

## **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 Assistance Agreement that may be entered into between the CDFI Fund and a Recipient under the CMF Program.

The substantive modifications from the previous version of the document have been highlighted in yellow. 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 March 10, 2020.**

TEMPLATE

**DRAFT FY 2019 CAPITAL MAGNET FUND  
TEMPLATE ASSISTANCE AGREEMENT**

<b>Recipient:</b> [AMIS To Populate]	<b>Capital Magnet Fund Award Number:</b> [AMIS To Populate] <b>DUNS Number:</b> [AMIS To Populate] <b>Employer Identification Number:</b> [AMIS To Populate]
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<b>Address:</b> [AMIS To Populate]
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<b>Applicable Program:</b> Capital Magnet Fund <b>Date of Applicable NOFA:</b> June 27, 2019	<b>Announcement Date:</b> February 25, 2020
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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.

<b>Community Development Financial Institutions Fund</b>	[AMIS To Populate]
By: _____ Digitally signed by on Authorized Representative: Daniel Aiello Title: Program Manager	By: _____ Digitally signed by on Authorized Representative: Title:

<b>Effective Date:</b>
<b>Recipient Information</b>
<b>Entity Type:</b> [AMIS To Populate]
<b>Organization Structure:</b> [AMIS To Populate]
<b>Eligibility Status:</b> [AMIS To Populate]
<b>CMF Award</b>
<b>Total Grant:</b> [AMIS To Populate]

**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	<b>X</b>
1-B. Annual Report	<b>X</b>
1-C. Annual Report Submission Deadlines	<b>X</b>
2. General Award Terms and Conditions	<b>X</b>
3. Certificate of Good Standing	<b>X</b>

TEMPLATE

**Schedule 1**  
**Award No.: [AMIS To Populate]**  
**Recipient: [AMIS To Populate]**

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**RECIPIENT-SPECIFIC TERMS AND CONDITIONS**

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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 selected below:

<b>Applicable if checked</b>	<b>Eligible Activities</b>
	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 selected below:

<b>Applicable if checked</b>	<b>Eligible Uses</b>
	Homeownership Affordable Housing
	Rental Affordable Housing
	Economic Development Activities

**Sections 3.2(c): PRODUCTION TARGETS**

Minimum number of Affordable Housing units for Eligible-Income Families (#):

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

Rental Housing – Percentage of rental Affordable Housing for Very Low-Income Families (inclusive of Extremely Low-Income Families) (%):

Homeownership Housing – Percentage of Homeownership Affordable Housing for Low-Income Families (inclusive of Very Low-Income Families and Extremely Low-Income Families) (%):

Areas of Economic Distress – Total percentage of Affordable Housing for Eligible-Income Families located in Areas of Economic Distress (%):

All of the Community Service Facilities and/or physical structures resulting from the Recipient’s Economic Development Activities that are financed and/or supported with Eligible Project Costs, shall be located in a Low-Income Area or Underserved Rural Area, as designated at the time of Commitment, and as published in a dataset for the applicable Award round on the CDFI Fund website: Applicable or Not Applicable

**Section 5.2(b): PROJECT-LEVEL TARGETED INCOME**

Rental – At least twenty percent (20%) of the units in each Multi-family rental Affordable Housing Project are leased by Low-Income Families.

**Section 3.2(e): RURAL AREAS**

Minimum percentage of the CMF Award used in Rural Areas (%):

**Section 3.2(f): SERVICE AREA REQUIREMENTS**

Service Area type:

Geographic areas:

State	State FIPS	If applicable, minimum number of Projects located in state:

**Section 3.2(g): LEVERAGING REQUIREMENTS**

Minimum Private Leverage Cost multiplier (#):

**Section 3.2(h): COMMITMENT**

Committed for use date: (2 Years after Effective Date)

**Section 3.2(i): DISBURSEMENT**

Initial disbursement date: (3 Years after Effective Date)

**Section 3.2(j): PROJECT COMPLETION**

Project Completion date: (5 Years after Effective Date)

**Section 3.8: PROGRAM INCOME REINVESTMENT**

Recipient shall use Program Income earned during the Investment Period in the form of principal and equity repayments in the manner set forth in the following section of Schedule 2:

**SCHEDULE 1**

**B. Annual Report**

**ANNUAL REPORT**

Throughout the Period of Performance of this Assistance Agreement, the Recipient must provide to the CDFI Fund an Annual Report with two components: Financial Condition Report and Performance Report. The Environmental Review Notification Report is submitted on an as needed basis. 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><b><u>FINANCIAL CONDITION REPORT:</u></b></p> <p><b>Financial Statement Audit Report (nonprofit Recipient, including Insured Credit Union)</b></p>	<p>A nonprofit Recipient must submit a Financial Statement Audit (FSA) report in AMIS, performed by an independent certified public accountant, if any are prepared.</p> <p>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 or parties other than the CDFI Fund.</p> <p><b>Form of submission: Recipient’s AMIS account.</b></p>
X	<p><b><u>FINANCIAL CONDITION REPORT:</u></b></p> <p><b>Financial Statement Audit Report (for-profit Recipient)</b></p>	<p>For-profit Recipients must submit a Financial Statement Audit report in AMIS, performed by an independent certified public accountant.</p> <p><b>Form of submission: Recipient’s AMIS account.</b></p>
X	<p><b><u>FINANCIAL CONDITION REPORT:</u></b></p>	<p><b>If the Recipient is a Depository Institution Holding Company (DHIC) or an Insured</b></p>



	<b><u>Financial Statement Audit Report (DHIC and Insured Depository Institution)</u></b>	<p>Depository Institution, it must submit a FSA report in AMIS.</p> <p><b>Form of submission: Recipient's AMIS account.</b></p>
X	<p><b><u>FINANCIAL CONDITION REPORT:</u></b></p> <p><b>Single Audit Report (nonprofit Recipient, if applicable)</b></p>	<p>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.</p> <p><b>Form of submission: Federal Audit Clearinghouse and via the Recipient's AMIS account (optional).</b></p>
X	<p><b><u>CMF PERFORMANCE REPORT:</u></b></p> <p><b>CMF Performance Report</b></p>	<p>The Recipient must submit the CMF Performance Report to the CDFI Fund.</p> <p><b>Form of submission: Recipient's AMIS account.</b></p>
X	<p><b><u>OTHER REPORTS:</u></b></p> <p><b>Environmental Review Notification Report</b></p>	<p>If applicable and in accordance with section 6.12 of Schedule 2, the Recipient must submit an Environmental Review Notification Report to the CDFI Fund 90 days prior to issuing a Commitment for the Project, in accordance with Section IV of this Schedule 1-B, and with all applicable requirements of Schedule 2.</p> <p><b>Form of submission: Recipient's AMIS account.</b></p>

<b>X</b>	<b>Material Event Form</b>	<p>As applicable and in accordance with section 7.8 of Schedule 2, the Recipient shall submit a Material Event Form within 30 days of the event.</p> <p><b>Form of submission: Recipient’s AMIS account.</b></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:** The Financial Statement Audit 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 Recipients (including Insured Credit Unions)** must submit to the CDFI Fund a Financial Statement Audit (FSA) report in AMIS, along with the Recipient’s statement of financial condition audited or reviewed by an independent certified public accountant, if any are prepared. The financial statements, if any are prepared, must be submitted no later than 180 days after the end of the Recipient’s fiscal year.

**B. For-profit Recipients** must submit to the CDFI Fund a FSA report in AMIS, along with the Recipient’s statement of financial condition audited or reviewed by an independent certified public accountant. 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 required to submit a FSA report to the CDFI Fund in AMIS.

**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, pursuant to 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 Commits for use the CMF Award, as currently outlined in Section 4.1 of the Assistance Agreement. It is permissible under the Assistance Agreement to incrementally expend the award during the Period of Performance. Prior to 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.

Recipients that are Institutions of Higher Education, Hospitals, Other Non-Profits, State, local, or federally recognized Indian tribal governments should refer to section 200.305(b)(9) 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.

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) regarding 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 controls 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. CMF PERFORMANCE REPORT:** The Recipient must submit a CMF Performance Report annually, 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. Please review Schedule 1-C for information regarding the due dates for the report.

**IV. ENVIRONMENTAL REVIEW NOTIFICATION REPORT:** The Recipient shall submit the Environmental Review Notification Report each time the Recipient identifies a new proposed 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 one hundred eighty (180) days prior to the date that funds are Committed to a project.

V. **MATERIAL EVENT FORM:** As applicable and in accordance with section 7.8 of Schedule 2, the Recipient shall advise the CDFI Fund in writing via a service request within AMIS, the occurrence of a Material Event within 30 days of the event.

TEMPLATE

**C. Annual Report Submission Deadlines**

**ANNUAL REPORT SUBMISSION DEADLINES**

The Recipient must submit Annual Report components according to the schedule below.

**FINANCIAL CONDITION REPORTS**

<b>Financial Condition Report Deadlines</b> <b>[As applicable; to be determined by Recipient annually.]</b>		
<b>Fiscal year end date:</b>	<b>Due date for Financial Statements:</b> <b>[As applicable.]</b>	<b>Due date for Single Audit Report:</b> <b>[As applicable.]</b>

## PERFORMANCE REPORT

The Performance Goals are derived from the Application and are specified in Schedule 1. Any Recipient that fails to achieve any Performance Goal 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.

<b>Performance Report Annual Periods and Due Dates Schedule<sup>1</sup></b>			
	<b>Start date:</b>	<b>End date:</b>	<b>Annual report due date:</b>
Year 1 of Period of Performance			
Year 2 of Period of Performance			
Year 3 of Period of Performance			
Year 4 of Period of Performance			
Year 5 of Period of Performance			
Year 6 of Period of Performance			
Year 7 of Period of Performance			
Year 8 of Period of Performance			
Year 9 of Period of Performance			
Year 10 of Period of Performance			
Year 11 of Period of Performance			
Year 12 of Period of Performance			
Year 13 of Period of Performance			
Year 14 of Period of Performance			
Year 15 of Period of Performance			
Year 16 of Period of Performance (if period between Effective Date and Recipient's fiscal year end date is less than 12 months)			

**Questions related to these reporting requirements should be submitted via AMIS service requests.**

<sup>1</sup> The Period of Performance will include additional reporting years not reflected on this schedule if at least one Project has not completed its 10-year Affordability Period by the 16<sup>th</sup> performance year. Early termination of the reporting requirements is also possible if the 10-year Affordability Period for every Project is completed prior to the 16<sup>th</sup> performance year.

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**Schedule 2**

**Award No.: [AMIS To Populate]**

**Recipient: [AMIS To Populate]**

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**GENERAL AWARD TERMS AND CONDITIONS**

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## ARTICLE I INCORPORATION BY REFERENCE

12 C.F.R. Part 1807, as may be amended from time to time, 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 Project, the period beginning on the date when the Project achieves Initial Occupancy 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 Areas of Economic Distress. “Areas of Economic Distress” shall mean census tracts identified by the CDFI Fund, as published in a dataset for the applicable Award round on the CDFI Fund website: (a) where at least 20 percent of households that are Very Low-Income spend more than half of their income on housing; or (b) that are designated Qualified Opportunity Zones under 26 U.S.C. §1400Z-1; or (c) that are Low-Income Housing Tax Credit Qualified Census Tracts; or (d) where greater than 20 percent of households have incomes below the poverty rate and the rental vacancy rate is at least 10 percent; or (e) where greater than 20 percent of the households have incomes below the poverty rate and the homeownership vacancy rate is at least 10 percent; or (f) are Underserved Rural Areas as defined in the CMF Regulations.

2.5 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.

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

2.7 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.

2.8 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.*

2.9 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).

2.10 Enterprise-level Capital. “Enterprise-level Capital” shall mean capital earned, borrowed, or raised by the Recipient or its Affiliates, which is designated for use and ultimately used to pay for Leveraged Costs but is not initially restricted for use for specific properties at the time it is earned, borrowed or raised.

2.11 Initial Occupancy. “Initial Occupancy” shall mean:

(a) For rental Affordable Housing, after the Project is Placed into Service and when at least ninety percent (90%) of all CMF Award financed and/or supported units within the property are occupied or 12 months after the Project Completion date;

(b) For Affordable Housing Homeownership, upon the occurrence of the transfer of equitable title to the homeowner; and

(c) For owner-occupied Rehabilitation of Homeownership Affordable Housing only, at Project Completion pursuant to 12 C.F.R. § 1807.503.

2.12 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.

2.13 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.

2.14 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.*

2.15 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.

2.16 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.

2.17 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. The applicable NOFA for this Assistance Agreement is as listed on the signature page.

2.18 Performance Goals. “Performance Goals” shall mean the performance goals and measures as described in Schedule 1, and as further described in Schedule 2.

2.19 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.

2.20 Placed into Service. “Placed into Service” shall mean, in the case of the Development, Rehabilitation and/or Preservation of rental Affordable Housing, after Project Completion is achieved and the property is otherwise ready for occupancy as evidenced by a certificate of occupancy.

2.21 Private Leverage Capital. “Private Leverage Capital” shall mean investments or loans the Recipient, or Projects financed and/or supported by the Recipient, received from private entities that are not a unit of federal, state, or local government. Examples include private activity bonds, LIHTC equity, other equity investments, lines of credit, loans or other investments from private sources, such as banks, private investors or philanthropic entities that are made to the Recipient or Projects.

2.22 Rural Areas. “Rural Areas” shall mean, as published in a dataset on the CDFI Fund website: (i) a census tract outside of a Metropolitan Statistical Areas as designated by the Office of Management and Budget; or (ii) a census tract in a Metropolitan Statistical Areas as designated by the Office of Management and Budget that is outside of the Metropolitan Statistical Area’s Urbanized Areas, as designated by the U.S. Department of Agriculture’s (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of over 64 housing units per square mile for USDA’s RUCA Code #2.

2.23 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.

2.24 Tribal Government. “Tribal Government” shall mean the Federally or state-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. Pursuant to Section 3.8, Projects financed and/or supported with specified forms of Program Income will be treated as Projects financed with CMF Awards for purposes of

calculating Recipient performance. The Recipient shall use the CMF Award in the manner set forth below:

- (a) Eligible activities. The Recipient shall use the CMF Award only for the activities designated as applicable in Schedule 1 of this Assistance Agreement.
- (b) Eligible uses. The Recipient shall use the CMF Award only for the uses designated in Schedule 1 of this Assistance Agreement. If applicable, the Recipient shall use no more than thirty percent (30%) of its CMF Award to capitalize a fund to support Economic Development Activities. The Recipient is authorized to use no more than five percent (5%) of its CMF Award for Direct Administrative Expenses.
- (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 Affordable Housing, financed and/or supported with a CMF Award, that is set aside to be leased or owned, as applicable, by Eligible-Income Families in a number of units that is no less than the number set forth in Schedule 1 of this Assistance Agreement.
- (d) Portfolio-level targeted incomes and geographies.
  - (i) Rental Affordable Housing. If applicable, as of the end of the Investment Period, the Recipient shall have used its CMF Award for Affordable Housing Activities resulting in rental Affordable Housing units set aside to be leased by Very Low-Income Families (inclusive of Extremely Low-Income Families), as measured over the Recipient's entire portfolio of rental Affordable Housing, financed and/or supported with the CMF Award, in a percentage no less than the percentage set forth in Schedule 1 of this Assistance Agreement. In the event the Recipient's percentage is 100%, all rental Affordable Housing units, as measured over the Recipient's entire portfolio of rental Affordable Housing units financed and/or supported with the CMF Award and associated Leveraged Costs, as of the applicable Initial Occupancy date, must be set aside to be leased by Very Low-Income (inclusive of Extremely Low-Income) Families.
  - (ii) Homeownership Affordable Housing. If applicable, as of the end of the Investment Period, the Recipient shall have used its CMF Award for Affordable Housing Activities resulting in Homeownership Affordable Housing reserved for ownership or owned by Low-Income Families (inclusive of Very Low-Income and Extremely Low-Income Families), as measured over the Recipient's entire portfolio of Homeownership Affordable Housing, financed and/or supported with the CMF Award, in a percentage no less than the percentage set forth in Schedule 1 of this Assistance Agreement. In the event the Recipient's percentage is 100%, all Homeownership Affordable Housing, as measured over the Recipient's entire portfolio of Homeownership Affordable Housing financed and/or supported with

the CMF Award, as of the applicable Initial Occupancy date, must be reserved for ownership or owned by Low-Income Families (inclusive of Very Low-Income and Extremely Low-Income Families).

(iii) Areas of Economic Distress for Affordable Housing. As of the end of the Investment Period, the Recipient shall have used its CMF Award for Affordable Housing Activities resulting in Affordable Housing located in Areas of Economic Distress, that is reserved for lease or ownership, as applicable, by Eligible-Income Families, as measured over the Recipient's entire portfolio of Eligible-Income units financed and/or supported with the CMF Award, in a percentage that is no less than the percentage set forth in Schedule 1 of this Assistance Agreement. In the event the Recipient's percentage is 100%, all Affordable Housing within the Recipient's entire portfolio of Eligible-Income units, financed and/or supported with the CMF Award must be located in Areas of Economic Distress. **Such Affordable Housing that is located in Areas of Economic Distress must have been designated in Areas of Economic Distress at the time of Commitment.**

(iv) Low-Income Areas for Economic Development Activities. If applicable and as indicated in Schedule 1, as of the end of the Investment Period, the Recipient shall have used its CMF Award to finance and/or support Economic Development Activities In Conjunction With Affordable Housing resulting in Community Service Facilities and/or physical structures, financed and/or supported with the CMF Award, that are located in a Low-Income Area or Underserved Rural Area, as designated at the time of Commitment, and as published in a dataset for the applicable Award round on the CDFI Fund website.

(e) Rural Areas. As of the end of the Investment Period, the percentage of the total CMF Award used by the Recipient to finance and/or support Affordable Housing Activities and/or Economic Development Activities resulting in Affordable Housing and/or Community Service Facilities and/or physical structures, that are located in Rural Areas shall be no less than the percentage set forth in Schedule 1. In the event the Recipient's percentage is 100%, all of the CMF Award used to finance and/or support Affordable Housing Activities and/or Economic Development Activities resulting in Affordable Housing and/or Community Service Facilities and/or physical structures, as measured at any time, must be located in Rural Areas.

(f) Service Area requirements. As applicable, the states listed in the geographic areas table in Schedule 1 comprise the allowable geographic areas for the location of Affordable Housing and/or Community Service Facilities/physical structures resulting from the Recipient's Affordable Housing Activities and/or Economic Development Activities. Recipient shall use 100% of its CMF Award to finance and/or support



Affordable Housing Activities and/or Economic Development Activities resulting in Affordable Housing and/or Community Service Facilities/physical structures, financed and/or supported with the CMF Award, that are located in its Service Area. If applicable, as of the end of the Investment Period, the Recipient shall have used its CMF Award to finance and/or support the minimum number, as set forth in Schedule 1, of Affordable Housing and/or Community Service Facilities/physical structures located in the specific, corresponding geographic areas within its Service Area.

(g) Leveraging requirements.

(i) As of the end of the Investment Period, the Recipient shall have financed and/or supported Eligible Project Costs in an amount that equals at least ten (10) times the dollar amount of the CMF Award. Eligible Project Costs for a given Project shall not exceed total development costs for that Project, as further described in Section 3.4(e).

(ii) As of the end of the Investment Period, the Recipient shall have yielded an amount of total Leveraged Costs funded by Private Leverage Capital that is no less than the amount of the CMF Award times the private leverage cost multiplier set forth in Schedule 1.

(h) 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 two (2) years after the Effective Date 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.

(i) Initial Disbursement date. The Recipient shall make an initial disbursement of its CMF Award to at least one Project 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. All CMF Award funds must be fully disbursed by the Project Completion date.

(j) Project Completion date. The Recipient shall achieve Project Completion with respect to Projects financed/supported by its entire CMF Award by 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

(k) Placed into Service date. Upon Project Completion, the Recipient shall Place into Service each rental Project no later than six (6) months from the Project Completion date of the applicable Project.

(l) Initial Occupancy date. Upon Project Completion and Project being Placed into Service, if applicable, the Recipient shall achieve Initial Occupancy within 12 months of the applicable Project Completion date of each Project.

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 uses 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 Leveraged Costs.

(b) No costs attributable to prohibited uses as identified in 12 C.F.R. § 1807.302(a) and § 1807.302(b) or any in Section 3.5 below may be reported as Eligible Project Costs.

(c) Notwithstanding the foregoing paragraphs of this Section 3.4, costs are deemed Eligible Project Costs only if they are expenses that are reasonable, necessary, and non-luxury, 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).

(d) CMF Award dollars and Leveraged Costs may be used to pay for the Eligible Project Costs contained in Section 3.4(e) 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 the CMF Award to be used to pay for Eligible Project Costs in a written agreement.

(e) Eligible Project Costs are calculated for each Project at Project Completion and include all eligible costs incurred in achieving Project Completion. Eligible Project Costs may be incurred during multiple phases of development of the same Project but in no event exceed the total development cost of the Project, as outlined below. 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, but are not limited to: all costs necessary to meet the standards in 12 C.F.R. § 1807.503; the costs to make utility connections; the costs for environmental remediation; 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 utilities necessary to the development of the project. A development project consists of one or more buildings or structures on the same site (or on scattered sites if developed together) that are considered one property under the same ownership.

(ii) Refinancing costs. The dollar amount of the equity investment, grant or loan to refinance existing debt with new debt funded in whole or in part with a CMF Award. The debt must be secured by the Housing associated with the Project in order to make or preserve it as affordable, in accordance with 12 C.F.R. § 1807.400 *et seq.*

(iii) Financing Costs. Fees and costs associated with a loan including, but not limited to, origination fees, service fees, recordation fees, title search and other costs relating to the making of loans.

(iv) Acquisition costs. Costs of acquiring improved or unimproved real property, including the mortgage amount loaned to homebuyers.

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

(1) Architectural, engineering, or related professional services, including but not limited to services to prepare plans, drawings, specifications, or work write-ups.

(2) Building permits, attorneys' fees, private appraisal fees and fees for an independent cost estimate, builders or developer's 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, limited to 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, and 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.

(vi) Relocation costs. The cost of relocation payments and other relocation assistance to persons and businesses 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.

(vii) 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 other Eligible Project Costs.

(f) Recipient's Program Income in the form of principal and equity repayments that is reinvested in a prior CMF financed and/or supported Project cannot be counted in the Eligible Project Costs calculation. The CMF Award amount in whole or in part, including

in the form of Program Income, shall only be counted once as Eligible Project Costs for any given Project.

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) Residential treatment facilities;
- (xi) Correctional facilities;
- (xii) Student dormitories;
- (xiii) 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
- (xiv) Projects consisting of farming, as set forth in 12 C.F.R. § 1807.302(c)(2).

(b) Subrecipient Relationships. The Recipient shall adhere to the following Subrecipient relationship requirements.

- (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 **which must be approved in advance by the CDFI Fund (“Approved SPE”)** to carry out CMF activities. The Approved SPE shall:
- (1) be one hundred percent (100%) owned and managed by the Recipient;
  - (2) be created to solely act as 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) **be capitalized by a CMF Award and leverage capital, the total of which shall be used solely for Eligible Project Costs;**
  - (4) **be subject to an Approved SPE Agreement between the Approved SPE and the Recipient, which clearly states that all provisions, requirements and obligations of this Assistance Agreement remain with the Recipient and additionally apply to the Approved SPE, including compliance with all Federal statutes and regulations referenced in this Assistance Agreement;**
  - (5) does not otherwise engage in any of the prohibited activities set forth in this Section 3.5; and
  - (6) is approved in advance and in writing by, and meets all other requirements to the satisfaction of, the CDFI Fund, **including the provision of a legal opinion from the counsel of the Recipient in the form prescribed by the CDFI Fund.**
- (iii) All provisions, requirements and obligations of this Assistance Agreement remain with the Recipient and additionally apply to the Approved SPE.
- (iv) **An Approved SPE Agreement does not constitute a Commitment for use.**

(c) The Recipient shall not use any CMF Award funds 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 funds provided hereunder for the purpose of covering expenses, including consultant fees, related to the preparation of an application for certification or an award from the CDFI Fund.

(e) The Recipient may not use any CMF Award funds 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 funds 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 its CMF Award under this Assistance Agreement for any project that also receives funding from the Recipient's (or any of its Affiliates') other CDFI Fund awards or allocations, except when the CMF Award is used to finance an activity in a different phase of development financing in the same project. The phases of development financing are deemed to be:

- (i) predevelopment;
- (ii) acquisition;
- (iii) site work (pre-construction);
- (iv) construction/rehabilitation;
- (v) permanent financing; or
- (vi) bridge financing between two or more phases.

(1) This restriction does not apply to the Recipient's CMF Awards. The Recipient may combine its multiple CMF Awards, including Program Income in the form

of principal and equity repayments, to provide financing on any project, including financing the same phase of any project. However, the Recipient may not deem costs as Eligible Project Costs under this Assistance Agreement for those same costs deemed as Eligible Project Costs under the Recipient's prior CMF Awards or another Recipient's CMF Award. **The Recipient may use Program Income earned in the form of principal and equity repayments on a Project that received prior funding from the CMF Award issued under this Assistance Agreement or another CMF Award issued under a different Assistance Agreement. However, such Program Income earned in the form of principal and equity repayments cannot be counted in the Eligible Project Costs calculation on a Project that has received prior funding from the CMF Award issued under this Assistance Agreement or another CMF Award issued under a different Assistance Agreement.**

(2) If providing Homeownership assistance, a CMF Award may be used in conjunction with awards or allocations from other CDFI Fund programs only if the Project can be divided into phases of development financing, and the CMF Award is used in a different phase from the other CDFI Fund program awards/allocations. A CMF Award cannot be used for a Homeownership property that is permanently financed (or supported) by both the Recipient's (or any of its Affiliates') CMF Award and an award or allocation from another CDFI Fund program (e.g., down payment assistance funded from CMF dollars may not be combined with a permanent mortgage funded from another CDFI Fund program).

(3) Costs financed and/or supported by the Recipient's (or any of its Affiliates') other awards/allocations from CDFI Fund programs, including awards from prior CMF rounds, may not be counted or reported as Leveraged Costs for this CMF Award.

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 cannot 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 affect 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, 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 (or being noncompliant but not determined by the CDFI Fund to be in default) with the terms and conditions of any prior award from 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, 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.

(e) Following the Announcement Date, if the Recipient is found to be noncompliant or in default under any CDFI Fund award, the CDFI Fund may rescind the Assistance to the Recipient if:

- (i) the Recipient fails to remedy the noncompliance within the timeframe established in writing by the CDFI Fund, or
- (ii) the Recipient fails to satisfy any condition related to the noncompliance or default within the timeframe established in writing by the CDFI Fund.

3.8 Authorized uses of Program Income; requirements for reinvestment.

- (a) If applicable as noted in Section 3.8 of Schedule 1, Program Income in the form of principal and equity repayments of the CMF Award earned during the five-year Investment Period must be reinvested by the Recipient as part of its continued performance under the CMF Award. Program Income generated from earned interest on the CMF Award must be used by the Recipient solely to further the objectives of its mission. Interest income may be used to support additional Affordable Housing, although it is not a requirement. For purposes of this Section 3.8, 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.

Such Program Income must be reinvested by the Recipient as described below:

- (i) Recipient shall invest such Program Income in the eligible activities identified in Section 3.2(a).
- (ii) Recipient shall invest such Program Income in the eligible uses identified in Section 3.2(b).
- (iii) Recipient shall use 100 percent of such Program Income to finance and/or support Affordable Housing and/or Community Service Facilities/physical structures located in its Service Area, set forth in Section 3.2(f).
- (iv) Recipient shall use such Program Income to achieve the production targets set forth in Section 3.2(c).
- (v) Recipient shall use such Program Income to achieve the rental Affordable Housing requirement set forth in Sections 3.2(d)(i) and 5.2(a).
- (vi) Recipient shall use such Program Income to achieve the Homeownership Affordable Housing requirement set forth in Sections 3.2(d)(ii) and 5.3(a).
- (vii) Recipient shall use such Program Income to achieve the Areas of Economic Distress for Affordable Housing requirement set forth in Section 3.2(d)(iii).

- (viii) Recipient shall use such Program Income to achieve the Low-Income Areas for Economic Development Activities requirement set forth in Section 3.2(d)(iv).
- (ix) Recipient shall use such Program Income to achieve the leverage requirements set forth in Section 3.2(g). For purposes of this section, only Projects financed and/or supported with such Program Income and completed within the Investment Period will be counted towards Eligible Project Costs, as further stipulated in Section 3.5(h). For purposes of Section 3.2(g), costs paid for with such Program Income will be deemed as paid for by the CMF Award for purposes of determining Eligible Project Costs and as further stipulated in Section 3.5(h).
- (x) For items (iv)-(vii) and (ix) above, only Affordable Housing and/or Community Service Facilities/Economic Development Activity physical structures, as applicable, financed or supported with such Program Income that achieve Project Completion by the end of the Investment Period will be counted towards the requirements in Sections 3.2 and 5.3.
- (xi) Recipient shall use such Program Income to achieve the Eligible Project Costs requirements set forth in Section 5.1. For purposes of Section 5.1 costs paid for with such Program Income will be deemed as paid for by the CMF Award for purposes of Eligible Project Costs, subject to Section 3.5(h). For purposes of this section, only Projects financed and/or supported with such Program Income and completed within the Investment Period will be counted towards Eligible Projects Costs, and as further stipulated in Section 3.5(h).
- (xii) With regard to rental Affordable Housing financed and/or supported with such Program Income, the Recipient shall comply with the project level targeted income requirements set forth in Section 5.2(b).
- (xiii) Any Affordable Housing resulting from such Program Income, shall be subject to a ten-year (10-year) Affordability Period beginning the date that the Project achieves Initial Occupancy.
- (xiv) There is no initial disbursement requirement for such Program Income.
- (xv) For any Project financed or supported with Program Income as described in this Section 3.8(a), the Recipient shall have up to thirty-six (36) months from the time the Project is Committed to obtain Project Completion, but any Project completed after the end of the five year Investment Period shall not be counted towards meeting Performance Goals.

(xvi) The reinvestment requirement of this Section 3.8(a) is only triggered when the cumulative balance of Program Income earned equals \$100,000 or greater. During the Investment Period any Program Income earned and not Committed, in an amount that is less than \$100,000, shall be reinvested as required of this Section 3.8(a) or placed in an interest bearing account until the cumulative amount of Program Income reaches \$100,000 or greater. If and when the cumulative balance of Program Income earned reaches \$100,000 or greater during the Investment Period, the Recipient shall Commit and reinvest any amount in excess of the \$100,000 threshold within 12 months of the end of the Recipient's fiscal year in which the applicable balance was achieved, and as required of this Section 3.8(a). If the cumulative amount of Program Income does not reach \$100,000 by the end of the Investment Period, the Recipient shall use such Program Income to further the objectives of its mission as a Certified CDFI or Nonprofit Organization.

(b) If applicable as noted in Section 3.8 of Schedule 1, Program Income in the form of principal and equity repayments of the CMF Award earned during the Investment Period must be reinvested by the Recipient. Program Income generated from earned interest must be used by the Recipient solely to further the objectives of its mission. Interest income may be used to support additional Affordable Housing, although it is not a requirement. For purposes of this Section 3.8, 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. Such Program Income must be reinvested by the Recipient as described below:

- (i) Recipient shall invest such Program Income in the eligible activities set forth in Section 3.2(a).
- (ii) Recipient shall invest such Program Income in the eligible uses set forth in Section 3.2(b).
- (iii) Recipient shall use such Program Income to achieve the Low-Income Areas for Economic Development Activities requirement set forth in Section 3.2(d)(iv).
- (iv) Recipient shall use 100 percent of such Program Income to finance and/or support Affordable Housing and/or Community Service Facilities/physical structures located in its Service Area, as set forth in Section 3.2(f).
- (v) If Recipient uses its Program Income on any Project that achieves Project Completion by the date specified in Section 3.2(f), it shall use such Program Income to achieve the leverage requirements set forth in Section 3.2(g). For purposes of this section, only Projects financed and/or

supported with such Program Income and completed within the Investment Period will be counted towards Eligible Project Costs, as further stipulated in Section 3.5(h). For purposes of Section 3.2(g), costs paid for with such Program Income will be deemed as paid for by the CMF Award for purposes of determining Eligible Project Costs and as further stipulated in Section 3.5(h).

- (vi) Recipient shall use such Program Income to achieve the Eligible Project Costs requirements set forth in Section 5.1. For purposes of Section 5.1 costs paid for with such Program Income will be deemed as paid for by the CMF Award for purposes of Eligible Project Costs, subject to Section 3.5(h). For purposes of this section, only Projects financed and/or supported with such Program Income and completed within the Investment Period and as further stipulated in Section 3.5(h) will be counted towards Eligible Projects Costs.
  - (vii) In the case where Recipient uses such Program Income to finance and/or support Multi-family rental housing, the requirements set forth in Section 5.2(b) shall apply.
  - (viii) Any Affordable Housing resulting from such Program Income, shall be subject to a ten-year (10-year) Affordability Period beginning the date that the Project achieves Initial Occupancy.
  - (ix) There is no initial disbursement requirement for such Program Income.
  - (x) For any Project financed and/or supported with Program Income as described in this Section 3.8(b), the Recipient shall have up to thirty-six (36) months from the time the Project is Committed to obtain Project Completion.
  - (xi) The reinvestment requirement of this Section 3.8(b) is only triggered when the total cumulative balance of such Program Income earned equals \$100,000 or greater. During the Investment Period any Program Income earned and not Committed, in an amount that is less than \$100,000, shall be reinvested as required of this Section 3.8(b) or placed in an interest bearing account until the cumulative amount of such Program Income reaches \$100,000 or greater. If and when the cumulative balance of such Program Income earned reaches \$100,000 or greater during the Investment Period, the Recipient shall Commit and reinvest any amount in excess of the \$100,000 threshold within 12 months of the end of the Recipient's fiscal year in which the applicable balance was achieved, and as required by this Section 3.8(b). If the cumulative amount of Program Income does not reach \$100,000 by the end the Investment Period, the Recipient shall use such Program Income to further the objectives of its mission as a Certified CDFI or Nonprofit Organization.
- (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) or (b)), 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, as described in Section 3.8, 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 during the Investment Period, 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. Furthermore, if Program Income is used for Economic Development Activities, the total amount of CMF Award and Program Income used for Economic Development Activities may not exceed thirty percent (30%) of the CMF Award amount (i.e. the amount of the CMF award listed on the signature page of this Assistance Agreement times 30%).

(f) In no event shall the Recipient use any Program Income for Direct Administrative Expenses during the Investment Period, 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. Furthermore, if Program Income is used for Direct Administrative Expenses, the total amount of CMF Award and Program Income used for Direct Administrative Expenses may not exceed five percent (5%) of the CMF Award amount (i.e. the amount of the CMF award listed on the signature page of this Assistance Agreement times 5%).

(g) The Recipient may use Program Income earned in the form of principal and equity repayments on a Project that was supported and/or received prior funding from the CMF Award issued under this Assistance Agreement or another CMF Award issued under a different Assistance Agreement. However, such Program Income earned in the form of principal and equity repayments cannot be counted in the Eligible Project Costs calculation on a Project that was supported and/or received prior funding from the CMF Award issued under this Assistance Agreement or another CMF Award issued under a different Assistance Agreement.

#### **ARTICLE IV COMMITMENT AND DISBURSEMENT**

4.1 Commitment. The Recipient shall demonstrate that 100% of 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 to a third-party unless the requirement of 12 C.F.R. § 1807.501(b) for such an agreement is waived by the CDFI Fund pursuant to 12 C.F.R. § 1807.105 and alternate documentation is approved. CMF assistance in the form of a Loan Guarantee is considered Committed for use when the Recipient enters into a legally binding agreement to provide payment to a counterparty under the terms of the Loan Guarantee. CMF assistance in the form of a Loan Loss Reserve is considered Committed for use when the Recipient enters into a legally binding agreement to set aside proceeds of the CMF Award to cover losses on loans, accounts, and/or notes receivable for an identified eligible project.

For purposes of demonstrating Commitment, an Affiliate of the Recipient that is a separate legal entity is deemed a third-party. The Commitment agreement or approved alternate documentation must demonstrate that the CMF Award will be provided to a qualified Family, developer, project sponsor, borrower or in the case of Loan Loss Reserves to a lender, 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, the requirements of this Section 4.1(b) are

deemed to be met when at least one loan is made to a qualifying Family pursuant to a Board approved Homeownership program that satisfies the requirements set forth in 12 C.F.R. § 1807.402; or

(c) Construction schedule ensures Project Completion within five (5) years of the Effective Date of the Assistance Agreement, except as described in Section 3.8(a)(xvi) and (b)(xi).

4.2 Alternative Forms of Commitment. In cases where there is no counterparty for purposes of Commitment and the Recipient serves in the role as the developer for the Project; or Recipient is financing and/or supporting a Project for Purchase and the Project is not owned, sponsored, or being developed by a limited partnership or limited liability company or other separate legal entity; or the Recipient is committing its CMF Award to a Loan Loss Reserve where the reserve is not pledged to a third party or separate legal entity affiliated with the Recipient, but is used to reserve against losses from loans directly made by the Recipient, the Recipients may evidence a Commitment via a resolution of the Board of Directors for an identified Project or Affordable Homeownership purchase program, per the CDFI Fund general waiver issued in the Notice of Funds Availability dated July 18, 2018 (83 FR 34685). Such resolution shall be in the form and meet the minimum requirements as described below and in further guidance entitled “Guidance on Commitment Counterparty Waiver” which can be located on the CMF Compliance and Reporting section of the CDFI Fund’s website heading “General Compliance Resources.” For the purpose of evidencing Commitment to a Project for Affordable Homeownership Purchase and achieving Project Completion for Purchase, the Recipient’s entire portfolio of Homeownership financed and/or supported with the CMF Award will be deemed a Project.

(a) The Board of Directors of the Recipient shall adopt a resolution which shall include the following:

(i) The resolution shall cite the regulatory requirement and waiver and state it is being adopted to satisfy the evidence of commitment pursuant to 12 C.F.R. 1807.501(b) of the CMF Regulations, per the waiver of general applicability as published in the Federal Register on July 18, 2018.

(ii) The resolution shall be binding and approved on or before the Commitment for use date listed in section 3.2(h) of this Assistance Agreement.

(iii) The resolution shall state that a legally binding Commitment to a third party is not possible.

(iv) The resolution shall include the Affordable Housing Activity and/or eligible activity, amount of the CMF Award this is being Committed for Use, the identified Project, and the targeted income levels of the Families in the applicable percentages.



(v) The resolution shall commit the Recipient to ensuring full compliance with this Assistance Agreement and the CMF Regulations.

4.3 Revisions to Commitment. Once a portion or all of the CMF Award is Committed for use to a specific Project, the Commitment may be changed, cancelled, withdrawn or substituted only under the following circumstances:

(a) Prior to the Commitment for use date specified in Section 3.2(h) of the Assistance Agreement. A Commitment can be withdrawn if the Project is not moving forward and it is prior to the Commitment for use date.

(b) After the Commitment for use date specified in Assistance Agreement Section 3.2(h). A Commitment can be withdrawn if the Project is not moving forward, is past the Commitment for use date and no CMF Award dollars were disbursed into the Project. The Recipient shall identify an eligible Project(s) to Commit its CMF Award as a substitution. The Recipient shall remain required to meet all of its Performance Goals by the Project Completion deadline. Withdrawal of a Commitment after the Committed for use date specified in Section 3.2(h) is a Material Event and subject to the reporting requirements outlined in Section 7.8.

4.4 Disbursement. The Recipient shall make an initial disbursement of either all or a portion of the CMF Award for Affordable Housing Activities or Economic Development Activities by the date set forth in Schedule 1. The entire CMF Award shall be fully disbursed by the Recipient as of the end of the Investment Period. Funds are considered disbursed when they are provided to the project sponsor, developer, borrower, Eligible-Income Family 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 disbursed, for the purposes of Section 3.2(i) and this Section 4.4, at the time the funds are Committed for use for an identifiable Project and credited to a separate account.

## ARTICLE V AFFORDABILITY REQUIREMENTS

5.1 Affordability requirements in general. The Recipient shall ensure the following affordability qualifications are met for Projects undergoing an Affordability Period:

(a) Housing must meet the affordability requirements for not less than 10 years, beginning after Project Completion and at Initial Occupancy, or for Affordable Homeownership, beginning at the time of purchase by the qualifying Family. The

Recipient shall ensure that one hundred percent (100%) of total Eligible Project Costs are attributable to Affordable Housing units leased or owned by 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 are leased or owned by Low-Income Families, (inclusive of Very Low-Income and Extremely Low-Income Families), as set forth in 12 C.F.R. § 1807.400 *et seq.*

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 Project has an Affordability Period in effect:

(a) Portfolio-level targeted incomes. If applicable, at the end of the Investment Period the percentage of rental Affordable Housing, as measured over the Recipient's entire portfolio of rental Affordable Housing financed and/or supported by this CMF Award, leased by Very Low-Income (inclusive of Extremely Low-Income) Families, shall be no less than the percentage set forth in Schedule 1 of this Agreement.

(b) Project-level targeted incomes. For each Multi-family rental Affordable Housing Project, financed or supported with Eligible Project Costs, at least twenty percent (20%) of the units in each Project shall be leased by Low-Income Families (inclusive of Very Low-income and Extremely Low-income Families). For the purposes of this Section 5.2(b), a project consists of one or more buildings or structures on the same site that together are considered one property (or on scattered sites if developed together) under the same ownership.

(c) The maximum rent of and utilities allowances for each Affordable Housing 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 Affordable Housing project, the CDFI Fund reserves the right to seek corrective actions, including any in Section 8.2 of this Agreement, 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 Affordable 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 Affordable Housing project will continue to meet the affordability requirements for the remaining duration of the Affordability Period.

(g) For any Affordable Housing financed or supported with a CMF Award, 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 report on the first Annual Report for each Project Placed into Service that mechanisms such as deed restrictions, covenants running with the land, or other recordable mechanisms, if applicable, have been put in place to impose the affordability requirements for each property until the exit of that property from the Affordability Period, regardless of any change in property ownership or other restrictions or conditions. The Recipient shall ensure that all filings and recordings are duly made, such that all the necessary CMF affordability requirements imposed on each property are enforceable under all applicable Federal, State, and local laws. In connection with these filings and recordings, the CDFI Fund reserves the right to **review the filings and/or recordings for compliance with these requirements** and/or 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 are enforceable under the laws of the State and locality where the Affordable Housing is located.

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 Homeownership Project annually, as applicable during its Affordability Period and for each year that the Recipient has an Affordability Period in effect.

(a) Portfolio-level targeted incomes. If applicable, after the end of the Investment Period, the percentage of Homeownership Affordable Housing, financed and/or supported with Eligible Project Costs and owned by Low-Income Families (inclusive of Very Low-Income and Extremely Low-Income), as measured over the Recipient's entire portfolio of Homeownership Affordable Housing, financed and/or supported with the CMF Award, shall be no less than the percentage set forth in Schedule 1 of this Assistance Agreement.

(b) The Housing must be Single-family housing.

(c) 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.

(d) 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 verifying and documenting Family income that is in compliance with all applicable Federal and State lending laws. Family income statements must be verified by third-party documentation (e.g. pay-stubs, income statements, tax returns, records of self-employment, etc.).

(e) The Housing financed and/or supported by the CMF Award must be the principal residence of the Family.

(f) The Housing must meet the definition of “Homeownership” as defined in 12 C.F.R. § 1807.104.

(g) Resale or 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 resale or recoupment strategy shall include mechanisms for:

(1) The occupying Family to provide notice to the Recipient of the sale or transfer of a CMF financed and/or supported home;

(2) The Recipient to provide notice to the CDFI Fund through the CMF Performance Report for the same performance year when the Recipient utilizes this resale or recoupment strategy;

(3) Ensuring that the Recipient shall demonstrate through legal instruments, filings, and other documentation (e.g., deed restrictions, covenants running with the land, etc.) that the CMF financed and/or supported Housing is either resold to an Eligible-Income Family, or if resold to a non-Eligible-Income Family, the home is replaced as part of the Recipient’s CMF Homeownership portfolio or program using recouped CMF Award proceeds or other funds with an Eligible-Income Family of the same income category of the original occupying Family.

(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.

(h) If applicable, any rental Affordable Housing financed and/or supported with a CMF Award shall be convertible to Homeownership Affordable Housing in accordance with 12 C.F.R. § 1807.402(e).

(i) The affordable homeownership provisions of 12 C.F.R. § 1807.402 *et seq.* are otherwise met.

5.4 Economic Development Activities. The Recipient shall ensure that the requirements of 12 C.F.R. § 1807.300(b) 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. 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, as well as the income restrictions for these units. 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 Affordable Housing units meet the affordability requirements for no less than ten (10) years, beginning after Project Completion and on the date when the Affordable Housing achieves Initial Occupancy, by ensuring each year during the Affordability Period the following:

(a) For rental Affordable Housing units:

(1) The tenant's income is re-examined annually to determine if the Family remains income eligible in accordance with 12 C.F.R. 1807.401(f).

(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 (e). (5)

(5) Any temporary noncompliance resulting from CMF-assisted units that are occupied by tenants that are over-income is resolved in accordance with 12 C.F.R. § 1807.401(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 the time the equitable title of the Housing is transferred to the qualifying Family, or at or around the time the Affordable Housing Activity achieves Project Completion. Income verifications should rely on third party documentation and not solely on self-certification by the qualifying Family.

(2) Resale strategies pursuant to Section 5.3(g) and 12 C.F.R. § 1807.402(a)(5) are imposed should the Housing be sold to a non-Eligible-Income 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 one hundred eighty (180) 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) of 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, and as described in Section 7.8(c), if applicable.

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 CDFI Program Regulations (at 12 C.F.R. § 1805.806).

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, including, but not limited to, filing an Annual Certification and Data Collection Report.

(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, via a Service Request through AMIS, 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 activities and 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 or the plan to assign, pledge, or otherwise transfer any rights, benefits, or responsibilities of the Recipient under the Assistance Agreement, pursuant to Section 9.2;
- (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 non-procurement 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 or the withdrawal of a Commitment as described in Section 4.3(b);
- (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 achieved Project Completion and Initial Occupancy, any change in the ownership or management of a Project during the Affordability Period;
- (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 Performance Goals set forth in Schedule 1 during the timeframe set forth in Sections 3.2, 5.1, 5.2, and 5.3, as applicable.
- (b) The Recipient shall not use the CMF Award under this Assistance Agreement for any Project that receives funding from the Recipient's (or any of its Affiliates') other CDFI Fund program awards or allocations, except as provided in Section 3.5(h) of this Assistance Agreement.
- (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) et seq. 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, including any Program Income in the form of principal or equity repayments, is currently debarred, suspended, excluded, or disqualified by the U.S. Department of the Treasury or any other Federal department or agency, as described in 31 C.F. R. Part 19. 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.fsrcs.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.fsrcs.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/execomp.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.sam.gov/portal/sam>.

(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/execomp.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 superseded 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 activities and uses.
- (i) The failure of the Recipient to satisfy the conditions set forth in Article IV by the fifth year (5<sup>th</sup> year) anniversary of the Effective Date.
- (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 Sanctions 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 thirty (30) 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 thirty-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 and Changes in Key Personnel.

(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 replaces its Executive Director, Chief Executive Officer or equivalent leadership official, the Recipient must notify the CDFI Fund in writing via a Service Request through the Recipient's AMIS account within thirty (30) days of occurrence.

(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. In its sole discretion, the CDFI Fund will either grant or deny an amendment request and communicate its decision in writing to the Recipient.

(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, unless a recoupment and redeployment of the actual CMF Award dollars: 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).

9.18 Procurement Standards. When the Recipient uses its CMF Award to procure property and services it shall follow the UAR General Procurement Standards in 2 C.F.R. § 200.318 through 2 C.F.R. § 200.326.

**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.]**