

APPENDIX TO CITY COUNCIL AGENDA APRIL 24, 2017



The poster features a blue silhouette of a lighthouse on the left. The PNC logo is in the top left, and the City of Rocky Mount logo is in the top right. The text 'FREE OUTDOOR CONCERTS!' is written in a green, hand-drawn style. The title 'ROCKY MOUNT'S DOWNTOWN Live!' is in large green letters with a treble clef. The background shows a green grassy field.

PNC PRESENTS

FREE OUTDOOR CONCERTS!

ROCKY MOUNT'S DOWNTOWN Live!

summer music series

SCHEDULE			
May 11	The Wallers	August 3	Liquid Pleasure
May 25	East Coast Rhythm & Blues Band	August 17	Jim Quick & Coastline
June 8	Throwback Thursday-Love Tribe	August 31	Steve Owen & Summertime
June 22	Spare Change	September 14	The Embers featuring Craig Woolard
July 6	The Tams	September 28	The Band of Oz
July 20	The Main Event Band		

DOORS OPEN AT 5:00 PM FOOD & BEVERAGES AVAILABLE ON SITE
MUSIC STARTS AT 6:00 PM NO COOLERS ALLOWED

THURSDAYS
on the lawn at the
IMPERIAL CENTRE
FOR THE ARTS & SCIENCES
270 GAY STREET
DOWNTOWN ROCKY MOUNT
252.972.1266
WWW.IMPERIALCENTRE.ORG

**SEE ITEM 10
IN
MAIN AGENDA
PACKAGE**

Memo

To: Stephen W Raper, City Manager
From: Amy Staton, Director of Finance *A. Staton*
Date: April 19, 2017
Re: New Market Tax Credit (NMTC) documents

The city obtained special obligation bond financing in December 2016 for construction of the Downtown Community Facility. It was anticipated that the city would subsequently receive new market tax credits to provide additional funding for the facility. We have received approximately \$22 million in new market tax credit allocation that will yield equity into the project in the amount of \$5,269,500 as additional funding for the facility. In preparation for closing the NMTC financing, there are several documents which require city council approval that are listed below.

1. Resolution Approving New Market Tax Credit Transaction - this document summarizes the overall new markets financing and requests city council approve the transaction and authorize the mayor and staff to execute the documents listed below, as well as other ancillary documents related to the new markets tax credit financing, to close the financing.
2. Rocky Mount Public Facilities Corporation – in order to facilitate the NMTC financing, a separate nonprofit corporation controlled by the city has been created. The articles of incorporation and bylaws are attached.
3. Memorandum of Understanding – in order to facilitate the NMTC financing, a separate nonprofit controlled by the city called the Rocky Mount Public Facilities Corporation has been formed, which will own 90% of the Rocky Mount DCF, LLC (the qualified active low income active community business created for NMTC program) (the QALICB). Under the Memorandum of Understanding, the city agrees to provide financial support to the Public Facilities Corporation for the project if needed.
4. Ground Lease - Rocky Mount Downtown Community Facility – this agreement is between the City of Rocky Mount (owner of the land) and Rocky Mount DCF, LLC (the "QALICB") for the overall purposes of allowing the construction of the facility.

5. Operating Lease Agreement – this agreement is between the Rocky Mount DCF, LLC (QALICB) and the City of Rocky Mount in the capacity of tenant for use of the facility.
6. Promissory Note (Upper Tier Loan), Loan Agreement (Upper Tier Loan), and Security and Pledge Agreement (Upper Tier Loan) – the city of Rocky Mount will make a loan to the Rocky Mount Public Facilities Corporation (a city controlled entity) for purposes of creating the leverage loan required to activate the new market tax credits. The city's funding for this loan is provided within the special obligation bond proceeds. These documents are the agreement, note, and pledge for the loan.
7. Development and Contribution Agreement – this agreement is between the City of Rocky Mount (owner of land) and the Rocky Mount DCF, LLC (QALICB) that provides for the City of Rocky Mount to be the developer of the property.

The city council will receive a Use Agreement as well as a Construction Disbursing Agreement at a later date. The City and OIC will enter into a Use Agreement for OIC to use portions of the DCF for educational and wellness programming during periods when it is not being used for amateur athletic and community events. The City, the QALICB, the Sub-CDEs, the Tax Credit Investor and Wells Fargo Bank, N.A. as monitoring agent will enter into a construction monitoring agreement (Construction Disbursing Agreement) pursuant to which the proceeds of the QLICI loans will be disbursed and combined with the remaining proceeds of the Bonds to pay construction costs. These last two agreements are referenced in the resolution and are currently being developed.

It is recommended that city council approve the documents listed in 1 through 7 and authorize the mayor and appropriate city staff to sign the documents.

Recommend Approval
[Signature]

RESOLUTION

RESOLUTION APPROVING NEW MARKETS TAX CREDIT TRANSACTION TO PROVIDE FINANCING FOR A PORTION OF THE COST OF THE ROCKY MOUNT DOWNTOWN COMMUNITY FACILITY, INCLUDING A WELLNESS CLINIC THEREIN AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED INSTRUMENTS, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, on December 28, 2016, the City of Rocky Mount, North Carolina (the "City") issued its \$36,815,000 Special Obligation Bonds, Series 2016 (the "Bonds") pursuant to a Bond Order and Authorizing Resolution adopted on November 28, 2016 (the "Resolution") and a General Trust Indenture dated as of December 1, 2016 (the "General Indenture") between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and a Series Indenture, Number 1 dated as of December 1, 2016, between the City and the Trustee (the "Series Indenture," and together with the General Indenture, the "Indenture");

WHEREAS, the proceeds of the Bonds are being used to finance and support the financing of the acquisition, construction and equipping of the Downtown Community Facility ("DCF" or the "Project"), a multi-purpose event center located in a municipal service district in downtown Rocky Mount, on a site with an address of 285 N.E. Main Street, Rocky Mount, North Carolina 27801 (the "Site");

WHEREAS, a portion of the financing of the Project (the "New Markets Tax Credit Financing") will be provided through financing provided under the new markets tax credit program (the "NMTC Program") under Section 45D of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, in addition to financing a portion of the Project generally, the New Markets Tax Credit Financing will provide the QALICB with the sufficient resources to finance the costs of constructing and equipping a health clinic within the DCF to provide urgent care, sports medicine and physical therapy as well as wellness programming within the DCF (collectively, the "Clinic");

WHEREAS, the DCF is being developed by the QALICB (as described below) and will be leased to the City and to OIC (defined below);

WHEREAS, the Clinic will be operated by Opportunities Industrialization Center, Incorporated ("OIC"), a North Carolina nonprofit corporation exempt from federal income taxation under Section 501(c)(3) of the Code and which is a federally qualified health center;

WHEREAS, as required for the New Markets Tax Credit Financing, reservation letters for new markets tax credit ("NMTC") allocation have been obtained from National Community Investment Fund ("NCIF") in the amount of \$3,000,000, CAHEC New Markets, LLC ("CAHEC") in the amount of \$10,000,000, and Greenline Community Ventures, LLC ("Greenline") in the net amount of \$9,000,000, for a total of \$22,000,000 in new markets tax credit allocation, and a commitment has been obtained from Wells Fargo Community Investment Holdings, LLC (the

“Tax Credit Investor”) to invest approximately \$7,400,000 into the New Markets Tax Credit Financing;

WHEREAS, in order to facilitate the financing of the Project, the City has created a separate nonprofit corporation under Chapter 55A of the North Carolina General Statutes (“N.C.G.S.”) called the Rocky Mount Public Facilities Corporation (the “Facilities Corporation”), which will be controlled by the City;

WHEREAS, copies of the articles of incorporation, bylaws and conflict of interest policy of the Facilities Corporation have been made available to the City Council of the City (the “City Council”);

WHEREAS, the Facilities Corporation and OIC have jointly formed a separate limited liability company under Chapter 57D of the North Carolina General Statutes called Rocky Mount DCF, LLC, which will be the “qualified active low income business” for purposes of the NMTC Program (the “QALICB”);

WHEREAS, under N.C.G.S. Sections 160A-272, 160A-279 and 160A-456, the City will lease the Site to the QALICB pursuant to a ground lease (the “Ground Lease”) with an initial term not to exceed sixty-five (65) years;

WHEREAS, using the proceeds of the New Markets Tax Credit Financing, including the Greenline Leverage Loan, the CAHEC Leverage Loan, and the NCIF Leverage Loan, all as described below, the QALICB will cause the Project to be developed, constructed and equipped in accordance with a Development and Contribution Agreement between the QALICB and the City (the “Development Agreement”), pursuant to which the City will carry out the design and construction of the DCF under that certain Design Build Agreement between the City and Barnhill/Holt Brothers, a Design-Build Joint Venture for the construction of an approximately 175,000 square foot building, nine acres of outdoor space and approximately 321 parking spaces, which will include approximately 4,500 square feet to be operated as the Clinic (the “Construction Contract”) and use proceeds of the Bonds to pay costs of the Project that are not covered by the New Markets Tax Credit Financing ;

WHEREAS, the QALICB will enter into an operating lease agreement for the Clinic with OIC (the “OIC Lease”), and an operating lease agreement with the City or all of the DCF other than the Clinic under N.C.G.S. Section 160A-19 (the “City Lease”);

WHEREAS, the City and OIC will enter into a Use Agreement pursuant to which OIC will use portions of the DCF for educational and wellness programming during periods when it is not being used for amateur athletic and community events (the “Use Agreement”);

WHEREAS, in order to provide funding to leverage into additional new markets tax credits in the New Markets Tax Credits Financing, pursuant to N.C.G.S. Section 160A- 279, the City has agreed to lend up to \$17,000,000 from the proceeds of the Bonds to the Facilities Corporation pursuant to (i) a loan and security agreement between the City and the Facilities Corporation (the “Upper Tier Loan Agreement”), (ii) a promissory note executed by the Facilities Corporation in favor of the City (the “Upper Tier Note”) and (iii) a security and pledge agreement pursuant to which the Facilities Corporation pledges to the City as security for the Upper Tier Note all of the

loan and security documents entered into by the Facilities Corporation in connection with the leverage loans described below (the “Upper Tier Pledge Agreement,” and together with the Upper Tier Note and the Upper Tier Loan Agreement, the “Upper Tier Loan Documents”);

WHEREAS, in order to effect the New Markets Tax Credit Financing, (i) the Facilities Corporation will make a loan in the amount of approximately \$7,500,000 out of a portion of the proceeds of the Upper Tier Loan (the “Greenline Leverage Loan”), to Greenline Rocky Mount DCF Investment Fund LLC (the “Greenline Investment Fund”) and (ii) using the proceeds of the Greenline Leverage Loan together with funds received from the Tax Credit Investor, the Greenline Investment Fund will make a qualified equity investment (“Greenline Equity Investment”) in Greenline CDF Subfund XXXI LLC, a Delaware limited liability company (the “Greenline Sub-CDE”);

WHEREAS, the Greenline Leverage Loan will be made pursuant to (i) a loan and security agreement between the Facilities Corporation and the Greenline Investment Fund (the “Greenline Leverage Loan Agreement”) and (ii) a promissory note executed by the Greenline investment fund in favor of the Facilities Corporation (the “Greenline Leverage Note”);

WHEREAS, as security for the Greenline Investment Fund’s obligations under the Greenline Leverage Loan Agreement, the Greenline Investment Fund will execute a pledge agreement (the “Greenline Leverage Loan Pledge Agreement”, together with the Greenline Leverage Loan Agreement and the Greenline Leverage Note, the “Greenline Leverage Loan Documents”) in favor of the Facilities Corporation, whereby the Facilities Corporation will be granted a security interest in the Greenline Investment Fund’s equity interest in the Greenline Sub-CDE Lender;

WHEREAS, the Facilities Corporation will also make a loan in the amount of approximately \$7,096,000 out of a portion of the proceeds of the Upper Tier Loan (the “CAHEC Leverage Loan”), to CAHEC Rocky Mount DCF Investment Fund LLC (the “CAHEC Investment Fund”) and the CAHEC Investment Fund, using the proceeds of the CAHEC Leverage Loan together with funds received from the Tax Credit Investor, will make a qualified equity investment (the “CAHEC Equity Investment”) in CAHEC Sub-CDE XI, LLC, a North Carolina limited liability company (“CAHEC Sub-CDE”);

WHEREAS, the CAHEC Leverage Loan will be made pursuant to (i) a loan and security agreement between the Facilities Corporation and the CAHEC Investment Fund (the “CAHEC Leverage Loan Agreement”) and (ii) a promissory note executed by the CAHEC Investment Fund in favor of the Facilities Corporation (the “CAHEC Leverage Note”);

WHEREAS, as security for the CAHEC Investment Fund’s obligations under the CAHEC Leverage Loan Agreement, the CAHEC Investment Fund will execute a pledge agreement (the “CAHEC Leverage Loan Pledge Agreement,” and, together with the CAHEC Leverage Loan Agreement and the CAHEC Leverage Note, the “CAHEC Leverage Loan Documents”) in favor of the Facilities Corporation, whereby the Facilities Corporation will be granted a security interest in the CAHEC Investment Fund’s equity interest in the CAHEC Sub-CDE and certain other collateral;

WHEREAS, the Facilities Corporation will also make a loan in the amount of approximately \$2,053,800 out of a portion of the proceeds of the Upper Tier Loan (the “NCIF Leverage Loan”), to NCIF Rocky Mount DCF Investment Fund LLC (the “NCIF Investment Fund”) pursuant to (i) a loan and security agreement between the Facilities Corporation and the NCIF Investment Fund (the “NCIF Leverage Loan Agreement”) and (ii) a promissory note executed by the NCIF Investment Fund in favor of the Facilities Corporation (the “NCIF Leverage Note”);

WHEREAS, as security for the NCIF Investment Fund’s obligations under the NCIF Leverage Loan Agreement, the NCIF Investment Fund will execute a pledge agreement (the “NCIF Leverage Loan Pledge Agreement,” and, together with the NCIF Leverage Loan Agreement and the NCIF Leverage Note, the “NCIF Leverage Loan Documents”) in favor of the Facilities Corporation, whereby the Facilities Corporation will be granted a security interest in the NCIF Investment Fund’s equity interest in the NCIF Sub-CDE and certain other collateral;

WHEREAS, each of the CAHEC Sub-CDE , NCIF Sub-CDE and the Greenline Sub-CDE (collectively, the “CDE Lenders”) will use the proceeds of their respective equity investment that each receives to make loans to the QALICB (collectively, the “QLICI Loans”);

WHEREAS, the QLICI Loans will be made pursuant to (i) one or more loan agreements (the “QLICI Loan Agreement”) between the QALICB and the CDE Lenders, (ii) promissory notes executed by the QALICB in favor of each of the CDE Lenders (the “CAHEC Notes”, the “NCIF Notes” and the “Greenline Notes;” respectively, and collectively, the QLICI Notes”);

WHEREAS, the proceeds from the QLICI Loans (the “QLICI Proceeds”) will be disbursed to the QALICB pursuant to the QLICI Loan Agreement and pursuant to a construction monitoring and disbursement agreement (the “Disbursement Agreement”) by and among the City, the CDE Lenders, the QALICB and Wells Fargo Bank, N.A., as disbursing agent, to pay for or reimburse costs related to the, acquisition, development and construction of the Project;

WHEREAS, as security for the QALICB’s obligations under the CAHEC Notes and the NCIF Notes, the QALICB shall execute a leasehold deed of trust on the QALICB’s leasehold interest in the Site (the “Leasehold Deed of Trust”) in favor of the CAHEC Sub-CDE and NCIF Sub-CDE, whereby the CAHEC Sub-CDE and NCIF Sub-CDE will be granted a security interest in the QALICB’s leasehold interest in the Project;

WHEREAS, in connection with the New Markets Tax Credit Financing, pursuant to an agreement (the “Indemnity Agreement of QALICB”) between the QALICB and the Tax Credit Investor, the QALICB agrees to make certain payments to the Tax Credit Investor with respect to the recapture, disallowance, reduction or loss of any federal new markets tax credits under Section 45D of the Code projected to be available to the Tax Credit Investor, as described more particularly in the Indemnity Agreement of QALICB;

WHEREAS, in connection with the New Markets Tax Credit Financing, pursuant to an agreement (the “Tax Credit Put/Call Agreement”) between the Facilities Corporation and the Tax Credit Investor, subsequent to the seven-year compliance period contemplated by Section 45D of the Code, the Tax Credit Investor will have the right to sell its equity interests in the CAHEC

Investment Fund and the NCIF Investment Fund to the Facilities Corporation, and the Facilities Corporation will have the right to purchase the equity interests in the CAHEC Investment Fund and the NCIF Investment Fund from the Tax Credit Investor, as described more particularly in the Tax Credit Put/Call Agreement; and

WHEREAS, the City intends to enter into a memorandum of understanding (the "MOU") with the Facilities Corporation and the QALICB pursuant to which the City agrees to pay to the Facilities Corporation (a) amounts sufficient to make payments under the Tax Credit Put/Call Agreement, and (b) contributions to the QALICB sufficient to make payments under all of the documents executed by the QALICB in connection with the New Markets Tax Credit Financing (collectively, the "NMTC Transaction Documents"), if required;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY, as follows:

1. The City Council does hereby approve, authorize, ratify and confirm the formation of Rocky Mount Public Facilities Corporation as a nonprofit corporation under North Carolina law to serve as the leverage lender and as a partner in the QALICB in connection with the New Markets Tax Credit Financing.

2. The City Council hereby approves and authorizes each of the City Manager and the Mayor to execute and deliver the Ground Lease to the QALICB, and, pursuant to N.C.G.S. 160A-267, authorizes and directs that a notice summarizing the contents of this authorization be published in the *Rocky Mount Telegram*; provided that, City officials shall not execute or deliver the Ground Lease until at least ten days after such publication.

3. The City Council hereby approves and authorizes the making of a loan in the amount of up to \$17,000,000 out of the proceeds of the Bonds to the Facilities Corporation, and the execution, delivery and performance by the City of the Upper Tier Loan Documents with the Facilities Corporation.

4. The City Council hereby approves and authorizes the execution, delivery and performance by the City of the Ground Lease, the City Lease, the Development Agreement, the Disbursement Agreement, the Use Agreement and the MOU.

5. The City Council hereby approves the execution and delivery of the documents to which the City and the Facilities Corporation are a party and all other documents necessary for the New Market Tax Credit Financing, and, to the extent the City or the Facilities Corporation are parties to such transactions, the consummation of all other transactions described in the recitals to this resolution (collectively, the "Plan of Financing").

6. Each of the Mayor, City Manager and Finance Director is hereby authorized and directed to execute and deliver the Ground Lease, the City Lease, the MOU, the Development Agreement, the Disbursement Agreement, the Upper Tier Loan Documents, the Use Agreement, and such other documents as may be required to be executed by the City in connection with the New Markets Tax Credit Financing thereunder or under the NMTC Transaction Documents in substantially the form made available to or described to the City Council at this meeting, with such changes or additions thereto or deletions therefrom as the authorized person executing the same

shall approve, which approval conclusively evidenced by his or her execution of such instruments. The Clerk is hereby authorized to attest and to affix the official seal of the City of Rocky Mount, North Carolina to such documents as may require such attest and seal.

7. The Mayor, the City Manager, the Assistant City Managers and the Finance Director and any person or persons designated and authorized by the City Council to act in the name and on behalf of the City, or any one or more of them, are authorized to do and perform or cause to be done and performed in the name and on behalf of the City such other act, to pay or cause to be paid on behalf of the City such related costs and expenses, and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, requests, demands, directions, consents, approvals, orders, applications, certificates, agreement, further assurances, or other instruments or communications, under the seal of the City, or otherwise, as they or any of them may deem necessary, advisable, or appropriate in order to (a) complete the Plan of Financing, and (b) carry into effect the intent of the provisions of this resolution.

8. No provision of this resolution shall be construed or interpreted as creating a pledge of the faith and credit of the City within the meaning of any State of North Carolina constitutional debt limitation. No provision, of this resolution shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the City within the meaning of the constitution of the State.

9. Each act of the Mayor, the City Manager, any assistant City Manager or Finance Director or any person or persons designated and authorized to act by the City Council, which act would have been authorized by the foregoing provisions of this resolution except that such action was taken prior to the adoption of this resolution, is hereby ratified, confirmed, approved and adopted.

I, Pamela O. Casey, Clerk to the City Council, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of a resolution duly adopted by the City Council of Rocky Mount City, North Carolina at a regularly scheduled meeting held on April 24, 2017, and that a schedule of the regularly scheduled meetings of the City Council for 2017 was on file with me for at least seven calendar days prior to such meeting, all in accordance with G.S. 143-318.12.

WITNESS my hand and corporate seal the City of Rocky Mount, North Carolina, this ____ day of April, 2017.

Clerk, City of Rocky Mount, North Carolina

**BYLAWS OF
ROCKY MOUNT PUBLIC FACILITIES CORPORATION**

**ARTICLE I
ORGANIZATION AND OFFICES**

Section 1.1. *Name.* This North Carolina nonprofit corporation shall be known as Rocky Mount Public Facilities Corporation (the "Corporation").

Section 1.2. *Purpose.* The role and purpose of the Corporation shall be that described in the Articles of Incorporation.

Section 1.3. *Principal Office.* The principal office of the Corporation shall be as stated in the Articles of Incorporation.

Section 1.4. *Registered Office and Agent.* The registered office and agent of the Corporation shall be as stated in the Articles of Incorporation.

Section 1.5. *Other Offices.* The Corporation may have offices at such other places within the State of North Carolina, as the Board of Directors may from time to time determine, or as the affairs of the Corporation may require.

Section 1.6. *Members.* The Corporation shall have no members.

**ARTICLE II
DIRECTORS**

Section 2.1. *General Power.* All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, its Board of Directors.

Section 2.2. *Number, Term and Qualifications.* The Board of Directors shall consist of three Directors. The City Manager, the City Finance Officer and the Mayor of the City of Rocky Mount, North Carolina (the "City") shall serve as Directors by virtue of their positions with the City. If a Director ceases to serve on the Board of Directors because he or she ceases to serve in such position with the City, then such Director's position on the Board of Directors shall be deemed vacant until filled by the person appointed to such office (whether on an interim or permanent basis). If any such office ceases to exist, then the corresponding vacancy on the Board of Directors shall be filled by the person appointed to (1) the position with the City created in place and instead of such office, if applicable, or (2) the position with the City whose responsibilities most closely align with the day-to-day duties and responsibilities of such office. Each director shall hold office until a successor shall have been elected and qualified.

Section 2.3. *Compensation, Expenses.* The Directors of the Corporation shall not receive any compensation for service as a Director. Directors may be reimbursed for direct out of pocket expenses incurred in connection with the performance of any duties undertaken on by them on behalf of the Corporation.

ARTICLE III MEETINGS AND ACTION OF THE BOARD OF DIRECTORS

Section 3.1. *Regular Meetings.* The Board of Directors may provide, by resolution, the time and place, within the State of North Carolina, for the holding of one or more regular meetings for the purpose of transacting such business as may be properly brought before the meeting.

Section 3.2. *Special Meetings.* Special meetings of the Board of Directors may be called by the Chairman or Secretary or shall be called by either of them upon the written request of the majority of the Directors.

Section 3.3. *Presence at Meetings.* The Board of Directors may permit any or all Directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 3.4. *Notice of Meetings.* Regular and Special meetings of the Board of Directors shall be held on such notice sent by any usual means of communication (which may include electronic mail) not less than forty-eight hours before the meeting. Such notice shall reasonably describe the purpose of the meeting.

Section 3.5. *Waiver of Notice.* A Director may waive any notice required by law or these Bylaws before or after the date and time stated in the notice. The waiver shall be in writing, signed by the Director entitled to the notice, and filed with the minutes or corporate records.

A Director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the Director, at the beginning of the meeting (or promptly upon his or her arrival), objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 3.6. *Quorum.* A majority of the Directors fixed by these Bylaws shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors.

Section 3.7. *Action Without Meeting.* To the extent permitted by applicable law, action required or permitted to be taken by a meeting of the Board of Directors may be taken without a meeting if the action is taken by all members of the Board of Directors. The action must be evidenced by one or more written consents signed by each Director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records reflecting the action taken.

Action taken under this section is effective when the last Director signs the consent, unless the consent specifies a different effective date.

A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

ARTICLE IV COMMITTEES

Section 4.1. *Creation.* The Board of Directors may create one or more committees and appoint members of the Board of Directors to serve on them. Each committee shall have two or more members who serve at the pleasure of the Board of Directors.

Section 4.2. *Approval of Committees.* The creation of a committee and appointment of members to it shall be approved by a majority of the Directors in office when the action is taken.

Section 4.3. *Meetings of Committees.* The procedures set forth in Article III herein governing meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the Board of Directors, apply also to committees and their members.

Section 4.4. *Authority.* To the extent specified by written action of the Board of Directors, each committee may exercise the authority of the Board of Directors under Article III; provided, however, a committee may not act on behalf of the Corporation or the Board of Directors to:

- (a) make a distribution of the Corporation's assets;
- (b) approve dissolution, merger or the sale, pledge, or transfer of all or substantially all of the Corporation's assets; or
- (c) adopt, amend, or repeal the Articles of Incorporation or Bylaws.

ARTICLE V OFFICERS

Section 5.1. *Officers; Qualifications.* The officers of the Corporation shall consist of a President (who shall also be the Chair of the Board of Directors), a Vice President (who shall also be the Vice Chair of the Board of Directors), a Secretary, a Treasurer, and such additional Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board of Directors may from time to time elect. The officers shall be elected by the Board of Directors. Any two or more offices may be held by the same person, but no individual may act in more than one capacity where action of two or more officers is required. The President and Vice President of the Corporation shall also be members of the Board of Directors, but the Secretary, Treasurer and any Assistant Secretary or Assistant Treasurer are not required to be members of the Board of Directors.

Section 5.2. *Terms.* The officers of the Corporation appointed or elected by the Board

of Directors shall hold their offices for such terms, and shall exercise such powers, and perform such duties as shall be determined from time to time by the Board of Directors.

Section 5.3. *Removal.* Any officer or agent may be removed by the Board of Directors with or without cause, but such removal shall be without prejudice to the express and written contract rights, if any, of the person so removed.

Section 5.4. *Compensation.* The officers of the Corporation shall not receive any compensation for serving in such roles unless directed by an express resolution adopted by the Board of Directors. Direct and out of pocket expenses incurred by an officer solely for his or her activities on behalf of the Corporation may be reimbursed.

Section 5.5. *President and Chair of the Board.* The President shall have and exercise general charge and general supervision of the affairs of the Corporation and shall perform such other duties and have such other powers as may be assigned to him or her by the Board of Directors. The Chair shall preside at all meetings of the Board of Directors and shall have the power to call the regular and any special meetings of the Board of Directors.

Section 5.6. *Vice Presidents.* In the absence or disability of the President, any Vice President shall have the powers and duties of the President. Any Vice President shall also have general administrative duties under the direction of the President and such other duties as may be assigned to him or her by the Board of Directors. In the event of a vacancy in the office of Chair, or during the Chair's absence or inability to serve, the Vice Chair shall perform all the duties required of the Chair, and shall have the same powers and privileges

Section 5.7. *Secretary.* The Secretary shall keep accurate records of the acts and proceedings of all meetings of the Board of Directors. He or she shall give all notices required by law and by the Bylaws. He or she shall have general charge of the corporate books and records and of the corporate seal, and he or she shall affix the corporate seal to any lawfully executed instrument requiring it. He or she shall sign such instruments as may require his or her signature. He or she shall perform all duties incident to the office of a Secretary and such other duties as may be assigned to him or her from time to time by the President or the Board of Directors.

Section 5.8. *Treasurer.* The Treasurer shall have custody of all funds and securities belonging to the Corporation and shall receive, deposit or disburse the same under the direction of the Board of Directors. He or she shall keep full and accurate accounts of the finances of the Corporation in books especially provided for that purpose. The Treasurer shall perform all duties incident to his or her office and such other duties as may be assigned to him or her from time to time by the President or by the Board of Directors.

Section 5.9. *Assistant Secretaries and Treasurers.* The Assistant Secretaries and Assistant Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

Section 5.10. *Bonds.* The Board of Directors may by resolution require any and all officers, agents, and employees of the Corporation to give a bond to the Corporation, with sufficient sureties, conditioned on the faithful performance of the duties of their respective offices or positions, and to comply with such other conditions as may from time to time be required by the Board of Directors.

ARTICLE VI INDEMNIFICATION

Any person who at any time serves or has served as a director or officer of the Corporation, or who, while serving as a director or officer of the Corporation, serves or has served, at the request of the Corporation, as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a trustee or administrator under an employee benefit plan, shall have a right to be indemnified by the Corporation to the fullest extent permitted by the North Carolina Nonprofit Corporation Act, as it now exists or may hereafter be amended, against (a) reasonable expenses, including attorneys' fees, incurred by him or her in connection with any threatened, pending or completed civil, criminal, administrative, investigative or arbitral action, suit or proceeding (and any appeal therein), seeking to hold him or her liable by reason of the fact that he or she is or was acting in such capacity, and (b) reasonable payments made by him or her in satisfaction of any judgment, money decree, fine (including an excise tax assessed with respect to an employee benefit plan), penalty or settlement for which he or she may have become liable in any such action, suit or proceeding. The Board of Directors shall take all such action as may be necessary and appropriate to authorize the Corporation to pay the indemnification required by this Article, including, without limitation, making a determination that indemnification is permissible in the circumstances and a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him or her. The Board of Directors may appoint a committee or special counsel to make such determination and evaluation. Any person who at any time after the adoption of this Article serves or has served in the aforesaid capacity for or on behalf of the Corporation shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provisions of this Article. Notwithstanding the other provisions of this Article, the Corporation may not indemnify any person if such indemnification would subject the Corporation to income or excise tax under the Internal Revenue Code of 1986, as amended (the "Code") (or corresponding provisions of any future United States Internal Revenue law).

ARTICLE VII CONTRACTS, LOANS AND DEPOSITS

Section 7.1. *Contracts.* The Board of Directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 7.2. *Loans.* No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 7.3. *Checks and Drafts.* All checks, drafts or other orders for the payment of money issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such a manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of a specific resolution to the contrary, each check, draft or order must be signed by either the President or Vice President and the Treasurer.

Section 7.4. *Deposits.* All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories as the President shall direct.

ARTICLE VIII DISTRIBUTIONS

Section 8.1. *Limit on Distributions.* Except as provided by this Article and in the Articles of Incorporation, the Corporation shall not make any distributions.

Section 8.2. *Expenses.* The Corporation may pay or reimburse directors or officers for their reasonable expenses incurred in connection with the conduct of the business and affairs of the Corporation.

Section 8.3. *Permitted Distributions.* Except as provided in Section 8.4 hereof, the Corporation may make distributions to the City, to any entity that is exempt under Section 501(c)(3) of the Code or any successor section, or that is organized exclusively for one or more of the purposes specified in Section 501(c)(3) of the Code or any successor section and upon dissolution shall distribute its assets as provided in the Articles of Incorporation.

Section 8.4. *No Distributions in Certain Cases.* The Corporation shall not make any distribution under Section 8.3 of this Article if at the time or as a result of such distribution the Corporation would not be able to pay its debts as they become due in the usual course of business or the Corporation's total assets would be less than the sum of its total liabilities.

ARTICLE IX REPORTS AND RECORDS

Section 9.1. *Reports and Records.* The Corporation shall keep and file such records as are required by the North Carolina Nonprofit Corporation Act, including, minutes of all meetings of members and the Board of Directors, records of all actions taken by the Board of Directors and records of all actions taken by committees of the Board of Directors.

ARTICLE X GENERAL PROVISIONS

Section 10.1. *Seal.* The seal of the Corporation shall have inscribed thereon the name of the Corporation and the word "Seal," and shall be adopted by resolution of the Board of Directors.

Section 10.2. *Amendments.* The Board of Directors may amend or repeal these Bylaws as provided in the Articles of Incorporation and under the provisions of the North Carolina Nonprofit Corporation Act.

Section 10.3. *Fiscal Year.* The Corporation shall operate on a fiscal year ending June 30.

Section 10.4. *Discrimination.* The Corporation shall not discriminate against any individual, or take any action of any nature, based upon race, religion, sex, national origin or political affiliation of any individual.

Section 10.5. *Gender.* Words of the masculine gender used in these Bylaws include correlative words of the feminine and neuter genders.

CERTIFICATE

The foregoing Bylaws of Rocky Mount Public Facilities Corporation were duly adopted by the Directors of the Corporation on the ____ day of April, 2017.

Amy Staton, Secretary

**State of North Carolina
Department of the Secretary of State**

**ARTICLES OF INCORPORATION
NONPROFIT CORPORATION**

Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. The name of the nonprofit corporation is Rocky Mount Public Facilities Corporation.
2. x (Check only if applicable.) The corporation is a charitable or religious corporation as defined in NCGS §55A-1-40(4).

3. The name of the initial registered agent is: Amy Staton.

4. The street address and county of the initial registered agent's office of the corporation is:

Number and Street: 331 S. Franklin Street

City: Rocky Mount State: NC Zip Code: 27802-1180 County: Edgecombe & Nash

The mailing address *if different from the street address* of the initial registered agent's office is:

Number and Street or PO Box: Post Office Box 1180

City: Rocky Mount State: NC Zip Code: 27802-1180 County: Edgecombe & Nash

5. The name and address of each incorporator is as follows:

Name	Address
<u>Mary Nash Rusher</u>	<u>434 Fayetteville Street, Suite 2600, Raleigh, North Carolina 27601-1789</u>

6. The corporation will have no members.
7. Provisions regarding the distribution of the corporation's assets upon its dissolution are attached hereto

8. Any other provisions which the corporation elects to include are attached.

9. The street address and county of the principal office of the corporation is:

Principal Office Telephone Number: (252) 972-1202

Number and Street: 331 S. Franklin Street

City: Rocky Mount State: NC Zip Code: 27802-1180 County: Edgecombe & Nash

The mailing address *if different from the street address* of the principal office is:

Number and Street or PO Box: Post Office Box 1180

City: Rocky Mount State: NC Zip Code: 27802-1180 County: Edgecombe & Nash

10. The Initial Directors of the Corporation shall be the persons serving in the position of City Manager, Finance Director and Clerk of the City of Rocky Mount. The names and addresses of such persons as of the date hereof are:

<u>Name</u>	<u>Address</u>	<u>Office</u>
Steve Raper	P.O. Box 1180 Rocky Mount, NC 27802	Interim City Manager City of Rocky Mount
Amy Staton	P.O. Box 1180 Rocky Mount, NC 27802	Finance Director City of Rocky Mount
David Combs	P.O. Box 1180 Rocky Mount, NC 27802	Mayor City of Rocky Mount

11. **(Optional):** Please provide a business e-mail address: amy.staton@rockymountnc.gov.

The Secretary of State's Office will e-mail the business automatically at the address provided at no charge when a document is filed. The e-mail provided will not be viewable on the website. For more information on why this service is being offered, please see the instructions for this document.

12. These articles will be effective upon filing, unless a future time and/or date is specified:

This is the ____ day of April, 2017.

Signature of Incorporator

Mary Nash Rusher, Incorporator

Type or print Incorporator's name and title, if any

NOTES:

1. Filing fee is \$60. This document must be filed with the Secretary of State.

Additional Provisions relating to Rocky Mount Public Facilities Corporation

1. To the fullest extent permitted by the North Carolina Nonprofit Corporation Act as it exists or may hereafter be amended, no person who is serving or who has served as a director of the corporation shall be personally liable to the corporation or any of its members, if applicable, for monetary damages for breach of duty as a Director. No amendment or repeal of this article, nor the adoption of any provision to these Articles of Incorporation inconsistent with this section shall eliminate or reduce the protection granted herein with respect to any matter that occurred prior to such amendment, repeal or adoption.

2. The corporation is a charitable organization. The purposes for which the corporation is organized is exclusively charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue Law (the "Code"). It is specifically organized and shall be operated exclusively for the purpose of promoting the general welfare of the citizens of the City of Rocky Mount, North Carolina (the "City") by assisting the City in carrying out its governmental function through the acquisition, construction, operation, sale or lease of real estate and improvements, facilities, equipment and other personal property. The corporation is authorized and empowered (a) to plan, finance, refinance, construct, acquire, lease, sell and convey real estate, improvements to real estate, furnishings, equipment and other personal property; (b) to solicit, receive, maintain, borrow, lend and administer any funds or property, real or personal, tangible or intangible, including grants, loans, notes, security instruments and other financing documents; and (c) to possess and exercise such general and additional powers as are conferred by the laws of the State of North Carolina on nonprofit corporations organized under Chapter 55A of the General Statutes of North Carolina, subject to any limitations contained therein.

3. No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its any other private persons, and the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in paragraph 2 above. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or otherwise intervene in (including the publishing or distribution of statements) any political campaign on behalf of, or in opposition to, any candidate for public office. Notwithstanding any other provisions of these articles, the corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

4. Upon the dissolution of the limited liability company, after paying or making provision for the payment of all of the liabilities of the limited liability company, all of the assets of the corporation shall be distributed as follows:

(a) Assets held by the corporation on condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements.

(b) Assets which are legally required to be used for a particular purpose, if any, shall be transferred or conveyed to the City of Rocky Mount, North Carolina, or to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the corporation, pursuant to the plan of dissolution.

(c) Other assets, if any, shall be distributed to the City of Rocky Mount, North Carolina or to such organizations that are exempt from taxation under §501(c)(3) of the Code at the time of dissolution as shall, in the judgment of the board of directors of the corporation, be most likely to fulfill the purposes of the corporation.

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Amy Staton
Finance Director
City of Rocky Mount, North Carolina

MEMORANDUM OF UNDERSTANDING

THIS **MEMORANDUM OF UNDERSTANDING** (the "Memorandum"), is made and entered into this ____ day of May, 2017, by and among the **CITY OF ROCKY MOUNT, NORTH CAROLINA**, a municipal corporation created under the laws of the State of North Carolina (the "City"), **ROCKY MOUNT DCF, LLC**, a North Carolina limited liability company ("RM-DCF"), and **ROCKY MOUNT PUBLIC FACILITIES CORPORATION**, a North Carolina nonprofit corporation (the "Facilities Corporation").

WITNESSETH

WHEREAS, the City created Rocky Mount Municipal Service District Number Two ("MSD No. 2") pursuant to North Carolina General Statutes Section 160A-536 et seq (the "MSD Act") in order to provide for and finance downtown revitalization projects, which are improvements, services, functions, promotions, and developmental activities intended to further the public health, safety, welfare, convenience, and economic well-being of the City's Central City Area and Local Downtown Historic District;

WHEREAS, on December 28, 2016, the City issued its \$36,815,000 Special Obligation Bonds, Series 2016 (the "Bonds"), the proceeds of which are being used to finance the acquisition, construction and equipping of the Downtown Community Facility ("DCF" or the "Project"), a multi-purpose event center located in MSD No. 2 in downtown Rocky Mount, on a site with an address of 285 N.E. Main Street, Rocky Mount, North Carolina 27801 (the "Site");

WHEREAS, the DCF will consist an approximately 175,000 square foot building designed as a multipurpose venue that will allow the City to host indoor youth and amateur sporting events, tournaments, community events, meetings and conferences;

WHEREAS, the DCF will include an approximately 4,500 square foot clinic to provide urgent care, sports medicine and physical therapy (the "Clinic") that will address key health disparities of people living in and around the downtown area, as well as provide space and equipment within the DCF to be used for health and wellness education and programming;

WHEREAS, financing for the construction and build-out costs of the Clinic and certain other designated portions of the remaining DCF space ("New Markets Tax Credit Financing"), is being provided through the use of the new markets tax credit program (the "NMTC Program") under Section 45D of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, as required for the New Markets Tax Credit Financing, reservation letters for new markets tax credit ("NMTC") allocation have been obtained from National Community Investment Fund ("NCIF"), CAHEC New Markets, LLC ("CAHEC"), and Greenline Community Ventures, LLC ("Greenline," and, together with NCIF and CAHEC, the "CDEs"), as well as a commitment from Wells

Fargo Community Investment Holdings, LLC (the “Tax Credit Investor”) to provide an equity investment for the Project;

WHEREAS, the Clinic will be leased to and operated by Opportunities Industrialization Center, Incorporated (“OIC”), a North Carolina nonprofit corporation exempt from federal income taxation under Section 501(c)(3) of the Code;

WHEREAS, in order to facilitate the New Markets Tax Credit Financing, the Facilities Corporation has been created as a separate nonprofit corporation under Chapter 55A of the North Carolina General Statutes;

WHEREAS, the Facilities Corporation and OIC have jointly formed RM-DCF as a separate limited liability company under Chapter 57D of the North Carolina General Statutes, which will be the “qualified active low income community business” for purposes of the NMTC Program (the “QALICB”);

WHEREAS, in accordance with Sections 160A-272, 160A-279 and 160A-456 of the North Carolina General Statutes, which permit the City to lease property to a nonprofit entity to carry out a public purpose, the City has entered into a Ground Lease dated the date hereof with RM-DCF pursuant to which the City has agreed to lease the Site to RM-DCF;

WHEREAS, pursuant to a Development, Contribution, and Reimbursement Agreement dated the date hereof, the City has agreed to undertake the construction and equipping of the DCF;

WHEREAS, in accordance with Section 160A-19 of the North Carolina General Statutes the City has entered into an Operating Lease Agreement with RM-DCF (the “City Lease”) pursuant to which RM-DCF will lease all of the DCF other than the Clinic to the City;

WHEREAS, RM-DCF has entered into an Operating Lease dated the date hereof (the “OIC Lease”) with OIC pursuant to which it will lease the Clinic to OIC;

WHEREAS, the City, RM-DCF and OIC have entered into a Use Agreement pursuant to which OIC will have the right to use portions of the DCF for educational and wellness programming in support of the Clinic when such portions are not being used for amateur athletic and community events;

WHEREAS, in order to provide funding to leverage into additional new markets tax credits in the New Markets Tax Credits Financing, pursuant to Section 160A- 279 of the North Carolina General Statutes, the City has agreed to lend \$[16,640,000] from the proceeds of the Bonds to the Facilities Corporation, and the Facilities Corporation in turn has agreed to make loans (the “Leverage Loans”) to investment funds created by the Tax Credit Investor (the “Investment Funds”);

WHEREAS, the Investment Funds, using the proceeds of the Leverage Loans and equity provided by the Tax Credit Investor, will make investments in separate entities controlled by the CDEs, which will in turn make loans to RM-DCF as the QALICB to provide funding for the cost of constructing and equipping the Clinic and certain other portions of the Project;

WHEREAS, the OIC Lease and the City Lease will be triple net leases pursuant to which the City and OIC will be responsible for paying the costs of operating the DCF and the Clinic, respectively;

WHEREAS, under the New Markets Tax Credit Financing, RM-DCF has agreed to enter into an agreement (the “QALICB NMTC Agreement”) with the Tax Credit Investor, pursuant to which RM-DCF has agreed to make certain payments to the Tax Credit Investor with respect to the recapture,

disallowance, reduction or loss of any federal new markets tax credits under Section 45D of the Code projected to be available to the Tax Credit Investor;

WHEREAS, in connection with the New Markets Tax Credit Financing, pursuant to an agreement (the "Tax Credit Put/Call Agreement") between the Facilities Corporation and the Tax Credit Investor, subsequent to the seven-year compliance period contemplated by Section 45D of the Code, the Tax Credit Investor will have the right to sell its equity interests in certain of the Investment Funds to the Facilities Corporation, and the Facilities Corporation will have the right to purchase the equity interests in such Investment Funds from the Tax Credit Investor, as described more particularly in the Tax Credit Put/Call Agreements; and

WHEREAS, Section 160A-279 of the North Carolina General Statutes permits the City to appropriate funds to any nonprofit corporation to carry out any public purpose that the City is authorized by law to engage in, and, pursuant to such authority, the City has agreed to appropriate, subject to the conditions set forth herein, and pay (i) to RM-DCF any amounts that RM-DCF may be required to pay to the Tax Credit Investor under the QALICB NMTC Agreement or otherwise in connection with the New Markets Tax Credit Financing, and (ii) to the Facilities Corporation, such funds as may be required under the Tax Credit Put/Call Agreement;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the City, RM-DCF and the Facilities Corporation agree as follows:

Section 1. Shortfall Contributions to RM-DCF. As and to the extent RM-DCF has insufficient funds available from other sources to satisfy its payment obligations under the QALICB NMTC Agreement and any other documents executed by RM-DCF in connection with the New Market Tax Credit Financing (collectively, the "NMTC Transaction Documents"), the Facilities Corporation shall promptly contribute to RM-DCF the funds required to fully satisfy such payment obligations (such contributed funds being referred to herein as "Shortfall Contributions"). Further, as and to the extent the Facilities Corporation has insufficient funds available from other sources to satisfy any Shortfall Contribution obligation, the City shall promptly advance to the Facilities Corporation the funds required to fully satisfy such obligation.

Section 2. Payments to Facilities Corporation. The City hereby agrees to provide to the Facilities Corporation such funds as may be required for RM-DCF to make payments under the Tax Credit Put/Call Agreement.

Section 3. Term. This Memorandum shall continue in full force and effect until such time as the obligations of RM-DCF under the NMTC Transaction Documents, and the obligations of the Facilities Corporation under the Tax Credit Put/Call Agreement, have been indefeasibly discharged.

Section 4. Limited Obligation. No provision of this Memorandum shall be construed or interpreted as creating a pledge of the faith and credit of the City within the meaning of any State of North Carolina constitutional debt limitation. No provision of this Memorandum shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the City within the meaning of the constitution of the State. This Memorandum shall not directly or indirectly or contingently obligate the City to make any payments beyond any payments appropriated in the sole discretion of the City for any fiscal year in which this Memorandum is in effect; provided, however, that any failure or refusal by the City to appropriate funds which results in its failure to make any payment coming due hereunder will in no way obviate the occurrence of the event of default resulting from such nonpayment. No deficiency judgment may be rendered against the City in any action for breach of a contractual obligation hereunder, and the taxing power of the City is not and may not be

pledged directly or indirectly or contingently to secure any amounts due hereunder. No provision of this Memorandum shall be construed to pledge or to create a lien on any class or source of the City's funds, nor shall any provision of this Memorandum restrict the future issuance of any of the City's bonds or obligations payable from any class or source of the City's funds.

Section 5. Further Agreements. The City, the Facilities Corporation and RM-DCF shall in good faith execute such further agreements as may be necessary or desirable to set forth their respective rights and obligations hereunder in greater detail.

Section 6. Purpose and Intent. This Memorandum is entered into by the City, the Facilities Corporation and RM-DCF to facilitate the NMTC Transaction and to permit RM-DCF to take advantage of certain federal income tax credits generated by the Project.

Section 7. Binding Effect. This Memorandum shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 8. Recitals. The recitals are hereby made part of this Memorandum.

Section 9. Entire Agreement. This instrument shall constitute the entire understanding between the parties, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed under seal on duplicate originals, one of which shall be retained by each party, this the day and year first above written.

CITY OF ROCKY MOUNT, NORTH CAROLINA

By: _____
City Manager

ATTEST:

Clerk to the City Council

SEAL

ROCKY MOUNT DCF, LLC

By: _____
Manager

ROCKY MOUNT PUBLIC FACILITIES CORPORATION

By: _____
President

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

THIS **MEMORANDUM OF UNDERSTANDING**, made and entered into this ____ day of April, 2017, by and among the **CITY OF ROCKY MOUNT, NORTH CAROLINA, ROCKY MOUNT PUBLIC FACILITIES CORPORATION** and **ROCKY MOUNT DCF, LLC**, has been approved under the provisions of Article 8 of Chapter 159 of the General Statutes of North Carolina, as amended.

Secretary
Local Government Commission of North Carolina

**GROUND LEASE
ROCKY MOUNT DOWNTOWN COMMUNITY FACILITY**

between

CITY OF ROCKY MOUNT, NORTH CAROLINA

and

ROCKY MOUNT PUBLIC FACILITIES CORPORATION

**Dated as of
May __, 2017**

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Ground Lease

(Rocky Mount Downtown Community Facility)

THIS GROUND LEASE (Rocky Mount Downtown Community Facility) (this “*Ground Lease*”) dated as of May __, 2017, between the **CITY OF ROCKY MOUNT, NORTH CAROLINA**, a municipal corporation duly created under the laws of the State of North Carolina (the “*City*”), and **ROCKY MOUNT DCF, LLC**, a North Carolina limited liability company (the “*QALICB*”).

RECITALS:

WHEREAS, in accordance with Section 160A-279, 160A-272 and 160A-456(a)(2) of the General Statutes of North Carolina, the City has the full power and the authority to lease any property owned by it to a nonprofit corporation to be used for a public purpose; and

WHEREAS, the City has fee simple title to the property described on **Exhibit A** hereto (the “*Site*”) and intends, in cooperation with the Rocky Mount Public Facilities Corporation (the “*Facilities Corp.*”), the QALICB and certain other private parties, to enter into a new markets tax credit transaction pursuant to which a new markets tax credit investor will provide certain funds to be used, together with the proceeds of a loan from the City to the Facilities Corp., to provide for the construction on the Site of a multi-purpose event center called the “Downtown Community Facility,” which will include a wellness clinic and educational facility (the “*Project*”); and

WHEREAS, the parties desire to enter into this Ground Lease, so that the QALICB can cause the Site to be developed pursuant to the terms of the Development Agreement (defined below) using the proceeds of certain loans from the Sub-CDE Lenders (also defined below).

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements and conditions as set forth herein, and desiring to provide for the terms and conditions in which the efforts of the parties will be conducted, the City and the QALICB hereby covenant and agree as follows:

ARTICLE I

BASIC TERMS AND DEFINITIONS; RULES OF CONSTRUCTION

Section 1.1 Definitions. Unless otherwise set forth in this Ground Lease, all definitions set forth in the Development Agreement, the City Operating Lease and the QLICB Loan Agreement (each as defined below) shall be applicable to this Ground Lease. The following definitions shall be applicable to this Ground Lease:

“*Additional Rent*” means all amounts payable by the QALICB under this Ground Lease other than the Base Rent and whether or not designated as Additional Rent.

“*Affiliate*” means any Person that directly or indirectly controls, or is controlled by, or is under common control with the designated Person or any officer, director, managing or general partner, or member of such designated Person.

“*Applicable Laws*” means any present or future law (including Environmental Laws), statute, ordinance, regulation, code, judgment, injunction, arbitral award, order, rule, directive, proclamation, decree, common law or other requirement, ordinary or extraordinary, foreseen or unforeseen, of the United States, any state or local government, or any political subdivision thereof, arbitrator, department, commission, board, bureau, agency or instrumentality thereof, or of any court or other administrative,

judicial or quasi-judicial tribunal or agency of competent jurisdiction, or of any other public or quasi-public authority or group, having jurisdiction over the Premises; and any reciprocal easement, covenant, restriction, or other agreement, restriction or easement of record affecting the Premises as of the date of this Ground Lease or subsequent thereto.

“*Base Rent*” means the amount required to be paid under Section 3.1 hereof.

“*Business Day*” means any day other than (a) a day on which banking institutions in New York, New York, or in the State are authorized to close or (b) a day on which the New York Stock Exchange is closed.

“*Closing Date*” means May __, 2017.

“*City*” means the City of Rocky Mount, North Carolina, a municipal corporation duly created under the laws of the State.

“*City Operating Lease*” means the City Operating Lease dated as of the Closing Date, between the QALICB, as lessor, and the City, as lessee, relating to the Project other than the portion of the Project included in the OIC Lease.

“*Development Agreement*” means the Development and Contribution Agreement dated as of the Closing Date, by and between the City and the QALICB.

“*Environmental Laws*” means all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, resolutions, executive orders and decisions of Governmental Authorities relating to Hazardous Substances, natural resources, human health or the environment, including, without limitation, as amended from time to time, the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901, 6903 et seq.), Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601(14) et seq.), Federal Hazardous Materials Transportation Control Act (42 U.S.C. Section 1801 et seq.), Federal Clean Air Act (42 U.S.C. Section 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. Section 1317), Federal Water Act of 1977 (93 U.S.C. Section 1251 et seq.), Federal Insecticide, Fungicide and Rodenticide Act, Radioactive Waste Storage and Transportation Act of 1980, and Federal Clean Air Act (42 U.S.C. Section 7401, et seq.).

“*Facilities Corp.*” means the “Facilities Corp.”, as defined in the Recitals.

“*Foreclosure*” has the meaning provided therefor in Section 5.4(a) hereof.

“*Greenline Sub-CDE*” means a limited liability company formed by Greenline Community Ventures, LLC.

“*Ground Lease*” means this Ground Lease dated as of the Closing Date, by and between the City and the QALICB.

“*Governmental Authority*” means any governmental authority, agency, department, district, commission, board or instrumentality of the United States of America, the State, the City, Edgecombe County, and any other governmental authority having jurisdiction over the Premises.

“*Hazardous Substances*” means any material, waste, substance, industrial waste, toxic waste, chemical contaminant, petroleum, asbestos, polychlorinated biphenyls, radioactive materials or other

substances regulated or classified by Environmental Laws as hazardous, toxic, dangerous or harmful to human health or property.

“Impositions” has the meaning provided therefor in Section 4.1 hereof.

“Improvements” means an approximately 175,000 square foot building, nine acres of outdoor space and approximately 1500 parking spaces, to be constructed on the Site.

“Leasehold Deed of Trust Beneficiary” has the meaning provided therefor in Section 5.4 hereof.

“Leasehold Deed of Trust” has the meaning provided therefor in Section 5.4 hereof.

“Liabilities” means all losses, claims, suits, demands, costs, liabilities, and expenses, including reasonable attorneys’ fees, penalties, interest, fines, judgment amounts, fees, and damages, of whatever kind or nature.

“Market Value” means the most probable price which a property (whether fee estate, leasehold estate, the Site or the Project, as the case may be) should bring in a competitive and open market under all conditions requisite for a fair sale, the buyer and seller (or assignee and assignor in the case of the sale of a leasehold estate) each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus or distress, under the following conditions:

- (i) buyer and seller (or assignor and assignee, as the case may be) are typically motivated; and
- (ii) both parties are well informed or well advised, and acting in what they consider their best interests; and
- (iii) a reasonable time is allowed for exposure in the open market; and
- (iv) payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- (v) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

“OIC” means Opportunities Industrialization Center, Incorporated, a North Carolina nonprofit corporation exempt from federal income taxation under Section 501(c)(3) of the Code has the meaning therefor given in the recitals to this Ground Lease.

“OIC Lease” means the Lease dated as of the Closing Date, between the QALICB, as lessor, and OIC, as lessee, relating to the portion of the Project consisting of approximately 4,500 square feet to be used as a clinic.

“Operating Lease” means any lease entered into between the QALICB and a Tenant with respect to the Premises permitted under this Ground Lease, and includes the OIC Lease and the City Operating Lease.

“Permitted Encumbrances” means as of any particular time, (i) liens for ad valorem taxes, special assessments, and other charges not then delinquent or for taxes, assessments, and other charges being contested in accordance with the terms of this Ground Lease, (ii) the currently existing utility, access, and

other easements and rights of way, restrictions, and exceptions set forth on **Exhibit B** attached hereto, (iii) mechanics' and materialman's liens that arise by operation of law but that have not been perfected by the required filing of record, for work done or materials delivered after the date hereof, and (iv) any additional exceptions or encumbrances created or consented to by both the City and the QALICB.

"Permitted Use" means the Project shall be used exclusively as a community event center, wellness clinic and educational facility under the City Operating Lease and the OIC Lease, and uses ancillary thereto, and any other lawful use, including the use of the Site by the QALICB (or an Affiliate of the QALICB). In the event any Leasehold Deed of Trust is foreclosed, Permitted Use will be any lawful use of the Project.

"Person" means any individual, corporation, partnership, firm or other legal entity.

"Personal Property" means all furniture and other personal property owned or leased by the City, the QALICB or OIC, located at the Premises and used in the operation of the Project, excluding trucks and cars.

"Premises" means the Site and any improvements thereon, including the Project, together with any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto.

"Purchaser" has the meaning provided therefor in Section 5.4(c) hereof.

"QLICI Loans" means the loans from the Sub-CDE Lenders to the QALICB evidenced by the QLICI Loan Agreement.

"QLICI Loan Agreement" means that certain Loan Agreement dated as of the Closing Date between the Sub-CDE Lenders and the QALICB.

"QALICB" means Rocky Mount DCF, LLC, a North Carolina limited liability company.

"Rent" means the Base Rent and Additional Rent.

"State" means the State of North Carolina.

"Sub-CDE Leasehold Deed of Trust" means the leasehold deed of trust on the QALICB's leasehold interest in the Premises granted by the QALICB to CAHEC Sub-CDE XI, LLC, a North Carolina limited liability company (*"CAHEC Sub-CDE"*), and [NCIF SUB-CDE], a Delaware limited liability company (*"NCIF Sub-CDE"*) to secure the QALICB's obligations to CAHEC Sub-CDE and NCIF Sub-CDE under the QLICI Loans.

"Sub-CDE Lenders" means, collectively, CAHEC Sub-CDE, NCIF Sub-CDE, and [Greenline Sub CDE], as lenders to the QALICB under the QLICI Loan Agreement.

"Tenant" means the City or any other tenant under the City Operating Lease, and OIC or any other tenant under the OIC Lease, and any successors to either, and any other tenant under an Operating Lease.

"Term" means the period beginning on the date of execution and delivery hereof and ending on a date sixty-five (65) years after the Closing Date.

Section 1.2 Rules of Construction.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words used herein shall include the plural as well as the singular number.

(b) References herein to particular articles or sections are references to articles or sections of this Ground Lease unless some other reference is indicated.

(c) References herein to specific sections or chapters of the General Statutes of North Carolina or to specific legislative acts are intended to be references to these sections, chapters or acts as amended and as they may be amended from time to time by the General Assembly of North Carolina, or any successor statute.

**ARTICLE II
LEASE OF PROPERTY; AS IS CONDITION; AGREEMENT; TERM OF
LEASE; PERMITTED USE; DEVELOPMENT AGREEMENT; FUNDING
OF CITY OPERATING LEASE PAYMENTS**

Section 2.1 Term. Subject to the terms and conditions of this Ground Lease, the City leases to the QALICB, and the QALICB leases from the City, the Premises for the Term, subject to earlier termination pursuant to any of the terms, covenants, or conditions of this Ground Lease or pursuant to Applicable Laws.

Section 2.2 As-Is Condition. The QALICB has examined the Site and accepts possession of the Site in its condition as is on the Closing Date, but free and clear of all liens and encumbrances other than the Permitted Encumbrances, provided however that the QALICB shall not be deemed (i) to have assumed any Liabilities for environmental or other conditions that are in existence prior to the Closing Date and violate any Applicable Laws, whether or not discovered or discoverable (collectively, the “*Pre-Existing Conditions*”), or (ii) to assume at any time during the Term any Liabilities associated with environmental or other conditions violating any Laws that develop during the Term as a result of the City, any Tenant or any third party (collectively, the “*Developing Conditions*”). Except as otherwise expressly provided in this Ground Lease and in the Development Agreement, and except for the Pre-Existing Conditions and the Developing Conditions, the City has no obligation whatsoever to perform any work or make any repairs with respect to the Premises, to furnish any services with respect to the Premises, or to incur any expenses with respect to the Premises, and the City has no responsibility with respect to the condition of the Premises. The QALICB expressly acknowledges and agrees that the City has not made and is not making, and the QALICB, in executing and delivering this Ground Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Ground Lease. Notwithstanding the foregoing, during the Term the City shall not encumber the Premises with any liens or encumbrances of any nature whatsoever except for the Permitted Encumbrances without the QALICB’s prior written consent.

Section 2.3 Permitted Use. Subject to all of the other terms, covenants and conditions of this Ground Lease, the QALICB shall use the Site and the Project only for the Permitted Use and for the construction and operation of the Project. The City hereby acknowledges and agrees that the QALICB shall sublease approximately _____ square feet of the Premises to the City pursuant to the City Operating Lease, and approximately 4,500 square feet to OIC under the OIC Lease. The City hereby consents to the sublease of the Premises to the City and OIC. Notwithstanding the foregoing, the QALICB shall not at any time use or occupy the Site or the Project, or consent to anyone else using or occupying the Premises: (a) in any manner that violates the provisions of this Ground Lease or the

certificate of occupancy, if any, for the Premises, or (b) so as to cause waste, or (c) so as to violate any insurance policy then issued in respect of the Premises, or (d) so as to create a nuisance. The QALICB shall not be deemed to be in violation of this Section 2.3 with respect to any Tenant's failure to comply with this Section 2.3 as long as the QALICB is using commercially reasonable efforts to enforce the terms of the applicable Operating Lease regarding such violation. In the event of the exercise of remedies under any Leasehold Deed of Trust, the City understands that the term Permitted Use will include any lawful use.

Section 2.4 Access to Premises. Subject to rights of a Tenant under the City Operating Lease or the OIC Lease, the City, its authorized representatives, agents, employees, and attorneys may, but shall be under no duty to, enter the Premises at reasonable times and hours to inspect the Premises in order to determine whether the QALICB is complying with its obligations under this Ground Lease.

Section 2.5 Compliance with Development Agreement; Cooperation. The QALICB shall observe all requirements terms and conditions of the Development Agreement. To the extent reasonably necessary, and without violating Applicable Laws, the City and the QALICB shall cooperate with each other to obtain the required permits, approvals, and authorizations for the construction of the Project and operation of the Premises in accordance with this Ground Lease, including by joining in applications for building permits, subdivision plat approvals, certificates of dedication, public works or other agreements, utility easements, permits for sewer, water and other utility services, and the dedication to the applicable governmental authorities of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are reasonably necessary or desirable.

ARTICLE III RENT

Section 3.1 Base Rent. In consideration for the granting of this Ground Lease, the QALICB shall pay to the City \$1.00 per year (the "*Base Rent*") with the first seven (7) payments due on the Closing Date and thereafter, beginning in 2021, on each anniversary of such date during the Term. None of the Base Rent is refundable in the event of an early termination hereof.

Section 3.2 Additional Rent. The parties hereto understand and agree that this is a so-called "triple net" lease and that the QALICB shall pay, or cause to be paid, any and all costs and expenses, and shall perform (or cause to be performed) all obligations, relating to the ownership, use, occupancy, operation, maintenance and repair of, and maintenance of insurance on, and payment of taxes or assessments of any sort with respect to, the Premises, and all such payments shall be deemed Additional Rent for purposes of this Ground Lease whether paid directly to the City or to others.

Section 3.3 Additional Rent Payment. Additional Rent may be paid directly to the person to whom it is owed, with notice to the City or, if applicable, to the City at the place provided for in Section 23.13 hereof in lawful money of the United States of America by good check or, at the City's request, by wire transfer. A bill for Additional Rent payable to the City sent by first class mail to the address to which Notices are to be given under this Ground Lease shall be deemed a proper demand for the payment of the amounts set forth therein. Additional Rent paid directly to the City for any period shall be paid within 30 days after the City provides the QALICB with a written statement of the estimated or actual additional rent due for such period; the City will provide the QALICB with a final adjustment statement within 90 days after the close of each calendar year.

Section 3.4 Non-Waiver. The City's delay in rendering, or failure to render, any statement or bill for Additional Rent for any period shall not waive the City's right to render a statement or collect such Additional Rent for that or any subsequent period. If the City delivers to the QALICB an incorrect

statement with respect to any Additional Rent, the City shall have the right to give the QALICB a corrected statement for the period covered by the incorrect statement and to collect the correct amount of the Rent.

Section 3.5 *Inability to Pay Rent.* If at any time during the Term the Rent is not fully collectible by reason of any Applicable Laws, the QALICB shall enter into such agreements and take such other action as the City reasonably requests to permit the City to collect the Rent.

Section 3.6 *Interest and Charges on Late Payments.* If any Base Rent is not paid when due, the QALICB shall pay an amount equal to 1% of the amount overdue for each month, or partial month when such payment is overdue. If any Additional Rent payable directly to the City is not paid within fifteen days after the date any bill therefor is mailed to the QALICB due under this Ground Lease, the QALICB shall pay the City, as Additional Rent an amount equal to 1% of the amount overdue for each month, or partial month when such payment is overdue. Such additional payments shall be in addition to, and not in lieu of, any other remedy the City may have.

ARTICLE IV PAYMENT OF IMPOSITIONS AND UTILITIES

Section 4.1 *Impositions.* The term “*Impositions*” shall mean, collectively, (a) all real estate taxes, all special assessments and all other property assessments, including all assessments for public improvements or betterments, whether or not commenced or completed within the term of this Ground Lease, (b) all ad valorem, sales and use taxes, (c) all rent taxes, occupancy taxes and all similar taxes, (d) all fines, fees, charges, penalties, and interest imposed by any Governmental Authority, including the City, and (e) all other governmental charges and taxes, in each case of any kind or nature whatsoever, general or special, foreseen or unforeseen, ordinary or extraordinary, which are at any time during or with respect to the Term assessed, levied, charged, confirmed or imposed with respect to the Premises or the use, leasing, ownership or operation thereof, or become payable out of or become a lien upon the Premises or the rents or income therefrom. If at any time during the Term the present method of real estate taxation or assessment is changed so that there is substituted for the type of Impositions presently being assessed or imposed on real estate, or in lieu of any increase in such Impositions, a tax, such substitute taxes shall be deemed to be included within the term “*Impositions*.”

Section 4.2 *Payable When Due.* While it is anticipated that there will be no Impositions during the Term hereof, in the event there are Impositions, the QALICB will pay, or cause to be paid, all Impositions as and when the same shall become due and payable directly to the Governmental Authority charged with the collection thereof, provided that if any Imposition may by Applicable Laws be paid in installments, the QALICB may pay such Imposition in installments as permitted by Applicable Laws.

Section 4.3 *Reduction of Impositions.* The QALICB may, at no cost or expense to the City, endeavor from time to time to reduce the assessed valuation, if any, of the Premises for the purpose of reducing the Impositions payable by the QALICB. Notwithstanding the foregoing, the QALICB shall timely pay, or cause to be paid, all Impositions. The City agrees to offer no objection to such contest or proceeding and, at the request of the QALICB, to reasonably cooperate with the QALICB in pursuing such contest or proceeding, but without expense to the City. Any such contest or proceeding shall be brought in the QALICB’s name unless otherwise required by Applicable Laws in which case the contest or proceeding may be brought in the City’s name.

Section 4.4 *Refund of Impositions.* If all or any part of an Imposition is refunded (whether through cash payment or credit against Impositions), the party who paid the Imposition to which the refund relates shall be entitled to such refund to the extent such refund relates to any Imposition paid by

such party. If either party receives a refund (whether by cash payment or credit) to which the other party is entitled, the receiving party shall promptly pay the amount of such refund or credit to the entitled party, less the receiving party's reasonable expenses, if any, in obtaining such refund or credit.

ARTICLE V

EFFECT OF GROUND LEASE ON OWNERSHIP OF PROPERTY; AND CERTAIN OTHER INCIDENTS OF GROUND LEASE

Section 5.1 *Ownership of Property.* At all times during the Term, all Personal Property acquired (or leased) by the QALICB shall be the property of the QALICB. During the Term, the QALICB alone shall be entitled to all of the tax attributes of ownership of the Improvements and all Personal Property acquired (or leased) by the QALICB, including, without limitation, the right to claim depreciation or cost recovery deductions. This Ground Lease is intended to convey to the QALICB all the benefits and burdens of ownership and to cause the QALICB to be treated as the owner of the Improvements for federal income tax purposes. The parties agree to treat this Ground Lease in a manner consistent with this intention, including filing all federal income tax returns and other reports consistent with such treatment. The City will not claim tax credits, depreciation or any other federal or state income tax benefits with respect to the Improvements, or take any action which is inconsistent with this provision. Upon the expiration or sooner termination of the Term, the Improvements shall become the sole property of the City at no cost to the City, free and clear of all liens, leases and encumbrances. The QALICB shall remove from the Premises upon any such termination any and all Personal Property acquired by the QALICB that is moveable, but the QALICB shall repair any damage caused by such removal; provided, that any such Personal Property not so removed shall be deemed abandoned by the QALICB and shall become the property of the City in accordance with Section 20.2 below.

Section 5.2 *Replacement of Fixtures.* Notwithstanding the foregoing, the QALICB may replace and may permit the City and OIC or any other Tenant to replace any fixtures, machinery, equipment and Personal Property from time to time, provided such replacements are new and of quality and utility at least equal to the fixtures, machinery, equipment and Personal Property being replaced.

Section 5.3 *Lien-Free.* The QALICB shall keep the Premises and this Ground Lease free from any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect or engineer and free from any similar lien or encumbrance with respect to work, material or services alleged to have been performed for the QALICB. If any such lien or encumbrance is filed or recorded, the QALICB shall discharge any such lien or encumbrance by bond or otherwise within 30 days after the QALICB receives notice of such lien or encumbrance. If the QALICB fails to discharge such lien or encumbrance within such 30-day period, the City may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as the City deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by the QALICB. The amount so paid and costs incurred by the City shall be deemed Additional Rent under this Ground Lease payable within 30 days after the QALICB is billed therefor. Nothing in this Ground Lease shall be deemed in any way to: (a) constitute the City's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair of the Premises; or (b) evidence the City's agreement to subject the Premises to any such lien. The QALICB shall not be deemed to be in violation of this Section 5.3 with respect to (i) the City's failure to comply with or discharge its obligations with respect to this Section 5.3 under the Development Agreement or (ii) any Tenant's failure to comply with this Section 5.3 as long as the QALICB is using commercially reasonable efforts to enforce the terms of the applicable Operating Lease regarding such violation.

Section 5.4 Certain Rights and Duties of Leasehold Deed of Trust Beneficiaries. The QALICB shall have the right from time to time to apply for and obtain mortgage loan financing and to grant to the providers of such financing (the "*Leasehold Deed of Trust Beneficiaries*") leasehold deeds of trust, assignments of leases and rents and such other security instruments covering and affecting all or any portion of the QALICB's interest in the Premises as the QALICB may deem necessary or appropriate (collectively, "*Leasehold Deeds of Trust*").

(a) **Mortgagee's Right to Take Possession and Title.** Any of the Leasehold Deed of Trust Beneficiaries, during the term of their respective Leasehold Deeds of Trust and subject to clause (e) below, may, under the provisions of such Leasehold Deeds of Trust, have inter alia the right to enter upon and take possession of the Premises, for any default in or breach of the QALICB's obligations to such Leasehold Deed of Trust Beneficiary, and the City's consent shall not be required in connection with any transfer of the QALICB's interest in the Premises under this Ground Lease in connection with a judicial or non-judicial sale proceeding pursuant to any Leasehold Deed of Trust, any transfer pursuant to a deed or assignment in lieu of foreclosure, any sale or transfer in any bankruptcy or insolvency proceedings, or any similar transfer pursuant to any exercise of remedies under any Leasehold Deed of Trust (collectively, a "**Foreclosure**"), subject to compliance with the terms of this Section 5.4. Notice of any such transfer of possession or title shall be sent to the City and to all Leasehold Deed of Trust Beneficiaries. The City hereby acknowledges receipt of notice of the QALICB Loans and the Sub-CDE Leasehold Deed of Trust and agrees that the Sub-CDE Leasehold Deed shall constitute a "Leasehold Deed of Trust" and the Sub-CDE Lenders shall constitute "Leasehold Deed of Trust Beneficiaries" for all purposes under this Lease.

(b) **Right of Leasehold Deed of Trust Beneficiaries to Cure Defaults.** Each Leasehold Deed of Trust Beneficiary who gives written notice to the City shall have the benefit of the following provisions in addition to those elsewhere provided in this Ground Lease:

(i) all notices or copies of notices which are by the terms of this Ground Lease to be sent to such Leasehold Deed of Trust Beneficiaries shall be in writing and shall be sent to the address set forth in Section 23.13 hereof;

(ii) no notice of default given by the City to the QALICB shall be effective unless it sets forth in sufficiently reasonable detail the nature of the QALICB's uncured default and until a copy thereof shall also be sent to all Leasehold Deed of Trust Beneficiaries; and

(iii) after the occurrence of a default by the QALICB and delivery of the notice described in clause (ii) above, the City hereby agrees to accept from any Leasehold Deed of Trust Beneficiary any and all payments and performance of the QALICB's obligations under this Ground Lease, with the same force and effect as if paid or performed by the QALICB. The City further agrees that in the event that the QALICB shall not cure any default or breach by the QALICB under this Ground Lease within any applicable cure period provided hereunder, then the Leasehold Deed of Trust Beneficiaries shall have the right, at their sole option, to exercise any one or more of the following rights, and the City will delay and forbear from the exercise of its remedies throughout the period in which the Leasehold Deed of Trust Beneficiaries are entitled to exercise such rights as provided below:

(A) The Leasehold Deed of Trust Beneficiaries shall be entitled to cure or remedy such default within an additional period following the "Cure Commencement Date" (as hereinafter defined); it being agreed that:

- (1) in the case of any default in the payment of any sum of money, the Leasehold Deed of Trust Beneficiaries shall have ten (10) business days following the Cure Commencement Date in which to cure such default;
- (2) in the event that the default is not a default in the payment of a sum of money, the Leasehold Deed of Trust Beneficiaries shall have thirty (30) days following the Cure Commencement Date in which to cure such default, provided that if such default cannot reasonably be cured within such thirty (30) day period and the Leasehold Deed of Trust Beneficiaries have commenced efforts to cure such default (or efforts to exercise remedies to enable them to cure such default) within thirty (30) days following the Cure Commencement Date, the Leasehold Deed of Trust Beneficiaries shall have an additional reasonable period of time following the end of such thirty (30) day period within which to cure such default, and so long as the Leasehold Deed of Trust Beneficiaries shall be diligently pursuing their efforts to cure, the City shall accept such cure or remedy when effected; and
- (3) in no event shall any Leasehold Deed of Trust Beneficiary be required to cure any defaults by the QALICB that by their nature are not susceptible to cure by a Leasehold Deed of Trust Beneficiary, and with respect to such defaults, the same shall be deemed cured by the Leasehold Deed of Trust Beneficiaries if the Leasehold Deed of Trust Beneficiaries have commenced efforts to exercise remedies under its Leasehold Deed of Trust and succeeded to the QALICB's interests under this Ground Lease in accordance with the provisions of this Section 5.4;

provided, that it is hereby expressly agreed that the time permitted to the Leasehold Deed of Trust Beneficiaries to cure defaults shall include and shall be extended by the time required to pursue any remedies necessary to enable the Leasehold Deed of Trust Beneficiaries to effect such cure, including but not limited to any period in which the Leasehold Deed of Trust Beneficiaries are prevented from curing by reason of any stay in any bankruptcy of the QALICB or other stay of enforcement proceedings to which the Leasehold Deed of Trust Beneficiaries may be subject.

- (B) The Leasehold Deed of Trust Beneficiaries shall be entitled to acquire pursuant to any Foreclosure the QALICB's rights, title, and interests under this Ground Lease and assume the obligations of the QALICB Tenant under this Lease as provided under this Section 5.4, and in such event, the City shall not exercise its right of termination with respect to such default, provided that upon such acquisition, the Leasehold Deed of Trust Beneficiaries shall be entitled to cure any outstanding defaults (to the extent required) within the cure periods provided above.
- (C) As used herein, "Cure Commencement Date" shall mean the date that is the later of (1) thirty (30) days following the Leasehold Deed of Trust Beneficiaries' receipt of a copy of the notice of such default given by the City to the QALICB as required under Section 5.4(b)(i) and (ii) above, and (2) the date of the Leasehold Deed of Trust Beneficiaries' receipt of notice from the City of the QALICB's failure to cure such default within the applicable cure period provided in this Ground Lease.

Nothing contained in this clause (b) shall require a Leasehold Deed of Trust Beneficiary to begin or continue such possession or foreclosure proceedings or to begin or continue to cure any default by the QALICB.

(c) ***Attornment and Non-Termination of this Ground Lease.*** In the event any Leasehold Deed of Trust Beneficiary or any nominee, successor, assignee or grantee of such Leasehold Deed of Trust Beneficiary (collectively, a “***Purchaser***”) acquires the QALICB’s interests under this Ground Lease pursuant to any Foreclosure, such Leasehold Deed of Trust Beneficiary or other Purchaser shall attorn to the City as landlord under this Ground Lease, and the City shall accept and recognize such Leasehold Deed of Trust Beneficiary or other Purchaser as tenant for the remainder of the Term, so that there shall be no lapse of this Ground Lease, at the rent and upon the covenants, agreements, terms, provisions and limitations herein contained. Any such Leasehold Deed of Trust Beneficiary or other Purchaser, as tenant under this Ground Lease, shall have the same rights, title and interest in and to the Premises as the QALICB had under this Ground Lease.

(d) ***Protection of Interests of Leasehold Deed of Trust Beneficiary.*** If a Leasehold Deed of Trust Beneficiary, through its Leasehold Deed of Trust or operation of its loan documents, or by entry as a mortgagee in possession or by Foreclosure, acquires the QALICB’s interest in the Premises, such Leasehold Deed of Trust Beneficiary shall have the right, at its option, to:

(i) operate the Premises itself and in all respects comply with the provisions of this Ground Lease from and after the date on which such Leasehold Deed of Trust Beneficiary acquired possession; or

(ii) assign or transfer the QALICB’s interest in the Premises, provided that the assignee or transferee shall expressly assume all of the covenants, agreements and obligations of the QALICB under this Ground Lease arising from and after the date of such assignment or transfer by written instrument to be recorded in the appropriate real property records (subject to the provisions of Section 5.4(e) below).

No such action by a Leasehold Deed of Trust Beneficiary shall relieve the QALICB of any of its obligations hereunder.

(e) ***Obligations and Rights of a Leasehold Deed of Trust Beneficiary in Possession.*** If a Leasehold Deed of Trust Beneficiary or other Purchaser shall acquire the QALICB’s interests under this Ground Lease pursuant to any Foreclosure, but not otherwise, it shall be bound thereafter to keep and perform all duties and covenants and agreements of the QALICB arising under this Ground Lease from and after the date on which such Purchaser entered and took possession of the Premises, and neither the Leasehold Deed of Trust Beneficiary nor any other Purchaser shall be liable for any duties, covenants, agreements or obligations of the QALICB arising prior to the date on which such Leasehold Deed of Trust Beneficiary or other Purchaser enters and takes possession of the Premises. In the event any Leasehold Deed of Trust Beneficiary or other Purchaser shall have acquired the Premises, upon any subsequent assignment of this Ground Lease, such Leasehold Deed of Trust Beneficiary or other Purchaser shall be released from any further liability under this Ground Lease accruing after the date of such assignment. In addition notwithstanding anything in the foregoing or any other provision hereof to the contrary, (i) if any default shall have been cured and the QALICB shall resume possession, or (ii) if after such entry upon and taking possession of the Premises, the City and the Leasehold Deed of Trust Beneficiary shall accept, in writing, another tenant in place of the QALICB or the Leasehold Deed of Trust Beneficiary shall have assigned or transferred the QALICB’s interest in the Premises pursuant to subsection (d)(ii) above, then the Leasehold Deed of Trust Beneficiary shall no longer be so bound.

(f) ***No Modification or Termination by the QALICB.*** During the term of any Leasehold Deed of Trust, this Ground Lease shall not be (i) amended or modified or (ii) terminated or canceled by the QALICB hereunder, or by the giving of any notice by the QALICB hereunder, nor shall the City accept a surrender of the QALICB’s leasehold interest, unless such amendment, modification,

termination, surrender or cancellation is assented to in writing in advance by all Leasehold Deed of Trust Beneficiaries. Any such attempted amendment or modification, termination, surrender or cancellation without such prior written assent shall be void.

(g) ***Rights of Purchaser/Assignee.*** The rights of Leasehold Deed of Trust Beneficiaries described in this Section 5.4 also shall inure to the benefit of any purchaser at a foreclosure sale or any purchaser or assignee of the Leasehold Deed of Trust Beneficiary's interest after the Leasehold Deed of Trust Beneficiary has acquired leasehold title by foreclosure or acceptance of a deed in lieu of foreclosure.

(h) ***No Encumbrances by City.*** The City agrees not to mortgage or otherwise encumber its interests in the Premises or this Lease following the date hereof, unless all holders of any such mortgage or other encumbrance expressly agree to be subject to and bound by the terms of this Ground Lease (expressly including this Section 5.4) and that no foreclosure or other enforcement of such mortgage or other encumbrance will disturb or effect this Ground Lease or the rights of Leasehold Deed of Trust Beneficiaries hereunder.

(i) ***New Lease.*** In the event that, for any reason, this Ground Lease terminate prior to satisfaction of all indebtedness and obligations secured or intended to be secured by any Leasehold Deed of Trust, the Leasehold Deed of Trust Beneficiaries thereunder shall be entitled to enter into a new lease with the City, for the balance of the term of this Ground Lease, and on the same terms as set forth in this Ground Lease (a "***New Lease***"). Such right shall be exercisable by such Leasehold Deed of Trust Beneficiaries within thirty (30) days following written notice by the City to such Leasehold Deed of Trust Beneficiaries of the termination of this Ground Lease, and shall be exercised (if at all) by written notice from such Leasehold Deed of Trust Beneficiaries to the City given within such 30-day period. Upon exercise of such right, the City and such Leasehold Deed of Trust Beneficiaries (or an affiliate or nominee thereof, as such Leasehold Deed of Trust Beneficiaries may elect) shall enter into the New Lease within thirty (30) days thereafter. Upon execution of any such New Lease, the tenant thereunder shall be required to cure outstanding defaults of the Tenant under this Lease in the same manner, and within the same time period, as required of any Leasehold Deed of Trust Beneficiary under the provisions of this Section 5.4.

(j) ***Bankruptcy of Lessor.*** In the event that the City shall become subject to any bankruptcy or insolvency proceeding, any rights, elections, or actions available to the QALICB therein shall be subject to the rights of the Leasehold Deed of Trust Beneficiaries under their applicable Leasehold Deed of Trust to consent to, or to exercise on behalf of the QALICB, such rights, elections, or actions. Without limiting the foregoing, no consent or acquiescence by the QALICB to any rejection of this Ground Lease by the City or any successor or trustee in such proceeding shall be binding or effective without the prior, written consent thereto by each Leasehold Deed of Trust Beneficiaries, and the rights, liens, and claims of Leasehold Deed of Trust Beneficiaries shall extend to, encumber, and include all rights to damages for any such rejection and all rights to continued possession of the Premises.

(k) ***Additional Documentation.*** The City will execute and deliver, within five days of the QALICB's request therefor, estoppel certificates or such other similar certificates as may be reasonably requested from any Leasehold Deed of Trust Beneficiaries, affirming such facts with respect to this Ground Lease as may be required by parties to such financing and offering, among other matters, that this Ground Lease is in full force and effect. Furthermore, the City agrees, promptly after submission, to execute, acknowledge and deliver any normal and customary agreements modifying this Ground Lease reasonably requested by Leasehold Deed of Trust Beneficiary, provided that such modifications do not decrease the QALICB's obligations pursuant to this Ground Lease.

ARTICLE VI
COMPLIANCE WITH LAW; ENVIRONMENTAL LAWS; CONTEST

Section 6.1 Compliance With General Laws. The QALICB, at no expense to the City, shall comply, and shall cause the Tenants and any other tenant to comply, in all material respects at all times, with all Applicable Laws. Without limiting the foregoing, the QALICB shall promptly cure, or cause the cure of, all violations of Applicable Laws caused by the QALICB or any Tenant as to which a notice of violation has been issued or as to which a directive or order has been issued by any public officer or other person having authority; promptly discharge of record any such notice of violation by the QALICB or any Tenant; promptly comply with any such order or directive; and pay all fines, penalties, interest, and other costs imposed by any Governmental Authority in connection with any violation or requirement of Applicable Laws by the QALICB or any Tenant; provided, however, that the QALICB shall not be deemed to be in violation of this Section 6.1 with respect to (i) the City's failure to comply with or discharge its obligations with respect to compliance with Applicable Laws under the Development Agreement or (ii) any Tenant's failure to comply with any Applicable Laws as long as the QALICB is using commercially reasonable efforts to enforce the terms of the applicable Operating Lease regarding such violation. Notwithstanding the foregoing, neither the QALICB nor any Tenant shall have any responsibility or liability with respect to any Pre-Existing Conditions or Developing Conditions, which shall remain the responsibility of the City in accordance with Section 2.2 above.

Section 6.2 Compliance With Environmental Laws. Without limiting the foregoing:

(a) The following terms, as used in this Ground Lease and in all amendments hereto (unless otherwise specified or unless the context otherwise requires), shall have the meanings and/or be construed, as the case may be, as set forth below:

“*Remedial Action*” shall mean the investigation, response, clean up, remediation, prevention, mitigation or removal of contamination, environmental degradation or damage caused by, related to or arising from the release of sediment or the existence, generation, use, handling, treatment, storage, transportation, disposal, discharge, Release (including a continuous Release) or emission of any Hazardous Substance, including the investigation, removal or closure of any underground storage tanks and any soil or groundwater investigation, remediation or other action required under or necessary to comply with any Environmental Laws.

“*Release*” shall mean the release or threatened release of sediment or any Hazardous Substances into or upon or under any land, water or air, or otherwise into the environment, including by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, powering, escaping, emptying, placement and the like.

“*Material*”, as used to describe the QALICB's compliance obligations in this Article VI, shall mean that the failure to so comply may reasonably be expected to result in material risk of (1) physical injury or illness to any individual, (2) physical damage to the Site or the Project, (3) criminal liability or (4) fines or Remedial Action.

(b) Subject to subparagraph (c) and to Section 6.4 below, the QALICB, at no expense to the City, shall comply, and shall cause each Tenant to comply, in all material respects at all times, with all Environmental Laws. Such compliance includes the QALICB's obligation to take, or cause the taking of, Remedial Action when required by Applicable Laws (in accordance with Applicable Laws and this Ground Lease) and to pay, or cause the payment of, all fines, penalties, interest and other costs imposed by any Governmental Authority in connection with any violation or requirement of Applicable Laws by the QALICB or any Tenant, including any additional fines or penalties levied in the matter resulting from

the City's failure to comply with any Environmental Laws in the past. Notwithstanding the foregoing, the QALICB shall not be deemed to be in violation of this Section 6.2 with respect to any Tenant's failure to comply with any Environmental Laws as long as the QALICB is using commercially reasonable efforts to enforce the terms of the applicable Operating Lease regarding such violation.

(c) The QALICB shall notify the City promptly if (i) the QALICB becomes aware of the presence of any sediment or Hazardous Substances or Release at, on, under, within, emanating from or migrating to the Premises in any quantity or manner, which could reasonably be expected to violate in any material respect any Environmental Laws or give rise to any Material liability or the obligation to take Remedial Action or other material obligations under any Environmental Law, or (ii) the QALICB receives any written notice, claim, demand, request for information or other communication from a Governmental Authority, or a third party, regarding the presence of any sediment or any Hazardous Substances or Release at, on, under, within, emanating from or migrating to the Premises or related to the Premises which could reasonably be expected to violate in any material respect any Environmental Laws or give rise to any Material liability or obligation to take Remedial Action or other material obligations under any Environmental Law.

(d) If the Release of any Hazardous Substance onto the Premises or the Release of sediment was the result of action or omission of the QALICB or any Tenant, the QALICB shall take and complete, or cause the taking and completion of, any Remedial Action with respect to the Premises in full compliance with all Laws and shall, when such Remedial Action is completed, submit to the City written confirmation from the applicable Governmental Authorities that no further Remedial Action is required to be taken ("*Final Governmental Approval*"). In connection with any Material Remedial Action, (i) the QALICB shall promptly submit, or cause the submission, to the City the plan of Remedial Action and all material modifications thereof, (ii) the QALICB shall use an environmental consultant reasonably acceptable to the City, and (iii) the QALICB shall apprise the City, on a quarterly basis (or more frequently if reasonably requested by the City), of the status of such remediation plan and provide the City with copies of all correspondence, plans, proposals, contracts and other documents relating to such plan or proposed plan. If the QALICB's environmental consultant determines that there is not a reasonable likelihood of obtaining Final Governmental Approval prior to the third anniversary of the date on which the remediation plan is first submitted to the City, a certificate to that effect shall be provided to the City by such environmental consultant on behalf of the QALICB, which certificate shall also state, to the reasonable satisfaction of the City, the status of the Remedial Action and the schedule for completion of the Remedial Action, the reasons why such Final Governmental Approval is not likely to be obtained within such time period and that all Remedial Actions to date have been completed in accordance with all Environmental Laws.

Section 6.3 QALICB's Right to Contest Claimed Violations. The QALICB (or any Tenant) shall have the right to contest, by appropriate legal proceedings, the amount or validity of any fine, charge or penalty imposed in connection with an alleged violation of Applicable Laws the validity of any Applicable Laws to the Premises, the validity of any application of any Applicable Laws to the Premises, the existence of any violation of Applicable Laws, and/or the validity of any notice of violation of Applicable Laws issued to the QALICB or any Tenant (the "*Contested Obligation*"). The QALICB may defer payment and/or performance of the Contested Obligation to the extent that and so long as the QALICB or any Tenant is diligently contesting, at no expense to the City, by appropriate legal proceedings the existence, amount or validity of the Contested Obligation, provided that all of the following conditions are met:

- (a) There is no outstanding Event of Default.
- (b) Such contest is made and prosecuted in good faith.

(c) Such proceeding shall operate during the pendency thereof to prevent (i) the sale, forfeiture or loss of the City's fee estate in the Site, (ii) the forfeiture or loss of the Base Rent or Additional Rent, (iii) any interference with the use or occupancy of the Premises, and (iv) the cancellation of any insurance policy required to be maintained by the QALICB pursuant to Article VIII of this Ground Lease. In addition, such proceeding shall not create an imminent, material risk that any of the foregoing will occur.

(d) The City is not exposed to any risk of criminal liability, penalty, or sanction.

(e) The QALICB reimburses the City, or causes the City to be reimbursed, within ten days of being billed therefor, for all Liabilities incurred by the City in connection with such contest.

(f) The QALICB is not contesting a criminal liability, penalty, or sanction.

(g) The QALICB shall, promptly upon the City's request, apprise the City of the status of the contest and provide the City with copies of all documentation relating to such contest.

(h) The QALICB or a Tenant promptly and diligently prosecutes such contest to final conclusion by appropriate legal proceeding, but the QALICB or a Tenant shall have the right to attempt to settle or compromise such contest, subject to receipt of the City's consent, which shall not be unreasonably withheld, unless the settlement or compromise will in the City's reasonable judgment have a material impact on the use and occupancy of the Premises.

The QALICB shall indemnify and save the City harmless against any and all Liabilities incurred by the City in connection with any such contest or the Contested Obligation. The QALICB shall, promptly after the final determination of such contest, comply with the requirements of such determination and pay all amounts levied, assessed, charged or imposed on the City, the QALICB, the Premises or any part thereof, in connection therewith, together with all fines, penalties, interest, costs and Liabilities.

Section 6.4 Environmental Matters. To the best of the City's knowledge, without independent investigation, and except as expressly set forth in the Environmental Site Assessment and Report dated September 5, 2015, a Limited Environmental Site Assessment (Limited ESA) Report dated April 29, 2016, and Limited Survey for Asbestos and Lead Based Paint (Asbestos and IBP Survey) dated March 7, 2017 (collectively, the "Environmental Reports") the City represents that (a) the Premises, including, without limitation, soil and groundwater conditions, is not in violation of any Environmental Law, nor has the City received any written notice nor is the City otherwise aware of any such violation or alleged violation; (b) neither the City nor any third party has used, manufactured, stored or disposed of, on, under or about the Premises, or transported to or from the Premises, any Hazardous Substances; and (c) no underground storage tanks exist on or have been removed from the Premises, nor have the Premises ever been used as a dump or landfill site. The City acknowledges and agrees that it shall be solely responsible for any and all Liabilities associated with any Pre-Existing Conditions and any Developing Conditions.

Section 6.5 Reservation of Rights. Nothing contained in this Ground Lease shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which either QALICB and/or City may have against any third party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved

ARTICLE VII REPAIRS AND MAINTENANCE

Section 7.1 Standards. The QALICB, at no expense to the City, shall at all times (a) maintain or cause to be maintained the Premises in an orderly and safe condition, in a good state of repair, and in a manner consistent with the standards of operation and maintenance of first class properties similar to the Premises, and (b) make or cause to be made such repairs, replacements and alterations to the Premises as are necessary to keep it in the condition required by the preceding clause (a) and to comply or require any Tenant to comply with the requirements of Article V, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. The parties hereto acknowledge that under the terms of the City Operating Lease and the OIC Lease, the parties hereto and thereto have provided for compliance with these requirements.

Section 7.2 No Waste or Nuisance. The QALICB shall not permit any waste of the Premises or permit any nuisance to exist on the Premises.

Section 7.3 No Accumulation. The QALICB shall keep or cause to be kept the entire Premises, including adjoining sidewalks, substantially free of any accumulation of dirt, rubbish, snow and ice.

Section 7.4 City's Obligation. Unless otherwise expressly provided in this Ground Lease, and except as set forth in the Development Agreement, the City is under no obligation to maintain, repair, clean, alter or improve the Premises, to comply with any requirements of Applicable Laws or to provide any service to the Premises.

Section 7.5 Violations by Tenants. The QALICB shall not be deemed to be in violation of this Article VII with respect to any Tenant's failure to comply with the corresponding provisions of their respective Operating Leases as long as the QALICB is using commercially reasonable efforts to enforce the terms of the applicable Operating Lease regarding such violation.

ARTICLE VIII INSURANCE; COMPLIANCE WITH INSURANCE REQUIREMENTS

Section 8.1 Insurance. During the Term, the QALICB shall maintain or cause to be maintained (except as otherwise specifically provided below), the insurance coverages set forth in the QALICB Loan Agreement.

Section 8.2 Insurance Policies. All policies required by this Article shall be issued by insurance companies licensed to do business in the State of North Carolina and must be approved by the City. All such insurers shall have the rating of "A-V" or better corresponding to an adjusted policyholder surplus of not less than \$500,000,000 by A.M. Best (or any successor rating agency or entity reasonably selected by the City if A.M. Best discontinues publishing ratings of insurance companies or if the rating system is changed). If it is commercially impracticable to obtain insurance from an insurer with the "A-V" rating because of changes in the insurance industry or conditions in the vicinity of the Premises, the QALICB's insurers shall have a policy holder's rating that is at least equal to the customarily required rating.

Section 8.3 Reserved.

Section 8.4 Named and Additional Insured. The liability policy shall name the QALICB as insured and shall include the City as additional insured. Notwithstanding the foregoing, to the extent this

Section or any other Section of this Ground Lease requires the City to be (a) included as additional insured in any policy of insurance or (b) benefited by a waiver of subrogation endorsement, such requirement shall be triggered as to any fee lender or as to the City's managing agent only when the City has advised the QALICB of the names and addresses of such entities and requested such inclusion.

Section 8.5 *No Cancellation Without Notice to City.* All insurance policies required by this Article shall (i) contain endorsements that such insurance may not be canceled, except upon not less than 30 days prior written notice to the City from said insurance carrier or the QALICB, and (ii) be written as primary policies not contributing to or in excess of any policies carried by the City, and (iii) each contain a waiver of subrogation endorsement, in form and substance reasonably satisfactory to the City, in favor of the City.

Section 8.6 *Certificate of Insurance.* Concurrently with execution of this Ground Lease and thereafter at least 15 days prior to the expiration of any policy, the QALICB shall deliver to the City certificates evidencing the insurance required by this Article in form and content reasonably satisfactory to the City, together with evidence of payment of the annual premium for each policy. The QALICB shall at any time and from time to time during the Term, promptly upon the City's request, furnish or cause any Tenant to furnish the City with a copy of the then current paid-up Property Damage Policy, appropriately authenticated by the insurer or, at the City's option, the declarations page of such policy evidencing the required insurance.

Section 8.7 *Failure to Maintain Insurance.* If the QALICB fails to maintain the insurance required by the foregoing provisions of this Article or to timely furnish to the City the required evidence of such insurance and payment of the insurance premiums, the QALICB shall be responsible for all Liabilities incurred by the City with respect to such default, including any Liabilities that would have been covered by the insurance the QALICB is required to maintain. If the QALICB fails to maintain any of the insurance required by this Article, the City may, at its option, in addition to exercising any other remedies available to it under this Ground Lease or at law, obtain the insurance described in this Article, in which event the QALICB shall reimburse the City, as Additional Rent, within 10 days of being billed therefor, for the costs incurred by the City to obtain such insurance.

Section 8.8 *Qualification as to Tenant Maintained Insurance.* Notwithstanding anything to the contrary set forth in this Article VIII, the QALICB shall not be deemed to be in violation of this Article with respect to all insurance maintained, or required to be maintained hereunder, so long as the QALICB is using commercially reasonable efforts to enforce the terms of the Operating Leases requiring the Tenants to maintain the insurance required by this Article VIII.

ARTICLE IX INDEMNITY

Section 9.1 *Indemnity.* The QALICB shall indemnify and hold harmless the City from and against any and all Liabilities arising from or in connection with all of the following: (a) the Premises and/or any operations or activities thereon during the Term and after the Term for so long as the QALICB, or any person holding through or under the QALICB, remains in possession of the Premises, except to the extent such Liabilities arise out of the negligence or misconduct by the City, any Tenant or their respective officers, representatives, agents, contractors, employees or invitees; (b) any act, omission, negligence, or misconduct of the QALICB, or any person holding through or under the QALICB and/or any of the QALICB's officers, directors, employees, partners, members, agents, contractors, invitees; (c) any accident, injury or damage (including death) occurring in, at or about the Premises during the Term and after the Term for so long as the QALICB, or any person holding through or under the QALICB, remains in possession of the Premises, except to the extent such Liabilities arise out of the negligence or

misconduct by the City, any Tenant or their respective officers, representatives, agents, contractors, employees or invitees; (d) any breach or default by the QALICB, or any person holding through or under the QALICB under this Ground Lease; (e) any claims made by any Tenant during or after the Term (including claims for return of security deposits and prepaid rent), except to the extent such claims arise out of the City's negligence or misconduct or its respective officers, representatives, agents, contractors, employees or invitees; and (f) any holdover by the QALICB, or by any person(s) holding through the QALICB, after the Term. If any action or proceeding is brought against the City by reason of any such claim(s), the QALICB, upon notice from the City, shall cooperate with the City to resist and defend such action or proceeding by counsel reasonably satisfactory to the City.

Section 9.2 Waiver of Claims; Subrogation. Notwithstanding anything to the contrary set forth in Section 9.1, each of the City and the QALICB releases the other, and its employees, agents, and representatives, from liability, and waives its entire right of recovery against the other for loss or damage occurring in or about the Premises to the extent such loss or damages is covered under fire, casualty and all risk insurance policies, including extended coverage endorsements, carried by the parties. Each party agrees that each such insurance policy obtained by it with respect to the Premises or any Personal Property shall include a waiver by the insurer of its subrogation rights for such losses and damages. The foregoing mutual waivers shall be effective only so long as such waivers are available in the State of North Carolina and do not invalidate the insurance coverage.

ARTICLE X CASUALTY DAMAGE AND DESTRUCTION

Section 10.1 Damage. If the Premises are damaged or destroyed by fire or other cause (ordinary or extraordinary), the QALICB shall give the City prompt notice of such event and (i) so long as any Leasehold Deed of Trust is in effect, shall take such action as is required by the Leasehold Deed of Trust and (ii) after the termination of the any and all Leasehold Deed(s) of Trust and except as provided in Section 10.3 below, the terms and conditions of which are incorporated herein by this reference, the QALICB, shall repair such damage and restore the Premises to the condition existing prior to such damage or destruction and to a standard and quality no less than the construction of the original Improvements (the "*Restoration*"). Such repair and restoration shall be effected with reasonable diligence, subject to reasonable delays for adjustment of the insurance loss. Subject to Section 10.3, such obligation shall survive any termination of this Ground Lease. Except as provided in Section 16.1, this Ground Lease shall not terminate solely by reason of such damage or destruction. Notwithstanding the above, the City and the QALICB acknowledge that the QALICB and the City and OIC have agreed that during the term of the City Operating Lease and the OIC Lease, respectively, any insurance proceeds arising from insurance provided by the City or OIC shall first be used to repair or replace the Premises, unless it is impossible or impracticable to repair or replace the Premises, as provided in Section 6.1(a) of the City Operating Lease and the OIC Lease.

Section 10.2 Proceeds of Insurance. So long as any Leasehold Deed of Trust is in effect, the parties hereto acknowledge that the proceeds of any Property Damage Policy shall be disbursed to the Leasehold Deed of Trust Beneficiaries to be applied as provided in the Leasehold Deed of Trust. In the event that no Leasehold Deed of Trust is any longer in effect and unless the QALICB is permitted to terminate this Ground Lease pursuant to Section 10.3, the proceeds of any Property Damage Policy shall be disbursed to the QALICB, to be used for the repair and restoration of the Premises as required by Section 10.1 hereof. Notwithstanding the above, the City and the QALICB acknowledge that the QALICB and the City have agreed that during the term of the City Operating Lease, any insurance proceeds arising from insurance provided by the City shall first be used to repair or replace the Premises,

unless it is impossible or impracticable to repair or replace the Premises, as provided in Section 6.1(a) of the City Operating Lease.

Section 10.3 Termination Rights. Subject to the foregoing:

- (a) If the City Operating Lease is terminated as a result of such casualty, or the proceeds of any Property Damage Policy are insufficient to pay for the cost of Restoration; or
- (b) If the Premises (or any discrete portion thereof) are damaged or destroyed by fire or other cause during the last 5 years of the Term and the cost to restore the Premises (or portion thereof), as reasonably estimated, would equal or exceed 25% of the Full Replacement Cost of the Improvements;

then, the QALICB may, with the written consent of the City, terminate this Ground Lease with respect to the Premises (or any discrete portion thereof) within 90 days after such fire or casualty event, provided that (i) the QALICB must as a condition precedent to such termination pay to the City the proceeds of any Property Damage Policy and (ii) no such election to terminate this Ground Lease shall be effective without the prior written consent of the applicable Leasehold Deed of Trust Beneficiaries so long as any Leasehold Deed of Trust remains in effect. In such event, this Ground Lease shall cease and come to an end as of the later of the date 45 days after the date the City receives such notice.

Section 10.4 Rights of Certain Parties. The City's and the QALICB's rights under this Article X shall be subject and subordinate to the rights of the Leasehold Deed of Trust Beneficiaries so long as any Leasehold Deed of Trust is outstanding.

ARTICLE XI CONDEMNATION

Section 11.1 Definitions. The following basic terms, as used in this Ground Lease and in all amendments to this Ground Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

"Taking" shall mean a taking during the Term of all or any part of the Premises, or any interest therein or right accruing thereto including any right of access, by or on behalf of any Governmental Authority or by any entity granted the authority to take property through the exercise of a power of eminent domain granted by statute, any agreement that conveys to the condemning authority all or any part of the Premises as the result of, or in lieu of, or in anticipation of the exercise of a right of condemnation or eminent domain, or a change of grade affecting the Premises. The date of the Taking shall be deemed to be the date that title vests in the condemning authority or its designee.

"Award" shall mean the condemnation award and/or proceeds of the Taking, including any interest earned on the Award.

"Partial Taking" means any taking that is not a Substantial Taking or a Temporary Taking.

"Substantial Taking" means a taking that would render the Project unusable for the Permitted Use during the remainder of the Term.

“*Temporary Taking*” means a taking of the use of the Project that renders the Project unusable for the Permitted Use during the period of the Temporary Taking.

Section 11.2 Nature of Taking. The City and the QALICB shall each notify the other if either becomes aware of a threatened or possible Taking (including any letter of interest from the condemning authority or its designee), or the commencement of any proceedings or negotiations which might result in a Taking. The City and the QALICB shall have the right to appear in such proceedings, as their interests may appear, and be represented by their respective counsel.

Section 11.3 Taking While Leasehold Deed of Trust in Effect. If there is a Taking (whether a Substantial Taking, Partial Taking or Temporary Taking), the parties hereto acknowledge that so long as any Leasehold Deed of Trust is in effect, the proceeds of any Award shall be disbursed to the Leasehold Deed of Trust Beneficiaries to be applied as provided in the Leasehold Deed of Trust and related Documents.

Section 11.4 Taking After Discharge of Sub-CDE Leasehold Deed of Trust. If there is a taking at a time when no Leasehold Deed of Trust remains outstanding, then the following provisions shall apply.

(i) If such taking is a Substantial Taking, at the QALICB’s election, the Term of this Ground Lease shall cease and terminate on the date of the Taking as fully and completely as if such date were the originally stated expiration of the Term hereof. The Award for a Substantial Taking shall be paid to the QALICB to the extent attributable to the Improvements and to the City to the extent attributable to the land that comprises the Site.

(ii) If such taking is a Partial Taking, this Ground Lease shall remain in full force and effect; provided, however, that on the date of such Taking this Ground Lease shall terminate as to the portion of the Premises taken, which portion shall no longer be deemed part of the Premises. Thereafter, the QALICB, to the extent of the Award made available to it, shall promptly restore, or cause the restoration of, the Premises, to the extent reasonably practicable given the nature and scope of the Taking and the requirements of Applicable Laws to their condition immediately prior to such Partial Taking in accordance with the provisions of this Ground Lease and to a standard and quality no less than the construction of the original Improvements (the “*Condemnation Restoration*”). The Award for the Partial Taking shall be allocated as follows:

(A) If the Partial Taking includes any of the Improvements (including any parking area), the Award shall first be applied to effect the Condemnation Restoration. The balance of the Award (if any) shall be paid to the City.

(B) If the cost of the Condemnation Restoration, as reasonably estimated, is less than the portion of the Award needed to effect the Condemnation Restoration, the Award shall be paid to the QALICB, who shall effect the Condemnation Restoration, and if the cost of effecting the Condemnation Restoration is equal to or greater than the portion of the Award needed for restoration of the Premises, the Award shall be paid to the City, who shall distribute such portion of the Award to the QALICB as the Condemnation Restoration progresses in the same manner as provided in Section 10.2 with respect to insurance proceeds and subject to the same conditions.

(C) If the Partial Taking does not include any portion of the Project, the entire Award shall be paid to the City.

Section 11.5 Reimbursement for Taxes. Notwithstanding anything in this Article XI to the contrary, to the extent any Award is allocated to reimbursement for real estate taxes and assessments that have been paid with respect to periods after the date title vests in the condemning authority or its designee, such portion shall be paid to the party who paid such taxes and assessments. To the extent any Award is allocated to reimbursement of prepayment penalties, such portion shall be paid to the party that paid the prepayment penalty.

Section 11.6 Rights of Certain Parties. The City's and the QALICB's rights under this Article XI shall be subject and subordinate to the rights of any Leasehold Deed of Trust Beneficiary so long as any Leasehold Deed of Trust is outstanding.

Section 11.7 No Benefit to Condemning Party. Nothing in this Article is included for the benefit of the condemning authority, the intent being only to set out the rights of the parties vis-a-vis one another.

ARTICLE XII ESTOPPEL CERTIFICATES

Section 12.1 Estoppel Certificates. The City and the QALICB shall, at any time and from time to time, within 30 Business Days following receipt of written request from the other party, execute, acknowledge and deliver a written statement certifying to such parties as such requesting party may require, including lenders: that this Ground Lease is in full force and effect and unmodified (or, if modified, stating the nature and date of such modification); the Closing Date; the end of the Term; whether or not, to the best knowledge of the signer, the other party is in default in performance of any of its obligations under this Ground Lease including the payment of Additional Rent (and, if so, specifying each such default of which the signer shall have knowledge and the amount of any unpaid Additional Rent); if the signer is the QALICB, that the QALICB is not in default of any of its obligations under this Ground Lease; and as to such other matters regarding this Ground Lease as may reasonably be requested. Failure to deliver such statement within the 30 Business Days' period shall be conclusive as to the facts stated in the requested certification and binding upon the party who failed to deliver such certification as it relates to the entity seeking the certification. However, the failure to deliver said statement shall not be a waiver of any claim the City may otherwise have against the QALICB to the extent the enforcement of the City's claim does not adversely impact the entity seeking the certification.

ARTICLE XIII ASSIGNMENT AND SUBLEASE

Section 13.1 Prohibition of Assignment and Subleasing. Except as permitted by this Article, or with the City's approval, the QALICB may not assign this Ground Lease or sublease all or substantially all of the Premises in a single transaction or related transactions, or otherwise transfer (whether by operation of law or otherwise) all or substantially all of its interest in this Ground Lease or the Premises, excluding Affiliate transfers. For purposes of this Article XV, a transfer (whether by a single transfer or by a series of related or unrelated transfers) of 50% or more of the membership interests or other interests of the QALICB, however accomplished and whether effected voluntarily or by operation of Applicable Laws shall be deemed an assignment of this Ground Lease, whether such transfer(s) shall involve a transfer or transfers of outstanding interests of the QALICB and/or the issuance of interests in the QALICB, unless the QALICB or an Affiliate of the QALICB is the manager or managing member immediately following any such transfer of 50% or more of the membership interests or other interests.

Section 13.2 Permitted Assignment and Subletting. The City and the QALICB agree that each of the City Operating Lease, the OIC Lease and the Sub-CDE Leasehold Deed of Trust is permitted, and that in the event of any termination of the City Operating Lease or the OIC Lease, the QALICB will be entitled to enter into one or more replacement subleases of the spaces thereunder on commercially reasonable terms.

ARTICLE XIV DEFAULT; INSOLVENCY EVENTS; AND CONDITIONS OF LIMITATION

Section 14.1 Events of Default. This Ground Lease and the term and estate thereof are subject to the conditional limitation set forth below. If any of the following events occur and a court of competent jurisdiction renders a judgment in favor of the City (each, an “*Event of Default*”):

- (a) The QALICB fails to pay Base Rent to the City when the same is due and payable under the terms of this Ground Lease, or
- (b) The QALICB fails to pay to the City any Additional Rent when the same is due and payable under the terms of this Ground Lease and such failure continues for a period of 30 days after written notice thereof is given to the QALICB, or
- (c) The QALICB, whether by action or inaction, fails to timely perform or observe any of the other terms, covenants or conditions of this Ground Lease and such default is not remedied within 60 days after written notice thereof is given to the QALICB, provided that if such default cannot, with reasonable diligence, be fully remedied within such 60 day period, the QALICB shall have as long as is reasonably necessary to cure such default, provided the QALICB commences compliance within such 60 day period (or as promptly as reasonably possible in an emergency) and thereafter pursues compliance to completion with reasonable diligence; provided, further, however, that an Event of Default shall not exist hereunder with respect to a Tenant’s failure to timely perform or observe any term, covenant or condition of the Operating Lease and such failure would otherwise result in an Event of Default hereunder, as long as the QALICB is using commercially reasonable efforts to enforce the terms of the Operating Lease with respect to such Tenant.

Then in any such case the City may, at any time during the continuance of such Event of Default after the applicable notice and cure periods have expired, give the QALICB notice of termination of this Ground Lease and, upon the date five days after service of such notice, this Ground Lease and the term and estate thereof shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Ground Lease, but the QALICB shall remain liable for damages as provided in this Ground Lease and the City may resort to and enforce any of the remedies provided in Article XVII below; provided, however, that the City acknowledges that any rights hereunder are subject to the rights of the Leasehold Deed of Trust Beneficiaries set forth in Section 5.4 above; and provided further that with respect to a default under clause (c) above, the City shall have, as its sole remedy for such default, the right to maintain an action in law or equity to require specific performance of the terms of this Ground Lease.

Section 14.2 Insolvency Events. Following the repayment in full or other discharge of the QALICI Loans, this Ground Lease and the term and estate thereof is subject to the further conditional limitation that if any of the following events occur (“*Insolvency Events*”):

- (a) The QALICB makes an assignment for the benefit of its creditors, or

(b) If an involuntary petition is filed against the QALICB under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import, and such petition is not dismissed within 120 days after the date filed; or

(c) The QALICB shall file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by the QALICB under the reorganization provisions of the United States Bankruptcy Act or under the provisions of any law of like import, or whenever a petition shall be filed by the QALICB under the arrangement provisions of the United States Bankruptcy Act or under the provisions of any law of like import.

Then in any such case the City may, at any time during the continuance of such Insolvency Event, after the applicable notice and cure period have expired, give the QALICB notice of termination of this Ground Lease and, upon the date five days after service of such notice, this Ground Lease and the term and estate thereof shall terminate and end with the same force and effect as if that day were the day herein definitely fixed for the end and expiration of this Ground Lease, but the QALICB shall remain liable for damages as provided in this Ground Lease and the City may resort to and enforce any of the remedies provided in Article XVII below; provided, however, that the City acknowledges that any rights hereunder are subject to the rights of the Leasehold Deed of Trust Beneficiaries set forth in Section 5.4 above; and provided further that with respect to a default under clause (c), the City shall have, as its sole remedy for such default, the right to maintain an action in law or equity in Section 16.1 above to require specific performance of the terms of this Ground Lease.

Section 14.3 City Default. It shall be a default under and breach of this Ground Lease by the City if it shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Ground Lease for a period of 30 days after notice thereof from the QALICB; provided, however, that if the term, condition, covenant or obligation to be performed by the City is of such nature that the same cannot reasonably be performed within such 30 day period, such default shall be deemed to have been cured if the City commences such performance within said 30 day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such the default by the City, the QALICB may (a) cure such default by the City and offset Additional Rent against such amounts, or (b) sue for injunctive relief or to recover damages for any loss resulting from the breach or may pursue any other remedies available to it under Applicable Laws.

ARTICLE XV REMEDIES

Section 15.1 Rights of City. Subject to the rights of the Leasehold Deed of Trust Beneficiaries set forth in Section 5.4 above; and provided further that with respect to an Event of Default under Clause (c) of Section 14.1 above, the City shall have, as its sole remedy for such default, the right to maintain an action in law or equity to require specific performance of the terms of this Ground Lease, if (a) this Ground Lease is terminated pursuant to Article XIV, or (b) the City re-enters or obtains possession of the Premises by summary proceedings or any other action or proceeding, or (c) the City re-enters or obtains possession by any other legal act (which the City may do without further notice and without liability or obligation to the QALICB or any occupant of the Premises if this Ground Lease is terminated pursuant to Article XVI), all of the provisions of this Section shall apply (in addition to any other applicable provisions of this Ground Lease):

(a) The QALICB shall immediately vacate the Premises and surrender the Premises to the City in good order, condition and repair, excepting reasonable wear and tear and damage that is not the QALICB's obligation to repair; and, if the QALICB fails to surrender the Premises

in such condition, the QALICB shall reimburse the City for all costs incurred by the City to restore the Premises to such condition.

(b) Subject to the terms of the Operating Leases, the City, at the City's option, may (i) relet the Premises, or any portion of the Premises, from time to time, in the name of the City, the QALICB or otherwise, as determined by the City, to any person and on any terms, but the City shall have no obligation to relet the Premises, or any portion of the Premises, or to collect any rent (and the failure to relet the Premises, or any portion of the Premises, or to collect any rent shall not impose any liability or obligation on the City or relieve the QALICB of any obligation or liability under this Ground Lease), and (ii) make any changes to the Premises as the City, in the City's judgment, considers advisable or necessary in connection with a reletting, without imposing any liability or obligation on the City or relieving the QALICB of any obligation or liability under this Ground Lease.

(c) The QALICB shall pay the City the following amounts:

(i) All Rent payable to the date on which this Ground Lease is terminated or the City reenters or obtains possession of the Premises; and

(ii) Any deficiency between (i) the aggregate Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the 12 month period immediately preceding the termination, re-entry or obtaining of possession); and (ii) the rents, if any, applicable to that period collected under any reletting of any portion of the Premises; and the QALICB shall pay any such deficiency in installments on the dates specified in this Ground Lease for payment of installments of the Base Rent, and the City shall be entitled to recover from the QALICB each deficiency as the same arises. No suit to collect the deficiency for any month shall prejudice the City's right to collect the deficiency for any subsequent month. The QALICB shall not be entitled to any rents payable (whether or not collected) under any reletting, whether or not those rents exceed the Rent.

(iii) Any costs and expenses incurred by the City in connection with the termination, re-entry or obtaining of possession, and the reletting of the Premises, including all repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements, alteration costs and other expenses of preparing the Premises for reletting.

The QALICB shall deliver to the City all sums held by the QALICB with respect to the occupancy of the Premises by the City under the City Operating Lease, including prepaid rents, estimated prepayments relating to real estate taxes, if any, operating expenses, and other expenses; all security deposits; and shall transfer to the City at the QALICB's expense any letters of credit, bonds and other security instruments issued to the QALICB on behalf of the City in accordance with the requirements of the issuer thereof.

Nothing contained in this Ground Lease shall be considered to limit or preclude the recovery by the City from the QALICB of the maximum amount allowed to be obtained as damages or otherwise by any Applicable Laws.

Section 15.2 Right of Injunction. Either party may seek to enjoin any breach or threatened breach of any provision of this Ground Lease. The right of any party to exercise any particular remedy available under this Ground Lease, at law or in equity, shall not preclude such party from exercising any

other remedy it might have pursuant to this Ground Lease, in law or in equity. Each right and remedy specified in this Ground Lease and each other right or remedy that may exist at law, in equity or otherwise upon breach of any provision in this Ground Lease, shall be deemed distinct, separate and cumulative; and no right or remedy, whether exercised or not, shall be deemed to be in exclusion of any other unless otherwise expressly provided in this Ground Lease.

Section 15.3 City May Cure Default. If (a) there is then an Event of Default, or (b) if the QALICB fails to comply with any obligation under this Ground Lease which in the City's reasonable opinion creates an emergency, the City may, but is not obligated to, cure the default. The QALICB shall reimburse the City, as Additional Rent, for all Liabilities incurred by the City in connection therewith, within ten days after the QALICB is billed for such Liabilities.

Section 15.4 No Waiver by the City. No payment by the QALICB or receipt by the City of a lesser amount than the Rent shall be considered other than on account of the Rent. No endorsement or statement on any check or letter accompanying any check or payment shall prevent the City from cashing the check or otherwise accepting the payment, without prejudice to the City's right to recover the balance of the Rent or pursue any other remedy.

Section 15.5 QALICB Waiver. The QALICB waives the QALICB's right, if any, to designate the items against which any Rent payments made by the QALICB pursuant to this Ground Lease are to be credited and the QALICB agrees that the City may apply any payments made by the QALICB to any Rent items the City sees fit irrespective of and notwithstanding any designation or request by the QALICB as to the items against which any such payments shall be credited.

Section 15.6 Jurisdiction. All legal actions relating to this Ground Lease shall be adjudicated in any North Carolina state court or in any federal court having jurisdiction in the City. The QALICB irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action relating to this Ground Lease and waives any claim that any legal action relating to this Ground Lease brought in any such court has been brought in an inconvenient forum. This consent to jurisdiction is self-operative and no further instrument or legal action, other than service of process in any manner permitted by Applicable Laws or this Section, is necessary in order to confer jurisdiction upon the person of the QALICB and the subject matter in question in any such court.

ARTICLE XVI BROKER

Section 16.1 No Broker. Each of the City and the QALICB represents and warrants that it has not dealt with any broker in connection with this Ground Lease, and each party shall be responsible for any broker's fee or commission for any broker claiming through such party. The QALICB shall indemnify and hold the City harmless from and against any and all claims for any brokerage fee or commission with respect to this Ground Lease transaction by any broker with whom the QALICB has dealt or is alleged to have dealt. The provisions of this Section shall survive any termination of this Ground Lease.

Section 16.2 No Broker's Lien. The QALICB shall keep the Premises and this Ground Lease free from any broker's lien, other than the lien of any broker that the City is obligated to pay pursuant to this Ground Lease.

ARTICLE XVII NO IMPAIRMENT OF CITY'S TITLE

Section 17.1 *Rights Granted by City.* Nothing contained in this Ground Lease or any action or inaction by the City, shall be deemed or construed to mean that the City has granted to the QALICB any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance upon the estate of the City in the Premises.

Section 17.2 *No Impairment of City's Title.* In amplification and not in limitation of the foregoing, the QALICB shall not permit the Premises to be used by any person or persons or by the public, as such, at any time or times during the term of this Ground Lease, in such manner as might reasonably tend to impair the City's title to or interest in the Premises or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises.

Section 17.3 *Liens.* The QALICB shall not cause, or permit the Tenants to cause, the City's fee estate in the Premises to be encumbered by any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect, or engineer with respect to the work, materials or services alleged to have been performed at or with respect to the Premises. If any such lien or encumbrance is filed or recorded, the QALICB shall discharge any such lien or encumbrance by bond or otherwise within 30 days after the QALICB receives notice of such lien or encumbrance. If the QALICB fails to discharge such lien or encumbrance within such 30 day period, the City may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as the City deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by the QALICB. The amount so paid and costs incurred by the City shall be deemed Additional Rent under this Ground Lease payable within 30 days after the QALICB is billed therefor. The QALICB shall not be deemed to be in violation of this Section 17.3 with respect to (i) the City's failure to comply with or discharge its obligations with respect to liens or encumbrances described above under the Development Agreement or (ii) any Tenant's failure to comply with this Section 17.3 as long as the QALICB is using commercially reasonable efforts to enforce the terms of the applicable Operating Lease regarding such violation.

ARTICLE XVIII QUIET ENJOYMENT

Section 18.1 *Quiet Enjoyment.* The City covenants that if and so long as the QALICB observes and performs each and every covenant, agreement, term, provision and condition of this Ground Lease on the part of the QALICB to be observed and performed, the QALICB shall quietly enjoy the Premises without hindrance or molestation of the City or any other person or entity acting through or on behalf of the City, subject to the covenants, agreements, terms, provisions and conditions of this Ground Lease. The City represents and warrants that there is no lien encumbering the City's fee interest in the Site or any improvements located thereon.

ARTICLE XIX LIMITATION OF CITY LIABILITY

Section 19.1 *Transfer by City.* If the City sells, assigns, or otherwise transfers (whether by operation of law or otherwise) all or part of its interest in the Premises or this Ground Lease, the assignment agreement must fully obligate the assignee to assume all of the City's obligations and

responsibilities pursuant to this Ground Lease. The City shall be relieved of all of its obligations and liabilities under this Ground Lease accruing after the effective date of the transfer, and the transferee shall be deemed to have assumed all of the City's obligations and liabilities under this Ground Lease effective from and after the effective date of the transfer.

Section 19.2 No Personal Liability. The officers, directors, employees, agents and attorneys of the City, disclosed and undisclosed, shall have no personal liability under or in connection with this Ground Lease.

ARTICLE XX END OF TERM

Section 20.1 Surrender of Premises. At the end of the Term whether by the running of the Term or on such earlier date that this Ground Lease terminates or expires, the QALICB shall peaceably and quietly surrender the Premises to the City vacant (except for occupancy by the Tenants under the Operating Leases, if any), broom clean, in good order, condition and repair excepting reasonable wear and tear and damage that is not the QALICB's obligation to repair, free and clear of all subleases, liens, and other encumbrances (except for any existing Operating Lease and any other liens and encumbrances caused or expressly consented to by the City), and with all Personal Property acquired (or leased) by the QALICB (except for the property of the Tenants occupying under Operating Lease) removed. The QALICB shall deliver to the City, on or before the end of the Term or such earlier date that this Ground Lease terminates or expires, upon the City's request, all licenses, permits, warranties, and guaranties then in effect for the Premises (and shall assign same to the City upon the City's request) and all books and records reasonably requested by the City. The QALICB shall cooperate with the City to achieve an orderly transition of the Premises to the City's control. The City and the QALICB shall, prior to the expiration of the Term, (a) adjust for Impositions and all other appropriate expenses and income of the Premises, and (b) if a memorandum of lease has been recorded, execute a document in recordable form evidencing the termination of this Ground Lease and all amendments thereto.

Section 20.2 Personal Property. Any Personal Property which shall remain on the Premises after the expiration of the Term or such earlier date that this Ground Lease terminates or expires, may, at the option of the City, be deemed to have been abandoned and either may be retained by the City as its property or be disposed of, without accountability, in such manner as the City may see fit, except that the property of any tenant then in possession shall be retained by such tenant. The QALICB shall reimburse the City, as Additional Rent, for all costs and expenses incurred by the City in connection with disposing of such property.

Section 20.3 Holdover. If the Premises are not vacated and surrendered in accordance with this Ground Lease at the conclusion of the Term or sooner termination of this Ground Lease, the QALICB shall be liable to the City for (a) all Liabilities incurred by the City in connection with such holdover, including Liabilities incurred in connection with any summary proceedings, action or proceeding to recover possession of the Premises from the QALICB, and (b) per diem use and occupancy in respect of the Premises equal to the fair rental value of the Premises, and (c) all damages incurred by the City in connection with such holdover, including any lost opportunity damages incurred by the City. If only a portion of the Premises is timely vacated and surrendered, the QALICB shall nevertheless remain liable for per diem use and occupancy with respect to the entire Premises, but any reletting proceeds received by the City during the period of the QALICB's holdover shall be credited against the QALICB's liability for use and occupancy for the entire Premises. In no event shall this Section be construed as permitting the QALICB (or other occupants) to remain in possession of the Premises after the Term or sooner termination of this Ground Lease. The QALICB shall indemnify, defend and hold harmless the City against all claims made by any succeeding tenants to the extent such claims arise by reason of the failure

of the QALICB (and all other occupants) timely to vacate and surrender the Premises (or any portion thereof) in accordance with this Ground Lease. The City may recover amounts due it under this Section in any summary proceeding and/or any separate action or proceeding.

Section 20.4 No Acceptance of Surrender. No act or thing done by the City or the City's agents (including receipt of keys) during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by the City.

ARTICLE XXI MISCELLANEOUS

Section 21.1 Modifications in Writing. This Ground Lease may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

Section 21.2 No Waiver. Receipt or acceptance of Rent by the City and payment of any Rent by the QALICB shall not be deemed to be a waiver of any default under the covenants, agreements, terms, provisions and conditions of this Ground Lease, or of any right which the City or the QALICB, as the case may be, may be entitled to exercise under this Ground Lease. Failure to insist upon the strict performance of any of the provisions of this Ground Lease or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such provision, right, remedy or election, but the same shall continue and remain in full force and effect. The waiver by either party of any breach of this Ground Lease shall not be deemed a waiver of any future breach.

Section 21.3 Consent of City. Consent of the City to any act or matter must be in writing and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve the QALICB from the obligation wherever required under this Ground Lease to obtain the consent of the City to any other act or matter. If the QALICB requests the City's consent or approval and the City fails or refuses to give such consent or approval, the QALICB shall not be entitled to any damages for any withholding by the City of its consent or approval, it being intended that the QALICB's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases where the City has expressly agreed in writing not to unreasonably withhold or delay its consent or where as a matter of law the City may not unreasonably withhold its consent.

Section 21.4 Further Liability. Upon the expiration of the Term of this Ground Lease, neither party shall have any further obligation or liability to the other except as otherwise provided in this Ground Lease and except for (a) such obligations as by their nature or under the circumstances can only be, or by the provisions of this Ground Lease may be, performed after such expiration, and (b) any liability for Rent, and (c) any liability for acts or omissions occurring during the Term, and (d) any obligation or liability under Articles IX, XIX and XXII, all of which obligations shall survive such expiration.

Section 21.5 Validity of Lease. Each party represents and warrants (a) that this Ground Lease has been duly authorized, executed and delivered by such party and constitutes the legal, valid and binding obligation of such party, (b) that there are no actions, suits or proceedings pending or, to the knowledge of such party, threatened against or affecting such party, at law or in equity or before any Governmental Authority which would impair such party's ability to perform its obligations under this Ground Lease, and (c) that the consummation of the transactions hereby contemplated and the performance of this Ground Lease will not result in any breach or violation of, or constitute a default under any lease, bank loan or credit agreement. The QALICB shall provide to the City, upon the City's request, evidence that the execution and delivery of this Ground Lease have been duly authorized by the

QALICB and that the person or persons executing and delivering this Ground Lease on behalf of the QALICB have been duly authorized to do so, together with a certified copy of the QALICB's articles of incorporation, partnership agreement or operating agreement, as applicable, and all amendments thereto.

Section 21.6 No Merger. There shall be no merger of this Ground Lease or the leasehold estate created by this Ground Lease with a fee interest in the Premises by reason of the fact that the same person may acquire, own or hold, directly or indirectly, this Ground Lease or the leasehold estate created by this Ground Lease and the fee estate in the Premises, unless and until such person shall join in a written instrument expressly providing for such merger and such instrument is recorded.

Section 21.7 Memorandum of Ground Lease. The parties shall execute and acknowledge, in a manner suitable for recording, a Memorandum of Ground Lease in the form attached as **Exhibit C**, which Memorandum of Ground Lease may be recorded by either of the parties.

Section 21.8 Entire Agreement. This Ground Lease represents the entire agreement of the parties with respect to the Premises, and, accordingly, all prior understandings and agreements between the parties with respect to the Premises are merged into this Ground Lease, which alone fully and completely expresses the agreement of the parties.

Section 21.9 Independent Covenants. Each covenant, agreement, obligation or other provision of this Ground Lease on the QALICB's part to be performed, shall be deemed and construed as a separate and independent covenant of the QALICB, not dependent on any other provision of this Ground Lease.

Section 21.10 Inclusion. All terms and words used in this Ground Lease shall be deemed to include any other number and any other gender as the context may require.

Section 21.11 Negotiations Have No Binding Effect. The submission of drafts of and comments to this Ground Lease, the negotiation of this Ground Lease, and the exchange of correspondence concerning the negotiation and execution of this Ground Lease shall have no binding force or effect and shall confer no rights nor impose any obligations, including brokerage obligations, on either party. This Ground Lease shall become a binding agreement only after both the City and the QALICB have executed this Ground Lease and duplicate originals thereof (including any counterparts) shall have been delivered to the respective parties.

Section 21.12 Notice. All notices or other communications required to be given under this Ground Lease shall be given in writing and shall be deemed to have been duly given on the date delivered, if delivered personally; or the next Business Day, if delivered to a nationally recognized overnight courier service, addressed as follows:

Notice to the City:

City of Rocky Mount, North Carolina
331 S. Franklin Street
Rocky Mount, North Carolina 27802
Attention: City Manager

Notice to the QALICB:

Rocky Mount DCF, LLC
331 S. Franklin Street
Rocky Mount, North Carolina 27802
Attention:

Notice to the initial Leasehold Deed of Trust Beneficiaries:

NCIF New Markets Capital Fund XXIII CDE, LLC
135 South LaSalle Street, Suite 2040
Chicago, IL 60603
Attention: Saurabh Narain, President and
Chief Executive Officer

With a copy to:

Dentons US LLP
233 South Wacker Drive, Suite 5900
Chicago, IL 60606-6306
Attention: Scott A. Lindquist

Each party hereto may, by notice given to each of the other parties, designate any additional or different addresses to which subsequent notices, certificates, demands, requests, or other communications shall be sent. Notwithstanding anything contained herein to the contrary, any notice required to be given by the City or the QALICB hereunder shall be deemed to have been given and shall be effective as of the date such notice is received or refused reflected on said notice. All notices, certificates, demands, requests, or other communications made by either party to the other which are required or permitted by the provisions of this Ground Lease shall be in writing.

Section 21.13 No Claims Against City. Except to the extent expressly provided in this Ground Lease, nothing contained in this Ground Lease shall be deemed to authorize the QALICB to enter into any contract or agreement on behalf of the City or to subject the City's interest in the Premises or in this Ground Lease to any lien or encumbrance, including without limiting the generality of the foregoing, any liens for the construction, repair, renovation or addition of any improvements so as to permit the making of any claim against the City or the City's interest in the Site, the Improvements or the Personal Property, or shall be deemed a waiver by the City of any right, remedy, or interest granted to the City under this Ground Lease. The QALICB is hereby prohibited from taking any such action. Any persons rendering any labor or service or furnishing materials to the QALICB or to the Premises, or otherwise contracting with the QALICB, shall look solely to the QALICB for payment therefor.

IN WITNESS WHEREOF, the City and the QALICB have executed this Ground Lease as of the day and year first above written.

CITY OF ROCKY MOUNT, NORTH CAROLINA

By: _____
Mayor

[SEAL]

ATTEST:

Clerk to the Board of Commissioners

[illegible]

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing instrument: David Combs, as Mayor of the City of Rocky Mount, North Carolina.

Dated: _____, 2017

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

[illegible]

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing instrument: Pamela O. Casey, as Clerk to the Board of Commissioners of the City of Rocky Mount, North Carolina.

Dated: _____, 2017

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

ROCKY MOUNT DCF, LLC

By: _____
Title: _____

STATE OF NORTH CAROLINA)
)
COUNTY OF EDGECOMBE)

I certify that the following person personally appeared before me this day, acknowledging to me that s/he signed the foregoing instrument: _____, as _____ of Rocky Mount DCF, LLC, a North Carolina limited liability company.

Dated: April __, 2017

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A
LEGAL DESCRIPTION OF SITE



EXHIBIT B

PERMITTED ENCUMBRANCES

All of the exceptions from coverage included on Schedule B to QALICB's Owner's Policy of Title Insurance issued by _____ on the Closing Date.

EXHIBIT C

MEMORANDUM OF GROUND LEASE

Prepared by and Return to:

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "*Memorandum*") is made and entered into as of the [] day of May, 2017, by and between the City of Rocky Mount, North Carolina, a municipal corporation created under the laws of the State of North Carolina (the "*City*"), and Rocky Mount DCF, LLC, a North Carolina limited liability company (the "*QALICB*").

WITNESSETH:

WHEREAS, the City and the QALICB entered into a certain Ground Lease dated as of May [], 2017 (the "*Ground Lease*"); and

WHEREAS, the City and the QALICB desire to have a memorandum of the Ground Lease recorded in the Office of the Register of Deeds for Rocky Mount City, North Carolina.

NOW, THEREFORE, the City and the QALICB hereby state the following for recording:

1. The address for the City and the QALICB as set forth in the Ground Lease are as follows:

For the City:

City of Rocky Mount, North Carolina
331 S. Franklin Street
Rocky Mount, North Carolina 27802
Attention: City Manager

For the QALICB:

Rocky Mount DCF, LLC
331 S. Franklin Street
Rocky Mount, North Carolina 27802
Attention: Tasha Logan-Ford Manager

2. Pursuant to the terms of the Ground Lease, the City leases to the QALICB all that certain tract or parcel of land described in **Exhibit A** attached to this Memorandum and made a part hereof by this reference.

3. The term of the Ground Lease shall commence on the date of execution and delivery thereof and shall terminate on May 1, 2082.

4. In the event of termination of the Ground Lease for any reason contained therein, or upon the expiration of the term of the Ground Lease, if applicable, this Memorandum shall be deemed terminated, null and void, of no further force and effect and removed of record.

5. This Memorandum has been executed for recording purposes only, and shall not be deemed to amend or supplement the Ground Lease. In the event of any conflicts between the provisions of this Memorandum and the provisions of the Ground Lease, the provisions of the Ground Lease shall prevail.

[Remainder of Page Left Blank]

ROCKY MOUNT DCF, LLC

By: _____
Tasha Logan-Ford, Manager

[illegible]

I certify that the following person personally appeared before me this day, acknowledging to me that s/he signed the foregoing instrument: Tasha Logan-Ford, as Manager of Rocky Mount DCF, LLC, a North Carolina limited liability company.

Dated: _____, 2017

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A TO MEMORANDUM OF GROUND LEASE

LEGAL DESCRIPTION

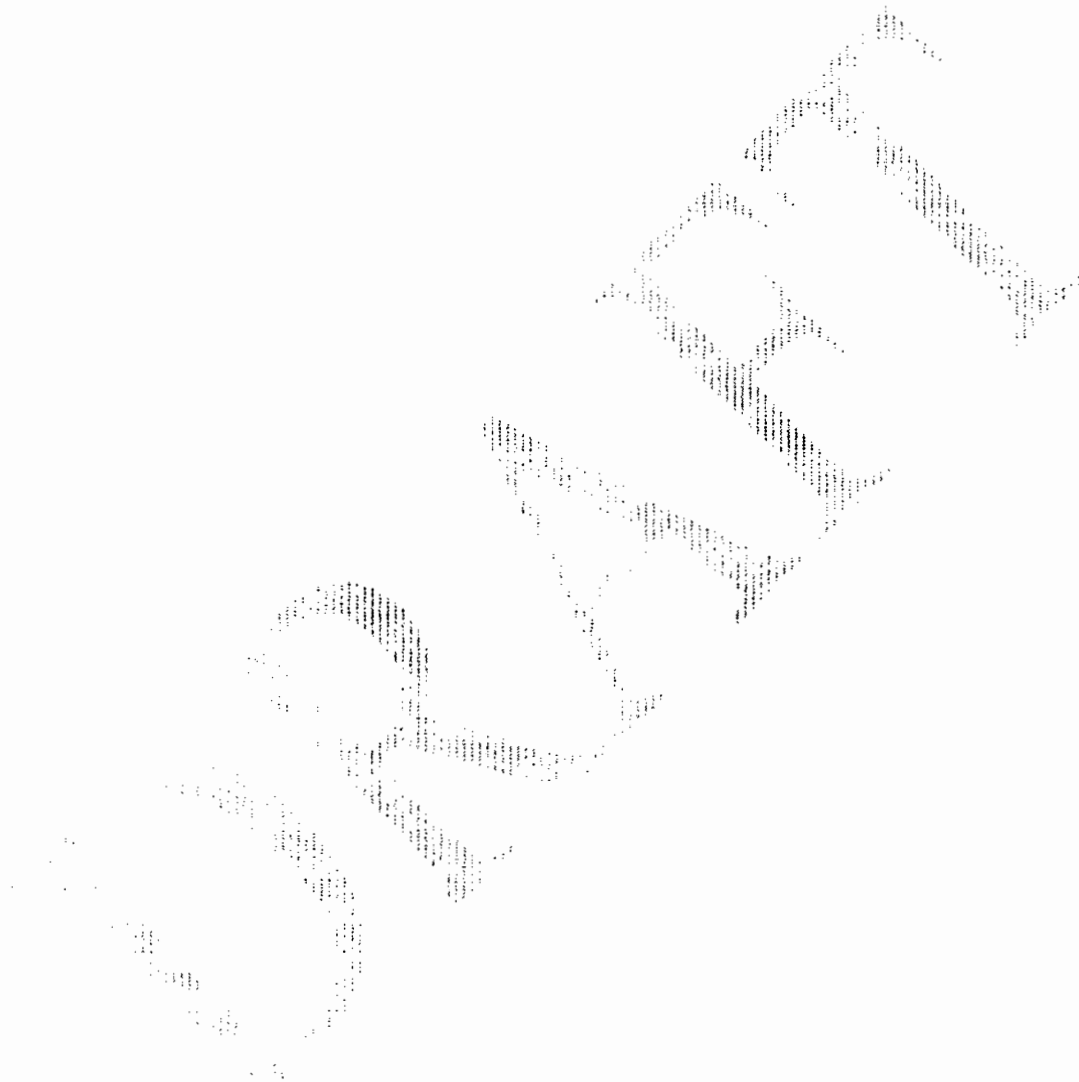


EXHIBIT D

PROHIBITED NMTC USES

The following uses shall constitute Prohibited NMTC Uses under this Ground Lease:

1. Any trade or business at the Premises consisting of (i) the rental to others of residential real property (which is defined in Section 168(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "Code") as property where eighty percent (80%) or more of the gross rental income from such property is derived from the rental of dwelling units); (ii) the development or holding of intangibles for sale or license, (iii) the operation of (A) a private or commercial golf course, (B) a country club, (C) a massage parlor, (D) a hot tub facility, (E) a suntan facility, (F) a racetrack or other facility used for gambling, or (G) any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or (iv) farming (within the meaning of Code Section 2032A(e)(5)(A) or (B) and the applicable regulations promulgated under the Code).

2. Any trade or business at the Premises constituting a shooting gallery; adult bookstore or facility selling or displaying pornographic books, literature or videotapes (materials shall be considered "adult" or "pornographic" for such purposes if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality); bingo or similar games of chance, however lottery ticket and other items commonly sold in retail establishments may be sold as an incidental part of business; or video game or amusement arcade, except as an incidental part of another primary business.

OPERATING LEASE AGREEMENT

Between

Rocky Mount DCF, LLC, as landlord

and

The City of Rocky Mount, as tenant

**Dated as of
May __, 2017**

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EXHIBIT B	-	Rent Schedule
EXHIBIT C	-	Insurance Requirements

OPERATING LEASE AGREEMENT

THIS OPERATING LEASE AGREEMENT (this "Lease") is made as of this ____ day of May, 2017 (the "Effective Date"), by and between **ROCKY MOUNT DCF, LLC**, a North Carolina limited liability company, as landlord ("QALICB"), and the **CITY OF ROCKY MOUNT, NORTH CAROLINA**, a municipal corporation duly created under the laws of the State of North Carolina, as tenant (the "Tenant").

Recitals

Pursuant to that certain Ground Lease (Rocky Mount Downtown Community Facility), dated or to be dated as of the date hereof (the "Ground Lease"), entered into between QALICB and the City of Rocky Mount, North Carolina (the "Ground Lessor"), a memorandum of which will be recorded in the Office of the Register of Deeds for Edgecombe County, QALICB is the holder of a leasehold interest in certain real property located at 285 NE Main Street in the City of Rocky Mount, Edgecombe County, North Carolina, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Site") upon which a 160,000 square foot building, nine acres of outdoor space and approximately 1,500 parking spaces, to be to be used as a multi-purpose event center called the "Downtown Community Facility" (the "Project") will be constructed. The building will include 4,500 square feet of space to be used as a wellness clinic, including urgent care and sports and physical rehabilitation, and is designated on Exhibit A as "Clinic Space" (the "Clinic"). The portion of the Downtown Community Facility other than the Clinic consisting of approximately 155,500 square feet is designated on Exhibit A as "DCF Space" and is referred to herein as the "Premises."

Agreement

NOW, THEREFORE, in consideration of the above Recitals and other good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, QALICB and the Tenant hereby agree as follows:

ARTICLE 1

BASIC LEASE PROVISIONS

SECTION 1.1 Lease of Premises. QALICB hereby leases to the Tenant, and the Tenant hereby leases from QALICB, the Premises, together with any and all appurtenances, rights, privileges and easements benefitting, belonging or pertaining thereto on the terms set forth herein.

SECTION 1.2 Term.

(a) Term. The term of this Lease (the "Lease Term") shall begin on the date hereof and continue until [May 1, 2037]. The Tenant's right to occupy the Premises shall begin on the earlier of (1) the date the Tenant receives a certificate of occupancy (or its local equivalent) from the appropriate governmental authority with respect to the Premises, (2) the date the Tenant begins operating the Premises for the Permitted Use (defined in Section 1.4 below), or (3) the

expected date for the certificate of occupancy is August 1, 2018 (the earlier of such dates hereinafter referred to as the "Occupancy Date") and shall continue until the end of the Lease Term. The last day of the Lease Term shall be referred to herein as the "Termination Date".

(b) Renewal Term. The Tenant shall have the option to renew this Lease and extend the Lease Term for two (2) additional periods of five (5) years (each a "Renewal Term") to commence immediately upon the expiration of the original Lease Term and to be upon the same terms, covenants and conditions of this Lease effective during such original Lease Term. Each Renewal Term shall be exercised by the Tenant giving QALICB notice in writing of its election at least one hundred eighty (180) days prior to the expiration of the original Lease Term. The failure to give such written notice by such date shall constitute a waiver by the Tenant of the right to extend this Lease for the applicable Renewal Term. Notwithstanding the foregoing, the Renewal Term may not be exercised if (i) the Tenant is not occupying and doing business from the Premises at the time the option to renew is exercised, (ii) the Tenant is then in Default under this Lease; or (iii) the Tenant has committed three (3) or more Defaults under this Lease during the Lease Term. References to "Lease Term" under this Lease shall be deemed to include any Renewal Term exercised by the Tenant.

SECTION 1.3 Construction of the Project. Upon the date of the full execution of this Lease, QALICB will enter into the Development, Contribution, and Reimbursement Agreement with the Tenant pursuant to which the Tenant will agree to complete the construction of the Project according to the construction contract by and between the Tenant and Barnhill Contracting Company, as design-builder.

SECTION 1.4 Use of the Premises. The Tenant may use and occupy the Premises only for the following uses: operation of a downtown community facility to be used as a multi-purpose event center and uses ancillary and related thereto, including to provide health and wellness education and programming (collectively, the "Permitted Use"). In no event shall the Tenant, any permitted subtenant or licensee use all or any portion of the Premises for any of the Prohibited Uses, as defined in Section 10.15 below.

SECTION 1.5 Title and Condition of Site and Improvements. QALICB demises and lets to the Tenant the Premises subject to all easements, encumbrances, zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations, without representation or warranty as to such matters by QALICB. The Tenant acknowledges that it is fully familiar with the condition of the Premises and hereby accepts the Premises in its present, "as-is" condition, such condition being satisfactory to the Tenant.

THE TENANT HEREBY ACKNOWLEDGES AND AGREES THAT: (A) NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OF THE PREMISES OR THE HABITABILITY OR SUITABILITY OF THE SAME FOR THE TENANT'S INTENDED USE OR ANY OTHER PURPOSE, OR OTHERWISE, HAVE BEEN MADE TO THE TENANT BY QALICB OR ANYONE ACTING FOR OR ON BEHALF OF QALICB, AND ANY WARRANTY OF HABITABILITY, SUITABILITY OR FITNESS OF THE PREMISES FOR A PARTICULAR USE OR PURPOSE, EITHER EXPRESS OR IMPLIED, IF ANY, IS HEREBY DISCLAIMED BY QALICB AND IRREVOCABLY WAIVED BY THE TENANT, AND (B) QALICB

SHALL BE UNDER NO OBLIGATION AND HAS MADE NO PROMISES OF ANY KIND TO REPAIR, REMODEL OR MAKE ANY ALTERATIONS OR IMPROVEMENTS TO THE PREMISES.

ARTICLE 2

RENT

SECTION 2.1 **Rent.** The Tenant shall pay to QALICB base rent (the "Rent") in quarterly installments due on the dates set forth on Exhibit B attached hereto. It is the intention of the parties hereto that the obligations of the Tenant hereunder shall be separate and independent covenants and agreements and that Rent and all other sums payable by the Tenant hereunder shall continue to be payable in all events without notice, demand, setoff, counterclaim, abatement, suspension, deduction or defense, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease.

SECTION 2.2 **Default Interest and Late Charges.**

(a) Any amount due from the Tenant to QALICB hereunder which is not paid within ten (10) days of the date the same is due shall bear interest at the rate (the "Default Rate") equal to the lesser of: (i) the maximum interest rate allowed by applicable law; or (ii) one and one-half percent (1.5%) per month from the due date until paid unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by the Tenant under this Lease.

(b) The Tenant acknowledges that its failure to pay any part, portion or component of any rental payment or any other charge due to QALICB hereunder will cause QALICB to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges and late charges that may be imposed on QALICB by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any rental payment or any other charge due to QALICB hereunder shall not be received by QALICB within ten (10) days of the date when due, the Tenant covenants and agrees to pay QALICB, as Additional Rent hereunder, a late charge equal to five percent (5%) of the amount of any such part, portion, or component of any such overdue rental payment or any such overdue charge. This late charge is in addition to payment of interest at the Default Rate. The parties agree that this late charge represents a fair and reasonable estimate of the costs that QALICB will incur by reason of late payment by the Tenant.

SECTION 2.3 **Additional Rent.** It is the intent of the parties that Rent payable to QALICB is absolutely net of all expenses associated with the operation of the Project and that the Tenant shall pay all costs and expenses relating to the Premises and the uses thereof as "Additional Rent". Any amount or obligation set forth in this Lease and relating to the Premises which is not expressly declared to be that of QALICB shall be deemed to be an obligation of the Tenant to be performed by the Tenant at the Tenant's expense. Accordingly, the Tenant shall pay as and when due the cost of all real and personal property taxes with regard to the Premises, if any (Section 3.5), the cost of insurance premiums for insurance required hereunder (Article 5),

the cost of all services and utilities serving the Premises (Section 3.2), the cost of maintaining and repairing, as and when necessary, all aspects of the Premises (Section 3.3), any other costs, expenses or monetary obligations payable by QALICB to the Ground Lessor under the terms of the Ground Lease that relate or correspond to the Premises. On the request of QALICB, the Tenant shall provide to QALICB evidence of payment of all such charges and expenses. If QALICB receives any invoices or bills for any amounts owed by the Tenant hereunder, QALICB shall promptly forward the same to the Tenant. All such amounts payable by the Tenant pursuant to this Lease which become due and payable for any partial calendar year shall be apportioned and prorated between QALICB and the Tenant based on the respective number of months during such year in which this Lease is in effect.

SECTION 2.4 Additional Payments. In addition to the Rent and Additional Rent payable hereunder, the Tenant shall pay as and when due any monetary obligations of QALICB under [the [Loan Documents defined in the Loan Agreement (as defined in Section 10.15 below) (the "Additional Payments")]. On the request of QALICB, the Tenant shall provide to QALICB evidence of payment of all Additional Payments. If QALICB receives any invoices or bills for any Additional Payments, QALICB shall promptly forward the same to the Tenant.

ARTICLE 3

AFFIRMATIVE OBLIGATIONS

SECTION 3.1 Compliance with Laws. During the Lease Term, the Tenant agrees to comply with all laws, ordinances, orders, regulations and requirements of all county, municipal, state, federal and other governmental authorities affecting the construction, use and occupancy of the Premises and the cleanliness, safety or operation thereof. The Tenant agrees to be the responsible entity for instituting a plan of compliance to ensure that the Premises are in compliance with the Americans with Disabilities Act of 1990 (the "ADA") and the Tenant shall make, at its sole cost, any and all alterations which may be required to bring the Premises into compliance with the ADA. The Tenant agrees, at its sole expense, to comply with all recommendations, regulations and requirements of any public or private agency having authority over insurance rates with respect to the construction, use or occupancy of the Premises by the Tenant, including, without limitation, installation and maintenance of any fire extinguishing apparatus required by local regulations or the requirements of insurance underwriters.

SECTION 3.2 Services and Utilities.

(a) **Services.** The Tenant shall arrange for and shall pay the cost of all services necessary for the operation of the Premises for the Tenant's use, including, but not limited to, security, janitorial, pest control, garbage removal, landscaping, maintenance and repair, and any other similar services the Tenant deems necessary in connection with the operation of its business on the Premises. Tenant has entered into a Facility Management Agreement with Sports Facilities Management, Inc. dated January 23, 2017 (the "SFM Agreement"), and a Use Agreement with Opportunities Industrialization Center, Incorporated ("OIC"), a North Carolina nonprofit corporation ("OIC"), dated the date hereof (the "Use Agreement"), and agrees to comply with the terms thereof.

(b) Utilities for the Premises. The Tenant shall establish in the Tenant's name accounts with all applicable utility companies, including, but not limited to, electricity, water, sewage, telephone, and natural gas, and shall pay the cost of all such utilities used by the Tenant at the Premises. If the Tenant's use or occupancy of the Premises results in an increase to QALICB of any utilities expense or connection or user fees or charges for increased usage or capacity or assessments of any kind whatsoever, the Tenant shall pay the entire amount thereof within thirty (30) days after receipt of written demand thereof by QALICB.

(c) Interruption. No interruption or malfunction of any utility services (including, without limitation, interruption of such utilities as a result of the enactment or promulgation, regardless of the ultimate validity or enforceability thereof, of any federal, state or local law, statute, ordinance, decree, order, guideline or regulation now or hereafter enacted or promulgated by any governmental, quasi-governmental, regulatory or executive authority) shall constitute an eviction or disturbance of the Tenant's use and possession of the Premises or a breach by QALICB of any of its obligations hereunder or render QALICB liable for any damages (including, without limitation, consequential or special damages) or entitle the Tenant to be relieved from any of its obligations hereunder (including the obligation to pay Rent) or grant the Tenant any right of off-set or recoupment.

SECTION 3.3 Condition and Care of the Premises.

(a) By the Tenant. The Tenant agrees to, at its sole expense, (i) keep and maintain the Premises in good repair and appearance, except for ordinary wear and tear; (ii) care for and maintain the grounds around the Premises, including the regular mowing of grass, care of shrubs and general landscaping; (iii) maintain and repair the parking areas, driveways and alleys on the Site; (iv) maintain the whole of the Premises in a clean and sanitary condition; and (v) promptly make all structural and nonstructural, foreseen and unforeseen, ordinary and extraordinary changes, repairs and replacements of every kind which may be required to keep the Premises in such good condition, repair and appearance. The Tenant's obligation extends to both interior and exterior items and includes, without limitation, maintenance, repair, and replacement of the roof(s) of the Premises, underground sewer, water and utility service pipes and lines located outside the exterior walls of the Premises, and all walls of the Premises, any and all glass and plate glass, whether used in or comprising windows, awnings, doors, walls, or other parts of the Premises, doors and passageways, overhead doors, sewer, water, and utility service pipes and lines located under or within the exterior walls of the Premises, equipment, fixtures, furnaces, air conditioners, plumbing, wiring, heating and other parts of the Premises, all pavement (asphalt, concrete, or other types which may be on the Premises and including re-striping and repaving same and removing any ice, snow and rubbish thereon) and fences. The Tenant hereby expressly waives the right to make repairs at the expense of QALICB which may be provided for in any law in effect as of the Occupancy Date or which may thereafter be enacted.

The Tenant, at its own cost and expense, shall regularly monitor the Premises for the presence of mold or any conditions that reasonably can be expected to give rise to mold ("Mold Conditions"), including, but not limited to, observed or suspected instances of water damage, mold growth, repeated complaints of respiratory ailments by the Tenant's employees or other occupants of the Premises, or any notice from a governmental agency of complaints regarding the indoor air quality of the improvements on the Premises and shall promptly notify QALICB in

writing if the Tenant suspects mold or Mold Conditions to exist at the Premises. In the event mold or Mold Conditions exist at the Premises, then the Tenant, at its own cost and expense, shall promptly ensure that mold remediation is conducted pursuant to applicable governmental laws, regulations or guidelines and shall notify QALICB of the actions the Tenant is taking.

(b) Failure of the Tenant to Care for Premises. In the event the Tenant fails to maintain and repair the Premises as is required herein, QALICB shall have the right, but not the obligation, to enter the Premises and to make such repairs or perform such maintenance as QALICB shall deem necessary. The Tenant shall reimburse QALICB for the cost of such maintenance and repairs immediately on demand from QALICB.

SECTION 3.4 Return of the Premises. Upon the expiration or sooner termination of this Lease, the Tenant shall surrender possession of the Premises to QALICB. On or before such expiration or termination, the Tenant (i) shall remove its furniture, machinery, equipment and other items of personal property in or upon the Premises and (ii) if required by QALICB, remove any of the alterations, improvements or additions in or to the Premises; provided, however, that the Tenant shall restore any damage to the Premises caused by such removal. QALICB shall be deemed the owner of any alterations, improvements or additions which the Tenant does not so remove.

SECTION 3.5 Taxes.

(a) Payment of Taxes. The Tenant agrees that the Tenant shall pay as and when due all assessments, excises, levies, fees, ad valorem and other taxes or charges imposed upon or as a result of (i) the Premises, (ii) any personal property which is incorporated into, used in connection with, or located at the Premises, (iii) any Rent, Additional Rent, Additional Payments or other sums paid hereunder, (iv) this Lease or the sub-leasehold estate created hereunder, (v) all sales from the Premises, gross receipts, use and similar taxes at any time levied, assessed or payable on account of the acquisition, ownership, leasing, operation, possession or use of the Premises, and (vi) all transfer, recording, stamp and real property taxes incurred upon the lease, sale, or transfer of the Premises to the Tenant hereunder (collectively, the "Taxes"). In the event any Taxes may be paid in installments, the Tenant shall have the option to pay the same in installments. In such event, the Tenant shall be liable to pay only those installments which become due and payable during the Lease Term.

(b) Right to Contest Taxes. The Tenant, at the Tenant's sole cost and expense, may contest (including seeking an abatement or reduction of) any Taxes agreed to be paid hereunder; provided, however, that (i) the Tenant first shall satisfy any requirements of applicable laws, including, if required, that the Taxes be paid in full before being contested, (ii) no Default under this Lease has occurred and is continuing, and (iii) failing to pay such Taxes will not subject QALICB or QALICB's lender, if any, to criminal or civil penalties or fines or to prosecution for a crime. At the Tenant's sole cost and expense, QALICB shall assist the Tenant as reasonably necessary with respect to any such contest, including, but not limited to, joining in and signing applications or pleadings. Any rebate received shall belong solely to the Tenant.

ARTICLE 4

COVENANTS

SECTION 4.1 Alterations.

(a) The Tenant shall not make any alterations, additions or modifications to the Premises without the prior written consent of QALICB (which consent shall not be unreasonably withheld), except for installation of unattached, movable trade fixtures in the Premises which may be installed without drilling, cutting or otherwise defacing any part of the Premises. All alterations, additions and modifications made to the Premises by the Tenant other than unattached, movable trade fixtures shall remain upon the Premises and become the property of QALICB upon the expiration or termination of this Lease, unless QALICB requests their removal in which event the Tenant shall, at its own expense, remove the same and restore the Premises to their original condition as of the Occupancy Date. If the Tenant fails to repair any damage to the Premises caused by any removal of any alterations, additions or modifications to the Premises, then QALICB shall have the right, but not the obligation, to repair any such damage to the Premises, and thereafter the Tenant will be obligated to reimburse QALICB for the reasonable costs of repairing such damage. All plumbing or electrical wiring connections exposed as a result of the removal of any alterations, additions or modifications shall be capped by the Tenant in a safe and workmanlike manner.

(b) Notwithstanding anything contained in paragraph (a), above, to the contrary, before approving any alterations, additions or modifications for which QALICB's consent is required, QALICB may require the Tenant to furnish it with (i) plans and specifications detailing the work to be completed, (ii) the names and addresses of the contractors to complete such work and copies of the contracts entered into with such contractors, (iii) all permits necessary for the construction of such alterations, additions or modifications, and (iv) evidence of any insurance reasonably requested by QALICB in connection with such alterations, additions and modifications, which insurance shall name QALICB and its lender as additional insureds.

(c) All construction work done by the Tenant within or upon the Premises shall be performed in a good and workmanlike manner, in compliance with all governmental requirements, and the requirements of any contract, mortgage or deed of trust to which QALICB may be a party and in such manner as to cause a minimum of interference with adjacent properties.

(d) The Tenant agrees that all improvements, alterations, repairs or other work performed upon the Premises under any provision of this Lease including, without limitation, any venting, opening, sealing, water proofing or any altering of the roof of the Premises, shall be performed under the direction of a general contractor approved by QALICB in advance and that when completed the Tenant shall furnish to QALICB a certificate from such contractor stating that all such alterations approved by QALICB have been completed in accordance with plans and specifications previously approved by QALICB.

SECTION 4.2 No Liens. The Tenant will not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any mortgage, lien,

encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to, the Premises or any part thereof or the Tenant's interest therein or the Rent or other sums payable by the Tenant under this Lease. Nothing contained in this Lease shall be construed as constituting the consent or request, expressed or implied, by QALICB to the performance of any labor or services or of the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Premises or any part thereof by any contractor, subcontractor, laborer, materialman or vendor. Notice is hereby given that QALICB will not be liable for any labor, services or materials furnished or to be furnished to the Tenant, or to anyone holding the Premises or any part thereof, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of QALICB in and to the Premises.

SECTION 4.3 Assignment and Subleasing.

(a) The Tenant may not, without QALICB's prior written consent, assign this Lease or sublet all or any portion of the Premises. Any assignment or sublease in violation of this Section 4.3 shall be null and void.

(b) Unless QALICB shall agree to the contrary in writing, no assignment or sublease shall release the Tenant from its obligations hereunder, including obligations thereafter accruing.

SECTION 4.4 Abandonment of the Premises. In the event that at any time during the Lease Term, or any extension or renewal thereof, the Tenant should vacate, abandon, or desert the Premises or cease operating therein for the Permitted Use for a period in excess of thirty (30) days, except for any periods during which there are no scheduled events, then, in any such event, the Tenant shall be in Default hereunder and QALICB shall have, in addition to all rights and remedies provided hereunder, the right to collect not only the Rent and other charges otherwise provided for herein, but also additional rent at the rate of Fifty and No/100 Dollars (\$50.00) per day for each and every day that the Tenant shall fail to do business within the Premises in accordance with the terms of this Lease; provided, however, that such additional rent shall not accrue during any period when the Premises are rendered untenable by reason of fire, casualty, or cause beyond the Tenant's control and not resulting from the intentional or negligent acts or omissions of the Tenant, its assignees, sublessees, servants, agents, employees, invitees, licensees, or concessionaires, or the servants, agents, employees, invitees, licensees, or concessionaires of the Tenant's assignees or sublessees, and the failure to operate the Tenant's business during such period shall not be deemed a Default hereunder. Such additional rent is intended to contribute to the expense of monitoring the occupancy of the Premises and shall not be deemed a penalty or liquidated damages.

SECTION 4.5 Financing. The Tenant agrees to cooperate with QALICB in connection with any attempt by QALICB to obtain and put in place financing for the Project.

ARTICLE 5

INSURANCE AND INDEMNITIES

SECTION 5.1 Insurance. The Tenant shall carry and maintain all insurance coverages as set forth in Exhibit C attached hereto and shall name the Tenant, the QALICB and the Sub-CDE Lenders as additional insureds under such coverage.

SECTION 5.2 Indemnification.

(a) Indemnities.

(i) To the extent permitted by law, the Tenant shall indemnify and hold harmless QALICB from and against any and all claims arising from the Tenant's use of the Premises, or from any activity, work or things done, permitted or suffered by the Tenant in the Premises on or after the Occupancy Date and shall further indemnify and hold harmless QALICB from and against any and all claims arising from any Default or breach in the performance of any obligation on the Tenant's part to be performed under the Lease Term, and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against QALICB by reason of any such claim, the Tenant upon notice from QALICB shall defend the same at the Tenant's expense by counsel reasonably satisfactory to QALICB.

(ii) QALICB shall indemnify and hold harmless the Tenant from and against any and all claims arising from QALICB's activity, work or things done, permitted or suffered in or about the Premises by QALICB prior to the Occupancy Date and shall further indemnify and hold harmless the Tenant from and against any and all claims arising from any breach or default in the performance of any obligation on QALICB's, or any of QALICB's agents, contractors or employees part to be performed under the terms of this Lease, and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against the Tenant by reason of any such claim, QALICB upon notice from the Tenant shall defend the same at QALICB's expense by counsel reasonably satisfactory to the Tenant.

(b) Release of Claims. Notwithstanding Section 5.2(a), the parties release each other from any claims either party (the "Injured Party") has against the other. This release is limited to the extent the claim is covered by the Injured Party's insurance or the insurance the Injured Party is required to carry under Section 5.1, whichever is greater.

SECTION 5.3 Environmental.

(a) Definition of Hazardous Substances. The term "Hazardous Substances", as used in this Lease, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials,

petroleum and petroleum products and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

(b) Restrictions on the Tenant. The Tenant shall not cause or permit to occur: (i) any violation of any federal, state or local law, ordinance or regulation now or hereafter enacted, related to environmental conditions ("Laws") on, under or about the Premises or arising from the Tenant's use or occupancy of the Premises, including, but not limited to, soil and ground water conditions; or (ii) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances without QALICB's prior written consent, which consent may be withdrawn, conditioned or modified by QALICB in its sole and absolute discretion in order to insure compliance with all applicable Laws, as such Laws may be enacted or amended from time to time.

(c) Environmental Clean-up. The Tenant shall, at the Tenant's own expense: (i) comply with all Laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances; (ii) make all submissions to, provide all information required by and comply with all requirements of all governmental authorities (the "Authorities") under the Laws; (iii) prepare and submit the required plans and all related bonds and other financial assurances should the Authorities or any third party demand that a clean-up plan be prepared and a clean-up be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances that occurs during the Lease Term, at or from the Premises or which arises at any time from the Tenant's use or occupancy of the Premises and the Tenant shall carry out all such clean-up plans; and (iv) promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances that is requested by QALICB. If the Tenant fails to fulfill any duty imposed under this Section within thirty (30) days following its request, QALICB may proceed with such efforts and, in such case, the Tenant shall cooperate with QALICB in order to prepare all documents QALICB deems necessary or appropriate to determine the applicability of the Laws to the Premises and the Tenant's use thereof and for compliance therewith and the Tenant shall execute all documents promptly upon QALICB's request and any expenses incurred by QALICB shall be payable by the Tenant as Additional Rent. No such action by QALICB and no attempt made by QALICB to mitigate damages under any Law shall constitute a waiver of any of the Tenant's obligations under this Section. The Tenant's obligations and liabilities under this Section shall survive the expiration or other termination of this Lease.

(d) Tenant's Indemnity. To the extent permitted by law, the Tenant shall indemnify, defend and hold harmless QALICB, its respective officers, directors, beneficiaries, shareholders, partners, agents and employees, from all fines, suits, procedures, claims and actions of every kind and all costs associated therewith, including reasonable attorneys' and consultants' fees, arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances that occurs during the Lease Term at or from the Premises or which arises at any time from the Tenant's use or occupancy of the Premises or from the Tenant's failure to provide all information, make all submissions or take all steps required by all Authorities under the Laws and all other environmental laws. The Tenant's obligations and liabilities under this Section shall survive the expiration or other termination of this Lease.

ARTICLE 6

LOSS OF PREMISES

SECTION 6.1 Damages.

(a) Casualty Affecting the Premises. The Tenant shall give immediate written notice to QALICB of any damage to the Premises caused by fire or other casualty, and if QALICB does not elect to terminate this Lease as hereinafter provided, QALICB shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises. Notwithstanding the foregoing and subject to Article X of the Ground Lease, in the event that (i) the insurance proceeds payable in connection with such damage and destruction shall be insufficient to make such restoration, (ii) the Premises shall be destroyed or substantially damaged by casualty not covered by the insurance policies required to be maintained hereunder, (iii) the Premises shall be destroyed or rendered untenable by any casualty to the extent of at least fifty percent (50%) of the Premises, (iv) QALICB shall not have actual and unconditional receipt of the insurance proceeds payable in connection with such damage and destruction, (v) the holder of any mortgage or other instrument in the nature thereof which encumbers QALICB's interest hereunder or in the Premises shall require that such proceeds shall be applied against any indebtedness owed to such holder, or (vi) there shall be less than two (2) years remaining in the Lease Term, then, in any of such events, QALICB may elect either to terminate this Lease or to proceed to rebuild and repair the Premises. QALICB shall give written notice to the Tenant of such election within ninety (90) days after the occurrence of such casualty.

(b) Rent Abatement. If the Premises is completely or partially destroyed, regardless of whether the Tenant can use the Premises for substantially the same purpose(s) as immediately prior to the damage or destruction, there shall be no abatement of Rent or any other charges hereunder and this Lease shall continue in full force and effect.

(c) Repairs and Rebuilding. In the event QALICB elects to repair and rebuild the Premises, QALICB's obligation to rebuild and repair shall be limited to restoring the Premises to substantially the condition in which the same existed prior to the casualty, and the Tenant agrees that promptly after the completion of such work by QALICB, the Tenant will proceed with reasonable diligence and at its sole cost and expense to restore all alterations, additions and improvements done by the Tenant within the Premises to substantially the condition in which the same existed prior to the casualty.

(d) Business Operations. The Tenant agrees that during any period of reconstruction or repair of the Premises, it will continue the operation of its business within the Premises to the extent practicable. The Tenant shall not be entitled to and hereby waives, releases, and relinquishes any and all claims against QALICB for any compensation or damage for loss of use of all or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, repair, or restoration of the Premises.

SECTION 6.2 Condemnation.

(a) Taking of the Premises. If all or a portion of the Premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase under threat thereof such that the Tenant cannot use the remainder of the Premises for substantially the same purpose(s) as immediately prior to condemnation, this Lease shall terminate upon the election of either party effective on the date possession of a portion of the Premises is taken by the condemning authority. If a portion of the Premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase under threat thereof but the Tenant can use the remainder of the Premises for substantially the same purpose(s) as immediately prior to condemnation, this Lease shall not terminate.

(b) Termination. Any election to terminate this Lease pursuant to this Section 6.2 shall be evidenced by written notice of termination delivered to the other party within thirty (30) days after the date by which both QALICB and the Tenant are notified of such taking or such sale, and, in the event that neither QALICB nor the Tenant shall so exercise such election to terminate this Lease, then this Lease shall continue in full force and effect.

(c) Repairs and Alterations. If this Lease is not terminated following any condemnation, QALICB shall to the extent practical make all necessary repairs or alterations to restore the structure of the Premises to an architectural whole, and the Tenant agrees that promptly after completion of such work by QALICB, the Tenant will proceed with reasonable diligence and at its sole cost and expense to make all alterations, additions and improvements done by the Tenant within the Premises necessary to make the Premises an architectural whole.

(d) Compensation. Subject to the terms of the Ground Lease, all compensation awarded for any taking (or the proceeds of private sale under threat thereof), whether for the whole or a part of the Premises, shall be the property of QALICB, whether such award is compensation for damages to QALICB's or the Tenant's interest in the Premises, and the Tenant hereby assigns all of its interest in any such award to QALICB; provided, however, QALICB shall have no interest in any award made to the Tenant for loss of business or for the taking of the Tenant's fixtures and personal property within the Premises if a separate award for such items is made to the Tenant.

ARTICLE 7

DEFAULT

SECTION 7.1 Tenant's Default.

(a) Defaults. Each of the following constitutes a default by the Tenant (a "Default"):

(i) Tenant's failure to pay Rent, Additional Rent or other charges due to QALICB on the date on which such Rent, Additional Rent or other charges are due;

(ii) Tenant's failure to perform or observe any other of the Tenant's obligation after a period of thirty (30) days after it receives notice from QALICB setting forth in

reasonable detail the nature and extent of the failure and identifying the applicable Lease provision(s); provided, however, if such failure cannot be cured within thirty (30) days, such cure period shall be extended for a reasonable period of time to allow a cure so long as the Tenant has begun to cure within such thirty (30) days and diligently pursues a cure to completion;

(iii) Without the consent of QALICB, the Tenant's vacation of the Premises or abandoning of possession thereof, or use thereof for purposes other than the Permitted Use;

(iv) Tenant shall make an assignment for the benefit of its creditors;

(v) Tenant shall generally not pay its debts before they become due or admit in writing its inability to pay its debts as they become due;

(vi) The levying of a writ of execution or attachment on or against the property of the Tenant within the Premises and the same not being released or discharged within fifteen (15) days thereafter;

(vii) The institution of proceedings in a court of competent jurisdiction for the reorganization, liquidation, or voluntary or involuntary dissolution of the Tenant, or for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the property of the Tenant, and such proceedings not being dismissed, and any receiver, trustee or liquidator appointed therein not being discharged within fifteen (15) days after the institution of such proceedings;

(viii) The doing, or permitting, of any act by the Tenant which creates a lien against any part of the Premises and the same not being released within fifteen (15) days after the lien is filed;

(ix) Failure to operate the Premises as provided herein; or

(x) Any representation, warranty, or statement made by the Tenant in this Lease or in any other information provided by the Tenant to QALICB with respect to the identity, net worth, liabilities, assets, business or financial condition of the Tenant, or any other matter, shall prove to be untrue or misleading.

(b) QALICB's Remedies.

(i) Upon the occurrence of any Default, QALICB may pursue, in addition to all rights and remedies available to it under applicable law, any one or more of the following remedies, separately, concurrently, or in any combination, without any notice (except as specifically provided below) or demand whatsoever and without prejudice to any other remedy which it may have for possession or arrearage Rent or other amounts payable by the Tenant:

(A) QALICB may terminate this Lease by giving the Tenant notice of termination, in which event the Tenant shall immediately surrender the Premises

to QALICB and this Lease shall be terminated at the time designated by QALICB in its notice of termination to the Tenant;

(B) QALICB may enter upon and take possession of the Premises and expel or remove the Tenant and any other person who may be occupying the Premises, by force if necessary, without being liable for prosecution or any claim of damages, the Tenant hereby knowingly, intelligently and voluntarily waiving all rights to prior notice or hearing or both in the event that QALICB seeks a dispossessory or similar warrant against the Tenant under the laws of the State in which the Premises are located;

(C) QALICB may re-lease the Premises, on such terms as QALICB may deem satisfactory, and receive the rent for any such re-leasing, in which event the Tenant shall pay to QALICB on demand any deficiency that may arise by reason of such re-leasing;

(D) QALICB may do whatever the Tenant is obligated to do under the terms of this Lease, in which event the Tenant shall pay QALICB on demand for any expenses, including, without limitation, attorney's fees and expenses, which QALICB may incur in thus effecting compliance with the Tenant's obligations under this Lease; or

(E) QALICB shall have the right, with or without terminating this Lease, to declare immediately due and payable all Rent and other amounts payable by the Tenant, due and to become due under this Lease for the entire remaining term of this Lease, discounted at the rate quoted from time to time as the "Prime Rate" in the column entitled "Money Rates" in The Wall Street Journal, and such sum shall be deemed immediately due and payable; provided, however, that such sum shall not be deemed a penalty or forfeiture, actual damages being difficult or impossible to measure, and such sum representing the parties' reasonable best estimate of the damages which would be incurred by QALICB upon the occurrence of a Default by the Tenant. In addition, should the Premises leased hereunder include any furniture, fixtures, equipment, or other personality, upon the occurrence of a Default, QALICB shall have available to it any and all remedies prescribed by the Uniform Commercial Code of the state in which the Premises are located or, if such jurisdiction has not adopted the Uniform Commercial Code, any and all similar remedies generally available to landlords under such applicable law.

(ii) QALICB's pursuit of any one or more of the remedies stated in Section 7.1(b) shall not preclude pursuit of any other remedy or remedies provided in this Lease or any other remedy or remedies provided by law or in equity, separately, concurrently, or in any combination. QALICB's pursuit of any one or more of the remedies provided in this Lease shall not constitute: (i) an election of remedies excluding the election of any other remedy or remedies; or (ii) a forfeiture or waiver of any Rent or other amounts payable under this Lease by the Tenant or of any damages or other sums accruing to QALICB by reason of the Tenant's violation of any of the agreements, representations,

warranties, provisions, terms, and/or conditions of this Lease. No action taken by or on behalf of QALICB shall be construed to be an acceptance of a surrender of this Lease. QALICB's forbearance in pursuing or exercising one or more of its remedies shall not be deemed or construed to constitute a waiver of any Default or of any remedy. No waiver by QALICB of any right or remedy on one occasion shall be construed as a waiver of that right or remedy on any subsequent occasion or as a waiver of any other right or remedy then or thereafter existing. No failure of QALICB to pursue or exercise any of QALICB's powers, rights, remedies, or to insist upon strict compliance by the Tenant with any obligation of the Tenant, and no custom or practice at variance with the terms of this Lease, shall constitute a waiver of QALICB's right to demand exact compliance with the terms of this Lease. Notwithstanding anything in this Lease to the contrary, no termination of this Lease prior to the normal termination by lapse of time or otherwise, shall affect QALICB's right to collect Rent for the period prior to termination.

SECTION 7.2 QALICB's Default. QALICB's failure to perform or observe any of its obligations under this Lease after a period of thirty (30) days after it receives notice from the Tenant setting forth in reasonable detail the nature and extent of the failure and identifying the applicable Lease provision(s); provided, however, if such Default cannot be cured within thirty (30) days, such cure period shall be extended for a reasonable period of time to allow a cure so long as QALICB has begun to cure within such thirty (30) days and diligently pursues a cure to completion. If QALICB commits a Default, the Tenant may pursue any remedies available to it under applicable law.

SECTION 7.3 Exception to Cure Periods. The cure periods in Sections 7.1(a)(ii) and 7.2 do not apply to:

- (a) Emergencies;
- (b) Failure to maintain the insurance required by Section 5.1, but notice and ten (10) days shall be given prior to any such Default; and
- (c) Repair and reconstruction of the Premises as provided in Sections 6.1 and 6.2.

SECTION 7.4 Self-Help. If the Tenant is in Default, QALICB may, without being obligated and without waiving the Default, cure the Default, and QALICB is hereby authorized to enter the Premises to cure the Default. The Tenant shall pay QALICB, within thirty (30) days after demand, all costs, expenses and disbursements incurred by QALICB to cure the Default.

SECTION 7.5 Survival. The remedies permitted by Section 7, the parties' indemnities in Section 5.2, the environmental indemnities provided in Section 5.3, and the Tenant's obligation to reimburse amounts paid by QALICB as provided in this Lease shall survive the termination of this Lease.

ARTICLE 8

NONDISTURBANCE

SECTION 8.1 Subordination. This Lease and all rights of the Tenant hereunder are and shall be subject and subordinate to the lien of any mortgage, deed to secure debt, deed of trust, or other instrument in the nature thereof which may now or hereafter affect QALICB's leasehold title to the Premises or QALICB's interest hereunder and to any modifications, renewals, consolidations, extensions, or replacements of any of the foregoing. This clause shall be self-operative and no further instrument of subordination need be required by any mortgagee. In confirmation of such subordination, the Tenant shall within ten (10) days following a request by QALICB at any time or times, execute, seal and deliver to QALICB, without expense to QALICB, any and all instruments in recordable form that may be requested by QALICB to confirm or evidence the subordination of this Lease and all rights hereunder to the lien of any such mortgage, deed to secure debt, deed of trust or other instrument in the nature thereof, and each renewal, modification, consolidation, replacement, and extension thereof, and if the Tenant shall fail at any time to execute, seal and deliver any such instrument, QALICB in addition to any other remedies available to it in consequence thereof, may execute, seal and deliver the same as the attorney in fact of the Tenant and in the Tenant's name, place and stead, and the Tenant hereby irrevocably makes, constitutes, and appoints QALICB, its successors and assigns, as such attorney-in-fact for that purpose.

SECTION 8.2 Attornment. If the holder of any mortgage, deed to secure debt, deed of trust, or other instrument in the nature thereof shall hereafter succeed to the rights of QALICB under this Lease, whether through possession or foreclosure action or delivery of a new Lease, then, at the option of such holder, the Tenant shall attorn to and recognize such successor as the Tenant's landlord under this Lease, and shall promptly execute and deliver any instrument that may be necessary to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as a direct Lease between such successor landlord and the Tenant, subject to all the terms, covenants, and conditions of this Lease, and the successor landlord shall not disturb the Tenant's right of possession of the Premises so long as no Default exists under this Lease.

SECTION 8.3 Estoppel Certificates. At any time and from time to time, the Tenant shall within ten (10) days following a request made by QALICB, execute, acknowledge and deliver to QALICB or any person specified by QALICB a certificate evidencing whether or not:

- (a) The Tenant is in possession of the Premises;
- (b) This Lease is in full force and effect;
- (c) This Lease has been amended in any way (identifying any amendment with a true and correct copy attached);
- (d) There are any existing Defaults hereunder to the knowledge of the Tenant and specifying the nature of such Default, if any;

(c) The Tenant contends there are any existing set-offs or defenses against enforcement of any right or remedy of QALICB or any duty or obligation of the Tenant under this Lease (identifying such matter);

(f) The date to which Rent has been paid; and

(g) Any other matters reasonably requested by QALICB.

Each certificate delivered pursuant to this Section may be relied on by any prospective purchaser or transferee of the Premises or of QALICB's interest hereunder or by any mortgagee of the Premises or of QALICB's interest hereunder or by any assignee of any such mortgagee. If the Tenant shall fail at any time to execute, seal and deliver any such certificate within the foregoing ten (10) day period, QALICB in addition to any other remedies available to it in consequence thereof, may execute, seal and deliver the same as the attorney-in-fact of the Tenant and in the Tenant's name, place and stead, and the Tenant hereby irrevocably makes, constitutes, and appoints QALICB, its successors and assigns, as such attorney-in-fact for that purpose.

SECTION 8.4 Peaceful Enjoyment. The Tenant shall and may peacefully have, hold and enjoy the Premises so long as the Tenant performs its obligations under this Lease, and QALICB represents and warrants that neither QALICB nor any person or entity claiming by, through or under QALICB shall take any action to interfere with the Tenant's peaceful enjoyment of the Premises or the Tenant's rights under this Lease so long as the Tenant is not in Default under this Lease.

ARTICLE 9

QALICB'S RIGHTS

SECTION 9.1 Mechanic's Liens. The interest of QALICB in the Premises is not subject to liens for improvements or alterations made by the Tenant. The Tenant will not create or permit to be created or remain as a result of any action or work done or contracted for by the Tenant, any lien, encumbrance or charge levied on account of any imposition of any mechanic's, laborer's or materialman's lien which might be or become a lien, encumbrance or charge upon the Premises or any part thereof, or the income therefrom, whether or not the same shall have any priority or preference over or ranking on a parity with the estate, rights and interest of QALICB in the Premises or any part thereof, or the income therefrom, and the Tenant will not suffer any other matter or thing whereby the estate, rights and interest of QALICB in the Premises or any part thereof might be impaired. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or any part thereof as a result of any action or work done on behalf of or contracted for by the Tenant, the Tenant, within ten (10) days after the filing thereof, shall cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If the Tenant shall fail to cause such lien to be so discharged within the period aforesaid, then, in addition to any other right or remedy available to QALICB, QALICB may, but shall not be obligated to, discharge such lien by paying the amount claimed to be due. Any amount so paid by QALICB and all costs, expenses and fees, including, without limitation, reasonable attorneys' fees, incurred by QALICB in connection with any mechanic's, laborer's or materialman's lien, whether or not the same has been discharged of

record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, together with interest thereon at the Default Rate from the respective dates of QALICB's making of the payments and incurring of the costs and expenses, shall constitute additional Rent payable by the Tenant to QALICB within ten (10) days after receipt of written demand thereof by QALICB.

Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of QALICB, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any alteration, addition, improvement or repair to the Premises or any part thereof, or as giving the Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the Premises or any part thereof, nor to subject QALICB's estate in the Premises or any part thereof, to liability in any way under any mechanic's and/or materialman's lien laws of the state in which the Premises is located, it being expressly understood that QALICB's estate shall not be subject to any such liability.

If the Tenant does not discharge the lien or post the bond or otherwise dispute the lien within the thirty (30) day period, QALICB may pay any amounts reasonably incurred, including interest and legal fees, to discharge the lien. The Tenant shall then be liable to QALICB for the amounts paid by QALICB which shall be paid within thirty (30) days after demand.

SECTION 9.2 Right to Enter. Upon at least twenty-four (24) hours prior notice to the Tenant (and at any time in cases of emergency), QALICB, or its designee, subject to the applicable provisions of this Lease affecting or limiting QALICB's right to do so or the method QALICB may use to do so, may enter the Premises for the purpose of performing its obligations hereunder; provided, however, that QALICB shall use its best efforts to minimize the disturbance to the Tenant and to protect the Premises and the property therein.

SECTION 9.3 Holdover. If the Tenant continues occupying the Premises after the expiration or earlier termination of the Lease Term, then the Tenant shall be deemed a tenant at sufferance subject to all the terms and provisions of this Lease, except that quarterly payments of Rent shall be equal to two hundred percent (200%) of the amount of Rent due in the last full quarterly of the Lease Term.

SECTION 9.4 Signs. Subject to applicable laws, restrictions and covenants and regulatory and governmental approvals, the Tenant shall have the right, at the Tenant's sole cost and expense, to erect, install or modify signage on the Premises, provided that the Tenant shall have submitted the Tenant's plan for the sign to QALICB and obtained QALICB's approval, prior to the erection, installation or modification thereof, and further that such sign(s) shall comply in all respects with the laws governing the same by the appropriate government authority. QALICB agrees not to unreasonably withhold, condition, or delay its approval of any such plan submitted to QALICB.

ARTICLE 10

MISCELLANEOUS

SECTION 10.1 Brokers. QALICB and the Tenant each warrants and represents to the other that there are no brokers, finders fees or any real estate commissions due to any broker, agent or other party in connection with the negotiation or execution of this Lease or on behalf of either of them.

SECTION 10.2 Attorneys' Fees. In any litigation between the parties regarding this Lease, the losing party shall pay to the prevailing party all reasonable expenses and court costs including attorneys' fees actually incurred by the prevailing party. A party shall be considered the prevailing party if:

(a) It initiated the litigation and substantially obtains the relief it sought, either through a judgment or the losing party's voluntary action before dispute resolution methods (after scheduled), trial, or judgment;

(b) The other party withdraws its action without substantially obtaining the relief it sought; or

(c) It did not initiate the litigation and judgment is entered for either party, but without substantially granting the relief sought.

SECTION 10.3 Exculpation. If QALICB shall fail to perform any covenant, term or condition of this Lease upon QALICB's part to be performed and, as a consequence of such default, the Tenant shall recover a money judgment against QALICB, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of QALICB in the Premises as the same may then be encumbered and neither QALICB, nor any of the partners, members or shareholders comprising QALICB, as the case may be, shall be liable for any deficiency. It is understood that in no event shall the Tenant have the right to levy execution against any property of QALICB other than its interest in the Premises.

SECTION 10.4 Notices. Unless a Lease provision expressly authorizes verbal notice, all notices under this Lease shall be in writing and sent by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized courier service, charges prepaid, next business day delivery, as follows:

To the Tenant: City of Rocky Mount, North Carolina
331 S. Franklin Street
Rocky Mount, North Carolina 27802
Attention: City Manager

To QALICB: Rocky Mount DCF, LLC
331 S. Franklin Street
Rocky Mount, North Carolina 27802
Attention:

Either party may change these persons or addresses by giving notice as provided above. Notice shall be considered given and received on the latest original delivery or attempted delivery date as indicated on the postage receipt(s) of all persons and addresses to which notice is to be given or in the case of a courier service, one (1) business day after deposit with the courier service.

SECTION 10.5 Partial Invalidity. If any Lease provision is invalid or unenforceable to any extent, then that provision and the remainder of this Lease shall continue in effect and be enforceable to the fullest extent permitted by law.

SECTION 10.6 Waiver. The failure of either party to exercise any of its rights is not a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

SECTION 10.7 Construction.

(a) No Construction Against Drafter. The parties agree that this Lease has been fully negotiated by both parties, is fair to both parties, and should not be construed against the drafter.

(b) Deletions. If the parties delete any provision or part of a provision, this Lease will be interpreted as if the deleted language was never part of this Lease.

SECTION 10.8 Binding on Successors. This Lease shall bind and insure to the benefit of the parties' heirs, successors, representatives and permitted assigns.

SECTION 10.9 Governing Law. This Lease shall be governed by the laws of the State of North Carolina.

SECTION 10.10 Recording. QALICB and the Tenant shall, on or after the date hereof, promptly execute and record, at the cost of the requesting party, a memorandum of this Lease legally sufficient to comply with the relevant provisions of the North Carolina General Statutes.

SECTION 10.11 Survival of Remedies. The parties' remedies shall survive the termination of this Lease when the termination is caused by the default of the other party.

SECTION 10.12 Authority of Parties. Each party warrants that it is authorized to enter into this Lease, that the person signing on its behalf is duly authorized to execute this Lease, and that no other signatures are necessary.

SECTION 10.13 Force Majeure. Whenever a period of time is prescribed for the taking of any action by QALICB or the Tenant, neither party shall be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, fire, floods, earthquakes, riots, acts of God, shortages of labor or materials (not caused by QALICB's or QALICB's contractor's improper planning or management), war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of QALICB or the Tenant, excluding, however, the financial condition or the unavailability or cost of funds of either party.

SECTION 10.14 Entire Agreement. This Lease and the exhibit attached hereto contain the entire agreement between the parties about the Premises all other subject matter contained herein. This Lease and exhibit shall be modified only in a writing signed by both parties.

SECTION 10.15 Acknowledgement and Covenants Related to New Markets Tax Credit Financing. The parties hereto acknowledge and agree that a portion of the Premises subject to this Lease has been financed through four qualified low-income community investments in the form of loans by the Sub-CDE Lenders (as defined in the Ground Lease) to QALICB pursuant to that certain Loan Agreement, dated or to be dated as of the date hereof, by and between the Sub-CDE Lenders and QALICB (the "Loan Agreement"). In accordance with the terms of the Loan Agreement, the Tenant hereby represents and warrants to QALICB for the benefit of the Sub-CDE Lenders that the Tenant is not currently engaged, and has no expectation that at any point during the term of this Lease it will become engaged, in any trade or business consisting of (a) the rental of residential rental property (Section 168(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "Code")); or (b) any trade or business 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 (c) farming (within the meaning of Code Section 2032A(e)(5)(A) or (B) and the applicable regulations promulgated under the Code); or (d) any trade or business constituting a shooting gallery, adult bookstore or facility selling or displaying pornographic books, literature or videotapes (materials shall be considered "adult" or "pornographic" for such purposes if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality), bingo or similar games of chance (however, lottery ticket and other items commonly sold in retail establishments may be sold as an incidental part of business), or video game or amusement arcade, except as an incidental part of another primary business (collectively, the "Prohibited Uses"). Further, the Tenant hereby represents and warrants that it will not sublease, license or otherwise permit any other party occupying or using all or any portion of the Premises to engage in any of the Prohibited Uses in any portion of the Premises.

{The remainder of this page left intentionally blank}

{Signatures on following pages}

IN WITNESS WHEREOF, QALICB and the Tenant have executed this Lease effective as of the Effective Date.

QALICB:

ROCKY MOUNT DCF, LLC

By: _____

Title: _____

Tenant:

CITY OF ROCKY MOUNT, NORTH CAROLINA

By: _____

Mayor

[SEAL]

ATTEST:

Clerk

{Signature Page}

Exhibit A

Legal Description of the Site

Schematic Drawing of Building showing Clinic Space and DCF Space

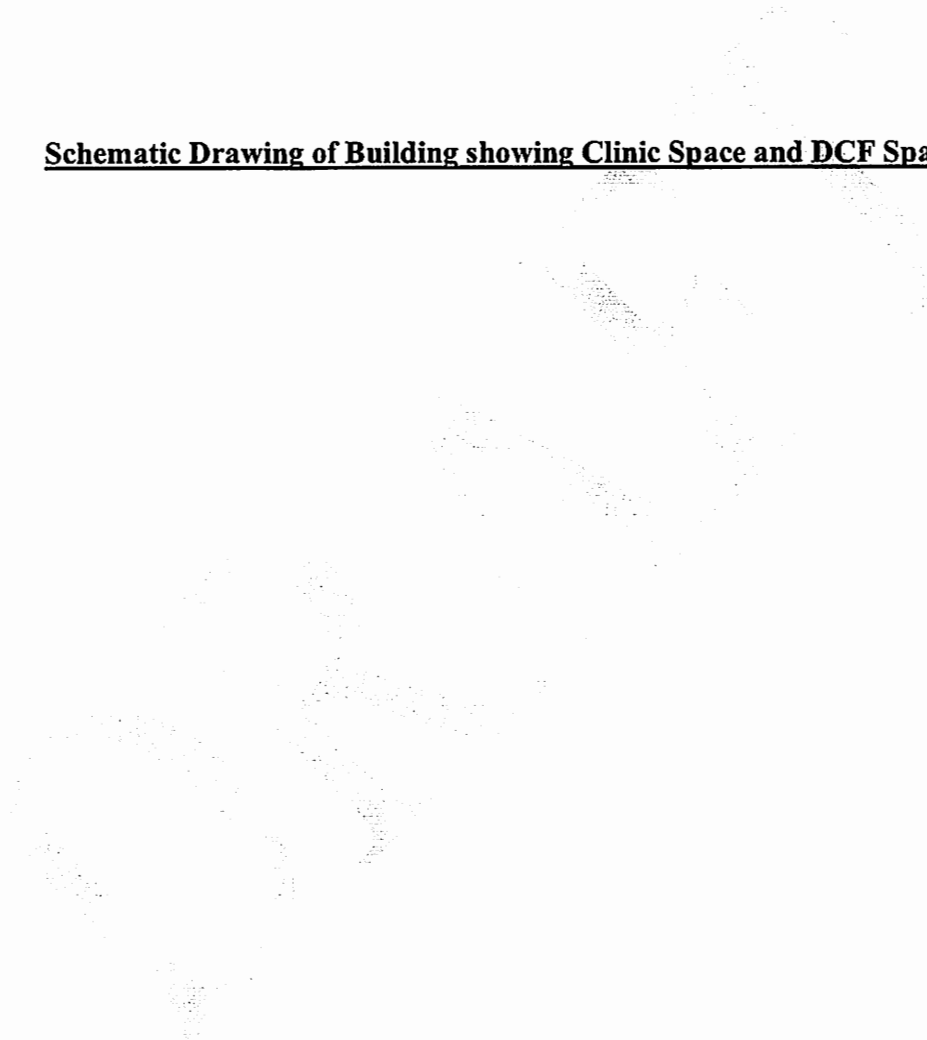


Exhibit B

Rent Schedule

(immediately follows)

DRAFT

Exhibit C

Insurance Requirements

(a) [TO BE REVISED BASED ON QLICI LOAN AGREEMENT REQUIREMENTS] The Tenant shall, at its expense, provide or cause to be provided in force the following policies of insurance at such times indicated below:

(i) as of the date this Lease, insurance with respect to the Project against any peril included within the classification "All Risks of Physical Loss," including, without limitation, insurance against loss or damage by fire, lightning, windstorm, civil commotion, smoke, hail, aircraft, vandalism, explosion, riot, strike, water damage, sprinkler leakage, collapse and malicious mischief, in amounts at all times sufficient to prevent the Tenant from becoming coinsurer within the terms of the applicable policies, but in any event such insurance shall be maintained in the full insurable value of the Project (the term "full insurable value" to mean 100% of the actual replacement cost of the Project);

(ii) as of the date of this Lease, comprehensive general liability insurance, including bodily injury and property damage liability against any and all claims, including, without limitation, all legal liability to the extent insurable imposed upon the Sub-CDE Lenders and all court costs and reasonable attorneys' fees, arising out of or connected with the possession, use, leasing, operation or condition of the Project, of such types as the Sub-CDE Lenders reasonably may require from time to time, and in amounts not less than (A) \$1,000,000 per accident or occurrence for personal injury, (B) \$2,000,000 per accident or occurrence for injury to property and (C) \$2,000,000 general aggregate limit, for injuries to, or illness or death of, persons and damage to property;

(iii) at any time when the Tenant has employees, statutory workers' compensation insurance with respect to any work on or about the Project; and

(iv) such other insurance and increased policy limits as are specifically requested by the Sub-CDE Lenders to the extent that such requests are in line with industry standards.

(b) Until substantial completion of the Project, the Tenant's policy of property damage insurance must include comprehensive builder's risk coverage on a completed value, nonreporting form, with permission to complete and occupy, and be sufficient in coverage to reimburse all budgeted soft costs to be expended in connection with the Loans. Coverage shall not be less than that encompassed by "Fire, Extended Coverage and Vandalism and Malicious Mischief" perils broadened to include the so-called "All Risk of Physical Loss" coverage. Insurance shall be written on a replacement cost basis, and shall be in an amount not less than the amount necessary to comply with any co-insurance percentage stipulated in the policy or policies, but in all events not less than 100% of insurable value (based on replacement cost).

(c) All insurance premiums shall have been paid when due, and if requested, the Tenant shall provide to the Sub-CDE Lenders evidence of such payment. Each policy of insurance maintained by the Tenant pursuant to the terms hereof shall (i) name the Ground

Lessor, QALICB and the Sub-CDE Lenders (together with their respective successors and assigns as their interests may appear); (ii) contain standard noncontributory form mortgagee clause endorsement in favor of the Sub-CDE Lenders with respect to hazard insurance coverage that is reasonably acceptable to the Sub-CDE Lenders; (iii) except in the case of public liability insurance and workers' compensation insurance, name the Ground Lessor, QALICB and the Sub-CDE Lenders as loss payees and provide that all insurance proceeds for losses be adjusted and be payable in accordance with the requirements of the Sub-CDE Lenders; (iv) include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and named insureds other than the Tenant (provided, that, the Sub-CDE Lenders shall have the right to pay premiums and continue any insurance upon the insolvency of the Tenant or the foreclosure or other transfer of the Project) and all rights of subrogation against any named insured; (v) except in the case of public liability insurance and workers' compensation insurance, provide that any losses shall be payable notwithstanding (A) any act, failure to act, negligence of, or violation or breach of warranties, declarations or conditions contained in such policy by the Tenant, the Ground Lessor, QALICB or the Sub-CDE Lenders or any other named insured or loss payee, (B) any foreclosure or other proceeding or notice of sale relating to the insured properties, or (C) any change in the title to or ownership or possession of the insured properties; (vi) provide that if all or any part of such policy is cancelled, terminated or expires, the insurer will forthwith give notice thereof to each named insured and loss payee and that no cancellation, termination, expiration or reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by each named insured and loss payee of written notice thereof; and (vii) not be subject to a deductible in excess of amounts as are in line with industry standards.

(d) The Tenant shall pay or cause to be paid as and when the same become due and payable the premiums for all insurance policies that the Tenant is required to maintain hereunder. All such policies shall be nonassessable and shall contain such expiration dates as the Sub-CDE Lenders may reasonably require. The Tenant shall deliver to the Sub-CDE Lenders concurrently herewith insurance certificates setting forth in reasonable detail the terms of all insurance policies that the Tenant is required to maintain hereunder, together with true and complete copies of such policies. The Tenant shall deliver to the Sub-CDE Lenders, concurrently with each change in or renewal of any such insurance policy, a certificate with respect to such changed insurance policy certified by the insurance broker that procured or placed such policies, in the same form and containing the same information as the initial certificates required to be delivered by the Tenant pursuant to this subparagraph and a certificate of the Tenant certifying that all of the insurance policies maintained by the Tenant pursuant hereto comply in all respects with the requirements of this Agreement, that all premiums then due thereon have been paid to the applicable insurers and that the same are in full force and effect.

(e) Not later than 30 days prior to the expiration, termination or cancellation of any insurance policy which the Tenant is required to maintain hereunder, the Tenant shall obtain a replacement policy or policies (or a binding commitment for such replacement policy or policies), which shall be effective no later than the date of the expiration, termination or cancellation of the previous policy, and shall deliver to the Sub-CDE Lenders a certificate and a true and complete copy of such policy or policies which comply with the above requirements or a copy of the binding commitment for such policy or policies. The Tenant shall also provide to the Sub-CDE Lenders originals of such policies or copies thereof certified by the insurance

companies issuing them as soon as reasonably possible after the Sub-CDE Lenders' request therefor.

(f) All insurers shall be authorized to issue insurance in the jurisdiction in which the Project is located and all insurers and reinsurers shall have the A.M. Best rating of "A-V" or better corresponding to an adjusted policyholder surplus of not less than \$500,000,000.

**PROMISSORY NOTE
(Upper-Tier Loan)**

\$16,640,500

May __, 2017

FOR VALUE RECEIVED, the undersigned, ROCKY MOUNT PUBLIC FACILITIES CORPORATION (the "Borrower"), hereby promises to pay to the CITY OF ROCKY MOUNT, NORTH CAROLINA, its permitted successors and assigns (the "Lender"), at its office located at 331 S. Franklin Street, Rocky Mount, NC 27802, the principal sum of Sixteen Million Six Hundred Forty Thousand Five Hundred and No/100 Dollars (\$16,640,500), or so much as may be advanced hereunder, together with interest thereon as hereinafter provided.

RECITALS

This Note is made in connection with that certain Loan Agreement dated as of the date hereof by and between the Lender and the Borrower (the "Loan Agreement", all capitalized terms used herein and not otherwise defined shall have the meaning given them in the Loan Agreement).

AGREEMENT

1. RATE OF INTEREST

Interest on the outstanding principal amount of this Note shall accrue at a rate of [1.0]% per annum (the "Interest Rate").

2. PAYMENTS

The Borrower shall make payments according to the following paragraphs to the Lender at its address appearing above or as later communicated to the Borrower in writing, in immediately payable U.S. funds. All payments shall be first applied to accrued and unpaid interest; and then to unpaid principal. If any payment due date (each a "Payment Date") is a Saturday, Sunday, or banking holiday observed by banks in Rocky Mount, North Carolina, the due date of the payment shall automatically be extended to the next following banking business day.

From the date hereof continuing until [May 31, 2024] (the "Initial Loan Period") the Borrower shall make quarterly installment payments of accrued interest only payable in arrears, on March 31, June 30, September 30, and December 31 (each a "Payment Date"), such payments commencing on June 30, 2017. Following the end of the Initial Loan Period until the Maturity Date (as defined below), the Borrower shall make [equal quarterly payments of principal and interest] in an amount sufficient to fully amortize the Loan at then applicable Interest Rate over the remaining term of the Loan. The outstanding principal balance and all accrued and unpaid interest on the Loan shall be paid in full on the Maturity Date.

3. FINAL PAYMENT/MATURITY DATE

Notwithstanding anything set forth above, all sums due under this Note, both principal and accrued and unpaid interest, if not sooner paid, shall be due and payable on [May 31, 2042] (the "Maturity Date").

4. PAYMENT DUE DATE/FAILURE TO PAY

A. All payments due under this Note shall be made without demand and received on each Payment Date and the Maturity Date; and

B. In the event of a default under this Note or upon the occurrence of any default under the Loan Agreement (and without regard to any cure periods allowed hereunder or thereunder), at the option of the Lender, for so long as the default exists, interest on the outstanding principal balance hereof shall accrue and will be paid at a rate of interest per annum equal to then applicable interest rate under the Note plus five percent (5%), not to exceed, however, the maximum rate permitted by law ("Default Interest Rate"); and

C. Any scheduled installment of principal and/or interest due hereunder which is not received on or before the tenth (10th) day after the Payment Date, at the Lender's option, be subject to a late payment fee of five percent (5%) of the amount owed on such installment, for the purpose of defraying the expense incident to handling such delinquent payment (this payment is in addition to the amount set forth in B above); provided, however, such late payment fee, if any, applicable to the final payment of principal and interest on the Maturity Date shall not exceed One Thousand Dollars (\$1,000.00).

5. INTEREST RATE COMPUTATION/APPLICATION OF PAYMENTS

A. All interest calculated under this Note shall be calculated on the basis of a thirty (30) calendar day month and a three hundred sixty (360) calendar day year.

B. All payments shall be applied first to the payment of accrued interest; then to late charges; then to the payment of the principal sum; provided, however, the Lender may elect to apply such payments in any other order it deems appropriate. Funds shall be deemed received by the Lender on the next business day if not received by 3:00 P.M. local time at the location where payments hereunder are to be made.

6. LOAN AGREEMENT INCORPORATION

This Note is the "Note" as defined in the Loan Agreement and the Loan Agreement and the Loan Documents and all of the provisions thereof are hereby incorporated herein by reference and all terms and provisions thereof with respect to this Note shall be applicable hereto. All capitalized terms used herein and not otherwise defined shall have the meaning given them in the Loan Agreement.

7. PREPAYMENT

This Note may be prepaid at any time without penalty or premium.

8. PLACE OF PAYMENT

All payments shall be made to the Lender at the address on the interest billing statement provided by the Lender or at the address of the Lender set forth at the beginning of this Note or such other place as the Lender may from time to time designate in writing.

9. SECURITY

As a condition precedent to the making by the Lender of the Loan, the Borrower has executed and delivered to the Lender a Security and Pledge Agreement of even date herewith (the "Pledge Agreement"), pursuant to which the Borrower has pledged certain of its assets, including the Assigned Interest, as defined in the Pledge Agreement (the "Collateral"), to secure repayment of the Note.

10. WAIVERS

Except as herein provided, the Borrower and all others who may become liable for all or part of the principal balance hereof or for any obligations of the Borrower to the Lender or the holder hereof (a) jointly and severally, forever waive presentment, protest and demand, notice of protest, demand and dishonor and non-payment of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, (b) agree that the time of payment of the debt or any part thereof may be extended from time to time without modifying or releasing the lien of the Pledge Agreement or the other Loan Documents or the liability of the Borrower or any other such parties, the right of recourse against the Borrower and such parties being hereby reserved by the Lender; and (c) agree that time is of the essence. The Borrower agrees to pay all costs of collection when incurred, whether suit be brought or not, including reasonable attorneys' fees and costs of suit and preparation therefore, and to perform and comply with each of the covenants, conditions, provisions and agreements of the Borrower contained in this Note and Loan Documents. It is expressly agreed by the Borrower that no extensions of time for the payment of this Note, nor the failure on the part of the Lender to exercise any of its rights hereunder, shall operate to release, discharge, modify, change or affect the original liability under this Note or any of the Loan Documents, either in whole or in part.

11. COMPLIANCE

The Borrower agrees that this instrument and the rights and obligations of all parties hereunder shall be governed by and construed under the laws of the State of North Carolina, without giving effect to conflict of laws principles thereof. If any provision of this Note shall be illegal or unenforceable, such provision shall be deemed canceled to the same extent as though it never had appeared therein, but the remaining provisions shall not be affected thereby.

12. NOTICES

Whenever the Lender or the Borrower desires to give any notice to the other, it shall be sufficient for all purposes if such notice is given in accordance with the Loan Agreement.

13. INTEREST NOT TO EXCEED MAXIMUM ALLOWED BY LAW

If from any circumstances whatsoever, by reason of acceleration or otherwise, the fulfillment of any provision of this Note involves transcending the limit of validity prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then the obligations to be fulfilled will be reduced to the limit of such validity as provided in such statute or law, so that in no event shall any exaction be possible under this Note in excess of the limit of such validity.

14. SUCCESSORS

All rights, powers, privileges and immunities herein granted to the Lender shall extend to its successors and assigns and any other legal holder of this Note.

[SIGNATURE PAGE FOLLOWS]

Signed on the day and year first above written.

BORROWER:

**ROCKY MOUNT PUBLIC FACILITIES
CORPORATION**

By: _____
Its: _____

**[SIGNATURE PAGE FOR PROMISSORY NOTE
(UPPER-TIER LOAN)]**

LOAN AGREEMENT
(Upper-Tier Loan)

THIS LOAN AGREEMENT is made as of this ____ day of May, 2017, by and between **ROCKY MOUNT PUBLIC FACILITIES CORPORATION**, a North Carolina nonprofit corporation (the "Borrower" or "RMPFC"), and **CITY OF ROCKY MOUNT, NORTH CAROLINA**, a municipal corporation formed under the laws of the State of North Carolina (the "Lender").

WITNESSETH:

WHEREAS, in connection with a financing pursuant to Section 45D of the Internal Revenue Code of 1986, as amended (the "Federal NMTC Code"), the Borrower has requested that the Lender loan to the Borrower the sum of \$[16,640,500] (the "Loan"); and

WHEREAS, the Lender is willing to make the Loan in accordance with the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. THE LOAN. Subject to the terms and conditions contained herein, on the date hereof, the Lender agrees to make the Loan to Borrower in the aggregate principal amount of [Sixteen Million Six Hundred Forty Thousand Five Hundred] and No/100 Dollars (\$16,640,500) (the "Loan Amount"). The Loan shall be evidenced by, and subject to the terms of, the Note, as hereinafter defined. Once repaid, no amounts made under the Loan may be re-borrowed.

2. NOTE. The obligation of the Borrower to repay the Loan is evidenced by that certain promissory note of even date herewith executed by the Borrower in the original principal amount of \$[16,640,500] and payable to the order of the Lender (the "Note").

3. INTEREST. The unpaid principal balance on the Note will bear interest as set forth in the Note.

4. ADVANCES. The entire Loan Amount shall be advanced at closing.

5. RELIANCE BY LENDER. The Lender shall be entitled to rely upon, and shall be fully protected in relying upon, any notice believed by the Lender to be genuine. The Lender may assume that each person executing and delivering any notice in accordance herewith was duly authorized, unless the responsible individual acting thereon for the Lender has actual knowledge to the contrary.

6. SECURITY. As a condition precedent to the making by the Lender of the Loan, the Borrower has executed and delivered to the Lender a Security and Pledge Agreement of even date herewith (the "Pledge Agreement"), pursuant to which the Borrower has pledged certain of its assets, including the Assigned Interest as defined in the Pledge Agreement (the "Collateral"), to secure repayment of the Note.

7. REPRESENTATIONS. In order to induce the Lender to make the Loan, the Borrower hereby warrants and represents to the Lender as follows:

A. Borrower Existence and Power. The Borrower is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina, and has all requisite power and authority to carry on its business as now conducted and as presently proposed to be conducted.

B. Authority of Borrower. The Borrower has full power and authority to execute and deliver this Agreement, the Note and the Pledge Agreement, along with all other documents and agreements to be executed in connection therewith (collectively, the "Loan Documents") and to incur and perform its obligations thereunder; the execution, delivery and performance by the Borrower of the Loan Documents will not violate any provision of the organizational documents of the Borrower or to its knowledge, of any law, rule, regulation or court order or result in the breach of, constitute a default under, or create or give rise to any lien under, any indenture or other agreement or instrument to which the Borrower is a party or by which the Borrower or its property may be bound or affected.

C. Enforceability Against the Borrower. Each of the Loan Documents constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its respective terms, except to the extent enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles (whether enforcement is sought by proceedings in equity or at law).

D. Litigation. There is no action, suit or proceeding pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower which, if adversely determined, would have a material adverse effect on the condition (financial or otherwise), business, properties or assets of the Borrower or which would question the validity of the Loan Documents or any instrument, document or other agreement related hereto or required hereby, or impair the ability of the Borrower to perform its obligations under the foregoing agreements.

E. Licenses. The Borrower possesses adequate licenses, permits, franchises, patents, copyrights, trademarks and trade names, or rights thereto, to conduct its business substantially as now conducted and as presently proposed to be conducted.

F. Default. The Borrower is not in default beyond any applicable cure periods with respect to a material provision under any agreement, instrument, decree or order to which it is a party or by which it or its property is bound or affected.

G. Consents. No consent, approval, order or authorization of, or registration, declaration or filing with, or notice to, any governmental authority or any third party is required in connection with the Borrower's execution and delivery of the Loan Documents or any of the agreements or instruments herein mentioned relating to the Loan to which the Borrower is a party or the carrying out or performance of any of the transactions required or contemplated hereby or thereby or, if required, (1) such consent, approval, order or authorization has been obtained, (2) such registration, declaration or filing has been accomplished, or (3) such notice has been given prior to the date hereof.

H. Taxes. The Borrower has filed all tax returns required to be filed and either paid all taxes shown thereon to be due, including interest and penalties, which are not being contested in good faith and by appropriate proceedings, or provided adequate reserves for payment thereof, and the Borrower has no information or knowledge of any objections to or claims for additional taxes in respect of federal income or excess profits tax returns for prior years.

I. Judgments. There are no judgments outstanding or docketed against the Borrower.

J. Indebtedness. The Borrower has no indebtedness of any kind other than the Loan or indebtedness previously disclosed in writing to the Lender.

8. COVENANTS OF THE BORROWER. On and after the date hereof and until the payment in full of the Note and the performance of all other obligations of the Borrower hereunder, the Borrower agrees that, unless the Lender shall otherwise consent in writing:

A. Financial Information. From time to time, within forty-five (45) days of a request by the Lender, the Borrower shall deliver or cause to be delivered to the Lender such information as the Lender may reasonably request regarding the business, operations, properties, assets, liabilities (including specifically, but not by way of limitation, all guaranty, partnership, direct, indirect, contingent, absolute, joint and joint and several, liabilities and obligations, whether matured or unmatured), affairs and financial and other condition of the Borrower. Borrower shall provide to Lender its annual year-end financial statements, as well as any tax returns filed by Borrower, promptly after such statements and returns are prepared and filed.

B. Taxes and Claims. The Borrower shall pay and discharge all taxes, assessments, charges, levies or claims imposed upon it or upon its income or profits, or upon any of its assets or properties, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon the Collateral or other assets of the Borrower, provided that Borrower will not be required to pay any such tax, assessment, charge, levy or claim if the amount, applicability or validity thereof will currently be contested in good faith by appropriate proceedings diligently conducted or if Borrower has set up reserves therefor adequate under generally accepted accounting principles.

C. Maintenance of Existence; Conduct of Business. The Borrower shall preserve all of its rights, privileges and franchises necessary in the normal conduct of its business; conduct its business in an orderly, efficient and regular manner; and shall not liquidate, merge, dissolve, suspend operations, or sell all or substantially all of its assets without the prior written consent of the Lender.

D. Maintenance of Properties. The Borrower shall keep all of its assets and properties in good working order and condition, ordinary wear and tear and casualty losses excepted.

E. Compliance with Applicable Laws. The Borrower shall comply with the requirements of all applicable state and federal laws, and of all rules, regulations and orders of any governmental or other authority or agency, a breach of which would materially and adversely affect its business or credit, except where contested in good faith and by proper proceedings.

F. Litigation. The Borrower shall promptly give to the Lender notice in writing of all litigation and of all proceedings by or before any court or governmental or regulatory agency affecting the Borrower, except litigation or proceedings which, if adversely determined, would not materially affect the financial condition or business of the Borrower.

G. Liens. The Borrower shall not create, assume, incur or suffer to exist any assignment, mortgage, pledge, security interest, lien, charge or other encumbrance whatsoever upon its interest in the Collateral, except any security interest or mortgage granted to the Lender or consented to in writing by the Lender.

H. Access to Books and Inspection. The Borrower shall at all times keep proper books of record and accounts for itself, and, upon request of the Lender, the Borrower shall provide any duly authorized representative of the Lender access during, normal business hours to, and permit such representative, at the Lender's expense, to examine, copy or make extracts from any and all books, records and documents in the Borrower's possession or control relating to the Borrower's affairs, and to inspect any of its facilities and properties; provided, however, that the Lender shall treat all such books and records confidential and shall only be permitted to disclose the information contained therein to its legal counsel, its independent public accountants, any participating lenders, or in connection with any action to collect on the Note or to enforce this Agreement or the documents related hereto, or as otherwise permitted or required by law.

I. Transfer of Collateral. The Borrower shall not sell, dispose of, lease, mortgage, assign, sublet or transfer any of its right, title or interest in or to the Collateral without the prior written consent of the Lender.

J. Prepayment of Note. Borrower may prepay the outstanding balance of the Note at any time without premium or penalty.

K. Indebtedness. Borrower covenants that it will treat the Loan as its indebtedness for federal income tax and financial accounting purposes.

L. Amendments to Organizational Documents. The Borrower shall not amend its organizational documents without the prior written consent of the Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

9. EVENTS OF DEFAULT. As used herein, the term "Event of Default" shall mean and include any one or more of the following events:

A. the Borrower shall fail to pay, within twenty (20) business days after receipt of notice of any outstanding amounts required to be paid by the Borrower under the Note;

B. the Borrower shall fail to observe or perform any covenant, condition or agreement to be observed or performed by it under this Agreement, the Note, the Pledge Agreement or any other document related hereto or thereto for a period of thirty (30) days after written notice (or if such condition is not reasonably subject to cure within thirty (30) days, then such longer period not to exceed an additional ninety (90) days as the Lender shall specify), specifying such default and requesting that it be remedied, given by the Lender to the Borrower;

C. the Borrower shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future state or federal bankruptcy act or under any similar federal or state law, or shall be adjudicated bankrupt or insolvent, or shall make a general assignment for the benefit of its creditors, or shall be unable to pay its debts generally as they become due; or if an order for relief under any present or future federal bankruptcy act or similar state or federal law shall be entered against the Borrower or if a petition or answer requesting or proposing the entry of such order for relief or the adjudication of the Borrower as debtor or bankrupt or reorganization under any present or future state or federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or if a receiver, trustee or liquidator of the Borrower or of all or substantially all of the assets of the Borrower or of the property subject to the Pledge Agreement or any part thereof, shall be appointed in any proceeding brought against the Borrower and shall not be discharged within sixty (60) days of such appointment; or if the Borrower shall consent to or acquiesce in such appointment; or if any property of the Borrower (including without limitation the estate or interest of the Borrower in the property subject to the Pledge Agreement or any part thereof) shall be levied upon or attached in any proceeding;

D. final judgment(s) for the payment of money shall be rendered against the Borrower in an amount greater than \$25,000, individually or in the aggregate, and shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed;

E. the Borrower shall be or become insolvent (whether in the equity or bankruptcy sense);

F. any representation or warranty made by the Borrower herein or in the Loan Documents related hereto shall prove to be untrue or misleading in any material respect, or

any statement, certificate or report furnished hereunder or under any of the foregoing documents by or on behalf of the Borrower shall prove to be untrue or misleading in any material respect on the date when the facts set forth and recited therein are stated or certified; or

G. the Borrower shall liquidate, dissolve, terminate or suspend its business operations, or sell all or substantially all of its assets, without the prior written consent of the Lender.

Upon the occurrence of an Event of Default, the Lender may, at its option, exercise any and all of the following rights and remedies (in addition to any other rights and remedies available to it):

- (a) subject to the provisions of Section 10 below, the Lender may, without notice, declare immediately due and payable all unpaid principal of and accrued interest on the Note, together with all other sums payable hereunder or under the Note, and the Note shall thereupon be immediately due and payable without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are hereby expressly waived;
- (b) the Lender may exercise all of its rights or remedies under the Loan Documents; and/or
- (c) the Lender shall have all the right, in addition to any other rights provided by law, to enforce its rights and remedies under the Loan Documents.

10. FORBEARANCE. Notwithstanding any provision of this Agreement or of any other Loan Document to the contrary, from the date hereof until ninety (90) days after termination of the NMTC Compliance Period (hereinafter defined) (the “Forbearance Termination Date”) the Lender agrees to refrain from (i) taking any Lien Enforcement Action (hereinafter defined), (ii) exercising any other rights or remedies it may have under the Loan Documents (including, without limitation the Pledge Agreement), including, but not limited to, accelerating the Loan, collecting rents, appointing (or seeking the appointment of a receiver or exercising any other rights or remedies thereunder), (iii) individually or joining with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, and (iv) any other action that would result in a recapture of all or any part of any new markets tax credits under the Federal NMTC Code. “NMTC Compliance Period” shall have the meaning given to such term in that certain Fund Loan Agreement dated as of the date hereof by and between Borrower and [NCIF/CAHEC Investment Fund, LLC, a Delaware limited liability company]. “Lien Enforcement Action” shall mean (a) any action to foreclose on, take possession of, sell or otherwise realize (judicially or non-judicially) upon the Collateral, or any rights or privileges attendant thereto (including, without limitation, by setoff), (b) any action to assert ownership rights with respect to any Collateral, or any rights or privileges attendant thereto (including without limitation the exercise or withholding of consent or voting rights), (c) any action (judicially or non-judicially) to dissolve or liquidate the Borrower, and/or (d) the commencement of any legal proceedings to facilitate any of the actions described in clauses (a), (b) or (c) above.

Following the Forbearance Termination Date, to the extent otherwise permitted under its respective Loan Documents, the Lender shall be free, in its sole and absolute discretion, to accelerate the payment in full of all of Borrower's obligations to it under the respective Loan Documents and to institute proceedings to enforce its rights and remedies under the Loan Documents and/or as provided by applicable law. All of Borrower's obligations and liabilities to the Lender hereunder (including, without limitation, Borrower's payment obligations) and any documents, instruments or agreements pursuant to which Borrower may, from time to time, grant to the Lender as collateral security for Borrower's obligations to the Lender, shall survive the Forbearance Termination Date.

Notwithstanding anything contained herein to the contrary, after [May 31, 2024] (the "Amortization Commencement Date"), Borrower, at its option may, in its sole discretion, elect to satisfy all Loan obligations by transferring to Lender all of its right title and interest in the Collateral. Borrower shall have two hundred ten (210) days following the Amortization Commencement Date to make such election by providing notice thereof to the Lender. If the Borrower elects to satisfy the Loan obligations as described herein, Borrower will take such action as may be required to transfer all of its right, title and interest in the Pledged Rights and the other Collateral to the Lender.

11. NON-RECOURSE LIABILITY. The Loan is a nonrecourse obligation of Borrower, payable solely from revenues received by Borrower under the Fund Loan Agreements (as defined in the Pledge Agreement) and secured only by the Collateral. The Lender shall enforce the liability of the Borrower to pay the Loan and perform all obligations set forth herein only against the Collateral pledged under the Pledge Agreement as security for the payment of the Loan and performance of the Borrower's obligations under the Loan Documents. The directors, officers and employees of Borrower shall have no liability whatsoever for the repayment of the Loan. The Lender acknowledges and agrees that the Lender does not intend by this Agreement, the Note, or any other of the Loan Documents to impose contractual liability on the officers, directors and employees of the Borrower, and all such parties are hereby exculpated from any such liability under the Loan Documents.

12. NOTICES. All notices, consents, requests, demands and other communications hereunder shall be given to or made upon the respective parties hereto at their respective addresses specified below or, as to any party, at such other address as may be designated by it in a written notice to the other party. All notices, requests, consents and demands hereunder shall be effective when personally delivered, one day following deposit with a nationally recognized overnight delivery service (such as Federal Express or UPS) or three days following deposit in the United States mail, certified or registered, postage prepaid, in each case addressed as aforesaid.

IF TO THE LENDER:

CITY OF ROCKY MOUNT, NORTH CAROLINA
331 S. Franklin Street
Rocky Mount, North Carolina 27802
Attention: Finance Director

IF TO THE BORROWER:

ROCKY MOUNT PUBLIC FACILITIES CORPORATION
331 South Franklin Street
Rocky Mount, North Carolina 27802
Attention: City Manager

13. MISCELLANEOUS.

A. Waivers, etc. No failure on the part of the Lender to exercise, and no delay in exercising, any right or remedy hereunder or under applicable law or any document or agreement related hereto shall operate as a waiver thereof; nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

B. Amendments, etc. This Agreement and the documents related hereto may not be amended or modified, nor may any of their terms (including without limitation, terms affecting the maturity of or rate of interest on the Note) be modified or waived, except by written instruments signed by the Lender and the Borrower.

C. Successors. This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and assigns; provided, however, that the Borrower may not transfer or assign its right to borrow hereunder without the prior written consent of the Lender; provided, further, that the Lender may not transfer or assign any of its rights under this Loan Agreement without the prior written consent of the Borrower, as set forth in 13.G below.

D. Offsets. Nothing in this Agreement shall be deemed a waiver or prohibition of the Lender's right of banker's lien, offset, or counterclaim, which right the Borrower hereby grants to the Lender.

E. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart.

F. Headings. The descriptive headings for the several sections of this Agreement are inserted for convenience only and shall not define or limit any of the terms or provisions hereof

G. Sale of Loan or Participations. In no event may the Lender at any time sell, assign, transfer, syndicate, grant participations in or otherwise dispose of any portion of the Loan (each such interest so disposed of being herein called a "Transferred Interest") to any party (hereinafter called "Transferees") without the prior written consent of Borrower. At the request of the Lender, in the event of any such sale, assignment, transfer or syndication approved by Borrower as provided for above, the Borrower shall execute separate new Notes to the assignor and its assignee, in the amounts of their respective interests in the Loan after said assignment, and shall deliver the same to the assignor and the assignee, in

exchange for the assignor's existing Note. All such separate new Notes shall be entitled to all the rights and benefits accorded to the Note under the terms of the Loan Documents. No such assignment shall be binding upon the Borrower until the Lender gives written notice thereof to the Borrower, and the Lender obtains the consents as set forth above. The Lender may divulge all information relating to the Borrower, which the Lender has to any actual or potential Transferee, and the Borrower shall cooperate with the Lender in connection with the transfer. The Borrower agrees that each permitted Transferee shall be entitled to the benefits hereof with respect to its Transferred Interest and that each permitted Transferee may exercise any and all rights of banker's lien, setoff and counterclaim as if such Transferee were a direct lender to the Borrower. If the Lender makes any assignment to a permitted Transferee, then upon notice to the Borrower, such Transferee, to the extent of such assignment (unless otherwise provided therein) shall become a lender hereunder and shall have the rights and obligations of the Lender hereunder, and the Lender shall be released from its duties and obligations under this Agreement to the extent of such assignment.

H. Indebtedness. The Lender covenants that it will treat the Loan as indebtedness of the Borrower for federal income tax and financial accounting purposes.

I. Partial Invalidity. In the event any one or more of the provisions contained in this Agreement shall be for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein.

J. Entire Agreement. This Agreement, the other Loan Documents and the other documents mentioned herein set forth the entire agreement of the parties with respect to the Loan and supersede all prior written or oral understandings and agreements with respect thereto. No modification or waiver of any provision of this Agreement shall be effective unless set forth in writing and signed by the parties hereto.

K. WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND THE LENDER HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, TO THE NOTE AND TO ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS HEREUNDER OR THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. THE BORROWER AND THE LENDER EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

L. GOVERNING LAW; JURISDICTION; VENUE. THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, THE RIGHTS OF THE PARTIES HEREUNDER AND THEREUNDER AND THE INTERPRETATION HEREOF AND THEREOF SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE

STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES THEREOF. AT THE OPTION OF THE LENDER, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS MAY BE ENFORCED IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISIDITION SITTING IN THE STATE OF NORTH CAROLINA; THE BORROWER CONSENTS TO THE JURISDICTION AND VENUE OF ANY SUCH COURT AND WAIVES ANY ARGUMENT THAT JURISDICTION IN SUCH FORUMS IS NOT PROPER OR THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT. IN THE EVENT AN ACTION IS COMMENCED IN ANOTHER JURISDICTION OR VENUE UNDER ANY TORT OR CONTRACT THEORY ARISING DIRECTLY OR INDIRECTLY FROM THE RELATIONSHIP CREATED BY THIS AGREEMENT, THE LENDER AT ITS OPTION SHALL BE ENTITLED TO HAVE THE CASE TRANSFERRED TO ONE OF THE JURISDICTIONS AND VENUES ABOVE DESCRIBED, OR IF SUCH TRANSFER CANNOT BE ACCOMPLISHED UNDER APPLICABLE LAW, TO HAVE SUCH CASE DISMISSED WITHOUT PREJUDICE.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

**ROCKY MOUNT PUBLIC FACILITIES
CORPORATION, a North Carolina nonprofit
corporation**

By: _____
Title: _____

LENDER:

**CITY OF ROCKY MOUNT, NORTH CAROLINA, a
North Carolina municipality**

By: _____
Title: _____

SECURITY AND PLEDGE AGREEMENT (Upper-Tier Loan)

This Security and Pledge Agreement ("Agreement"), is entered into as of the ____ day of May, 2017, by and between **ROCKY MOUNT PUBLIC FACILITIES CORPORATION** ("Pledgor") and **CITY OF ROCKY MOUNT, NORTH CAROLINA** ("Pledgee").

W I T N E S S E T H :

WHEREAS, in connection with a financing (the "NMTC Financing") pursuant to Section 45D of the Internal Revenue Code of 1986, as amended (the "Federal NMTC Code"), Pledgor has executed a promissory note ("Note") of even date herewith in favor of Pledgee in the original principal amount of \$16,640,500 (Pledgor's obligations under the Note and the Loan Agreement, as hereinafter defined, shall be referred to collectively as the "Obligation"), which Note was issued pursuant to the terms of that certain Loan Agreement of even date herewith by and between Pledgor and Pledgee (the "Loan Agreement"). All capitalized terms used herein and not otherwise defined shall have the meaning given them in the Loan Agreement;

WHEREAS, in connection with the NMTC Financing, Greenline Rocky Mount DCF Investment Fund LLC, NCIF Rocky Mount Investment Fund, LLC, and CAHEC Rocky Mount DCF Investment Fund LLC, each a Delaware limited liability company (collectively, the "Investment Funds"), have executed three separate promissory notes ("Fund Loan Notes") of even date herewith in favor of Pledgor in the aggregate original principal amount of \$16,640,500, which Fund Loan Notes were issued pursuant to the terms of three separate Fund Loan Agreements of even date herewith by and between Pledgor and each of the Investment Funds (the "Fund Loan Agreements") and which Fund Loan Notes are secured pursuant to the terms of three separate Fund Pledge Agreements of even date herewith by and between Pledgor and each Investment Fund (the "Fund Pledge Agreements", together with the Fund Loan Notes and the Fund Loan Agreements, the "Fund Loan Documents");

WHEREAS, pursuant to the CAHEC Fund Pledge Agreement, Pledgor is the assignee of certain rights to the membership interest of CAHEC Rocky Mount DCF Investment Fund LLC (the "CAHEC Pledged Securities") in CAHEC Sub-CDE XI, LLC, a North Carolina limited liability company ("CAHEC Sub-CDE"), as described more particularly in the CAHEC Fund Pledge Agreement;

WHEREAS, pursuant to the NCIF Fund Pledge Agreement, Pledgor is the assignee of certain rights to the membership interest of NCIF Rocky Mount DCF Investment Fund LLC (the "NCIF Pledged Securities") in NCIF New Markets Capital Fund XXIII CDE, LLC, a Delaware limited liability company ("NCIF Sub-CDE"), as described more particularly in the NCIF Fund Pledge Agreement;

WHEREAS, pursuant to the Greenline Fund Pledge Agreement, Pledgor is the assignee of certain rights to the membership interest of Greenline Rocky Mount DCF Investment Fund LLC (the "Greenline Pledged Securities") in Greenline CDF Subfund XXXI LLC, a Delaware limited liability company ("Greenline Sub-CDE"), as described more particularly in the

Greenline Fund Pledge Agreement;

WHEREAS, pursuant to that certain Investment Fund Put and Call Agreement between Pledgor and Wells Fargo Community Investment Holdings, LLC, a Delaware limited liability company, dated of even date herewith, Pledgor has certain purchase rights with respect to the membership interest in the NCIF Investment Fund and the CAHEC Investment Fund (the "Put/Call Rights"); and

WHEREAS, to secure Pledgor's Obligation, Pledgee has requested that Pledgor pledge its right, title and interest in the CAHEC Pledged Securities, the NCIF Pledged Securities and the Greenline Pledged Securities, the Fund Loan Documents, and the Put/Call Rights (collectively, the "Assigned Interest").

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgor and Pledgee hereby agree as follows:

Article 1. Pledge.

(a) As security for the due payment and performance of the Obligation and any other act or forbearance which Pledgee may validly request and performance of the duties of Pledgor, Pledgor hereby does pledge and grant a security interest in and collaterally assign to Pledgee all of Pledgor's Assigned Interest, including, but not limited to, all financial rights therein and all rights to share in profits and distributions with regard thereto, all present and future payments, distributions, proceeds, profits, income, compensation, property, assets and rights due or to become due and payable to Pledgor in connection with the Assigned Interest, and Pledgor's interest in any deposit account maintained exclusively with respect to the Assigned Interest (including the Collateral Account as provided for hereinafter) (collectively referred to as the "Collateral").

(b) Pledgor shall take any and all action requested by Pledgee in order to allow Pledgee fully to enforce the pledge of the Collateral hereunder and realize thereon to the fullest possible extent, including but not limited to, the filing of any claims with any court, liquidator or trustee, custodian, receiver or other like person or party.

(c) Subject to Article 2 below, upon an Event of Default (as defined in the Loan Agreement) and prior to the full payment and performance of the Obligation, Pledgee shall be entitled to receive any and all additions to the Collateral, proceeds of the Collateral or any other property of any kind distributable on or by reason of the Collateral pledged hereunder, whether in the form of, or by way of distributions, dividends, warrants, liquidation (partial or complete), conversion, or redemptions (in whole or in part), or otherwise. Subject to Article 2, if any of such property shall come into the possession or control of Pledgor after an Event of Default and Pledgee's exercise of the remedies described in this subparagraph (c), Pledgor shall forthwith transfer, pledge and deliver the same to Pledgee subject to the provisions hereof.

(d) As long as no Event of Default shall have occurred and be continuing, and thereafter until written notice shall be given to the Pledgor by the Pledgee, the Pledgor may receive cash or property distributions attributable to the Collateral and make distributions to its

members of any amounts not needed to make payments on the Note which are then due and payable.

(e) In all events, the Pledgor shall have the right, from time to time, to vote and give consents with respect to the Collateral or any part thereof for all purposes as it may determine in its sole discretion.

Article 2. Remedies; Liability. Pledgee shall have all the rights and remedies granted or available to it as a secured party hereunder, under the Uniform Commercial Code as in effect from time to time in the State of North Carolina, under any other statute or the common law, or under any other document in furtherance of connected with, or in any way related to the aforesaid Obligation. Subject to the Loan Agreement, upon the occurrence of any Event of Default:

(a) Pledgee may declare the Obligation of Pledgor immediately due and payable without demand or notice, and Pledgee may proceed to exercise any one or more of the rights or remedies afforded by:

(i) the Uniform Commercial Code, as amended, or other applicable law of any jurisdiction, or

(ii) this Agreement, simultaneously or consecutively, against or in respect of Pledgor, all of which rights and remedies shall, to the fullest extent permitted by law, be cumulative. The choice of one or more rights or remedies shall not be construed as a waiver or election barring other rights and remedies. Pledgor hereby acknowledges and agrees that the Pledgee is not required to exercise all remedies and rights available to it equally with respect to all of the Collateral and the Pledgee may select less than all of the Collateral with respect to which the remedies, as determined by Pledgee, may be exercised.

(b) In addition to the foregoing, Pledgee shall have the right:

(i) to immediately foreclose against the Collateral and accept the Collateral as partial or full satisfaction of the Obligation. Pledgor has previously admitted the prior receipt of adequate and sufficient good and valuable consideration for the Collateral. However, in the event of a bona fide dispute as to consideration or the amount of partial satisfaction, the passing of both legal and beneficial ownership of the Collateral to the Pledgee shall not be delayed, withheld or otherwise impaired; or

(ii) to sell any or all of the Collateral at one or more public or private sales upon ten (10) business days prior written notice to Pledgor at the address designated herein, and to bid thereat or purchase any part or all thereof in their own or a nominee's name, free and clear of any equity or right of redemption (other than as set forth herein); and to apply the net proceeds of the sale, after deduction for any expenses of sale, including reasonable attorneys' fees, to the payment of the Obligation first to accrued interest and second to principal. In the

event the net proceeds of the sale exceed the Obligation (including expenses payable by Pledgor hereunder), such surplus shall be paid to Pledgor.

(c) Pledgor hereby irrevocably appoints Pledgee as its attorney-in-fact to execute, deliver, and record, if appropriate, from time to time, any financing statements or forms UCC-1, and after the occurrence of an Event of Default, any instruments or documents in connection with the Collateral, in Pledgor's or Pledgee's names.

(d) Pledgee shall be under no obligation to take any action and shall have no liability, except for gross negligence or willful misconduct, with respect to the preservation or protection of the Collateral or any underlying interests represented thereby as against claims by or on behalf of any other parties. In the event Pledgor requests that Pledgee take or omit to take action(s) with respect to the Collateral, Pledgee may refuse to do so with impunity if Pledgor does not, upon request of Pledgee, post sufficient, creditworthy indemnities with Pledgee which, in Pledgee's sole discretion, are sufficient to hold it harmless from any possible liability of any kind in connection therewith.

Article 3. Events of Default. An Event of Default under the Loan Agreement shall be deemed an Event of Default under this Agreement.

Article 4. Return of Collateral. Upon receipt of payment in full and complete performance of the Obligation, Pledgee shall release its security interest hereunder, including the filing of all applicable termination statements, lien releases, termination agreements and other release documents, and the Pledgee will deliver any of the Collateral held or possessed by Pledgee to Pledgor.

Article 5. Possession of the Collateral upon Default. Upon the occurrence of an Event of Default, pursuant to the provisions herein and subject to the terms of the Loan Agreement, Pledgee may transfer or cause to be transferred any of the Collateral into its own or a nominee's name. Other than such transfer or a transfer in connection with the remedies set forth in Article 2, Pledgee shall not sell, transfer, assign, pledge, hypothecate or otherwise encumber the Collateral during such time or times the Collateral is subject to this Agreement and Pledgee shall hold the Collateral safe from loss, theft or destruction.

Article 6. Waiver. Pledgor agrees that Pledgee, at any time and without affecting its rights in the Collateral and without notice to Pledgor, may grant any extensions, releases or other modifications of any kind respecting the Obligation, and any collateral security therefor and Pledgor, except as otherwise provided herein, waives all notices of any kind in connection with the Obligation, and any changes therein or defaults or enforcement proceedings thereunder, whether against a Pledgor or any other party. Pledgor hereby waives any rights it has at equity or in law to require Pledgee to apply any rights of marshalling or other equitable doctrines in connection with any enforcement proceedings. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, THE RIGHTS AND REMEDIES OF LENDER ARE SUBJECT IN ALL RESPECTS TO THE PROVISIONS OF SECTION 10 OF THE LOAN AGREEMENT, AND NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO AUTHORIZE OR EMPOWER PLEDGEE TO TAKE ANY ACTION OR EXERCISE ANY RIGHT OR REMEDY THAT IS INCONSISTENT WITH SUCH PROVISIONS.

Article 7. Representations, Warranties, and Covenants. Pledgor hereby represents, warrants, covenants to Pledgee that:

(a) Except as otherwise provided herein, Pledgor owns the Collateral free and clear of liens, other security interests or encumbrances, and will not assign, sell, mortgage, lease, transfer, further pledge or grant a security interest in, subordinate, or encumber or otherwise dispose of or abandon any part of the Collateral during the term hereof without the prior written consent of Pledgee;

(b) Pledgor is duly authorized to execute and deliver this Agreement and to perform all of its obligations under this Agreement, including the execution, delivery and performance of whatever additional documents are necessary or required in connection with the transactions contemplated herein;

(c) the execution and delivery by Pledgor of this Agreement and the performance by Pledgor of its obligations under this Agreement do not and will not conflict with any material agreement affecting or binding upon Pledgor or, to the best of Pledgor's knowledge, with any provision of law;

(d) this Agreement, when duly executed and delivered, will represent the valid and binding obligations of Pledgor enforceable in accordance with its terms (except to the extent enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles whether enforcement is sought by proceedings in equity or at law);

(e) no certificate or written statement herewith or heretofore delivered by Pledgor to Pledgee in connection herewith, or in connection with any transaction contemplated hereby, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained herein from being misleading; and

(f) Pledgor will hold the Collateral separate and distinct from its other assets, and upon written request of Pledgee will deposit all cash Collateral, including all cash received with respect to the Assigned Interest, in a separate bank account, and take such further actions as may be reasonably necessary in order to perfect Pledgee's security interest in such account (the "Collateral Account").

Article 8. Amendment. This Agreement may not be changed, amended or modified other than by a writing executed by Pledgor and Pledgee.

Article 9. Choice of Law. This Agreement shall be governed, construed and enforceable in accordance with the laws of the State of North Carolina.

Article 10. WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, PLEDGOR AND PLEDGEE HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS INSTRUMENT AND TO ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS HEREUNDER OR THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING

THEREFROM OR CONNECTED THERETO. PLEDGOR AND PLEDGEE EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

Article 11. GOVERNING LAW; JURISDICTION; VENUE. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, THE RIGHTS OF THE PARTIES HEREUNDER AND THEREUNDER AND THE INTERPRETATION HEREOF AND THEREOF SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES THEREOF. AT THE OPTION OF THE PLEDGEE, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS MAY BE ENFORCED IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN THE STATE OF NORTH CAROLINA; THE BORROWER CONSENTS TO THE JURISDICTION AND VENUE OF ANY SUCH COURT AND WAIVES ANY ARGUMENT THAT JURISDICTION IN SUCH FORUMS IS NOT PROPER OR THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT. IN THE EVENT AN ACTION IS COMMENCED IN ANOTHER JURISDICTION OR VENUE UNDER ANY TORT OR CONTRACT THEORY ARISING DIRECTLY OR INDIRECTLY FROM THE RELATIONSHIP CREATED BY THIS AGREEMENT, THE PLEDGEE AT ITS OPTION SHALL BE ENTITLED TO HAVE THE CASE TRANSFERRED TO ONE OF THE JURISDICTIONS AND VENUES ABOVE DESCRIBED, OR IF SUCH TRANSFER CANNOT BE ACCOMPLISHED UNDER APPLICABLE LAW, TO HAVE SUCH CASE DISMISSED WITHOUT PREJUDICE.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

PLEDGOR:

**ROCKY MOUNT PUBLIC FACILITIES
CORPORATION**

By: _____

Its: _____

PLEDGE:

**CITY OF ROCKY MOUNT, NORTH
CAROLINA**

By: _____

Its: _____

**[SIGNATURE PAGE FOR SECURITY AND PLEDGE AGREEMENT
(UPPER-TIER LOAN)]**

DEVELOPMENT AND CONTRIBUTION AGREEMENT

This Development and Contribution Agreement (this "Agreement") entered into as of _____, 2017 (the "Effective Date"), by and between **ROCKY MOUNT DCF, LLC**, a North Carolina limited liability company (the "QALICB"), and the **CITY OF ROCKY MOUNT, NORTH CAROLINA**, a municipal corporation duly created under the laws of the State of North Carolina (the "City").

RECITALS

The City and the QALICB have entered into a long-term ground lease to be dated as of the Effective Date (the "Ground Lease") with respect to certain real property upon which City shall develop, construct and lease a facility to be used as a multi-purpose event center called the "Downtown Community Facility", which will include a wellness clinic and educational facility (the "Center"). The address of the Center is 285 NE Main Street, Rocky Mount, North Carolina 27801 (said property, together with the Center and all improvements located thereon, is hereafter referred to as the "Project"). The QALICB desires to employ the City to develop the Project. The QALICB and the City acknowledge that it is in their mutual interest to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises recited above, the mutual agreements herein set forth, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 DEVELOPMENT AND CONTRIBUTION MATTERS

SECTION 1.1 Appointment of the City as the Developer. The City is appointed by the QALICB as the developer of the Project. In such capacity, the City shall perform the services described in Section 1.2 hereof. The terms of this Agreement shall begin as of the Effective Date and, except with respect to Sections 1.3, 1.4, and 2.3 hereof, end upon the earlier to occur of (i) substantial completion of the Center or (ii) _____, 20____.

SECTION 1.2 Development Services.

(a) The City shall oversee the development and construction of the Project, in its capacity as the developer thereof, and shall perform the services and carry out the responsibilities reasonably within the general scope of such development and construction and as are designated from time to time by the QALICB. In connection with the performance of such services and the carrying out of such responsibilities, the City may retain the services of independent consultants, provided the QALICB shall have no responsibility to such independent parties.

(b) The City's services shall consist of the duties set forth in the following subparagraphs of this Section 1.2(b) and as provided elsewhere in this Agreement; provided, however, that if the performance of any duty of the City set forth in this Agreement is beyond the control of the City, the City shall nonetheless be obligated to (i) use best efforts to perform such duty, and (ii) promptly notify the QALICB that the performance of such duty is beyond its control. The City has performed or shall perform the following:

(1) Negotiate and cause to be executed agreements for testing or consulting services for the Project, and any agreements for the construction of any improvements or tenant improvements to be constructed or installed, or any amendments thereof;

(2) Interact with neighborhood groups, local organizations, and other parties interested in the development of the Project in connection with such development;

(3) Establish and implement appropriate administrative and financial procedures and controls for the construction of the Project, including but not limited to:

(i) coordination and administration of professionals and consultants employed in connection with the construction of the Project;

(ii) administration of any construction, engineering and architectural contracts;

(iii) participation in conferences and the rendering of such advice and assistance as will aid in developing economical, efficient and desirable design and construction procedures;

(iv) the rendering of advice and recommendations as to the selection procedures for and selection of subcontractors and suppliers;

(v) the review and submission of all requests for payments under any agreements providing funds for the construction of any improvements;

(vi) the submission of any suggestions or requests for changes which could in any reasonable manner improve the efficiency or cost of the construction of the Project;

(vii) applying for and maintaining in full force and effect any and all governmental permits and approvals, if any, required for the lawful construction of the Project;

(viii) compliance with all terms and conditions applicable to the Project contained in any governmental permit or approval required or obtained for the lawful construction of the Project, or in any insurance policy affecting or covering the Project;

(ix) furnishing such consultation and advice relating to the construction and development of the Project as may be reasonably requested from time to time by the QALICB; and

(x) keeping the QALICB reasonably informed on a regular basis of the progress of the design and construction of the Project, including the preparation of such reports as may be requested by the QALICB.

(4) Inspect the progress of the course of construction of the Project, including verification of the materials and labor being furnished to the Project and on behalf of such construction so as to be fully competent to approve or disapprove requests for payment made by parties with respect to the construction of the Project, and in addition to verify that the same is being carried out substantially in accordance with the scope of work approved by the QALICB or, in the event that the same is not being so carried out, to promptly so notify the QALICB;

(5) To the extent requested to do so by the QALICB, prepare and distribute to the QALICB a critical path schedule, periodic updates, construction cost estimates as required by the

QALICB, financial accounting reports, progress reports on quality, progress and cost of construction and the drawing of funds arranged to cover the cost of construction of the Project;

(6) Obtaining and maintaining insurance coverage for the Project, the QALICB and its employees during the construction phase of the Project, in accordance with any insurance schedule approved by the QALICB;

(7) During the construction period of the Project, comply with all applicable laws, ordinances, orders, rules, regulations and requirements (hereinafter called "laws") of all federal, state and municipal governments, courts, departments, commissions, boards and offices having jurisdiction in the county in which the Project is located or any other body exercising functions similar to those of any of the foregoing, or any insurance carriers providing any insurance coverage for the QALICB or the Project, which may be applicable to the Project or any part thereof;

(8) Assemble and retain all contracts, agreements and other records and data as may be necessary to carry out the City's functions thereunder;

(9) Use commercially reasonable efforts to accomplish the timely completion of the Project in accordance with the approved scope of work and the time schedules for such completion approved by the QALICB;

(10) At the direction of the QALICB, implement any decisions of the QALICB made in connection with the construction of the Project or any policies and procedures relating thereto; and

(11) Perform and administer any and all other services and responsibilities of the City which are set forth in any other provisions of this Agreement, or which are requested to be performed by the QALICB and are within the general scope of the services described herein.

(c) In accordance with the terms of that certain Construction Monitoring and Disbursement Agreement, dated as of the date hereof (the "Construction Monitoring Agreement"), by and among the City, the QALICB, [CAHEC Sub-CDE], [NCIF Sub-CDE], [Greenline Sub-CDE], and Wells Fargo Bank, National Association, the City and the QALICB shall coordinate disbursement of the proceeds of the indebtedness incurred by the QALICB to finance the Project (the "QALICB Proceeds") and disbursement of the remaining proceeds of the City's \$36,815,000 Special Obligation Bonds, Series 2016 (the "Bonds") issued by the City to finance the Project.

(d) To the extent assignable, the City hereby assigns, transfers, sell and conveys to the QALICB all of the City's rights, title and interest in and to the documents listed on Exhibit A hereto (collectively, the "Assigned Documents"). The QALICB hereby assumes and agrees to perform, pay and discharge, the obligations and liabilities of the City under the Assigned Documents from and after the Effective Date.

SECTION 1.3 Contributions by the City to the QALICB.

(a) The City hereby covenants to make cash contributions in the amounts and on or about the dates as are set forth on Exhibit B hereto, such amounts to be deposited into the QALICB's operating account at Wells Fargo Bank, National Association, and to be used by the QALICB to make construction-period interest payments on the indebtedness incurred by the QALICB to finance the Project.

(b) The City hereby covenants to provide funds necessary to make payments for costs of construction of the Project and to complete the Project to the extent the QLICI proceeds are insufficient therefor.

(c) This Section 1.3 shall survive any termination of this Agreement.

ARTICLE 2 TERMINATION

SECTION 2.1 Termination. This Agreement may be terminated by either party if the other party shall fail to perform its obligations under this Agreement (the "Non-Performing Party"), and such failure shall continue uncured for thirty (30) days after the giving of written notice thereof by the other party (the "Performing Party," whether singular or plural) to the Non-Performing Party specifying the nature of such failure, the Non-Performing Party shall be in default under this Agreement ("Default"), unless such failure is not susceptible of being cured within said thirty (30) day period, in which event such a failure shall not constitute a Default if the Non-Performing Party commences curative action within said thirty (30) day period and prosecutes such action to completion, continuously and diligently.

SECTION 2.2 Remedy for Default. If the Non-Performing Party is in Default under this Agreement pursuant to Section 2.1, the Performing Party shall have the right, in addition to all other rights and remedies available to the Performing Party at law or in equity (including the right to set-off), at its option, to terminate this Agreement by giving written notice of such termination to the Non-Performing Party. If the Performing Party shall elect to terminate this Agreement by reason of such Default, the Performing Party and the Non-Performing Party shall each immediately pay to the other all amounts currently due or deferred to the other pursuant to the terms of this Agreement, whereupon, the Performing Party and Non-Performing Party shall have no further rights under this Agreement.

SECTION 2.3 Effect of Termination. Upon the termination of this Agreement pursuant to Section 2.1, the City shall promptly deliver to the QALICB all books, records and accounts pertaining to the Project, which are in the possession of the City and shall cooperate with the QALICB to effectuate an orderly and systematic termination of the City's responsibilities and duties under this Agreement. In furtherance of the foregoing, if in carrying out its responsibilities and duties under this Agreement, the City has entered into contracts which create rights which are necessary for the QALICB to continue the operation or management of the Project after this Agreement is terminated, the City shall, at the request of the QALICB, assign to the QALICB all of such rights and shall grant to the QALICB, a limited power of attorney (coupled with an interest) to the extent necessary to enable the QALICB to preserve and enforce such rights. This Section 2.3 shall survive any termination of this Agreement.

ARTICLE 3 ASSIGNMENT

Neither party may assign this Agreement or any rights or benefits hereunder without the prior written consent of the other party.

**ARTICLE 4
BINDING AGREEMENT**

This Agreement shall be binding upon and shall inure to the benefit of the QALICB, the City, and the successors-in-interest or transferees of the business or the assets of the QALICB and the City subject to the limitations set forth above.

**ARTICLE 5
NOTICES**

All notices and other communications hereunder must be in writing and shall be deemed to have been duly given when either personally delivered or placed in the United States mail by certified mail, return receipt requested, postage prepaid, or by private overnight carrier, in each instance properly addressed and with postage or other charges prepaid to the parties as follows:

As to the City: City of Rocky Mount, North Carolina
 331 S. Franklin Street
 Rocky Mount, North Carolina 27802
 Attention: City Manager

As to the QALICB: Rocky Mount DCF, LLC
 331 S. Franklin Street
 Rocky Mount, North Carolina 27802
 Attention: _____

All notices shall be considered to have been given on the earlier of (i) receipt or (ii) three days after the date of mailing or one day after delivery to an overnight carrier as provided herein. Any party to this Agreement desiring to make a change in its address for the purpose of notices under this section shall notify the other party of the change of address in the same manner as provided for in this section for notices.

**ARTICLE 6
WAIVER**

No waiver by either party of any breach by the other of any provision hereof shall be deemed to be a waiver of any later or other breach thereof or as a waiver of any other provision of this Agreement.

**ARTICLE 7
ENTIRE AGREEMENT**

This Agreement and those agreements herein referred to constitute the entire agreement and sets forth all of the terms of the understanding between the parties hereto with respect to the subject matter hereof and may only be waived, changed or modified by an instrument in writing which expressly refers to this Agreement and which is signed by the party against whom the waiver, change or modification is sought.

ARTICLE 8 ENFORCEABILITY

Should any provision of this Agreement be declared invalid or unenforceable as a matter of law, such invalidity or unenforceability shall not affect or impair the validity or enforceability of any other provision of this Agreement or the remainder of this Agreement as a whole. To the extent permitted by applicable law the parties hereto waive any provision of law now or hereafter in effect which renders any provision hereof prohibited or unenforceable in any respect.

ARTICLE 9 GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the State of North Carolina.

ARTICLE 10 CAPTION

All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

ARTICLE 11 TERMINOLOGY

All personal pronouns used in this Agreement, whether used in the masculine, feminine and neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

ARTICLE 12 RELIANCE

No person other than the parties to this Agreement may directly or indirectly rely upon or enforce the provisions of this Agreement, whether as a third party beneficiary or otherwise.

ARTICLE 13 RELATIONSHIP OF PARTIES

Nothing contained in this Agreement shall be deemed or construed by the parties or any third party to create the relationship of partners or joint venturers between the City and the QALICB.

ARTICLE 14 COUNTERPART ORIGINALS

This Agreement is executed in duplicate originals, one of which is being retained by each of the parties hereto and each of which shall be deemed an original hereof.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized officers as of the day and year first above written.

QALICB:

ROCKY MOUNT DCF, LLC,
a North Carolina limited liability company

By: _____
Name:
Title:

CITY:

**CITY OF ROCKY MOUNT, NORTH
CAROLINA**

By: _____
Name:
Title:

Exhibit A

Assigned Documents

1. Contract to Provide Special Financial and Strategic Advisory Services made as of _____ by and between BBC Consulting, LLC and the City of Rocky Mount, North Carolina and any modifications or amendments thereto.
2. Engagement letter from Maynard, Cooper & Gale, P.C. in connection with the Project, and any modifications or amendments thereto.
3. Engagement letter from Novogradac & Company LLP in connection with the Project, and any modifications or amendments thereto.
4. [Add other documents as necessary]

Exhibit B

City Contributions to QALICB

June 1, 2017	\$ _____
September 1, 2017	_____
December 1, 2017	_____
March 1, 2018	_____
June 1, 2018	_____

Exhibit C

Pre-Closing Costs

[To be added]