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**UNCONDITIONAL GUARANTY OF NEW MARKETS TAX CREDITS, PUT PRICE  
AND ENVIRONMENTAL INDEMNIFICATION**

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**by and among**

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**and**

\_\_\_\_\_,

**and**

\_\_\_\_\_,

**and**

**U.S. Bancorp Community Development Corporation,  
a Minnesota corporation**

[\_\_\_\_\_] [\_\_\_\_], 2017

**THIS UNCONDITIONAL GUARANTY OF NEW MARKETS TAX CREDITS, PUT PRICE AND ENVIRONMENTAL INDEMNIFICATION** (this “*Guaranty*”) is made as of [\_\_\_\_\_] [\_\_\_\_], 2017 (the “*Closing Date*”), by and among \_\_\_\_\_ (“*Borrower*”), \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, each a “*Guarantor*”, and collectively, “*Guarantors*”), in favor and for the benefit of U.S. Bancorp Community Development Corporation, a Minnesota corporation, and its successors and/or assigns (“*Investor*”).

## RECITALS

The following recitals are a material part of this Guaranty:

\_\_\_\_\_, (i) received an allocation of new markets tax credits (the “*New Markets Tax Credits*”) under Section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder (collectively, the “*Code*”) and (ii) has made a suballocation of such allocation to \_\_\_\_\_ (the “*CDE*”).

On the Closing Date, \_\_\_\_\_ (the “*Investment Fund*”) will receive loans from \_\_\_\_\_ (the “*Leverage Lender*”), in the aggregate amount of \$ \_\_\_\_\_ (the “*Leverage Loan*”) pursuant to the Leverage Loan Documents (as defined below).

On the Closing Date, Investor will make an equity investment in the Investment Fund in the amount of \$ \_\_\_\_\_ (the “*USBCDC Investment*”).

On the Closing Date, the Investment Fund will use the proceeds of the USBCDC Investment, and the Leverage Loan to make (i) an equity investment in the CDE in the amount of \$ \_\_\_\_\_ (the “*Equity Investment*”), which Equity Investment is expected to constitute one (1) “qualified equity investment” (“*QEI*”) under Section 45D of the Code and the rules and regulations promulgated thereunder (the “*NMTC Program*”) and implemented by the Community Development Financial Institutions Fund of the United States Treasury Department (the “*CDFI Fund*”), with respect to which Investor may claim New Markets Tax Credits; and (ii) pay certain fees and establish and fund a fee reserve.

On or about the Closing Date, substantially all of the proceeds of the Equity Investment will be used by the CDE to make loans to Borrower in the aggregate amount of \$[\_\_\_\_\_] (the “*QLICI Loans*”), each of which QLICI Loans is expected to constitute a “qualified low-income community investment” (“*QLICI*”) being made to a “qualified active low-income community business” under the NMTC Program.

The documents evidencing or securing the QLICI Loans, including, without limitation, that certain Loan Agreement by and between the CDE and Borrower dated as of the Closing Date, are hereinafter collectively referred to as the “*CDE Loan Documents*”.

Borrower will be the fee owner of certain real property located at \_\_\_\_\_ (the “*Property*”), which Property is in in Census Tract: \_\_\_\_\_, which Borrower has found to be characterized by economic distress and inadequate access to capital. In order to have

a catalytic effect on economic development within the Property area and other low-income communities, the Property will be developed and used as an office, retail and residential facility called the \_\_\_\_\_ (the "**Project**"). The proceeds of the QLICI Loans will be used to finance the construction and development of the Project.

As a condition of making the USBCDC Investment and to consenting to the CDEs' making of the QLICI Loans to Borrower, Investor has required Guarantors to provide the guaranty set forth herein and Investor has made the USBCDC Investment in reliance of such Guarantor's agreement to do so.

The New Markets Tax Credits claimable by Investor in connection with the USBCDC Investment and the subsequent Equity Investment by the Investment Fund in the CDEs have allowed Investor to indirectly make the Equity Investment in the CDEs on more favorable terms, which in turn has allowed the CDEs to provide the QLICI Loans to the Borrower on more favorable terms, and, as a result, each Guarantor stipulates it shall substantially benefit, directly or indirectly, from the making of the Equity Investment in the CDEs.

**NOW, THEREFORE**, for and in consideration of the foregoing, of the mutual promises of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Guarantor hereby covenants and agrees as follows:

**Section 1. Definitions.**

(a) For purposes of this Guaranty, unless otherwise defined herein, capitalized terms shall have the meaning ascribed to such terms in the Transaction Documents (as defined below) as the context requires.

(b) For the purposes of this Guaranty, the following terms used herein shall have the following meanings:

**"After Tax Basis"** means, with respect to any payment to be received by Investor, the amount of such payment supplemented by a further payment or payments so that, after taking into account all income taxes imposed on Investor by any governmental authority with respect to such payments, the aggregate payments received by Investor achieves the stated after-tax internal rate of return reflected in the Financial Projections, based on the same assumptions and methods (including, but not limited to, tax rates, and timing of tax credit recognition) as reflected in the Financial Projections.

**"Applicable Rate"** means the applicable long-term rate as prescribed under Section 1274(d) of the Code in effect at the end of the preceding calendar month plus two percent (2%).

**"Borrower"** has the meaning set forth in the Preamble to this Guaranty.

**"Borrower Operating Agreement"** means that certain Operating Agreement for Borrower dated as of the date hereof.

“**Business Day**” shall mean any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in St. Louis, Missouri.

“**CDE(s)**” has the meaning set forth in the Recitals to this Guaranty.

“**CDE Loan Documents**” has the meaning set forth in the Recitals to this Guaranty.

“**CDE Operating Agreements**” means (i) that certain Amended and Restated Operating Agreement of the CDE dated as of the date hereof, as amended, restated or otherwise modified from time to time.

“**CDFI Fund**” has the meaning set forth in the Recitals to this Guaranty.

“**Closing Date**” has the meaning set forth in the Preamble to this Guaranty.

“**Code**” has the meaning set forth in the Recitals to this Guaranty.

“**Disallowed New Markets Tax Credits**” shall mean, with respect to any QEI made by the Investment Fund in a CDE, the present value of any New Markets Tax Credits disallowed as a result of a NMTC Recapture Event during the period beginning on the date such QEI was made and ending on the seventh (7th) anniversary date thereof calculated using an annual discount rate of six percent (6%) calculated on a quarterly basis, but shall not include any Recaptured New Markets Tax Credits.

“**Environmental Hazard**” means any hazardous or toxic substance, waste or material, or any other substance, pollutant, or condition that poses a risk to human health or the environment, including, but not limited to: (i) any “*hazardous substance*” as that term is defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, *et seq.* as amended; (ii) petroleum in any form, lead-based paint, asbestos, urea formaldehyde insulation, methane gas, polychlorinated biphenyls, fluorescent lamps, radon, or lead in drinking water, except for ordinary and necessary quantities of office supplies, cleaning materials and pest control supplies stored in a safe and lawful manner and petroleum products contained in motor vehicles; (iii) any underground storage tanks; (iv) accumulations of debris, mining debris or spent batteries, except for ordinary garbage stored in receptacles for regular removal; or (v) any other condition that could result in liability for an owner or operator of the Project under any federal, state, or local law, rule, regulation or ordinance.

“**Equity Investment**” has the meaning set forth in the Recitals to this Guaranty.

“**Final Determination**” means the earliest to occur of (i) the date on which a decision, judgment, decree or other order has been issued by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (*i.e.*, all allowable appeals requested by the parties to the action have been exhausted or the time for such appeals has expired); (ii) the date on which the time for instituting a claim for refund has expired, or if a claim was filed the time for instituting suit with respect thereto has expired with no such suit having been filed; or (iii) the date on which the IRS entered into a binding agreement with Investor, with respect to its equity

interest in a CDE through the Investment Fund, for federal income tax purposes, in which the IRS has reached a final administrative or judicial determination with respect to such issue and which, whether by law or agreement, is not subject to appeal; or (iv) the date on which the applicable statute of limitations for raising an issue regarding a federal (or, if applicable, a state or local) income tax matter with respect to the Investment Fund has expired with such issue not having been raised.

“**Financial Projections**” means those certain financial projections dated as of the date hereof and prepared by \_\_\_\_\_.

“**Guarantor**” and “**Guarantors**” each have the meaning set forth in the Preamble to this Guaranty.

“**Guaranty**” has the meaning set forth in the Preamble to this Guaranty.

“**Guaranty Payment Date**” has the meaning set forth in Section 3(b) of this Guaranty.

“**Investment Fund**” has the meaning set forth in the Recitals to this Guaranty.

“**Investment Fund Operating Agreement**” means that certain Operating Agreement for the Investment Fund dated as of the date hereof, as amended, restated or otherwise modified from time to time.

“**Investor**” has the meaning set forth in the Preamble to this Guaranty.

“**IRR Amount**” means such additional amount (if any) in addition to the Recaptured New Markets Tax Credits and Disallowed New Markets Tax Credits as shall be required to cause Investor to have received, on an After-Tax Basis, an “Annual After-Tax Internal Rate of Return” (as defined and calculated in the same manner as provided for in the Financial Projections) of [ ]% (representing Investor’s projected return from its investment in the Investment Fund), taking into account (in lieu of Investor’s receipt of the New Markets Tax Credits) such expenses resulting from, and the effect of, the recapture of the New Markets Tax Credits and the receipt of the cash payments provided for herein, and utilizing the same assumptions and methodology as used in the Financial Projections (including, but not limited to, tax rates, and timing of New Markets Tax Credit recognition).

“**IRS**” means the Internal Revenue Service.

“**Leverage Lenders**” has the meaning set forth in the Recitals to this Guaranty.

“**Leverage Loan**” has the meaning set forth in the Recitals to this Guaranty.

“**Leverage Loan Documents**” means those certain loan documents evidencing, securing or otherwise executed in connection with the Leverage Loan of even date herewith, as amended, restated or otherwise modified from time to time, including, without limitation, (i) that certain Fund Loan Agreement by and between Leverage Lender and the Investment Fund, (ii) that certain

Promissory Note in the original principal amount of \$\_\_\_\_\_ to be delivered by the Investment Fund to Leverage lender, and (iii) that certain Pledge Agreement by and between the Investment Fund and Leverage lender.

“*New Markets Tax Credits*” has the meaning set forth in the Recitals to this Guaranty.

“*NMTC Guaranteed Amount*” means the sum of (i) the NMTC Recapture Amount and (ii) an amount sufficient, on an After Tax Basis, to pay any additional Federal tax liability, interest and penalties of Investor resulting from any NMTC Recapture Event in excess of the NMTC Recapture Amount.

“*NMTC Program*” has the meaning set forth in the Recitals to this Guaranty.

“*NMTC Recapture Amount*” means the sum of (i) the Recaptured New Markets Tax Credits, (ii) the Disallowed New Markets Tax Credits, and (iii) the IRR Amount.

“*NMTC Recapture Event*” means a recapture or disallowance of any New Markets Tax Credits attributable to any QEI in a CDE, the proceeds of which were or will be used to fund the QLICIs or related fees; but only to the extent such recapture or disallowance is the direct or indirect result of any of the following: (a) the Borrower not being or ceasing to be a QALICB; (b) the QLICI Loans not being or ceasing to be QLICIs; (c) the redemption by a CDE (within the meaning of Treas. Reg. Section 1.45D-1(e)(3)(iii)) of any portion of the Equity Investment caused directly or indirectly by Borrower’s violation of the CDE Loan Documents; (d) the failure of any tenant or subtenant of the Project to be classified as a Qualified Business; (e) the failure of a CDE to maintain substantially all of the Equity Investment invested in QLICIs attributable to a prepayment (whether voluntary or involuntary or as a result of acceleration, foreclosure or otherwise) of any of the QLICI Loans by the Borrower in violation of the CDE Loan Documents or as a result of the exercise of any rights or remedies of a CDE following a default by the Borrower under the CDE Loan Documents; (f) any Guarantor’s (or any of Guarantor’s affiliates’) gross negligence, fraud, willful misconduct, malfeasance, material violation of any law; (g) any other act or omission by or within the control of any Guarantor; (h) the breach by any Guarantor of any warranty or covenant as contained in any of the Transaction Documents; (i) any representation of any Guarantor as contained in any Transaction Document shall prove to be false or misleading in any respect; or (j) a determination by the CDFI Fund or the Internal Revenue Service that the use of QLICI proceeds: (A) constituted an inappropriate or abusive use of such proceeds or (B) is inconsistent with the purposes of Section 45D of the Code and the related Treas. Reg., as provided in Treas. Reg. Section 1.45D-1(g), respectively.

“*Obligations*” means the obligations set forth in Sections 2 through 5 herein.

“*Project*” has the meaning set forth in the Recitals to this Guaranty.

“*Property*” has the meaning set forth in the Recitals to this Guaranty.

**“Put and Call Agreement”** means that certain Investment Fund Put and Call Agreement by and between the Put/Call Counterparty and Investor dated as of the date hereof, as amended, restated or otherwise modified from time to time.

**“Put/Call Counterparty”** means \_\_\_\_\_.

**“QALICB”** means a “qualified active low-income community business” as such term is defined in Section 45D of the Code and the Treasury Regulations and Guidance.

**“QEI”** has the meaning set forth in the Recitals to this Guaranty.

**“QLICF”** has the meaning set forth in the Recitals to this Guaranty.

**“QLICI Loans”** has the meaning set forth in the Recitals to this Guaranty.

**“Qualified Business”** means any trade or business except: (a) the rental of Residential Rental Property; (b) any trade or business consisting predominantly of the development or holding of intangibles for sale or license; (c) 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 (d) any trade or business the principal activity of which is farming.

**“Recaptured New Markets Tax Credits”** means, with respect to any QEI made by the Investment Fund in a CDE, the sum of 100% of the New Markets Tax Credits that are recaptured pursuant to a NMTC Recapture Event.

**“Residential Rental Property”** means any building or structure if eighty percent (80%) or more of the gross rental income from such building or structure for the taxable year is rental income from “dwelling units.” For such purpose, a “dwelling unit” means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one half (1/2) of the units in which are used on a transient basis. If any portion of the building or structure is occupied by the taxpayer, the gross rental income for such building or structure includes the rental value of the portion so occupied.

**“Transaction Documents”** means the Investment Fund Operating Agreement, the Leverage Loan Documents, the Borrower Operating Agreement, the CDE Operating Agreement, the CDE Loan Documents, and all related documents executed and delivered in connection therewith.

**“Treasury Regulations and Guidance”** means and includes any proposed, temporary and/or final regulations now or hereafter promulgated under the Code and any guidance, rule, or procedure published by the CDFI Fund, including without limitation the Community Development Entity Certification Applications of the CDE, the New Markets Tax Credit Allocation Applications of the CDE and the Allocation Agreements of the CDE with the CDFI Fund.

**“USBCDC Investment”** has the meaning set forth in the Recitals to this Guaranty.

**Section 2. Guaranty.**

(a) Each Guarantor jointly, severally, irrevocably, unconditionally, and absolutely guarantees the due, prompt and complete payment and performance of the Obligations to Investor, including, without limitation, the payment of the NMTC Guaranteed Amount pursuant to Section 3 of this Guaranty.

(b) Any amounts not paid by the Guaranty Payment Date pursuant to this Guaranty shall bear interest at the Applicable Rate as of the Guaranty Payment Date until the date such amounts are paid in full. Such amounts shall be compounded on a monthly basis.

**Section 3. New Markets Tax Credits.**

(a) The Guarantors shall pay the NMTC Guaranteed Amount in accordance with Section 3(b) of this Guaranty plus interest determined in accordance with Section 2(b) of this Guaranty on any amounts unpaid in accordance with such section, until paid in full directly to Investor, but only if and to the extent that the applicable NMTC Recapture Amount is the direct or indirect result of a NMTC Recapture Event.

(b) The NMTC Guaranteed Amount shall be due and payable by Guarantors not later than the date which is ten (10) calendar days after the earliest to occur, if known, of the following dates (the “*Guaranty Payment Date*”):

(i) the date on which the Investment Fund and/or Investor provides written notice to Guarantors of the NMTC Recapture Amount calculated based upon issuance of a Schedule K-1 to the Investment Fund and/or Investor for any taxable year that reflects Recaptured New Markets Tax Credits or Disallowed New Markets Tax Credits;

(ii) the date on which a determination is made by Investor in good faith based upon advice from tax counsel or its accountants that a NMTC Recapture Event has occurred; or

(iii) the date on which the Investment Fund and/or Investor provides written notice to Guarantors of its receipt of written notice of a Final Determination that a NMTC Recapture Event has occurred and that Investor is being assessed additional tax liability (with any applicable interest or penalties) on account of such NMTC Recapture Event; *provided, however*, that in the event that, prior to the receipt of written notice of a Final Determination, Investor is (1) actually required to pay such additional tax liability on account of such NMTC Recapture Event or (2) not permitted to claim the New Markets Tax Credits on its tax return at the time of filing, then the NMTC Guaranteed Amount shall be due and payable within ten (10) calendar days of the date on which the Investment Fund and/or Investor provides written notice to Guarantors of the occurrence of such event; *provided, further, however*, that if there is subsequently a Final Determination that a NMTC Recapture Event has not occurred, then Investor shall, within ten (10) calendar days after receipt of such Final Determination, pay to Guarantors any amounts previously paid



to Investor pursuant to this subsection (b) except to the extent of any amount necessary to pay any reasonable costs and expenses (including reasonable attorney fees) relating to taking necessary steps to address the preliminary determination of a NMTC Recapture Event and the Final Determination, including but not limited to steps relating to amending any tax returns or other related actions.

(c) Notwithstanding anything herein to the contrary, the NMTC Recapture Amount shall be reduced by any amounts previously distributed to Investor by the Investment Fund in connection with the Obligations arising under this Section 3.

**Section 4. Put Price.** Guarantors shall pay the “USBCDC Put Price”, as defined in the Put and Call Agreement, and any amounts due under Section 11 of the Put and Call Agreement, upon five (5) Business Days’ prior written notice that the Put/Call Counterparty or its designee has failed to make such payments when due.

**Section 5. Environmental Indemnification.** Each Guarantor shall absolutely and unconditionally, jointly and severally, indemnify Investor against out-of-pocket losses, claims, damages, and expenses arising from (a) the presence, or release of any Environmental Hazard in, on, under, or from the Property, and/or (b) the presence, or release of any Environmental Hazard in, on, under, or from any real property adjacent to or in the vicinity of the Property to which an Environmental Hazard has spread from the Property. Such indemnity shall include, but not be limited to, any and all loss, damage, expense or similar type of economic detriment out of any one or more of the following: (a) injury or death to any person; (b) damage to or loss of use of the Property or any other property or ground water, waterway or body of water adjacent to the Property; (c) the cost of removal, clean-up or remedial action of any and all Environmental Hazard from the Property or surrounding area including any ground water, waterway or body of water and the preparation of any closure or other activity required by any governmental entity; (d) the cost required to take necessary precautions to protect against the release of any Environmental Hazard in, on or under the Property, the air, any ground water, waterway or body of water, any public domain or any surrounding areas to the Property; (e) the cost of any demolition and rebuilding or repair of improvements on the Property or in any surrounding areas to the Property; (f) any lawsuit brought or threatened, settlement reached, or governmental order relating to the presence, disposal, or release of any Environmental Hazard in, on, under, from or affecting the Property or in any surrounding areas to the Property; and (g) the imposition of any lien on or against the Property or in any surrounding areas to the Property arising from the presence or release of any Environmental Hazard in, on, under, from or affecting the Property.

**Section 6. Powers and Authority.** Each Guarantor hereby grants to Investor, in its absolute discretion and without notice to such Guarantor, the power and authority to deal with the Obligations in any lawful manner. Without limiting the generality of the foregoing, the liability of each Guarantor hereunder shall not be affected, impaired or reduced in any way by any action taken by Investor involving any of the following powers or authorities or pursuant to any other provision hereof, or by any delay, failure or refusal of Investor to exercise any right or remedy it may have against any person, firm or corporation, including other guarantors, if any, liable for all or any part of the Obligations:

(a) to renew, compromise, extend, accelerate or otherwise change the time or place of payment of or to otherwise change the terms of the Obligations;

(b) to (i) modify any of the terms of the Transaction Documents, or (ii) waive any of the terms thereof;

(c) to take and hold security for the payment of the Obligations and to impair, exhaust, exchange, enforce, waive or release any such security;

(d) to direct the order or manner of sale of any such security as Investor, in its discretion, may determine;

(e) to grant any indulgence, forbearance or waiver with respect to the Obligations or any of the other obligations guaranteed hereby;

(f) to release or waive rights against Borrower and any guarantor; and/or

(g) to agree to any valuation by Investor of any collateral securing payment of any of the Obligations in any proceedings under the United States Bankruptcy Code concerning Investor.

**Section 7. Payment.** Each Guarantor agrees that if any of the Obligations are not fully and timely paid or performed in accordance with the terms and conditions hereof, whether by acceleration or otherwise, such Guarantor shall immediately upon receipt of written demand therefor from Investor, pay all of the unpaid Obligations hereby guaranteed in like manner as if the Obligations constituted the direct and primary obligation of such Guarantor. Guarantors shall not have any right of subrogation as a result of any payment hereunder or any other payment made by any other guarantor on account of the Obligations, and each Guarantor hereby waives, releases and relinquishes any claim based on any right of subrogation, any claim for unjust enrichment or any other theory that would entitle such Guarantor to a claim against the Borrower based on any payment made hereunder or otherwise on account of the Obligations.

**Section 8. Continuing and Irrevocable.** This Guaranty and the Obligations shall be continuing and irrevocable until the Obligations have been satisfied in full. Notwithstanding the foregoing or anything else set forth herein, and in addition thereto, if at any time all or any part of any payment received by Investor from any Guarantor under or with respect to this Guaranty is or must be rescinded or returned for any reason whatsoever (including, but not limited to, any determination that the payment was a voidable preference or fraudulent transfer under insolvency, bankruptcy or reorganization laws), then each Guarantor's obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding the previous receipt of payment by Investor, and each Guarantor's obligations hereunder shall continue to be effective or be reinstated as to such payment, all as though such previous payment to Investor had never been made. The provisions of the foregoing sentence shall survive termination of this Guaranty, and shall remain a valid and binding obligation of Guarantors until satisfied.

**Section 9. Waiver of Notice.** Each Guarantor hereby waives notice of acceptance of this Guaranty by Investor and this Guaranty shall immediately be binding upon each Guarantor. Each

Guarantor, by executing this Guaranty, shall be fully bound hereby regardless of whether or not any other guarantor subsequently executes this Guaranty.

**Section 10. Waiver of Rights.** Each Guarantor hereby waives and agrees not to assert or take advantage of:

(a) any right to require Investor to proceed against the Borrower or any other person or to proceed against or exhaust any security held by Investor at any time or to pursue any other remedy in Investor's power before proceeding against Guarantor;

(b) the defense of the statute of limitations in any action hereunder or in any action for the collection of any of the Obligations;

(c) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Investor to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(d) demand, presentment for payment, notice of nonpayment, protest, notice of protest and all other notices of any kind, including, without limitation, notice of the existence, creation or incurring of any new or additional obligations or obligation or of any action or non-action on the part of Investor or any endorser or creditor of Investor or Guarantor or on the part of any other person whomsoever under this or any other instrument in connection with any of the Obligations or evidence of Obligations held by Investor or in connection therewith;

(e) any defense based upon an election of remedies by Investor, the right of Guarantor to proceed against Investor for reimbursement, any rights or benefits under the bankruptcy and insolvency laws of the State of Missouri or any other applicable state of the United States or under Sections 364 and 1111 of the Bankruptcy Code as same may be amended or replaced from time to time;

(f) any election by Investor to exercise any right or remedy it may have against the Borrower or any security held by Investor, including, without limitation, the right to foreclose upon any such security by judicial or non-judicial sale, without affecting or impairing in any way the liability of such Guarantor hereunder, except to the extent the Obligations have been paid, and such Guarantor waives any default arising out of the absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy of such Guarantor against Investor or any such security whether resulting from such election by Investor or otherwise; and

(g) any duty or obligation on the part of Investor to perfect, protect, not impair, retain or enforce any security for the payment of the Obligations or performance of any of the other obligations guaranteed hereby.

**Section 11. Subordination.** The right of any Guarantor to (i) withdraw, or to cause or permit any person controlled or owned in whole or in part by such Guarantor to withdraw, any capital invested by such Guarantor or such person in Borrower, any other Guarantor or any of their respective Affiliates and (ii) receive payments of any kind from any Guarantor or any of their respective Affiliates, is hereby subordinated to the Obligations. In addition, after the occurrence of a default under this Guaranty, without the prior written consent of Investor, such subordinated

obligations shall not be paid and such capital shall not be withdrawn in whole or in part nor shall any Guarantor accept or cause or permit any person controlled or owned in whole or in part by such Guarantor to accept any payment of or on account of any such subordinated obligations or as a withdrawal of capital. Any payment received by any Guarantor in violation of this Guaranty shall be received by the person to whom paid in trust for Investor, and such Guarantor shall cause the same to be paid to Investor immediately on account of the Obligations. No such payment shall reduce or affect in any manner the liability of any Guarantor under this Guaranty.

**Section 12. Unconditional Guaranty of Payment and Performance; Joint and Several Liability.** The liability of each Guarantor under this Guaranty shall be an absolute, direct, immediate and unconditional guaranty of payment and performance and not of collectability. Guarantors shall be jointly and severally liable with any other guarantor. The amount of each Guarantor's liability and all rights, powers and remedies of Investor hereunder shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to any and all rights, powers and remedies given to Investor under any applicable Transaction Document or any other document or agreement relating in any way to the terms and provisions thereof or otherwise provided by law. The liability of each Guarantor under this Guaranty is independent of the obligations of any other guarantor or of any other party which may initially be or otherwise become responsible for the payment and performance of the obligations guaranteed hereunder, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted by Investor against any one Guarantor, whether or not any of the other guarantors or any other party is joined therein or a separate action or actions are brought against any of the other guarantors or such other party. Investor may maintain successive actions for other defaults. Investor's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions unless and until the obligations guaranteed hereunder have been paid and performed in full.

**Section 13. Amendments.** The parties to any of the Transaction Documents may, in their sole discretion, at any time enter into agreements to amend, modify or change such agreements in the manner provided for in such documents or as the parties thereto shall otherwise agree; or may at any time waive or release any provision or provisions thereof and, with reference thereto, may make and enter into all such agreements as they may deem proper or desirable, without any notice or further assent from any Guarantor and without in any manner impairing or affecting this Guaranty or any of the rights of Investor or the Obligations.

**Section 14. Fees and Costs.** Guarantors hereby agree to pay to Investor, upon demand, all reasonable attorneys' fees and all costs and other expenses which Investor expends or incurs in collecting or compromising the Obligations or in enforcing this Guaranty against Guarantors whether or not suit is filed, including, without limitation, all reasonable costs, attorneys' fees and expenses incurred by Investor in connection with any tax audit, insolvency, bankruptcy, reorganization, arrangement or other similar proceedings involving Guarantors which in any way affect the exercise by Investor of its rights and remedies hereunder. Any and all such costs, attorneys' fees and expenses not so paid shall bear interest at an annual interest rate equal to the lesser of (i) the Applicable Rate or (ii) the highest rate permitted by applicable law, from the date incurred by Investor until paid by Guarantors.

**Section 15. Severability.** Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

**Section 16. Waiver.** No provision of this Guaranty or right of Investor hereunder can be waived nor can any Guarantor be released from such Guarantor's obligations hereunder except by a writing duly executed by Investor. This Guaranty may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever except by the express terms of a writing duly executed by Investor and Guarantors.

**Section 17. Interpretation.** When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, limited liability company, partnership, corporation, trust or other legal entity of any kind whatsoever.

**Section 18. Assignment.** If any or all of the right to claim New Markets Tax Credits with respect to the USBCDC Investment and Equity Investment is assigned by Investor, this Guaranty shall automatically be assigned therewith in whole or in part, as applicable, without the need of any express assignment or consent, and, when so assigned, each Guarantor shall be bound as set forth herein to the assignee(s) without in any manner affecting any Guarantor's liability hereunder with respect to any rights hereunder retained by Investor. No Guarantor shall assign all or any portion of this Guaranty or any of the obligations hereunder without the prior written consent of Investor, which may be given in its sole discretion. This Guaranty shall be binding upon each Guarantor and its heirs, executors, administrators, legal representatives, successors and permitted assigns and shall inure to the benefit of Investor and its successors and assigns.

**Section 19. [Reserved].**

**Section 20. Governing Law.** This Guaranty shall be governed by and construed in accordance with the laws of the State of Missouri without regard to principles of conflicts of law, except to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case, such Federal law shall so govern and be controlling. Each Guarantor acknowledges that, inasmuch as Investor's principal offices are located in Missouri, the State of Missouri bears a reasonable relationship to this Guaranty and the underlying transaction. In any action brought under or arising out of this Guaranty, each Guarantor hereby consents to the jurisdiction of any competent court within the State of Missouri and consents to service of process by any means authorized by the laws of such state. Except as provided in any other written agreement now or at any time hereafter in force between Investor and such Guarantor, this Guaranty shall constitute the entire agreement of such Guarantor with Investor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Investor or such Guarantor unless expressed herein.

**Section 21. Notices.** All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by depositing same with Federal Express for next Business Day delivery or by depositing same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

(a) If to Investor: U.S. Bancorp Community Development Corporation  
1307 Washington Avenue, Suite 300  
St. Louis, Missouri 63103  
Attention: Director of Asset Management – NMTC  
Project #: \_\_\_\_\_  
Facsimile: 314.335.2602

With a copy to:

Nixon Peabody LLP  
799 9<sup>th</sup> Street NW, Suite 500  
Washington, DC 20001  
Attention: Greg Doran  
Facsimile: 202.585.8080

(b) If to Guarantors:

With a copy to:

All notices, demands and requests shall be effective upon such personal delivery or upon being deposited with Federal Express or in the United States mail as required above. However, with respect to notices, demands or requests so deposited with Federal Express or in the United States mail, the time period in which a response to any such notice, demand or request must be given shall commence to run from the next Business Day following any such deposit with Federal Express or, in the case of a deposit in the United States mail as provided above, the date on the return receipt of the notice, demand or request reflecting the date of delivery or rejection of the same by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. Each party hereto shall have the right from time to time to change its address and the right to specify as its address any other address within the United States of America by giving to the other party hereto at least thirty (30) calendar days' written notice thereof in accordance with the provisions hereof.

**Section 22. Bankruptcy.** Each Guarantor hereby agrees that this Guaranty and the Obligations shall remain in full force and effect at all times hereinafter until paid and/or performed in full notwithstanding any action or undertakings by, or against Investor or any Guarantor in any proceeding in the United States Bankruptcy Court, including, without limitation, any proceeding relating to valuation of collateral, election or imposition of secured or unsecured claim status upon claims by Investor pursuant to any chapter of the Bankruptcy Code or the Rules of Bankruptcy Procedure as same may be applicable from time to time. Each Guarantor acknowledges that its obligations hereunder may survive the repayment of the QLICI Loans, and that it may not be possible to determine the existence of liability hereunder until after such time as the IRS is

prohibited from assessing additional tax liability against Investor for any year in which it claimed any of the New Markets Tax Credits.

**Section 23. Counterparts.** This Guaranty may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, with the same effect as if all parties hereto had signed the same signature page. Any signature page of this Guaranty may be detached from any counterpart of this Guaranty without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Guaranty identical in form hereto but having attached to it one or more additional signature pages. Execution by any Guarantor shall bind such Guarantor regardless of whether any one or more other guarantors executes this Guaranty. Signature by facsimile or other reproduction sent by electronic mail shall be considered an original signature.

**Section 24. Representations, Warranties and Covenants.**

(a) Each Guarantor represents, warrants and covenants to and for the benefit of Investor as follows:

(i) the execution, delivery and performance by it of this Guaranty does not and will not contravene or conflict with any law, order, rule, regulation, writ, injunction or decree now in effect of any government, governmental instrumentality or court or tribunal having jurisdiction over it, or any contractual restriction binding on or affecting it, or any of its organizational documents;

(ii) there are no existing or reasonably anticipated facts or circumstances of any kind or nature whatsoever of which it is aware that could in any way impair or prevent it from performing its obligations under this Guaranty;

(iii) any and all financial information with respect to it that it has given to Investor in connection with the transactions contemplated by this Guaranty fairly and accurately present its financial condition and results of operations as of the respective dates thereof and for the respective dates indicated therein, and, subsequent to such respective dates, there has been no adverse change in the financial condition or results of its operations;

(iv) with the assistance of counsel of its choice, it has read and reviewed this Guaranty and such other documents as it and its counsel deemed necessary or desirable to read in connection herewith;

(v) each representation made by it in any of the Transaction Documents to which such Guarantor is a party is true and correct in all material respects and Investor may rely thereon; and

(vi) upon written request of Investor, such Guarantor shall provide Investor with (i) annual financial statements, including audited financial statements if such Guarantor has such audited financial statements prepared for such annual period ended (provided that such audited financial statements, if any, will be provided to Investor no later than

180 days after the end of each fiscal year of such Guarantor and such unaudited financial statements will be provided to Investor no later than 120 days after the end of each fiscal year of such Guarantor), certified as true, correct and complete; and (ii) such other financial information or reports reasonably requested by Investor or that such Guarantor is otherwise obligated to provide; provided further, however, that if at any time a guarantor obligated hereunder is an individual, then such financial statements need not be audited but rather may be signed and sworn by such individual guarantor.

(b) Each Guarantor further covenants and agrees to immediately notify Investor of any change in such Guarantor's financial condition that adversely and materially affects its ability to perform the Obligations hereunder.

**Section 25. Miscellaneous.** Each Guarantor acknowledges that Investor is a member of Investment Fund, which is a member of the CDE. Notwithstanding such affiliation, each Guarantor agrees as follows: (a) no partnership or joint venture relationship exists between Investor and such Guarantor; (b) Investor owes no fiduciary or other duty to such Guarantor, except for any obligations of Investor set forth in this Guaranty, and (c) the exercise by Investor of any of its rights or remedies under the Transaction Documents shall not serve to reduce or discharge the liability of such Guarantor hereunder, except to the extent of any recovery actually realized by Investor in cash with respect to the Obligations; provided, however that Investor shall have no obligation to exercise any of its rights or remedies under any Transaction Document. Each Guarantor severally waives and releases any claim it may now or hereafter have against Investor based on any theory or cause of action that conflicts with the agreements of the parties set forth in this Section. Each Guarantor has not and will not, without the prior written consent of Investor, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of such Guarantor's assets, or any interest therein. Upon demand, each Guarantor will provide annual financial information, including financial statements certified as true, correct and complete, and such other information as may reasonably be requested by Investor.

**[Remainder of Page Intentionally Left Blank]**

**[Signatures contained on following pages]**



**COUNTERPART SIGNATURE PAGE  
UNCONDITIONAL GUARANTY OF NEW MARKETS TAX CREDITS, PUT PRICE  
AND ENVIRONMENTAL INDEMNIFICATION**

**IN WITNESS WHEREOF**, Borrower has caused this Unconditional Guaranty of New Markets Tax Credits, Put Price and Environmental Indemnification to be duly executed as of the date first above written.

**BORROWER:**

\_\_\_\_\_,  
a \_\_\_\_\_

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

**COUNTERPART SIGNATURE PAGE  
UNCONDITIONAL GUARANTY OF NEW MARKETS TAX CREDITS, PUT PRICE  
AND ENVIRONMENTAL INDEMNIFICATION**

**IN WITNESS WHEREOF**, \_\_\_\_\_ has caused this Unconditional Guaranty of New Markets Tax Credits, Put Price and Environmental Indemnification to be duly executed as of the date first above written.

**[GUARANTOR]:**

\_\_\_\_\_, a  
\_\_\_\_\_

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

**COUNTERPART SIGNATURE PAGE  
UNCONDITIONAL GUARANTY OF NEW MARKETS TAX CREDITS, PUT PRICE  
AND ENVIRONMENTAL INDEMNIFICATION**

**IN WITNESS WHEREOF**, \_\_\_\_\_ has caused this Unconditional Guaranty of New Markets Tax Credits, Put Price and Environmental Indemnification to be duly executed as of the date first above written.

**[GUARANTOR]:**

\_\_\_\_\_,  
a \_\_\_\_\_

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

**COUNTERPART SIGNATURE PAGE  
UNCONDITIONAL GUARANTY OF NEW MARKETS TAX CREDITS, PUT PRICE  
AND ENVIRONMENTAL INDEMNIFICATION**

**IN WITNESS WHEREOF**, Investor has caused this Unconditional Guaranty of New Markets Tax Credits, Put Price and Environmental Indemnification to be duly executed as of the date first above written.

**INVESTOR:**

**U.S. BANCORP COMMUNITY DEVELOPMENT  
CORPORATION**, a Minnesota corporation

By: \_\_\_\_\_  
[Name]  
Its: [Title]