New Markets Tax Credits And Urban Supermarkets

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Introduction

Authorized in the year 2000, the New Markets Tax Credit[1] (NMTC) program has allocated tax credit authority in competitive rounds to applicants certified by the CDFI Fund as “Community Development Entities” or “CDEs”. As a Federal program designed to encourage capital investment in under-invested communities, there are many opportunities to use NMTC for retail financing in areas lacking access to fresh foods. The primary terms of eligibility in the NMTC program are higher levels of unemployment, poverty and low-income. Not coincidentally, communities lacking access to fresh foods often exhibit these same characteristics.

NMTC was created with the belief that the extensive physical development and financial investment in suburban and higher wealth communities had left behind forgotten market opportunities in areas of lower incomes, with higher rates of poverty and unemployment. Investments in these “New Markets” can be encouraged through the NMTC program by rewarding the investor with seven years of tax benefit on the cash value of their eligible investment. This chapter will not be a stand-alone primer on the NMTC program, and the reader may benefit from such a primer prior to reading this chapter [2, 3]. For the reader familiar with the NMTC program, little differs in using NMTC for food retail transactions than for other businesses or real estate developments. One must just decide whether the Retailer or the Real Estate Owner will be the borrower, as illustrated in the case studies at the end of this document.

Implicit in the policy concept of “New Markets” is the economic linkage of business investment and job creation. In addition to increasing employment opportunities, investments in these targeted communities can also increase the quality of life by providing essential services such as fresh food access, education and healthcare to name a few.

Food processing businesses, food distribution facilities and food production can all be eligible uses as long as the assets of the business are located in NMTC eligible areas. NMTC can also be a source of financing for non-retail businesses in the food supply chain such as warehouse and distribution centers. In this Implementation Handbook chapter, we draw upon The Reinvestment Fund’s (TRF) NMTC experience gained from allocating almost $280 million in NMTC, including $80 million in supermarket and other food system transactions since the first round of allocation awards from the Treasury.

Most tax incentive programs promulgate a list of acronyms, and the NMTC program is no different. This chapter uses some of that terminology as well. A complete list of terminology and definitions can be found on the CDFI Fund’s website.

New Markets Tax Credits and Urban Supermarkets

The mechanics of financing urban supermarkets with NMTC are virtually that same as those employed when financing other eligible commercial real estate transactions involving retail such as strip centers, big-box anchored shopping plazas, etc. Further, a loan officer or credit analyst underwriting a grocery store QLICIs will find the due diligence process very similar to the due diligence process for other types of non-NMTC commercial real estate transactions. Key store metrics for understanding and other unique supermarket industry characteristics to focus on during underwriting are reviewed in the Underwriting Supermarkets and Grocery Stores chapter of this handbook.

While the mechanics of a NMTC transaction and the due diligence process are very similar to other commercial real estate transactions that a CDE may finance, there are key differences that a CDFI should consider when making a business decision to provide financing to an urban supermarket. First, a supermarket, much more than other types of retail, is a community anchor, and the developer and/or operator of the supermarket will need to engage the community [residents, community organizations, relevant political representatives, etc.] in the planning process for the supermarket, well before the first spade of dirt is turned. Involving a large group of community stakeholders adds more complexity to a project, translating to a longer development timeline for the supermarket project; the CDFI should expect a more elongated timeframe for a supermarket project than for other commercial real estate transactions. Further, with a supermarket project, more so than other retail projects, the developer may be a community based or non-profit developer who has less experience developing large-scale commercial projects. If this is the case, the CDFI should not only expect a lengthened development timeline but also to spend more time providing technical assistance, underwriting, building capacity, etc.

Another difference between supermarket NMTC transactions and other commercial real estate NMTC transactions is the number and amount of project sources that are grants or other non-traditional financing sources [e.g. loans from public entities or government programs]. While there is a significant benefit to the project for these non-debt sources to be leveraged through the NMTC structure [or provided directly to the project], these sources tend to carry with them various timing, use and reporting requirements which have to be managed – sometimes by the CDFI. Also, similar to any real estate project financed by more than one source, having multiple financing sources adds another layer of complexity to a development project which will require more of the CDFI's capacity.

The Power of NMTC Financing

Equity: The most common use of NMTC is to offer a combination of debt and equity to the QALICB. Often this "equity" is documented as debt that converts to equity after seven years (see Charts 1 and 2 below). This NMTC benefit gives the QALICB sufficient equity to meet loan to value requirements. The portion of the transaction which is equity can vary based on the yield desired by the investor, the fees charged by the CDE, and the reserves required by the investor and CDE. Further, the amount of equity is directly tied to the value of the tax benefit, fewer costs paid by investor or CDE directly and discounted for the fact that the investor is paying now but receiving the tax benefit later. It is often the case that transaction costs like legal, accounting and consulting fees are paid by the investor and/or the CDE to reduce the burden on the borrower.

In TRF's Experience

In TRF's experience, investors desire an annual yield in the neighborhood of 4.20% to 6.40%; this yield or discount rate translates into a discounted price paid for each credit of $0.65 to $0.75. The price paid for each credit has a direct link to the size of the NMTC benefit; that is, the lower the price paid per credit, the smaller the NMTC benefit.

There is a wide range of debt/equity ratios in the program which reflects the variety of investor yield requirements, a wide range of CDE fees, and in some instances an "appreciation sharing" rule which divides real estate value gains between the Investor, CDE and QALICB. For instance, TRF, a CDFI and one of the leaders of NMTC financing in grocery stores, has an NMTC food portfolio with debt/equity ratios ranging from 82/18 for a retail developer to 75/25 for a store operator.

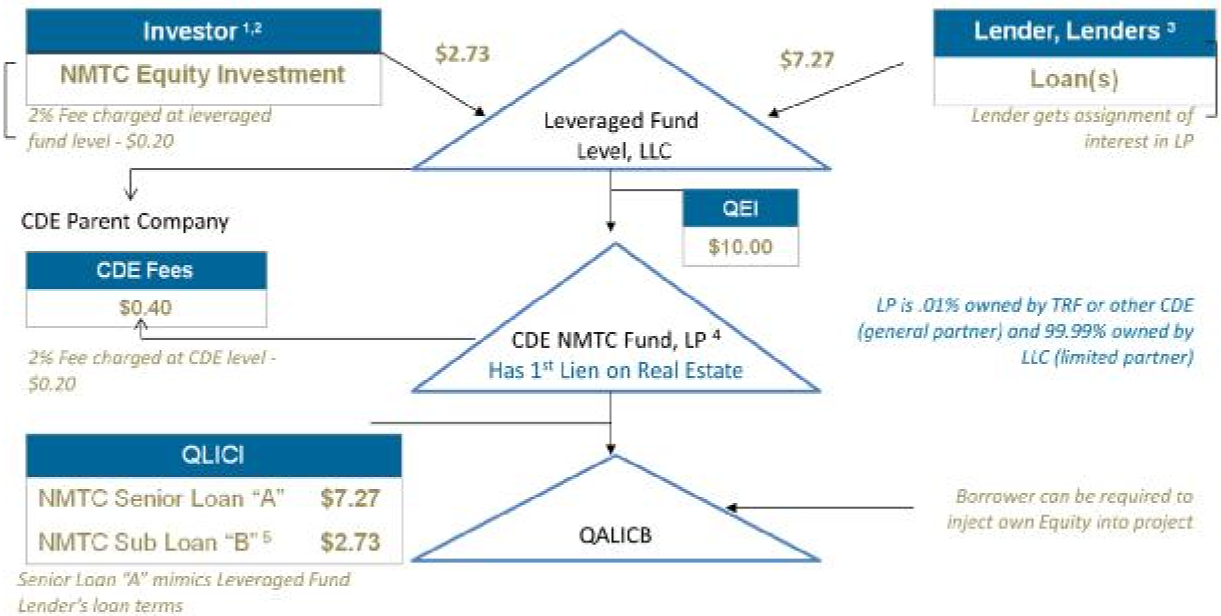
In TRF's Experience

During TRF's years of experience, we have seen a wide range in the amount of fees and the structure of fees charged by CDEs in NMTC transaction. Typically, CDE fees appear to add up to an aggregate 5 to 8% of QEI over the seven year compliance period, resulting in a direct reduction of NMTC benefit. An example of the amount a structure of fees that could be charged in a single transaction include a 2% fee charged at the investment fund level, a 2% charged at the CDE level and a 0.50% asset management fee charged every year of the seven year credit period.

A fair rule of thumb is to expect 20-25% of the NMTC transaction to be in the form of equity or debt that converts to equity that the operator or owner (parent co. of operator) is not required to contribute themselves. The benefit of equity cannot be understated. Every dollar generated in equity from a NMTC transaction is a dollar not needed from the business or realty owner. Conventional debt requires that 20-25% of a transaction be borrower cash equity. With NMTC this can be reduced to 5-10%, and with non-profit QALICBs this can be reduced even further with the borrower possibly receiving 100% financing.

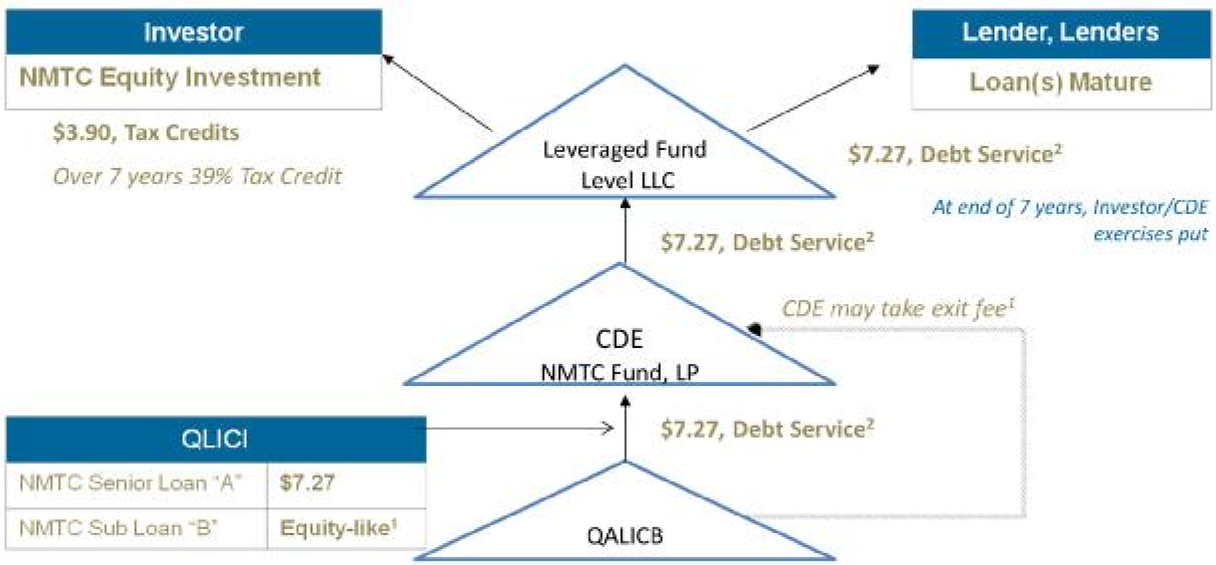
This is further illustrated in the charts below. Chart 1 shows the NMTC structure at the close of a transaction. Note that the QLICI consists of two loans, Senior Loan A and Subordinate Loan B. At the end of seven years, as indicated in Chart 2, the Subordinate Loan B note transfers to the borrower or its affiliate through a put/call transaction converting it to equity. At this stage, the borrower or its affiliate owns the Subordinate note and would likely refinance the Senior note. The CDE is concerned about the refinance of the senior note and strongly considers the feasibility of the refinancing strategy when underwriting the QALICB since a refinance/sale event is the usual method of payback.
The charts below include transaction costs, which vary depending on a CDE's fee strategy and expenses involved. Transaction costs are described in detail in the "Limitations of NMTC Financing" section below.

Chart 1: Sample NMTC Structure at Closing



1. Investor receives 39% tax credit over 7 years calculated on the QEI account.
2. Investor paying $0.70/credit.
3. Leverage lender typically underwrites loan, gets assignment of interest in LP and doesn't get a mortgage lien on the real estate. Loan terms are 7 years interest only.
4. CDE usually charges an additional 50 bp per year in annual management fees.
5. NMTC Sub Loan "B" is reduced by the $0.40 in fees charged by the CDE.

Chart 2: Sample NMTC Structure at the end of seven years



1. NMTC Sub Loan "B" is reduced by the $0.40 in fees charged by the CDE at closing (reflected in chart 1) as well as an additional $.30 exit fee (3% fee). As a result, the equity-like loan or NMTC Benefit that the QALICB receives is reduced to $2.43.
2. The leverage lender in this example receives, in addition to the refinance of their loan, NMTC Senior Loan A, interest only payments over the seven year compliance period at a market interest rate. In this example, assuming a market interest rate of 7.0%, the lender would have received $7.27 in principal payments and $3.56 in cumulative interest payments.

Lower Debt Service: The value of the tax credit can also be used to substantially reduce the interest rate on the transaction. The subsidized interest rate model has not been the

> *In TRF's Experience*
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> In TRF's experience, market interest rates typically fall in the Prime plus 350bp to Prime plus 450bp range depending on the type of project and the borrower's credit risk. Within the NMTC structure, TRF typically sees interest rates that are 200bp-350bp lower than the comparable interest rate.

predominate use of NMTC in recent years, as market interest rates have abated and more conservative underwriting has emphasized using the equity model to lower debt levels of QALICBs. However, having a heavily subsidized interest rate which reduces the debt service burden can be useful in instances where rents or revenues are starting from a lower level in the early years of a venture (e.g. the startup of a grocery store) and are anticipated to grow. This lower debt service is critical for developers of real estate as it enables them to offer rent concessions in early years of tenant leases. These concessions are important to attract qualified operators to underserved areas. Using the interest rate subsidy model increases refinance risks at maturity as there is little principal reduction over the course of the transaction, so the investor and CDE must be assured that the project's value will increase within the seven years, and that refinancing will be available at maturity.

Lower Financing Costs: NMTC transactions are complex and more costly to organize than conventional financing. However, the transaction costs can be borne by the CDE and investor, resulting in a simpler and cheaper net transaction cost for the QALICB. Lower origination costs leave more loan proceeds in the project which allows a lower overall capital need. Additionally, since origination fees are often zero to 0.5%, more loan proceeds are left in the project reducing the borrower's project budget.

The Limitations of NMTC Financing

NMTC can be a powerful financial resource in financing food access, but it does have its limits. The store needs to be located in an eligible location, the transaction needs to be of considerable size to fully realize the benefits, the QALICB needs to agree to the program's regulations and requirements, and financing partners must be reasonably assured that the project's refinancing will be available at the NMTC compliance period.

Location: As is clear from the eligibility requirements[5], NMTC can only be used in highly specific locations. To be successful, a grocery store needs to be located in an area where there is sufficient demand (households) to support the business. The size of the area of demand, or trade area, served by a grocer may easily exceed the local NMTC eligible area, yet the program requires that the business assets be located within eligible census tracts – not just nearby. As a program requirement, this may seem reasonable and not overly limiting; yet in urban and rural areas it is surprisingly common to find that the only available parcel for a grocery store is "across the street" from eligible census tracts. In a rural context, this may be due to the need to locate the store near infrastructure or traffic where there are more households – yet the areas of eligibility are down the road in a denser main street setting that is inappropriate for grocery store development. In an urban context, this near-miss location can be the result of unpopulated and cleared industrial land being adjacent to an eligible and populated tract. In either case there are other ways to document eligibility (brownfield, blight, or other governmental designations) but it remains common to find parcels that can serve low-income populations yet remain ineligible for NMTC.

Size: The vast majority of NMTC transactions equal or exceed $5 million. This large size is the result of two primary factors — the complexity of a NMTC transaction and the professional fees necessary to comply with the program's regulations. Few investors are willing to endure the complexity for a smaller transaction, and the costs of a transaction do not shrink as the transaction gets smaller. This size constraint means it is fairly difficult to provide NMTC benefits to a corner store, a farmers' market or even a basic grocery store. When NMTCs are utilized in the food retail sector, it is typically for a full-service supermarket of 40,000 square feet or greater. Depending on the nature of the project (the construction of the real estate shell by a developer and/or the fit-out of the supermarket's interior including equipment, etc.), the transactions can range from around $8 million on the low-end to $20 million or more. Further, on any NMTC transaction of $15 million or more, multiple CDEs will likely be required because the amount of allocation needed is more than a CDE typically provides to a single project. There are models to alleviate the size requirement (pooled transactions, the best example of which may be CRF USA[4]), but these bundles of transactions rarely include an equity benefit for the QALICB, and have become more rare after the debt crisis of 2008-2009.

Restrictions: In sectors that rely on public sector subsidy or payments (such as affordable housing, day care or schools), borrowers are usually knowledgeable and comfortable with government regulations and reporting requirements. In contrast, food retailers have much less experience with governmental finance and its regulations. Food safety, health and employment regulations are familiar territory for grocers – but these regulations are level across the industry. When explaining the NMTC program to a grocer, it is not unusual to hear reluctance in taking on regulations which their competition may not face. Most troubling of the requirements for grocers include the inability to pre-pay the NMTC financing, the limitations as to where they can relocate the store during the NMTC period, and the need for financial reporting and program compliance which is materially different from the needs of a usual bank loan. Similarly, a real estate developer that is not familiar with governmental finance may also have issues with the program constraints. A developer may also wish to have the latitude to pre-pay the financing, sell the real estate, or lease space to a non-NMTC eligible business (liquor stores, sun tanning, gambling, etc). The financial benefits of the NMTC program can outweigh these concerns, but there are developers and grocers who will decline the attractive financing or the eligible site due to these constraints on their business.

Balloon Repayment: The NMTC program requires that financing (QLICIs) remain in place for seven years. This amount of time is longer than the three to five year term usually available from conventional bank financing, but the program also requires that only 15% of the debt be repaid during those seven years. Higher rates of repayment can trigger the need to redeploy the funds into another QLICI – or if that does not happen, then the tax credits may be at risk of recapture. This means that somewhere from 100% to 85% of the debt will still be outstanding at maturity. Loan balances of this size are unlikely to be self-financed. In today's debt market any refinance includes new levels of business risk which can be mitigated through a sinking fund or build up of permitted levels of working capital. In addition, risks are mitigated if the NMTC transaction was designed to have debt convert to equity upon maturity which lowers the balance due. There are also a few strategies that allow the un-repaid portion of the debt to continue after the NMTC period expires. For example, the subordinate loan could have a much longer maturity date than the senior loan. This can be effected by the CDE transferring the unpaid loan to the tax investor after maturity, or through a put or call option to another party.

Transaction Costs: All borrowers dislike high transaction costs, and the NMTC program does generate very high costs. QEI may be sourced from multiple parties (a lender and a tax investor) and each will be represented by separate counsel. The CDE and QALICB each also have separate counsel. Within each law firm hired, there is usually the need to consult with corporate, real estate and tax counsel. There is also the need for the investor to have a tax model of the transaction, usually generated by a CPA firm. All these costs can add up to 2-3% of the transaction size – and as mentioned above, the effort is the same for a $5 million deal as with a $30 million deal. These financing costs are dwarfed by the NMTC benefits available to QALICBs, but they are a highly visible inefficiency in delivering NMTC benefit to QALICBs.

CDE fees are another absorber of the value of the NMTC benefit. It is important to note, however, that there are infrastructure costs such as compliance reporting and monitoring, investor management, asset management, and audit requirements, associated with being a CDE that necessitate the level of aggregate fees that a CDE may charge. An experienced CDE will likely be more efficient at leveraging these infrastructure costs and may have additional fee income to support other areas of the CDE. Some CDEs charge annual fees which can either be paid from the debt service (like a servicing fee, taking risk that the deal will pay promptly) while other CDEs require that their fees be escrowed as cash in advance (not a vote of confidence in their customer, but it is done). CDEs also frequently charge a fee at closing that can range from 2-8%, and some will also charge a fee when debt converts to equity at the end of the transaction. There are some CDEs, often bank owned CDEs, which charge little or no fees but require a higher after-tax yield in compensation. Bank owned CDEs do not work as well with outside QEI providers or tax investors, preferring to be a one stop shop for deals that meet their particular CRA examination needs.

Fresh Food Retailers as QALICBs

Despite the cautions above about the limitations of NMTC financing, there is an overall good fit between the nature of food retailing and the NMTC program. Grocers should have little concern of breaking the NMTC rules on excessive working capital, as most of the cash generated in a low margin business is immediately reinvested in inventory or expenses. The sin business activities that are NMTC ineligible are either rarely combined with food retailing (sun tanning booths, gambling, collectibles, liquor), and when they are it is a small portion of revenues and can therefore be made compliant. For example, supermarkets that sell alcohol would still be NMTC eligible as long as alcohol sales were not the store's primary source of revenue.

Grocery stores are usually not bought and sold as frequently as some prepared food franchises or lifestyle retail businesses, so the seven year NMTC period is rarely a barrier to the entrepreneur. Moreover, most operators cannot attract financing terms longer than five years due to the nature of their equipment/fit-out depreciation schedules; therefore the seven year term in NMTC is very attractive to QALICBs.

Single store operators will have no problem complying with the asset location requirements of NMTC – and multi-store operators can comply in one of two ways. One approach is to structure the NMTC eligible store(s) as a separate wholly owned firm. Alternatively, they can prepare store-specific financial reports for the eligible store. Either of these strategies will allow the business activities at the eligible location to be financed, even though the operator may have ineligible store locations elsewhere. Smaller operators may be attracted to the special purpose corporation in the first option, so that the legal separation creates a firmer discipline about what NMTC is financing. The alternate strategy is more likely employed by a larger employer as they will have the financial reporting systems necessary to maintain separate books and records and the disincentive to have multiple operating firms (creating governance complexity).

Grocers build equity in their businesses slowly over time through the financing and amortization of tenant improvements and equipment. Producing cash equity for the opening of a new store can be years in the making, and national chains with access to capital markets are able to grow much faster than independent operators as a result. NMTC can level the playing field considerably for local entrepreneurs, by providing much of the equity for growth through the tax credit.

Lender's Corner

For a lender, there is a disconnect between the amortization typical for grocers (five-seven years) and the slower rate of amortization in the NMTC program (interest only or at most 15% amortization of balances). As a result of this disconnect, debt can remain on depreciated assets such as equipment, making debt greater than the value of the asset. This trend may not be viewed favorably by the ultimate source of refinance after the NMTC period. The table below illustrates the many different asset classes that a lender may provide financing for and the appropriateness of NMTC financing:

Asset Class	Grocer	Developer
Construction/Renovation	Strong Fit	Strong Fit
Property Acquisition	Strong Fit	With Some Limits
Tenant Improvements	Strong Fit	Strong Fit
Equipment	Weak Mismatch	Weak Mismatch
Inventory	Strong Mismatch	Strong Mismatch

Due to its quick depreciation [shorter than the 7 year compliance period], equipment is a weak mismatch for NMTC proceeds; lenders typically desire to match the length of loan terms closely with the depreciation schedule of the asset collateralizing the loan. Similarly, inventory is an even stronger mismatch as inventory typically churns in less than a month.

Real Estate Owners as QALICBs

A review of the public policy premise of the NMTC program reminds us that the program exists to direct capital investment into specific neighborhoods. This implies that at a minimum, a mission is served by financing a developer to build *here* rather than *there*. If the real estate entity consumes the full NMTC benefit for itself, creating few jobs itself but facilitating retail tenants in a distressed census tract, then that could be considered the minimal community benefit necessary to comply with NMTC. More beneficial projects will evidence local hiring among the tenants in such space, or local hiring in the construction crew. Increasing or diversifying a tax base for local government can also be seen as a project benefit.

Developers of retail stores invariably create special purpose entities for each of their project locations, and as a result are highly compliant with the NMTC regulations regarding eligible asset locations. Developers with experience in building in underserved areas may also have more experience with governmental financing and the nature of the restrictions and reporting necessary. Occasionally, developers will wish to build, rent and then resell the property and that is difficult to accommodate in the

NMTC program. Post the debt crisis, this is much less of a concern for developers who now value capital access over flipping properties.

Real estate developers, who are successful attracting the scarce NMTC resources, clearly articulate how the NMTC benefit flows to them and also to their tenants. The NMTC deal structure gives a real estate developer greater flexibility to meet pro forma rent requirements and the tenant's desired lower rent through lower debt service or higher equity. In some cases it is less clear that the tenant benefits beyond the provision of market rate space in a location that had lacked such space. NMTC was not created with the intent of being a realty subsidy, and as a result developer financed real estate is somewhat more controversial and less encouraged. As an economic development tool, NMTC is more often identified with business finance and job creation.

Case Studies:

Real Estate Owner as QALICB: ShopRite Island Avenue

Operator as QALICB: The Fresh Grocer at Progress Plaza

REAL ESTATE OWNER AS QALICB: SHOPRITE ISLAND AVENUE

By The Reinvestment Fund

SHOPRITE ISLAND AVENUE
Philadelphia, PA

SECTORS: Retail

GEOGRAPHY: Urban; Low/Moderate Income Census Tract

WEBSITE: http://www.shoprite.com/cnt/member_brown.html

OWNERSHIP TYPE: For-Profit Business; Large Regional, Independent Supermarket Operator

PROJECT DESCRIPTION: New Construction; Large Format

YEAR STORE OPENED: 2005

SQUARE FOOTAGE: 57,000 sq.ft.

NUMBER OF STAFF: 258

TOTAL REVENUES: $35 million

SOURCES OF CAPITAL: $5 million in NMTC; $250,000 FFFI workforce development grant; $5 million in equity from operator

OTHER FINANCIAL SERVICES NEEDED: N/A

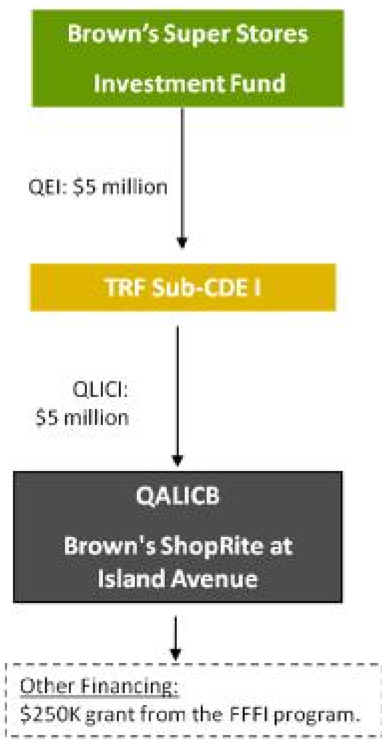
IMPACT/OUTCOMES: TRF financing for ShopRite Island Avenue helped operator Brown's SuperStores overcome the prohibitively high costs of locating in an urban setting. In addition to increasing access to healthy fresh food, the 57,000-square-foot supermarket boasts a dedicated community meeting room and offers prepared food from Delilah's Southern Cuisine. ShopRite Island Avenue has created 258 jobs, many of which feature attractive employee benefits. Employee training associated with the store provides critical life skills, particularly for ex-offenders. The Island Avenue jobs add to the 1,000-plus associates of Brown's in urban areas.

The Island Avenue ShopRite is a 57,000-sq.ft supermarket located in the Eastwick section of Philadelphia. The store boasts not only fresh and affordable foods, but a strong connection to the Eastwick community. The Island Avenue ShopRite has created a dedicated community meeting room and offers prepared foods by the renowned Philadelphia restaurant enterprise Delilah's Southern Cuisine.

In 2004, State Representative Dwight Evans and TRF proposed the idea of expanding into low-income communities as part of the Pennsylvania Fresh Food Financing Initiative. Brown's SuperStores, operating ShopRite supermarkets regionally since 1989, was selected for financing, and an abandoned supermarket on Island Avenue in Philadelphia was selected as a potential site. Given the inner-city location, startup and operating costs were prohibitively high. For ShopRite owner and operator Jeff Brown, additional financing was needed to address the need for extraordinarily high costs of employee training and security in an urban setting.

The ShopRite received $5 million in New Market Tax Credit. The NMTC financing was structured as a debt model with the debt funded completely with the borrower's equity. Brown's Super Stores [BSS] provided a capital contribution of $5 million to TRF NMTC Fund I which lent the funds to the project in a single note structure with a rate of monthly Libor plus 150 basis points. The loan is interest only. The loan balloons in August 2012, at which point BSS will likely buy back or refinance its own note. BSS used NMTC financing to support the construction and renovation of the store. BSS also received $250,000 in grant funding from the PA FFFI to help with workforce development training costs.

Chart 1: NMTC Financing for Island Avenue ShopRite



According to Brown, it would have been impossible to open the Island Avenue store without the help of FFFI. "Abandoned by a national, corporate chain, the Island Avenue store was a dark location when I acquired it. There are many issues that factor into the cost disparity, including employee training, security, store maintenance cost, and real estate taxes. I know that I would not have been able to grow my business without the support of the PA Fresh Food Financing Initiative."

According to a TRF case study, the cost of starting a supermarket is significantly higher in an urban versus suburban area. The cost of training new employees in an urban area is nearly seven times higher than in the suburbs. After startup, security costs are also daunting. The cost to staff security-related positions in urban stores is approximately five times more per year than in suburban stores because of the additional security need. Security equipment, particularly within urban stores, is also expensive.

In addition to providing an underserved community with fresh food, the Island Avenue ShopRite has created 258 quality jobs, most of which are accompanied by attractive employee benefits. These jobs represent an important source of employment in the community, particularly for ex-offenders. The employee training associated with the store provides critical life skills for both local neighbors and ex-offenders.

Building on the success of the Island Avenue store, Brown has since opened three inner-city stores. Together, they boast over 1,000 new associates, sales volumes equivalent to those in middle-income stores and a comparable amount of fresh foods sold. Like Island Avenue, each ShopRite provides a free meeting room to further community development. Says Brown, “Our inner-city stores have developed into so much more than full-service supermarkets. They have become staples within their communities that members respect and protect.”

Maggie Powell, who was Executive Director of the Eastwick Project Area Committee when the store opened, echoes Brown’s description of the community support for the store. “Our community is proud of the store. It is clean, the food is fresh, it employs many local residents and is prepared to be a strong community presence. The store and its owner Jeff Brown have already done so much for this neighborhood. We are glad they are here,” shared Powell.

In 2010, Brown was honored by President and Mrs. Obama with an invitation to attend the State of the Union address.

OPERATOR AS A QALICB:
THE FRESH GROCER AT PROGRESS PLAZA

By The Reinvestment Fund

THE FRESH GROCER AT PROGRESS PLAZA
Philadelphia, PA

SECTORS: Retail

GEOGRAPHY: Urban; Low/Moderate Income Census Tract

WEBSITE: http://www.thefreshgrocer.com/

OWNERSHIP TYPE: For-Profit Business; Large, Regional, Independent Supermarket Operator

PROJECT DESCRIPTION: New Construction; Large Format

YEAR STORE OPENED: 2009

NUMBER OF STAFF: 272

SQUARE FOOTAGE: 46,000

TOTAL REVENUES: $27 million

SOURCES OF CAPITAL: $13.7 million in New Market Tax Credits ($7 million to retail center owners and $6.7 million to supermarket operator), including $1 million in American Recovery and Reinvestment Act of 2009 funds; $1.9 million in loans from the Pennsylvania Fresh Food Financing Initiative for equipment financing; $1 million in grants from Pennsylvania Fresh Food Financing Initiative ($250,000 to retail center owners and $750,000 to supermarket operator); and $1.5 million City of Philadelphia Gap Financing ($500,000 to retail center owners and $1 million to supermarket operator).

OTHER FINANCIAL SERVICES NEEDED: N/A

IMPACT/OUTCOMES: TRF's financing helped preserve the nation's oldest African-American owned-and-operated shopping center. A new supermarket now provides fresh food in a neighborhood that has been lacking access for more than a decade. The flexible features of TRF financing made it affordable to create a larger store with rooftop parking. The use of NMTC's lower debt service also allowed the retail center's long-term tenants to remain at lower rents instead of vacating and re-tenanting at a higher rate. TRF was able to provide the shopping center's operators with a minority retailer development program grant to help with the demolition cost and associate professional fees.

Renovation retained 45 jobs and created 8 new jobs. In total, 272 jobs were added to the retail center; 95% of the employees live within one mile. The 46,000-square-foot retail center adds 6,000 square feet of new office space in addition to 6,000 square feet of retail space for rent.

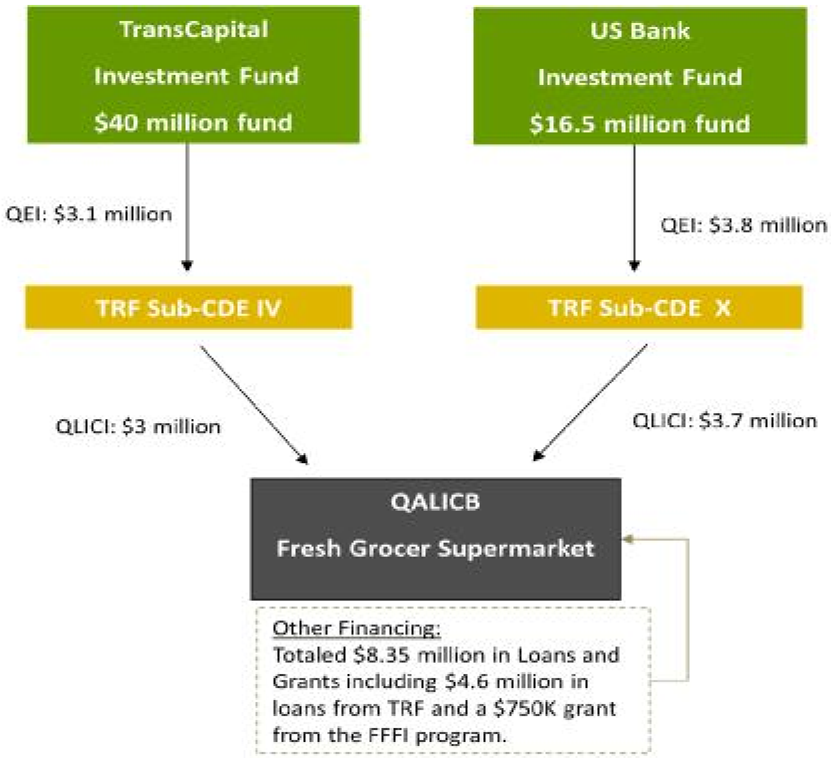
The Fresh Grocer (TFG) is a supermarket chain serving the Greater Philadelphia area. In 2009, TFG opened its 10th store at a retail center known as Progress Plaza. Located in North Philadelphia, Progress Plaza is the nation's oldest African-American owned and operated shopping center. The center was built in 1968 by civil rights leader Reverend Leon Sullivan with support from four thousand community investors, who gave $10 each month for 36 months. Rev. Sullivan was able to use those investments to leverage public and private funding to build Progress Plaza.

In 1999, Progress Plaza's anchor tenant, a supermarket, moved out and the center began to fall into disrepair. The vacancy dominated the center as the owners struggled to find a grocery store operator who understood how to manage a store in an urban market. However, the existing supermarket structure given its age and smaller size, proved to be a limitation for many experienced operators. In 2005, the owners decided to demolish the existing supermarket to create a developable site that would be more attractive to a potential operator. TRF provided the operators with a minority retailer development program grant to help with the demolition cost and associated professional fees. TRF then began working with the owners to secure an experienced supermarket tenant. In 2006, TFG became involved, expressing interest in operating a supermarket at the site. With a supermarket operator now in place, TRF began working with the owners and the operator on development plans and attracting financing for the project.

In 2007, TRF used its Round 4 NMTC allocation to provide the owners with a $10 million NMTC investment, a portion of which later was lent directly to TFG [$3 million]. Further, using a participation from the Positive Social Purpose Investment Program of the General Board of Pension and Health Benefits of the United Methodist Church, TRF also acted as the leveraged lender in this transaction. The $10 million in QLICIs were lent to the QALICB in two A/B note structures, each note having a fixed, interest-only rate. The A notes have market rates and the B notes have below market interest rates of approximately 3.50%. This funding allowed Progress Plaza's owners to begin the second phase of the development which involved renovations to the remaining retail space in the plaza and the addition of office space on the second floor. The owners then began the third phase of development which was the construction of a new supermarket.

In 2009, TRF used its Round 6 NMTC allocation to provide an additional $3.7 million in NMTC investment to the supermarket operator to support the new supermarket development and the construction of parking on the supermarket's rooftop; this investment also had an A/B note structure with fixed interest only rates. In addition to NMTC financing, the supermarket received $1.9 million in equipment financing through its Pennsylvania Fresh Food Financing Initiative. TRF also provided $1 million from its 2009 CDFI Fund Financial Assistance award as part of a leverage loan for the supermarket project. The supermarket opened on December 11, 2009. The chart below illustrates how the NMTC financing was structured.

Chart 1: NMTC Financing for The Fresh Grocer at Progress Plaza



The NMTC financing's lower debt service enabled the retail center's long-term tenants to stay at lower rents instead of vacating their space and re-tenanting. It also allowed the retail center to maintain the amenities the community valued. The NMTC financing also accommodated the higher costs of a slower rehab, reducing the impact on existing tenants. NMTC financing was also critical in helping the supermarket operator overcome the challenge of building a supermarket on a smaller lot. The flexible features of the financing made it more affordable for the developer to create a larger store, with rooftop parking. "Partnering with TRF was key as they provided the financial expertise and management skills necessary to help us formulate a program on how to layer financing to make this work. I wouldn't be here without them" shared Fresh Grocer President, Pat Burns.

Pennsylvania State Representative Dwight Evans and Philadelphia City Councilman Darrell Clarke worked with Plaza owners and the supermarket operator to secure the capital needed for the project. Both Representative Evans and Councilman Clarke have strong ties with the local community and had worked with the Plaza owners in their efforts to secure a supermarket operator. When TFG became interested in operating the supermarket, Representative Evans and Councilman Clarke worked with the store President Pat Burns to obtain the necessary financing to realize the project.

The renovation of the retail center enabled it to retain 45 jobs and create 8 new jobs. The retail center expects to add more jobs as it fills the 6,000 square feet of new office space and 6,000 square feet of retail space available for rent.

The new 46,000 square foot, full-service supermarket brings affordable healthy food choices to the community, as well as 272 jobs. 95% of the supermarket's employees live within a mile of the store.

For the center owners and the store operator, hiring a local workforce was an important step towards helping to bring lasting change to the neighborhood.

"Prior to getting hired by TFG, I was unemployed for more than a year. I found this opportunity through a transitional work program and it has been a true blessing," shared Jasmine Saunders, an employee at the store and a local resident. "The job has helped me develop my skills and provide for my family financially – I went from coffee bar assistant to managing the coffee bar in just six months. Working in an environment that emphasizes fresh, quality foods, has also impacted the way my family eats. We shop here and we have a lot more fruits and vegetables at our table these days."

The supermarket also has several green features including efficient refrigeration systems with 40% reduction in energy consumption over comparable systems and an energy management system that continually monitors power consumption in every device and automatically adjusts systems to minimize energy consumption based on daylight, temperature and shopping traffic.

For Progress Plaza's owners and the local community, the opening of the new supermarket has been key to brining much needed change to the neighborhood. Anita Chapell, one of the original investors in Progress Plaza and Board Secretary of the Progress Plaza Trust explains, "Reverend Sullivan's last words to us were to get the supermarket open. He said that the community needed a supermarket and he was right. The renovation has helped us bring this community a first class supermarket and new job opportunities. The Plaza is once again the center of this community and that fills us all with so much pride and excitement."

Appendix 1: 2009 Allocation Agreement Abstract for "Flexible Products" and "Eligible Areas" This excerpt from TRF's Allocation Agreement is provided to highlight the required features of loans and investments made with NMTC proceeds (QLICIs). Note the list of 11 characteristics of "Flexible Products", and long list of eligibility features.

3.2 Authorized Uses of NMTC Allocation. The Allocatee shall use the proceeds of its NMTC Allocation to make investments or reinvestments only as follows:

(f) If applicable, at such time that the Allocatee has made 100 percent of its QLICIs or September 30, 2012, whichever date is earlier, and until the Allocatee redeems its first Qualified Equity Investment related to its NMTC Allocation, the Allocatee shall fulfill the requirements listed in Schedule 1 of this Allocation Agreement, pertaining to "Flexible Products". The Allocatee shall demonstrate that 100 percent of QLICIs made in the form of loans to or investments in CDEs or QALICBs (as opposed to loan purchases or the provision of Financial Counseling and Other Services) incorporated terms and conditions that, at the time the QLICIs were made, were flexible, non-conventional, or non-conforming with reference to either the Allocatee's underwriting guidelines or standard practice in the marketplace as documented by the Allocatee. Specifically, the Allocatee must have made QLICIs that (a) are equity or equity-equivalent financing, (b) have interest rates that are the designated percent lower than either the prevailing market rates for the particular product or the Allocatee's current offerings for the particular product, or (c) meet the designated number of the following criteria, provided nothing in this Allocation Agreement shall be construed to require the Allocatee to engage in unsafe or unsound underwriting practices:

(i) Debt with equity features (i.e., debt with royalties; debt with warrants; convertible debt);
(ii) Subordinated debt;
(iii) Below market interest rates;
(iv) Lower than standard origination fees;
(v) A longer than standard period of interest only loan payments;
(vi) Higher than standard loan to value ratio;
(vii) A longer than standard amortization period;
(viii) More flexible borrower credit standards;
(ix) Nontraditional forms of collateral;
(x) Lower than standard debt service coverage ratio; or
(xi) Loan loss reserve requirements that are less than standard.

(h) If applicable, at such time that the Allocatee has made 100 percent of its QLICIs or September 30, 2012, whichever date is earlier, and until the Allocatee redeems its first Qualified Equity Investment related to its NMTC Allocation, the Allocatee shall have made at least 75 percent of the total dollar amount of its QLICIs in areas that are (1) characterized by at least one of items (i) – (iii) on the list below for each QLICI, or (2) characterized by at least two of items (iv) – (xviii) on the list below for each QLICI:

(i) Census tracts with poverty rates greater than 30 percent;
(ii) Census tracts that (a) if located within a non-Metropolitan Area, have a median family income that does not exceed 60 percent of statewide median family income; or (b) if located within a Metropolitan Area, have a median family income that does not exceed 60 percent of the greater of statewide median family income or the Metropolitan Area median family income;
(iii) Census tracts with unemployment rates at least 1.5 times the national average;

(iv) Census tracts with one of the following: (a) poverty rates greater than 25%; or (b) if located within a non-Metropolitan Area, median family income that does not exceed 70% of statewide median family income, or, if located within a Metropolitan Area, median family income that does not exceed 70% of the greater of the statewide median family income or the Metropolitan Area median family income; or (c) unemployment rates at least 1.25 times the national average.

(v) Federally designated Empowerment Zones, Enterprise Communities, or Renewal Communities;

(vi) U.S. Small Business Administration (SBA) designated HUB Zones, to the extent that the QLICIs will support businesses that obtain HUB Zone certification from the SBA;

(vii) Brownfield sites as defined under 42 U.S.C. 9601(39);

(viii) Areas encompassed by a HOPE VI redevelopment plan;

(ix) Federally designated as Native American or Alaskan Native areas, Hawaiian Homelands, or redevelopment areas by the appropriate Tribal or other authority;

(x) Areas designated as distressed by the Appalachian Regional Commission or Delta Regional Authority;

(xi) Colonias areas as designated by the U.S. Department of Housing and Urban Development;

(xii) Federally designated medically underserved areas, to the extent that QLICI activities will support health related services;

(xiii) As permitted by IRS and related CDFI Fund guidance materials, projects serving Targeted Populations to the extent that: (a) such projects are located in non-Metropolitan Areas; (b) such projects are at least 60% owned by members of eligible Targeted Populations; (c) at least 60% of the employees are members of eligible Targeted Populations; or (d) at least 60% of the customers are members of eligible Targeted Populations;

(xiv) High Migration Rural County (defined as any county which, during the 20 year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period. See IRC §45D(e)(5));

(xv) State or local tax-increment financing districts, enterprise zone programs, or other similar state/local programs targeted towards particularly economically distressed communities;

(xvi) Census tracts located in non-Metropolitan counties;

(xvii) Counties for which the Federal Emergency Management Agency (FEMA) has (a) issued a "major disaster declaration" since July 15, 2005; and (b) made a determination that such County is eligible for both "individual and public assistance;" provided that the initial project investment was made within 24 months of the disaster declaration; or

(xviii) Businesses certified by the Department of Commerce as eligible for assistance under the Trade Adjustment Assistance for Firms (TAA) Program.

Furthermore, to the extent that the Allocatee makes QLICIs in the form of loans to or investments in CDEs ("Recipient CDEs"), the Allocatee shall require that the Recipient CDE use at least 75 percent of the total dollar amount of the QLICI proceeds to make loans to or investments in QALICBs in areas that are (1) characterized by at least one of items (i) – (iii) on the list above for each loan or investment, or (2) characterized by at least two of items (iv) – (xviii) on the list above for each loan or investment.

Appendix 2: Borrower NMTC Representations, Warranties and Covenants

This is a sample of the contractual language TRF uses with NMTC borrowers to maintain eligibility. This sort of agreement is necessary to enforce eligibility of a transaction post closing, sharing the compliance risk from the investor and CDE onto the borrower (the QALICB).

NMTC PROVISIONS TO BE ADDED TO LOAN AGREEMENTS

AS BORROWER IS ACKNOWLEDGING THAT LENDER IS MAKING THE LOAN TO BORROWER ON THE BASIS THAT THE LOAN WILL QUALIFY AS A "QUALIFIED LOW-INCOME COMMUNITY INVESTMENT" FOR PURPOSES OF GENERATING CERTAIN TAX CREDITS (THE "NEW MARKETS TAX CREDIT" OR "NMTCS") UNDER SECTION 45D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), BORROWER WILL BE REQUIRED TO MAKE CERTAIN REPRESENTATIONS, WARRANTIES AND COVENANTS THAT WOULD GENERALLY NOT BE REQUESTED OR REQUIRED IN A NON-NMTC LENDING SITUATION. TYPICALLY, THESE REPRESENTATIONS, WARRANTIES AND COVENANTS WOULD RESEMBLE THE BELOW REPRESENTATIONS, WARRANTIES AND COVENANTS, THOUGH THE FACTS AND CIRCUMSTANCES REGARDING THE LENDER, BORROWER, BORROWER'S BUSINESS, OR THE INVESTOR MAY WARRANT MODIFICATIONS TO THE BELOW.

THE CAPITALIZED TERMS USED BELOW AND NOT OTHERWISE DEFINED WILL BE DEFINED WITHIN THE LOAN AGREEMENT.

REPRESENTATIONS, WARRANTIES AND COVENANTS. BORROWER HEREBY REPRESENTS, WARRANTS AND COVENANTS TO LENDER AS FOLLOWS:

Borrower operates a single trade or business which is ___________ (the "Business") which currently is and throughout the term of the Loan will be located at __________ (the "Property").

Borrower currently operates and throughout the term of the Loan shall operate the Business such that it shall qualify as a qualified active low-income community business (as defined in Section 45D(d)(2)(A) of the Code and the related Federal Income Tax Regulations, including proposed, interim and temporary regulations (the "Regulations")) (a "QALICB").

The Property is located in census tract number __________ (the "Census Tract"), and the Census Tract is in a low-income community (as defined in Section 45D(e) of the Code and the Regulations) (a "Low-Income Community").

Borrower does not have any employees nor does Borrower expect to have any employees during the term of the Loan.

Fifty percent (50%) or more of the total gross income of Borrower is and shall, for each tax year, continue to be derived from the active conduct of a qualified business (as defined in Section 45D(d)(3) of the Code and the related Regulations) within the Census Tract.

During each taxable year that the Borrower has no employees, eighty-five percent (85%) or more, and in no event less than fifty percent (50%), of the use of the tangible property of the Borrower (whether owned or leased) is and shall continue to be within the Census Tract. This percentage shall be determined in accordance with the rules set forth in Section 1.45D-1(d)(4)(i)(B) of the Regulations, which provides that the percentage shall be determined based on a fraction, the numerator of which is the average value of the tangible property owned or leased by the Borrower and used by the Borrower during the taxable year in the Census Tracts and the denominator of which is the average value of the tangible property owned or leased by the Borrower during the taxable year. For purposes of this percentage, the Regulations provide that Property owned by the Borrower is valued at its cost basis under Section 1012 of the Code and property leased by the entity is valued at a reasonable amount established by Borrower.

Borrower is not and throughout the term of the Loan shall not be a bank, credit union or other financial institution.

Less than five percent (5%) of the average of the aggregate unadjusted bases of the property of Borrower is and shall be, for each tax year throughout the term of the Loan, attributable to (i) works of art, (ii) rugs or antiques, (iii) metals or gems, (iv) stamps or coins, (v) alcoholic beverages, (vi) or any other tangible personal property specified by the Secretary of the United States Department of Treasury as a "collectible" (collectively, "Collectibles") other than collectibles that are held primarily for sale to customers in the ordinary course of business.

Less than five percent (5%) of the average of the aggregate unadjusted bases of the property of Borrower is and shall be, for each tax year throughout the term of the Loan, attributable to debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts (including any interest rate swap, cap or similar agreement), annuities, and other similar property ("Nonqualified Financial Property"); provided, however, that, in accordance with the safe harbor set forth in Regulations Section 1.45D-1(d)(4)(i)(E), Nonqualified Financial Property does not include: (i) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of eighteen (18) months or less, and (ii) debt instruments described in Section 1221(a)(4) of the Code.

Borrower is not currently engaged, and has no expectation that at any point during the term of the Loan it will become engaged, in any trade or business, either as a principal or an ancillary business, that is an excluded business under Section 1.45D-1(d)(5)(iii) of the Regulations, including, without limitation, any one or more of the following: (x) 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 activity of which is the sale of alcoholic beverages for consumption off premises (each item in subsection (x) is a "Tenant Excluded Business"); (y) developing or holding intangibles for sale or license; or (z) farming, as that term is defined in Section 2032A(e)(5)(A) or (B) of the Code (collectively the business activities described in clauses (x), (y) and (z) of this paragraph is an "Excluded Business").

Borrower has no information or knowledge that it does not or, throughout the term of the Loan, will not satisfy the definition of a QALICB.

No tenant, subtenant or occupant of any portion of the Property is engaged in, nor, throughout the term of the Loan, shall Borrower permit any tenant, subtenant or occupant of any portion of the Property to engage in, any Tenant Excluded Business.

No portion of the Property constitutes, and, throughout the term of the Loan, no portion of the Property shall constitute "residential rental property" as such term is defined in Section 168(e)(2)(A) of the Code ("Residential Rental Property").

The amount of reserves, receivables, assets and other items of working capital shown held by Borrower is reasonable based upon Borrower's reasonably anticipated costs of [constructing improvements on the Property] [and/or] [operating the Business].

Borrower reasonably expects to expend the proceeds of the Loan substantially in conformance with the Financial Projections (as defined below), but in all events will expend any amounts borrowed within [twelve (12)] months of the amounts being disbursed pursuant to the Agreement.

Borrower reasonably anticipates that it will generate revenues within three (3) years from the date hereof. [or: The use of the Loan proceeds by Borrower will be in furtherance of Borrower's non-profit mission.]

Borrower has had no correspondence or any communication with, to or from the Community Development Financial Institutions Fund, an agency of the United States Department of the Treasury (the "CDFI Fund"), concerning non-compliance with, or deficiencies in, reporting practices.

The officers of Borrower have determined that no officer, director, principal, employee or owner of Borrower is on the list of Specially Designated Nationals and Blocked Persons promulgated by the United States Department of the Treasury and located on the internet at http://www.treas.gov/offices/eotffc; http://www.treas.gov/ofac/t11sdn.pdf.

The assumptions underlying the financial projections prepared by _______, dated on or about the date hereof (the "Financial Projections"), in connection with the Loan are reasonable in all material respects and, to the best knowledge of Borrower, are accurate and complete in all material respects based on all of the facts and circumstances known to Borrower.

ADDITIONAL COVENANTS. BORROWER HEREBY COVENANTS AND AGREES WITH LENDER THAT, SO LONG AS THE AGREEMENT REMAINS IN EFFECT:

Borrower shall provide, at no cost to Lender, such reporting information as any Lender may reasonably require to comply with New Markets Tax Credit Program. Borrower shall provide Lender with such information as it or its Affiliates has in its possession and provide Lender with access to the Property and to tenants of the Property and subject to the terms of any lease and any sublease(s), assist Lender in obtaining information needed to maintain compliance with the New Markets Tax Credit Program requirements and in addition will provide any information required to be provided to the CDFI Fund. Such assistance shall include providing reasonable estimates to Lender where necessary or otherwise assisting Lender in obtaining such information. In furtherance of this requirement, Borrower shall provide Lender with all information requested by Lender (a) to complete any reporting to its members in connection with the NMTCs generated in connection with the Loan, and (b) in connection with Lender's NMTC reports and audits, including those made by the CDFI Fund's Community Investment Impact System.

Note that typically such information to be provided would include, without limitation, certain job data, such as minority, woman or low income person-owned or controlled businesses at the Property; minority, woman or low income persons employed by businesses at the Property; an estimate of the number of full-time equivalent jobs and the projected full-time equivalent jobs to be created or retained.

This information is typically required by Lender in order to assist Lender with its general obligations to the CDFI Fund, as well as to establish compliance with certain representations Lender made to the CDFI Fund in its NMTC application.

Borrower shall not move or expand existing operations to any location other than at the Property or develop, construct or improve any real property at any location other than at the Property without the prior written consent of Lender.

Borrower shall not use or convert the Property (or any portion thereof) into Residential Rental Property.

Borrower will not be a bank, credit union or other financial institution.

Borrower shall not purchase, acquire or allow the build-up of Nonqualified Financial Property to the extent such purchase, acquisition or build-up would cause the aggregate basis of Borrower's Nonqualified Financial Property to be five percent (5%) or more of the aggregate unadjusted bases of all property of Borrower nor shall Borrower dispose of any asset if the disposition would cause the aggregate basis of Borrower's Nonqualified Financial Property to be five percent (5%) or more of the aggregate unadjusted bases of all property of Borrower.

Borrower shall not lease any portion of the Property to any tenant, subtenant or occupant engaged in any Tenant Excluded Business nor shall Borrower permit any tenant, subtenant or occupant to engage in any Tenant Excluded Business.

Borrower shall not acquire any Collectibles to the extent that, after such acquisition, the aggregate bases of Collectibles owned by Borrower would equal or exceed five percent (5%) of the aggregate unadjusted bases of all property of Borrower nor shall Borrower dispose of any asset if the disposition would cause the aggregate basis of Collectibles owned by Borrower to equal or exceed five percent (5%) of the aggregate unadjusted bases of all property of Borrower.

Borrower shall not conduct any Excluded Business.

Borrower shall be a QALICB and shall take all actions necessary to maintain such status required by Section 45D of the Code and the related Regulations.

Borrower shall take all actions necessary to maintain the status of the Loan as a qualified low-income community investment (as such term is defined in Section 45D(d)(1) of the Code and the related Regulations) ("QLICI") including not making any unscheduled prepayment of the Loan, not specifically permitted in the Agreement.

Borrower shall comply with Lender's request in connection with the duties and obligations of Borrower under Section 45D of the Code to prevent a recapture of NMTCs.

Borrower shall not take any action which would cause (i) Borrower to cease to be a QALICB pursuant to Section 45D of the Code and the related Regulations, (ii) the Loan to cease to qualify as a QLICI pursuant to Section 45D of the Code and the related Regulations, and (iii) prepayment of the Loan other than as permitted under the Loan Documents, or (iv) a recapture of the NMTCs generated in connection with the Loan.

Borrower shall not take or fail to take any action which would cause Lender to be in default under any agreement between the Lender and the CDFI Fund, if the Lender first informs Borrower that such action would cause such default, unless failure by Borrower to take such action would cause Borrower to be in default under any documents and would also adversely affect the economic terms and conditions of the Loan for Borrower or any of Borrower's obligations hereunder in any material manner.

Borrower shall do all things necessary to observe organizational formalities and preserve its separate legal existence, and Borrower shall not amend, modify or otherwise change its articles of organization, operating agreement or other organizational documents, as the case may be, without the written consent of Lender.

No portion of the Property shall constitute a "qualified low-income building" under Section 42 of the Code.

Borrower shall provide to Lender such information and sign such documents as are necessary for Lender and their members to make timely, accurate and complete submissions of (i) federal and state income tax returns, and (ii) reports to governmental agencies.

Borrower shall not permit a change in control or ownership of interests in Borrower which would result in Lender having NMTC Control (as such term is defined in Regulations Section 1.45D-1(d)(6)(ii)(B), as amended, restated, or modified from time to time) of Borrower.

Borrower shall not discontinue conducting the Business, shall not relocate, expand or materially change the nature of its business, and shall not materially change the manner in which its business activities are conducted, other than changes in the nature of its business or the manner in which it conducts its business that do not cause such business to cease to be a Qualified Business (as defined in Section 45D(d)(3) of the Code and the related Regulations) of Borrower or to cease to continue as a QALICB (as determined by each Lender in its good faith judgment and based upon the advice of counsel) and which are otherwise permitted hereunder.

Borrower shall utilize all proceeds of the Loan within [twelve (12) months] of the date hereof.

[In the event the "portions of a business rule" is applied to qualify the Business as the QALICB, as opposed to the Borrower, there would be additional requirements, including, for example, the obligation for Borrower to maintain a complete and separate set of books and records for its ownership and operation of the Business, which books and records shall be separately maintained on a real-time basis (i.e., in a manner and on a frequency consistent with Borrower's ordinary course of business). Such books and records shall include, without limitation, books of original entry, ledger accounts (both general and subsidiary), and financial statements (including balance sheets, income statements, statements of cash flow, and trial balances). For this purpose, the books of original entry shall include cash receipts and disbursements journal where each receipt and each disbursement is recorded, in the case the cash receipts and disbursements method of accounting is employed, or a journal to record sales (accounts receivable) and journal to record expenses incurred (accounts payable), in the case the accrual method of accounting is employed; and the ledger accounts shall chronicle the impact during an accounting period of the specific transactions recorded in the journal for that period upon the various items shown on the balance sheet of Borrower (i.e., assets, liabilities, and any equity or capital accounts) and income statement (i.e., revenues and expenses). Borrower shall produce unaudited financial statements for the Business each fiscal quarter on or before the ________ day following the close of each such fiscal quarter and upon request for each fiscal year, which request can be no earlier than _________ days following the close of each such fiscal year, which statements must be delivered within _______ days of such request. In addition, at the written request of Lender from time to time, Borrower shall provide to Lender, within _____ days after receipt of such request, copies of the separate books and records required to be maintained with respect to the Business, which shall be certified as complete and accurate by a financial officer of the Borrower. Borrower shall hold title to all of its assets in connection with the Business solely in its own name, and shall not commingle the assets of the Business with any Person. Borrower's assets in connection with the Business shall not be listed as assets on the books and records of any other Person, except to the extent that such assets are consolidated with another Person's assets for financial reporting purposes, which shall not relieve Borrower of its obligation to maintain a complete and separate set of books and records for the Project Business. Borrower shall not possess or use assets of any other Person, and Borrower shall not permit any other Person to possess or use its assets, unless in either case such assets are rented, leased, or otherwise provided for use on an arms-length basis pursuant to a lease or services agreement or similar agreement with such Person. Borrower shall use all of the proceeds of the Loan in the Business, and Borrower's books and records shall be maintained in such a manner that such Loan proceeds can be traced to the Business. "<u>Person</u>" means any individual, general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so permits.]

[Additional "portions of business" covenants, potentially, could include:

Business shall allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate.

Business shall maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain Business' assets as separate from the assets of another Person and shall maintain its bank accounts separate from those of any other Person.

Borrower shall operate and maintain Business in such a manner that it would qualify as a QALICB in the event the Business was separately incorporated.

On ______ and ______ of each year, or upon request, Borrower will certify in writing to Lender that it is and for every day since entering into the Agreement it has continued to be in compliance with the provisions hereof, including in such certification the current percentages or ratios under the above paragraphs that are applicable to Borrower at such time.

1. "The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against Federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). Substantially all of the qualified equity investment must in turn be used by the CDE to provide investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period." [CDFI Fund: http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5]
2. Massachusetts Bar Association: A Primer on the New Markets Tax Credit By Thomas G. Collins http://www.massbar.org/publications/section-review/2007/v9-n3/a-primer-on-the-new-markets-tax-credit
3. Introduction to New Markets Tax Credits, Novogradac & Company LLP
4. www.crfusa.com

5. CDFI Fund NMTC Q&A Document: Low-Income Communities and Targeted Populations,http://www.cdfifund.gov/docs/nmtc/Targeted%20Population%20QA.pdf