

## INDEMNIFICATION AGREEMENT (QALICB)

**THIS INDEMNIFICATION AGREEMENT** (this “**Agreement**”) is entered into as of [\_\_\_\_\_, 2017], by and among (i) **MESQUITE QALICB, INC.**, a Nevada non-profit corporation (“**Project Borrower**”), (ii) **LAS VEGAS - CLARK COUNTY LIBRARY DISTRICT FOUNDATION, INC.**, a Nevada non-profit corporation (“**Leverage Lender**”; together with Project Borrower being collectively referred to herein as the “**Indemnitors**”), and (iii) **JPMORGAN CHASE BANK, N.A.**, a national banking association (“**JPMC**”).

### Recitals

A. JPMC is the sole member of Chase Community Equity, LLC, a Delaware limited liability company (“**CCE**”). CCE is the sole member in Chase NMTC Mesquite Library Investment Fund, LLC, a Delaware limited liability company (the “**Fund**”), as more particularly described in that certain Operating Agreement of the Fund, dated of even date herewith (as the same may be further amended, the “**Fund Agreement**”). On or about the date hereof Leverage Lender is making a loan in an amount equal to \$6,646,000 to the Fund (the “**Leverage Loan**”). In accordance with the Fund Agreement, CCE (with the proceeds of an equity investment from JPMC) will make a \$3,354,000 equity investment in the Fund and the Fund will use such funds, together with the proceeds of the Leverage Loan, to make a “qualified equity investment” (as such term is used in Section 45D of the Internal Revenue Code of 1986, as amended (the “**Code**”), and referred to herein as the “**QEI**”) in the amount of \$10,000,000 in Clearinghouse NMTC (Sub 52), LLC, a California limited liability company (the “**CDE**”).

B. In accordance with that certain Amended and Restated Operating Agreement of the CDE dated on or about the date hereof (as the same may be amended, the “**CDE Agreement**”), the CDE will use substantially all of the funds provided by the QEI to make certain loans to the Project Borrower in the aggregate amount of \$9,800,000 (collectively, the “**Project Loan**”), each of which is intended to constitute a “qualified low-income community investment”, as such term is used in Section 45D of the Code (referred to herein as a “**QLICI**”).

C. The Project Loan to be made by the CDE will finance the construction of a 13,313 square foot library branch building and rehabilitation of a 5,464 square foot existing structure that will provide related community services including literacy improvement and workforce training (the “**Project**”), located on that certain property in Mesquite, Nevada and more fully described in the loan documents that evidence and secure the Project Loan.

D. By reason of (i) CCE’s investment in the Fund with the proceeds of equity invested by JPMC, (ii) the Fund’s use of the proceeds of that investment to make the QEI in the CDE in the aggregate amount of \$10,000,000 (the “**Designated QEI Amount**”), and (iii) the CDE’s use of substantially all of the QEI to make the Project Loan, JPMC, as the sole member of CCE, will be entitled to claim New Markets Tax Credits under Section 45D of the Code (“**Tax Credits**”) in an aggregate amount equal to \$3,900,000 (i.e., 39% of \$10,000,000) beginning on the date the QEI was made to the CDE (the “**Credit Allowance Date**”).

E. CCE is making its investment with the proceeds of equity invested by JPMC based on the assumption that JPMC will obtain Tax Credits in the amount set forth above, and as more

specifically set forth in the NMTC Assumption (defined below), based in part on the representations, warranties and covenants of the Project Borrower in connection with the receipt of the Project Loan. As a condition to JPMC making its investment in CCE, CCE making its investment in the Fund, and the Fund making its QEI in the CDE, and therefore as a condition to the CDE making the Project Loan, the Project Borrower and Leverage Lender have been required to enter into this Agreement to provide assurances with respect to the qualification of the Project Loan as a QLICB and the qualification of the Project Borrower as a “qualified active low-income community business”, as such term is used in Section 45D of the Code (referred to herein as a “**QALICB**”). Leverage Lender is an affiliate of Project Borrower, Leverage Lender and Project Borrower share a common charitable purpose and each entity will benefit from the CDE making the Project Loan to Project Borrower.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitors and JPMC hereby agree as follows:

1. Tax Assumptions. Indemnitors acknowledge that, by virtue of the equity investment made by the Fund in the CDE that is intended to constitute a QEI, and assuming no recapture or disallowance of the Tax Credits occurs, JPMC (through its ownership of CCE) expects to claim or be entitled to claim Tax Credits in an amount equal to (i) 5% of the QEI on the Credit Allowance Date and on each of the next two anniversary dates of the Credit Allowance Date, and (ii) 6% of the QEI on each of the next four anniversary dates of the Credit Allowance Date (the “**NMTC Assumption**”), in an aggregate amount over such period of \$3,900,000.

2. Indemnification for Certain Recapture Events. Subject to the provisions of this Section, in the event any Specified NMTC Recapture Event shall occur, the Indemnitors, jointly and severally, shall be obligated to pay the NMTC Recapture Amount to JPMC within twenty (20) calendar days of receipt of Notice (as defined below) provided by JPMC of such Specified NMTC Recapture Event. For purposes of this Agreement:

“**After-Tax Basis**” means, with respect to any payment to be received by JPMC, the amount of such payment supplemented by a further payment or payments so that, after deducting from the aggregate amount of such payments the amount of all income taxes imposed on JPMC by any governmental authority or other taxing authority with respect to all such payments, the balance of such payments shall be equal to the original payment to be received.

“**Financial Projections**” means the tax benefit and financial projections dated [\_\_\_\_\_, 2017] relating to the investment and loan transactions described in the Recitals to this Agreement, as prepared by Novogradac & Company LLP.

“**NMTC Recapture Amount**” shall mean the sum of (i) the “credit recapture amount,” as defined in Section 45D(g)(2) of the Code, with respect to Tax Credits that have been claimed at the time of the Specified NMTC Recapture Event, plus (ii) an amount equal to the present value, calculated using a *per annum* discount rate equal to the Target Rate of Return, of the Tax Credits attributable to the Designated QEI Amount that would have been allowed to JPMC for any Tax Credits not yet claimed at the time of the Specified NMTC Recapture Event, plus (iii) any other interest or penalties assessed by the

Internal Revenue Service (the “**IRS**”) or any other governmental authority in connection therewith, plus (iv) such additional positive amount (if any) as shall be required to cause JPMC to have received, on an After-Tax Basis, the same “Internal Rate of Return” (as calculated in the manner provided in the Financial Projections) from the payments made pursuant to this Agreement as JPMC would have received on account of its ownership of CCE if the Tax Credits had not been so recaptured or disallowed (i.e., equal to the Target Rate of Return), taking into account the effect of the recapture, loss, or disallowance of Tax Credits and the receipt of the cash payments provided for herein, but otherwise based on the same assumptions in regard to profits, losses, and other tax and financial benefits as set forth in the Financial Projections, and utilizing the same methodology as used in the Financial Projections, including, without limitation, with respect to JPMC’s marginal federal and state income tax rates and with respect to the timing of Tax Credit recognition.

“**Project Loan Agreement**” shall mean that certain Loan Agreement dated on or about the date hereof made by and between the CDE and Project Borrower.

“**Specified NMTC Recapture Event**” means a recapture or disallowance of any Tax Credits attributable to the QEI made by the Fund in the CDE as a result of:

(a) the failure of the Project Borrower to satisfy the requirements for being and continuing to be a “qualified active low-income community business” under Section 45D(d)(2) of the Code and Treasury Regulation Section 1.45D-1(d)(4);

(b) the failure of the Project Loan to constitute a “qualified low-income community investment” (in whole or in part) under Section 45D(d)(1) of the Code and Treasury Regulation Section 1.45D-1, including, without limitation, by reason of any tenant, sub-tenant or other occupant of the Project failing to be a “qualified business”, as such term is defined in Section 45D(d)(3) of the Code and Treasury Regulation Section 1.45D-1(d)(5);

(c) the occurrence of an Event of Default (as such term is defined in the Project Loan Agreement) including, without limitation an Event of Default resulting from the unauthorized voluntary prepayment of the Project Loan caused by the Borrower or any other violation by the Project Borrower of any representations, warranties or covenants therein; or

(d) fraud, gross negligence, or willful misconduct of the Project Borrower or any of the Indemnitor(s); or

(e) any other recapture or disallowance of any Tax Credits attributable to the QEI made by the Fund in the CDE, provided, however, a Specified NMTC Recapture Event shall not include a recapture or disallowance of any Tax Credits attributable to the QEIs made by the Fund in the CDE solely on account of (i) the CDE ceasing to be a “qualified community development entity”, as defined in Section 45D of the Code; (ii) the failure by the CDE to disburse any of the Project Loan within twelve (12) months of the date that the Fund’s contribution was paid to such CDE, unless such failure is caused by the Project Borrower; (iii) the failure, at any time, of the original principal amount of the

applicable Project Loan to exceed eighty-five percent (85%) of the aggregate cost basis of the CDE in all of its assets; (iv) the redemption by the Fund (within the meaning of 26 C.F.R. 1.45D-1(e)(2)(iii)) of any portion of its contributions to the CDE, provided that such redemption shall not have occurred in connection with an Event of Default (as such term is defined in the Project Loan Agreement); (v) changes in the Code, the regulations promulgated thereunder, or other law, which changes cause the Fund to receive less than the amount of Tax Credits it would have otherwise been eligible to receive (except to the extent that the adverse effects thereof could reasonably have been mitigated by the Project Borrower); (vi) the transfer or assignment of the Project Loan by the CDE, the transfer or assignment by the Fund of any interest in the CDE or changes in the tax status of the CDE, the Fund, CCE or JPMC; (vii) any portion of the Tax Credits expected to be allowed with respect to the Fund's contributions to the CDE being claimable by a member of the CDE other than the Fund; or (viii) the failure by the CDE to reinvest casualty insurance proceeds or condemnation awards actually paid to the CDE.

**“Target Rate of Return”** means a projected, after-tax internal rate of return to JPMC on account of its investment in CCE and CCE's investment in the Fund (and the Fund's QEI in the CDE) equal to [\_\_\_\_\_] % per annum, taking into account the dates and amounts of such investments, all cash distributions, Tax Credits and other tax and financial benefits, and any offsetting tax detriments, as set forth in the Financial Projections, and utilizing the methodology contained in such Financial Projections.

3. Additional Payments. In addition to the foregoing, the Indemnitors shall also be obligated, jointly and severally, to pay: (a) all legal, accounting, and other fees and costs incurred by JPMC, CCE and/or the Fund in connection with any tax audit, litigation or other proceedings challenging JPMC's, CCE's or the Fund's entitlement to the Tax Credits as a result of an actual or alleged Specified NMTC Recapture Event; and (b) interest on the NMTC Recapture Amount unpaid from time to time, if any, at the rate of two percent (2%) over the long-term applicable federal rate (as prescribed under Section 1274(d) of the Code) at the end of the calendar month preceding the date on which the Specified NMTC Recapture Event occurs, which shall accrue from and after the date on which the NMTC Recapture Amount is required to be paid by Indemnitors to JPMC until paid in full.

4. Limitation on Liability. Notwithstanding the preceding sections hereof, Indemnitors' liability for a Specified NMTC Recapture Event under paragraph (e) of the definition of Specified NMTC Recapture Event in Section 2 of this Agreement shall not exceed an amount equal to \$3,154,000, unless the Specified NMTC Recapture Event is the result of fraud, gross negligence, or willful misconduct on the part of the Indemnitors (or any of them) or any Affiliate thereof, in which event no such limitation shall apply. In the event that any amounts owed under Section 2 are paid when due, Indemnitors shall have no liability to JPMC after the date of such payment for any interest or penalties assessed by the IRS or any other Governmental Authority (as such term is defined in the Project Loan Agreement) with respect to such amounts on account of any delay by Investor, Fund or any Affiliate of any of the foregoing in advancing Indemnitors' payment to the IRS or other applicable Governmental Authority. Notwithstanding Section 2 hereof, Indemnitors shall have no liability to JPMC with respect to a Specified NMTC Recapture

Event in the event that such Specified NMTC Recapture Event occurred solely from fraud, material misrepresentation, gross negligence, or willful misconduct of Investor or Fund.

5. Computations. All computations required under Sections 2 and 3 hereof shall be made by the accountants selected and approved by JPMC with the consent of the Indemnitors, such consent not to be unreasonably delayed, conditioned, or withheld, and the results of such computations, together with a statement describing in reasonable detail the manner in which such computations were made, shall be delivered to the Indemnitors in writing.

6. General.

a. In the event of any adjustments or claims for indemnity hereunder, each party shall be entitled to review such documents and shall be provided with such information by the other as shall be reasonably required in order that it may reasonably satisfy itself as to the requested amount of such indemnification; provided, however, that neither JPMC nor any of its Affiliates shall be obligated to make available any confidential information relating to its federal or state income tax returns or any issues relating thereto nor any computer program employed to calculate any such amount.

b. In the event of any action at law or in equity to enforce the provisions of this Agreement or to secure relief or damages for the breach of this Agreement, the prevailing party shall be entitled to its costs (including attorneys' fees) incurred in such proceedings.

c. All payments made hereunder shall be made in U.S. dollars in immediately available funds (unless the paying party is otherwise instructed by the recipient of such payment) to the account of the recipient.

d. This Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and permissible assigns whether or not an express assignment to any such holder of rights under this Agreement has been made. The term "JPMC" shall include any subsequent holder of the interests of JPMC as the member of CCE, the term "CCE" shall include any subsequent holder of the interests of CCE as investor member in the Fund, and the term "Fund" shall include any subsequent holder of the interests of the Fund as investor member in the CDE. Except to the extent notice by JPMC, CCE or the Fund of the assignment of such interests is required pursuant to the documents governing the Leverage Loan, each of JPMC, CCE, and the Fund may assign such interests, in whole or in part, without notice and without affecting any liability or obligation of the Indemnitors under this Agreement. Each of JPMC, CCE, and the Fund may make available to any assignee all credit and financial data with respect to any Indemnitor as may be lawfully in the possession of JPMC, CCE, or the Fund. Notwithstanding anything to the contrary, this Agreement shall not inure to the benefit of any purchaser of CCE's interest as sole member of the Fund pursuant to that certain Put/Call Option Agreement of even date herewith made by and between CCE and The Las Vegas - Clark County Library District, a political subdivision of the State of Nevada (the "**Option Agreement**"), and JPMC shall retain all of its rights under this Agreement subsequent to any such purchase.

e. Except to the extent the Leverage Lender is entitled to notice or consent to modifications of the CDE Agreement and the Fund Agreement, the Indemnitors hereby waive notice of the acceptance of this Agreement and of the extension or modification of the CDE Agreement, the Fund Agreement, or any part thereof. The Indemnitors further waive presentment, protest, notice, demand or action on delinquency in respect of this Agreement, except as specifically stated herein, the CDE Agreement, or the Fund Agreement or any part thereof, including any right to require JPMC or any of its Affiliates to sue the CDE, the Fund, or any other person obligated with respect to the NMTC Assumption, the Fund Agreement or the CDE Agreement, or any part thereof, or otherwise to enforce payment thereof against any collateral securing the Project Borrower's obligations or to collect against any other person who may be liable on account of any Specified NMTC Recapture Event.

f. This Agreement shall be interpreted and enforced according to the laws of the State of Nevada without regard to principles of conflicts of laws, and to the extent relevant in applying the provisions of Section 45D of the Code, the Code and the Treasury Regulations thereunder.

g. No amendment or modification of this Agreement, and no approvals, consents or waivers hereunder, shall be valid or binding unless in writing and executed by the party to be bound.

h. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes in their entirety any and all written or oral agreements previously existing between the parties with respect to such subject matter.

i. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

j. The Indemnitors hereby agree that this Agreement, the indemnified amounts as described in Sections 2 and 3 hereof, and all other obligations indemnified hereby, shall remain in full force and effect at all times hereafter until paid and/or performed in full notwithstanding any action or undertakings by or against the Project Borrower or any other Indemnitor 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 JPMC pursuant to any Chapter of the Bankruptcy Code or the Rules of Bankruptcy Procedure as same may be applicable from time to time.

k. Indemnitors covenant, represent and warrant to and for the benefit of JPMC as follows:

(i) the execution, delivery and performance by it of this Agreement does 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;

(ii) Indemnitors have all necessary power and authority to enter into and perform this Agreement, and there are no facts or circumstances of which any Indemnitor

is aware that could in any way impair or prevent it from performing its obligations under this Agreement;

(iii) any and all financial information with respect to Indemnitors given by Indemnitors to CCE or JPMC fairly and accurately present Indemnitors' financial condition and results of its operations as of the respective dates thereof and for the respective dates indicated therein, and, since the respective dates thereof, there has been no material adverse change in the Indemnitors' financial condition or the results of its operations; and

(iv) with the assistance of counsel of its choice, Indemnitors have read and reviewed this Agreement and such other documents as it and its counsel deemed necessary or desirable to read.

l. The Indemnitors further covenant and agree:

(i) to provide, within 120 days of the end of each calendar year, copies of audited financial statements regarding the previous calendar year for each Indemnitor, including a balance sheet, a statement of operations, and a statement of cash flows; and

(ii) to promptly notify JPMC of any change in their financial condition that adversely and materially affects their ability to perform hereunder.

m. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "**Notice**") required or permitted hereunder shall be in writing and shall be validly given if (i) sent by a nationally-recognized courier that obtains receipts, (ii) delivered personally by a courier that obtains receipts, (iii) mailed by United States certified mail (with return receipt requested and postage prepaid), or (iv) sent by facsimile (with a copy thereof sent via one of the methods of delivery set forth in clauses (i), (ii) or (iii) hereof), addressed to the applicable person at the address set forth on Schedule A to this Agreement. Each Notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no Notice was given shall be deemed receipt. Any party may periodically change its address for Notice (including different or additional addresses for copies) by giving the other party at least ten (10) days' prior notice in accordance with the foregoing provisions.

n. The liability of the Indemnitors under this Agreement shall be joint and several and shall be an absolute, direct, immediate and unconditional indemnity of payment and not of collectability. The obligations of each Indemnitor hereunder is independent of the obligations of any other Indemnitor, any Affiliates or any other party which may be initially or otherwise responsible for performance or payment of the obligations hereunder guaranteed, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against any one or more Indemnitors, whether or not any other Indemnitor or Affiliate thereof is joined therein or a separate action or actions are brought against any other Indemnitor or Affiliate. "**Affiliate**" means (x) with respect to a corporation, (i) any officer or director thereof and any Person which is, directly or indirectly, the beneficial owner of more than 10% of any class of

shares or other equity security or (ii) any Person or Persons (individually or in the aggregate) which, directly or indirectly, controls or are controlled by or is under common control with such corporation and (y) with respect to a partnership, venture or limited liability company, any (i) general partner or member, (ii) general partner or member of a general partner or member, (iii) partnership, venture or limited liability company with a common general partner or member, or (iv) coventurer thereof, and if any general partner, member or coventurer is a corporation, any Person which is an Affiliate of such corporation. **“Controls”** (which includes the correlative meanings of “controlled by” and “under common control with”) means effective power, directly or indirectly, to direct or cause the direction of the management and policies of such Person. **“Person”** means any individual, partnership, joint venture, limited liability company, corporation, trust or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

o. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY ANY INDEMNITOR OR JPMC, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR ANY ACTS OR OMISSIONS OF ANY INDEMNITOR OR JPMC IN CONNECTION THEREWITH.

p. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties, notwithstanding that all parties have not signed the original or the same counterpart. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

*[Balance of page is intentionally blank]*



IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by its duly authorized officer as of the date first written above.

**PROJECT BORROWER:**

**MESQUITE QALICB, INC.,**  
a Nevada non-profit corporation

By: \_\_\_\_\_  
Fred James  
President

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by its duly authorized officer as of the date first written above.

**LEVERAGE LENDER:**

**LAS VEGAS - CLARK COUNTY LIBRARY  
DISTRICT FOUNDATION, INC.,**  
a Nevada non-profit corporation

By: \_\_\_\_\_  
Edward Kojane  
President

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by its duly authorized officer as of the date first written above.

**JPMC:**

**JPMORGAN CHASE BANK, N.A.,**  
a national banking association

By: \_\_\_\_\_  
Emily Feder  
Authorized Officer

## **SCHEDULE A**

### **Notice Addresses of Parties**

If to Project Borrower:

Mesquite QALICB, Inc.  
7060 W. Windmill Lane  
Las Vegas, NV 89113  
Attention: Fred James  
Facsimile: (702) 507-6168  
Email: jamesf@lvccld.org

With a copy to:

Kutak Rock LLP  
1801 California Street, Suite 3000  
Denver, CO 80202-2626  
Attention: Barry Burns  
Facsimile: (303) 292-7799  
Email: Barry.Burns@KutakRock.com

If to Leverage Lender:

Las Vegas - Clark County Library District Foundation, Inc.  
7060 W. Windmill Lane  
Las Vegas, NV 89113  
Attention: Edward Kojane  
cc: Danielle Milam  
Facsimile: (702) 507-6171  
Email: Edward.kojane@ey.com  
milamd@lvccld.org

With a copy to:

Kutak Rock LLP  
1801 California Street, Suite 3000  
Denver, CO 80202-2626  
Attention: Barry Burns  
Facsimile: (303) 292-7799  
Email: Barry.Burns@KutakRock.com

If to Sponsor:

Las Vegas - Clark County Library District  
7060 W. Windmill Lane  
Las Vegas, NV 89113  
Attention: Fred James  
Facsimile: (702) 507-6171  
Email: jamesf@lvccld.org

With a copy to:

Kutak Rock LLP  
1801 California Street, Suite 3000  
Denver, CO 80202-2626  
Attention: Barry Burns  
Facsimile: (303) 292-7799

SCHEDULE A

Email: Barry.Burns@KutakRock.com

If to JPMC:

JPMorgan Chase Bank, N.A.  
10 S. Dearborn, 19th Floor  
Mail Code: IL1-0953  
Chicago, IL 60603-5506  
Attention: NMTC Asset Manager  
Facsimile: (312) 325-5050  
Email: nmtc.reporting@chase.com

With a copy to:

JPMorgan Chase Bank, N.A.  
300 South Grand Ave.  
4<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attention: Emily Feder  
Facsimile: (213) 621-8401  
Email: emily.j.feder@chase.com

With a copy to:

Dentons US LLP  
233 South Wacker Drive, Suite 5900  
Chicago, IL 60606  
Attention: Jonathan M. Kaden  
Facsimile: (312) 876-7934  
Email: jonathan.kaden@dentons.com

#### SCHEDULE A