

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, APPROVING THE UNWINDING OF A NEW MARKET TAX CREDIT TRANSACTION BY AUTHORIZING THE CITY MANAGER TO (1) EXECUTE A MEMBER INTEREST PURCHASE AGREEMENT; (2) EXECUTE A CONFIRMATION AND REAFFIRMATION OF QALICB GUARANTY; (3) DISSOLVE FBB INVESTMENT FUND, LLC; AND (4) DISTRIBUTE THE ASSETS OF THE FBB INVESTMENT FUND TO THE FRESNO JOINT POWERS FINANCING AGENCY IN EXCHANGE FOR CANCELLATION OF THE LOAN MADE BY THE FRESNO JOINT POWERS FINANCING AGENCY TO THE INVESTMENT FUND.

WHEREAS, The FBB Investment Fund, LLC (the Investment Fund) is a company created to raise funds through loans and equity contributions to enable the Investment Fund to participate in a New Market Tax Credit transaction, with U.S. Bank Community Development Corporation, a Minnesota corporation (the USBCDC) as its sole member; and

WHEREAS, as part of the New Market Tax Credit transaction, the City of Fresno granted USBCDC the option to sell USBCDC's interest in the Investment Fund to the City for \$1,000 upon the expiration of the seven year New Market Tax Credit compliance period (the Put Option); and

WHEREAS, the City also provided a guaranty to the Investment Fund in the event of non-compliance by the City of Fresno Cultural Arts Properties Corporation, a California nonprofit public benefit corporation (the COFCAP) with the New Market Tax Credit rules during the New Market Tax Credit Compliance period; and

Date Adopted:  
Date Approved:  
Effective Date:  
City Attorney Approval: \_\_\_\_\_

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WHEREAS, the Investment Fund borrowed from the Fresno Joint Powers Financing Authority Fund a loan in the approximate amount of \$12,690,500 (the JPFA Loan); and

WHEREAS, in addition to the JPFA Loan, the Investment Fund obtained an equity investment in the approximate amount of \$4,309,500 (the USB Equity Investment) from U.S. Bank Community Development Corporation, a Minnesota corporation (the USBCDC) in exchange for a 100% interest in the Investment Fund; and

WHEREAS, USBCDC subsequently assigned its interest to USB NMTC FUND 2011-1, LLC (USB NMTC) making UBS NMTC the current single member of the Investment Fund; and

WHEREAS, the Investment Fund used the proceeds from the JPFA Loan and the USB Equity Investment to make an equity contribution in the Clearinghouse NMTC (Sub 18), LLC, a community development entity created to facilitate the investment in low-income communities through the use of New Market Tax Credits (the CDE); and

WHEREAS, the CDE utilized the Investment Fund investment in the CDE to make a loan to COFCAP in the approximate amount of \$16,660,000 (the CDE Loan); and

WHEREAS, COFCAP used the CDE Loan to purchase the property commonly known as the Fresno Bee Building, from the City of Fresno, a municipal corporation (collectively, the Property) and promised to use the Property in accordance with the New Market Tax Credit rules during a seven year compliance period; and

WHEREAS, the CDE Loan is evidenced by two promissory notes executed by COFCAP in favor of the CDE, which are secured by a deed of trust recorded against the Property; and

WHEREAS, the New Market Tax Credit compliance period will expire on March 30, 2017, and the parties now wish to unwind the transaction; and

WHEREAS, As part of the unwind process, the CDE intends to redeem the Investment Fund's interest in the CDE by assigning to the Investment Fund the COFCAP promissory notes and the COFCAP deed of trust; and

WHEREAS, USB NMTC intends to exercise the Put Option and require the City to purchase USB NTMC's interest in the Investment Fund pursuant to the Member Interest Purchase Agreement; and

WHEREAS, the City, as sole member of the Investment Fund, will repay the JPFA Loan by assigning the COFCAP promissory notes and COFCAP deed of trust to the JPFA and terminate the Investment Fund.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno approves the Membership Purchase Agreement:

1. Council authorizes the execution of the Confirmation and Reaffirmation of QALICB Guaranty; and
2. Council authorizes the termination of FBB Investment Fund, LLC and the repayment of the Fresno Joint Powers Financing Agency loan made to FBB Investment Fund, LLC by assigning the COFCAP promissory notes and COFCAP deed of trust to the Fresno Joint Powers Financing Agency; and

3. Council authorizes the City Manager to execute the Membership Interest Purchase Agreement, Confirmation and Reaffirmation of QALICB Guaranty and any and all necessary documents and assignments necessary for the consummation any and all other activities contemplated in this Resolution.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2017  
Mayor Approval/No Return: \_\_\_\_\_, 2017  
Mayor Veto: \_\_\_\_\_, 2017  
Council Override Vote: \_\_\_\_\_, 2017

YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Laurie Avedisian-Favini [Date]  
Assistant City Attorney

LAF:ns [74250ns/laf]