

## MEMBERSHIP INTEREST PURCHASE AGREEMENT

This MEMBERSHIP INTEREST PURCHASE AGREEMENT (this “*Agreement*”), dated as of March 31, 2017, is made and entered into by and among CITY OF FRESNO, CALIFORNIA, a California municipal corporation (“*Purchaser*”), FBB INVESTMENT FUND, LLC, a Missouri limited liability company (“*Company*”), USB NMTC FUND 2011-1, LLC, a Delaware limited liability company (“*USB Fund*”) and U.S. BANCORP COMMUNITY DEVELOPMENT CORPORATION, a Minnesota corporation (“*USBCDC*” or “*Fund Manager*”).

### Recitals

The following Recitals are a material part of this Agreement:

A. Company has been continually operating under that certain Operating Agreement dated as of March 31, 2010 (the “*Initial Operating Agreement*”), as amended by that certain First Amendment to Operating Agreement, dated as of January 19, 2011 (the “*First Amendment*”, and together with the Initial Operating Agreement, the “*Operating Agreement*”). Capitalized terms not defined herein, shall have the meanings set forth in the Operating Agreement.

B. Purchaser and USBCDC entered into that certain Put/Call Option Agreement dated as of March 31, 2010 (as amended, modified or restated from time to time, the “*Option Agreement*”).

C. As described in the First Amendment, USBCDC transferred all of its membership interest in the Company to USB Fund.

D. USB Fund holds a 100% interest in Company and has all rights to receive distributions and allocations pursuant to the terms of the Operating Agreement (collectively, “*USB Fund’s Interest*”), and the Fund Manager is the non-member manager of the Company.

E. USB Fund desires to exercise its right under the Option Agreement to put USB Fund’s Interest to Purchaser.

F. The parties hereto agree and consent to Purchaser purchasing USB Fund’s Interest on the terms and subject to the conditions set forth in this Agreement.

### Agreement

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

#### 1. PURCHASE AND SALE; CLOSING

1.1 Purchase. USB Fund hereby agrees to transfer to Purchaser, and Purchaser hereby agrees to purchase from USB Fund, all of the right, title and interest of USB Fund in and to USB Fund’s Interest at the Closing (as hereinafter defined) on the terms and subject to the conditions set forth in this Agreement.

1.2 Purchase Price. The purchase price for USB Fund’s Interest (the “*Purchase Price*”) is One Thousand Dollars (\$1,000.00).

1.3 Payment of Purchase Price. On the Closing Date (defined below), Purchaser shall deliver to USB Fund the Purchase Price in cash by wire transfer of immediately available funds.

1.4 Closing. The closing of the transactions contemplated by this Agreement (the “*Closing*”) shall take place on March 31, 2017 (the “*Closing Date*”). The parties hereto shall not be required to attend the Closing in person.

1.5 USB Fund’s Deliveries. USB Fund shall deliver to Purchaser an assignment of USB Fund’s Interest substantially in the form of Exhibit A attached hereto (the “*Assignment*”), duly executed by or on behalf of USB Fund, and any other documentation needed to facilitate Purchaser’s assumption of USB Fund’s Interest.

1.6 Purchaser Deliveries. At the Closing, Purchaser shall deliver to USB Fund:

(a) the Assignment, duly executed by or on behalf of Purchaser;

(b) a Confirmation and Reaffirmation of Unconditional Guaranty of New Markets Tax Credits, in the form of Exhibit B attached hereto, duly executed by Purchaser and City of Fresno Cultural Arts Properties Corporation, a California nonprofit public benefit corporation (collectively, “*Guarantors*”), ratifying their obligations under that certain Confirmation of Unconditional Guaranty of New Markets Tax Credits, Put Price and Environmental Indemnification dated as of March 31, 2010 (“*Guaranty*”); and

(c) the Purchase Price, in cash by wire transfer of immediately available funds.

1.7 Transfer Taxes. All sales, value added, use, state or local transfer and gains taxes, registration, stamp and similar taxes, if any, imposed in connection with the transactions contemplated by this Agreement shall be borne exclusively by Purchaser.

## **2. REPRESENTATIONS AND WARRANTIES OF USB FUND**

USB Fund and Fund Manager hereby represent and warrant to Purchaser as follows:

2.1 Authority. The execution and delivery by USB Fund and Fund Manager of this Agreement, and the performance by USB Fund and Fund Manager of its respective obligations hereunder have been duly and validly authorized by all necessary actions on the part of USB Fund and Fund Manager. The individual signing this Agreement and all other documents executed pursuant hereto on behalf of the USB Fund and Fund Manager is duly authorized to sign the same on behalf of the USB Fund and Fund Manager and to bind USB Fund and Fund Manager.

2.2 Ownership. USB Fund owns USB Fund’s Interest free and clear of encumbrances. At the Closing, upon consummation of the transactions contemplated hereby, Purchaser will acquire the entire legal and beneficial interest in USB Fund’s Interest, free and clear of any and all encumbrances.

2.3 Binding Agreement. This Agreement and the provisions hereof are legal, valid and binding against USB Fund in accordance with their terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency and other similar laws, by any equitable principles affecting creditors' rights generally, and by the discretion of the courts in granting equitable remedies, regardless of whether such enforceability is considered in a proceeding at law or in equity and regardless of whether such limitations are derived from constitutions, statutes, judicial decisions or otherwise.

2.4 No Breach. The execution and delivery of this Agreement, the consummation of the transactions provided for herein and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, any agreement of Purchaser, or any instrument to which Purchaser is a party or by which Purchaser, or any of its property is bound, or any judgment, decree or order of any court or governmental body, or any applicable law, rule or regulation.

2.5 No Claims. There is no claim, action or lawsuit pending or existing against Company, USB Fund or Fund Manager related to or arising from the operations, activities, business and affairs of Company.

### **3. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to USB Fund as follows:

3.1 Authority. The execution and delivery by Purchaser of this Agreement, and the performance by Purchaser of its obligations hereunder have been duly and validly authorized by all necessary actions on the part of Purchaser. The individual signing this Agreement and all other documents executed pursuant hereto on behalf of Purchaser is duly authorized to sign same on behalf of Purchaser and to bind Purchaser.

3.2 Binding Agreement. This Agreement and the provisions hereof are legal, valid and binding against Purchaser in accordance with their terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency and other similar laws, by any equitable principles affecting creditors' rights generally, and by the discretion of the courts in granting equitable remedies, regardless of whether such enforceability is considered in a proceeding at law or in equity and regardless of whether such limitations are derived from constitutions, statutes, judicial decisions or otherwise.

3.3 No Breach. The execution and delivery of this Agreement, the consummation of the transactions provided for herein and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, any agreement of Purchaser, or any instrument to which Purchaser is a party or by which Purchaser, or any of its property is bound, or any judgment, decree or order of any court or governmental body, or any applicable law, rule or regulation.

3.4 No Default under Guaranty. To the knowledge of Purchaser, there are no defaults under the Guaranty or conditions which, with the passage of time or the giving of notice or both would constitute a default. To the knowledge of Purchaser, no Guarantor under the Guaranty is bankrupt or has filed (voluntarily or involuntarily) a petition for relief as debtor under the Bankruptcy Act of 1898 or the Bankruptcy Code of 1978 or like provision of law.

3.5 No Registration of USB Fund's Interest. Purchaser acknowledges that USB Fund's Interest has not been registered under applicable state and federal securities laws, and that it is acquiring USB Fund's Interest based solely on its independent confirmation that such registrations are not required, and not on any representation or warranty of USB Fund (all of which are hereby disclaimed by USB Fund).

3.6 As-Is Sale. Purchaser acknowledges and agrees that the purchase and sale of USB Fund's Interest pursuant hereto is on an "AS IS", "WHERE IS" BASIS, WITH ALL FAULTS AND, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, WITHOUT REPRESENTATIONS, EXPRESS OR IMPLIED, OF ANY TYPE, KIND, CHARACTER, OR NATURE, AND WITHOUT RECOURSE, EXPRESS OR IMPLIED, OF ANY KIND, TYPE, CHARACTER OR NATURE. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE LIMITED

REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN, USB FUND HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO USB FUND'S INTEREST OR FUTURE PERFORMANCE OF COMPANY.

### 3.7 Investor Representations.

(a) Purchaser is knowledgeable about Company, and no formal written descriptive offering materials regarding Company, USB Fund's Interest have been given to or requested by it for purposes hereof. Purchaser is a sophisticated investor with knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of the prospective investment; Purchaser has such knowledge and experience in financial and business matters so as to be capable of evaluating and understanding, and has evaluated and understands, the merits and risks of acquiring USB Fund's Interest, and it has been given the opportunity to (i) obtain information and examine all documents relating to Company and its business, and (ii) ask questions of and receive answers concerning Company, its business, and the terms and conditions of its acquisition of USB Fund's Interest. All such questions have been answered to its satisfaction, and all information and documents, books and records pertaining to Company and Company's business that it has requested have been made available to it.

(b) In entering into this Agreement, Purchaser is relying solely on the results of its own independent investigation and the advice of its own advisors and counsel with respect to the purchase of USB Fund's Interest. Other than the representations, warranties and covenants of USB Fund contained in this Agreement, it has neither received nor relied on any legal, investment, or tax advice from USB Fund, or its officers, agents, or other representatives relating to USB Fund's Interest or to the likelihood of successful operations or anticipated financial results of Company. It has had an opportunity to read, understand and negotiate the provisions of this Agreement, and other documents related to USB Fund's Interest, Company and its businesses, and to consider and consult with its advisors and counsel regarding the operation and consequences of such provisions.

## 4. REPRESENTATIONS AND WARRANTIES OF COMPANY

Company hereby represents and warrants to Purchaser and USB Fund as follows:

4.1 Authority. The execution and delivery by Company of this Agreement, and the performance by Company of its obligations hereunder have been duly and validly authorized by all necessary actions on the part of Company. The individual signing this Agreement and all other documents executed pursuant hereto on behalf of Company is duly authorized to sign same on behalf of Company and to bind Fund Manager. Company has been continually operating under the Operating Agreement.

4.2 Binding Agreement. This Agreement and the provisions hereof are legal, valid and binding against Company in accordance with their terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency and other similar laws, by any equitable principles affecting creditors' rights generally, and by the discretion of the courts in granting equitable remedies, regardless of

whether such enforceability is considered in a proceeding at law or in equity and regardless of whether such limitations are derived from constitutions, statutes, judicial decisions or otherwise.

## 5. COVENANTS AND OTHER AGREEMENTS

### 5.1 Indemnification.

(a) Except to the extent otherwise specifically provided in this Agreement (including Section 5.2), Purchaser shall indemnify, defend, and hold harmless USB Fund and USB CDC and their respective trustees, beneficiaries, affiliates, members, managers, officers, directors, shareholders, partners, employees and agents, and their respective successors, executors, administrators and personal representatives (collectively, the “**USB Indemnified Parties**”), from and against any loss, liability, damage, cost and expense (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) sustained or incurred by the USB Indemnified Parties or any one or more of such parties, arising from or with respect to the operations, activities, business and affairs of Company occurring after the Closing Date.

(b) Purchaser agrees to defend, indemnify and hold harmless the USB Indemnified Parties from and against any and all loss, liability, damage cost and expense (including reasonable attorneys’ fees, court costs, and litigation expenses, all through any level of appeal) arising in connection with any claim by any person or entity that any necessary consent was not obtained by Purchaser, and/or that USB Fund’s withdrawal from Company caused any damage, loss, cost or expense to any said person or entity.

5.2 Release. Purchaser hereby releases and forever discharges the USB Indemnified Parties from any and all claims, demands, obligations, losses, defaults, liabilities, damages, costs, expenses, contributions or reimbursements of any kind and nature arising out of the Operating Agreement or Option Agreement from and after the Closing Date. Manager hereby releases and forever discharges Purchaser from any and all claims, demands, obligations, losses, defaults, liabilities, damages, costs, expenses, contributions or reimbursements of any kind and nature arising out of the Operating Agreement or Option Agreement prior to the Closing Date. USB Fund hereby releases and forever discharges the Purchaser from any and all claims, demands, obligations, losses, defaults, liabilities, damages, costs, expenses, contributions or reimbursements of any kind and nature arising out of the Operating Agreement or Option Agreement prior to the Closing Date, except any claims related to the Guaranty and to any recapture of the Tax Credits.

5.3 Delivery of Reports. Purchaser covenants and agrees to deliver to USB Fund: (i) any reports received from Clearinghouse NMTC (Sub 18), LLC, a California limited liability company, within five (5) business days of receipt and (iii) such other financial information reasonably requested by USB CDC.

5.4 Time is of the Essence. Time is of the essence respecting the requirements set forth therein. The obligations set forth in this Section 5.3 shall survive the termination and expiration of this Agreement, unless otherwise agreed between the parties in writing.

5.5 Resignation of Manager. USB CDC hereby resigns as Fund Manager of Company. Purchaser hereby accepts such resignation, appoints itself as the successor manager, and agrees to be bound by the terms and obligations of the Fund Manager under the Operating Agreement.

**6. CLOSING CONDITIONS**

6.1 Conditions to Obligations of USB Fund. The obligations of USB Fund under this Agreement with respect to the Closing are subject to the satisfaction at or prior to the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of Purchaser and Company contained in Sections 3 and 4 herein, are true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date.

(b) Performance. Purchaser has performed and complied in all material respects with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on the Closing.

6.2 Conditions to Obligations of Purchaser. The obligations of Purchaser under this Agreement with respect to the Closing are subject to the satisfaction at or prior to the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of USB Fund, Fund Manager and Company contained in Sections 2 and 4 herein, are true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date.

(b) Performance. Each of USB Fund, Fund Manager and Company have performed and complied in all material respects with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on the Closing.

**7. WAIVER**

Purchaser, USB Fund, Company and Fund Manager each hereby waives any and all other requirements that may be set forth in the Option Agreement and/or Operating Agreement to the transactions described above, or otherwise, including without limitation, the requirement that USB Fund send the notice of the exercise of the put option to Purchaser.

**8. MISCELLANEOUS**

8.1 Notices. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by a nationally recognized overnight delivery service, or mailed (first class postage prepaid certified mail; return receipt requested) to the parties at the following addresses:

If to Purchaser or Company:

City of Fresno  
2600 Fresno Street  
Fresno, CA 93721  
Attn: City Manager

If to USB Fund:

U.S. Bancorp Community Development Corporation  
1307 Washington Avenue, Suite 300  
St. Louis, Missouri 63103

Attention: Director of Asset Management (NMTC)  
Project #: 20141

With a copy to: Husch Blackwell LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
Attention: Edward J. Lieberman

All such notices, requests and other communications will (a) if delivered personally to the address as provided in this Section 8.1, be deemed given upon delivery or refusal to accept delivery or (b) if delivered by mail or by a nationally recognized overnight delivery service in the manner described above to the address as provided in this Section 8.1, be deemed given upon receipt or refusal to accept delivery (in each case regardless of whether such notice, request or other communication is received by any other party to whom a copy of such notice is to be delivered pursuant to this Section 8.1). Any party from time to time may change its address or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

8.2 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, will be cumulative and not alternative.

8.3 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party hereto.

8.4 Binding Effect. This Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and assigns.

8.5 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

8.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

8.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.8 Third Party Beneficiary. The parties to this Agreement acknowledge and agree that USBCDC shall be an express and intended third-party beneficiary of the provisions set forth in Section 5 above. Without limiting the generality of the foregoing, USBCDC shall have the right to enforce the obligations of Purchaser under Section 5 above.

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized person of each party hereto as of the date first above written.

**PURCHASER AND SUCCESSOR FUND MANAGER:**

**CITY OF FRESNO,**  
a California municipal corporation

By: \_\_\_\_\_  
Name: Bruce Rudd, City Manager

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

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

APPROVED AS TO FORM:  
DOUG T. SLOAN  
City Attorney

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



IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized person of each party hereto as of the date first above written.

**COMPANY:**

**FBB INVESTMENT FUND, LLC,**  
a Missouri limited liability company

By: U.S. Bancorp Community Development Corporation, a Minnesota corporation, its manager

By: \_\_\_\_\_  
Brooke Roseberry, Assistant Vice President

**USB FUND:**

**USB NMTC FUND 2011-1 LLC,** a Delaware limited liability company

By: U.S. Bancorp Community Development Corporation, a Minnesota corporation, its Managing Member

By: \_\_\_\_\_  
Brooke Roseberry, Assistant Vice President

**USBCDC:**

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

By: \_\_\_\_\_  
Brooke Roseberry,  
Assistant Vice President

**Exhibit A**

**FORM OF MEMBERSHIP INTEREST ASSIGNMENT**

This MEMBERSHIP INTEREST ASSIGNMENT (this “*Assignment*”) is entered into as of March 31, 2017, by and between CITY OF FRESNO, a California municipal corporation (“*Purchaser*”), and USB NMTC FUND 2011-1, LLC, a Delaware limited liability company (“*USB Fund*”).

RECITALS

The following Recitals are a material part of this Assignment:

A. USB Fund, Purchaser, FBB Investment Fund, LLC, a Missouri limited liability company (“*Company*”), and U.S. Bancorp Community Development Corporation, a Minnesota corporation (“*USBCDC*”), entered into that certain Membership Interest Purchase Agreement dated as of the date hereof (the “*Purchase Agreement*”), pursuant to which, among other things, Purchaser agreed to purchase USB Fund’s Interest (as defined in the Purchase Agreement) in Company.

B. USB Fund wishes to sell, transfer, convey and assign to Purchaser USB Fund’s Interest.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Assignment agree as follows:

1. Assignment. USB Fund hereby sells, transfers, conveys, assigns and sets over to Purchaser, its successors and assigns, all of USB Fund’s Interest, including, without limitation, all rights and obligations under the Operating Agreement (as defined in the Purchase Agreement), free and clear of all encumbrances. Purchaser hereby accepts this assignment, and agrees to assume and perform all covenants, agreements, conditions, duties and obligations of USB Fund as and when due and be bound by the terms and provisions of the Operating Agreement. As of the date hereof, USB Fund (a) relinquishes all of its rights with respect to USB Fund’s Interest for all purposes under the Operating Agreement, and (b) withdraws as a member of Company.

2. Release. Purchaser hereby releases and forever discharges USBCDC and USB Fund from any and all claims, demands, obligations, losses, defaults, liabilities, damages, costs, expenses, contributions or reimbursements of any kind and nature arising out of the Operating Agreement or Option Agreement from and after the date hereof. Subject to Section 3 below, USB Fund hereby releases and forever discharges Purchaser from any and all claims, demands, obligations, losses, defaults, liabilities, damages, costs, expenses, contributions or reimbursements of any kind and nature arising solely out of the Operating Agreement or Option Agreement (except any claims related to the Guaranty (as defined in the Purchase Agreement)) prior to the date hereof.

3. Indemnity. Except to the extent otherwise specifically provided for in this Agreement (including Section 2 and the Purchase Agreement), the Purchaser shall indemnify, defend, and hold harmless USBCDC and USB Fund and their respective trustees, beneficiaries, affiliates, members, managers, officers, directors, shareholders, partners, employees and agents, and their respective successors, executors, administrators and personal representatives, from and against any loss, liability, damage, cost and expense (including without limitation reasonable attorneys’ fees, court costs and litigation expenses) sustained or incurred by USBCDC and/or USB Fund or any one or more of such other parties, arising

from or with respect to the operations, activities, business and affairs of the Company occurring after execution of this Agreement.

4. Further Assurances. At any time and from time to time after the date hereof, at the request and expense of Purchaser, and without further consideration, USB Fund shall execute and deliver such other instruments of transfer, conveyance, assignment and confirmation and take such other action as Purchaser may reasonably request as necessary or desirable in order to more effectively transfer, convey and assign USB Fund's Interest to Purchaser.

5. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Missouri.

6. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this Membership Interest Assignment to be duly executed and delivered by their respective duly authorized persons as of the date first written above.

**USB FUND:**

**USB NMTC FUND 2011-1, LLC**, a Delaware limited liability company

By: U.S. Bancorp Community Development Corporation, a Minnesota corporation, its Managing Member

By: \_\_\_\_\_  
Brooke Roseberry, Assistant Vice President

The undersigned, U.S. Bancorp Community Development Corporation, a Minnesota corporation, joins into this Membership Interest Assignment for the purposes set forth in Section 3 above.

**USBCDC:**

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

By: \_\_\_\_\_  
Brooke S. Roseberry,  
Assistant Vice President

**Exhibit B**

**FORM OF CONFIRMATION AND REAFFIRMATION OF GUARANTY**