

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER TO (1) ACQUIRE THE RESPECTIVE MEMBERSHIP INTERESTS OF CHASE COMMUNITY EQUITY, LLC, A DELAWARE LIMITED LIABILITY COMPANY (“CHASE INVESTOR”) AND COMMUNITY DEVELOPMENT PROPERTIES NEW MARKETS MM, INC., A DELAWARE CORPORATION (“CHASE MANAGER”) AND, COLLECTIVELY WITH CHASE INVESTOR, THE (“FUND INVESTORS”) IN CHASE NMTC SJEIC INVESTMENT FUND, LLC (“INVESTMENT FUND”) FOR A PURCHASE PRICE OF \$1,010 AND, IN CONNECTION THEREWITH, TO NEGOTIATE AND EXECUTE THE NMTC EXIT AGREEMENT AND THE FUND PURCHASE AGREEMENT WITH FUND INVESTORS; (2) ACCEPT THE ASSIGNMENT OF QLICI NOTES AND LEASEHOLD DEED OF TRUST FROM THE INVESTMENT FUND IN SATISFACTION OF THE LEVERAGE LOAN; AND (3) NEGOTIATE AND EXECUTE OTHER RELATED DOCUMENTS AS NECESSARY IN CONNECTION WITH THE UNWINDING OF THE NMTC TRANSACTIONS

WHEREAS, the NMTC SJEIC Investment Fund, LLC (“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 Chase Community Equity, LLC, a Delaware limited liability company (“Chase Investor”) and Community Development Properties New Markets MM, INC (“Chase Manager”), collectively (“Fund Investors”); and

WHEREAS, as part of the New Markets Credit transaction, the City of San Jose granted Fund Investors the option to sell their interest in the Investment Fund to the City for \$1,010 upon expiration of the seven-year New Market Tax Credit compliance period (“Put Option”); and

WHEREAS, the City formed the EIC QALICB Inc., a California nonprofit public benefit corporation (“EIC QALICB”) on June 21, 2011 for the purposes of promoting waste diversion, environmental education, workforce development, and to facilitate the completion of the Environmental Innovation Center (“EIC”) for the benefit of the City and its residents; and

WHEREAS, the Investment Fund borrowed from the City of San Jose a loan in the approximate amount of \$19,609,645 (“Leverage Loan”); and

WHEREAS, in addition to the Leverage Loan, the Investment Fund obtained an equity investment in the approximate amount of \$7,705,415 (“Chase Equity Investment”) from Chase Community Equity, LLC, a Delaware limited liability company (“Chase Investor”) in exchange for a 99.9% interest in the Investment Fund; and

WHEREAS, Community Development Properties New Markets MM, INC (“Chase Manager”) has a 0.01% interest in the Investment Fund; and

WHEREAS, the Investment Fund used the proceeds from the Leverage Loan and the Chase Equity Investment to make qualified equity investments (“QEI”) in three community development entities (“CDEs”), NDC New Markets Investments LXV, LLC (“NDC”), Northern California Community Loan Fund NMTC Sub-CDE III, LLC (“NCCLF”), and Brownfield Revitalization XV, LLC (“BR”), to facilitate the investment in qualified low-income communities through the use of New Market Tax Credits; and

WHEREAS, the CDEs utilized the QEI to make a loan to the EIC QALICB Inc. in the approximate amount of \$25,944,813 (“QLICI Loan”); and

WHEREAS, the EIC QALICB used the QLICI Loan to purchase a ground lease interest and development rights, reimburse the City for predevelopment activities, and complete

construction of the EIC; and promised to use the EIC in accordance with the New Market Tax Credit rules during a seven-year compliance period; and

WHEREAS, the QLICI Loan is evidenced by six promissory notes executed by EIC QALICB in favor of CDEs ("QLICI Notes"), which are secured by a Leasehold Deed of Trust recorded against the EIC; and

WHEREAS, the New Market Tax Credit compliance period will expire on November 8, 2018, and the parties now wish to unwind the transaction; and

WHEREAS, as part of the unwind process, the CDEs intend to redeem the Investment Fund's interest in the CDEs by assigning to the Investment Fund the QLICI Notes and the Leasehold Deed of Trust; and

WHEREAS, Chase Investor and Chase Manager intend to exercise the Put Option and require the City to purchase their interest in the Investment Fund pursuant to the Fund Purchase Agreement; and

WHEREAS, the City, as sole member of the Investment Fund, will repay the Leverage Loan by assigning the QLICI Notes and Leasehold Deed of Trust to the City and terminate the Investment Fund;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

The City Manager is authorized to:

1. Acquire the respective membership interests of Chase Community Equity, LLC, a Delaware limited liability company ("Chase Investor") and Community

Development Properties New Markets MM, INC., a Delaware corporation (“Chase Manager”) and, collectively with Chase Investor, the (“Fund Investors”) in Chase NMTC SJEIC Investment Fund, LLC (“Investment Fund”) for a purchase price of \$1,010 and, in connection therewith, to negotiate and execute the NMTC Exit Agreement and the Fund Purchase Agreement with Fund Investors;

2. Accept the assignment of QLICI Notes and Leasehold Deed of Trust from the Investment Fund in satisfaction of the Leverage Loan; and
3. Negotiate and execute other related documents as necessary in connection with the unwinding of the NMTC transactions.

ADOPTED this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk