

**RESOLUTION NO. 2019-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, APPROVING CERTAIN MATTERS RELATING TO THE EXIT OF A NEW MARKETS TAX CREDIT FINANCING FOR THE HEALTH AND WELLNESS CENTER AND APPROVING FORMS OF DOCUMENTS AND CERTAIN ACTIONS RELATED THERETO**

**WHEREAS**, the City of Desert Hot Springs ("City") participated in a financing ("Financing") for the Desert Hot Springs Health & Wellness Fitness Center ("Health Center"), which was executed and closed on July 13, 2012 ("Execution Date"); and

**WHEREAS**, the Financing in part utilized the federal New Markets Tax Credit program under Section 45D of the Internal Revenue Code of 1986, as amended ("Code"); and

**WHEREAS**, in connection with the Financing, the City made a loan ("Leveraged Loan") to Desert Hot Springs Investment Fund, LLC ("Investment Fund"), a limited liability company organized under the laws of the State of Missouri, the sole member of which is USB NMTC Fund 2012-1 LLC ("USB NMTC Fund"), and

**WHEREAS**, the Investment Fund is a limited liability company that is managed by managers; and

**WHEREAS**, in addition to the proceeds of the Leveraged Loan, the Investment Fund was also initially capitalized with an equity contribution ("USB NMTC Fund Equity") made by USB NMTC Fund; and

**WHEREAS**, the proceeds of the Leverage Loan and the USB NMTC Fund Equity were used by the Investment Fund to make "qualified equity investments" (as defined in Section 45D(b) of the Code) ("QEIs") in LCD New Markets Fund XII, LLC ("LCD") and New Markets Community Capital X, LLC ("NMCC") and to establish certain reserves; and

**WHEREAS**, the Investment Fund, by making the QEIs, owns 99.99% of the membership interests in LCD and NMCC, respectively; and

**WHEREAS**, LCD and NMCC, respectively, used the proceeds of the QEIs to make "qualified low-income community investments" (as defined in Section 45D(d) of the Code) ("QLICIs") to the Desert Hot Springs Health and Wellness Foundation ("Foundation") and to pay certain fees and costs; and

**WHEREAS**, the Foundation used the proceeds of the QLICIs to finance the construction, improving, and equipping of the Health Center; and

**WHEREAS**, in connection with the Financing, the City entered into that certain Investment Fund Put and Call Agreement, dated as of July 13, 2012 ("Option Agreement") with USB NMTC Fund, pursuant to which USB NMTC Fund has the right to put to the City, and the City has the obligation to purchase (together, "Put Right"), 100% of USB NMTC Fund's 100% membership interest in the Investment Fund ("Membership Interest"); and

**WHEREAS**, USB NMTC Fund has notified the City of its intention to exercise the Put Right, pursuant to which the City will pay \$1,000 for the Membership Interest; and

**WHEREAS**, in connection with the exercise of the Put Right, LCD and NMCC will assign all of their respective right, title, and interest in and to the QLICIs (collectively, "QLICI Assets") to the Investment Fund ("QLICI Assignment" and, collectively with the exercise of the Put Right and the purchase of the Membership Interest, "NMTC Exit"); and

**WHEREAS**, in connection with the consummation of the NMTC Exit, the Investment Fund's interest in LCD and NMCC will be redeemed and the Investment Fund will thereafter not be a member of either LCD or NMCC; and

**WHEREAS**, under Section 45(D)(g) of the Code, the QLICIs and the QEIs were required to be in place for a period of not less than seven years, which will elapse as of the close of business on July 13, 2019; and

**WHEREAS**, the City desires to purchase the Membership Interest pursuant to the exercise of the Put Right, to become the manager of the Investment Fund, and to approve the QLICI Assignment; and

**WHEREAS**, in connection with the NMTC Exit, the City is required to execute certain documents described in Section 3 below (collectively, the "Exit Documents").

**NOW, THEREFORE, BE IT RESOLVED DETERMINED, AND ORDERED BY THE CITY COUNCIL, AS FOLLOWS:**

**Section 1.      Recitals**

That all of the above recitals are true and correct.

**Section 2.      Findings**

That based upon its review (and amendments, as applicable) of the Report, a copy of which has been presented to the City Council and which has been filed with the City Clerk, the City Council hereby finds and determines that:

A.      The NMTC Exit will benefit the City by, among other things, enabling the City to have financial control over the Health Center by way of being the sole member and manager of the Investment Fund, which will own and control the QLICI Assets.

B.      The Investment Fund is a limited liability company organized under the laws of the State of Missouri which is managed by one or more managers. Subsequent to the NMTC Exit, the City desires to serve as the sole manager of the Investment Fund.

C.      The execution of the following documents is necessary to enable the City to consummate the NMTC Exit:

The Membership Interest Purchase Agreement, by and among the City, the Investment Fund, U.S. Bancorp Community Development Corporation, and USB NMTC Fund 2012-1 LLC and including, without limitation, the Membership Interest Assignment, by and between the City and USB NMTC Fund 2012-1 LLC;

An affidavit of lost note regarding the original of a note relating to the Financing;

A payoff letter relating to the Leverage Loan; and

Any other documents, instruments, or proofs reasonable or necessary to consummate the NMTC Exit.

**Section 3.      Report Filed With Clerk**

That the Exit Documents as presented to the City Council are on file in the office of the City Clerk as required by the Act.

**Section 4.      Delegation of Authority to Act**

That the City Council hereby orders the NMTC Exit be consummated. The City Council further orders that the City Manager act on behalf of the City in connection with the NMTC Exit, and in managing the Investment Fund. The City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City, the Exit Documents and to take any and all actions necessary or appropriate to consummate the NMTC Exit and for the City on behalf of itself and/or the Foundation to gain control and ownership of the Health Center, including but not limited to execution of any amendments to the articles of organization or operating agreement of the Investment Fund to enable the City to become the sole member and manager of the Investment Fund.

**Section 5.      Payment of Costs**

That the City Treasurer shall pay all costs associated with the NMTC Exit that the City is obligated to pay under and pursuant to the Exit Documents.

**Section 6.      Effective Date**

That this Resolution shall take effect immediately upon its adoption.

**Section 7.      Severability**

That should any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this resolution as hereby adopted shall remain in full force and effect.

**Section 8.      Repeal of Conflicting Resolutions**

That the City Council hereby repeals any prior resolutions which may conflict with this Resolution.

**Section 9.      Certification**

That the City Clerk shall certify as to the adoption of this Resolution and shall cause the same to be processed in the manner required by law.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

**PASSED AND ADOPTED** by the City Council of the City of Desert Hot Springs at a regular meeting held on this eighteenth day of June, 2019 by the following vote:

**AYES:**

**NAYS:**

**ABSENT:**

**RECUSED:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

\_\_\_\_\_  
Scott Matas, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer Mizrahi, City Attorney

### **CERTIFICATE OF CLERK**

I, Jerryl Soriano, City Clerk of the City of Desert Hot Springs, do hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of the City Council of the City of Desert Hot Springs duly and regularly held at the regular meeting place thereof on June 18, 2019, of which meeting all of the members of said City Council had due notice, and at said meeting said resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

RECUSED:

I do hereby further certify that an agenda of said meeting was posted at least 72 hours before said meeting at 11-711 West Drive, Desert Hot Springs, CA 92240, a location freely accessible to members of the public, and a brief description of said resolution appeared on said agenda.

I do hereby further certify that I have carefully compared the foregoing copy with the original minutes of said meeting on file and of record in my office; that said copy is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes; and that said resolution has not been amended, modified, rescinded or revoked in any manner since the date of its adoption, and the same is now in full force and effect.

Dated: June 18, 2019

---

City Clerk of the City of Desert Hot Springs

[SEAL]