

RESOLUTION NO. 2020-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, FORGIVING THE \$15,126,594 LOAN ORIGINALLY TO THE DESERT HOT SPRINGS INVESTMENT FUND, LLC., BUT THEN ABSORBED BY THE CITY, AS PART OF THE WIND DOWN OF THE NEW MARKET TAX CREDIT FINANCING OF THE DESERT HOT SPRINGS HEALTH AND WELLNESS FITNESS CENTER

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 \$15,126,594 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 fund managers; and

WHEREAS, the City Council took action to dissolve the Investment Fund, which owned 99.99% of the membership interest in the LCD New Markets Fund XII, LLC and New Markets Community Capital X, LLC, and such Investment Fund has in fact been dissolved; 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, the City did in fact exercise its Put Right on July 16, 2019, and in doing so, absorbed the Leveraged Loan; and

WHEREAS, in effect, as it stands now, the City has loaned the Leveraged Loan to itself; and

WHEREAS, the City desires to forgive the Leveraged Loan, as one of the last steps to wind down the exit of the new market tax credit financing of the Health Center.

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. Forgiveness of Leveraged Loan

That the City Council hereby forgives the Leveraged Loan. The City Council further orders that the City Manager act on behalf of the City in connection with the Leveraged Loan, and is hereby authorized and directed to negotiate and execute, any and all documents and to take any and all actions necessary or appropriate to consummate the forgiveness of the Leveraged Loan.

Section 3. Payment of Costs

That the City Treasurer shall pay all costs associated with any forgiveness of the Leveraged Loan.

Section 4. Effective Date

That this Resolution shall take effect immediately upon its adoption.

Section 5. 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 6. Repeal of Conflicting Resolutions

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

Section 7. 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.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on March 3, 2020, by the following vote:

AYES:

NAYS:

ABSENT:

RECUSED:

[SIGNATURES FOLLOW ON THE NEXT PAGE]

ATTEST:

Jerryl Soriano, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer Mizrahi, City Attorney