

**DESERT COMMUNITY COLLEGE DISTRICT
BOARD OF TRUSTEES**

Meeting Date: 3/21/2014

ITEM #: 6

AREA: Administrative Services

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|--|
| <input type="checkbox"/> CONSENT |
| <input checked="" type="checkbox"/> ACTION |
| <input type="checkbox"/> INFORMATION |

TITLE: ADOPTION OF RESOLUTION #032114-4 OF THE BOARD OF TRUSTEES OF THE DESERT COMMUNITY COLLEGE DISTRICT APPROVING, AUTHORIZING AND DIRECTING EXECUTION AND DELIVERY BY THE DISTRICT OF DOCUMENTATION (INCLUDING LEASE DOCUMENTS TO AND FROM THE DESERT COLLEGE FINANCING CORP. IN CONNECTION WITH THE FINANCING AND REFINANCING OF THE CONSTRUCTION AND DEVELOPMENT OF A CERTAIN DISTRICT FACILITY IN INDIO AND AUTHORIZING AND DIRECTING THE EXECUTION OF NECESSARY DOCUMENTS AND TAKING CERTAIN ACTIONS WITH RESPECT THERETO)

BACKGROUND:

The District is proposing to enter into a New Markets Tax Credit financing (the “NMTC Financing”) with US Bancorp Community Development Corporation (“USBCDC”) and Borders Community Capital Company, LLC (the “CDE”) for the purpose of providing additional funds to the District for the construction and development of the East Valley Campus. The NMTC Financing will include a ground lease of the East Valley Campus to a newly formed affiliate of the District, Desert College Financing Corp. (the “Financing Corp.”), a leaseback of the East Valley Campus from the Desert to the Financing Corp., and a loan from the CDE to the Financing Corp.

*Details on COD Website

FISCAL IMPLICATIONS:

The NMTC Financing is anticipated to provide a significant net benefit to the District in the amount of approximately \$1,750,000.

RECOMMENDATION:

Board of Trustees approves the NMTC Financing, authorize the District to enter into the agreements as more specifically set forth in the *Resolution #032114-4 presented, and authorize

certain officers of the District as identified in the Resolution to execute such agreements and instruments as are typical and customary for a NMTC Financing.

Administrator Initiating Item: Lisa Howell	Cabinet Review & Approval: 3/6/2014 Chair & Vice Chair Review: 3/12/2014
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DESERT COMMUNITY COLLEGE DISTRICT

RESOLUTION NO. 032114-4

RESOLUTION OF THE BOARD OF TRUSTEES OF THE DESERT COMMUNITY COLLEGE DISTRICT APPROVING, AUTHORIZING AND DIRECTING EXECUTION AND DELIVERY BY THE DISTRICT OF DOCUMENTATION (INCLUDING LEASE DOCUMENTS TO AND FROM THE DESERT COLLEGE FINANCING CORP. IN CONNECTION WITH THE FINANCING AND REFINANCING OF THE CONSTRUCTION AND DEVELOPMENT OF A CERTAIN DISTRICT FACILITY IN INDIO AND AUTHORIZING AND DIRECTING THE EXECUTION OF NECESSARY DOCUMENTS AND TAKING CERTAIN ACTIONS WITH RESPECT THERETO

* * * * *

RESOLVED, by the Board of Trustees (the "Board") of the Desert Community College District (the "District");

WHEREAS, the District, working together with the Desert College Financing Corp. (the "Corporation"), is proposing to proceed with a proposed new markets tax credit financing (the "NMTC Financing") with BCCCXI, LLC, a California limited liability company (the "CDE Lender") as described in this Resolution, including a loan to the Corporation from the CDE Lender in the amount of Eight Million, Nine Hundred Twenty Eight Thousand Dollars (\$8,528,000) (the "CDE Loan");

WHEREAS, the NMTC Financing will be implemented in accordance with Section 45D of the Internal Revenue Code, and the regulations promulgated thereunder by the U.S. Department of the Treasury, and is anticipated to generate a substantial economic benefit for the District;

WHEREAS, in connection with the NMTC Financing, the District will make a loan to the Corporation in the amount of Ten Million Dollars (\$10,000,000) (the "District Loan");

WHEREAS, it is in the public interest and for the public benefit that the District authorize and direct execution of the Site Lease and Lease Agreement (as such terms are hereinafter defined) and certain other financing documents in connection therewith and with respect to the NMTC Financing;

WHEREAS, it is in the public interest and for the public benefit that the District participate in the financing and refinancing of the construction of certain school facilities (collectively, the "Project") through the authorization of and entry into and execution of a Site Lease and Lease Agreement (as such terms are hereinafter defined) and certain other NMTC Financing documents in connection therewith;

WHEREAS, the District formed the Corporation, a new special purpose entity in connection with financing and refinancing the Project and the NMTC Financing;

WHEREAS, pursuant to the District's authorization in connection with the execution and delivery of the Site Lease and the Lease Agreement (as such terms are hereinafter defined) and certain other NMTC Financing documents in connection with the completion of the NMTC Financing there has been prepared by the District and its staff information materials relating to the entry into the NMTC Financing by the District and the Corporation and the authorization of the taking of certain judicial actions, including but not limited to the authorization of the commencement of a validation proceeding pursuant to Civil Procedure Sections 585(c) and 860 *et seq.*, and other applicable California law (the "Validation Proceeding") in the Superior Court of the State of California, County of Riverside, which this Board has reviewed and commented upon and the Board hereby determines that it is in the public interest and a benefit to the District to proceed with the NMTC Financing following obtaining a final judgment on the Validation Proceeding;

WHEREAS, the District has full legal right, power and authority under the Constitution of the State of California and the laws of the State of California to enter into the transactions herein authorized;

WHEREAS, the Board has been presented with the form of each document referred to and defined herein and certain other documents on file with the President, and the Board has examined and approved each document and had the opportunity to ask questions and receive answers with respect thereto and desires to authorize and direct the execution of such documents and the consummation of the transactions contemplated thereby;

WHEREAS, all acts, conditions and things required by the Constitution and laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of such transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the District is now duly authorized and empowered pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided; and

WHEREAS, the documents below specified have been filed with the District, and the members of the Board with the aid of its staff, have reviewed said documents.

NOW, THEREFORE, it is hereby ORDERED and DETERMINED, as follows:

Section 1. All of the recitals herein contained are complete, true and correct and the Board so finds.

Section 2. The proposed forms of the below-enumerated documents as presented to this Board and on file with the Clerk or Secretary of the Board, be and are hereby approved, and the President, Vice President or such other member of the Board as the President may designate, are each hereby authorized and directed to execute said documents for and in the name of and on behalf of the District, with such changes, insertions and omissions as may be approved by such officials, and the Secretary is hereby authorized and directed to attest to such official's signature:

- (a) a Site Lease, by and between the District, as lessor, and the Corporation, as lessee (the "Site Lease");

- (b) a Memorandum of Site Lease by and between the District and the Project Borrower (the "Memorandum of Site Lease");
- (c) a Lease Agreement by and between the Corporation, as lessor, and the District, as lessee (the "Lease Agreement"), so long as the stated term of the Lease Agreement does not exceed thirty (30) years;
- (d) a Memorandum of Project Lease by and between the Corporation and the District Borrower (the "Memorandum of Site Lease");
- (e) a Loan Agreement, by and between Twain Investment Fund 10, LLC, a Missouri limited liability company, (the "Fund Borrower") and the District (the "Fund Loan Agreement");
- (f) a Certificate of Debarment executed by the District (the "District Debarment Certificate");
- (g) a Pledge, Assignment and Security Agreement, by and between the District and the Fund Borrower to secure the Fund Borrower's payment obligations under the Fund Loan Agreement (the "Fund Pledge Agreement");
- (h) a QALICB Recapture and Environmental Indemnity Agreement by the Corporation and the District in favor of U.S. Bancorp Community Development Corporation, a Minnesota corporation (the "Investor");
- (i) a Put and Call Agreement by and between the District and the Investor;
- (j) a Guaranty of Payment and Completion by the District for the benefit of CDE Lender;
- (k) an Environmental Indemnity Agreement by the Corporation and the District in favor of the CDE Lender;
- (l) a Subordination, Non-Disturbance and Attornment Agreement by and among the District, the Corporation and the CDE Lender;
- (m) a Loan and Security Agreement by and between the District and the Corporation (the "District Loan");
- (n) a Promissory Note by the Corporation to the District in the principal amount of Ten Million Dollars (\$10,000,000.00) evidencing the District Loan (the "District Note");
- (o) a Second Lien Deed of Trust and Assignment of Rents by the Corporation, the District and Michael Allderdice, as Trustee thereunder, relating to the District Loan (the "District Mortgage"); and

- (p) a Pre-Closing Cost Certification executed by the Corporation and the District

Section 3. The Board hereby approves of the creation and establishment of a special purpose financing corporation to be utilized in connection with the execution and delivery of the certain promissory notes to the CDE Lender and such other entities that may make one or more loans to such entity in connection with the NMTC Financing which entity shall be named the Desert College Financing Corp. The Board authorizes and directs the President or Vice President, on behalf of the District or such other member of the Board or other permitted person as the President may designate, to take such further actions and execute documents as are deemed necessary and appropriate to establish and create such entity.

Section 4. The President, Vice President or such other member of the Board or other permitted person as the President may designate, is authorized and directed to cause and take such further actions prior to the signing of the final NMTC Financing documents and instruments as are deemed necessary or appropriate. The execution of the final NMTC Financing documents and instruments, which shall include such changes and additions thereto deemed advisable by the President or Vice President shall be conclusive evidence of the approval of such documents and instruments.

Section 5. The President, Vice President, the Secretary and all other appropriate officials of the District with the advice of its regular Counsel are hereby authorized and directed, jointly and severally, to do any and all things, to execute such other agreements, documents and certificates as they may deem necessary to effect the purposes of these Resolutions and the financing and related transactions herein authorized, including but not limited to the execution and entry into certain engagement letters with Butler Snow LP and Bergman and Allderdice (collectively, "Special Counsel"). In addition, the President, Vice President, or such other member of the Board or other permitted person as the President may designate, are hereby authorized and directed to execute one or more requisitions authorizing the payment of the cost of NMTC Financing.

Section 6. The District acknowledges that the service providers and professionals participating in the NMTC Financing including but not limited to Special Counsel, have and will continue to incur costs in connection with documenting the proposed NMTC Financing and the District hereby agrees that if the District abandons the proposed NMTC Financing, then the District shall promptly pay the fees, costs and expenses of the foregoing providers pursuant to certain term sheets with the Investor, the CDE Lender and other entities in connection with the NMTC Financing.

Section 7. All actions heretofore taken by the officers, employers and agents of the District with respect to the transaction set forth above are hereby approved, confirmed and ratified.

Section 8. These Resolutions shall take effect immediately upon adoption by the Board.

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SECRETARY CERTIFICATE

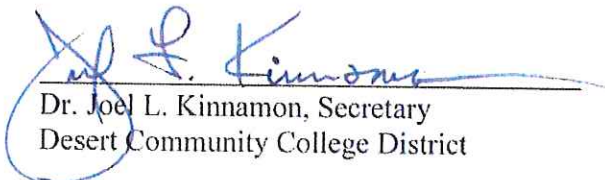
I, the undersigned Secretary of the Board of Trustees of the Desert Community College District, hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted by the Board of Trustees of the District at a meeting thereof on the 21st day of March, 2014, by the following vote of the members thereof:

AYES, and in favor thereof: 3

NOES: 1

ABSENT: 1

ABSTAIN: 0

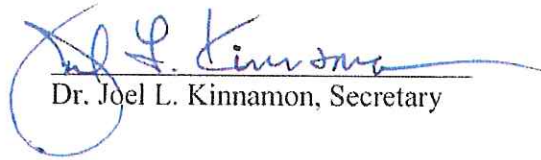


Dr. Joel L. Kinnamon, Secretary
Desert Community College District

OFFICER'S CERTIFICATE

I HEREBY CERTIFY that I am the duly elected and acting Secretary and keeper of the records of the Board of Trustees of the Desert Community College District, a California college district (the "District"); that the attached is a true and correct copy of Resolution #032114-4 duly adopted by the Board of Trustees (the "Board of Trustees") of the District at a duly noticed and called meeting of such Board of Trustees on March 21, 2014 (collectively, the "Resolution"); that the Resolution does not conflict with other actions of the District, nor has the Resolution been in any way altered, amended or repealed and that it is in full force and effect, unrevoked and unrescinded, as of this day, and has been entered upon the regular minute book of this District, as of the aforementioned date, and that the Board of Trustees of the District has, and at the time of adoption of the Resolution, had, full power and lawful authority to adopt the Resolution and to confer the powers thereby granted to the officers and staff therein named who have full power and lawful authority to exercise the same.

March 21, 2014


Dr. Joel L. Kinnamon, Secretary