

TO APPROVE A  
LIMITED WAIVER OF SOVEREIGN IMMUNITY

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IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

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A COUNCIL BILL

**TO APPROVE** a limited waiver of sovereign immunity from the Choctaw Nation of Oklahoma (the "Nation") with respect to the NMTC Financing and the NMTC Financing Documents (as defined herein and in Exhibit A).

**WHEREAS**, it has been proposed that the Nation enter into financing (the "NMTC Financing") with U.S. Bancorp Community Development Corporation, a Minnesota corporation ("USBCDC") and Travois New Markets Project CDE XXI, LLC, a Delaware limited liability company (the "Sub-CDE") utilizing federal tax credits under the New Markets Tax Credit program governed by Section 45D of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder (the "NMTC Program" and as to the credits, the "NMTCs") for the development and construction of a wellness center facility at 2750 Big Lots Parkway, Durant, Oklahoma 74701 (the "Project"), as described in Exhibit A attached hereto; and

**WHEREAS**, as a condition to entering into the NMTC Financing, USBCDC and the Sub-CDE are requiring a limited waiver of sovereign immunity from the Nation applicable to the NMTC Financing and the NMTC Financing Documents in substantially the following form:

**Limited Waiver of Sovereign Immunity.** To the extent that any party to this [Agreement] may be entitled in any state or jurisdiction to claim or benefit from any sovereign immunity now or hereafter for itself or any of its properties or assets (which it now has or may hereafter acquire) in respect of its obligations under this [Agreement] [or any other Loan Documents (as defined in this Agreement)] from service of process or other documents relating to proceedings, jurisdiction, suit, judgement, execution, attachment (whether before awarded or judgement, in aid or execution or otherwise) or legal process or to the extent that in any such jurisdiction there may be attributed to it or any of its properties or assets such sovereign immunity (whether or not claimed), each of the parties to this [Agreement] expressly, unconditionally and irrevocably agrees not to claim, invoke or permit to be invoked, on its or its properties' or assets' behalf or for its or its properties' or assets' benefit, and hereby expressly, unconditionally and irrevocably waives, such sovereign immunity to the fullest extent permitted by the laws of such jurisdiction; provided that such limited waiver shall be limited to the enforcement of the obligations under this [Agreement] [or any other Loan Document] and nothing in this Section [ ] shall be construed as extending or enlarging this limited waiver of sovereign immunity hereunder beyond the scope of the obligations set forth in this [Agreement] or [any other Loan Document].

Except as specifically set forth in this Section [ ], nothing contained herein [or in any Loan Document] is intended to, nor shall it be construed to:

1. benefit any party other than as specified herein or therein;
2. waive the sovereign immunity of any party except as specifically set forth herein or therein;
3. waive the sovereign immunity of (i) any legally distinct and separate agency or affiliate of the Choctaw Nation of Oklahoma or (ii) any official acting on behalf of the Choctaw Nation of Oklahoma, or such agency or affiliate, and within the scope of his or her official authority.

**WHEREAS**, the Unconditional Guaranty of New Markets Tax Credits, Put Price and Environmental Indemnification (the “NMTC Indemnity”) by the Nation and the QALICB (as defined in Exhibit A) require that the Nation and the QALICB indemnify USBCDC against any loss or recapture of the NMTCs resulting from certain actions or inactions of the Nation or the QALICB; and

**WHEREAS**, as a condition to entering into the NMTC Financing, USBCDC and the Sub-CDE are requiring that, with respect to the NMTC Financing Documents other than the Put/Call Agreement, NMTC Indemnity, Collateral Assignment of Fund Loan Documents and Bank Account Control Agreements, the Nation agree to Oklahoma governing law and jurisdiction and venue in the state and federal courts in Oklahoma City, Oklahoma; and

**WHEREAS**, as a condition to entering into the NMTC Financing, USBCDC is requiring that, with respect to the Put/Call Agreement, NMTC Indemnity and Collateral Assignment of Fund Loan Documents, the Nation agree to Missouri governing law and jurisdiction in the state and federal courts in Missouri; and

**WHEREAS**, as a condition to entering into the NMTC Financing, USBCDC is requiring that, with respect to the Bank Account Control Agreements, the Nation agree to Minnesota governing law and jurisdiction in the state and federal courts in Minnesota; and

**WHEREAS**, the Nation has determined that it is in the best interests of the Nation to enter into the NMTC Financing and NMTC Financing Documents; and

**WHEREAS**, the Tribal Council of the Nation has determined that it is in the best interests of the Nation to grant such a limited waiver of sovereign immunity as described above with respect to the NMTC Financing Documents.

**THEREFORE, BE IT ENACTED** by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority for the express, unequivocal and irrevocable grant of a limited waiver of the sovereign immunity of the Nation as set forth in this Council Bill; provided that the limited waiver of sovereign immunity shall be not be effective until the finalization, execution and delivery of the NMTC Financing Documents in connection with closing of the NMTC Financing.

**BE IT FURTHER ENACTED** by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority that nothing contained herein is intended to, nor shall it be construed to, benefit any party other than the Nation, the QALICB, USBCDC, the Investment Fund (as defined in Exhibit A), Travois (as defined in Exhibit A) and the Sub-CDE.

**BE IT FURTHER ENACTED** by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority that nothing contained herein is intended to, nor shall it be construed

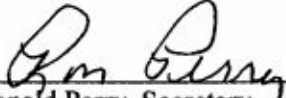
to, waive the sovereign immunity of the Nation, or any agency thereof, except as specifically set forth herein.


**BE IT FURTHER ENACTED** by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority that nothing contained herein is intended to, nor shall it be construed to, waive the sovereign immunity of (i) any legally distinct and separate agency or affiliate of the Choctaw Nation of Oklahoma or (ii) any official acting on behalf of the Choctaw Nation of Oklahoma, or such agency or affiliate, and within the scope of his or her official authority, except as specifically set forth herein.

**BE IT FURTHER ENACTED** by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as approval and authority that the Chief of the Nation, or his written designee, be authorized to prepare, execute, deliver and/or file any and all agreements (including, but not limited to, the NMTC Financing Documents), certificates, instruments and documents, in such form and with such terms and provisions as the Chief or his written designee may approve, with his, her or their execution, delivery and/or filing thereof to be conclusive evidence of such approval, and to take such other action as he, she or they may deem proper or appropriate, to carry out the intent and purposes of the foregoing enactments.

**CERTIFICATION**

*I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on October 14, 2017. I further certify that the foregoing Council Bill CB- 06 -18 was adopted at such meeting by the affirmative vote of twelve (12) members, zero (0) negative votes, and zero (0) abstaining.*

  
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Ronald Perry, Secretary  
Choctaw Nation Tribal Council

  
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Kenny Bryant, Speaker  
Choctaw Nation Tribal Council

  
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Gary Baton, Chief  
Choctaw Nation of Oklahoma

Date 10-17-17