



PHOENIX IDA

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## MEMORANDUM

**DATE:** February 26, 2021

**TO:** Members, Board of Directors

**FROM:** Juan Salgado, Chief Executive Officer

**SUBJECT:** Multifamily Housing Revenue Notes (Mesquite Terrace Apartments Project), Series 2021

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### BACKGROUND

On September 25, 2019, (the “Borrower,” whose name subsequently changed to Mesquite Terrace Apartments, LLC), obtained preliminary Board approval for a multifamily housing project known as Mesquite Terrace Apartments Project to finance the acquisition, construction, development, improvement, and equipping of the project site (the “Project”).

The Borrower name changed to Mesquite Terrace Associates, LLC subsequent to adoption of the Preliminary Resolution and that entity is now seeking the Board’s final approval for the issuance of the Phoenix IDA’s subject Multifamily Housing Revenue Notes (the “Notes”), in an aggregate principal amount not to exceed \$48,000,000. The Borrower will seek Phoenix City Council approval on March 17, 2021, pending Phoenix IDA Board approval.

### THE PROJECT

The Project contemplates the acquisition, construction, development, improvement, and equipping of a multifamily housing project consisting of approximately 300 affordable housing units. The Project is located at or near 5033, 5039, 5045 and 5107, North 19th Avenue in Phoenix, Arizona, north of the northeast corner of 19<sup>th</sup> Avenue and Camelback Road, and is within Phoenix City Council District 4, represented by Councilman Laura Pastor.

The Borrower anticipates completing the phased Project work by the 2<sup>nd</sup> Quarter of 2023.

### PLAN OF FINANCING

According to the Borrower, it is anticipated that the Notes will be sold to JPMorgan Chase Bank, N.A. The maturity of the longest series will be no more than 40 years. It is expected that the Notes will be sold at the then prevailing market rate. The Borrower expects the sale of the Notes to be completed by March 2021.

### RECOMMENDATION

Kutak Rock, as legal advisor to the Phoenix IDA, and I recommend that approval be granted subject to the terms and conditions contained in the Board final approval resolution, as reviewed by same.

**RESOLUTION NO. 2021-04**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA GRANTING FINAL APPROVAL TO THE ISSUANCE OF ONE OR MORE SERIES OF ITS TAX-EXEMPT AND/OR TAXABLE MULTIFAMILY HOUSING REVENUE NOTES (MESQUITE TERRACE APARTMENTS PROJECT), SERIES 2021, TO BE ISSUED PURSUANT TO A PLAN OF FINANCE IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$48,000,000 (THE “NOTES”) TO FINANCE A PROJECT FOR THE BENEFIT OF MESQUITE TERRACE APARTMENTS, LLC; AUTHORIZING THE EXECUTION AND DELIVERY OF A FUNDING LOAN AGREEMENT, A PROJECT LOAN AGREEMENT, A REGULATORY AGREEMENT AND OTHER DOCUMENTS REQUIRED IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF THE NOTES; APPROVING THE TERMS OF SUCH DOCUMENTS AND RELATED DOCUMENTS TO BE EXECUTED BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN IN CONNECTION WITH THE NOTES; AND AUTHORIZING OTHER ACTIONS NECESSARY IN CONNECTION WITH THE ISSUANCE OF THE NOTES**

**WHEREAS**, The Industrial Development Authority of the City of Phoenix, Arizona (the “**Authority**”), is an Arizona nonprofit corporation designated as a political subdivision of the State of Arizona (the “**State**”) empowered under the Industrial Development Financing Act, A.R.S. § 35-701 et seq., as amended (the “**Act**”), to issue industrial development revenue bonds for the purposes set forth in the Act, including the making of secured and unsecured loans for the purpose of financing the acquisition, construction, improvement, equipping or operating of a “project” (as defined in the Act) whenever the Board of Directors of the Authority (the “**Board of Directors**”) finds such loans to further advance the interests of the Authority or the public, and to refund outstanding obligations incurred by an enterprise to finance the cost of a project when the Board of Directors finds that the refinancing is in the public interest; and

**WHEREAS**, the term “project” includes within its meaning under the Act any land, any building or other improvements, and all real and personal properties which are suitable for any “residential real property for dwelling units located within the municipality approving the formation of the corporation;” and

**WHEREAS**, Mesquite Terrace Apartments, LLC, an Arizona limited liability company (collectively with its assignees and designees, the “**Borrower**”), has previously requested that the Authority issue its revenue bonds, notes or obligations in one or more tax-exempt or taxable series and loan the proceeds thereof to the Borrower to assist in the financing of the below-defined Project; and

**WHEREAS**, on September 25, 2019, pursuant to Resolution 2019-14 (the “**Preliminary Resolution**”), the Authority granted preliminary approval to issue and sell its Multifamily

Housing Revenue Bonds (Mesquite Terrace Apartments Project), pursuant to the Act, in one or more series in an aggregate principal amount not to exceed \$44,000,000; and

**WHEREAS**, the Borrower now requests that the Authority grant its final approval to the issuance and sale of its Multifamily Housing Revenue Notes (Mesquite Terrace Apartments Project), Series 2021 in one or more tax-exempt and/or taxable series in an aggregate principal amount not to exceed \$48,000,000 (the “**Notes**”); and

**WHEREAS**, the Borrower further requests that the Authority loan the proceeds from the sale of the Notes to the Borrower: (a) to finance and/or refinance, as applicable, the acquisition, construction, development, improvement, equipping and/or operation of a multifamily residential rental housing project and improvements and facilities functionally related and subordinate thereto, all to be situated on approximately three acres of land which is expected to consist of approximately 297 units, generally located at or near 5033, 5039, 5045 and 5107, North 19th Avenue, Phoenix, Arizona (collectively, the “**Facilities**”), (b) to fund any required reserve funds, (c) to pay capitalized interest on the Notes, if any, and (d) to pay costs and expenses incurred in connection with the issuance of such Notes (collectively, the “**Project**”), all in accordance with the Act; and

**WHEREAS**, in furtherance of the purposes of the Act and the interest of the Authority and the public thereunder, the Authority proposes to issue the Notes and loan the proceeds thereof to the Borrower to finance all or a portion of the costs of the Project; and

**WHEREAS**, in connection with the issuance of the Notes, the Authority will obtain a loan (the “**Funding Loan**”) pursuant to a Funding Loan Agreement, to be dated as of the first day of the month in which the Notes are issued (the “**Funding Loan Agreement**”), by and among the Authority, Zions Bancorporation, National Association, or such other national banking association that may be selected by the Borrower and is acceptable to the Authority, as fiscal agent (the “**Fiscal Agent**”), JPMorgan Chase Bank, N.A., as initial funding lender (“**Initial Funding Lender**”), and ORIX Real Estate Capital, LLC, doing business as Lument Capital, as permanent lender (“**Permanent Lender**”), the proceeds of which the Authority will use to make a loan (the “**Project Loan**”) to the Borrower pursuant to a Project Loan Agreement, to be dated as of the first day of the month in which the Notes are issued (the “**Project Loan Agreement**”) and, together with the Funding Loan Agreement, the “**Loan Agreements**”), concurrently entered into by and among the Authority, the Borrower and the Fiscal Agent; and

**WHEREAS**, the Borrower’s repayment obligations in respect of the Project Loan will be evidenced by a promissory note (together with all riders and modifications thereto, the “**Project Note**”) delivered to the Authority, which Project Note will be endorsed by the Authority to the Fiscal Agent as security for the Funding Loan; and

**WHEREAS**, in order to assure the Authority and the holders of the Notes that interest on the Notes will be excludible from gross income of the owners thereof for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “**Code**”), and to satisfy the public purposes for which the Notes are authorized to be issued under the Act, and to satisfy the purposes of the Authority in determining to issue the Notes, certain limits on the occupancy of units in the Project and other requirements have been established pursuant to

the terms of a Regulatory Agreement and Declaration of Restrictive Covenants, to be dated as of the first day of the month in which the Notes are issued (the “**Regulatory Agreement**”), among the Authority, the Fiscal Agent and the Borrower; and

**WHEREAS**, there have been prepared and presented to the Chief Executive Officer of the Authority the proposed, substantially final forms of the following documents (collectively, the “**Documents**”):

- (1) the Funding Loan Agreement, with form of Note attached thereto;
- (2) the Project Loan Agreement; and
- (3) the Regulatory Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of The Industrial Development Authority of the City of Phoenix, Arizona as follows:

**Section 1.** The Board of Directors finds and determines that the issuance of the Notes and the making of the Project Loan to the Borrower for the purpose of financing and/or refinancing all or a portion of the cost of the acquisition, construction, improvement, equipping and operation of the Project and the costs and expenses incidental thereto are in furtherance of the purposes of the Authority under the Act, that the Project will constitute a “project” within the meaning of the Act, and that such financing and/or refinancing is in the public interest.

**Section 2.** The Notes, which shall be named as set forth herein or as otherwise set forth in the Funding Loan Agreement, are hereby approved and authorized to be issued pursuant to a plan of finance in one or more tax-exempt and/or taxable series in an aggregate principal amount not to exceed \$48,000,000, to be dated, to mature (no later than 40 years after their date of issuance), to bear interest, to be subject to redemption and tender for purchase, to be payable as to principal, interest and any premium, and with such other terms, all as provided in the Funding Loan Agreement pursuant to which each series of the Notes are issued. This approval is subject to the following terms and conditions:

2.1 If a series of Notes has not received a rating of “BBB-” or better (or an equivalent rating) from a nationally recognized bond rating agency, each purchaser of such series of Notes shall execute and deliver an investor acknowledgement letter in form and substance satisfactory to the Authority and its counsel setting forth, *inter alia*, eligibility requirements of any purchaser and restrictions on the transfer of such series of Notes; provided, however, the provisions of this paragraph may be waived by the Authority in its sole discretion prior to the issuance of the Notes;

2.2 Notice regarding the issuance of the Notes is given to the Arizona Attorney General in the manner contemplated by Section 35-721(F) of the Act and, within ten days of such notice, the Arizona Attorney General does not issue an opinion indicating that the project to be financed does not come within the purview of the Act;

2.3 All agreements, certificates, documents, or instruments requiring the execution or consent of the Authority are in a form and substance acceptable to the Authority's counsel;

2.4 The Authority receives such opinions, certificates, comfort letters and consent letters in connection with the Notes as the Authority's counsel may deem necessary or appropriate, in form and substance satisfactory to the Authority's counsel and advisors;

2.5 The proceedings under which the Notes are to be issued have been approved by the Council of the City of Phoenix, Arizona (the "**City**");

2.6 The Authority, its officers, directors, employees, agents and its Chief Executive Officer and the City are provided with full indemnification in connection with the issuance and sale of the Notes, in form and substance satisfactory to the Authority's counsel, from a credit-worthy source;

2.7 The Borrower agrees to make arrangements mutually satisfactory to the Authority as to the payment of the Authority's closing fees, annual administrative fees, and expenses, the terms and conditions of which will be incorporated into the Documents executed in connection herewith.

**Section 3.** The Notes shall be payable solely from the receipts and revenues received by or on behalf of the Authority pursuant to the Loan Agreements, and other security provided in the Funding Loan Agreement, and such payments, revenues and receipts as shall be pledged and assigned to the Fiscal Agent as security for the payment of the Notes as provided in the Loan Agreements. Nothing contained in (a) this Resolution, (b) the Documents, or (c) any other agreement, certificate, document, or instrument executed in connection with the issuance of any of the Notes shall be construed as obligating the Authority (except as a special limited obligation to the extent provided in such documents or instruments) or obligating the City or the State to pay the principal of or premium, if any, or interest on the Notes, or as incurring a charge upon the general credit of the Authority, the City or the State, nor shall the breach of any agreement contemplated by this Resolution, the Documents, or any other instrument or documents executed in connection herewith or therewith impose any charge upon the general credit of the Authority, the City or the State. The Authority has no taxing power.

Prior to the issuance of the Notes, the Authority has or will have issued, and subsequent to the issuance of the Notes, the Authority may issue, notes, bonds or other obligations in connection with the financing of other projects (such notes, bonds or other obligations, together with any notes, bonds or other obligations issued by the Authority between this date and the issuance of the Notes shall be referred to herein as the "**Other Notes**"). Any pledge, mortgage, or assignment made in connection with the Other Notes shall be protected, and any funds pledged or assigned for payment of principal of or premium, if any, or interest on the Other Notes shall not be used for the payment of principal of or premium, if any, or interest on the Notes. Any pledge, mortgage, or assignment made in connection with the Notes shall be protected, and no funds pledged or assigned for the payment of the Notes shall be used for the payment of principal of or premium, if any, or interest on the Other Notes.

**Section 4.** The forms, terms, and provisions of each of the Documents, in the forms of such Documents (including the exhibits thereto) presented to this meeting, are hereby approved, with such insertions, deletions, and changes as are approved by the officers authorized to execute the documents (which approval will be conclusively established by their execution and/or delivery thereof). Upon satisfaction of the conditions set forth in Section 2 hereof, the Authority's President, Vice President, Secretary, Treasurer and Chief Executive Officer (each an "**Authorized Officer**") are each hereby authorized individually in such offices to execute and deliver each of the Documents and any related documents necessary to effectuate the financing contemplated by this Resolution, including, without limitation a tax certificate as to arbitrage and the provisions of section 103 and sections 141-150 of the Code, or, with respect to any of the Documents not calling for execution by the Authority, to approve and deliver such documents, with respect to any one or more series of the Notes. From and after the execution and delivery of each of the Documents, the officers, agents, employees and Chief Executive Officer of the Authority are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents, certificates and assignments as may be necessary to carry out and comply with the provisions of each of the Documents (as executed and delivered) and this Resolution.

Signature pages for any Documents requiring the Authority's signature shall be delivered to Authority's counsel no fewer than seven (7) days prior to Note closing or any other date on which an executed signature page is required (unless otherwise agreed to by the Authority and its counsel), and once executed will be held in escrow by the Authority's counsel and delivered on the closing date or on such other date on which an executed signature page is required.

**Section 5.** After the Notes are delivered to the holders upon receipt of payment therefor, this Resolution shall be and remain irrevocable until the Notes and interest thereon shall have been fully paid, canceled, and discharged.

**Section 6.** Nothing contained in this Resolution, nor in any other instrument, may be considered as obligating the Authority or the City to any pecuniary liability or charge upon the general credit of the Authority or the City. Furthermore, it is understood that no costs are to be borne by the Authority with respect to the Project and the issuance and sale of the Notes except those to be paid out of the proceeds of the Notes, and that the Borrower will promptly reimburse the Authority for any other expenses reasonably incurred by the Authority, including the fees of its legal counsel and any financial advisor, whether or not the Notes are issued or sold.

**Section 7.** The actions of the Borrower and those acting on its behalf in filing one or more requests from time to time for allocations for private activity bonding authority for the Notes through the Arizona Finance Authority (whether in the form of carryforward allocations or otherwise) is hereby ratified and authorized in an aggregate principal amount which, inclusive of any and all such requests, shall not exceed \$48,000,000.

**Section 8.** In accordance with Section 147(f) of the Code, the Authority has or will publish notice of and will hold a public hearing, the results of which will be reported to the City prior to its approval of the Notes. The officers of the Authority, each acting alone, or any representative thereof, are hereby authorized and directed to hold such public hearing for and on behalf of the Authority.

**Section 9.** All actions of the officers, staff, directors, employees, agents and Chief Executive Officer of the Authority which are in conformity with the purposes and intent of this Resolution and in furtherance thereof, whether heretofore or hereafter taken, including but not limited to the engagement of Kutak Rock, LLP, as the Authority's counsel and Note counsel, shall be and are hereby ratified, confirmed and approved. The proper officers, staff, directors, employees, agents and Chief Executive Officer of the Authority are hereby authorized and directed to do all such acts on behalf of the Authority as may be deemed necessary or desirable to carry out the terms and intent of this Resolution.

**Section 10.** The Chief Executive Officer of the Authority, the members of the Board of Directors of the Authority and any director, officer, official, employee or agent of the Authority shall not be subject to any personal liability or accountability by reason of the issuance of the Notes or execution, delivery of performance of the Documents. The liability of the Authority with respect to any document executed in connection with the transactions contemplated hereby, including the Documents, shall be limited as provided in the Act and such documents.

**Section 11.** The Borrower has indicated that it will incur and pay expenses relating to the Project prior to the issuance of the Notes and expects to reimburse those expenditures with proceeds of the Notes. The Authority hereby acknowledges that the Borrower intends to allocate proceeds of the Notes to the reimbursement of any such costs of the Project paid prior to the issuance of the Notes in accordance with Section 1.150-2 of the Treasury Regulations. Accordingly, this Resolution is a reaffirmation of the affirmative official action and declaration of official intent made by the Authority in the Preliminary Resolution relating to the issuance of the Notes as required by Section 1.150-2 of the Treasury Regulations.

**Section 12.** Any provisions of any bylaws, orders, procedural pamphlets and resolutions of the Authority inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as repealing any bylaw, order, procedural pamphlet or resolution or any part thereof.

**Section 13.** If any section, paragraph, clause or provision of this Resolution is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision does not affect any of the remaining provisions of this Resolution.

**Section 14.** It is found and determined that all formal actions of the Authority and its Board of Directors concerning and relating to the adoption of this Resolution were adopted in an open meeting and that all deliberations that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements of the State and the Authority.

**Section 15.** Notice of Arizona Revised Statutes Section 38-511 is hereby given. The provisions of that statute by this reference are incorporated herein to the extent of applicability to matters contained herein under the laws of the State.

**Section 16.** This Resolution is effective immediately upon its adoption.

**Section 17.** Neither this Resolution, any of the Documents, nor any action taken by the Authority, any member of the Board of Directors, the Chief Executive Officer or the Authority's counsel in connection with the issuance of the Notes is intended to provide, and shall not be construed as providing, advice of any kind to the Borrower or to the Authority with respect to the issuance of the Notes for purposes of 15 U.S.C. Section 78o-4(e)(4)(A)(i). The Authority is a conduit issuer and none of the Authority, the Board of Directors, the Chief Executive Officer or the Authority's counsel is acting or will act as a municipal advisor, financial advisor, or fiduciary to any party involved in the issuance of the Notes.

*[Signature page follows]*



Adopted and approved this 26<sup>th</sup> day of February, 2021.

THE INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF PHOENIX, ARIZONA

By: \_\_\_\_\_  
Juan Salgado, Chief Executive Officer