



PHOENIX**IDA**

Item 3



MEMORANDUM

DATE: August 18, 2022
TO: Members, Board of Directors
FROM: Juan Salgado, Chief Executive Officer
SUBJECT: Multifamily Housing Revenue Bonds (Residences at Falcon Park Project), Series 2022

BACKGROUND

On June 16, 2022, Falcon Park, LLC, an Arizona limited liability company (collectively with its assignees and designees, the “Borrower”), obtained final Board approval (Resolution No. 2022-08) to finance or refinance acquisition, construction, improvement, equipping and/or operation of a multifamily housing project to be known as Residences at Falcon Park.

THE PROJECT

The Borrower states that the project will be comprised of an approximately 192-unit multifamily residential rental housing complex (a portion of which will be set aside for occupancy by low- to moderate-income tenants). The project is currently expected to be located at or near 1220 North 34th Avenue in Phoenix, Arizona (east of the southeast intersection of 35th Avenue and the Interstate 10), within Phoenix City Council District 4, represented by Vice Mayor Laura Pastor.

THE REQUEST

The bond purchaser, Alliance Bank, has requested that a taxable series of bonds be added to the previously approved tax-exempt series. As such, the Borrower is now seeking the Board’s approval of an amended final approval resolution reflecting a not to exceed amount of \$30,000,000, up from the original final approval, not to exceed amount of \$25,000,000.

The Borrower expects the transaction to close in September of 2022, and anticipates completing the project work by the 4th Quarter of 2024.

RECOMMENDATION

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

RESOLUTION NO. 2022-12

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA AUTHORIZING AN INCREASE OF THE NOT TO EXCEED AGGREGATE PRINCIPAL AMOUNT RELATED TO THE FINAL APPROVAL OF THE ISSUANCE OF ONE OR MORE SERIES OF ITS TAX-EXEMPT AND/OR TAXABLE MULTIFAMILY HOUSING REVENUE BONDS (RESIDENCES AT FALCON PARK PROJECT), SERIES 2022, TO BE ISSUED PURSUANT TO A PLAN OF FINANCE IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$30,000,000 (THE “BONDS”) TO FINANCE A PROJECT FOR THE BENEFIT OF FALCON PARK, LLC; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE OF TRUST, A LOAN AGREEMENT, A REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, AND A BOND PURCHASE AGREEMENT; APPROVING THE TERMS OF SUCH DOCUMENTS; AUTHORIZING 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 BONDS; AND AUTHORIZING OTHER ACTIONS NECESSARY IN CONNECTION WITH THE ISSUANCE OF THE BONDS

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, the Authority previously granted its final approval to the issuance and sale of its Multifamily Housing Revenue Bonds (Residences at Falcon Park Project), Series 2022 in one or more tax-exempt and/or taxable series (the “Bonds”) pursuant to Resolution No. 2022-08, which was duly adopted by the Board of Directors of the Authority on June 16, 2022 (the “Original Resolution”), the proceeds of which will be used to make a loan to Falcon Park, LLC, an Arizona limited liability company (the “Borrower”) to: (a) finance or refinance, as applicable, all or a portion of the costs of acquiring, constructing, improving, equipping and/or operating a qualified

residential rental housing project to be comprised of 192 units (a portion of which will be set aside for occupancy by low- to moderate-income tenants) and improvements and facilities functionally related and subordinate thereto, to be known as the “Residences at Falcon Park” and to be generally located at 1220 N. 34th Avenue in Phoenix, Arizona (the “Project Facilities”); (b) fund any required reserve funds; (c) pay capitalized interest on the Bonds, if any; and (d) pay costs and expenses incurred in connection with the issuance of such Bonds (collectively, the “Project”), all in accordance with the Act; and

WHEREAS, the Original Resolution authorized the issuance of the Bonds in an aggregate principal amount not to exceed \$25,000,000 for the benefit of the Borrower; and

WHEREAS, the Borrower now requests that the Authority amend its Original Resolution to increase the authorized aggregate principal amount of the Bonds to an aggregate principal amount not to exceed \$30,000,000; and

WHEREAS, the Board of Directors determines hereby that such amendment will be in furtherance of the purposes of the Act and the Authority and in the public interest; and

WHEREAS, the Authority will issue the Bonds pursuant to an Indenture of Trust, to be dated as of the first day of the month in which the Bonds are issued (the “Indenture”), by and between the Authority and U.S. Bank Trust Company, National Association or another national banking association selected by the Borrower and acceptable to the Authority, as trustee (the “Trustee”), the proceeds of which the Authority will use to make a loan (the “Loan”) to the Borrower pursuant to a Loan Agreement, to be dated as of the first day of the month in which the Bonds are issued (the “Loan Agreement”), concurrently entered into by and between the Authority and the Borrower; and

WHEREAS, the Bonds are anticipated to be sold pursuant to a Bond Purchase Agreement among the Authority, the Borrower and an initial purchaser to be named therein (the “Bond Purchase Agreement”); and

WHEREAS, the Bonds will be payable from the Security (as defined in the Indenture) pledged in the Indenture, such loan of Bond proceeds to be evidenced by one or more promissory notes (collectively, the “Note”) delivered by the Borrower in favor of the Authority and assigned by the Authority to the Trustee; and

WHEREAS, in order to assure the Authority and the holders of the tax-exempt series of Bonds that interest on the tax-exempt series of Bonds 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 Bonds are authorized to be issued under the Act, and to satisfy the purposes of the Authority in determining to issue the Bonds, 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 Bonds are issued (the “Regulatory Agreement”), among the Authority, the Trustee 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 Indenture of Trust, with form of Bonds attached thereto;
- (2) the Loan Agreement, with form of Note attached thereto;
- (3) the Regulatory Agreement; and
- (4) the Bond Purchase 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. It is hereby determined that Section 2 and Section 7 of the Original Resolution, and any other reference to the not to exceed aggregate principal amount of the Bonds in the Original Resolution, should be and are amended such that the authorized aggregate principal amount of the Bonds to be issued shall be an amount not to exceed \$30,000,000, and therefore all references in the Original Resolution to “\$25,000,000” are hereby amended to read “\$30,000,000.” It is hereby further determined that all references in the Original Resolution to the terms “Documents,” “Indenture,” “Loan Agreement,” “Note,” “Regulatory Agreement,” and “Bond Purchase Agreement” are hereby amended to refer to the forms of such documents described by such terms in the recitals to this Resolution. This Resolution is subject to all terms and conditions of the Original Resolution and those set forth herein. Other than the amendments to the Original Resolution expressly described and approved herein, the terms and conditions contained in the Original Resolution remain in full force and effect. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Original Resolution.

Section 2. 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 of the Original Resolution, 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 Bonds. 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 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 3. 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 as bond 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 4. 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 Bonds or execution, delivery or 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 5. The Borrower has indicated that it will incur and pay expenses relating to the Project prior to the issuance of the Bonds and expects to reimburse those expenditures with proceeds of the Bonds. The Authority hereby acknowledges that the Borrower intends to allocate proceeds of the Bonds to the reimbursement of any such costs of the Project paid prior to the issuance of the Bonds 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 (as defined in the Original Resolution) relating to the issuance of the Bonds as required by Section 1.150-2 of the Treasury Regulations.

Section 6. 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 Bonds 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 Bonds 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 Bonds.

Section 7. 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 8. 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 9. 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 10. 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 11. This Resolution is effective immediately upon its adoption.

[Signature page follows]

Adopted and approved this 18th day of August, 2022.

THE INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE CITY OF PHOENIX, ARIZONA

By: _____
Juan Salgado, Chief Executive Officer