



PHOENIXIDA

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## Item 2



**MEMORANDUM**

**DATE:** January 19, 2023

**TO:** Members, Board of Directors

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

**SUBJECT:** Multifamily Housing Governmental Revenue Notes (Pueblo Apartments), Series 2023

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**BACKGROUND**

On July 21, 2022, Chicanos Por La Causa, Inc., an Arizona nonprofit corporation (together with its assignee and designees), obtained preliminary Board approval for a multifamily housing project to be known as Pueblo Apartments Project to finance or refinance acquisition, construction, development, rehabilitation, improvement, equipping, and/or operation of the project site (the “Project”).

Today, CPLC Broadway and Central LIHTC, LLC, an Arizona limited liability company (the “Borrower”), whose sole member is Chicanos Por La Causa, Inc., an Arizona nonprofit corporation (the “Member”), is 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 \$30,000,000. The Borrower will seek Phoenix City Council approval on February 1, 2023, pending Phoenix IDA Board approval.

**THE PROJECT**

The Borrower states that the project will be comprised of an approximately 161-unit multifamily residential rental housing project known Pueblo Apartments. The project is expected to be located at or near 316 West Broadway Road in Phoenix, Arizona, within Phoenix City Council District 7, represented by Vice Mayor Yassamin Ansari.

The Borrower anticipates completing the Project work by the 4<sup>th</sup> Quarter of 2024.

**PLAN OF FINANCING**

At this time, the Notes are projected to be purchased by Churchill Mortgage Investment LLC. The Borrower expects the sale of the Notes to be completed by March 2023.

**RECOMMENDATION**

Greenberg Traurig, LLP, 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. 2023-01**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA GRANTING APPROVAL OF THE ISSUANCE OF ONE OR MORE SERIES OF ITS MULTIFAMILY HOUSING GOVERNMENTAL REVENUE NOTES (PUEBLO APARTMENTS PROJECT), SERIES 2023, TO BE ISSUED ON A TAXABLE OR TAX EXEMPT BASIS, IN AN AGGREGATE ORIGINAL PRINCIPAL AMOUNT OF NOT TO EXCEED \$30,000,000; AUTHORIZING THE EXECUTION AND DELIVERY OF LOAN AGREEMENTS AND RELATED SECURITY DOCUMENTS; 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 SUCH NOTES; AND AUTHORIZING OTHER ACTIONS NECESSARY IN CONNECTION WITH THE ISSUANCE OF SUCH 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, Title 35, Chapter 5 of the Arizona Revised Statutes, Section 35-701 et seq., as amended (the “Act”), to issue revenue bonds or notes for the purposes set forth in the Act, including the making of secured and unsecured loans to finance or refinance 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;

**WHEREAS**, CPLC Broadway and Central LIHTC, LLC, an Arizona limited liability company (the “Borrower”), whose sole member is Chicanos Por La Causa, Inc., an Arizona nonprofit corporation (the “Member”) and an organization described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), has requested that the Authority issue its Multifamily Housing Governmental Notes (Pueblo Apartments Project) Series 2023, from time to time, and loan the proceeds thereof to the Borrower to finance or refinance, as applicable (a) the acquisition, construction, development, rehabilitation, 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 4.2 acres of land in the South Mountain Valley Urban Village, which is expected to consist of approximately 161 units located on a parcel at or near 316 W. Broadway Road, Phoenix, Arizona (collectively, the “Facilities”), (b) funding any required reserve funds, (c) paying capitalized interest on the notes, if any, and (d) paying costs and expenses incurred in connection with the issuance of such notes (collectively, the “Project”), all in accordance with the Act; and

**WHEREAS**, in accordance with the applicable provisions of the Act, the Authority, upon the request of the Borrower, proposes to enter into a Funding Loan Agreement (the “Funding Loan Agreement”), to be dated as of the first day of the calendar month in which the initial issuance of the hereinafter defined Governmental Notes occurs (the “Dated Date”), by and among the Authority, Churchill Mortgage Construction LLC, as initial funding lender (the “Initial Funding Lender”), Zions Bancorporation,

National Association, a national banking corporation, as fiscal agent (the “Fiscal Agent”), pursuant to which the Authority will receive a loan from the Initial Funding Lender on a draw down basis, in the maximum aggregate principal amount of \$30,000,000 (the “Funding Loan”); and

**WHEREAS**, the Funding Loan will be evidenced by one or more Multifamily Housing Revenue Governmental Notes, to be dated its date of issuance (the “Delivery Date”) in one or more tax-exempt and/or taxable series, in an aggregate principal amount not to exceed \$30,000,000 (collectively, the “Governmental Notes”), to be delivered by the Authority to the Initial Funding Lender; and

**WHEREAS**, the Initial Funding Lender will originate the Funding Loan pursuant to the Funding Loan Agreement and a Construction Funding Agreement, to be dated the Dated Date (the “Construction Funding Agreement”), by and between the Borrower and the Initial Funding Lender; and

**WHEREAS**, the Authority will use the proceeds of the Funding Loan to make a mortgage loan to the Borrower, in the maximum aggregate principal amount of \$30,000,000 (the “Project Loan”) pursuant to the terms of a Project Loan Agreement, to be dated the Dated Date (the “Project Loan Agreement”) by and among the Authority, the Borrower and the Fiscal Agent; and

**WHEREAS**, the Project Loan will be evidenced by a mortgage note in the maximum aggregate principal amount of \$30,000,000 (the “Project Note”), to be delivered by the Borrower to the Authority and endorsed by the Authority to the Initial Funding Lender; and

**WHEREAS**, the proceeds of the Project Loan will be used to provide financing to the Borrower in connection with its acquisition, construction and equipping of the Project; and

**WHEREAS**, during the construction phase of the Project Loan (the “Construction Phase”), the Initial Funding Lender will administer the Funding Loan and the Project Loan in accordance with the Construction Funding Agreement; and

**WHEREAS**, as provided in the Funding Loan Agreement, upon the satisfaction of certain conditions set forth in the Construction Funding Agreement, the Project Loan will convert from the Construction Phase to the Permanent Phase, and on such date of conversion (the “Conversion Date”), the Initial Funding Lender shall deliver the Funding Loan, as evidenced by the Governmental Notes, to Churchill Mortgage Investment LLC for purchase; and

**WHEREAS**, during the Construction Phase, the Borrower’s payment obligation in respect of the Project Loan will be secured by a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, to be dated the Dated Date (the “Security Instrument”), granting a security title on and security interest in the Project, to be given by the Borrower to the Authority and assigned by the Authority to the Initial Funding Lender pursuant to the Assignment of Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, to be dated the Dated Date (the “Assignment”); and

**WHEREAS**, as a condition to the conversion from the Construction Phase to the Permanent Phase, the Borrower will be required to deliver (i) an Amended and Restated Project Note (the “Amended and Restated Project Note”) and (ii) an Amended and Restated Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Amended and Restated Security Instrument”); and

**WHEREAS**, pursuant to the Land Use Restriction Agreement, to be dated the Dated Date (the “Regulatory Agreement”), among the Authority, the Fiscal Agent and the Borrower, the Borrower has covenanted that the Facilities will at all times be occupied in accordance with Section 142(d) of the Internal Revenue Code of 1986, as amended (the “Code”) and Treasury Regulations promulgated thereunder, in order that the interest on the Governmental Notes be and continue to be excluded from the gross income of the holders thereof for federal income tax purposes; and

**WHEREAS**, after careful study and investigation by the Authority, it appears to be in the best interest of the citizens of the City of Phoenix, Arizona (the “City”) that the Funding Loan Agreement and the Project Loan Agreement be entered into, and the Authority has found and does hereby declare that providing for the funding of the Project Loan from the proceeds of the Governmental Notes is a lawful and valid public purpose in that it will further the public purpose intended to be served by the Act;

**WHEREAS**, the terms, maturities, provisions for redemption, security, and sources of payment for the Governmental Notes are set forth in the Funding Loan Agreement and in the form of the Governmental Notes attached thereto;

**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”):

- (a) Funding Loan Agreement
- (b) the Governmental Notes (as set forth in the Funding Loan Agreement);
- (c) the Project Loan Agreement;
- (d) the Project Note;
- (e) the Security Instrument;
- (f) the Assignment;
- (g) the Regulatory Agreement;
- (h) the Amended and Restated Project Note; and
- (i) the Amended and Restated Security Instrument; and

**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. Ratification of Actions.** All actions not inconsistent with the provisions of this Resolution heretofore taken by or at the direction of the Authority and its directors, officers, counsel, advisors, agents or its Chief Executive Officer, including, but not limited to, the engagement of Greenberg Traurig, LLP, as the Authority’s legal advisor (the “Legal Advisor”), directed toward the issuance and sale of the Governmental Notes, are hereby approved and ratified.

**Section 2. Findings.** The Board of Directors finds and determines that the issuance of the Governmental Notes and the making of a loan to the Borrower for the purpose of financing, refinancing, or reimbursing all or a portion of the cost of the Project and the costs and expenses incidental thereto, are in furtherance of the purposes and interests of the Authority under the Act and in the public interest and that the Project will constitute a “project” within the meaning of the Act.

**Section 3. Authorization and Terms of Governmental Notes.** For the purpose of financing the Project Loan, the delivery of one or more Promissory Notes in the aggregate principal amount not to exceed \$30,000,000, entitled “Multifamily Housing Revenue Governmental Notes”, is hereby authorized. The Governmental Notes shall be dated, mature, bear interest, be subject to prepayment prior to maturity

and be payable as set forth in the Funding Loan Agreement and Article III of the Project Loan Agreement; provided that the principal amount of the Governmental Notes will not exceed \$30,000,000, the interest rate of the Governmental Notes will not exceed 10.00% per annum (except in the case of an event of default as described below), and the Governmental Notes will have a final maturity date not later than forty (40) years after its dated date. Notwithstanding the foregoing, during the existence of an event of default under the Funding Loan Agreement, the Governmental Notes will bear interest equal to the lower of (i) the Construction Phase Interest Rate or Permanent Phase Interest Rate, as applicable, otherwise in effect notwithstanding the default plus three percent (3.0%) per annum, or (ii) the Maximum Interest Rate (as defined in the Funding Loan Agreement).

The Governmental Notes shall be issued as a registered note without coupons with such rights of exchangeability and transfer of registration and shall be in the form attached to, and executed and authenticated in the manner provided in, the Funding Loan Agreement. Any Governmental Notes hereafter issued in exchange or for transfer of registration for the Governmental Notes initially issued and delivered pursuant to the Funding Loan Agreement shall be executed and attested in accordance with the provisions of the Funding Loan Agreement.

**Section 4. Authorization of Documents; Authority's Signatures.** 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 authorized and 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 7 hereof, each of the Authority's President, Vice President, Secretary, Treasurer or Chief Executive Officer (each, an "Authorized Officer") is hereby authorized to execute and deliver each of the Documents 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 Governmental 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).

The dates of documents and the series designation provided for herein and in the exhibits are for convenience and are not mandatory. The Authority hereby authorizes a change of document dates and series designation as may be convenient to the parties in connection with the issuance of the Governmental Notes or for any other purpose.

**Section 5. Special Limited Obligations.** The Governmental Notes shall be payable solely from the property held and receipts and revenues received by or on behalf of the Authority pursuant to the Financing Agreement. 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 Governmental 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 of Phoenix, Arizona (the "City"), or the State to pay the principal of or premium, if any, or interest on the Governmental 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.

**Section 6. Other Indebtedness.** Prior to the issuance of the Governmental Notes, the Authority has or will have issued, and subsequent to the issuance of the Governmental Notes, the Authority may issue indebtedness in connection with the financing of other projects (said indebtedness is 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 Governmental Notes. Any pledge, mortgage, or assignment made in connection with the Governmental Notes shall be protected, and no funds pledged or assigned for the payment of the Governmental Notes shall be used for the payment of principal of or premium, if any, or interest on the Other Notes.

**Section 7. Conditions.** The Governmental Notes shall not be issued unless and until:

(a) The Borrower must fully comply with all applicable provisions of the most current version of the Authority’s Procedural Pamphlet (the “Pamphlet”) and the Authority’s financial guidelines relating to the issuance and sale of the Governmental Notes, including the submission of legal proceedings, as required by Section 5 of the Pamphlet, in form and substance satisfactory to the Authority.

(b) Notice regarding the issuance of the Governmental Notes is given to the Arizona Attorney General in the manner contemplated by Section 35-721(F) of the Act and, within 10 days of such notice, the Arizona Attorney General does not issue a negative opinion regarding the issuance of the Governmental Notes.

(c) On or prior to each date any Governmental Notes are issued (each a “Closing Date”), the Borrower shall make arrangements satisfactory to the Authority as to the payment of the Authority’s closing fee and annual administrative fees and expenses.

(d) On each Closing Date, an opinion of nationally recognized Bond Counsel (as defined below), in a form acceptable to the Authority, that interest on the tax-exempt Governmental Notes to be issued will be exempt from all federal income taxes and Arizona income taxes under existing statutes, regulations and court decisions, must be addressed to and provided to the Authority.

(e) On each Closing Date, the Borrower must deliver an opinion or opinions, addressed and in form acceptable to the Authority, prior to the issuance of the Governmental Notes, to the effect that all of the statements and information contained in the offering materials (if any) distributed in connection with the offer and sale of the Governmental Notes are correct and complete in all material respects, and do not contain any untrue statements of material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(f) Prior to consideration of final approval by the Authority of the issuance of any Governmental Notes and in the event any such Governmental Notes will be sold pursuant to a public offering, the Borrower and the underwriter of such Governmental Notes to be publicly offered (the “Underwriter”) must submit a bond or note purchase agreement for such Governmental Notes in final form, including, without limitation, any exhibits, appendices or attachments, except for information pertaining to the maturities, interest rates, yields and redemption provisions on such Governmental Notes, in form and substance acceptable to Legal Advisor and to Lewis Roca Rothgerber Christie LLP, as bond counsel (“Bond Counsel”).

(g) If the Governmental Notes have not received a rating of “BBB-” or better (or an equivalent rating) from a nationally recognized bond rating agency, on the related Closing Date

each purchaser of such Governmental Notes shall execute and deliver an investor acknowledgement letter in form and substance satisfactory to the Authority and Legal Advisor; provided, however, the provisions of this paragraph may be waived by the Authority in its sole discretion prior to the issuance of such Governmental Notes.

(h) If the Governmental Notes are to be privately placed, the bond placement agent or the ultimate purchaser of such Governmental Notes must submit an investment letter to the Authority, including representations that it has performed its own due diligence of the Project, and will purchase and hold such Governmental Notes as a private placement. Any subsequent resale of such Governmental Notes must be restricted to accredited investors or qualified institutional buyers.

(i) Legal Advisor must receive such legal opinions (including an enforceability opinion of Counsel to the Borrower), certificates and other proceedings as are necessary and advisable to evidence compliance by the Borrower and the Underwriter or any other purchaser of the Governmental Notes with the Authority's policies and procedures and applicable federal and state laws.

(j) The Authority, its officers, directors, staff, employees, agents and Chief Executive Officer, and the City of Phoenix, Arizona (the "City") must be provided with full indemnification in connection with the issuance and sale of the Governmental Notes, in form and substance satisfactory to Legal Advisor, from a credit-worthy source.

(k) The Borrower must receive final approval by the Council of the City of Phoenix, Arizona and, if necessary, the Arizona Department of Housing prior to the issuance of the Governmental Notes.

Signature pages for any Documents requiring the Authority's signature shall be delivered to Authority's counsel no fewer than seven days prior to closing or any other date on which an executed signature page is required, 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 8. Further Actions.** The officers, the agents, the employees and the Chief Executive Officer of the Authority, upon satisfaction of the conditions set forth in Section 7 hereof, shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby, including without limitation, the execution and delivery of the closing and other documents required to be delivered in connection with the issuance, sale and delivery of the Governmental Notes.

**Section 9. Open Meeting Laws.** 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. Public Hearing.** The Authority is hereby authorized to determine, in consultation with the Borrower, a date for a public hearing on the plan of financing of the Project and the proposed issuance of the Governmental Notes issued as tax-exempt indebtedness, as required by Section 147(f) of the Code, and to publish a public notice of such hearing in such form as approved by the Borrower and Bond Counsel.



**Section 11. Irrepealability.** After the Governmental Notes are delivered by the Authority, this Resolution shall be and shall remain irrepealable until the Governmental Notes and interest thereon shall have been fully paid, canceled, and discharged.

**Section 12. No Personal Liability.** The Chief Executive Officer of the Authority, the members of the Board of Directors 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 Governmental Notes. The liability of the Authority with respect to the Documents, or any other document executed in connection with the transactions contemplated hereby, shall be limited as provided in the Act and such Documents.

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

**Section 14. Waiver.** Any provisions of the Authority's Bylaws, Procedural Pamphlet, as amended through February 24, 2017 (the "Pamphlet"), or prior resolutions inconsistent herewith are waived to the extent only of such inconsistency. This waiver shall not be construed as repealing any such Bylaws, Pamphlet, or resolution or any part thereof.

**Section 15. Headings.** Subject headings included in this Resolution are included for purpose of convenience only and shall not affect the construction or interpretation of any of its provisions.

**Section 16. Effectiveness.** This Resolution shall be effective immediately.

**Section 17. Notice.** 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 18. Resolution Not to be Construed as Providing Advice Concerning Municipal Securities.** None of this Resolution, any of the Documents or 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 Governmental Notes is intended to provide, and shall not be construed as providing, advice of any kind to the Borrower with respect to the issuance of the Governmental Notes for purposes of 15 U.S.C. Section 780-4(e)(4)(A)(i). The Authority is a conduit Authority 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 Governmental Notes.

[Signature page follows.]

Adopted and approved this 19<sup>th</sup> day of January, 2023.

THE INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF PHOENIX, ARIZONA

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