



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: September 5, 2023

* = Mandatory, information must be provided

or Procurement Director Award: ☐

***Contractor/Vendor Name/Grantor (DBA):**

Southwest Nonprofit Housing Corporation

***Project Title/Description:**

Affordable Housing Gap Funding

***Purpose:**

The Pima County Board of Supervisors allocated \$5 million in funding to increase the availability of affordable housing in this community. As recommended by the Pima County Regional Affordable Housing Commission ("Commission"), \$4 million of that funding was directed toward "gap funding" for affordable housing developments. Following a competitive process, and on recommendation of the Commission, on June 20, 2023, the Board approved an award of \$2,125,000 to Southwest Nonprofit Housing Corporation for the Rio Mercado Project. This Affordable Housing Gap Funding Agreement effectuates that award. Under the Agreement, Pima County will pay the gap funding upon demonstration of full project completion, and the owner and developer will then record a restrictive covenant restricting the project as affordable to low-and-moderate income households for 30 years.

***Procurement Method:**

This Affordable Housing Gap Funding Agreement is Procurement exempt and not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

This project will provide 107 multi-family housing units guaranteed to be affordable to low-to-moderate income households for 30 years.

***Public Benefit:**

Increased availability of affordable housing.

***Metrics Available to Measure Performance:**

Payment withheld until project complete. Recorded restrictive covenant requires 30 years of affordability.

***Retroactive:**

No.

TD: COB 8-23-23 (1)
Vers.: 1
pgs.: 31

AUG22 23PM0137 PD

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CT Department Code: CR Contract Number (i.e., 15-123): 24-077
 Commencement Date: 9/5/2023 Termination Date: 9/4/2024 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount \$ 2,125,000.00 * ☐ Revenue Amount: \$ _____

***Funding Source(s) required:** _____

Funding from General Fund? ☒ Yes ☐ No If Yes \$ 2,125,000.00 % 100

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? ☒ Yes ☐ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
 Amendment No.: _____ AMS Version No.: _____
 Commencement Date: _____ New Termination Date: _____
 Prior Contract No. (Synergen/CMS): _____

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease

Amount This Amendment: \$ _____

Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

***Funding Source(s) required:** _____

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards)

☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
 Commencement Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required:** _____

***Match funding from General Fund?** ☐ Yes ☐ No If Yes \$ _____ % _____

***Match funding from other sources?** ☐ Yes ☐ No If Yes \$ _____ % _____

***Funding Source:** _____

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: Jenifer Darland, Deputy Director

Department: Community & Workforce Development

Telephone: 4-8312

Department Director Signature: 

Date: 8/18/2023

Deputy County Administrator Signature: 

Date: 18 Aug 2023

County Administrator Signature: _____

Date: 8/18/2023

AFFORDABLE HOUSING GAP FUNDING AGREEMENT

Background and Purpose

- A. As part of Pima County's ("County") fiscal year ("FY") 2022-23 budget, the Pima County Board of Supervisors ("Board") allocated \$5 million toward increasing affordable housing in Pima County. The Board appointed a Pima County Regional Affordable Housing Commission ("Commission") to study and make recommendations on how to expend that funding. Among the Commission's recommendations was using \$4 million of that funding to provide "gap funding" for development or preservation of affordable housing.
- B. County staff, with Commission comment and approval, developed and issued a Request for Proposals ("RFP"), CWD-RFP-AHF-01-FY2022-2023, to solicit proposals for projects to seek gap funding. Seven proposals were received, seeking a total of \$10,025,000 in funding. The proposals were scored by a panel with expertise in diverse areas, including housing, development, community development, and finance based on criteria set forth in the RFP. The panel recommended funding two projects: (1) Southwest Nonprofit Housing Corp – Rio Mercado (\$2,125,000.00); and (2) Family Housing Resources – Talavera Apartments (\$500,000.00).
- C. The Commission unanimously endorsed staff's recommendations. On June 20, 2023, the Board approved staff's and the Commission's recommendations, awarding funding to the two recommended projects in the amounts requested.
- D. This Gap Funding Agreement ("Agreement") is among County, Southwest Nonprofit Housing Corporation ("Developer"), and Rio Mercado Partners, LLC ("Owner"), to effectuate the award of \$2,125,000.00 in gap funding ("Gap Funding") toward the Rio Mercado Project ("Project").
- E. The Project consists of a total of 107 units of multifamily housing located in the City of Tucson. The Project is situated on two separate parcels identified by Pima County Assessor Parcel Numbers 140-21-002B and 140-25-008A ("Project Property"). Construction of the Project is underway. Developer has obtained all necessary plan approvals and construction permits from the City of Tucson and any other necessary approving entity. A description of the Project is attached as **Exhibit A**, and a map depicting the Project is attached as **Exhibit B**.

Agreement

1. **Term.** This Agreement commences on the date it is approved by the Board and terminates on the date all Affordability Restrictions required by this Agreement have been recorded. Notwithstanding this section, Sections 4, 7, and 8 of this Agreement survive termination and remain in effect so long as the Affordability Restrictions remain in effect.
2. **Payment of Gap Funding.** Upon completion of the Project, Developer will submit to County an invoice in the amount of the Gap Funding on a form to be provided by

Handwritten:
MIM
8/17/23

County. Developer will include with that invoice documentation demonstrating Project completion, including permanent Certificates of Occupancy issued by the City of Tucson covering all units in the Project. County will review the invoice and, within 10 days, either approve it or reject it. If approved, County will pay Developer the full amount of the Gap Funding within 10 days of the date of the invoice. If rejected, County will provide Developer with a written response including the reasons for the rejection.

3. **Affordability Restriction.** Within 30 days after receiving the payment, Owner will record Affordability Restrictions against the Project Property in substantially the form attached as **Exhibit C** and provide copies of the Affordability Restrictions to County.
4. **Enforcement.** County may enforce the Affordability Restrictions in accordance with their terms at any time during which they are in effect.
5. **Marketing Plan.** No later than September 18, 2023, Developer will submit to County a marketing plan for the Project that, at minimum, identifies a marketing and sales team, market study, marketing and sales goals, marketing strategies, marketing budget, and other information demonstrating applicant's experience in marketing to an affordable renter market. Developer will thereafter market the Project in accordance with that plan.
6. **Assignment.** Neither Developer nor Owner may assign its obligations under this Agreement without County's written consent, which will not be unreasonably withheld.
7. **Insurance.** The Insurance Requirements herein are minimum requirements for this Agreement and in no way limit, the indemnity covenants contained in this Agreement. Owner's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII. Pima County in no way warrants that the minimum insurer rating is sufficient to protect the Owner from potential insurer insolvency.
 - 7.1. **Minimum Scope and Limits of Insurance.** Owner shall procure and maintain, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. Pima County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Owner from liabilities that arise out of the performance of the work under this Agreement. If necessary, Owner may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.
 - 7.1.1. **Property** - Commercial Property insurance with coverage at least as broad as ISO form CP 00 01, covering full replacement cost of real property up to insurance limits.
 - 7.1.2. **Commercial General Liability (CGL)** – Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.
 - 7.1.3. **Business Automobile Liability** – waived.

MM
2/17/23

7.1.4. **Workers' Compensation (WC) and Employers' Liability** - Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employer's Liability coverage- \$1,000,000 each accident and each person - disease.

Sole Proprietor: The Workers' Compensation requirement shall not apply to a contractor that is exempt under A.R.S. § 23-901, and when such contractor executes the appropriate "Pima County Sole Proprietor/Independent Contractor Waiver Form". The forms necessary to effectuate this waiver are attached as **Exhibit D** and **Exhibit E**, for demonstrative purposes.

7.1.5. **Claims-Made Insurance Coverage.** If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Agreement, and Owner must maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

7.2. **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

7.2.1. **Additional Insured:** The General Liability Policy shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Owner.

7.2.2. **Subrogation:** The General Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Owner.

7.2.3. **Primary Insurance:** The Owner's policies shall stipulate that the insurance afforded the Owner shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance.

7.2.4. Insurance provided by the Owner shall not limit the Owner's liability assumed under the indemnification provisions of this Agreement.

7.3. **Notice of Cancellation.** Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice shall include the Pima County project or contract number and project description.

7.4. **Verification of Coverage.** Owner shall furnish Pima County with certificates of insurance as required by this Agreement. An authorized representative of the insurer shall sign the certificates.

7.4.1. All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. Each insurance policy required by this Agreement must be in effect at, or prior

MM
8/17/23

to, commencement of work under this Agreement. Failure to maintain the insurance coverages or policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract.

7.4.2. All certificates required by this Agreement shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this Agreement at any time.

7.5. **Approval and Modifications.** The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Agreement amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Owner, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

8. **Indemnification.** To the fullest extent permitted by law, Owner and Developer will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnatee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Owner or Developer or any of Owner's or Developer's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Owner or Developer to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnatee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnatee, be indemnified by Owner or Developer from and against any and all Claims. Owner and Developer are responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Agreement.

9. **Laws and Regulations.**

9.1. Compliance with Laws. Owner and Developer will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

9.2. Licensing. Owner and Developer individually warrant that it is appropriately licensed to provide the services under this Agreement and that its subcontractors will be appropriately licensed.

9.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Agreement. Any action relating to this Agreement must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

95M
8/17/23

10. **Independent Contractor.** Owner and Developer are independent contractors. Neither Owner nor Developer, nor any of their officers, agents or employees will be considered an employee of Pima County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under the Pima County Merit System. Owner and Developer are each responsible for paying all federal, state and local taxes on the compensation received by them under this Agreement and will indemnify and hold County harmless from any and all liability that County may incur because of their failure to pay such taxes.
11. **Subcontractors.** Owner and Developer are each fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Owner and Developer are responsible for the acts and omissions of their own employees. Nothing in this Agreement creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
12. **Non-Discrimination.** Owner and Developer will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Agreement, neither Owner nor Developer will discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
13. **Americans with Disabilities Act.** Owner and Developer will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).
14. **Authority to Contract.** Owner and Developer each warrants its right and power to enter into this Agreement. If any court or administrative agency determines that County does not have authority to enter into this Agreement, County will not be liable to Owner or Developer or any third party by reason of such determination or by reason of this Agreement.
15. **Full and Complete Performance.** The failure of any party to insist, in one or more instances, upon another party's complete and satisfactory performance under this Agreement, or to take any action based on another party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Agreement, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
16. **Cancellation for Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.
17. **Termination by County.** County may terminate this Agreement if Owner or Developer fails to cure a default under this Agreement after more than 30 days after written notice of the default from County (or for a longer period as may be reasonable required under

Handwritten: 8/17/23

the circumstances to cure the violation, provided that Owner or Developer, whichever is in default, has commenced the cure within the initial 30-day period and thereafter diligently pursues the cure to completion).

18. **Remedies.** Any party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.
19. **Severability.** Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.
20. **Non-Exclusive Agreement.** Owner and Developer understand that this Agreement is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.
21. **Books and Records.** Owner and Developer will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Owner and Developer will retain all records relating to this Agreement for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
22. **Public Records.**

22.1. **Disclosure.** Pursuant to A.R.S. § 39-121 et seq., all documents submitted in response to the solicitation resulting in award of this Agreement, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

22.2. **Records Marked Confidential; Notice and Protective Order.** If Owner or Developer reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Owner or Developer must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Owner and Developer of the request as soon as reasonably possible. County will release the records 30 days after the date of that notice, unless Owner or Developer has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

23. **Legal Arizona Workers Act Compliance.**

23.1. Compliance with Immigration Laws. Owner and Developer hereby warrant that they will at all times during the term of this Agreement comply with all federal

MM
8/17/23

immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Owner and Developer will further ensure that each subcontractor who performs any work under this Agreement likewise complies with the State and Federal Immigration Laws.

23.2. Books & Records. County has the right at any time to inspect the books and records of Owner and Developer and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

23.3. Remedies for Breach of Warranty. Any breach of Owner's, Developer's, or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Agreement subjecting Owner or Developer to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Owner or Developer will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Owner and Developer.

23.4. Subcontractors. Owner and Developer will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 23 by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to

Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

24. **Notices**. Any notice required or permitted to be given under this Agreement must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:

Director, Pima County Community
& Workforce Development
2797 W. Ajo Way, 3rd Floor
Tucson, AZ 85713

Developer:

Southwest Nonprofit Housing Corporation
2455 E. Speedway #101
Tucson, AZ 85719

Owner:

Rio Mercado Partners, LLC
2455 E. Speedway #101
Tucson, AZ 85719

Any party may update its contact for purposes of notices in writing at any time.

25. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Owner or Developer engage in for-profit activity and have 10 or more employees, and if this Agreement has a value of \$100,000.00 or more, Owner and Developer each individually certify that it is not currently engaged in and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
26. **Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394, if Owner or Developer engage in for-profit activity and have 10 or more employees, Owner and Developer each individually certify that it is not currently using, and agrees for the duration of this Agreement to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Owner or Developer becomes aware during the term of the Agreement that it is not in compliance with A.R.S. § 35-394, it must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.
27. **Amendments.** The parties may modify, amend, alter or extend this Agreement only by a written amendment signed by the parties.
28. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which shall constitute one and the same instrument.
29. **Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Agreement supersedes all prior or contemporaneous agreements and understandings, oral or written.

The remainder of this page is intentionally left blank.

Signatures only on following page.

MM
8/17/23

PIMA COUNTY

OWNER:
RIO MERCADO PARTNERS, LLC,
AN ARIZONA LIMITED LIABILITY COMPANY,
BY RIO MERCADO CORPORATION, INC., AN
ARIZONA CORPORATION, ITS MANAGING
MEMBER, BY GREGORY MOORE, ITS
PRESIDENT

Adelita S. Grijalva
Chair, Board of Supervisors

Gregory Moore
Authorized Officer Signature

Date

GREGORY MOORE, PRESIDENT
Printed Name and Title

ATTEST

8/17/2023
Date

Clerk of the Board

Approved as to Form:

DEVELOPER:
SOUTHWEST NONPROFIT HOUSING
CORPORATION, AN ARIZONA 501(c)(4)
NON-PROFIT CORPORATION, BY GREGORY
MOORE, ITS PRESIDENT

[Signature]
Deputy County Attorney

Gregory Moore
Authorized Officer Signature

GREGORY MOORE
Print Name and Title

8/17/2023
Date

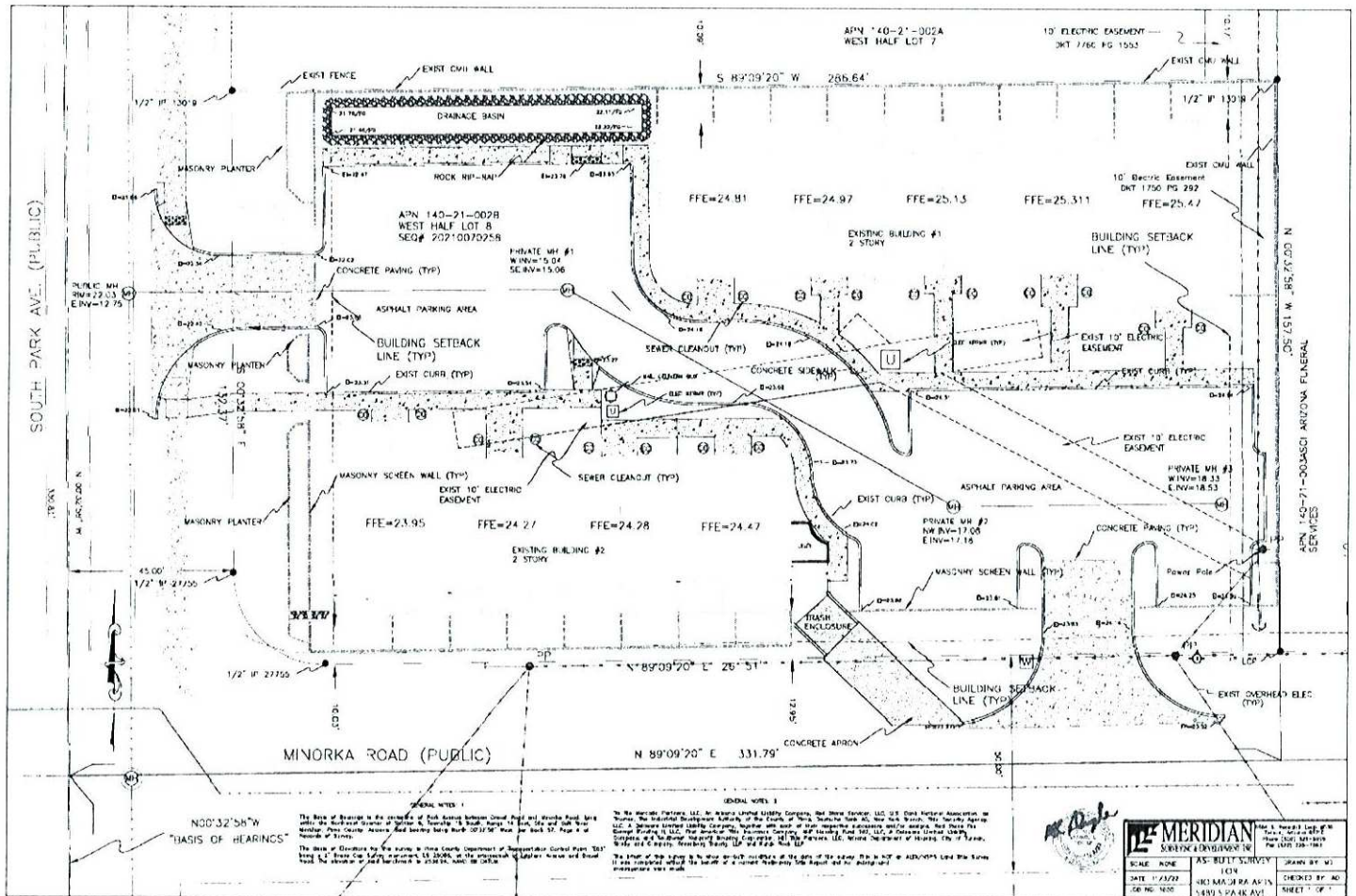
9/11
8/17/23

Exhibit A – Description of Project (1 page)

The Rio Mercado project ("Project") is a 107-unit, scattered site, multi-family housing development. It is located at 5489 S. Park Ave. (Rio Madera) and 5761 S. Park Ave. (Rio Del Sol). Its target population is households with income but earning at or below 60% of the area median income (some units will serve households at or below 50% of the area median income).

MM
8/17/23

Exhibit B – Depiction of Project (2 pages)



4/17/23

Exhibit C – Form of Affordability Restrictive Covenant (16 pages)

When Recorded, Please Return To:

Director, Pima County Community & Workforce Development
2797 E. Ajo Way
Tucson, AZ 85713-6223

AFFORDABLE HOUSING RESTRICTIVE COVENANT

1. Background and Purpose.

1.1. Pima County ("County"), Southwest Nonprofit Housing Corporation, an Arizona not-for-profit corporation ("Developer"), and Rio Mercado Partners, LLC ("Owner") have entered into an Affordable Housing Gap Funding Agreement ("Agreement"), Pima County Contract No. CT-CR-24*077. Under that Agreement, County provided \$2,125,000.00 in funding ("Gap Funding") to Developer to complete an affordable-housing project, Rio Mercado ("Project"), subject to, among others, the requirement that the Project remain affordable for a period of 30 years ("County Affordability Period"). The Project is also subject to affordability restrictions tied to other funding sources, including a Low Income Housing Tax Credit ("LIHTC") Affordability Period, which is in effect through December 30, 2052, unless earlier terminated in accordance with the LIHTC "qualified contract" process described in Internal Revenue Code § 42(h)(f)(6) ("LIHTC Affordability Period").

1.2. The Project consists of 107 one- and two-bedroom rental units, and is located on two parcels of land, legally described in attached **Exhibit A** and **Exhibit B** and further identified by Pima County Assessor Tax Parcel Numbers 140-21-002B and 140-25-008A ("Project Property"). Owner owns the Project Property.

1.3. In order to effectuate the County Affordability Restriction, County, Developer (to the extent of its interest in the Project Property), and Owner (collectively, "Parties") desire to enter into this Affordable Housing Restrictive Covenant ("Covenant") to be recorded against the Project Property to ensure that any subsequent sale of the Project Property would be subject to the County Affordability Period.

2. **Use Restrictions.** The Project Property will be subject to the following covenants and restrictions (collectively the "Affordability Restrictions") regulating and restricting the use and transfer of the Project Property, commencing on the date hereof. These restrictions shall be covenants running with the land and will bind Developer, Owner and their respective successors and assigns as set forth in this Covenant.

MM
8/17/23

- 2.1. **Residential Use.** Owner will cause all occupants to use the Property only for residential purposes and any incidental activities related to residential use that are currently permitted by applicable state and local zoning laws.
3. **Term and termination.** This Covenant takes effect upon its execution by the last Party to sign it and, unless earlier terminated by written consent of all Parties or through foreclosure, deed in lieu of foreclosure, or exercise of the power of sale under the senior Deed of Trust identified on **Exhibit E**, terminates 30 years after the effective date.
4. **Affordability Restrictions.**
- 4.1. While the LIHTC Affordability Period is in effect, all 107 rental units comprising the Project must be leased in accordance with applicable LIHTC Income and Rent Limits, which are published annually by the Arizona Department of Housing (for demonstrative purposes, a copy of the LIHTC Income and Rent Limits applicable at the time of the execution of this Covenant is attached as **Exhibit C**).
- 4.2. After the LIHTC Affordability Period expires, but before expiration of the County Affordability Period, all 107 rental units comprising the Project must be leased to tenants whose household income does not exceed 80% of the area median income ("AMI") for Pima County, as determined and promulgated by the Department of Housing and Urban Development, as applicable at the time the unit is rented. During this period, the total monthly rent for any one unit may not at any time exceed the allowable rent limit as established by the Arizona Department of Housing as published for the applicable year for 80% AMI tenants ("80% AMI Rent"), which includes the required utilities pursuant to the government program (for demonstrative purposes, a copy of the 80% AMI Rent applicable at the time of the execution of this Covenant is attached as **Exhibit D**).
- 4.3. **Physical Condition Standards.** During the Affordability Period, the Owner must maintain the Project suitable for occupancy; and, in decent, safe, and sanitary condition and good repair in accordance with the applicable local, state, and federal health, safety, and building codes and regulations.
5. **Eligibility Verification.** Owner must ensure that, for the duration of the County Affordability Period, the household income for each household occupying a unit in the Project is verified to be within the applicable limits described in Section 4, based on the tenant's current household income. Eligibility verification requires some form of income documentation (e.g., pay stubs, direct deposit images, third-party government verification of income within applicable limits), which must be retained for the duration of that household's tenancy and for at least one year after termination of that tenancy.
6. **Monitoring and Enforcement.**
- 6.1. In order to ensure compliance with and enforce this Covenant, County may:
- 6.1.1. At any reasonable time and in a reasonable manner enter and inspect the Project Property and to inspect any facility, document book, and record of the Owner relating to the Project.

MM
9/17/23

- 6.1.2. With at least 30 days' prior written notice, take any reasonable action to cure any violations of the provisions of this Covenant.
- 6.2. Owner covenants and agrees to inform County by written notice of any breach of the Owner's obligations hereunder within twenty (20) calendar days of first discovering any such breach. Violations must be cured within the deadlines described in paragraph 6.4, below.
- 6.3. If County believes Owner has violated any provision of this Covenant, County will serve Owner or Developer with written notice of the alleged default. The notice must specify both the violation alleged and the actions County believes are necessary and feasible to remedy the violation.
- 6.4. If Owner fails to cure the violation after more than 30 days after written notice of the violation from County (or for a longer period as may be reasonably required under the circumstances to cure the violation, provided that the Owner has commenced the cure within the initial 30-day period and is thereafter diligently pursuing the cure to completion), County, at its option (without liability to any party for failure to do so), may, in addition to any other remedies available at law:
- 6.4.1. Apply to an Arizona court of competent jurisdiction for specific performance of this Covenant or an injunction to remedy the violation, or for such other relief as may be appropriate.

6.4.2. Seek damages against Owner in an amount that represents that portion of the Gap Funding that is the extent to which the duration of the violation compares to the County Affordability Period and the scope of the violation compares to the overall Project. As an illustration of how this measure of damages should be applied, if the violation lasted for one year after expiration of the cure period and involved 50 of the 107 total units, the damages formula would be $\$2,125,000 * (1/30) * (50/107) = \$329,587.50$.
- 6.5. In any action brought under this Covenant, the prevailing Party is entitled to recover its reasonable costs and fees incurred in the action, including its reasonable attorney fees.
- 6.6. Owner and County each acknowledge that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Covenant are to assure compliance of the Project and the Owner with the program requirements, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING GAP FUNDS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT COUNTY AND THE LOW-INCOME TENANT(S) (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANTS OF THE PROJECT) (OR EITHER OR ALL OF THEM) WILL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS COVENANT IN ANY ARIZONA STATE COURT OF COMPETENT JURISDICTION. Owner hereby further specifically acknowledging that the

MM
8/17/23

beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

7. **Representations, Covenants and Warranties of Owner.** Owner hereby warrants and covenants that the warranties, covenants, and declaration of obligations and duties set forth herein may be relied upon by County and all persons interested in Project compliance under the Agreement requirements. In performing its duties and obligations hereunder, County may rely upon statements and certificates of the Owner pertaining to occupancy of the Project. The Owner further represents, covenants and warrants to County that:

7.1. The Owner:

7.1.1. has the power and requisite authority to own its properties and assets as owned, where owned, and to carry on its business as now being conducted (and as now contemplated) by this Covenant and the Agreement;

7.1.2. has the full legal right, power, and authority to execute and deliver this Covenant and the Agreement and to perform all undertakings of the Owner hereunder; and

7.2. The execution and performance of this Covenant and the Agreement by the Owner:

7.2.1. will not violate or, if applicable, have not violated any provision of law, rule or regulation, or any order of any court or other governmental agency;

7.2.2. will not violate or, if applicable, have not violated any provision of any indenture, declaration, mortgage, mortgage note or other instrument to which the Owner is a party or by which it or the Project is bound; and

7.2.3. will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

7.3. Except for those items listed on attached **Exhibit E**, the Owner will, at the time of execution and delivery of this Covenant, have good and marketable title to the real property and improvements constituting the Project free and clear of any lien or encumbrance.

7.4. There is presently no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair the Owner's right to carry on business substantially as now conducted (and as now contemplated) by this Covenant and the Agreement or which would materially, adversely affect its financial condition. Neither the Owner, its principals, shareholders, managers, members or general partners, as the case may be, have any judgment entered

MM
8/17/23

against them which would, when recorded, constitute a lien against or otherwise impair the security of the Project.

7.5. No actions will be taken by the Owner which will in any way adversely affect the use of the Project.

8. **Preservation of Records.** Owner or Developer must maintain records related to compliance with Pima County's affordability restrictions for the duration of each household's tenancy and for at least one year following the termination of any household's tenancy.
9. **Recordation of Documents.** Owner and Developer are authorized to record and file any notices or instruments appropriate to assuring the enforceability of the Affordability Restrictions. Owner and Developer will execute any such instruments upon request. The benefits of the Affordability Restrictions may be assignable by County to any successor institution performing substantially similar functions. The Parties intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.
10. **Nondiscrimination.** Owner and Developer may not discriminate in the lease, use, or occupancy of any of the rental units on the basis of any of the following: race, color, ethnicity, religion, sex, age, disability, marital or familial status, sexual or gender identity, or lawful source of income.
11. **Covenant Runs with the Land.** Upon execution Owner will cause this Covenant and all amendments and attachments hereto to be recorded and filed in the official records of the Pima County Recorder's Office in the count in which the Project is located, and pay all fees and charges incurred in conjunction with said recording. The restrictions and other provisions in this Covenant burden and run with the Project Property, bind any of Owner's successors or assigns, and inure to the benefit of County and any of its assigns.
12. **Severability.** The provisions of this Covenant are severable. If any provision of this Covenant, or any application of any of its provisions, to the Parties or any person or circumstances, is held invalid, that invalidity will not affect other provisions or applications of this Covenant that can be given effect without regard to the invalidity.
13. **Restraint on Alienation.** If the Affordability Restrictions are deemed unenforceable by virtue of its scope in terms of purpose or eligibility of tenants, but would be enforceable by reducing or increasing, as applicable, any part or all thereof, the same will be enforced to the fullest extent permissible under the laws and public policies applied in the State of Arizona.
14. **No Waiver.** No waiver by County of any breach of this Covenant, or any other act or omission by County, may be deemed a waiver of any other or subsequent breach.

MM
8/17/23

15. Governing Law. This Covenant is governed by and must be interpreted in accordance with Arizona law.

16. Conflict of Interest. This Covenant is subject to the provisions of Arizona Revised Statutes § 38-511.

17. Entire Agreement; Amendment. This document constitutes the entire agreement among the Parties pertaining to its subject matter. This Covenant may be modified, amended, altered, or extended only by a written agreement signed by all Parties.

The remainder of the page is intentionally left blank.

PIMA COUNTY

Adelita S. Grijalva
Chair, Board of Supervisors

Date

ATTEST

Clerk of the Board

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 20____ by _____.

Notary Public

My Commission Expires:

*MM
8/17/23*

DEVELOPER:
SOUTHWEST NONPROFIT HOUSING CORPORATION,
AN ARIZONA 501(c)(4) NON-PROFIT CORPORATION,
BY GREGORY MOORE, ITS PRESIDENT

Gregory Moore, President

Date

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 20____ by _____.

Notary Public

My Commission Expires: _____

MM
8/17/23

OWNER:
RIO MERCADO PARTNERS, LLC,
AN ARIZONA LIMITED LIABILITY COMPANY,
BY RIO MERCADO CORPORATION, INC., AN
ARIZONA CORPORATION, ITS MANAGING MEMBER,
BY GREGORY MOORE, ITS PRESIDENT

Gregory Moore, President

Date

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 20____ by _____.

Notary Public

My Commission Expires: _____

MM
8/17/23

Exhibit A
Legal Description – Parcel 140-21-002B

The West half of Lot 8, of EMERY PARK "JUDGE EMERY'S POULTRY COLONY", UNIT NO. 6, a subdivision of Pima County, Arizona according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 5 of Maps and Plats at page 20 thereof.

EXCEPT that portion conveyed to the City of Tucson by Deed recorded in Docket 4747 at page 615.

FURTHER EXCEPT any portion within Park Road as shown in Book 5 of Road Maps at page 71.

(JV Arb 82)

Exhibit Only
Not for Execution

CM
8/17/23

[Grab your reader's attention with a great quote from the document or use this space to emphasize a key point. To place this text box anywhere on the page, just drag it.]

Exhibit B
Legal Description – Parcel 140-25-008A

Lots 217, 218, 219 and 220, of LOS RANCHITOS NUMBER 6, a subdivision of Pima County, Arizona according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 8 of Maps and Plats at page 41 thereof.

EXCEPT that portion as described in Docket 360 at page 345 for road purposes.

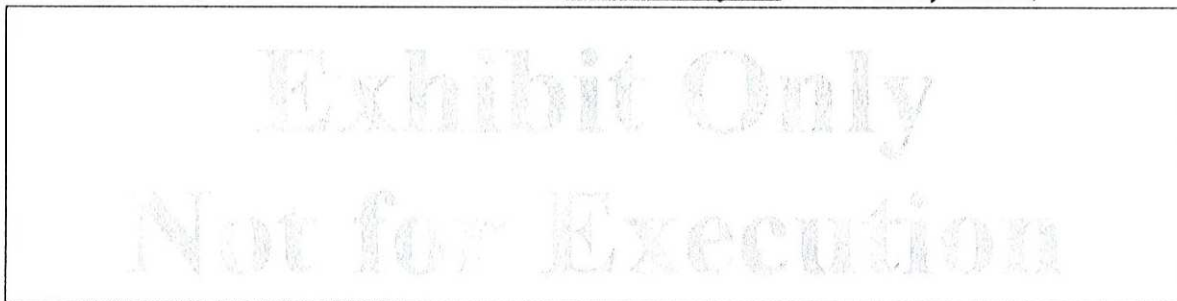
ALSO EXCEPT that portion of Lot 218 described as follows:

BEGINNING at the Northeast corner of said Lot 218;

THENCE South 89 degrees 14 minutes 07 seconds West, along the North line of said Lot 218, a distance of 64.99 to the POINT OF BEGINNING;

THENCE South 00 degrees 07 minutes 51 seconds East, a distance of 250.00 feet;

THENCE South 89 degrees 14 minutes 07 seconds West, a distance of 210.01 feet to a point on the East right of way line of Park Avenue as described in Docket 360, Page 345 of Pima County Records;



to the POINT OF BEGINNING.

AND FURTHER EXCEPT that portion of Lot 220 described as follows:

BEGINNING at the intersection of Milton Road and Jeanette Blvd.;

THENCE North 00 degrees 32 minutes 24 seconds West, along the center line of Jeanette Blvd., a distance of 79.96 feet;

THENCE South 89 degrees 28 minutes 36 seconds West, a distance of 30.00 feet to a point on the West right of way line of Jeanette Blvd., to the True Point of Beginning ;

THENCE North 00 degrees 32 minutes 00 seconds West, a distance of 215.00 feet;

THENCE South 89 degrees 16 minutes 16 seconds West, a distance of 250.00 feet;

THENCE South 00 degrees 31 minutes 50 seconds East, a distance of 264.97 feet, to a point on the North right of way of Milton Road;

THENCE North 89 degrees 26 minutes 16 seconds East, a distance of 200.00 feet, along the right of way of Milton Road;

THENCE along a curve to the left with a central angle of 89 degrees 57 minutes 40 seconds and a radius of 50.00 for a distance of 78.51 feet to the True Point of Beginning.

(JV Arb 2182= Lot 218, 420= Lot 220)

cm
8/17/23

Exhibit C - Arizona Low Income Housing Tax Credit – Imputed Incomes/Allowable Rents (eff. May 15, 2023)



Arizona
Department
of Housing

ARIZONA LOW INCOME HOUSING TAX CREDIT PROGRAM - IMPUTED INCOMES/ALLOWABLE RENTS
FOR RENTS BASED ON UNIT SIZE (Number of bedrooms: Post 1989 Projects)
(Figures derived from HUD Median Income Charts effective May 15, 2023)

MSA/County	%	(1 Person)	(2 Persons)	(3 Persons)	(4 Persons)	(5 Persons)	(6 Persons)	(7 Persons)	(8 Persons)	0 Bdrm Rent	1 Bdrm Rent	2 Bdrm Rent	3 Bdrm Rent	4 Bdrm Rent	5 Bdrm Rent
Phoenix (Maricopa/Pinal)	80	\$36,300	\$44,880	\$50,520	\$56,100	\$60,600	\$65,100	\$69,600	\$74,100	\$982	\$1,052	\$1,263	\$1,456	\$1,627	\$1,796
	90	\$32,750	\$37,400	\$42,000	\$46,750	\$50,000	\$54,250	\$58,000	\$61,750	\$816	\$876	\$1,052	\$1,210	\$1,350	\$1,490
	40	\$26,200	\$29,620	\$33,600	\$37,400	\$40,400	\$43,400	\$46,400	\$49,400	\$655	\$701	\$842	\$972	\$1,085	\$1,197
	30	\$18,650	\$22,440	\$25,200	\$28,000	\$30,300	\$32,550	\$34,800	\$37,050	\$481	\$526	\$631	\$729	\$813	\$898
	20	\$13,100	\$14,600	\$16,640	\$18,700	\$20,200	\$21,700	\$23,200	\$24,700	\$327	\$350	\$421	\$489	\$542	\$598
HERA Special	80	\$41,580	\$47,520	\$53,460	\$59,400	\$64,200	\$68,940	\$73,680	\$78,420	\$1,039	\$1,113	\$1,336	\$1,546	\$1,723	\$1,901
	90	\$34,550	\$39,600	\$44,650	\$49,500	\$53,500	\$57,450	\$61,400	\$65,350	\$850	\$928	\$1,113	\$1,287	\$1,436	\$1,584
	40	\$27,720	\$31,680	\$35,640	\$39,600	\$42,800	\$45,900	\$49,120	\$52,280	\$693	\$742	\$891	\$1,030	\$1,149	\$1,267
	30	\$20,700	\$23,760	\$26,730	\$29,700	\$32,100	\$34,470	\$36,840	\$39,210	\$519	\$556	\$666	\$772	\$861	\$950
	20	\$13,800	\$15,840	\$17,820	\$19,800	\$21,400	\$22,980	\$24,560	\$26,140	\$346	\$371	\$445	\$515	\$574	\$633
Tucson (Pima)															
Yuma (Yuma)															
HERA Special	80	\$30,000	\$34,260	\$38,520	\$42,780	\$46,260	\$49,680	\$53,100	\$56,520	\$750	\$803	\$963	\$1,113	\$1,242	\$1,370
	90	\$26,000	\$29,550	\$33,100	\$36,650	\$39,550	\$41,400	\$44,250	\$47,100	\$626	\$669	\$802	\$927	\$1,035	\$1,141
	40	\$20,000	\$22,840	\$25,680	\$28,520	\$30,840	\$33,120	\$35,400	\$37,680	\$500	\$535	\$642	\$742	\$828	\$913
	30	\$15,000	\$17,130	\$19,260	\$21,360	\$23,130	\$24,840	\$26,550	\$28,260	\$375	\$401	\$481	\$556	\$621	\$685
	20	\$10,000	\$11,420	\$12,840	\$14,260	\$15,420	\$16,560	\$17,700	\$18,840	\$250	\$267	\$321	\$371	\$414	\$456
Apache	80	\$24,600	\$28,140	\$31,680	\$35,160	\$37,980	\$40,800	\$43,620	\$46,440	\$616	\$660	\$792	\$914	\$1,020	\$1,125
	90	\$20,550	\$23,450	\$26,400	\$29,300	\$31,650	\$34,000	\$36,350	\$38,700	\$513	\$550	\$660	\$761	\$850	\$938
	40	\$16,440	\$18,760	\$21,120	\$23,440	\$25,320	\$27,200	\$29,080	\$30,960	\$411	\$440	\$528	\$609	\$680	\$750
	30	\$12,330	\$14,070	\$15,840	\$17,680	\$19,090	\$20,400	\$21,810	\$23,220	\$308	\$330	\$396	\$457	\$510	\$562
	20	\$8,220	\$9,380	\$10,560	\$11,720	\$12,660	\$13,600	\$14,540	\$15,480	\$205	\$220	\$264	\$304	\$340	\$375

The rent limits listed above are what an owner can charge, not what an owner must charge to avoid non-compliance.
Notifications sent to residents, for any owner imposed rent increase, that are characterized as mandates under ADOH, IRS or HUD regulations are prohibited.

MM
8/17/23

Exhibit D – LIHTC Income Limits for 2023 80% AMI Rents

LIHTC Income Limits for 2023
(Based on 2023 MTSP Income Limits)

80.00%

1 Person	45,520
2 Person	52,000
3 Person	58,480
4 Person	64,960
5 Person	70,160
6 Person	75,360

Exhibit Only
Not for Execution

LIH
(Based on 2023 MTSP/VLI Income Limits)

Bedrooms (People)

80.00%

Efficiency (1.0)	1,138
1 Bedroom (1.5)	1,219
2 Bedrooms (3.0)	1,462
3 Bedrooms (4.5)	1,569
4 Bedrooms (6.0)	1,884
5 Bedrooms (7.5)	2,079

9CM
8/17/23

Exhibit E – Permitted Exceptions (4 pages)

 First American Title™	Owner's Policy of Title Insurance
	ISSUED BY First American Title Insurance Company
Schedule B	POLICY NUMBER 5011400-2094603

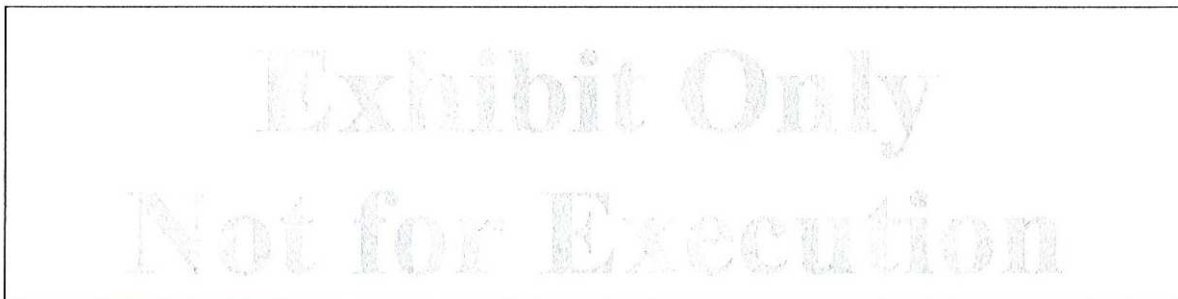
Order No.: 60016237-001-RS-BW

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees or expenses which arise by reason of:

THE FOLLOWING EXCEPTIONS AFFECT PARCEL 1:

1. RESERVATIONS contained in the Patent from the United States of America, recorded in Book 56 of Deeds at page 189, reading as follows:
SUBJECT to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States of America.
2. Taxes and assessments for the second half of 2020, a lien, payable but not yet due.
(All amounts due and payable have been paid)



Page	1561
Purpose	communication facilities

7. Any facts, rights, interests or claims that may exist or arise by reason of the following matters disclosed by an ALTA/NSPS Land Title Survey made by David L. Putt, Putt Land Surveying, Inc., dated December 15, 2020, last revised January 5, 2021, Job No. 18-143:
 - a. Possible future right of way line as disclosed in survey book 29 at page 30.
 - b. Overhead utility line outside recorded easement along southern boundary line of subject property.
 - c. Encroachment of masonry wall 0.3' west of property line.
 - d. Pipe risers with unknown purpose or direction located near center of subject property.
8. Intentionally Deleted.

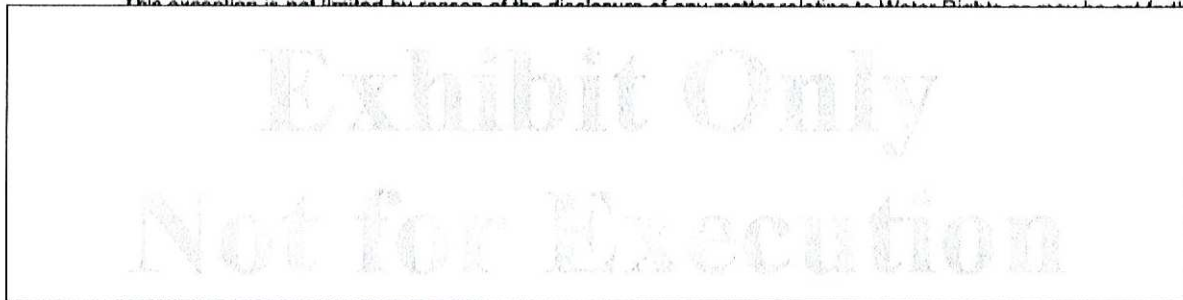
ECM
8/17/23

 First American Title™	Owner's Policy of Title Insurance
	ISSUED BY First American Title Insurance Company
Schedule B (Continued)	POLICY NUMBER 5011400-2094603

Order No.: 60016237-001-RS-BW


THE FOLLOWING EXCEPTIONS AFFECT PARCEL 2:

9. RESERVATIONS contained in the Patent from the United States of America, recorded in Book 56 of Deeds at page 189, reading as follows:
SUBJECT to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States of America.
10. Taxes and assessments for the second half of 2020, a lien, payable but not yet due.
(All amounts due and payable have been paid)
- 10a. Intentionally Deleted.
11. WATER RIGHTS, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.
This exception is not limited by reason of the disclosure of any matter relating to Water Rights on page 14 of the



15. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Document No. 20182470137
Purpose natural gas pipeline
16. Intentionally Deleted.
17. Any facts, rights, interests or claims that may exist or arise by reason of the following matters disclosed by an ALTA/NSPS Land Title Survey made by David L. Putt, Putt Land Surveying, Inc., dated December 15, 2020, last revised January 5, 2021, Job No. 18-144:
 - a. Encroachment of a west facing wall 0.4' west of property line along eastern boundary.
 - b. Possible future right of way as disclosed by Bright Design Associates Project No. 08.09, dated February 17, 2018

*KM
8/17/23*

	First American Title™	Owner's Policy of Title Insurance
Schedule B (Continued)		ISSUED BY First American Title Insurance Company
		POLICY NUMBER 5011400-2094603

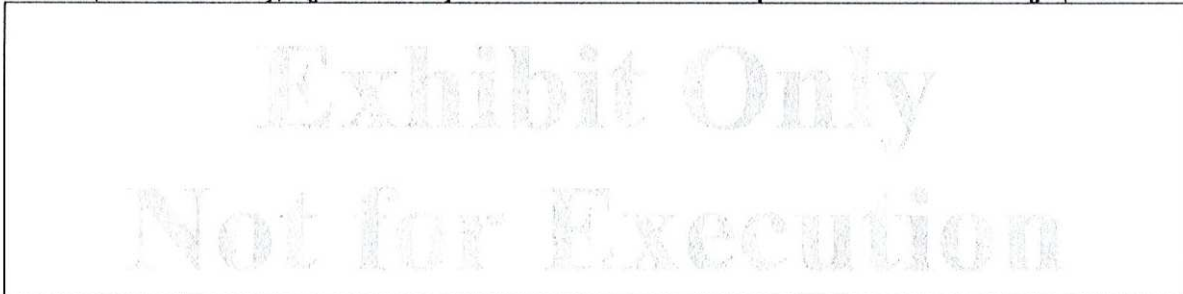
Order No.: 60016237-001-RS-BW

THE FOLLOWING EXCEPTIONS AFFECT ALL PARCELS:

18. Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing given by: Rio Mercado Partners, LLC, an Arizona limited liability company to: U.S. Bank National Association, a national banking association, as Trustee, its successors and assigns, as their interest may appear, in the original principal amount of \$18,300,000.00, dated January 1, 2021, effective January 7, 2021 and recorded January 7, 2021 as Instrument No. 20210070260 in the Pima County Recorder's Office of Pima County, Arizona.

19. Assignment of Leases, Rents and Other Income from Rio Mercado Partners, LLC, an Arizona limited liability company, to U.S. Bank National Association, a national banking association, organized and existing under the laws of the United States of America, as Trustee, together with any successor trustee and their respective successors and assigns, as Lender, dated January 1, 2021, recorded January 7, 2021 at Sequence No. 20210070262 in Pima County, Arizona.

20. UCC-1 Financing Statement from Rio Mercado Partners, LLC, an Arizona limited liability company, as Debtor, to U.S. Bank National Association, a national banking association, organized and existing under the laws of the United States of America, as Secured Party, together with any successor trustee and their respective successors and assigns, recorded



26. Declaration of Affirmative Land Use and Restrictive Covenants Agreement executed by Rio Mercado Partners, LLC, an Arizona limited liability company, as Owner, dated January 7, 2021, recorded January 7, 2021 at Sequence No. 20210070257 in Pima County, Arizona.

27. Deed of Trust executed by and between Rio Mercado Partners, LLC, an Arizona limited liability company, as Borrower, City of Tucson, a municipal corporation, as Lender, dated December 1, 2020, recorded January 07, 2021, at Sequence No. 20210070264 as subordinated by that certain Subordination Agreement by and between Rio Mercado Partners, LLC, an Arizona limited liability company, as Borrower, U.S. Bank National Association, a national banking association, organized and existing under the laws of the United States of America, together with any successor trustee and their respective successors and assigns, as Senior Lender, and City of Tucson, a municipal corporation, as Subordinate Lender, dated January 01, 2021, recorded January 07, 2021 at Sequence No. 20210070263 in Pima County, Arizona.

28. Intentionally Deleted. Combined with Item 27.

29. Declaration of Covenants, Conditions and Restrictions executed by the City of Tucson, an Arizona municipal corporation and Rio Mercado Partners, LLC, an Arizona limited liability company, dated January 07, 2021, recorded January 07, 2021 at Sequence No. 20210070265, in Pima County, Arizona.

Handwritten: CM 8/17/23

	First American Title™	Owner's Policy of Title Insurance
Schedule B (Continued)		ISSUED BY First American Title Insurance Company POLICY NUMBER 5011400-2094603

Order No.: 60016237-001-RS-BW

30. Consent and Subordination Agreement executed by and between City of Tucson Housing and Community Development Department, Subordinate Lender, The State of Arizona, Arizona Department of Housing, and Rio Mercado Partners, LLC, an Arizona limited liability company, dated January 7, 2021, recorded January 7, 2021 at Sequence No. 20210070266 in Pima County, Arizona.

31. Tax Regulatory Agreement and Declaration of Restrictive Covenant by and among The Industrial Development Authority of the County of Pima and U.S. Bank National Association, as Trustee, and Rio Mercado Partners, LLC, an Arizona limited liability company, dated as of January 1, 2021, recorded January 7, 2021 at Sequence No. 20210070259 in Pima County, Arizona.

32. Consent and Subordination Agreement executed by and between U.S. Bank National Association, a national banking association, organized and existing under the laws of the United States of America, together with any successor trustee and their respective successors and assigns, as Senior Lender, The State of Arizona, Arizona Department of Housing, and Rio Mercado Partners, LLC, an Arizona limited liability company, dated January 7, 2021, recorded January 7, 2021 at Sequence No. 20210070267 in Pima County, Arizona.

Exhibit Only
Not for Execution

CM
8/17/23

Exhibit D – Employee vs. Independent Contractor Form (2 pages)



Clear Form

EMPLOYEE VERSUS INDEPENDENT CONTRACTOR DETERMINATION QUESTIONNAIRE

Name of Individual Reviewed

Integration: *The extent to which the work performed is an integral part of the employer's business.*

Y N

- 1 Is the work of the individual an integral part of Pima County's business operations?
- 2 Is the work of the individual also done by current Pima County employees?
- 3 Does Pima County provide training to the individual?

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Managerial: *Whether the worker's managerial skills affect their opportunity for profit or loss.*

- 4 Are the individual's staff or assistants hired, supervised and paid by Pima County?
- 5 Can the individual terminate their relationship with Pima County at any time?
- 6 May the individual realize a profit or loss as a result of their work for Pima County?
- 7 Does the individual supervise non-County employees?
- 8 Does the individual's contract require the standard insurance language?

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Investment: *The relative investment in facilities and equipment by the worker and the employer.*

- 9 Does the individual perform work on Pima County premises?
- 10 Does the individual have a non-County owned physical location to work (Home Office, Rented Space)?
- 11 Does the individual furnish significant tools, materials or equipment to produce work?

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Initiative: *The worker's skill and initiative.*

- 12 Does the individual submit oral or written reports to Pima County?
- 13 Does the individual exercise independent judgment to complete work activities?

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Permanency: *The permanency of the worker's relationship with the employer.*

- 14 Does the individual have a continuing relationship with Pima County?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

Revised: 10/01/2019

SM
8/17/23



EMPLOYEE VERSUS INDEPENDENT CONTRACTOR DETERMINATION QUESTIONNAIRE

Control: *The nature and degree of control by the employer.*

Y N

15 Does Pima County dictate when, how and where the individual is to perform their work?

☐ ☐

16 Must services be rendered personally by the individual?

☐ ☐

17 Does Pima County set the schedule and work hours of the individual?

☐ ☐

18 Does Pima County determine the order in which work is completed by the individual?

☐ ☐

19 Does Pima County have the right to discharge the individual with or without cause?

☐ ☐

20 Does Pima County pay the business or travel expenses of the individual?

☐ ☐

21 Does the individual provide services for more than one firm or the general public at the same time?

☐ ☐

The undersigned, by signing below, certifies that all responses herein are true and accurate.

Appointing Authority Signature

Printed Name

Date

Contact the individual to obtain the information required in this section.

22 Does the individual receive benefits from an ASRS program?

☐ ☐

Program Name

23 Does the individual devote substantial, full-time work effort, to the business of Pima County?

☐ ☐

24 Does the individual provide substantially similar services to the general public as to Pima County?

☐ ☐

25 Does the individual provide substantially similar services to other firms as those to Pima County?

☐ ☐

26 Is the individual a former employee of Pima County?

☐ ☐

Job Title

Department

Date of Termination

The undersigned, by signing below, certifies that all responses herein are true and accurate.

Contractor Signature

Printed Name

Date

The undersigned has determined that the individual's status is Independent Contractor. Yes ☐ *No* ☐

Financial Operations Division Mgr. Signature

Printed Name

Date

Revised: 10/01/2019

MM
9/17/23

Exhibit E – Pima County Workers Compensation Sole Proprietor Waiver (1 page)

**Pima County
Workers Compensation
Sole Proprietor WAIVER**

NOTE: THIS FORM APPLIES ONLY TO PIMA COUNTY DEPARTMENTS, BOARDS, AND COMMISSIONS UTILIZING SOLE PROPRIETORS WITH NO EMPLOYEES. IF YOU ARE CONTRACTING WITH A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP OR SOLE PROPRIETORS WITH EMPLOYEES, THIS FORM DOES NOT APPLY.

The following is a written waiver under the compulsory Workers' Compensation laws of the State of Arizona, A.R.S. § 23-901 (et. seq.), and specifically, A.R.S. § 23-901 (M), that provides that a Sole Proprietor may waive his/her rights to Workers' Compensation coverage and benefits. I am a sole proprietor and I am doing business as (_____). I am performing work as an independent contractor for Pima County. I am not the employee of Pima County for workers' compensation purposes, and therefore, I am not entitled to workers' compensation benefits from Pima County. I understand that if I have any employees working for me, I must maintain workers' compensation insurance on them.

Contract Identification Information: _____

Signature of Sole Proprietor

Date

Signature of County Contract Administrator

Date

Signature of Risk Management Authorized Signer

Date

Completed Workers Compensation Sole Proprietor Waiver form with signatures must be submitted along with the Contract and The Independent Contractor vs Employee Determination Questionnaire to: Pima County Department of Finance and Risk Management, 130 West Congress, 9th Floor, Tucson, Arizona, 85701. An authorized representative Finance and Risk Management Representative will sign your completed form and return it to the appropriate department to be maintained in their records.

* This Waiver needs to be completed annually for Multi-year contracts

Revised 7 2019

MM
8/17/23