



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: 11/12/2024

* = Mandatory, information must be provided

or Procurement Director Award:

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

La Frontera Partners, Inc.

***Project Title/Description:**

West Point II Apartments Project-Gap Funding for Affordable Housing

***Purpose:**

This Gap Funding Project consists of a total of 85 one-bedroom units located at 20 E. Ochoa Street, Tucson, AZ 85701. This agreement effectuates the award of \$1,000,000.00 of the regional affordable housing allocation to increase the supply of housing for low-income adults 55 years of age and older.

***Procurement Method:**

Request for solicitation No. CWD-RFP-AHF-RFP-02-2023

***Program Goals/Predicted Outcomes:**

The project will feature the new construction of a single seven-story building with community space on the ground floor. All units will be one-bedroom, one-bathroom and will be approximately 585 square feet in size. The project will have the following income targeting: twenty-eight (28) units at 40% of area median income (AMI), twenty-eight (28) units at 50% of AMI, and twenty-eight (28) units at 60% of AMI. There will also be one employee unit. Eighty percent (80%) of the units will be set-aside for persons of 55 years of age and older and thirty percent (30%) of the total units will receive Project Based Rental Assistance and be reserved for persons with disabilities. Gap funding is provided in the form of a grant.

***Public Benefit:**

This project will increase the supply of quality, affordable homes in Pima County.

***Metrics Available to Measure Performance:**

Project will consist of eighty-five (85) one-bedroom units that will serve low-income adults 55 years of age and older and includes a thirty percent (30%) unit set aside for disabled populations. A recorded restrictive covenant ensures a minimum of 30 years of affordability. Draw requests require appropriate backup documentation, and a percentage of funds is retained until project completion.

***Retroactive:**

No

To: LOB 10-21-24(1)
vers: 0
pgs: 22

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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: PO Department Code: CWD Contract Number (i.e., 15-123): **2400010219**
Commencement Date: 11/12/24 Termination Date: 12/31/25 Prior Contract Number (Synergen/CMS): _____
 Expense Amount \$ 1,000,000.00 * Revenue Amount: \$ _____

***Funding Source(s) required: General Fund**

Funding from General Fund? Yes No If Yes \$ 1,000,000.00 % 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: Sofia Blue

Department: CWD

Telephone: 724-7312

Department Director Signature: 

Date: 10/11/24

Deputy County Administrator Signature: 

Date: 12 Oct 2024

County Administrator Signature: 

Date: 10/10/2024

Pima County Department of Community and Workforce Development

Project: West Point II Apartments

Contractor: La Frontera Partners, Inc.

Amount: \$1,000,000.00

Contract No.: PO2400010219

Funding: General Fund

AFFORDABLE HOUSING GAP FUNDING AGREEMENT

Background and Purpose

- A. As part of Pima County's (the "County") fiscal year ("FY") 2023-24 budget, the Pima County Board of Supervisors (the "Board") allocated \$5 million toward increasing affordable housing in Pima County. The Board appointed a Pima County Regional Affordable Housing Commission (the "Commission") to study and make recommendations on how to expend that funding. Among the Commission's recommendations was using the remaining balance from FY 2022-23 and FY 2023-24 allocation, totaling \$6.875 million to provide "gap funding" for development or preservation of affordable housing.
- B. The County staff, with the Commission comment and approval, developed and issued a Request for Proposals ("RFP"), CWD-RFP-AHF-RFP-02-2023, to solicit proposals for projects to seek gap funding. Twenty-one proposals were received, seeking a total of \$15,645,977.22 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 also included the Commission representation from a non-conflicted commissioner. The panel recommended funding ten projects: (1) West Point Apartments II, La Frontera Partners, \$1 million; (2) Belvedere Terrace, LP, Newport SW LLC., \$1 million; (3) Desert Dove Apartments, GHK Properties, LLC., \$1 million; (4) The Safford, Marana Leased Housing Associates, I LLLP, Dominium, \$1 million; (5) Tucson House, City of Tucson, \$1 million; (6) Emery Park Place, Family Housing Resources, \$750,000.00; (7) El Camino Affordable Housing, Casa Maria, Compass Affordable Housing, \$375,000.00; (8) Barrio Anita Casitas, Pima County Community Land Trust, \$234,316.00; (9) Rio Azul Apartments, Southwest Nonprofit Housing Corporation, \$1 million; and (10) Mars Landing, Habitat for Humanity Tucson, \$1 million.
- C. The Commission unanimously endorsed staff's recommendations. On March 5, 2024, the Board approved staff and the Commission's recommendations, awarding funding to the ten recommended projects in the amounts requested.

- D. This Affordable Housing Gap Funding Agreement (this "Agreement") is by and among County, La Frontera Partners, Inc., an Arizona nonprofit corporation (the "Developer"), and West Point Apartments II, LP, an Arizona limited partnership (the "Owner") (individually, a "Party" and collectively, the "Parties"), to effectuate the award of \$1,000,000.00 in gap funding ("Gap Funding") toward West Point Apartments II (the "Project").
- E. The Project consists of a total of 85 one-bedroom units located at 20 E. Ochoa Street, Tucson, AZ 85701. The Project is situated on one parcel identified by Pima County Assessor Parcel Number 117-130-0410 (the "Project Property"). Construction of the Project is underway. The 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 of the last Party to sign (the "Effective Date") and terminates on December 31, 2025, the anticipated date this Project will be placed in service. 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.
 - 2.1. Gap Funding Total. The County will pay the Developer an amount of not to exceed \$1,000,000.00.
 - 2.2. Timing of Invoices. Unless otherwise agreed, the Developer will submit invoices monthly.
 - 2.3. Content of Invoices. All invoices will be accompanied by a narrative description of the work performed during the period covered by the invoice, time accounting information and an allocation of all direct costs, including reimbursable costs to the County. The Developer's charges must be supported by appropriate documentation with each separate invoice submitted.
 - 2.4. Invoice Adjustments. The Developer applied for Gap Funding for direct construction costs. The County will adjust invoices at a reimbursement rate of not less than 90% until the Project meets half of its construction timeline. After the halfway milestone is reached, the County will adjust its reimbursement rate to 95%.
 - 2.5. County Review. The County will review the invoice and, within 30 days, either approve it or reject it. If approved, the County will pay the Developer the amount requested within 30 days of the date of the invoice. If rejected, the County will provide the Developer with a written response including the reasons for the rejection, and the Developer may submit a new invoice to correct any deficiencies.
 - 2.6. After Project completion, the Developer will submit a final invoice for the remaining Gap Funding. The Developer must include with the final invoice documentation demonstrating full Project completion, a project completion

report, final Certificates of Occupancy issued by the City of Tucson, final payment lien waivers from the general contractor and all subcontractors. The County will review the invoice and, within 30 days, either approve it or reject it. If approved, the County will pay the Developer the amount requested within 30 days of the date of the invoice. If rejected, the County will provide the Developer with a written response including the reasons for the rejection, and the Developer may submit a new invoice to correct any deficiencies.

3. Affordability Restriction. Within 30 days after this Agreement is fully executed, the Owner will record Affordability Restrictions against the Project Property in substantially the form attached as **Exhibit C** and provide copies of the recorded Affordability Restrictions to the County.
4. Enforcement. The County may enforce the Affordability Restrictions in accordance with their terms at any time during which they are in effect.
5. Marketing Plan. The Developer will market the Project in accordance with the previously submitted Marketing Plan.
6. Assignment. Neither the Developer nor the Owner may assign its obligations under this Agreement without the 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. The 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. The 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. The Owner shall procure and maintain, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. The 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, the 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. The 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.
 - 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".

- 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 the 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 the 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 the 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 the 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 the 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 County project or contract number and project description.
- 7.4. Verification of Coverage. The Owner shall furnish the 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 the County before the disbursement of funds under this Agreement. Each insurance policy required by this Agreement must be in effect at, or prior to, the disbursement of funds 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 County project or contract number and project description on the certificate. The 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 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, the Owner will defend, indemnify, and hold harmless the County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") 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 the Owner or any of the Owner'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 the Owner to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by the Owner from and against any and all Claims. The Owner is 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. The Developer and the Owner will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

9.2. Licensing. The Owner warrants that its general contractor and all of 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.

10. Independent Contractor. The Parties are independent contractors. Neither the Owner nor the Developer, nor any of their officers, agents or employees will be considered an employee of the County for any purpose or be entitled to receive any

employment-related benefits, or assert any protections, under the Pima County Merit System. The Parties 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 the County harmless from any and all liability that the County may incur because of their failure to pay such taxes.

11. Subcontractors. The Parties 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 the Developer are responsible for the acts and omissions of their own employees. Nothing in this Agreement creates any obligation on the part of the County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
12. Non-Discrimination. The Owner and the 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 the Owner nor the 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. The Owner and the 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. The Owner and the Developer each warrants its right and power to enter into this Agreement. If any court or administrative agency determines that the County does not have authority to enter into this Agreement, the County will not be liable to the Owner or the 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 any 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. The County may terminate this Agreement if the Owner or the Developer fails to cure a default under this Agreement after more than 30 days after written notice of the default from the County (or for a longer period as may be reasonable required under the circumstances to cure the violation, provided that the Owner or the 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. The Owner and the Developer understand that this Agreement is nonexclusive and is for the sole convenience of the County.
21. Books and Records. The Owner and the 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, the Owner and the 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 the Owner or the Developer reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, the Owner or the Developer must prominently mark those records "CONFIDENTIAL". In the event a public-records request is submitted to the County for records marked CONFIDENTIAL, the County will notify the Owner and the Developer of the request as soon as reasonably possible. The County will release the records 30 days after the date of that notice, unless the Owner or the Developer has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. The County will not, under any circumstances, be responsible for securing such an order, nor will the 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. The Owner and the Developer hereby warrant that they will at all times during the term of this Agreement comply with all federal 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"). The Owner and the 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. The County has the right at any time to inspect the books and records of the Owner and the 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 the Owner's, the 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 the Owner or the 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, the Owner or the 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 the Owner and the Developer.

23.4. Subcontractors. The Owner and the 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 the 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:

La Frontera Partners, Inc.
504 West 29th Street
Tucson, AZ 85713

Owner:

West Point Apartments II, LP
504 West 29th Street
Tucson, AZ 85713

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 the Owner or the 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, the Owner and the 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 the Owner or the Developer engage in for-profit activity and have 10 or more employees, the Owner and the 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 the Owner or the 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 the County regarding compliance within one hundred eighty days.
27. Heat Injury and Illness Prevention and Safety Plan. Pursuant to Pima County Procurement Code 11.40.030, the Owner hereby warrants that if the employees of the Owner's general contractor and its subcontractors perform work in an outdoor environment under this Agreement, the Owner will keep on file a written Heat Injury and Illness Prevention and Safety Plan. At the County's request, the Owner will provide a copy of this plan and documentation of heat safety and mitigation efforts implemented by the Owner to prevent heat-related illnesses and injuries in the workplace. The Owner will post a copy of the Heat Injury and Illness Prevention and Safety Plan where it is accessible to employees. The Owner will further ensure that its general contractor and each of the general contractor's subcontractors that perform any work for the Owner under this Agreement complies with this provision.
28. Amendments. The Parties may modify, amend, alter or extend this Agreement only by a written amendment signed by the Parties.
29. 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.

30. Entire Agreement. This document, along with the exhibits hereto, 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.

PIMA COUNTY

OWNER:
WEST POINT APARTMENTS II, LP, AN
ARIZONA LIMITED PARTNERSHIP
BY: LF WESTPOINT II HOUSING, INC.,
AN ARIZONA CORPORATION,
GENERAL PARTNER
MICHAEL PRUDENCE, SECRETARY &
TREASURER

Adelita S. Grijalva
Chair, Board of Supervisors

Michel Prudence

Authorized Officer Signature

Date

Michael Prudence, Secretary and Treasurer

Printed Name and Title

ATTEST

10/11/2024

Date

Clerk of the Board

DEVELOPER:
LA FRONTERA PARTNERS, INC., AN
ARIZONA NONPROFIT CORPORATION
MICHAEL PRUDENCE, SECRETARY &
TREASURER

Approved as to Form:

Kyle Johnson

Deputy County Attorney

Michel Prudence

Authorized Officer Signature

Approved as to Content:

Michael Prudence, Secretary and Treasurer

Printed Name and Title

Daniel P. Sullivan

Department Director Daniel Sullivan

10/11/2024

Date

10/11/24

Date

Exhibit A – Description of Project (1 page)

“West Point Apartments II” represents the new construction of an affordable housing project to be located at 20 East Ochoa Street in Tucson, Arizona 85701. The West Point Apartments II project has been awarded a reservation of 9% Low Income Housing Tax credits from the Arizona Department of Housing, City of Tucson HOME funds, City of Tucson Project Based Vouchers and Arizona Department of Housing HOME funds. This project began construction in March of 2024. The project has a funding gap that has resulted from a decrease in tax credit equity pricing and increasing construction costs and interest rates.

The project features eighty-five (85) one-bedroom units that will serve low-income adults 55 years of age and older and includes a thirty percent (30%) unit set aside for disabled populations. The rents will target households earning between 40% and 60% of the Area Median Income (AMI). The project will be financed with 9% Low Income Housing Tax Credits, City of Tucson HOME funds, Arizona Department of Housing CHDO HOME funds, this application for Pima County gap funds, and conventional permanent debt. The project will feature the new construction of a single seven-story building with community space on the ground floor. All units will be one-bedroom, one-bathroom and will be approximately 585 square feet in size. The project will have the following income targeting: twenty-eight (28) units at 40% of AMI, twenty-eight (28) units at 50% of AMI, and twenty-eight (28) units at 60% of AMI. There will also be one employee unit. Eighty percent (80%) of the units will be set-aside for persons of 55 years of age and older and thirty percent (30%) of the total units will receive Project Based Rental Assistance and be reserved for persons with disabilities. The ground floor will include amenities for residents, offices for supportive services staff and property management staff. The amenities will include community open spaces for residents to gather and receive supportive services, food pantry, fitness room with equipment, common laundry rooms and restrooms. The overall site will include an additional five percent (5%) accessible units above the minimum required by the local building code, a walking path, community garden and outdoor seating areas.

Exhibit B – Depiction of Project (1 page)

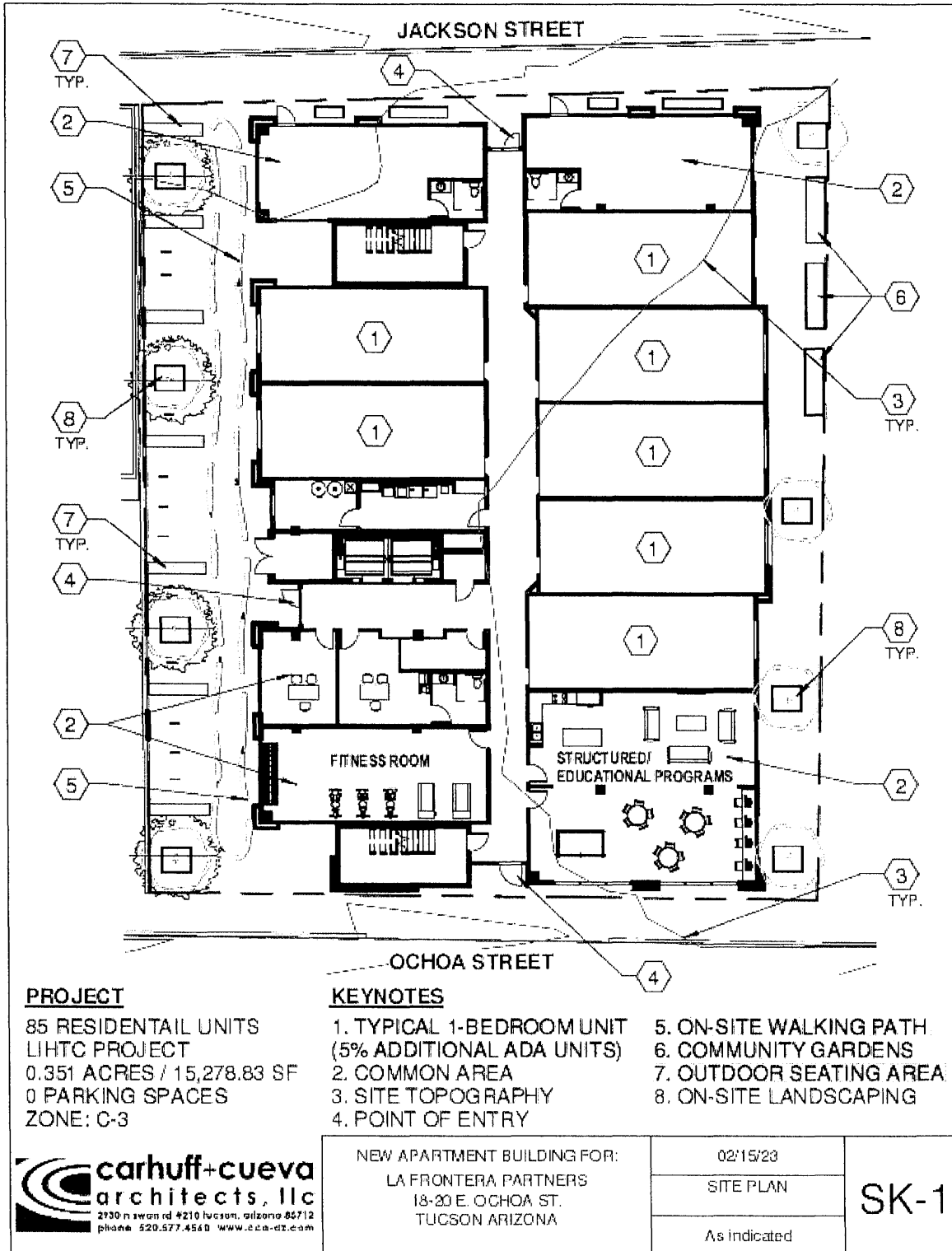


Exhibit C – Form of Affordability Restrictive Covenant (9 pages)

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"), La Frontera Partners, Inc., an Arizona nonprofit corporation ("Developer"), and Westpoint Apartments II, LP, an Arizona limited partnership ("Owner"), have entered into an Affordable Housing Gap Funding Agreement (the "Agreement"), Pima County Contract No. PO2400010219. Under that Agreement, County provided \$1,000,000.00 in funding ("Gap Funding") to Developer to complete an affordable-housing project, West Point Apartments II (the "Project"), subject to, among others, the requirement that the Project remain affordable for a period of 30 years (the "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, 2054, unless earlier terminated in accordance with the LIHTC "qualified contract" process described in Internal Revenue Code § 42(h)(f)(6) (the "LIHTC Affordability Period").
- 1.2. The Project consists of 85 one-bedroom, one-bathroom rental units, and is located on one parcel of land, legally described in attached Exhibit C-1 and further identified by Pima County Assessor Tax Parcel Number 117-130-0410 (the "Project Property"). Owner owns the Project Property.
- 1.3. In order to effectuate the Affordability Restrictions (as hereinafter defined), County, Developer and Owner (collectively, the "Parties") desire to enter into this Affordable Housing Restrictive Covenant (this "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 of recordation 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.

- 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 recordation 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 any senior Deed of Trust and terminates 30 years after the date of recordation.
4. **Affordability Restrictions.**
 - 4.1. While the LIHTC Affordability Period is in effect, 84 of the 85 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.
 - 4.2. After the LIHTC Affordability Period expires, but before expiration of the County Affordability Period, 84 of the 85 rental units comprising the Project must be leased to tenants whose household income at initial lease-up does not exceed 60% of the area median income ("AMI") for Pima County, as determined and promulgated by the Arizona Department of Housing and the U.S. 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 60% AMI tenants (the "60% AMI Rent"), which includes the required utilities pursuant to the government program.
 - 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 Owner relating to the Project.
 - 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 and Developer with written notice of the alleged default. The notice must specify both the violation alleged and the actions that 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 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 85 total units, the damages formula would be $\$1,000,000 * (1/30) * (50/85) = \$19,607.84$.
- 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 Owner with the restrictions provided in this Covenant are to assure compliance of the Project and 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 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 OWNER OF ITS OBLIGATIONS UNDER THIS COVENANT IN ANY ARIZONA STATE COURT OF COMPETENT JURISDICTION.
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 Funding Agreement requirements. In performing its duties and obligations hereunder, County may rely upon statements and certificates of Owner pertaining to occupancy of the Project. Owner further represents, covenants and warrants to County that:
- 7.1. Owner: 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;

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

7.2. The execution and performance of this Covenant and the Funding Agreement by 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 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. 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 Owner, threatened against or affecting it, or any of its properties or rights, that, if adversely determined, would materially impair Owner's right to carry on business substantially as now conducted (and as now contemplated) by this Covenant and the Agreement or that would materially, adversely affect its financial condition. Neither Owner, its principals, shareholders, or general partners, as the case may be, have any judgment entered against them that would, when recorded, constitute a lien against or otherwise impair the security of the Project.

7.5. No actions will be taken by 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 the Affordability Restriction 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 of recordation 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 of recordation hereof regardless of the date of actual 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 in the office of the Pima County Recorder, 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.
- 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, along with the Funding Agreement, 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.

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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 _____, 2024, by Adelita S. Grijalva, Chair, Board of Supervisors of Pima County, Arizona, on behalf of Pima County, Arizona.

Notary Public

My Commission Expires:

DEVELOPER:

LA FRONTERA PARTNERS, INC., AN ARIZONA NONPROFIT CORPORATION

BY: _____ Michael Prudence, Secretary & Treasurer

Date

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 2024, by Michael Prudence, as Secretary & Treasurer of La Frontera Partners, Inc., an Arizona nonprofit corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

OWNER:

WESTPOINT APARTMENTS II, LP, AN ARIZONA LIMITED PARTNERSHIP

BY: LF WEST POINT II HOUSING, INC., AN ARIZONA CORPORATION, GENERAL PARTNER

By: _____
Michael Prudence, Secretary & Treasurer

Date

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 2024, by Michael Prudence, as Secretary & Treasurer of LF West Point II Housing, Inc., an Arizona corporation, as General Partner of West Point Apartments II, LP, an Arizona limited partnership, on behalf of the corporation and partnership.

Notary Public

My Commission Expires:

Exhibit C-1

Legal Description – Parcel 117-130-0410

LEGAL DESCRIPTION

All of Lots 2 and 3 in Block 217 of the CITY OF TUCSON, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S.W. Forman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson on June 26, 1872, a certified copy of which is on record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70 thereof, described as follows:

BEGINNING at a point in the North line of said Block 217 distant South 79 degrees 54 minutes 43 seconds West, 110.39 feet from the Northeast corner of said Block 217;

THENCE South 7 degrees 32 minutes 45 seconds East, 136.23 feet (South 07 degrees 10 minutes 29 seconds East 136.45 feet measured) to a point on the South boundary of Block 217, situated South 81 degrees 57 minutes 0 seconds West, 97.374 feet from the Southeast corner of said Block 217;

THENCE South 81 degrees 57 minutes 0 seconds West, 111.966 feet (South 82 degrees 12 minutes 56 seconds West, 112.00 feet measured) along the South boundary of said Block 217 to a point situated North 81 degrees 57 minutes 0 seconds East, 108.85 feet from the Southwest corner of said Block 217;

THENCE North 8 degrees 58 minutes 26 seconds West, 132.14 feet (North 8 degrees 38 minutes 21 seconds West, 132.24 feet measured) to a point on the North boundary of said Block 217, North 79 degrees 54 minutes 43 seconds East, 108.85 feet from the Northwest corner of said Block;

THENCE North 79 degrees 54 minutes 43 seconds East, 115.37 feet (North 80 degrees 07 minutes 20 seconds East, 115.50 feet measured) along the North boundary of said Block 217 to the TRUE POINT OF BEGINNING.