

ATTACHMENT #1

HOUSING AUTHORITY OF INDIAN WELLS PROFESSIONAL SERVICES AGREEMENT

([choose one: “Mountain View Villas” or “Indian Wells Villas”])

This Professional Services Agreement (“Agreement”), effective _____, 2023 (“Effective Date”), is between the Housing Authority of the City of Indian Wells, a public body, corporate and politic, organized under the laws of the State of California with its principal place of business at 44-950 Eldorado Drive, Indian Wells, California 92210-7497 (“Housing Authority”) and Abode Communities, a California nonprofit corporation, with its principal place of business at 1149 S. Hill Street, Suite 700, Los Angeles, CA 90015 (“Management Agent”). Housing Authority and Management Agent are sometimes individually referred to as a “party” and collectively as the “parties.”

RECITALS

- 1. Management Agent.** Management Agent desires to perform and assume responsibility for the provision of certain professional services required by the Housing Authority on the terms and conditions set forth in this Agreement. Management Agent represents that it is experienced in providing professional property management services to public clients, is licensed in the State of California, and is familiar with the Housing Authority’s plans for the Project (as defined below).
- 2. Project.** Housing Authority desires to engage Management Agent to render professional property management services for [choose one: “the Indian Wells Villas residential community located at 74800 Village Center Drive, Indian Wells, California” or “the Mountain View Villas residential community located at 78000 Betty Barker Way, Indian Wells, California”] (“Project”) as such services are set forth in this Agreement.
- 3. Related Project.** Housing Authority has also engaged Management Agent to render professional property management services for [choose the other one: “the Indian Wells Villas residential community located at 74800 Village Center Drive, Indian Wells, California” or “the Mountain View Villas residential community located at 78000 Betty Barker Way, Indian Wells, California”] under a separate professional services agreement (“Other Agreement”).

TERMS AND CONDITIONS

1. **Scope of Services.** Management Agent promises and agrees to furnish to the Housing Authority all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional property management consulting services necessary for the Project (“Services”) as specifically described in Exhibit A, attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules and regulations.

2. **Term**
 - 2.1 **Initial Term.** The term of this Agreement begins on the Effective Date and ends one year from the Effective Date.

 - 2.2 **Extensions**
 - 2.2.1 The term of the Agreement is automatically extended by another year if neither party gives notice to the other of its intent to not extend at least 60 days prior to the end of the term.

 - 2.2.2 No more than two extensions may occur under this provision, for a maximum total term of three years. Any further extension of the term requires a written amendment of this Agreement.

 - 2.2.3 Notice must be in accordance with the notice provisions of this Agreement.

3. **Responsibilities of Management Agent**
 - 3.1 **Control and Payment of Subordinates; Independent Contractor.** The Services shall be performed by the Management Agent or under its supervision. Management Agent will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. The Housing Authority retains Management Agent on an independent contractor basis and not as an employee. Management Agent retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Management Agent shall also not be employees of Housing Authority and shall at all times be under Management Agent’s exclusive direction and control. Management Agent shall comply with applicable law in paying wages, salaries, and other amounts due such personnel in connection with their performance of the Services at the direction of

Management Agent. Management Agent shall be responsible for all reports and obligations respecting such additional personnel, including, as applicable, but not limited to: medical benefits, social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance, and in compliance with all applicable state and federal labor laws.

3.2 **Schedule of Services.** Management Agent shall perform all Services in accordance with generally accepted professional standards for property management of comparable projects and in compliance with state and federal fair-housing laws, and in accordance with the Schedule of Services set forth in Exhibit B attached hereto and incorporated herein by reference. Management Agent represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. To facilitate Management Agent's conformance with the Schedule, Housing Authority shall respond to Management Agent's submittals in a timely manner.

3.3 **Substitution of Key Personnel**

3.3.1 Management Agent has represented to Housing Authority that certain key personnel will perform and coordinate the Services under this Agreement.

3.3.2 Should one or more of such personnel become unavailable, Management Agent may substitute other personnel of at least equal competence upon written notice to Housing Authority.

3.3.3 As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the Housing Authority, or who are determined by the Housing Authority to be uncooperative, incompetent, incapable, a threat to the adequate or timely management of the Project, or a threat to the safety of persons or property, is subject to removal from the Project by the Management Agent at the request of the Housing Authority.

3.3.4 The key personnel for performance of this Agreement are as follows:

(A) Sarah Furchtenicht, Senior Vice President

(B) Jennifer Hecox, Director of Property Management Operations

3.4 **Housing Authority's Representative.** The Housing Authority hereby designates its Executive Director, or the Director's designee, to act as its representative for the performance of this Agreement ("Housing Authority's Representative"). Housing Authority's Representative shall have the power to act on behalf of the Housing Authority for all purposes under this Agreement. Management Agent shall not

accept direction or orders from any person other than the Housing Authority's Representative or his or her designee.

- 3.5 **Management Agent's Representative.** Management Agent hereby designates Sarah Furchtenicht, Senior Vice President, or her designee, including without limitation Jennifer Hecox, Director Of Property Management Operations, to act as its representative for the performance of this Agreement ("Management Agent's Representative"). The Management Agent's Representative shall have full authority to represent and act on behalf of the Management Agent for all purposes under this Agreement. The Management Agent's Representative shall supervise and direct the Services, using the Representative's best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.
- 3.6 **Coordination of Services.** Management Agent agrees to work closely with Housing Authority staff in the performance of Services and shall be available to Housing Authority's staff, consultants, and other staff at all reasonable times. There is no obligation under this section 3.6 to be available at unreasonable times.
- 3.7 **Standard of Care; Performance of Employees.** Management Agent shall perform all Services under this Agreement in a competent manner, consistent with the standards generally recognized as being employed by professional property managers in the State of California.
- 3.7.1 Management Agent represents and warrants that each of its employees and subcontractors used in performing the Services have sufficient skill and experience to perform the Services assigned to them.
- 3.7.2 Management Agent represents that it has all licenses, permits, and approvals that are legally required to perform the Services, including a City of Indian Wells ("City") business license, and that such licenses, permits, and approvals shall be maintained throughout the term of this Agreement.
- 3.7.3 As provided for in the indemnification provisions of this Agreement, Management Agent shall perform, at its own cost and expense and without reimbursement from the Housing Authority, any services necessary to correct errors or omissions that are caused by the Management Agent's failure to comply with the standard of care provided for herein.
- 3.7.4 In the event the Housing Authority reasonably determines that any employee of Management Agent is uncooperative, incompetent, incapable,

a threat to the adequate management of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Housing Authority, then upon notice from the Housing Authority, the employee shall promptly be removed from the Project by the Management Agent. Management Agent shall be responsible for determining its own legal liability in connection with such removal.

3.7.5 Any representative and employee of Management Agent that enters or has access to any area of the Project that is not open to the general public in order to provide Services under this Agreement shall, prior to accessing any such non-public area, undergo and pass a complete criminal background check in accordance with Management Agent's employment standards. Such employment standards may be revised from time to time and shall be reviewed and approved by Housing Authority, which approval may not to be unreasonably withheld or delayed.

3.8 **Laws and Regulations; Building Compliance.** Management Agent shall keep itself fully informed of and, subject to the terms of this Agreement, in compliance with all applicable local, state, and federal laws, rules and regulations affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. If the Management Agent performs any work knowing it to be contrary to such laws, rules, and regulations and without giving written notice to the Housing Authority, Management Agent shall be solely responsible for all costs arising therefrom. The Management Agent will hold the Housing Authority and City harmless from any claim or damage arising from the Management Agent's failure to comply with the law. The City is an intended third-party beneficiary of this Agreement.

3.9 **No Management Agent-owned Vehicles.** Management represents and warrants that it does not own any vehicle that will be used at the Project or in otherwise rendering the Services.

4. **Subcontracting**

4.1 **Prior Approval Required.** Management Agent shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of Housing Authority. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

4.2 **Bids.** In selecting subcontractors or vendors to conduct work required by this Agreement or in connection with the operation and maintenance of the Project, the

Management Agent shall solicit bids or proposals from not less than three vendors or subcontractors through a formal or informal solicitation process as agreed to following consultation with the Housing Authority and approval by the Housing Authority of the proposed solicitation process.

5. Management Agent Insurance

5.1 **Time for Compliance.** Management Agent shall not commence the Services under this Agreement until it has provided evidence satisfactory to the Housing Authority that it has secured all insurance required under this section 5. In addition, Management Agent shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Housing Authority that the subcontractor has secured all insurance required under this section 5.

5.2 **Minimum Requirements.** Management Agent shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Management Agent, its agents, representatives or employees. Such insurance shall meet at least the following minimum levels of coverage:

5.2.1 **Minimum Scope of Insurance.** Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 8 and 9 (hired and non-owned autos); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

5.2.2 **Minimum Limits of Insurance.** Management Agent shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence/\$4,000,000 in the aggregate, for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit, and shall be achieved by a combination of primary liability and excess liability coverage; (2) *Automobile Liability*: \$1,000,000 combined single limit, for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of

California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

- 5.3 **Professional Liability.** Management Agent shall procure and maintain Errors and Omissions insurance in the amount of \$1,000,000 per claim and \$2,000,000 in the annual aggregate.
- 5.4 **Fidelity Bonds (aka Commercial Crime Coverage).** Management Agent shall obtain Fidelity bond, or Commercial Crime coverage, and shall submit evidence thereof in a form and substance satisfactory to the Housing Authority, covering all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Management Agent, including, but not limited to, officers, directors, trustees and employees of the Management Agent, who handle or are responsible for funds collected pursuant to this Agreement. Such coverage shall be in an amount deemed reasonably appropriate by the Housing Authority but shall not be less than the estimated maximum funds in custody of the Management Agent, or 25 percent of the estimated annual operating expenses of the Project, plus reserves, whichever is greater.
- 5.5 **Insurance Endorsements.** The insurance policies shall contain provisions that are substantially the same and have the same legal effect as the following provisions, or Management Agent shall provide endorsements on forms supplied or approved by the Housing Authority to add the following provisions to the insurance policies:
- 5.5.1 **General Liability.** The general liability policy shall be endorsed to state that: (1) the Housing Authority and the City, their directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds ; and (2) the insurance coverage shall be excess of and non-contributory to insurance available as respects the Housing Authority or City, their directors, officials, officers, employees, agents and volunteers, except that Management Agent's general liability policy shall be primary and noncontributory to any other coverage available to the Housing Authority or City to the extent of Management Agent's indemnity obligations under section 19. Any insurance or self-insurance maintained by the Housing Authority or City, their directors, officials, officers, employees, agents and volunteers shall be primary to the Management Agent's insurance and shall not be called upon to contribute with it in any way except to the extent described in the preceding sentence.
- 5.5.2 **Automobile Liability.** The automobile liability policy shall be endorsed, where reasonably available from insurance underwriters, to state that: (1) the Housing Authority and City, their directors, officials, officers,

employees, agents and volunteers shall be covered as additional insureds as to any auto that is hired or borrowed by the Management Agent or for which the Management Agent is responsible; and (2) the insurance coverage shall be excess of and non-contributory to insurance as respects the Housing Authority and City, their directors, officials, officers, employees, agents and volunteers. Any insurance or self-insurance maintained by the Housing Authority or City, their directors, officials, officers, employees, agents and volunteers shall be primary to the Management Agent's insurance and shall not be called upon to contribute with it in any way.

5.5.3 **All Coverages.** Each insurance policy required by this Agreement shall be endorsed to state that: coverage shall not be canceled or non-renewed except after 30-day prior written notice, or 10-day notice for cancellation by non-payment of premium, has been given to the Housing Authority;

5.6 **Separation of Insureds; No Special Limitations.** All insurance required by this section 5 shall contain standard separation of insureds provisions.

5.7 **Deductibles and Self-Insurance Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the Housing Authority.

5.8 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the Housing Authority.

5.9 **Verification of Coverage.** Management Agent shall furnish Housing Authority with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Housing Authority. Management Agent will provide Housing Authority with the certificates and endorsements required by this Agreement within ten business days of Management Agent receiving them.

5.10 **Management Agent's Subcontractors.** To the extent reasonably available in the commercial insurance marketplace, Management Agent shall also require all of its subcontractors to procure and maintain appropriate types of insurance required by this Agreement, at limits appropriate for the risk associated with the subcontracted activity.

6. **Housing Authority Insurance**

6.1 Housing Authority agrees to maintain in full force and effect commercial general liability insurance on an occurrence form including premises/operations liability,

protective liability, contractual liability, products/completed operations liability and personal and advertising liability coverages. The ISO commercial general liability policy form CG 00 01 or its equivalent should be utilized. The following minimum limits of liability shall be maintained: \$1,000,000 each occurrence; \$1,000,000 personal and advertising injury; \$1,000,000 products/completed operations aggregate; \$2,000,000 general policy aggregate. A per location general aggregate limit is required if the Housing Authority's general liability insurance policy covers more than one location. The Management Agent shall be designated as an additional insured under the Housing Authority's policy which shall be primary and noncontributory to any other coverage available to the Management Agent to the extent of the Housing Authority's indemnity obligations under section 19.

- 6.2 Housing Authority also agrees to maintain in full force and effect automobile liability insurance for all owned, leased, non-owned and hired vehicles. The minimum limit of liability shall be \$1,000,000 each accident, combined single limit for bodily injury and property damage. The policy shall include auto contractual liability coverage. The policy shall include the Management Agent as an additional insured.
- 6.3 Housing Authority also agrees to maintain in full force and effect excess umbrella liability insurance providing following form coverage over the underlying general liability and automobile liability insurance policies described above with minimum occurrence and aggregate limits of \$5,000,000.
- 6.4 Housing Authority also agrees to maintain in full force and effect "All-risk" property insurance to cover physical loss or damage to the Project in an amount equal to the 100-percent replacement cost of the Project; and Business interruption and extra expense coverage for the full recovery of the net profits of the Project for the entire period of any such business interruption. Coverage shall be in effect from the date on which the Management Agent first assumes management responsibility of the property and throughout the term of the management agreement
- 6.5 .Each of the insurance coverages described above, must be purchased from insurance companies licensed to do business in California and have a current A.M. Best's rating of A-, VIII or higher.
- 6.6 Housing Authority agrees to furnish certificates of the above-mentioned insurance before Management Agent assumes management responsibility of the Project, and at each renewal. Such certificates shall state that in the event of cancellation, written notification shall be given at least thirty (30) days in advance of such cancellation.

7. **Insured Claims.** Neither Management Agent nor Housing Authority shall assert against the other, and do hereby waive with respect to each other, any claim for any loss, damage, liability, or expenses incurred or sustained by either of them on account of injury to persons or damage to property arising out of the ownership, operation, or management of the Project to the extent that the same are covered by the insurance required under this Agreement. Each policy of liability insurance required herein shall contain a specific waiver of subrogation reflecting the provisions of this section 7, and a provision to the effect that the existence of the preceding waiver shall not affect the validity of any such policy or the obligation of the insurer to pay the full amount of any loss sustained.

8. **Existing Conditions at Project**

8.1 Housing Authority and Management Agent agree and acknowledge that, notwithstanding anything in this Agreement or elsewhere to the contrary, Housing Authority is solely responsible and Management Agent has no responsibility whatsoever prior to commencement of this Agreement for identifying, addressing or correcting any existing issues at the Project, including, without limitation structural, building or fire code, asbestos, lead paint, ventilation, water pipe, and potential mold problems at the Project, including selecting and contracting with appropriate third-party contractors and vendors in connection with such issues.

8.2 Housing Authority shall promptly cause the full remediation of any existing issues at the Project, such obligation to include expending such funds as shall be necessary for such purpose.

8.3 Once all existing issues at the Project have been fully remedied by Housing Authority (to the extent any are necessary), Management Agent will thereafter use commercially reasonable diligence, to the extent of funds made available by Housing Authority, to cause the Project to be maintained and repaired (a) in accordance with all applicable, federal, state, and local laws and regulations, and (b) in a condition that is reasonably acceptable to Housing Authority.

8.4 Maintenance and repair here includes, but is not limited to, cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary.

8.5 Management Agent shall have no responsibility or liability with regard to maintenance for which Management Agent requested funding from the Housing Authority but the funding was denied by Housing Authority

9. **Past Practices.** Notwithstanding anything to the contrary stated or implied herein, Management Agent shall not be liable to Housing Authority (or anyone claiming through

Housing Authority) in any context whatsoever for any acts or omissions of (a) Housing Authority, (b) any past or present employees of Housing Authority, (c) any previous employees of the Project, (d) any previous management contractor employed at or providing services to the Project, or (e) any consultant or contractor of (a)–(d) above.

10. Safety. Management Agent shall execute and maintain its work so as to avoid injury or damage to any person or property.

10.1 In carrying out the Services, the Management Agent shall, subject to the other terms of this Agreement, at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

10.2 Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

11. Fees and Payments

11.1 **Compensation.** Management Agent shall receive compensation, including authorized payment for expenses, for all Services rendered under this Agreement as set forth in Exhibit C attached hereto and incorporated herein by reference. Extra Work, as defined in section 11.4, may be authorized, as described below; and if authorized and agreed to by Management Agent, with compensation paid to Management Agent as agreed to in writing by Housing Authority and Management Agent.

11.2 **Payment of Compensation.** Management Agent may pay its management fee from the general operating account for the Project. The monthly management fee will be payable on the first day of the month following the month in which services were rendered.

11.3 Payment for Expenses

11.3.1 Management Agent shall not be paid for any expense unless authorized in writing by Housing Authority, provided that such expense payments may

be approved in the annual budget prepared for the Project, which must be approved by the Housing Authority.

11.3.2 Costs listed on Exhibit C as well as the following shall be paid from the general operating account as Project expenses provided that such expenses shall be limited to budgeted amounts as approved by the Housing Authority as part of the annual budget:

- (A) reasonable costs and expenses in connection with training of employees, annual certification and licensing programs, and on-going educational opportunities as well as the associated costs for travel, food, and lodging,
- (B) the technology required to manage the Project including but not limited to hardware, software licensing and technology maintenance fees, and
- (C) reasonable costs incurred in connection with third-party records-storage expenses, including but not limited to document storage, off-site electronic storage, maintenance, and retrieval costs.
- (D) In addition, all costs and expenses in connection with emergency repairs involving manifest danger to persons or property or required to avoid suspension of any necessary service to the Project will be paid from the general operating account and will be treated as a Project expense.

11.4 **Extra Work**

11.4.1 At any time during the term of this Agreement, Housing Authority may request that Management Agent perform Extra Work, which Management Agent shall perform provided that Management Agent agrees to perform the Extra Work and Housing Authority and Management Agent agree in writing on the additional compensation to be paid Management Agent for such Extra Work.

11.4.2 “Extra Work” means any work that is determined by Housing Authority to be necessary for the proper management of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement and that are not described in the “Services.”

11.4.3 Management Agent shall not perform, nor be compensated for, Extra Work without written authorization from Housing Authority’s Representative.

11.5 Additional Funds

11.5.1 In the event that the balance in the general operating account is at any time insufficient to pay expenses when due, Management Agent will inform Housing Authority of that fact, and Housing Authority will, within five business days, remit to Housing Authority sufficient funds to cover the deficiency to the extent consistent with the approved general operating budget and this Agreement.

11.5.2 Notwithstanding anything to the contrary stated or implied herein, Management Agent shall have no obligation or responsibility to use its funds to pay Project expenses.

12. First Right of Refusal. If, during the term of this Agreement, Housing Authority decides to sell the Project, Management Agent has first right of refusal, as set forth below, subject to applicable law.

12.1 Before it may sell the Project to any other person, Housing Authority must provide Management Agent with written notice of Housing Authority's intent to sell ("Sale Notice").

12.2 To exercise its first right of refusal, Management Agent must provide Housing Authority with written notice of its intent to do so ("First Right of Refusal Notice") within ten business days of the date of the Sale Notice.

12.3 If Management Agent timely provides the First Right of Refusal Notice under section 12.2 above, Housing Authority and Management Agent have three months from the date of the First Right of Refusal Notice to agree upon a term sheet summarizing key terms for the sale.

12.4 If the parties agree on a term sheet within the three months, they have nine additional months in which to negotiate the terms of a sale. If they do not agree on a term sheet within the three months, neither party has any obligation to continue negotiating, and Management Agent's first right of refusal terminates.

12.5 If, during the term of this Agreement, Housing Authority receives an offer from a third party to purchase the Project, Housing Authority may not accept the third-party offer without first complying with sections 12.1 through 12.4 above.

13. Accounting Records

13.1 Management Agent shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement.

- 13.2 All such records shall be clearly identifiable.
- 13.3 Management Agent shall allow a representative of Housing Authority during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement.
- 13.4 Management Agent shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three years from the date of final payment under this Agreement.

14. Termination

14.1 Grounds

14.1.1 **For Cause.** Housing Authority may, by written notice to Management Agent, terminate this Agreement for cause by giving written notice to Management Agent of Management Agent's default under the terms of this Agreement, and providing Management Agent 60 days in which to cure such default. If Management Agent fails to cure the default within that time and Housing Authority elects to continue with termination, Housing Authority shall send notice to Management Agent of its election to terminate, specifying the effective date thereof.

14.1.2 **Material Breach.** This Agreement may be terminated for material breach by either party provided it first gives written notice to the other, setting forth with specificity the claimed breach and the other party fails to cure the same within 30 days (or such longer period if necessary under the circumstances).

14.2 **Compensation.** Upon termination, Management Agent shall be compensated only for those services which have been rendered to Housing Authority, and Management Agent shall be entitled to no further compensation.

14.3 **Documents and Data.** Upon any termination of this Agreement, Housing Authority may require Management Agent to provide all finished or unfinished Documents and Data and other information of any kind prepared by Management Agent in connection with the performance of Services under this Agreement. Management Agent shall be required to provide such documents and other information within 15 days of the request.

14.4 **Cross-Termination.** Of the Other Agreement for the related project, referred to in recital 3 above, is terminated for any reason, Housing Authority may terminate this Agreement with at least 30-day prior written notice to Management Agent.

15. Notice

15.1 All notices permitted or required under this Agreement shall be given to the respective party at the following address, or at such other address as the respective parties may provide in writing for this purpose:

15.1.1 To Management Agent:

Abode Communities
1149 S. Hill Street, Suite 700
Los Angeles, CA 90015
Attn: Sarah Furchtenicht

15.1.2 To Housing Authority:

Housing Authority of Indian Wells
44-950 Eldorado Drive, Indian Wells
California 92210-7497
Attn: Housing Manager

15.2 Such notice shall be deemed made when personally delivered or when mailed, 48 hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

16. Documents & Data; Licensing of Intellectual Property. Housing Authority agrees that it shall not copy, use, modify, reuse, or sublicense and shall keep confidential, subject to the rest of this section 16, any and all procedures, management systems, operational and other manuals and forms used by Management Agent in operating the Project outside the scope of this Agreement. If Housing Authority receives a request for any such materials that are in the Housing Authority's possession, Housing Authority will promptly provide Management Agent with written notice of the request. Management Agent will then have the time specified in the Housing Authority's notice to determine whether it considers any of the information confidential proprietary information and whether it will take legal action to preclude disclosure of the requested information. Management Agent understands that the Housing Authority's notice of a request for records under the California Public Records Act (Gov. Code, § 6250, et seq.) will require a prompt response from Management Agent given the Housing Authority's obligation to respond to such a request within 10 days of its receipt. Absent a timely response, Housing Authority may release the requested records. Housing Authority shall have no monetary liability to Management Agent for release of information pursuant to a request under the California Public Records Act or any subpoena; nor shall Housing Authority be obligated to defend against any challenge related to a California Public Records Act request or a subpoena for records that Management Agent asserts are confidential. Management Agent further agrees to be liable for and pay all

judgments against the Housing Authority, as well as attorney fees and costs, resulting from a challenge related to a records request or subpoena for records to the extent resulting from Management Agent's actions to block the release of those records.

- 17. Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Management Agent in connection with the performance of this Agreement shall be held confidential by Management Agent. Such materials shall not, without the prior written consent of Housing Authority, be used by Management Agent for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Management Agent which is otherwise known to Management Agent or is generally known, or has become known, to the related industry shall be deemed confidential. Management Agent shall not use Housing Authority's name or insignia, photographs of the Project, or any public Housing Authority pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Housing Authority.
- 18. Prohibition Relative to Management Agent's Employees.** For the term of this Agreement, as it may be extended or renewed, and for one year after its termination or expiration for any reason, Housing Authority shall not employ, engage, solicit for employment or consultation, hire, consult with or use the services of any person, in any capacity whatsoever, who is currently, or during the term of this Agreement becomes, an employee of Management Agent, whether such services are provided for with or without compensation. Housing Authority's obligations with respect to section 16, as defined herein, shall apply fully to any employee or former employee of Management Agent who becomes affiliated with Housing Authority in any respect. In addition to its other obligations hereunder, Housing Authority shall take all necessary precautions to insure that any employee or former employee of Management Agent who becomes affiliated with Housing Authority in any respect keeps Management Agent's materials strictly confidential in accordance with the provisions of section 16.
- 19. Indemnification**

 - 19.1 By Management Agent.** Management Agent shall defend, indemnify and hold Housing Authority and City, their officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent such claim arises out of or is incident to the Services or the negligence or willful misconduct of Management Agent, its

officials, officers or employees in the performance of the Services by Management Agent. Management Agent's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Housing Authority or City, their officials, officers, employees and agents.

19.2 **By Housing Authority.** Housing Authority shall defend, indemnify and hold Management Agent, its officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent such claim arises out of or is incident to the gross negligence or willful misconduct of the Housing Authority or City. Housing Authority's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Management Agent, its officials, officers, employees and agents.

19.3 **Survival.** Every indemnity obligation contained in this Agreement survives the expiration or earlier termination of this Agreement.

20. **No Personal Liability.** No manager, member, officer, director, agent, or employee of Management Agent and no officer, director, trustee, member, partner, manager, agent, or employee of any manager or member of Management Agent shall have any personal liability for the performance of any obligation by Management Agent, or under or in connection with this Agreement or any acts done or omitted by Management Agent. Housing Authority shall look only to Management Agent and its assets for payment or performance under this Agreement.

21. **General Provisions**

21.1 **Entire Agreement.** This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified by a writing signed by both parties.

21.2 **Governing Law.** This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

21.3 **Time of Essence.** Time is of the essence for each and every provision of this Agreement.

21.4 **Cooperation; Further Acts.** The parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

- 21.5 **Successors and Assigns.** This Agreement shall be binding on the successors and assigns of the parties.
- 21.6 **Assignment or Transfer.** Management Agent shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Housing Authority. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.
- 21.7 **Construction; References; Captions.** Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Management Agent include all personnel, employees, agents, and subcontractors of Management Agent, except as otherwise specified in this Agreement. All references to Housing Authority include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 21.8 **Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.
- 21.9 **Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.
- 21.10 **Third-Party Beneficiaries.** Except for the City, as stated above, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 21.11 **Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 21.12 **Prohibited Interests.** Management Agent maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Management Agent, to solicit or secure this Agreement. Further, Management Agent warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for

Management Agent, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Housing Authority shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Housing Authority, during the term of his or her service with Housing Authority, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

- 21.13 **Equal Opportunity Employment.** Management Agent represents that it is an equal opportunity employer, and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Management Agent shall also comply with all relevant provisions of any Housing Authority's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.
- 21.14 **Labor Certification.** By its signature hereunder, Management Agent certifies that it is aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.
- 21.15 **Authority to Enter Agreement.** Management Agent and Housing Authority have all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective party.
- 21.16 **Counterparts.** This Agreement may be signed and delivered in counterparts, each of which shall constitute an original.
- 21.17 **Electronic Signatures.** This Agreement may be signed and delivered by each party either electronically by facsimile (e.g, scanned image or PDF copy) or digitally through the use of EchoSign, DocuSign, or such other commercially available digital-signature software that results in verified and confirmed signatures delivered electronically to each party. Each electronic or digital signature of a party is treated as an original, as if personally signed by that party.

(Signatures on Following Page)

**HOUSING AUTHORITY OF
INDIAN WELLS**

ABODE COMMUNITIES

By: Christopher Freeland
Housing Authority Executive Director

By: Sarah Furchtenicht
Senior Vice President

Date

Date

Attest:

Angelica Avila
Chief Deputy Housing Authority Clerk

Approved as to Form:

for
Best Best & Krieger, LLP
Housing Authority General Counsel

EXHIBIT A

SCOPE OF SERVICES

Management Agent Services to include the following:

1. Personnel
 - 1.1 Provide employees of Abode Communities to operate the Project on-site including but not limited to the following positions:
 - A. Activity Coordinator(s),
 - B. Property Manager(s),
 - C. Assistant Property Manager(s),
 - D. Maintenance Supervisor(s),
 - E. Maintenance Personnel,
 - F. Resident Services Coordinator(s).
 - 1.2 All on-site personnel shall be contracted service providers or employees of the Management Agent and shall be paid from the general operating account as an expense of the Project. Management Agent shall at all times have sufficient personnel physically present at the Project for the full and efficient performance of its duties under this Agreement, including physical presence of responsible persons at such times as reasonably may be requested by the Housing Authority.
2. **Leasing.**
 - 2.1 The Management Agent shall lease units and operate Project according to Regulatory Agreements, covenants, conditions of the properties, the Fair Housing Act, the Fair Employment and Housing Act, and the Americans with Disabilities Act.
 - 2.2 The Management Agent shall commence offering for rent the dwelling units in the Project.
 - 2.3 Units shall be made available for subsequent lease up in accordance with a rent schedule approved in writing by the Housing Authority and the leasing guidelines

and form of lease that are approved by the Housing Authority's Executive Director and General Counsel. Incident thereto, the following provisions shall apply:

- A. Management Agent shall show dwelling units for rent in the Project to all prospective Tenants.
- B. Management Agent shall take and process applications for rentals, including prospective Tenant interviews, criminal and credit checks. If an application is rejected, the Management Agent shall promptly give the applicant proper written notice stating the reason for rejection.
- C. Management Agent shall calculate and update the maximum allowable rent for each income designated category at the Project annually based on the rent adjustment calculations that utilize Area Median Income (AMI) pursuant to the Department of Housing and Community Development ("HCD"), Cal. Health & Safety Code sections 50093(c), 50052.5, and 50053.
- D. Management Agent shall apply adjustments to the maximum allowable rent under the Section 8 Housing Choice Voucher Program (Section 8) on an annual basis at the Project for tenants who participate in the Section 8 program pursuant to all applicable guidelines set by the U.S. Department of Housing and Urban Development ("HUD").
- E. Management Agent shall be responsible for the certification and recertification of tenants covered by any Housing Assistance Payments Contracts that may be applicable to the Project with respect to federal Section 8 rent subsidies, following procedures required by HUD if applicable the certification and recertification process shall be the sole responsibility of the Management Agent, in accordance with applicable Federal (HUD), State (HCD), and County (Housing Authority) guidelines.
- F. Management Agent shall, subject to prior written approval by Housing Authority of any deviation from Housing Authority's approved rent schedule, lease form, and leasing guidelines, execute all Leases in Management Agent's name, identified thereon as agent for Housing Authority.
- G. Management Agent shall collect and deposit security deposits, if required, in accordance with the terms of each Lease. The Management Agent shall maintain the security deposit account and make disbursements in accordance with the terms of the lease. The amount of each security deposit

shall be specified in the Management Plan or as approved by Housing Authority in writing. Interest on security deposits shall be paid according to law. Security deposits shall be held by the Management Agent in a trust account, separate from all other accounts and funds. Such an account shall be in the Housing Authority's name and be designated as the "security deposit account."

- H. Management Agent shall maintain a current waiting list of prospective qualified Tenants and undertake all arrangements necessary and incidental to the acceptance of rental applications and the execution of Leases. Management Agent shall exercise its best efforts including, but not limited to, placement of advertising, interview of prospective Tenants, assistance in completion of rental applications and execution of Leases, processing of documents, credit check, employment verifications, and explanation of the program and operations of the Housing Authority, to affect the leasing of dwelling units, and renewal of Leases.
- I. Management Agent shall perform such other acts and deeds requested by Housing Authority as are reasonable, necessary, and proper in the discharge of Management Agent's rental duties under this Agreement.
- J. Management Agent shall prorate the second month's rent collected from a Tenant should the Lease term commence on any other day than the first day of the month.
- K. Management Agent shall participate in the inspection of the dwelling unit identified in the Lease together with the Tenant prior to move-in and upon move-out, and shall record in writing any previous damage to the unit and any damage occurring during the Tenant's occupancy.
- L. Management Agent shall, unless otherwise agreed by Housing Authority and Management Agent in writing,
 - (1) comply with the leasing guidelines detailed in the Management Plan and
 - (2) use for each Lease the form of lease agreement that are approved by the Housing Authority's Executive Director and General Counsel.

- 3. **Marketing.** Management Agent shall carry out the marketing activities including tenant screening interviews in compliance with state and federal fair-housing laws.

4. **Collection of Rents, Etc.** Management Agent shall collect when due, directly or through an on-site manager, all rents, charges, and other amounts receivable on Housing Authority's account in connection with the management and operation of the Project.

4.1 Such receipts shall be deposited in the general operating account and controlled by the Management Agent, separate from all other accounts and funds.

4.2 Adjust rents yearly as required by Housing Authority policy attached hereto as Exhibit D.

5. **Enforcement of Leases**

5.1 Management Agent shall enforce the Residential Lease provisions and Rules and Regulations by making reasonable efforts to secure full compliance by each Tenant with the terms of such Tenant's Lease. Voluntary compliance shall be emphasized, and Management Agent shall counsel Tenants and make referrals to community agencies in cases of financial hardship or other circumstances deemed appropriate by Management Agent, all to the end that involuntary termination of tenancies shall be avoided to the maximum extent, consistent with sound management of the Project.

5.2 Nevertheless, and subject to any applicable procedures prescribed in the Management Plan, Management Agent may, and shall if requested by Housing Authority, lawfully terminate any tenancy when sufficient cause for such termination occurs under the terms of the Tenant's Lease, including, but not limited to, nonpayment of rent.

A. For this purpose, Management Agent is authorized to consult with legal counsel to be designated by Housing Authority and bring actions agreed upon by the Housing Authority and Management Agent for eviction and execute notices to vacate and judicial pleadings incident to such actions; provided however, that Management Agent shall keep the Housing Authority informed of such actions and shall follow such instructions as the Housing Authority may prescribe for the conduct of any such action.

B. Reasonable attorneys' fees and other necessary costs incurred in connection with such actions, as determined by the Housing Authority, shall be paid out of the general operating account.

5.3 Management Agent shall properly assess and collect from each Tenant, or the tenant's security deposit, the cost of repairing any damages to the dwelling unit arising during the Tenant's occupancy.

6. Maintenance and Repairs

- 6.1 Management Agent shall cause the Project to be maintained in a habitable, decent, safe, and sanitary condition and in a rentable state of repair, all in accordance with the Management Plan and federal, state, and local codes.
- 6.2 Management Agent otherwise shall maintain the Project at all times in a condition acceptable to the Housing Authority, including, but not limited to, performance of cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary.
- 6.3 Incident thereto, the following provisions shall apply:
 - A. Special attention shall be given to preventive maintenance, and to the greatest extent feasible, the services of regular maintenance personnel shall be used.
 - B. Subject to Housing Authority's prior written approval, Management Agent shall contract with qualified independent contractors for the maintenance and repair of major mechanical systems, and for the performance of extraordinary repairs beyond the capability of regular maintenance personnel. Management Agent shall obtain prior to commencement of any work written evidence of such contractor's liability and workers compensation insurance and shall obtain lien releases upon completion of repairs.
 - C. Management Agent shall systematically and promptly receive and investigate all service requests from Tenants, take such action thereon as may be justified, and keep records of the same. Management Agent shall make all reasonable efforts to ensure that emergency requests are received and serviced on a 24-hour basis. Complaints of a serious nature shall be reported to the Housing Authority after investigation. The Housing Authority shall have the right to receive copies of all service requests and the reports of action taken thereon.
 - D. Management Agent shall, to the extent within the scope of its authority and duties hereunder, use best efforts to take such action as may be necessary to comply with any and all orders or requirements of federal, state, county, or municipal authorities having jurisdiction over the Project and orders of any board of fire underwriters, insurance companies, and other similar bodies.

- E. Subject to the provisions of paragraphs A through D of this section 6.3, the Management Agent is authorized to purchase all materials, equipment, tools, appliances, supplies, and services necessary for proper maintenance or repair of the Project. Management Agent shall consult with Housing Authority before making any such purchase if such purchases when combined with other regularly occurring project expenses and/or when combined with outstanding accounts payable from the project's general operating account will result in an general operating account balance of less than \$1,000.00.
- F. Notwithstanding any of the foregoing provisions, the prior approval of Housing Authority shall be required for any one or combination of expenditures exceeding \$5,000.00 for any labor, materials, supplies or otherwise that will be required in connection with the related maintenance and repair of a unit or condition in the Project, except for emergency repairs involving manifest danger to persons or property, or required to avoid imminent suspension of any necessary service to the Project. The Management Agent will abide by the provisions of this paragraph F when preparing a unit for re-rental. In the event of emergency repairs, the Management Agent shall notify the Housing Authority of the fact promptly, and in no event later than 72 hours from the occurrence of the event.
- G. Unless receiving written authorization from the Housing Authority for services and products required for the Project and to be charged to the general operating account, Management Agent shall not procure the services of, or purchase from, any business entity that is either owned by or employs members of any nuclear or extended family members of the Management Agent. This restriction applies regardless of the dollar amount of the services or goods in question.
- H. Management Agent shall pay subcontractors, vendors, and other required bills in a timely and effective manner.
- I. Assist Housing Authority in identifying and developing CDBG eligible projects to benefit senior tenants.

7. **Bids Discounts and Rebates.**

- 7.1 Management Agent shall obtain contracts, materials, supplies, utilities, and services on the most reasonably advantageous terms to the Project, and shall solicit formal bids on all contracts or purchases exceeding \$5,000.00 for those items which can

be obtained from more than one source unless instructed otherwise in writing by the Housing Authority.

7.2 Management Agent shall secure and credit to the Housing Authority all discounts, rebates, or commissions obtainable with respect to purchase, service contracts, and all other transactions on Housing Authority's behalf.

8. **Utilities and Services.** In accordance with any applicable provisions of the Management Plan, Management Agent shall make arrangements for water, electricity, solar, gas, sewage, trash disposal, vermin extermination, landscaping, pool cleaning, telephone and basic cable and internet service in connection with the Project.

8.1 All vendor bills will be sent directly to the Management Agent.

8.2 All services contracted will be in the name of the Housing Authority.

9. **Compliance Requirements.**

9.1 Management Agent shall provide compliance with regulatory requirements of the Housing Authority, county, and all other governmental agencies having jurisdiction over affordable housing.

9.2 This includes, but is not limited to, the following:

A. Establish and maintain a comprehensive system of records, books, and accounts in accordance with Housing Authority oversight and auditory controls.

B. Provide monthly financial reports to the Housing Authority indicating all rents collected, rents outstanding, operating expenditures by property, capital replacement costs by property, and include any other financial data requested by Housing Authority.

C. Provide annual budgets for each property and monthly reports detailing expenditures to Budget.

D. Provide quarterly review of the annual budgets for the Housing Authority Board of Commissioner update reports.

E. Provide monthly maintenance and repair reports of the properties to the Housing Authority, including but not limited to, repair work order logs.

F. Establish and maintain a comprehensive tracking log of reasonable accommodation and modification requests.

- G. Establish and maintain a comprehensive tracking log of what appliances have been replaced, reasonable modifications have been made, or any changes to the physical structure of the interior of the unit including the air conditioner.
- H. Investigate and furnish Housing Authority full reports of accidents occurring on or about the properties or in connection with the operations of the projects, or any claims or potential claims for damages.
- I. Attend Housing Authority Board of Commissioner meetings, or any other meetings requested by the Housing Authority.
- J. Meet with the Housing Authority monthly or as determined by the Housing Authority.

10. **Compliance with Laws.** In the performance of its obligations under this Agreement, Management Agent shall comply with all applicable local, state, and federal laws and regulations.

11. **Oversight of Vendors.**

11.1 The Management Agent will oversee and manage all vendors, contractors and subcontractors that provide goods and services to the Project, except to the extent that the Housing Authority notifies Management Agent in writing that it assumes responsibility for one or more of the vendors, contractors or subcontractors.

11.2 Management Agent's oversight includes, but is not limited to, the following:

- A. Management Agent shall inspect work done by vendors, contractors, or subcontractors and ensure that it is done satisfactorily prior to final payment.
- B. Management Agent shall pay subcontractors, vendors, and other required bills in a timely and effective manner.

12. **General Operating Account.** The general operating account for the Project shall be controlled by the Management Agent, with signatories that conform to the designated signatory authority of the Management Agent as outlined in its corporate documents, and shall be governed by the following:

12.1 Funds collected by the Management Agent hereof shall be deposited into the general operating account to be controlled by the Management Agent.

- 12.2 Management Agent shall make disbursements from the general operating account promptly when payable, in the following order of priority:
- 12.3 Salaries and other compensation due and payable to the employees, together with related payroll taxes;
- 12.4 Real estate taxes and assessments, and fire and other hazard insurance premiums, (including any required monthly escrow payments therefore, utilities, interest on the Mortgages, amortization of the principal of the Mortgages, fees, and establishment and maintenance of all required reserve funds;
- 12.5 Other payments due and payable by Housing Authority as operating expenses incurred pursuant to Housing Authority's approved operating budget and in accordance with this Agreement;
- 12.6 Management Fees in accordance with this Agreement; and
- 12.7 Distributions to or at the direction of the Housing Authority, including distributions to the Housing Authority partners in accordance with the Partnership Agreement.

13. Operating Budget.

- 13.1 Management Agent shall prepare a recommended annual operating budget for the Project for each Fiscal Year during the term of this Agreement.
- 13.2 Management Agent submit the same to the Housing Authority at least 120 days before the beginning of such Fiscal Year.
- 13.3 The annual operating budget shall include the following:
 - A. The annual operating budget shall be mutually agreed to by the Housing Authority and Management Agent.
 - B. In preparing each proposed annual operating budget, Management Agent and Housing Authority shall each use their best efforts to take account of anticipated increases in capital improvements, real estate taxes, utility charges, and other operating costs including all anticipated office and administrative expenses of the Management Agent that may be considered Project expenses, subject to the approval of the Housing Authority.
 - C. To the extent feasible, Management Agent shall support anticipated increases in real estate taxes and utility charges with written evidence or documentation.

- D. Proposed annual operating budgets for the Project shall be subject to approval by Housing Authority.
 - E. Housing Authority shall promptly inform Management Agent of any changes incorporated on the approved operating budget, and Management Agent shall make no expenditures in excess of the amounts set forth in such approved operating budget, for each line item of operation expense itemized, without the prior written approval of the Housing Authority, except for emergency repairs involving manifest danger to persons or property, or required to avoid imminent suspension of any services to the Project.
 - F. Management Agent shall control expenses in accordance with the agreed upon annual operating budget.
 - G. Management Agent and the Housing Authority will promptly notify the other if either accounts for, is informed of, or anticipates an increase for any particular item included on the annual operating budget or any project expense for the Project.
 - H. The operating budget shall be substantially in the form proposed by the Housing Authority including, but not limited to the following:
 - I. The operating budget shall include a schedule of recommended rents to be charged for each dwelling unit, including recommended rent increases with respect to Lease renewals and new Leases.
14. **Records and Reports.** In addition to any requirements specified in the Management Plan or other provisions of this Agreement, Management Agent shall have the following responsibilities with respect to records and reports:
- 14.1 Within 30 days after the Effective Date of the Agreement, Management Agent shall ascertain the general condition of the Project, including, but not limited to, the taking of an inventory of all appliances, furniture, equipment, tools, and supplies, and shall prepare within 60 days after the Effective Date a report on the physical and financial status of the Project. Management Agent shall provide the Housing Authority with a copy of the reports and inventories so prepared within 60 days after the Effective Date.
 - 14.2 Within ninety (90) days after transition of management of the Project, Management Agent shall ascertain the general need for Capital Improvements to the Project, including, but not limited to, building structures, HVAC equipment, utility

infrastructure, roads, pedestrian walks, pools, windows, and shall prepare a report prioritizing the physical and financial status of the capital needs for the Project. Management Agent shall provide the Housing Authority with a copy of the reports and inventories so prepared within 90 days of occupancy.

- 14.3 Management Agent shall establish and maintain a system of records, books, and accounts, in accordance with the Management Plan and in a manner satisfactory to the Housing Authority. All records, books, and accounts shall be subject to examination at reasonable hours by any authorized representative of the Housing Authority.
- 14.4 Management Agent shall provide the Housing Authority with written documentation of all rents, security deposits and other funds collected and deposited into the Security Deposit and/or general operating account as well as a list of all delinquent rents as of the 15th day of the current month, in accordance with any applicable provisions of the Management Plan and in form satisfactory to the Housing Authority.
- 14.5 Management Agent shall promptly furnish such additional information as may be requested from time to time by the Housing Authority with respect to the renting and financial, physical, or operational condition of the Project.
- 14.6 Establish processes for documenting and addressing tenant complaints, disputes, maintenance requests, wellness checks, and adult protective service activity.
- 14.7 Management Agent shall prepare, execute, and file all forms, reports, and returns required by law in connection with the employment of personnel, unemployment insurance, worker's compensation insurance, disability benefits, Social Security, and other similar insurance, and all other benefits or taxes now in effect or hereafter imposed.
- 14.8 Management Agent shall establish tenant files containing copies of leases, certification forms, notices, and other documentation required by any lender or the tax credit program, if and to the extent applicable.
- 14.9 Except as may otherwise be expressly provided in this Agreement, all management overhead expenses shall be borne by Management Agent out of its funds and shall not be treated as Project expenses. No such charges shall be payable as a Project expense unless the Housing Authority has specifically approved such an expense prior to it being charged to the project.

14.10 Management Agent shall provide the Housing Authority with written monthly reports containing and including at least the following:

- A. a statement of income and expenses, including variance between actual income and expenses and budget and accounts receivable and payable from the preceding month;
- B. a rent roll and cash receipts form for the previous month, including notation of delinquencies;
- C. a disbursements summary for the previous month; and
- D. current bank statements with reconciliation of operating and security-deposit accounts by the 15th day of the following month.

15. Property Performance Standards.

15.1 Housing Authority staff will annually review management operations through a series of performance indicators and create a Performance Indicator Report. Any individual Performance Indicator that exceeds maximum thresholds as detailed herein may be grounds for a reduction in the management fee paid to the Management Agent by Housing Authority pursuant to section 11, Fees and Payment, of this Agreement. Management Agent is expected to perform to the following specifications:

- A. Perform to a budget variance of less than 5% (difference between budget and actual income and expenditures).
- B. Keep annual vacancy rate and rent loss due to vacancies under 3%.
- C. Keep regulatory compliance findings to less than 20% findings on annually reviewed files.
- D. Rank highly on an annual customer service survey of tenants.

15.2 Management Agent shall also ensure that the Personnel identified in Term 1 of this exhibit will adhere to the following performance standards:

- A. Within 90 days after the start of the term, occupancy of the Project is 98 percent or higher.

(1)
$$[\text{Total Number of Units} - \text{Vacant} / \text{Total Units}] = \text{Occupancy Rate}$$

- (2) The units that are designated for Personnel are exempt from this calculation.

B. Rent & Deposit Collections:

- (1) Within 90 days after the start of the term, 100 percent of rent collected each month are correct rental amounts.
- (2) Rent collected by the sixth day of the month. If the sixth day of the month falls on a Saturday or Sunday, then serve notice the following Monday.
- (3) There are no more than two percent in monthly current delinquencies (unpaid rent and unpaid other charges).
- (4) Approved reasonable accommodation requests to pay rent at a later date due to disability related income or disability related issues are exempt from this calculation.

C. Vacancies:

- (1) Five days or less for unit readiness.
- (2) Ten days or less for unit turn around (move-out to move-in date).

D. Operating Expenses:

- (1) Must be within five percent of Board Approved Budget.
- (2) Variance reporting to be completed and submitted to Asset Management every month by the 15th of the preceding month.

E. Annual Certifications. Annual certifications must be completed, signed, and approved within 30 days of the anniversary of the Effective Date of the Agreement, in accordance with the annual recertification schedule.

F. Reporting Requirements. Management Agent will timely submit all requested reports, including but not limited to weekly status reports, monthly variance reports, and resident-age reports.

G. Maintenance & Work Orders:

- (1) All work orders must be in writing by the Resident.

- (2) Work orders received must be logged onto appropriate software, and upon completion closed on the appropriate software, and file a copy of the completed work order in the Unit Maintenance File.
 - (3) Emergency work orders addressed within 24 hours of notification.
 - (4) Non-emergency work orders addressed within 48 - 72 hours based on priority level of the work order, which considers whether the repair required is for safety or habitability reasons.
 - (5) Preventative Maintenance conducted on a monthly basis per plan and or as instructed by the Director of Facilities
- H. Resident Complaint Responses: Addressed from receipt to final response to the resident within ten business days.
- I. Inspection and Audit Responses: Addressed within the sooner of 15 to 30 days of receipt from Agency or Housing Authority in writing, or by the Agency's or Housing Authority's deadline.
- J. Unit Inspections:
- (1) Conducted semi-annually
 - (2) Repairs identified during unit inspections to be addressed and resolved within 60 days of the inspection.
- K. Property Physical Inspections:
- (1) Conducted daily by Resident Manager and Maintenance Personnel
 - (2) Semi-monthly by Regional Property Supervisor.
 - (3) Findings must be in writing with a completion target day and signed by both Property Manager and Supervisor.
 - (4) Repairs identified during Property Physical Inspections to be addressed and resolved within 60 days of the Property Physical Inspection.
- L. Move-Outs. Within five days of move-out:
- (1) Conduct move-out inspection,

- (2) Assess damage,
- (3) Complete a Move out Report and send it to the Regional Property Supervisor for review and to the Accounting Department for processing.

M. Resident Lease Violations:

- (1) Issue to resident within 48 hours of Incident.
- (2) Regional Property Supervisors must review before serving the violation to the residents.
- (3) Must treat all tenants the same by adhering to the lease terms and conditions, as well as Rules and Regulations uniformly to all residents. Residents who have an approved reasonable accommodation request to change or waive a rule, policy, or practice in order to accommodate a disability-related need might be exempt.

N. Customer Service. The following customer service protocols shall be provided to and signed by each employee of the Project, and kept in their employee file as acknowledgment of their customer service rules:

- (1) Have normal business hours Monday through Friday 8:00 a.m.–5:00 p.m. with a break for lunch, except on holidays.
- (2) During normal business hours, do not use an answering service to pick up phone calls. Exceptions for this include but are not limited to when the office is closed during normal business hours for holidays, training presentations, or lunch breaks.
- (3) During normal business hours, staff should be present to greet residents, potential residents, vendors, and representatives of the Housing Authority.
- (4) During normal business hours, if all staff members must leave the office, then lock the office doors to ensure that all private resident information is secure, place a notification on the door for when staff will return, and forward all calls to cellphones.
- (5) Treat all residents or prospective residents in a professional and courteous manner.

- (a) Greet everyone in a kind and professional manner in-person and over the phone.
 - (b) Make eye contact when communicating in-person.
 - (c) Smile upon greeting residents or prospective residents.
 - (d) Approach each situation with a positive attitude.
 - (e) Do not answer the phone when a resident or potential resident is in front of you. Allow voicemail to pick up the call, finish assisting the person, and then check messages promptly thereafter.
 - (f) Maintain your desk or office in a neat and professional manner.
 - (g) Do not leave confidential income and medical information out when you leave your desk or office.
 - (h) Learn the names of the residents and use their name often.
 - (i) Speak to residents and call them by name when walking through the community. Introduce yourself with a smile and offer a handshake to residents you have not met yet. If you cannot speak directly to them, always wave and smile.
 - (j) Avoid using slang or property management jargon with residents or potential residents.
 - (k) Do not curse or use slang with residents or potential residents.
 - (l) Do not gossip or discuss residents' personal matters, including but not limited to medical and income information. Doing so may violate fair housing laws.
- (6) All calls should be returned within 24 hours. Escalate unmanageable calls to a supervisor.
- (7) Handle complaints professionally, with kindness, and follow-up until there is a satisfactory resolution:

- (a) When an employee is contacted by phone, email, or in-person by a resident or potential resident with a concern, the employee must take personal responsibility and follow-up to ensure the problem is brought to a satisfactory resolution.
- (b) Treat every complaint as legitimate and give the residents the courtesy of a response verbally and in writing.
- (c) Do not argue, raise the volume of your voice, or yell at residents or potential residents.
- (d) Stay calm, be positive, show empathy and sincere concern.
- (e) Do not take a person's anger personally.
- (f) When speaking to an upset person, ensure that there is some level of privacy so that other people don't overhear the conversation.
- (g) Log the complaint, actions taken or to be taken, resolution, and other details in the appropriate software for tracking and management.
- (h) If a resident's concern cannot be resolved at the community level, the employee must immediately inform the Regional Property Supervisor.

(8) Following Up with Residents is Key:

- (a) If a problem or concern is not resolved within the first conversation, let the person know what the next steps are to handle their complaint.
- (b) Get permission to follow up with them over the phone or email until a resolution is reached.
- (c) Obtain details about the situation or problem.
- (d) Obtain contact information for those involved (i.e. telephone number, unit number, email address, etc.)
- (e) Never assume that the problem has been resolved until you hear it directly from the resident or potential resident.

- (9) Listen actively and do not interrupt people.
 - (a) Let people communicate their issues, be patient, and resist the urge to hurry the person along. The longer your conversation lasts, the greater your chances of diffusing their anger and getting useful information from the exchange.
 - (b) Let them get what they want to say off their mind. This is crucial for problem-solving because the person can't move on to a resolution until they feel that they have said all they need to about the problem. Your job is to listen patiently without interruption.
- (10) Express concern and gratitude.
 - (a) When a resident or prospective resident comes to you with a problem, express concern for what they are going through and thank them for giving you the opportunity to remedy the problem and restore their satisfaction.
 - (b) Show personal attention by using the resident's name often and demonstrating open body language and respectful facial expressions.
- (11) Offer Solutions.
 - (a) Provide problem-solving solutions immediately, if possible.
 - (b) If you cannot solve the problem, then identify an individual who can, and provide a time frame for contact and resolution.
 - (c) Follow-up with appropriate solutions until satisfactory resolution.
 - (d) Document the details and resolution of the problem in the appropriate software for tracking and management.
- (12) No Personal Relationships with Residents. Even if you live on-site, keep everything professional with all residents.
- (13) Guests, relatives, caregivers, or friends are not permitted to be in the managers' offices alone at any time.

(14) Finish every conversation with a meaningful “Thank You.”

16. Expectations of Resident Services Coordinator. The Resident Services Coordinator is expected to do the following:

16.1 Plan and successfully execute celebrations for the residents at the Project:

A. Celebrations include but are not limited to the following holidays:

- (1) New Year’s Day (January)
- (2) Valentine’s Day (February)
- (3) St. Patrick’s Day (March)
- (4) Mother’s Day (May)
- (5) Memorial Day (May)
- (6) Father’s Day (June)
- (7) Independence Day (July)
- (8) Thanksgiving (November)
- (9) Christmas/Hanukkah/Kwanza (December)

B. Celebrations may include more than one holiday (i.e. Mother’s Day and Memorial Day joint celebration in May).

C. Celebrations include but are not limited to having food, beverages, decorations, and a program of activities, games, or some entertainment.

D. Decorate the inside and outside of the Clubhouse and vehicle gates for the Winter holidays with festive decorations and lighting.

16.2 Plan and successfully create a calendar of events.

A. Distribute the calendar to the residents prior to the first day of each month.

B. Events on the calendar may include but are not limited to the following:

- (1) Abode resident meetings,
- (2) Food bank distribution,

- (3) Fitness classes,
- (4) Meditation, yoga, and mindfulness classes,
- (5) Card games,
- (6) Bingo games,
- (7) Movie showings in the clubhouse with popcorn, (Please avoid movies with a lot of violence, noise, stressful or anxiety provoking content. Movies about wars and horror films are discouraged.)
- (8) Health screenings (i.e. blood pressure, flu shots, eye and hearing evaluations, etc.)
- (9) Learning sessions (i.e. Alzheimer's awareness, computer literacy, fraud prevention, first aid, emergency preparedness, in-home support services, etc.)
- (10) Book club,
- (11) Poetry reading,
- (12) Art (i.e. painting, drawing, etc.)
- (13) Group-therapy sessions

16.3 Coordinate Resident Services

- A. Make partnerships with local organizations for seniors and the disabled to have professionals come to the Project to give services or educational presentations.
- B. Invite speakers to come present or do workshops with the residents at the Project such as doctors, nurses, social workers, fitness instructors, therapists, stylists, massage therapists, in-home aid services, computer and technology trainers, entertainers, mindfulness coaches, dieticians, nutritionists, etc.

16.4 Wellness Checks. When appropriate, facilitate wellness checks on residents with the appropriate health professionals or social services.

16.5 Social and Financial Services. Assist residents and potential residents with obtaining information and applying to social and financial services (e.g., Section 8

Housing Choice Voucher Program, CalFresh or EBT Cards, CARE/FERA Utility Subsidy, LIHEAP Subsidy, Meals On Wheels).

- 16.6 Food Bank
 - A. Coordinate, schedule, and execute services with local food banks.
 - B. Assist in distributing food.
 - C. Assist individuals with mobility impairments to ensure their participation.
- 17. Expectations for Service delivery are as follows:
 - 17.1 Implement social service and senior activity programs.
 - 17.2 Focus on a customer service culture and serving the needs of tenants.
 - 17.3 Provide accountability to the public.
 - 17.4 Manage the Properties as self-sufficient individual entities.
 - 17.5 Apply operational policies and procedures in a uniform manner.
 - 17.6 Ensure compliance with program requirements.
 - 17.7 Communicate with tenants and Housing Authority staff in a clear and concise manner.
 - 17.8 Setup and prepare emergency response resources and an implementation plan.
 - 17.9 Utilize industry best practices for tenet selection, leasing, rent re/assignment, and vacancy advertisement as needed.
 - 17.10 Manage tenant waiting lists through semi-annual updates of prospective applicants in conformance with Housing Authority tenant selection policies.
 - 17.11 Produce semi-annual reports detailing number of new applicants, number of dropped applicants, and total for each waiting list.
 - 17.12 Generate detailed files for evictions, application denials, and social service interventions for seniors unable to live independently.
 - 17.13 Recommend further improvements to operational practices to improve and refine administrative/leasing services further.

- 17.14 Utilize Housing Authority's standardized chart of accounts.
 - 17.15 Use a financial software package capable of delivering accrual based accounting reports on a monthly basis.
 - 17.16 Comply and assist with preparation of an annual fiscal audit focused on compliance with generally accepted accounting procedures (GAAP).
 - 17.17 Implement proper internal controls for accounts receivable and payable, account reconciliation, security deposits, records retention, electronic backup, and expenditures for services.
 - 17.18 Act as Housing Authority's fiscal agent for day-to-day operations.
 - 17.19 Work with Housing Authority staff to ensure the most efficient system of reporting.
18. Maintenance and Capital Replacement Services:
- 18.1 Ensure cost control without sacrificing quality of maintenance services and contractors performing routine maintenance.
 - 18.2 Utilize a maintenance request and maintenance tracking system or software program that provides quarterly reports to Housing Authority staff detailing work orders received (date & time), completion (date & time), and hours completed or subcontractors used to complete work.
 - 18.3 Manage a comprehensive landscaping service contract that provides timely and effective repair and replacement of irrigation systems to ensure landscape vitality.
 - 18.4 Oversight of subcontracts for services for pest management, electrical systems, trash removal, fire alarm and suppression systems, HVAC, security gates, and custodial cleaning as necessary.
 - 18.5 Perform reliable and well-executed replacements and repairs related to plumbing lines, lighting, curbs, sidewalks, window coverings, paint, and unit appliances and fixtures (e.g., light-bulb replacement, roof repairs, stucco repair).
 - 18.6 Conduct semi-annual unit inspections to track and monitor condition and need for maintenance or replacement of carpeting, appliances, fixtures, blinds, and other unit assets in a form approved by Housing Authority.
 - 18.7 Provide emergency-maintenance services, and help Housing Authority improve preventive-maintenance procedures.

- 18.8 Participate in capital needs planning and budgeting.
- 18.9 Recommend process and material use improvements to extend Project longevity while minimizing long-term cost impacts.
- 18.10 Employ qualified and trained maintenance staff with adequate oversight for quality control.
- 18.11 Conduct annual assessment of available energy- and water-efficiency improvements that help to identify future operating-cost savings.

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EXHIBIT B

SCHEDULE OF SERVICES

Scope of Service Based on Transition Plan Provided by Abode Communities

1. Management Agent's Transition Responsibilities within 90 days of Agreement Effective Date:
 - 1.1 Assess Project conditions, review existing warranties, manufacturer's instructions and other subcontracts. Provide Housing Authority a preventive maintenance schedule in accordance with manufacturer's recommendations and Project needs.
 - 1.2 Hire all persons necessary to properly maintain and operate the Properties. All contractor employees will be the sole responsibility of Management Agent and in no case will be City, Housing Authority, or previous management staff of the properties.
 - 1.3 Review existing service subcontracts and provide Housing Authority a full list of subcontractors with contract expiration dates, costs, and proof of liability insurance naming the Housing Authority additionally insured.
 - 1.4 Catalog and inventory all removable assets (furniture, tools, appliances, etc.) and provide to Housing Authority.
 - 1.5 Develop and submit an emergency response plan and submit to Housing Authority.
 - 1.6 In accordance with California State Toxic Substance Program (Right-to-Know Law) and the United States Occupational Safety and Health Administration's Hazard Communication Standard, produce and provide a communication plan.
 - 1.7 Develop quarterly report to Housing Authority detailing Administrative/Leasing actions taken, financial documentation of accounts payable and receivable, Maintenance work order tracking and completion logs, and regulatory compliance updates.
 - 1.8 Develop and provide to Housing Authority a Management, Marketing, and Tenant Selection plan.

2. Management Agent shall be subject to the following Regulatory Compliance procedures and oversight:
 - 2.1 Perform annual random sample monitoring of income re/certification procedures, files, tenant lease agreements, and rent roll records to verify compliance with income certification requirements.
 - 2.2 Conduct semi-annual random audit of tenant files to ensure proper records retention for verification of continued income eligibility, occupancy limits, vehicle registration and insurance, etc.
 - 2.3 Review the prospective tenant waiting list files for compliance with tenant selection policy, applicant verification procedures, and waiting list noticing requirements.
 - 2.4 Quarterly review rent rolls and Profit and Loss statements to verify budget variance percentages, rent collections percentages, and vacancy rate.

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EXHIBIT C

COMPENSATION

Fee Structure

Management Agent's Compensation: The Management Agent shall be compensated for its services under this contract by a monthly management fee to be paid in equal monthly installments from the general operating account.

As compensation for all the Management Agent's ongoing supervisory, management, financial, accounting, reporting, record-keeping, and related services under this Agreement, the Management Agent shall receive \$70 per unit per month, commencing on the first month of resident move-in for each unit. Such fees shall be payable out of the general operating account, and treated as a Project expense, on the tenth day of the month following the month in which the services were rendered. The fee shall increase by the lesser of 3.5 percent per annum or an amount approved by the Housing Authority, lenders, and investor.

- A. \$6,750 one-time up-front start-up fee for transition of management
- B. \$11,159 Compliance fee per annum
- C. \$4,000 Accounting fee per annum

EXHIBIT D

HOUSING AUTHORITY RENT INCREASE POLICY

MEMORANDUM

To: City of Indian Wells Housing Authority Board of Commissioners
From: Jon Berg, Housing Authority Deputy Executive Director
City of Indian Wells Housing Authority
Date: November 7, 2019
Re: Annual Renewal Rent Rate Policy (Update 1)

Introduction

The City of Indian Wells Housing Authority (“Housing Authority”) currently owns two income restricted apartment complexes for low-income seniors, Indian Wells Villas and Mountain View Villas. Each property has a Regulatory Agreement and Declaration of Restrictive Covenants (“Regulatory Agreement”) recorded with the County of Riverside regulating income restrictions on each property.

One provision in common is eligibility for both properties to adjust rents once per year either (i) upon annual review and income recertification of qualified households, or (ii) in accordance with increases in HUD median incomes. Rents at both properties shall be limited to three income categories; 110 percent, 60 percent, and 50 percent of area median income (“AMI”), as calculated annually by Riverside County, based on formulas provided by HUD.

From approximately 2010 until 2015, annual income certifications during lease renewal, as allowed under the Regulatory Agreement for each property, were not systematically undertaken. At this time, many household rents are significantly below the maximum rent allowed under the Regulatory Agreements. To maintain the operations and long-term financial viability of the properties, it is appropriate that a systematic rent adjustment process be implemented during annual lease renewal.

This updated Annual Renewal Rent Rate Policy provides transparent guidance to the Housing Authority’s property managers on systematically adjusting rents annually to the maximum allowed by Riverside County. This updated Policy shall be implemented for all leases renewed after July 2019, including any “grandfathered” rents.

Definitions

- **Gross Rent:** Maximum Allowable Rent based on the applicable Riverside County area median income calculation *inclusive* of utility allowances.
- **Net Rent:** Maximum Allowable Rent based on the applicable Riverside County area median income calculation *exclusive* of utility allowance.
- **Maximum Allowable Rent:** Maximum Allowable Rent is established annually by the Housing Authority for all unit categories within 60 days of the Riverside County Updated Income Limits being published.

Effective August 1, 2019, households will receive an adjustment in their rent annually at lease renewal. Renewal rents will adjust to the Maximum Rent for their unit category, or by 10%, whichever is less. In no case will rent adjustments exceed the Maximum Rent.

This policy is separate and distinct from the Rent Reassignment Policy. If at annual income recertification and lease renewal a household goes over income for the unit category in which they reside, the procedures outlined in the Rent Reassignment Policy will prevail.

Jon Berg
Deputy Executive Director
City of Indian Wells Housing Authority