

ATTACHMENT #1

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the "**Agreement**") is entered into this 15th day of February, 2024, by and between the INDIAN WELLS HOUSING AUTHORITY, a public body, corporate and politic, in its capacity as Housing Successor to the Indian Wells Redevelopment Agency (the "**Housing Authority**"), and ABODE COMMUNITIES, a California non-profit public benefit corporation, ("**Developer**"), on the terms and provisions set forth below. Housing Authority and Developer are sometime referred to collectively herein as the "**Parties**."

RECITALS

- A. The Housing Authority is the owner of that certain real property consisting of approximately six (6) acres located on Highway 111, east of Miles Avenue and immediately adjacent to the Mountain View Villas age restricted affordable housing development (the "**Property**").
- B. On June 1, 2020, the Housing Authority released a thirty (30) day Request for Qualifications (the "**RFQ**") seeking statements of qualifications from affordable housing developers interested in acquiring the Property from the Housing Authority for the purpose of developing affordable housing.
- C. The Housing Authority received eight (8) statements of qualifications from well qualified affordable housing developers expressing interest in the proposed development opportunity, which statements of qualifications were reviewed by Housing Authority staff and consultants.
- D. After review of the proposed statements of qualifications and interview process, Housing Authority staff and consultants recommended that the Housing Authority engage in exclusive negotiations with Developer for the disposition of the Property for the purpose of developing affordable housing, and the Parties desire to enter into this Agreement to establish the terms of such exclusive negotiations.

AGREEMENT

NOW, THEREFORE, THE HOUSING AUTHORITY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

100. NEGOTIATIONS

101. Good Faith Negotiations

The Housing Authority and Developer, acknowledging that time is of the essence, agree for the Negotiation Period set forth below to negotiate diligently and in good faith to prepare a Disposition and Development Agreement (the "**DDA**") to be considered for execution between the Housing Authority and the Developer, in the manner set forth herein, establishing the terms pursuant to which the Housing Authority will ground lease the Property to Developer. The Property is shown on the "Map of the Property," attached hereto as **Exhibit A** and incorporated herein by reference. The Housing Authority agrees, for the period set forth below,

not to negotiate with any other person or entity regarding the conveyance of the Property or any portion thereof.

The Property is currently undeveloped, and the Housing Authority desires that affordable housing be developed on the site with 100 affordable multifamily units in a configuration that provides for not more than two-story buildings. The Housing Authority and Developer desire to engage in negotiations for a mutually agreeable disposition and development agreement that will provide for the ground lease of the Property to Developer for development in accordance with the Housing Authority's desired uses for the Property.

During the Negotiation Period, the Housing Authority shall provide the Developer with reasonable access to the Property as necessary for the Developer to evaluate the Property for development as an affordable housing project subject to reasonable rules and requirements as may be imposed by the Housing Authority.

102. Duration of this Agreement

The duration of this Agreement (the "Negotiation Period") shall be eighteen (18) months from the date of execution of this Agreement by the Housing Authority. If upon expiration of the Negotiation Period, Developer has not signed and submitted a DDA to the Housing Authority, then this Agreement shall automatically terminate unless this Agreement has been mutually extended by the Housing Authority and Developer. If a DDA is so signed and submitted by Developer to the Housing Authority on or before expiration of the Negotiation Period, then this Agreement and the Negotiation Period herein shall be extended without further action by the Housing Authority for forty-five (45) days from the date of such submittal during which time the Housing Authority shall take all steps legally necessary to (1) consider the terms and conditions of the proposed DDA, (2) if appropriate, take the actions necessary to authorize the Housing Authority to enter into the DDA, including but not limited to completion of compliance with the California Environmental Quality Act, and (3) execute the DDA.

If the Housing Authority has not executed the DDA by such 45th day or any extension of such period, then this Agreement shall automatically terminate, unless the 45-day period has been mutually extended by the Housing Authority and Developer. The Housing Authority agrees to consider reasonable requests for extensions of time and shall, upon request, notify Developer in writing of the reasons for any decision not to execute the DDA.

200. CONVEYANCE OF THE PROPERTY; AUTHORITY ASSISTANCE

The ground lease payments and/or other consideration to be paid by Developer for the Property under the DDA, and any additional assistance to be provided by the Housing Authority will be established by the Housing Authority after negotiation with Developer. Such ground lease payments and/or other consideration and additional assistance will be based upon such factors as the fair market value of the property, market conditions, affordability restrictions on the Property, Developer's efforts to develop affordable housing in furtherance of the Housing Authority's statutory obligations and satisfaction of the City of Indian Wells' fair share of regional housing needs, condition of the improvements, risks of the Housing Authority, and risks of Developer, and will be subject to approval by the Housing Authority Board after a public

hearing as required by law. Housing Authority and Developer further acknowledge that the negotiations between Housing Authority and Developer for the conveyance of the Property shall initially be based on the pro forma submitted by Developer on 8/20/2020 as part of its Statement of Qualifications, which pro forma is attached hereto and incorporated herein as **Exhibit B**.

The Parties expect and intend that the DDA will also include certain other regulatory and loan documents that will be entered into and, as applicable, recorded upon conveyance of the Property, including, but not limited to, a Ground Lease conveying a leasehold interest in the Property to Developer, a Promissory Note and Deed of Trust for any loan made by the Housing Authority from the Low and Moderate Income Housing Asset Fund, and a Regulatory Agreement restricting the affordability of the multifamily units to be developed on the Property.

300. DEVELOPER

301. Nature of Developer

Developer is a California non-profit public benefit corporation.

302. Office of Developer

The principal office of the Developer is 1149 S. Hill Street, Suite 700, Los Angeles CA 90015.

303. Principal Representatives of Developer

The principal representatives of Developer for purposes of negotiating the Development Proposal and DDA are Robin Hughes and Lara Regus.

304. Full Disclosure

Developer has made full disclosure to the Housing Authority of its principals, officers, major stockholders, major partners, joint ventures, key managerial employees and other associates, and all other material information concerning Developer and its associates. Any significant change in the principals, associates, partners, joint ventures, negotiators, development manager, consultants, professional and directly-involved managerial employees of Developer is subject to the approval of the Housing Authority. Notwithstanding the foregoing, Developer reserves the right at its discretion to join and associate with other entities in joint ventures, partnerships or otherwise for the purpose of developing the Property, provided that Developer retains management and control of such entities and remains fully responsible to the Housing Authority hereunder.

400. DEVELOPER'S FINANCIAL CAPACITY

401. Financial Ability

Prior to execution of a DDA, the Developer shall submit to the Housing Authority satisfactory evidence of its ability to finance and complete the ground lease and development of the Property and fulfill the operation of the anticipated improvements to the Property as set forth

in the DDA. Such evidence may include a financing plan that is contingent on securing certain public and private financing, including but not limited to an allocation of low income housing tax credits.

402. Full Disclosure

Developer will be required to make and maintain full disclosure to the Housing Authority of its methods of financing to be used in the acquisition of the Property.

500. HOUSING AUTHORITY'S RESPONSIBILITIES

501. Environmental Documents

The Housing Authority shall be responsible for conducting any review of the proposed development of the Property that it deems necessary and appropriate under the California Environmental Quality Act. Any costs, fees and charges associated with the requirements of the California Environmental Quality Act shall be paid by Developer, unless otherwise agreed by the Housing Authority, provided, however, the Housing Authority shall not incur any material cost for which it shall seek reimbursement without providing prior notice thereof to the Developer. The staff of the Housing Authority shall be available to meet with Developer to discuss the development of the Property, so that Developer shall have sufficient input to prepare its full proposal for the use the development of the Property.

502. Public Hearing

A DDA resulting from the negotiations hereunder shall become effective only after and if the DDA has been considered and approved by the Housing Authority Board at a public hearing called for such purpose.

600. REAL ESTATE COMMISSIONS

The Housing Authority shall not be liable for any real estate commissions or brokerage fees which may arise herefrom. The Housing Authority represents that it has engaged no broker, agent or finder in connection with this transaction, and Developer agrees to hold the Housing Authority harmless from any claim by any broker, agent or finder retained by the Developer.

700. LIMITATIONS OF THIS AGREEMENT

By its execution of this Agreement, the Housing Authority is not committing itself to or agreeing to undertake: (1) disposition of land or a leasehold interest to Developer; or (2) any other acts or activities requiring the subsequent independent exercise of discretion by the Housing Authority, the City of Indian Wells or any agency or department thereof.

This Agreement does not constitute a development agreement, disposition of property or exercise of control over property by the Housing Authority. Execution of this Agreement by the Housing Authority is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the Housing Authority

as to any Purchase and Sale Agreement and all proceedings and decisions in connection therewith.

This Agreement may be executed in any number of counterparts, which shall, collectively and separately, constitute one agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

February ___, 2024

INDIAN WELLS HOUSING AUTHORITY, a public body, corporate and politic

By: _____
Its: Executive Director

“HOUSING AUTHORITY”

February ___, 2024

ABODE COMMUNITIES, a California non-profit public benefit corporation

By: _____
Its: President

“DEVELOPER”

APPROVED AS TO FORM:

By: _____
Its: Housing Authority Counsel

EXHIBIT A
MAP OF THE PROPERTY


EXHIBIT "A"



Housing Authority Site



Legend

 Project Boundary - 6 acre

0 250 500 1,000 US Feet

EXHIBIT B
DEVELOPER PRO FORMA

Exhibit A

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Indian Wells Affordable Housing Project (RFQ No. HA 2020-01)
 Abode Communities
 Summary of Sources & Uses and Unit Mix

PROJECT SOURCES & USES

Project Uses	Total	Per Unit
Acquisition - Ground Lease Value	3,000,000	30,000
Hard Costs	33,191,400	331,914
Architecture & Engineering	2,055,984	20,560
Financing Costs	2,574,324	25,743
Other Soft Costs	1,577,118	15,771
Developer Costs	6,684,697	66,847
TOTAL	49,083,522	490,835

Construction Sources	Total	Per Unit
Construction Loan	32,486,591	324,866
Ground Lease Note	3,000,000	30,000
City of Indian Wells Housing Authority LMIHAF	6,073,134	60,731
FHLB Affordable Housing Program	1,250,000	12,500
Tax Credit Equity	1,255,382	12,554
GP Equity	100	1
Deferred Costs	5,018,315	50,183
TOTAL	49,083,522	490,835

Permanent Sources	Total	Per Unit
Permanent Loan	5,459,500	54,595
Ground Lease Note	3,000,000	30,000
City of Indian Wells Housing Authority LMIHAF	6,073,134	60,731
CalHCD Multifamily Housing Program	17,501,246	175,012
FHLB Affordable Housing Program	1,250,000	12,500
Tax Credit Equity	12,553,822	125,538
GP Equity / Deferred Developer Fee	3,245,821	32,458
TOTAL	49,083,522	490,835

KEY FINANCING ASSUMPTIONS

Construction Loan Rate	4.50%
Permanent Loan Rate	5.00%
Permanent Loan Term (yrs)	35
4% Tax Credit Rate	3.15%
Tax Credit Price	\$0.90

UNIT MIX & AFFORDABILITY

Unit Size	AMI	No. of Units	
1BR	30%*	12	48
	50%	13	
	60%	16	
	80%	7	
2BR	30%*	12	24
	50%	3	
	60%	6	
	80%	2	
	Manager's Unit	1	
3BR	30%*	6	28
	50%	4	
	60%	14	
	80%	4	
Total Units		100	

*30% AMI units subsidized with Project Based Section 8 Vouchers from the HARIVCO

Indian Wells Affordable Housing Project (RFQ No. HA 2020-01)
 Abode Communities
 Detailed Project Budget

Item	Total	Comments & Assumptions
ACQUISITION		
Land Value	\$3,000,000	Based on two affordable housing Ground Lease transactions in the Coachella Valley
CONSTRUCTION		
Site Improvements	\$2,763,600	
Structures	\$23,248,469	
Overhead & Profit	\$4,161,931	Includes OH&P, General Reqs, Insurance, and Bond
TOTAL CONSTRUCTION COSTS	\$30,174,000	
CONSTRUCTION CONTINGENCY	\$3,017,400	10% of Total Construction Costs
ARCHITECTURE & DESIGN		
Architecture	\$1,860,549	
Engineering	\$195,435	
Permitting & Fees	\$722,128	Includes development impact fees and permitting fees
CONSTRUCTION FINANCING		
Predevelopment Interest & Expenses	\$68,058	Assumes 24 month predevelopment term
Construction Loan Interest	\$1,754,276	Assumes 24 month construction term
Fees, Transaction Costs & Bond Expenses	\$394,820	
Insurance	\$150,000	Course of construction insurance
Closing Costs	\$83,625	
PERMANENT FINANCING		
Fees, Transaction & Closing Costs	\$66,595	
SYNDICATION		
TCAC Fees	\$56,950	
Consultant, Administration & Audit	\$97,500	
LEGAL FEES	\$165,200	
SOFT COSTS		
Reports	\$32,000	
Entitlements Consulting	\$150,000	
Marketing	\$29,448	
Construction Management & Monitoring	\$242,000	
Furnishings	\$60,000	
Soft Cost Contingency	\$243,816	
RESERVES		
Operating Reserve	\$246,035	
Rental Subsidy Transition Reserve	\$466,955	
DEVELOPER EXPENSES		
Administration & Accounting	\$30,300	
Developer Fee	\$5,776,433	Total paid Developer Fee is approx \$3.2MM with balance contributed back into the project as GP Equity
TOTAL DEVELOPMENT COSTS	\$49,083,522	

Indian Wells Affordable Housing Project (RFQ No. HA 2020-01)
 Abode Communities
 Cash Flow, Years 1-15

RESIDENTIAL CASH FLOW			Factor	Trend	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Gross Residential Income		2.50%			944,172	967,776	991,971	1,016,770	1,042,189	1,068,244	1,094,950	1,122,324	1,150,382	1,179,141	1,208,620	1,238,835	1,269,806	1,301,552	1,334,090
Miscellaneous Income (laundry)	\$42.00 PUPA	2.50%			4,200	4,305	4,413	4,523	4,636	4,752	4,871	4,992	5,117	5,245	5,376	5,511	5,649	5,790	5,934
Vacancy Rate	5.00%				(47,419)	(48,604)	(49,819)	(51,065)	(52,341)	(53,650)	(54,991)	(56,366)	(57,775)	(59,219)	(60,700)	(62,217)	(63,773)	(65,367)	(67,001)
Rental/Operating Subsidy	Y	2.50%			322,416	330,476	338,738	347,207	355,887	364,784	373,904	383,251	392,833	402,653	412,720	423,038	433,614	444,454	455,565
Vacancy Rate (subsidized units)	5.00%				(16,121)	(16,524)	(16,937)	(17,360)	(17,794)	(18,239)	(18,695)	(19,163)	(19,642)	(20,133)	(20,636)	(21,152)	(21,681)	(22,223)	(22,778)
EFFECTIVE GROSS INCOME					1,207,249	1,237,430	1,268,366	1,300,075	1,332,577	1,365,891	1,400,038	1,435,039	1,470,915	1,507,688	1,545,380	1,584,015	1,623,615	1,664,206	1,705,811
Residential Operating Expenses	\$6,535 PUPA	3.50%			(653,500)	(676,373)	(700,046)	(724,547)	(749,906)	(776,153)	(803,318)	(831,434)	(860,535)	(890,653)	(921,826)	(954,090)	(987,483)	(1,022,045)	(1,057,817)
Resident Services - Beyond Homes	\$500	3.50%			(50,000)	(51,750)	(53,561)	(55,436)	(57,376)	(59,384)	(61,463)	(63,614)	(65,840)	(68,145)	(70,530)	(72,998)	(75,553)	(78,198)	(80,935)
Replacement Reserve	\$500 PUPA				(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
CalIHCD Interest	0.42% per annum				(73,505)	(73,505)	(73,505)	(73,505)	(73,505)	(73,505)	(73,505)	(73,505)	(73,505)	(73,505)	(73,505)	(73,505)	(73,505)	(73,505)	(73,505)
NET OPERATING INCOME					380,243	385,802	391,254	396,586	401,789	406,848	411,752	416,486	421,035	425,385	429,519	433,421	437,073	440,457	443,554
Debt Service					(330,641)	(330,641)	(330,641)	(330,641)	(330,641)	(330,641)	(330,641)	(330,641)	(330,641)	(330,641)	(330,641)	(330,641)	(330,641)	(330,641)	(330,641)
NET CASH FLOW					49,602	55,161	60,612	65,945	71,148	76,207	81,111	85,844	90,394	94,743	98,878	102,780	106,432	109,816	112,913
DISTRIBUTION OF RESIDENTIAL CASH FLOW			Factor	Trend	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Net Residential Cash Flow					49,602	55,161	60,612	65,945	71,148	76,207	81,111	85,844	90,394	94,743	98,878	102,780	106,432	109,816	112,913
LP Asset Management Fee	\$3,000 per annum	3.50%			(3,000)	(3,105)	(3,214)	(3,326)	(3,443)	(3,563)	(3,688)	(3,817)	(3,950)	(4,089)	(4,232)	(4,380)	(4,533)	(4,692)	(4,856)
Deferred Developer Fee	\$695,575	0.00%			(46,602)	(52,056)	(57,399)	(62,619)	(67,705)	(72,644)	(77,423)	(82,028)	(86,443)	(90,655)	(0)	(0)	(0)	(0)	(0)
Partnership Management Fee	\$12,000 per annum	3.50%			0	0	0	0	0	0	0	0	0	0	(94,646)	(80,578)	(18,133)	(18,767)	(19,424)
Residual Receipt - Ground Lease	5.64% share				0	0	0	0	0	0	0	0	0	0	0	(1,006)	(4,728)	(4,874)	(5,003)
Residual Receipt - City of Indian Wells	11.43% share				0	0	0	0	0	0	0	0	0	0	0	(2,036)	(9,572)	(9,868)	(10,128)
Residual Receipt - MHP	32.93% share				0	0	0	0	0	0	0	0	0	0	0	(5,869)	(27,583)	(28,436)	(29,186)
Residual Receipt - Limited Partnership	50.00% share				0	0	0	0	0	0	0	0	0	0	0	(8,911)	(41,883)	(43,178)	(44,316)