



## REPORT TO THE HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

**DATE ISSUED:** July 1, 2020

**REPORT NO:** HAR20-026

**ATTENTION:** Chair and Members of the Housing Authority of the City of San Diego  
For the Agenda of July 28, 2020

**SUBJECT:** Hillcrest Inn – Property Acquisition

**COUNCIL DISTRICT:** 3

**REQUESTED ACTION:**

Approve the San Diego Housing Commission’s acquisition of Hillcrest Inn, located at 3754 Fifth Avenue, San Diego, CA 92103, on terms and conditions described in this report.

**STAFF RECOMMENDATION**

That the Housing Authority of the City of San Diego (Housing Authority) take the following actions:

- 1) Authorize the San Diego Housing Commission’s (Housing Commission) President & CEO, and, if and as necessary, the Executive Director of the Housing Authority, or designee, and/or the Executive Vice President and Chief of Staff, or designee, to execute all documents and instruments that are necessary and/or appropriate to implement these approvals, in a form approved by General Counsel, and to take such actions as are necessary and/or appropriate to implement these approvals upon the advice of General Counsel, to allow the Housing Commission to acquire Hillcrest Inn, the property located at 3754 Fifth Avenue, San Diego, CA 92103 (Property), on terms and conditions described in this report, as approved by General Counsel of the Housing Commission;
- 2) Ratify the execution of a Purchase and Sale Agreement (PSA) dated February 21, 2020, with the seller S Wilson Uptown, Inc. a California Seller (“Seller”);
- 3) Authorize the Housing Commission’s President & CEO, or designee, upon satisfactory completion and evaluation of the Property during the due diligence period, to take such actions and perform such acts as are necessary to acquire the 0.16 acre Property with improvements for the price of \$8,000,000. The Seller shall provide clear fee simple title upon acquisition of the Property;
- 4) Ratify the funding of the refundable escrow deposit of \$100,000 in accordance with the terms outlined in the PSA, which will be applicable to the purchase price and which deposit will become non-refundable upon the expiration of the due diligence period on August 19, 2020;
- 5) Authorize the Housing Commission’s President & CEO, or designee, to execute and record an affordability covenant against the Property for 65 years, with 36 of the units remaining

affordable at or below 80 percent of the San Diego Area Median Income (AMI), four units affordable at or below 120 percent of AMI, and five units affordable at or below 150 percent of AMI;

- 6) Authorize the Housing Commission to provide property management services and hire additional staff, if needed, or procure a new property management company through a competitive Request for Proposal process;
- 7) Authorize the Housing Commission’s purchase of the Property, associated closing costs, and remediation and upgrades to the Property utilizing \$4,800,000.00 of U.S. Department of Housing and Urban Development (HUD) Moving to Work (MTW) Funds; up to \$1,008,460 of local funds from the proceeds of the Housing Commission’s sale of the Mariner’s Village property to Housing Development Partners (HDP), the Housing Commission’s nonprofit affiliate; and up to \$4,100,000 of local redevelopment funds;
- 8) Authorize the Housing Commission’s President & CEO, or designee, to substitute approved funding sources for the Property with any other available funds as deemed appropriate, contingent upon budget availability, and further authorize the President & CEO, or designee, to take such actions as are necessary, convenient and/or appropriate to implement these approvals, upon the advice of General Counsel; and
- 9) Adopt a Resolution making the findings required by Health & Safety Code Section 34340(a)(4) to allow gap funding for middle income households at rents affordable to such households.

### **SUMMARY**

Hillcrest Inn is a 47-unit Single-Room Occupancy (SRO) building located on a 0.16-acre site at 3754 Fifth Avenue in the Hillcrest Neighborhood of Central San Diego (Attachment 1 – Location Maps).

The property was built in 1988 and is currently used for short-term and long-term rentals. The building is contained within one three-story structure that consists of 47 original units with private baths, ranging from 185 to 240 square feet, and a common laundry room. Of the 47 units, one unit is designated as the manager’s unit. In addition, one unit was split to provide space for a leasing office, with a portion of the split unit added to the adjacent manager’s unit.

### **Rehabilitation Plan**

The property will be acquired and undergo upgrades to fire and life safety systems, accessibility and path of travel, and remediated for hazardous materials. No changes are planned to building and unit footprints or property use. There will be no new construction. A comprehensive renovation effort is not contemplated for this action.

### **Housing Affordability**

Hillcrest Inn will provide 36 units affordable for low-income households with income at or below 80 percent of the San Diego Area Median Income (AMI), currently \$64,700 a year for a one-person household; four units affordable for moderate-income households with income at or below 120 percent of AMI, currently \$77,900 for a one-person household; and five units affordable for middle-income households with income at or below 150 percent of AMI, as referenced below.

**Middle Income Project**

In accordance with AB 1637, which allows the Housing Commission to implement a pilot program to develop and finance a middle-income housing project, the remaining five units will be designated to San Diego residents earning at or below 150 percent of AMI, currently \$97,350 for a one-person household. As required by the provisions of Health & Safety Code Section 34340(a)(3) and (4), the Housing Commission Board of Commissioners and the Housing Authority shall have public hearings and adopt resolutions making findings, as referenced within the cited code sections, respectively.

**SRO Long-Term Affordability**

The Housing Commission’s acquisition of Hillcrest Inn would preserve the SRO units at Hillcrest Inn. This SRO property is not subject to deed restrictions requiring affordability at any specific income level. The owner has the option to sell or convert the property to a different use, subject to the replacement requirements in the City of San Diego’s SRO Hotel Regulations, which would require replacement units to operate as SRO units for 30 years. The Housing Commission’s proposed acquisition would ensure the SRO units remain for at least 65 years, and deed restrictions would require the units to be affordable for individuals with income ranging from 80 percent or less of AMI to 150 percent of AMI.

**Deal Terms**

The Housing Commission executed a Purchase and Sale Agreement (PSA) with the Seller to allow staff to investigate the property during the due diligence period, which started on February 21, 2020, and is scheduled to expire on August 19, 2020. The purchase of the property is explicitly contingent upon the approval of the Housing Commission Board of Commissioners and the Housing Authority of the City of San Diego. The key PSA terms are:

- Purchase Price: The purchase price for Hillcrest Inn is \$8,000,000.
- Due Diligence Period: The due diligence period begins with the effective date of the PSA (February 21, 2020) and ends on August 19, 2020.
- Broker’s Commission: The Broker’s commission will be paid by the Seller via a separate agreement in the amount of \$200,000 (2.5 percent).
- Earnest Money Deposit: The Housing Commission has placed a refundable deposit of \$100,000 into escrow with Chicago Title Company. The deposit will become non-refundable upon expiration of the due diligence period and will be credited against the purchase price.
- Close of Escrow: The PSA provides for the Close of Escrow occurring on or before October 15, 2020.

**Proposed Schedule of Performance**

The following are key project milestones:

Action	Anticipated Completion
Purchase and Sale Agreement Effective Date	February 21, 2020
Housing Commission Board Meeting	July 10, 2020
Housing Authority / City Council Meeting	July 28, 2020
Due Diligence Period Ends	August 19, 2020
Anticipated Closing Date	October 15, 2020

**Due Diligence**

Housing Commission staff has engaged consultants to prepare the following due diligence reports:

*Appraisal* – CBRE (appraiser) has been commissioned to perform an “as proposed” appraisal of value of the property’s fee simple interest. The value of the property was determined to be \$8,010,000 (\$170,426 per unit). This value is slightly higher than the asking purchase price of \$8,000,000 (\$170,213 per unit). An updated appraisal was requested to determine any changes as a result of the COVID-19 pandemic. After review of updated financials and rental records, CBRE determined no change to the previous valuation.

*Capital Needs Assessment Report* – CNA Specialists (Paul Youngborg, AIA RAS) has conducted an assessment of the current physical condition of the property and improvements. Specifically, the team inspected the site, structural, mechanical, building envelope, electrical, plumbing, interiors, landscaping, roof systems, accessibility and life safety. Areas of inspection included unit interiors, exterior stairways, management office, electrical and mechanical rooms, the building exterior and site improvements. Life safety, code violations, and accessibility compliance issues were also reviewed. A report has been prepared by CNA Specialists that summarizes the existing conditions of the property, determines the remaining useful life of the building’s components, identifies immediate (Priority 1) and future repairs, and provides estimates for the costs of upgrades.

*CEQA & NEPA* – Environmental reviews were conducted for this Property, and it was determined that the acquisition would not have the potential for causing a significant effect on the environment pursuant to the applicable State California Environmental Quality Act (CEQA) Guidelines. Furthermore, in compliance with the requirements under the National Environmental Policy Act (NEPA), the City of San Diego made the determination that this action is categorically excluded, and converts to exempt.

*Hazardous Materials* – VM3 Environmental inspected all units and common areas for microbial growth, and asbestos. Elevated air samples were detected in seven units. The Housing Commission will undertake remediation efforts prior to habitation of the units. A post-remediation clearance inspection will be obtained once remediation is completed.

Asbestos was found in the penetration mastic on the exterior roof at the HVAC vent stacks, which the lab results found to be “good/friable.” The immediate needs and remediation work does not currently anticipate disturbance of these materials; however, should unforeseen circumstances arise, all work will be performed by licensed contractors experienced in working with, and properly disposing of, asbestos-containing materials. Clearance testing will also be performed, as needed.

Hillcrest Inn’s build date is after January 1, 1978, and is, therefore, not considered “Target Housing” by the Environmental Protection Agency. For this reason, a lead-paint inspection was not performed.

*Phase I Environmental Site Assessment* – SCS Engineers has conducted a Phase I Environmental Site Assessment of the Property to determine if any recognized environmental conditions (REC) are present as a result of the current or historical land uses. Findings indicate no evidence of a recognized environmental condition in connection with the Site.

*Termite Inspections* – Thrasher Termite and Pest Control completed a drywood termite inspection of every unit and common areas. Some common exterior areas were found to have evidence of drywood termites, as well as the interior of six units. The Housing Commission will use local spot treatment to the areas that had evidence of drywood termites.

*Zoning Conformance* – The property, a Single-Room Occupancy (SRO) Hotel, is located in the City of San Diego’s CC-3-9 Commercial Community zoning district and is developed with a 47-unit rental complex. It is the opinion of Zoning Research Group that the site is in compliance with the City’s zoning regulations pertaining to allowed uses, while being “legal non-conforming” to development and parking regulations.

### **COMPLIANCE WITH APPLICABLE PROVISIONS OF HOUSING COMMISSION POLICY NO. RED-374.02.**

1. Section 3.3(a)(1). The provisions of Section 4.1.8 of the Acquisition Policy has been complied with by SDHC Board making an advisory recommendation to the Housing Authority of the City of San Diego and by forwarding that recommendation to the full Housing Authority Board for final action. Section 4.1.11 The property shall be utilized by the Housing Commission as rental properties for low- or moderate-income housing or middle income housing
2. Section 4.1.12 A certified appraisal has been obtained and has determined that the acquisition price is at or below the appraised value.
3. All other requirements of the Acquisition Policy have been met, as referenced above in the due diligence portion of this report.
4. The gap funding for at least 10% of the units within the project complies with the provisions of AB 1637, as referenced within the fiscal considerations portion of this report, as set forth below.

### **AFFORDABLE HOUSING IMPACT**

Acquisition of the property will ultimately result in the addition of 36 units of housing affordable to individuals with income at or below 80 percent of AMI, four units affordable to individuals with income at or below 120 percent of AMI; and five units affordable to individuals with income at or below 150 percent of AMI.

### **FISCAL CONSIDERATIONS**

The proposed funding sources and uses approved by this action were included in the Housing Authority-approved Fiscal Year 2021 Housing Commission budget. Approving this action will result in the acquisition of a 47-unit property. Funding sources and uses will be as follows:

**Fiscal Year 2021 Funding Sources:**

Local Funds	\$5,108,460
Federal MTW Funds	\$4,800,000
<b>Total:</b>	<b>\$9,908,460</b>

**Fiscal Year 2021 Funding Uses:**

Acquisition	\$8,000,000
Rehabilitation	\$1,908,460
<b>Total:</b>	<b>\$9,908,460</b>

**PREVIOUS COUNCIL and/or COMMITTEE ACTION**

The Housing Commission’s Policy for Acquisition and/or Purchase of Real Estate was unanimously approved by the Housing Authority on November 15, 2016 (Housing Authority Resolution HA-1705).

**KEY STAKEHOLDERS and PROJECTED IMPACTS**

Key stakeholders for this potential acquisition include the Seller, the Housing Commission, the Hillcrest Community, the City of San Diego, and residents of Hillcrest Inn.

**ENVIRONMENTAL REVIEW**

This proposed acquisition and rehabilitation is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities), which allows the operation, repair, maintenance permitting, leasing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

Hillcrest Inn is an existing facility and the proposed actions do not involve expansion of the existing use(s).

The activities described herein are Categorically Excluded subject to Section 58.5 from the National Environmental Policy Act (NEPA) pursuant to Section 58.35(a)(5) of Title 24 of the Code of Federal Regulations. The City of San Diego, as responsible entity, has conducted a limited Environmental Review of this project as required under Section 58.35(a), and has determined that this project converts to Exempt status per Section 58.34(a)(12). A copy of the Environmental Review is on file in the Environmental Review Record.

Respectfully submitted,

*Pari Zaker*  
Pari Zaker  
Vice President of Real Estate Development  
Real Estate Division

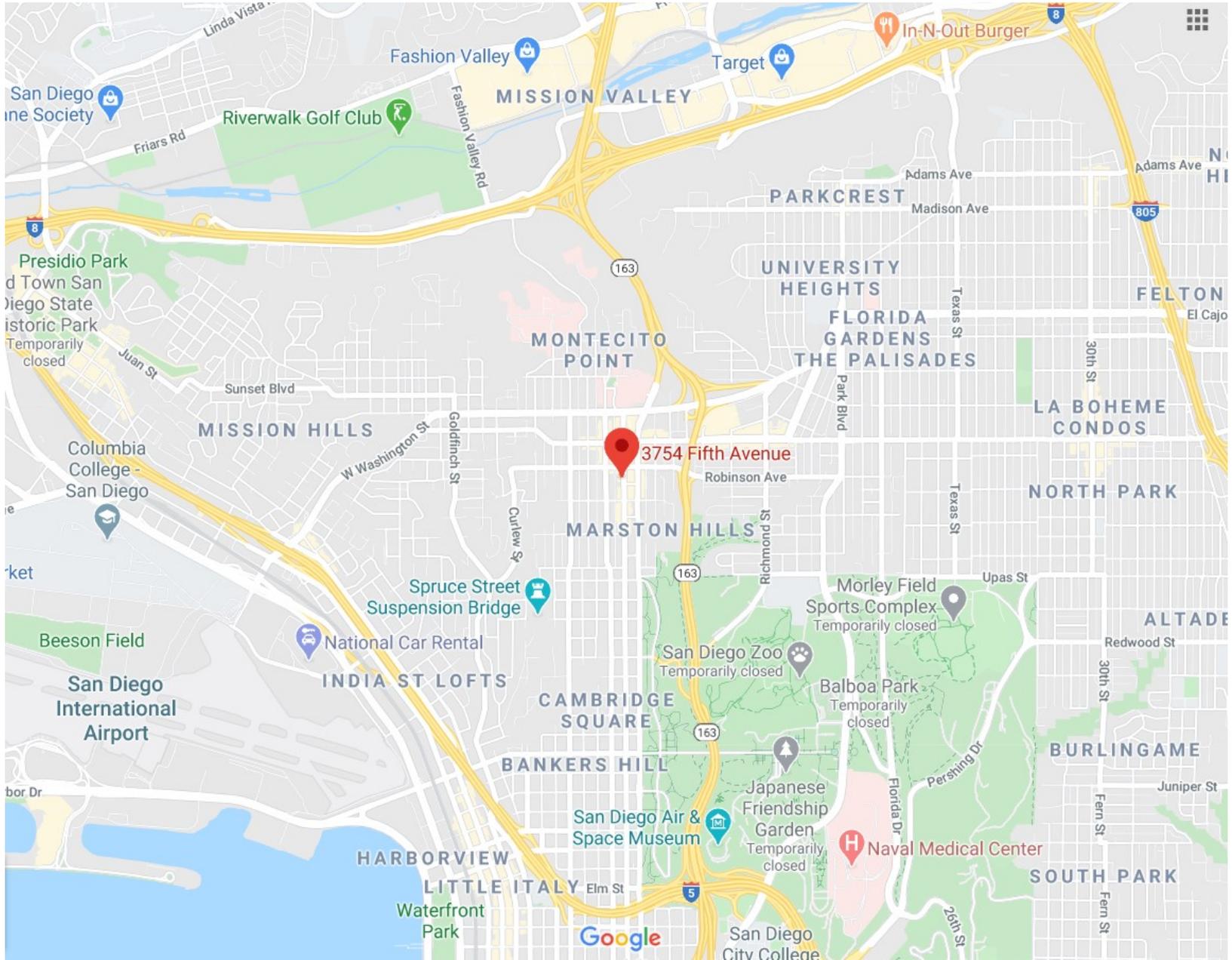
Approved by,

*Jeff Davis*  
Jeff Davis  
Executive Vice President & Chief of Staff  
San Diego Housing Commission

Attachments: 1) Location Maps  
2) Pro forma

Docket materials are available in the “Governance & Legislative Affairs” section of the San Diego Housing Commission’s website at [www.sdhc.org](http://www.sdhc.org).

Attachment 1



### Hillcrest Inn

PSH, 80% & Middle Income (AB1637)

Draft Date: 06/17/2020 - 6:49 PM

#### SECTION 1: PROJECT INFORMATION AND ACQUISITION ASSUMPTIONS

##### GENERAL PROJECT INFORMATION

Project Name	Hillcrest Inn
Purchase Price	\$8,000,000
Project Address	3754 Fifth Ave
Year Built	1986
Site Acreage	0.16
Total Units	45 plus 1 Manager's Unit and 1 Leasing Office
MSA	San Diego County
Area Media Income	\$86,300
Project Type	
Prospected Owner Entity	Hillcrest Inn

##### BUILDING AREA

Residential Rentable SF				9,300	sf
Common Areas	25%	of Res sf		3,148	sf
<b>Subtotal Residential SF</b>				<b>12,448</b>	<b>sf</b>
Commercial / Retail / Office Rentable SF					sf
Common Areas					sf
<b>Subtotal Commercial SF</b>				-	<b>sf</b>
Parking Structure	0	Spaces @	390	sf per space	-
On Grade Parking	0	Spaces @	300	sf per space	-
<b>Subtotal Parking SF</b>					<b>-</b>
<b>Approximate Gross Building Area</b>				<b>12,448</b>	<b>sf</b>

#### SECTION 2: UNIT MIX & PROJECT INCOME

##### RESIDENTIAL INCOME

Bedroom Type		Number of Units	% of Total	Net Area (SF)	Gross Square Feet	Current (Market) Rents	Utility Allowance	Max Rent (Per AMI Restriction)	Achievable Rent	Spread to Market	Monthly Income	Annual Income
PSH	Studio	12	25.5%	202	2,424	\$1,150	\$0	\$1,499	\$300	0%	\$3,600	\$43,200
80% AMI	Studio	24	51.1%	202	4,848	\$1,150	\$0	\$1,499	\$1,150	0%	\$27,600	\$331,200
120% AMI	Studio	4	8.5%	202	808	\$1,150	\$0	\$1,813	\$1,150	0%	\$4,600	\$55,200
150% AMI	Studio	5	10.6%	202	1,010	\$1,150	\$0	\$2,265	\$1,150	0%	\$5,750	\$69,000
Studio	Manager	1	2.1%	202	202	\$0	\$0	\$0	\$0	0%	\$0	\$0
Unit - Office	Manager	1	2.1%	202	202	\$0	\$0	\$0	\$0	0%	\$0	\$0
<b>Total/Average</b>		<b>47</b>	<b>100.0%</b>	<b>202</b>	<b>9,494</b>	<b>\$0</b>	<b>\$0.00</b>		<b>\$884</b>	<b>0%</b>	<b>\$41,550</b>	<b>\$498,600</b>

##### COMMERCIAL INCOME (NNN)

Unit Type	Net SF	\$/SF/Month	Monthly	Annual
Commercial Suites	0	\$0.00	\$0	\$0
Vacancy	5%			\$0
<b>Total</b>				<b>\$0</b>

##### OTHER INCOME

Residential	\$/unit/Month	Monthly	Annual
Parking Income	\$0.00	\$0	\$0
Storage Income	\$0.00	\$0	\$0
Laundry Income	\$7.50	\$353	\$4,230
Fees and Charges	\$0.00	\$0	\$0
Other	\$0.00	\$0	\$0
<b>Total other income/month</b>	<b>\$7.50</b>	<b>\$353</b>	<b>\$4,230</b>

##### ESCALATORS & VACANCY

Item	Rate
Escalator for Income	2.0%
Escalator for Expenses	3.0%
Escalator for P'ship Expenses	3.0%
Escalator for Misc Expenses	0.0%
Residential Vacancy	5.0%



# Hillcrest Inn

## DEVELOPMENT COSTS

	Unit Cost	Total	Per Unit	% of Total
<b>ACQUISITION COSTS</b>				
1010 BUILDINGS	\$7,900,000	\$7,900,000	\$168,085	79.7%
1015 ESCROW DEPOSIT - Refundable	\$100,000	\$100,000	\$2,128	1.0%
<b>TOTAL ACQUISITION &amp; CLOSING COSTS</b>		\$8,000,000	\$170,213	80.7%
<b>HARD COSTS</b>				
2030 REHABILITATION (RESIDENTIAL) Prevail. Wage	\$15,900	\$747,300	\$15,900	7.5%
2045 GENERAL CONDITIONS/REQUIREMENTS	6.00%	\$44,838	\$954	0.5%
2050 GENERAL CONTRACTOR FEE (OHP)	7.00%	\$52,311	\$1,113	0.5%
2055 BONDING (CONTRACTOR)	1.00%	\$7,473	\$159	0.1%
2057 INSURANCE (CONTRACTOR)	1.00%	\$7,473	\$159	0.1%
2060 HARD COST CONTINGENCY (OWNER)	10.00%	\$85,192	\$1,813	0.9%
<b>TOTAL HARD COSTS</b>		\$944,587	\$20,098	9.5%
<b>PERMITS &amp; FEES</b>				
3030 MUNICIPAL	3.00%	\$28,338	\$603	0.3%
<b>TOTAL PERMITS &amp; FEES</b>		\$28,338	\$603	0.3%
<b>ARCHITECTURE &amp; ENGINEERING</b>				
4005 ARCHITECT	8.00%	\$75,567	\$1,608	0.8%
4030 OTHER CONSULTANTS-SPECIAL INSPECTIONS	\$15,000	\$15,000	\$319	0.2%
<b>TOTAL ARCHITECTURE &amp; ENGINEERING</b>		\$90,567	\$1,927	0.9%
<b>THIRD PARTY REPORTS</b>				
5005 APPRAISAL	\$6,200	\$6,200	\$132	0.1%
5010 MARKET STUDY	\$6,500	\$6,500	\$138	0.1%
5020 ENVIRONMENTAL (PH1 & PH2)	\$15,000	\$15,000	\$319	0.2%
5025 PHYSICAL NEEDS ASSESSMENT	\$6,000	\$6,000	\$128	0.1%
5035 ALTA SURVEY	\$12,000	\$12,000	\$255	0.1%
5040 HAZARDOUS MATERIAL TESTING	\$7,123	\$7,123	\$152	0.1%
5040 OTHER TECHNICAL REPORTS	\$11,040	\$11,040	\$235	0.1%
8075 THIRD PARTY REPORT CONTINGENCY	10.00%	\$6,386	\$136	0.1%
<b>TOTAL DILIGENCE COSTS</b>		\$70,249	\$1,495	0.7%
<b>FINANCING COSTS</b>				
6135 SDHC LEGAL	\$25,000	\$25,000	\$532	0.3%
<b>TOTAL FINANCING COSTS</b>		\$25,000	\$532	0.3%
<b>RESERVES</b>				
7005 REPLACEMENT RESERVE - INITIAL DEPOSIT	\$500	\$23,500	\$500	0.2%
7010 OPERATING RESERVE	3	\$101,606	\$2,162	1.0%
<b>TOTAL RESERVES</b>		\$125,106	\$2,662	0.2%

## Hillcrest Inn

### DEVELOPMENT COSTS

	Unit Cost	Total	Per Unit	% of Total
<b>OTHER SOFT COSTS</b>				
8020 LEGAL - DEVELOPER	\$50,000	\$50,000	\$1,064	0.5%
8045 RELOCATION COSTS	\$25,000	\$235,000	\$5,000	2.4%
8045 RELOCATION STUDY	\$19,930	\$19,930	\$424	0.2%
8060 TITLE/ESCROW/RECORDING	\$30,000	\$30,000	\$638	0.3%
4025 CONSTRUCTION MANAGEMENT	\$134,000	\$134,000	\$2,851	1.4%
8087 LABOR COMPLIANCE	\$6,000	\$6,000	\$128	0.1%
8085 BORROWER FINANCIAL ANALYST	\$35,000	\$35,000	\$745	0.4%
8030 FF&E - RESIDENTIAL	\$700	\$32,900	\$700	0.3%
8080 FF&E - COMMON AREA	\$25,000	\$25,000	\$532	0.3%
8075 SOFT COST CONTINGENCY	10.00%	\$56,783	\$1,208	0.6%
<b>TOTAL OTHER SOFT COSTS</b>		\$624,613	\$13,290	6.3%
<b>DEVELOPER FEE</b>				
9005 DEVELOPER FEE	\$0	\$0	\$0	0.0%
<b>TOTAL DEVELOPER FEE</b>		\$0	\$0	0.0%
<b>GRAND TOTAL DEVELOPMENT COSTS</b>		<b>\$9,908,460</b>	<b>\$210,818</b>	<b>99.0%</b>

### Hillcrest Inn

#### Cash Flow Analysis 1.1

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
<b>OPERATING BUDGET</b>															
<b>GROSS RENTAL INCOME</b>	498,600	508,572	518,743	529,118	539,701	550,495	561,505	572,735	584,189	595,873	607,791	619,946	632,345	644,992	657,892
Other Income	4,230	4,315	4,401	4,489	4,579	4,670	4,764	4,859	4,956	5,055	5,156	5,259	5,365	5,472	5,581
(Less) Vacancy @ 5%	(25,142)	(25,644)	(26,157)	(26,680)	(27,214)	(27,758)	(28,313)	(28,880)	(29,457)	(30,046)	(30,647)	(31,260)	(31,886)	(32,523)	(33,174)
<b>EFFECTIVE GROSS INCOME</b>	477,689	487,242	496,987	506,927	517,065	527,407	537,955	548,714	559,688	570,882	582,300	593,946	605,825	617,941	630,300
Commercial Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>TOTAL GROSS INCOME</b>	477,689	487,242	496,987	506,927	517,065	527,407	537,955	548,714	559,688	570,882	582,300	593,946	605,825	617,941	630,300
(Less) Total Operating Expenses	(406,425)	(418,617)	(431,176)	(444,111)	(457,434)	(471,157)	(485,292)	(499,851)	(514,846)	(530,292)	(546,201)	(562,587)	(579,464)	(596,848)	(614,754)
<b>NET OPERATING INCOME</b>	71,264	68,625	65,811	62,816	59,631	56,249	52,663	48,863	44,842	40,590	36,099	31,359	26,360	21,093	15,546
(Less) Debt Service	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>NET PROJECT CASH FLOW</b>	71,264	68,625	65,811	62,816	59,631	56,249	52,663	48,863	44,842	40,590	36,099	31,359	26,360	21,093	15,546

**PURCHASE AND SALE AGREEMENT  
(Hillcrest Inn)**

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is dated as of the 21<sup>st</sup> day of February, 2020 (“Effective Date”), by and between S Wilson Uptown, Inc., a California corporation (“Seller”), and the San Diego Housing Commission, a public agency, or its designated assignee (“Purchaser”).

**RECITALS**

A. The Seller owns that certain real property commonly referred to as “Hillcrest Inn,” which is generally located at 3754 Fifth Avenue, San Diego, California 92103, and is legally described on Exhibit A attached hereto and made a part hereof (“Real Property”).

B. The Purchaser has the power of eminent domain, the Purchaser’s acquisition of the Property falls within the scope of that eminent domain power, and the Purchaser understands that Seller is agreeing to sell the Property under threat of condemnation and in lieu of the Purchaser condemning the Property. Purchaser agrees to reasonably cooperate with the Seller in structuring and documenting the sale of the Property to effect a tax deferred exchange in accordance with the provisions of Section 1033 of the Internal Revenue Code and its corresponding regulations. Such cooperation shall be at no cost to the Purchaser.

C. Provided the various conditions to Closing (as defined below) set forth in this Agreement are timely satisfied, the Seller agrees to sell the Property (as defined below) to the Purchaser and the Purchaser agrees to purchase the Property from the Seller as set forth in this Agreement.

**AGREEMENT**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are acknowledged, the Seller and the Purchaser hereby agree as follows:

1. Purchase and Sale. In consideration of the mutual covenants set forth in this Agreement, the Purchaser will acquire all of the Property, on the terms and conditions set forth herein, provided the various conditions to Closing set forth in this Agreement are satisfied or waived as provided herein.

(a) Sale. The Seller agrees to sell the Property to the Purchaser, and the Purchaser agrees to purchase the Property from Seller, on the terms and conditions set forth herein. At Closing, the Seller shall convey the fee interest in the Real Property to the Purchaser by recordation of the Grant Deed (as defined below). The Escrow Agent shall issue the Title Policy (as defined below) to the Purchaser at Closing.

(b) Possession. The Seller shall deliver possession of the Property to Purchaser at Closing. Possession of the Property shall be delivered to Purchaser encumbered by and/or subject only to the Property Documents, the Tenant Agreements and the Permitted Exceptions.

2. Definitions. As used in this Agreement, the following terms shall have the following meanings:

“Agreement” means this Purchase and Sale Agreement between the Seller and the Purchaser.

“Assignment” means the Assignment of Personal Property and Assignment and Assumption of Leases and Contracts duly executed and acknowledged by the Seller and Purchaser, in substantially the form attached hereto as Exhibit B and made a part hereof.

“Business Day” means any day other than a Saturday, Sunday or any other day on which Purchaser or Escrow Agent is not open for business. In the event any date, deadline or due date set forth in this Agreement falls on a day that is not a Business Day, then such deadline or due date shall automatically be extended to the next Business Day.

“Close” or “Closing” means the close of Escrow as provided herein, which shall be one (1) Business Day after the latest of: (i) the date all of the Conditions Precedent for the Benefit of the Seller have been satisfied; and (ii) the date all of the Conditions Precedent for the Benefit of the Purchaser have been satisfied. The Closing shall occur on or before October 19, 2020.

“Closing Date” means the date on which the Closing occurs.

“Conditions Precedent for the Benefit of the Seller” shall have the meaning set forth in Section 5 of this Agreement.

“Conditions Precedent for the Benefit of the Purchaser” shall have the meaning set forth in Section 6 of this Agreement.

“Deposit” shall have the meaning set forth in Section 3 of this Agreement.

“Due Diligence Period” means the period of time commencing on the Effective Date and ending at 5:00 p.m. Pacific time on August 19, 2020.

“Escrow” means the escrow depository and disbursement services to be performed by Escrow Agent pursuant to the provisions of this Agreement.

“Escrow Agent” means Chicago Title Company.

“Grant Deed” means a duly executed and acknowledged grant deed conveying fee simple title to the Real Property from the Seller to the Purchaser.

“Hazardous Materials” means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United State Government. Provided, however, the term “Hazardous Materials” shall not include substances typically used in the ordinary course of developing, operating and maintaining

apartment complexes in California or small amounts of chemicals, cleaning agents and the like commonly employed in routine household uses in a manner typical of occupants in other similar properties, provided that such substances are used in compliance with applicable laws.

“Immediately Available Funds” means a bank wire transfer or a certified bank or cashier’s check.

“Improvements” means collectively: (i) any and all buildings, structures and improvements, of any kinds whatsoever, located at or affixed to the Real Property; (ii) all rights, privileges and easements appurtenant to the Real Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Real Property; (iii) all development rights, air rights, and water rights relating to the Real Property; and (iv) all easements, rights-of-way or appurtenances which run with the Real Property.

“Permitted Exceptions” means (i) the printed exceptions and exclusions in the Title Policy; (ii) the exceptions to title set forth in the Title Report (as defined in Section 4(d) below) which are approved by Purchaser in writing, or deemed approved by Purchaser, as provided in Section 4(d) below; (iii) real property taxes and assessments which are a lien but not yet payable; and (iv) any title exceptions caused, consented to or preapproved by Purchaser.

“Personal Property” means all (i) all tangible personal property owned by the Seller and located at and used in connection with, the Real Property and the Improvements, including without limitation, all furniture fixtures and equipment at the Real Property, and all deposits made by tenants, occupants or renters of all of any portion of the Real Property; (ii) all of Seller’s right, title and interest in and to the name “Hillcrest Inn”; and (iii) all of Seller’s right, title and interest in and to any agreements, maps, permits, certificates, approvals, awards, deposits, licenses, utilities, government entitlements and other rights and privileges relating to or appurtenant to the Property.

“Property” means collectively, the Real Property, the Improvements and the Personal Property.

“Property Documents” means the documents and agreements listed on Exhibit D attached hereto and made a part hereof.

“Purchase Price” shall have the meaning set forth in Section 3(a) of this Agreement.

“Purchaser” means the San Diego Housing Commission, a public agency; provided, however, if the San Diego Housing Commission assigns its interest in this Agreement pursuant to Section 10 of this Agreement, then the term “Purchaser” shall mean such assignee.

“Real Property” means that certain real property commonly referred to as “Hillcrest Inn,” which is generally located at 3754 Fifth Avenue, San Diego, California 92103, and is legally described on Exhibit A attached hereto and made a part hereof

“Rent Roll” means the rent roll and security deposit report for the Project.

“Seller” means S Wilson Uptown, Inc., a California corporation.

“Tenant Agreements” means all leases and all other rental or occupancy agreements with all tenants of the Property, plus any other rental or occupancy agreements with tenants that are entered into in the ordinary course of business after the Effective Date.

“Title Policy” means a CLTA Owner’s Policy of Title Insurance in the amount of the Purchase Price, insuring that title to the fee interest in the Real Property is vested in the Purchaser, subject only to the Permitted Exceptions, which Title Policy shall be obtained through the Escrow Agent. Seller shall pay the cost of the CLTA Owner’s Policy of Title Insurance. Purchaser shall pay the cost of any endorsements it desires. Purchaser may obtain an ALTA Owner’s Policy of Title Insurance in which event Purchaser shall pay the difference between the cost of the ALTA Owner’s Policy of Title Insurance and the cost of a CLTA Owner’s Policy of Title Insurance.

3. Purchase Price.

(a) Purchase Price and Payment of the Purchaser Price. The total purchase price to be paid by the Purchaser for all of the Property shall be Eight Million and No/100 Dollars (\$8,000,000.00) (“Purchase Price”).

(b) Deposit; Liquidated Damages.

(1) Deposit. Purchaser shall make a deposit into Escrow of Immediately Available Funds equal to the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) (“Deposit”) within five (5) Business Days of the Effective Date. The Deposit shall be credited against the Purchase Price and shall be nonrefundable upon the expiration of the Due Diligence Period. If the Purchaser elects to terminate this Agreement prior to expiration of the Due Diligence Period, as set forth in Section 4 below, then the Deposit shall be immediately returned by Escrow Agent to the Purchaser. At Closing, the Deposit shall be released by Escrow Agent to the Seller. The Deposit, and any interest earned on the Deposit, shall be credited in favor of the Purchaser against the Purchase Price as set forth in Section 3(c), below. Notwithstanding anything to the contrary set forth herein, the Deposit and any other deposits made by the Purchaser shall be fully refundable to the Purchaser until such time as this Agreement has been approved by (collectively, the “Approvals”): (i) Purchaser’s board and (ii) if the Housing Authority of the City of San Diego elects to hear the matter, then also by resolution of the Housing Authority of the City of San Diego, in its sole discretion. The Seller hereby acknowledges that the Purchaser is prohibited by San Diego Municipal Code Section 98.0301(d)(8)(A) from purchasing the Property, without the approval of the Purchaser’s board and if the Housing Authority of the City of San Diego elects to hear the matter, then also by the Housing Authority of the City of San Diego. If the Approvals are not received before the expiration of the Due Diligence Period, this Agreement shall automatically terminate and the Deposit shall be immediately returned by the Escrow Agent to the Purchaser.

(2) LIQUIDATED DAMAGES. THE DEPOSIT SHALL BE REFUNDABLE TO THE PURCHASER AS MAY BE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT. IF ESCROW FAILS TO CLOSE AS A RESULT OF PURCHASER'S DEFAULT HEREUNDER, THE SOLE REMEDY OF THE SELLER SHALL BE TO TERMINATE THIS AGREEMENT BY GIVING WRITTEN NOTICE THEREOF TO PURCHASER AND ESCROW AGENT, WHEREUPON THE SELLER SHALL RETAIN THE DEPOSIT ACTUALLY DEPOSITED BY PURCHASER INTO ESCROW AS LIQUIDATED DAMAGES (AND THE SELLER WAIVES ANY RIGHT TO SPECIFICALLY ENFORCE THIS AGREEMENT SET FORTH IN CALIFORNIA CIVIL CODE SECTION 1680 OR 3389). THEREAFTER, NO PARTY HERETO SHALL HAVE ANY FURTHER LIABILITY OR OBLIGATION TO ANY OTHER PARTY HERETO EXCEPT FOR: (i) THE SELLER'S RIGHT TO RECEIVE AND RETAIN SUCH LIQUIDATED DAMAGES; (ii) THE OBLIGATION OF THE PURCHASER TO PAY AMOUNTS INTO ESCROW TO PAY A PORTION OF THE FEES AND COSTS OF ESCROW AS SET FORTH IN SECTIONS 5 AND 6 BELOW; (iii) THE OBLIGATIONS OF PURCHASER SET FORTH IN SECTIONS 4(a) AND 9, BELOW; AND (iv) ATTORNEYS' FEE AS SET FORTH IN SECTION 15(k), BELOW. THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THE SELLER'S ACTUAL DAMAGES IN THE EVENT OF PURCHASER'S DEFAULT HEREUNDER ARE UNCERTAIN IN AMOUNT AND DIFFICULT TO ASCERTAIN, AND THAT SUCH AMOUNT OF LIQUIDATED DAMAGES IS REASONABLE UNDER THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1671 ET SEQ., CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE HEREOF INCLUDING, WITHOUT LIMITATION, THE RELATIONSHIP OF SUCH AMOUNT TO THE RANGE OF POTENTIAL HARM TO THE SELLER THAT CAN REASONABLY BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES RESULTING FROM SUCH DEFAULT WOULD BE COSTLY AND INCONVENIENT. IN PLACING ITS INITIALS IN THE SPACE BELOW, EACH PARTY HERETO SPECIFICALLY CONFIRMS THE ACCURACY OF THE FOREGOING AND THE FACT THAT SUCH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE PROVISIONS OF THIS SECTION 3(b)(2) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

Siv  
Seller's Initials

  
Purchaser's Initials

(c) Delivery of Remainder of Purchase Price into Escrow. Not less than one (1) Business Day prior to the Closing Date, the Purchaser shall cause Immediately Available Funds to be delivered to the Escrow Agent in an amount equal to the Purchase Price, minus the Deposit and any interest earned on the Deposit, and plus or minus any adjustments for prorations and expenses required under this Agreement.

(d) Disbursement to the Seller. Immediately after the Closing, the Escrow Agent shall disburse to the Seller the funds that the Seller is entitled to receive under this Agreement.

4. Due Diligence Period. During the Due Diligence Period the Purchaser may determine in the Purchaser's sole and absolute discretion, whether to proceed with the purchase of the Property. During the Due Diligence Period, the Purchaser may terminate this Agreement for any reason or for no reason at all by delivering written notice of such termination to Seller and Escrow Agent. After expiration of the Due Diligence Period, the Purchaser's right to terminate this Agreement for any reason, or for no reason at all, shall expire and the Deposit shall become nonrefundable. If this Agreement is terminated during the Due Diligence Period, then: (i) all rights and liabilities of the Purchaser and the Seller with respect to this Agreement shall immediately terminate, except for rights and liabilities that specifically survive such termination; (ii) Escrow Agent shall return to the Purchaser all funds or other things deposited in Escrow by the Purchaser, less any fees and costs charged by the Escrow Agent; and (iii) Escrow Agent shall return to the Seller all funds or other things deposited in Escrow by the Seller.

(a) Access and Cooperation. During the first 60-days of the Due Diligence Period, Purchaser and its representatives, consultants and attorneys shall have access to the Real Property and the Improvements. Purchaser and Seller shall cooperate in order to allow for the minimum disturbance to tenants and residents. Purchaser shall indemnify and defend the Seller, and shall hold the Seller, the Seller's agents and employees and the Real Property harmless from, any actions, losses, costs, damages, claims and/or liabilities, including but not limited to, mechanics' and materialmen's liens and attorney fees, proximately caused by the actions of Purchaser and/or its contractors or agents upon the Property. The Purchaser shall not permit any mechanic's, materialman's, contractor's, subcontractor's or other lien arising from any work done by the Purchaser or its agents pursuant to this Agreement to encumber or stand against the Property. If any such lien shall be filed against the Property, the Purchaser shall cause the same to be discharged or bonded by payment, deposit, bond or otherwise within thirty (30) days after actual notice of such filing. The Purchaser's obligations under this Section 4(a) shall survive the termination or expiration of this Agreement. If Purchaser desires to do any invasive testing at the Property, the Purchaser may do so only after a proposed scope of work and schedule for the invasive testing and obtaining Seller's prior written consent to the same, which consent may be withheld or granted on conditions in Seller's reasonable discretion. The Purchaser shall promptly restore the Property to the condition the Property was in immediately prior to any such tests, at the Purchaser's sole cost and expense. The Purchaser shall provide the Seller with a complete set of plans, drawings and specifications ("Invasive Testing Plans") that define to the sole satisfaction of the Seller the invasive testing to be performed on the Property and the names of all environmental and other consultants, contractors and subcontractors who will be performing such invasive testing (collectively "Purchaser's Consultants"). The Purchaser shall deliver the names of the Purchaser's Consultants and the Invasive Testing Plans to the Seller concurrently with its request to the Seller that the Purchaser desires to perform invasive testing (unless the names of Purchaser's Consultants have previously been provided to the Seller).

(b) Due Diligence Deliveries. Not later than five (5) Business Days after execution and delivery of this Agreement to the Escrow Agent, the Seller shall provide, to the extent in Seller's possession or control the Purchaser with copies of the Rent Roll, Tenant Agreements and Property Documents by any of the following methods provide physical copies or digital copies (e.g. a pdf, tif or jpg file) by email or on a memory medium.

(c) Tenant Noticing. Certain State and Federal relocation laws may be applicable to the Purchaser, as a public agency, which would require the Purchaser to provide certain notices to the tenants of the Property. Within five (5) Business Days after the Effective Date, the Seller shall provide the names and addresses of all tenants of the Property, if any, to the Purchaser. The Seller agrees to allow the Purchaser to provide any and all notices to tenants of the Property that are required or advisable in order for the Purchaser to comply with any applicable laws; provided, however, prior to delivering notices to any tenants of the Property, the Purchaser shall submit a sample of the notice to the Seller for the Seller's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(d) Title. Purchaser's obligation to Close is contingent upon Purchaser's approval of all matters affecting title to or use of the Real Property (collectively, "Title Matters"). The intent of this Section 4(d) is to allow the parties to have certainty regarding the condition of title and the Title Matters which are acceptable to the Purchaser. The procedure set forth in this Section 4(d) shall not affect or otherwise limit the Purchaser's right to terminate this Agreement for any reason or no reason at all as set forth in Section 4, above. Seller shall use commercially reasonable efforts to cause the Title Company to deliver to Purchaser on or before March 2, 2020, a current preliminary title report for the Real Property and legible copies of all documents referred to therein (the "Title Report"). Purchaser shall have until April 1, 2020, to approve or object to any items disclosed by the Title Report. If Purchaser does not give written notice to Seller of Purchaser's approval or disapproval of any items disclosed by the Title Report within said time period, then Purchaser shall be deemed to have approved the items disclosed by the Title Report. If Purchaser gives written notice to Seller of Purchaser's disapproval of any items disclosed by the Title Report within said time period and Seller does not give written notice to Purchaser within five (5) calendar days thereafter of either: (i) Seller's elimination of or agreement to eliminate those disapproved matters prior to the close of Escrow; or (ii) Seller's agreement to provide at Seller's sole expense such title insurance endorsements relating thereto as are acceptable to Purchaser in Purchaser's sole discretion prior to the close of Escrow (each, a "Cure Notice"), then this Agreement shall terminate immediately, unless Purchaser affirmatively agrees in writing within five (5) calendar days thereafter that this Agreement will remain in full force and effect and that the previously disapproved items disclosed by the Title Report are approved by Purchaser. If Title Company issues a supplemental title report prior to the close of Escrow showing additional exceptions to title (a "Title Supplement"), Purchaser shall have five (5) Business Days from the date of receipt of the Title Supplement and a copy of each document referred to in the Title Supplement in which to give Seller written notice of disapproval as to any additional exceptions; provided, however, Purchaser may not disapprove any exceptions that were contained in the original Title Report or are otherwise Permitted Exceptions. Purchaser's failure to deliver any such written notice of disapproval within such five (5) Business Day period shall be deemed to mean that Purchaser has approved all such additional exceptions. If Purchaser disapproves any additional exception shown in the Title Supplement, then Purchaser and Seller will have the same rights and obligations set forth above in this Section regarding Purchaser's original review and approval of the Title Report. Notwithstanding the foregoing, Seller shall cause all Title Matters which are mechanics' liens or deeds of trust to be eliminated as exceptions to title on the Title Policy at Seller's sole expense prior to or upon the close of Escrow, and shall not record any documents against the Real Property from and after the Effective Date without Purchaser's prior written consent.

5. Conditions Precedent for the Benefit of the Seller. The Seller's obligation to Close shall be conditioned upon the satisfaction or emailed or written waiver by the Seller of all of the conditions precedent ("Conditions Precedent for the Benefit of the Seller") set forth in this Section 5. Any of the Conditions Precedent for the Benefit of the Seller may be waived by the Seller unilaterally; and if so waived, such conditions shall be of no further effect hereunder. Any such waiver shall be effective only if the same is expressly waived (i) by email from the Seller to the Purchaser and Escrow Agent; or (ii) in a writing signed by the Seller and delivered to the Purchaser and Escrow Agent. If the Conditions Precedent for the Benefit of the Seller are not satisfied by the deadlines set forth in this Section 5 or expressly waived, the Seller (provided the Seller is not in default hereunder) may provide emailed or written notice of the Seller's conditional termination of this Agreement to the Purchaser and Escrow Agent. After receipt of such notice of conditional termination, the Purchaser shall have ten (10) Business Days to cure any non-satisfaction of a condition or other default specified in the notice of conditional termination. If such matter remains unsatisfied or the default remains uncured after the expiration of such ten (10) Business Day period, then this Agreement shall terminate at the close of business on such tenth (10<sup>th</sup>) Business Day. In the event of termination of this Agreement (and by operation of law the Escrow) pursuant to this Section 5, then: (x) as set forth in the liquidated damages provision of Section 3(b)(2), above, all rights and liabilities of the Purchaser and the Seller with respect to this Agreement shall immediately terminate except those which specifically survive such termination; (y) Escrow Agent shall deliver the Deposit and all interest thereon to the Seller and shall return to the Seller all funds or other things deposited in Escrow by the Seller; (z) Escrow Agent shall return to the Purchaser all funds or other things deposited in Escrow by the Purchaser, less the Deposit and all interest thereon, and less all fees and costs charged by the Escrow Agent. Notwithstanding the preceding clause (x) of this Section 5, in the event of termination of this Agreement pursuant to this Section 5, the Seller and the Purchaser shall cooperate with one another, execute all documents reasonably necessary and take all reasonable steps as may be required by Escrow Agent in order to accomplish the purposes of this Section 5. The Conditions Precedent for the Benefit of the Seller are:

- (a) Purchaser making the Deposit into Escrow, as set forth in Section 3(b)(1), above.
- (b) The delivery by the Purchaser into Escrow at least one (1) Business Day prior to Closing of Immediately Available Funds equal to the Purchase Price (less the Deposit and plus or minus expenses and prorations) as required by Section 3(c) above.
- (c) The delivery by the Purchaser into Escrow at least one (1) Business Day prior to Closing of all other documents and instruments required by this Agreement or reasonably required by Escrow to complete the Closing.
- (d) As of the Closing Date, Purchaser is not in default of any of its representations or warranties under this Agreement, or any other material terms or conditions related to Purchaser, and all of the Purchaser's representations and warranties under this Agreement are true and correct as of the Closing Date.

(e) As of the Closing Date, the Purchaser has not made an assignment for the benefit of creditors, filed a bankruptcy petition, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of, or trustee for, the Purchaser, or commenced any proceeding relating to the Purchaser under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect.

6. Conditions Precedent for the Benefit of the Purchaser. The Purchaser's obligation to Close shall be conditioned upon the satisfaction or emailed or written waiver by the Purchaser of all of the conditions precedent ("Conditions Precedent for the Benefit of the Purchaser") set forth in this Section 6. Any of the Conditions Precedent for the Benefit of the Purchaser may be waived by the Purchaser unilaterally; and if so waived, such conditions shall be of no further effect hereunder. Any such waiver shall be effective only if the same is (i) expressly waived by email from the Purchaser to the Seller and Escrow Agent; or (ii) in writing signed by the Purchaser and delivered to the Seller and Escrow Agent. If the Conditions Precedent for the Benefit of the Purchaser are not satisfied by the deadlines set forth in this Section 6 or expressly waived, the Purchaser (provided the Purchaser is not in default hereunder) may provide emailed or written notice of the Purchaser's conditional termination of this Agreement to the Seller and Escrow Agent. After receipt of such notice of conditional termination, the Seller shall have ten (10) Business Days to cure any non-satisfaction of a condition or other default specified in the notice of conditional termination. If such matter remains unsatisfied or the default remains uncured after the expiration of such ten (10) Business Day period, then this Agreement shall terminate at the close of business on such tenth (10<sup>th</sup>) Business Day. In the event of termination of this Agreement (and by operation of law the Escrow) pursuant to this Section 6, then: (w) the same shall be a default by the Seller; (x) Escrow Agent shall return to the Seller all funds or other things deposited in Escrow by the Seller; (y) Escrow Agent shall upon receipt of unilateral notice from the Purchaser, return to the Purchaser all funds or other things deposited in Escrow by the Purchaser; and (z) all fees and costs charged by the Escrow Agent shall be paid by the Seller. Purchaser is not waiving any default by the Seller and nothing contained in this Section 6, including, without limitation, the immediately foregoing sentence shall be a waiver of any right of Purchaser to recover damages from the Seller for any default by Seller hereunder. Notwithstanding the foregoing clause (w) of this Section 6, in the event of termination of this Agreement pursuant to this Section 6, the Purchaser and the Seller shall cooperate with one another, execute all documents reasonably necessary and take all reasonable steps as may be required by Escrow Agent in order to accomplish the purposes of this Section 6. The Conditions Precedent for the Benefit of Purchaser are:

(a) The deposit by the Seller into Escrow at least one (1) Business Day prior to Closing of the Grant Deed duly executed and acknowledged by the Seller, conveying fee simple title to the Improvements to the Purchaser.

(b) The deposit by the Seller into Escrow at least one (1) Business Day prior to Closing of the Assignment, duly executed, conveying title to the Personal Property to the Purchaser.

(c) The deposit by the Seller into Escrow at least one (1) Business Day prior to Closing of a duly executed affidavit in the form prescribed by federal regulations that Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7761(a)(30) of the Internal Revenue Code of 1986, as amended.

(d) The deposit by the Seller into Escrow at least one (1) Business Day prior to Closing of a duly executed California Form 593(c) or other evidence that withholding of any portion of the Purchase Price is not required by the Revenue and Taxation Code of California, at least one (1) Business Day prior to Closing.

(e) The deposit by the Seller into Escrow at least one (1) Business Day prior to Closing of all additional documents and instruments as are reasonably required by the Escrow Agent to complete the Closing.

(f) As of the Closing Date, no lease, tenancy or occupancy agreement exists which affects the Property, except for the Tenant Agreements, Property Documents and any new residential leases entered into with tenants after the Effective Date.

(g) After the expiration of the Due Diligence Period, the Seller has not entered into any new leases or occupancy agreements of any kinds with tenants or guests which will cause any person to have the right to occupy any room or unit at the Real Property after the Closing Date, unless Purchaser has provided prior consent.

(h) As of the Closing Date, there is no pending, or threatened to be pending, any action or proceeding of which Seller has knowledge by any person or before any government authority, the outcome of which could prohibit the use of the Property as intended by the Purchaser.

(i) The Escrow Agent is prepared and obligated to issue the Title Policy in Purchaser's favor, upon the recordation of the Grant Deed and there are no exceptions to the Title Policy, except for the Permitted Exceptions.

(j) As of the Closing Date, Seller is not in material default of any of its representations or warranties under this Agreement, or any other material terms or conditions related to Seller, and all of Seller's representations and warranties under this Agreement are true and correct as of the Closing Date.

7. Representations, Warranties and Covenants; Waivers and Releases; Seller Default. When making the representations and warranties set forth in this Section 7, each party making a representation and/or warranty represents that the same are true, correct and complete as of the date hereof and shall be and are true, correct and complete as of the Closing Date. The representations and warranties shall survive the Closing.

(a) Representations and Warranties Regarding Authority. The Seller and the Purchaser each hereby represents and warrants to the other that this Agreement and all documents or instruments executed by them which are to be delivered at or prior to the Closing

are, or on the Closing Date will be, duly authorized, executed and delivered by the Seller or the Purchaser, as applicable.

(b) Representations and Warranties Regarding Enforceability of Agreement. The Seller and the Purchaser each hereby represents and warrants to the other that this Agreement and all documents required hereby to be executed by them shall be valid, legally binding obligations of, and enforceable against, the Seller or the Purchaser, as applicable, in accordance with their terms.

(c) Seller Representations and Warranties Pertaining to Legal Matters. The Seller hereby represents and warrants to the Purchaser that:

(1) The Seller is the sole owner of title to the Property.

(2) To the best of Seller's knowledge, there is no pending or threatened proceeding in eminent domain or otherwise, which would affect the Property, or any portions thereof, nor any facts which might give rise to such action or proceeding;

(d) Seller Representations and Warranties Pertaining to Options. As of the Effective Date, the Seller hereby represents and warrants to the Purchaser that no person has any option or right of first refusal to purchase the Property or any parts thereof.

(e) Seller Representation and Warranty Pertaining to Rent Roll. The Seller hereby represents and warrants to the Purchaser that to the best of Seller's knowledge, the Rent Roll and all other documents required to be delivered to Purchaser are true, complete and correct in all material respects as of the dates set forth thereon.

(f) Seller Representation and Warranty Pertaining to Tenant Agreements. The Seller hereby represents and warrants to the Purchaser that to the best of Seller's knowledge, the Tenant Agreements constitute all of the oral and written agreements or understandings concerning the leasing or occupancy of the Property by which the Purchaser would be bound following the Closing, except for any new residential leases entered into with tenants after the Effective Date.

(g) Seller Representation and Warranty Regarding Operation of the Property. The Seller hereby represents and warrants to the Purchaser that to the best of Seller's knowledge, the Property Documents and the Permitted Exceptions constitute all of the oral and written agreements or understandings concerning the Property by which the Purchaser would be bound following the Closing other than the Tenant Agreements.

(h) Seller Representations and Warranties Regarding Discovery of New Information. If the Seller discovers any information or facts prior to Closing that would materially change any of the foregoing representations and warranties or cause any of the foregoing representations and warranties to be untrue or misleading in any respect, the Seller will promptly give the Purchaser notice of those facts and information.

(i) AS-IS CONDITION. PURCHASER HEREBY ACKNOWLEDGES, REPRESENTS, WARRANTS, COVENANTS AND AGREES THAT AS A MATERIAL INDUCEMENT TO SELLER TO EXECUTE AND ACCEPT THIS AGREEMENT AND IN CONSIDERATION OF THE PERFORMANCE BY SELLER OF ITS DUTIES AND OBLIGATIONS UNDER THIS AGREEMENT THAT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, AND SUBJECT TO SELLER'S EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 7 OF THIS AGREEMENT, THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN "AS-IS, WHERE-IS" BASIS, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, FUTURE OR OTHERWISE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (1) THE EXISTENCE OF HAZARDOUS MATERIALS OR MOLD UPON THE PROPERTY OR ANY PORTION THEREOF; (2) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND FAULTING; (3) WHETHER OR NOT AND TO THE EXTENT TO WHICH THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (4) DRAINAGE; (5) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORING; (6) USES OF ADJOINING PROPERTIES; (7) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, DURABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY RIGHTS OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, WHETHER OR NOT THE IMPROVEMENTS COMPLY WITH THE REQUIREMENTS OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. §§ 12181-12183, 12186(B) - 12189 AND RELATED REGULATIONS; (8) THE PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR IN THE VICINITY OF THE PROPERTY; (9) THE SQUARE FOOTAGE OF THE PROPERTY; (10) IMPROVEMENTS AND INFRASTRUCTURE, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE ROOF, FOUNDATION, FIXTURES, AND PERSONAL PROPERTY; (11) DEVELOPMENT RIGHTS AND EXTRACTATIONS; (12) WATER OR WATER RIGHTS; (13) THE DEVELOPMENT POTENTIAL FOR THE PROPERTY; (14) THE ABILITY OF PURCHASER TO REZONE THE REAL PROPERTY OR CHANGE THE USE OF THE PROPERTY; (15) THE ABILITY OF PURCHASER TO ACQUIRE ADJACENT PROPERTIES; (16) THE EXISTENCE AND POSSIBLE LOCATION OF ANY UNDERGROUND UTILITIES; (17) THE EXISTENCE AND POSSIBLE LOCATION OF ANY ENCROACHMENTS; (18) WHETHER THE IMPROVEMENTS WERE BUILT, IN WHOLE OR IN PART, IN COMPLIANCE WITH APPLICABLE BUILDING CODES; (19) THE STATUS OF ANY LIFE-SAFETY SYSTEMS IN THE IMPROVEMENTS; (20) THE

CHARACTER OF THE NEIGHBORHOOD IN WHICH THE PROPERTY IS SITUATED; (21) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; (22) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (PURCHASER AFFIRMING THAT PURCHASER HAS NOT RELIED ON SELLER'S SKILL OR JUDGMENT TO SELECT THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT SELLER MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE); AND/OR (23) THE SUITABILITY OF THE PROPERTY FOR CONDOMINIUM CONVERSION. NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, SELLER IS NOT RELEASED FROM ANY LIABILITY TO PURCHASER FOR FRAUD OR BREACH OF ANY COVENANT, REPRESENTATION OR WARRANTY SET FORTH IN THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THIS SECTION 7(i), ANY RIGHT WAIVED BY PURCHASER AND ANY RELEASE BY PURCHASER, SHALL ONLY RELEASE OR WAIVE THE PURCHASER'S RIGHTS TO ENFORCE ANY JUDGMENT PERSONALLY AGAINST THE SELLER AND SELLER'S SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, SHAREHOLDERS, PARTICIPANTS, PARTNERS, MEMBERS, MANAGERS, AFFILIATES, EMPLOYEES, REPRESENTATIVES, INVITEES AND AGENTS (COLLECTIVELY, THE "SELLER PARTIES") OR ANY OF THEM. PURCHASER IS NOT WAIVING ANY RIGHT TO BRING ANY ACTION AGAINST ANY OF THE "NON-RELEASED PARTIES" (DEFINED BELOW) OR WAIVING RECOVERY AGAINST OR OTHERWISE RELEASING OR AGREEING TO FOREGO PURCHASER'S RIGHTS WITH RESPECT TO ANY INSURANCE POLICY, OR ANY OTHER PERSON (OTHER THAN THE RIGHT TO ENFORCE A JUDGMENT PERSONALLY AGAINST ANY OF THE SELLER PARTIES), INCLUDING WITHOUT LIMITATION PERSONS OBLIGATED TO THE SELLER PARTIES, BY RIGHT OF SUBROGATION OR OTHERWISE, PRIOR OWNERS OR OCCUPANTS OF THE REAL PROPERTY, THE TENANTS, PERSONS PERFORMING WORK AT THE PROPERTY AND/OR ANY INSURANCE POLICIES HELD BY ANY OR ALL SUCH PERSONS (COLLECTIVELY, THE "NON-RELEASED PARTIES").

PURCHASER ACKNOWLEDGES THAT AS OF THE EXPIRATION OF THE DUE DILIGENCE PERIOD, PURCHASER SHALL HAVE COMPLETED ALL PHYSICAL AND FINANCIAL EXAMINATIONS RELATING TO THE ACQUISITION OF THE PROPERTY HEREUNDER (IT BEING ACKNOWLEDGED AND AGREED THAT PURCHASER SHALL BE DEEMED TO HAVE INSPECTED EACH APARTMENT UNIT WITHIN THE PROPERTY) AND WILL ACQUIRE THE SAME SOLELY ON THE BASIS OF SUCH EXAMINATIONS AND THE TITLE INSURANCE PROTECTION FOR THE PROPERTY AFFORDED BY THE TITLE POLICY, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, AND SUBJECT AND LIMITED TO SELLER'S EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 7 OF THIS AGREEMENT. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY

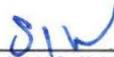
WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, AND SUBJECT TO THE SELLER'S EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT. SELLER SHALL NOT BE LIABLE FOR ANY NEGLIGENT MISREPRESENTATION OR FAILURE TO INVESTIGATE THE PROPERTY NOR SHALL SELLER BE BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, APPRAISALS, ENVIRONMENTAL ASSESSMENT REPORTS, OR OTHER INFORMATION PERTAINING TO THE PROPERTY OR THE OPERATION THEREOF, FURNISHED BY SELLER, OR ANY REAL ESTATE BROKER, AGENT, REPRESENTATIVE, EMPLOYEE, SERVANT OR OTHER PERSON ACTING ON SELLER'S BEHALF, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 7 OF THIS AGREEMENT. IT IS ACKNOWLEDGED AND AGREED THAT THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING. NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, SELLER IS NOT RELEASED FROM ANY LIABILITY TO PURCHASER FOR FRAUD OR BREACH OF ANY COVENANT, REPRESENTATION OR WARRANTY SET FORTH IN THIS AGREEMENT.

PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT PURCHASER IS FULLY AWARE OF THE AGE OF THE PROPERTY, THAT OVER TIME VARIOUS EVENTS MAY HAVE OCCURRED ON THE PROPERTY WHICH EVENTS MAY BE TYPICAL AND/OR ATYPICAL OF EVENTS OCCURRING TO OTHER PROPERTIES OF SIMILAR AGE TO THE PROPERTY AND SIMILARLY LOCATED IN THE CITY OF SAN DIEGO AND/OR THE COUNTY OF SAN DIEGO, CALIFORNIA, AND THAT SUCH EVENTS MAY INCLUDE, WITHOUT LIMITATION, SLAB LEAKS, MOLD, FIRE, SHIFTING, AND VIOLATIONS OF LAWS, ORDINANCES, RULES, REGULATIONS, PERMITS, APPROVALS, LICENSES AND/OR ORDERS OF GOVERNMENTAL AGENCIES WITH JURISDICTION OVER THE PROPERTY.

THE CLOSING OF THE PURCHASE OF THE PROPERTY BY PURCHASER HEREUNDER SHALL BE CONCLUSIVE EVIDENCE THAT: (A) PURCHASER HAS FULLY AND COMPLETELY INSPECTED (OR HAS CAUSED TO BE FULLY AND COMPLETELY INSPECTED) THE PROPERTY; AND (B) PURCHASER ACCEPTS THE PROPERTY AS BEING IN GOOD AND SATISFACTORY CONDITION AND SUITABLE FOR PURCHASER'S PURPOSES.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT FOR RELIANCE ON THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, PURCHASER SHALL PERFORM AND RELY SOLELY UPON ITS OWN INVESTIGATION CONCERNING ITS INTENDED USE OF THE PROPERTY, AND THE PROPERTY'S FITNESS THEREFOR. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER'S COOPERATION WITH PURCHASER WHETHER BY

PROVIDING DOCUMENTS RELATING TO THE PROPERTY OR PERMITTING INSPECTION OF THE PROPERTY, SHALL NOT BE CONSTRUED AS ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO THE PROPERTY, OR WITH RESPECT TO THE ACCURACY, COMPLETENESS, OR RELEVANCE OF THE DOCUMENTS PROVIDED TO PURCHASER BY SELLER IN RELATION TO THE PROPERTY, PROVIDED THAT THE FOREGOING SHALL NOT BE A LIMITATION OR MODIFICATION OF THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT.

  
SELLER'S INITIALS

  
PURCHASER'S INITIALS

(j) Indemnity and Release.

(1) Indemnity. For the purposes of this Section 7(j), the term "Claims" shall mean any and all claims, obligations, liabilities, causes of action, suits, debts, liens, damages, judgments, losses, demands, orders, penalties, settlements, attorney's fees, costs and expenses (including, without limitation, attorneys' fees and costs and any and all costs and expenses related to, whether directly or indirectly, any and all clean-up, remediation, investigations, monitoring, abatement, mitigation measures, fines or removal with respect to Hazardous Materials) of any kind or nature whatsoever. The definition of "Claims" shall include, without limitation, Claims under contract law or tort law. Each and every provision of this Section 7(j) shall survive the Closing. Purchaser acknowledges that but for Purchaser's agreement to each and every provision of this Section 7(j), Seller would not have entered into the Agreement. Purchaser, on behalf of itself, its successors, assigns and successors-in-interest ("Successors"), hereby agrees to indemnify, defend and hold Seller and Seller's successors, assigns, officers, directors, shareholders, participants, partners, members, managers, affiliates, employees, representatives, invitees and agents (collectively, "Seller Parties") harmless from any and all Claims resulting from, related to, or based upon, whether directly or indirectly: (i) the breach by Purchaser of any representation, warranty, covenant or obligation contained in the Agreement, or in any other agreement, document, exhibit or instrument related hereto or referenced herein; (ii) any Claim or Claims, if the basis of such Claim or Claims arose on or after the Closing, except as noted in clause (iv) below, and if the basis of such Claim or Claims arose from, is based upon, relates to or pertains to, whether directly or indirectly, the ownership, operation, management and use of the Property; (iii) any Claim or Claims which Claim or Claims (or the basis for which) arose from, is based upon, relates to or pertains to, whether directly or indirectly, any act or omission of Purchaser; (iv) (A) any Claim or Claims that relate to the condition of the Property regardless of whether said condition or the cause of the same arose on or after the Close of Escrow, including any judgment, order or settlement under or otherwise pursuant to a lawsuit, and (B) any Claim or Claims that relate to defects in the Property (including, without limitation, patent and latent construction defects), regardless of whether said defects or the cause of the same arose either before or after the Close of Escrow, including any judgment, order or settlement under or otherwise pursuant to the lawsuit; and (v) any express or implied indemnity including equitable comparative indemnity arising out of any condominium conversion of the Property including any Claims arising out of alleged construction defects made by unit purchasers, the homeowners association or Purchaser. Any defense of any or all of the Seller

Parties referenced in this Section 7(j)(1), shall be at the Purchaser's sole cost and expense and by counsel selected by the Purchaser, subject to the reasonable approval of the indemnified person, which counsel may, without limiting the rights of any of the Seller Parties pursuant to the next succeeding sentence of this Section 7(j)(1), also represent the Purchaser in such investigation, action or proceeding. If any of the Seller Parties that is being indemnified determines reasonably and in good faith that its defense by the Purchaser is reasonably likely to cause a conflict of interest or is being conducted in a manner which is prejudicial to such persons interests, such indemnified person may elect to conduct its own defense through counsel of its own choosing, subject to the reasonable approval of the Purchaser, and at the expense of the Purchaser. Purchaser hereby waives any right of subrogation as to Seller or the Seller Parties. Each and every provision of this Section 7 shall survive the Closing and but for Purchaser's agreement to each and every provision of this Section 7, Seller would not have executed the Agreement.

(2) Release. Notwithstanding the following or anything to the contrary set forth in this Agreement, the Seller is not released from any liability to the Purchaser for fraud or material breach of any covenant or warranty set forth in this Agreement. Subject to the immediately preceding sentence and the Purchaser's right to rely on the Seller's representations and warranties, Purchaser for itself and on behalf of each of its successors (collectively, the "Releasors") by this general release of known and unknown claims (this "Release") hereby irrevocably and unconditionally release and forever discharge Seller and each of the Seller Parties (collectively, the "Releasees") or any of them, from and against any and all Claims of any kind or nature whatsoever, **WHETHER KNOWN OR UNKNOWN**, suspected or unsuspected, fixed or contingent, liquidated or unliquidated which any of the Releasors now have, own, hold, or claim to have had, owned, or held, against any of the Releasees arising from, based upon or related to, whether directly or indirectly any facts, matters, circumstances, conditions or defects (whether patent or latent) of all or any kinds, related to, arising from, or based upon, whether directly or indirectly, the Property, including without limitation, (i) the physical condition, quality and state of repair of the Property; (ii) any latent or patent defect affecting the Property, (iii) the presence of Hazardous Materials in, on, about or under the Real Property or which have migrated from adjacent lands to the Real Property or from the Real Property to adjacent lands, and (iv) any express or implied indemnity including equitable comparative indemnity arising out of any condominium conversion of the Property including any Claims arising out of alleged construction defects made by unit purchasers, the homeowners association or Purchaser.

(3) Section 1542 Waiver. Except for Claims for Seller's fraud or the breach of any covenants, representations and warranties of the Seller provided in this Agreement, Releasors hereby further agree as follows:

(A) Releasors acknowledge that there is a risk that subsequent to the execution of this Agreement, Releasors may discover, incur, or suffer from Claims which were unknown or unanticipated at the time this Release is executed, including, without limitation, unknown or unanticipated Claims which, if known by Releasors on the date this Release is being executed, may have materially affected Releasors' decision to execute this Agreement. Releasors acknowledge that Releasors are assuming the risk of such unknown and unanticipated Claims and agree that this Release applies thereto. Releasors expressly waive the benefits of Section 1542 of the California Civil Code, which reads as follows:

**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

(B) Releasors represent and warrant that Releasors have been represented by independent counsel of Releasors' own choosing in connection with the preparation and review of the Release set forth herein, that Releasors have specifically discussed with such counsel the meaning and effect of this Release and that Releasors have carefully read and understand the scope and effect of each provision contained herein. Releasors further represent and warrant that Releasors do not rely and have not relied upon any representation or statement made by any of the Releasees or any of their representatives, agents, employees, attorneys or officers with regard to the subject matter, basis or effect of this Release.

(C) Releasors represent and warrant to Releasees that Releasors have not and shall not assign or transfer or purport to assign or transfer any Claim or Claims or any portion thereof or any interest therein, and shall indemnify, defend, and hold the Releasees harmless from and against any Claim or Claims based on or arising out of, whether directly or indirectly, any such assignment or transfer, or purported assignment or transfer.

SIN  
SELLER'S INITIALS

[Signature]  
PURCHASER'S INITIALS

It is specifically intended that each of the Seller Parties shall be third party beneficiaries of Section 7(i) and Section 7(j).

8. Condemnation.

(a) Condemnation. If between the Effective Date and the Closing Date, any condemnation or eminent domain proceeding is commenced that will result in the taking of any part of the Property, Purchaser may, at Purchaser's election, within ten (10) business days of receiving Condemnation notice from Seller under paragraph 8(b) of the condemnation proceeding, either:

(1) Terminate this Agreement by giving written or emailed notice to the Seller and the Escrow Agent (in which event all remaining funds or other things deposited in Escrow by Purchaser, including without limitation, the Deposit, shall be returned to the Purchaser immediately from Escrow, together with any interest earned thereon and all fees and costs charged by the Escrow Agent shall be paid one-half (1/2) by the Purchaser and one-half (1/2) by the Seller); or

(2) Give written or emailed notice to the Seller and the Escrow Agent that Purchaser will proceed with the Closing, in which event the Seller shall assign to the Purchaser all of the Seller's rights, titles and interests to any award made for the condemnation or eminent domain action.

(b) Notice. If the Seller obtains notice of the commencement of or the threatened commencement of eminent domain or condemnation proceedings with respect to all of any portion of the Property, the Seller shall notify the Purchaser in writing (“Condemnation Notice”).

9. Broker’s Commission. The Purchaser is represented by Jim Neil of Kidder Matthews. Seller shall satisfy all broker commissions due or owing to Jim Neil of Kidder Matthews pursuant to a separate commission agreement. The Purchaser and the Seller each agree that, except for the commission to the Purchaser’s Broker, to the extent any real estate commission, brokerage commission or finder’s fee shall be earned or claimed in connection with this Agreement or the Closing, the payment of such fee or commission, and the defense of any action in connection therewith, shall be the sole and exclusive obligation of the party who requested (or is alleged to have requested) the services of the broker or finder. In the event that any claim, demand or cause of action for any such commission or finder’s fee is asserted against the party to this Agreement who did not request such services (or is not alleged to have requested such services), the party through whom the broker or finder is making the claim shall indemnify, defend (with an attorney of the indemnitee’s choice) and hold harmless the other from and against any and all such claims, demands and causes of action and expenses related thereto, including, without limitation, attorneys’ fees and costs. The provisions of this Section 9 shall survive the Closing or termination of this Agreement.

10. Assignment. The Purchaser may assign this Agreement to Housing Development Partners of San Diego, a California nonprofit public benefit corporation, or to an entity in which the Purchaser has a controlling or majority interest without the prior written consent of the Seller. Except as set forth in the immediately preceding sentence, no party shall assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party hereto. Any attempted assignment or delegation of this Agreement by the Purchaser or the Seller in violation of this Section 10 shall be void.

11. Notices. All notices under this Agreement shall be in writing and sent (a) by certified or registered mail, return receipt requested, in which case notice shall be deemed delivered three (3) Business Days after deposit, postage prepaid in the United States Mail, (b) overnight by a nationally recognized overnight courier such as UPS Overnight, or FedEx, in which case notice shall be deemed delivered one (1) Business Day after deposit with that courier, (c) by personal delivery, in which case notice shall be deemed delivered upon the actual date of delivery, or (d) by email, in which case notice shall be deemed delivered upon the actual date of delivery. All notices shall be delivered to the following addresses:

If to Seller:

S Wilson Uptown, Inc.  
3739 Rosecroft Lane  
San Diego, CA 92106  
Email: [stuwilson3739@gmail.com](mailto:stuwilson3739@gmail.com)

Copy to: George B. Blackmar  
Blackmar, Principe & Schmelter, APC  
600 B. St. Ste. 2250  
San Diego, CA 92101  
Email: [gblackmar@bpslaw.net](mailto:gblackmar@bpslaw.net)

If to Purchaser: San Diego Housing Commission  
Attn: Michael Pavco  
1122 Broadway, Suite 300  
San Diego, CA 92101  
Email: [mpavco@hdpartners.org](mailto:mpavco@hdpartners.org)

Copy to: Christensen & Spath LLP  
Attn: Walter F. Spath III, Esq.  
550 West C Street, Suite 1660  
San Diego, CA 92101  
Email: [wfs@candslaw.net](mailto:wfs@candslaw.net)

If to Escrow Agent: Chicago Title Company  
Attn: Verna Gregory  
2365 Northside Drive  
San Diego, CA 92108  
Email: [verna.gregory@ctt.com](mailto:verna.gregory@ctt.com)

The addresses above may be changed by written notice to the other party given in accordance with this Section 11.

12. Risk of Loss.

(a) Subject to the provisions of this Section 12(a), the risk of loss or damage to the Property until the Closing will be borne by Seller. Upon the occurrence of any damage to or destruction of the Property, Seller shall within five (5) days after the occurrence of such damage or destruction give written notice to Purchaser ("Damage Notice") specifying the estimated cost to repair or restore the Property and an estimate of the insurance proceeds, if any, that will be available with respect to such damage or destruction. The Closing shall be appropriately delayed to provide adequate time for Seller to give the Damage Notice and Purchaser to make its election provided for below.

(b) If prior to the Closing there is damage to or destruction of the Property that will cost in excess of One Hundred Thousand Dollars (\$100,000.00) to repair or restore, Purchaser shall have the right by written notice given to Seller within ten (10) days of Purchaser receiving the Damage Notice, to elect to: (i) close Escrow in such damaged condition, in which event the Purchase Price shall not be reduced and Seller shall not be obligated to repair or restore the Property and all insurance proceeds shall be assigned and payable to Purchaser, and if Seller receives any such insurance proceeds, they shall be immediately remitted by Seller to Purchaser at Closing or, if received by Seller after Closing, promptly after receipt; or (ii) terminate this

Agreement, in which event the Deposit and all interest accrued thereon shall be immediately returned to Purchaser, and neither party shall have any further rights or obligations to the other party, except neither party shall be relieved of any obligations provided for in this Agreement which expressly survives its termination.

(c) If prior to the Closing there is damage to or destruction of the Property that will cost One Hundred Thousand Dollars (\$100,000.00), or less, to repair or restore, Purchaser shall nevertheless close Escrow with the Property in such damaged condition, the Purchase Price shall be reduced by a commensurate amount and Seller shall not be obligated to repair or restore the Property, and all insurance proceeds shall be assigned and payable to Purchaser, and if Seller should receive any such insurance proceeds, they shall be immediately remitted to Purchaser.

13. Water Heaters. Seller hereby certifies and warrants that all water heaters in or on the Property are braced, anchored or strapped to prevent falling or horizontal displacement due to earthquake motions as required by State and applicable local codes.

14. Prorations. Real property taxes and assessments, utility costs, rents, security deposits, service and maintenance contract payments for contracts that are being assumed by the Purchaser (which assumption shall be of all service and maintenance and similar type contracts with regard to the Property to the extent same are assignable) and other expenses of operating the Property (provided, however, no proration shall be made with regard to any capital improvements, as determined in accordance with generally accepted accounting principles) shall be prorated as of the close of Escrow. Seller shall pay all real property taxes and assessments applicable to the period prior to the close of Escrow, and if any such taxes are unpaid after the close of Escrow, then Seller shall pay them promptly and in any event within ten (10) days after Purchaser's request (which shall include a copy of the relevant tax bill). Seller shall have the right, but not the obligation, to pursue after the close of Escrow collection from tenants of any rents due at the close of Escrow which are unpaid; provided, however, Seller shall not have the right to bring any eviction proceedings against any such tenants without the written consent of the Purchaser. If Purchaser collects any rents due on or before the close of Escrow from tenants, Purchaser shall promptly pay over said sums over to Seller.

15. General Provisions.

(a) Governing Law. This Agreement shall be interpreted and construed in accordance with California law, without regard to any choice of law principles.

(b) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) Captions. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions of this Agreement.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors, heirs and permitted assigns.

(e) Modifications; Waiver. No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless it is in writing and signed by the party against which the enforcement of the modification, waiver, amendment, discharge or change is sought.

(f) Entire Agreement. This Agreement contains the entire agreement between the parties relating to Purchaser's acquisition of the Property from the Seller and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded.

(g) Partial Invalidity. Any provision of this Agreement which is unenforceable, invalid, or the inclusion of which would adversely affect the validity, legality, or enforcement of this Agreement shall have no effect, but all the remaining provisions of this Agreement shall remain in full effect.

(h) Survival; No Merger. This Agreement, including without limitation, all representations, warranties, covenants, agreements, indemnities and other obligations of the Purchaser and the Seller in this Agreement, shall survive the Closing as provided for in this Agreement and will not be merged into the Grant Deed or any other document.

(i) No Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies.

(j) Time Of Essence. Time is of the essence in this Agreement.

(k) Attorneys' Fees. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Agreement shall be entitled to their expert witness fees, if any, as part of their costs of suit, and reasonable attorneys' fees as may be awarded by the court or otherwise determined, pursuant to California Code of Civil Procedure ("CCP") Section 1033.5 and/or any other applicable provisions of California law, including, without limitation, the provisions of CCP Section 998. All claims, disputes, causes of action or controversies shall be subject solely to the jurisdiction of the San Diego Superior Court, Downtown Branch.

(l) Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or partnership or a joint venture between the Purchaser and the Seller or between any of them and any third party.

(m) Recording. This Agreement shall not be recorded.

(n) Purchaser Approval. Where this Agreement refers to an action or approval of the Purchaser, it shall mean the approval of the President and CEO of the Purchaser, or designee, unless otherwise provided.

(o) Exhibits and Recitals Incorporated. All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The Recitals to this Agreement are hereby incorporated in this Agreement by this reference.

(p) Independent Counsel. Seller and Purchaser each acknowledge that: (a) they have been given the opportunity to be represented by independent counsel in connection with this Agreement; (b) they have executed this Agreement with the advice of such counsel, if such counsel was retained; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel, if such counsel was retained. The fact that this Agreement was prepared or negotiated by Purchaser's or Seller's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against either party due to the fact that Purchaser's or Seller's counsel prepared or negotiated this Agreement in its final form.

(q) Capacity and Authority. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, represent and warrant to one another party that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

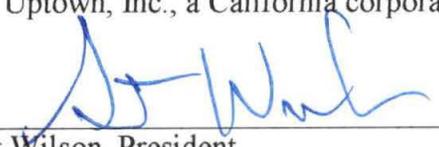
(r) Closing Costs. The Seller and the Purchaser shall pay the costs of the Title Policy in accordance with Section 2, above. The Purchaser and the Seller shall each pay one-half (1/2) of the costs of the City transfer taxes and County transfer taxes to be paid with reference to the Grant Deed and all other stamps, intangible, documentary, recording and surtax imposed by law with reference to any other documents delivered in connection with this Agreement. The Purchaser and the Seller shall equally share the Escrow Agent's escrow fees. All other closing costs shall be allocated in accordance with custom and practice for similar transactions in San Diego County, California.

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement as of the date first above written.

**SELLER:**

S Wilson Uptown, Inc., a California corporation

By: \_\_\_\_\_

  
Stuart Wilson, President

**[SIGNATURES CONTINUED ON FOLLOWING PAGE]**

**PURCHASER:**  
San Diego Housing Commission

By:   
Jeff Davis  
Executive Vice President and Chief of Staff

Approved as to Form:  
Christensen & Spath LLP

By:   
Walter F. Spath III, Esq.  
Purchaser General Counsel

## **Exhibit A**

### **Real Property Legal Description**

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

## **Exhibit B**

### ASSIGNMENT OF PERSONAL PROPERTY AND ASSIGNMENT AND ASSUMPTION OF LEASES AND CONTRACTS

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby expressly acknowledged, S Wilson Uptown, Inc., a California corporation ("Assignor"), hereby grants, conveys, transfers and assigns to the San Diego Housing Commission ("Assignee"), all of Assignor's right, title and interest in and to:

(a) all leases ("Leases"), if any, of space in the real property more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof ("Real Property"), together with all unapplied refundable security deposits and prepaid rents from tenants under the leases;

(b) all service agreements, maintenance agreements and other contracts listed on Exhibit "B" relating to the Real Property ("Contracts");

(c) all tangible personal property located at the Real Property which is owned by Assignor including without limitation, all furniture fixtures and equipment at the Real Property, but excluding any and all computers and related materials owned by Assignor and any other specifically listed property listed on Exhibit "C" ("Personal Property"); and

(d) all of Assignor's right, title and interest, if any, in and to (i) the name "Hillcrest Inn" for, and (ii) any agreements, maps, permits, certificates, approvals, awards, deposits, licenses, utilities, government entitlements and other rights and privileges relating to or appurtenant to the Property, if any ("Intangible Personal Property").

The Personal Property and the Intangible Personal Property are being transferred to Assignee without any representation or warranty of any kind or nature whatsoever, including, without limitation, as to any representations or warranties as to merchantability or fitness for a particular purpose.

Assignee agrees to perform or cause to be performed Assignor's obligations, if any, under the Leases and the Contracts from and after the date of this instrument.

Each of Assignor and Assignee hereby covenants that they will, at any time and from time to time upon written request therefor, execute and deliver to the other, its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts which the other, its successors and/or assigns, may reasonably request in order to fully assign and transfer to and vest in Assignee, its nominees, successors and/or assigns, and protect its and/or their rights, title and interest in and enjoyment of, all of the assets of Assignor intended to be transferred and assigned hereby, or to enable Assignee, its successors and/or assigns, to

realize upon or otherwise enjoy any such assets, or to effect the allocation of responsibility for performance under the Leases and the Contracts.

The provisions of this Assignment of Personal Property and Assignment and Assumption of Lease and Contracts shall be binding upon and inure to the benefit of Assignor, Assignee and their successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Assignment of Personal Property and Assignment and Assumption of Leases and Contracts as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ASSIGNOR:**

S Wilson Uptown, Inc., a California corporation

By: \_\_\_\_\_  
Stuart Wilson, President

**ASSIGNEE:**

San Diego Housing Commission

By: \_\_\_\_\_  
Jeff Davis  
Executive Vice President & Chief Operating Officer

Approved as to Form:  
Christensen & Spath LLP

By: \_\_\_\_\_  
Walter F. Spath III, Esq.  
Assignee General Counsel

**Exhibit C**  
**Excluded Assets**

**NONE**

## Exhibit D

### Property Documents

Rent Roll

Operating Statements:

- Year Ending 2019
- Year Ending 2018
- Year Ending 2017

Year-to-Date Operating Statements

Disclosure Reports

- Natural Hazard Zone

Property Tax Bill History (2015-Present)

Major Capital Contracts (2015-Present)

Site Map and Floorplans

HVAC Count

Insurance Loss Reports

Current Salary Schedule (Monthly)

Business License and Permits

Certificate of Occupancy

All active Contracts, including Service Contracts, management contracts, franchise contracts, and all contracts for which payments are owed, will be owed at or after the Closing or for which payments were made after January 1, 2020.

Gas and Electric Utility History (2015-Present)

Utility Bills (2015-Present)

Capital Expenditures (2015-Present) – General Ledger Detail

Drawings, Plans and Specifications, including as-builts



HOUSING AUTHORITY OF  
THE CITY OF SAN DIEGO

RESOLUTION NUMBER HA-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE HOUSING AUTHORITY OF THE  
CITY OF SAN DIEGO APPROVING THE SAN DIEGO  
HOUSING COMMISSION'S ACQUISITION OF HILLCREST  
INN AND RELATED ACTIONS.

WHEREAS, Hillcrest Inn is a Single Room Occupancy (SRO) building located on 0.16 acres at 3754 Fifth Avenue in the Hillcrest Neighborhood (Property); and

WHEREAS, the San Diego Housing Commission (Housing Commission), has negotiated a Purchase and Sale Agreement (Agreement) with S Wilson Uptown, Inc., a California corporation (Seller), related to the Property, a copy of which is included in the backup materials to this Resolution; and

WHEREAS, the Housing Commission will provide 36 units at 80 percent area median income, 4 units at 120 percent area median income, 5 units at 150 percent area median income, and 1 manager's unit (Project); and

WHEREAS, the Housing Commission's acquisition of the Property will preserve that the SRO units in the Project will be subject to 65-year affordability covenants to be recorded against the Property in accordance with the Agreement; and

WHEREAS, the Housing Commission is purchasing the Property for \$8,000,000 with an additional \$1,908,460 for rehabilitation of the Property; and

WHEREAS, the Housing Commission is funding the acquisition and rehabilitation from the following sources: \$1,008,460 in local funds from the sale of the Mariner's Village property to the Housing Development Partners (HDP), \$4,100,000 of local redevelopment funds, and

\$4,800,000 from U.S. Department of Housing and Urban Development (HUD) Moving to Work (MTW) funds; and

WHEREAS, in accordance with California Health and Safety Code (Code) section 34340(a)(3), the Housing Authority of the City of San Diego (Housing Authority) held a public hearing on July 28, 2020, to consider the approval of the Project after publishing notice of the public hearing as specified in California Government Code section 6066; and

WHEREAS, the Housing Authority has considered any written evidence, public testimony, or both, received in support of or in opposition to the Project, as well as the entire record prepared by Housing Commission staff related to the matters addressed in this Resolution; NOW, THEREFORE,

BE IT RESOLVED, by the Housing Authority of the City of San Diego, as follows:

1. The Housing Authority finds and determines that all recitals set forth in this Resolution are true and correct and fully incorporated in this Resolution.
2. The President, Chief Executive Officer of the Housing Commission (President & CEO), and, if necessary, the Executive Director of the Housing Authority, or designee, is authorized to execute any documents and instruments that are necessary and appropriate to implement this Resolution, in a form approved by Housing Commission General Counsel and to take such actions necessary and appropriate to implement these approvals without further action of the Board of Commissioners of the Housing Commission (Housing Commission Board) or the Housing Authority.
3. The Housing Authority approves the Agreement and all other attachments and exhibits to the Agreement.

4. The President & CEO, or designee, is authorized and directed to sign the Agreement.
5. The President & CEO, or designee, is authorized to substitute approved funding sources with any other available funds as deemed appropriate, without further action by the Housing Authority or the Housing Commission Board, but only if and to the extent funds are determined to be available for such purposes and upon the advice of Housing Commission General Counsel.
6. The Housing Authority finds that the gap financing will provide housing for low and middle-income persons pursuant to Code section 34340(a)(4).

APPROVED: MARA W. ELLIOTT, General Counsel

By \_\_\_\_\_  
Katherine Anne Malcolm  
Deputy City Attorney

KAM:soc  
07/07/2020  
Or.Dept: Housing Authority  
Doc. No. 2421276



The City of San Diego  
**Item Approvals**

**Item Subject:** Hillcrest Inn – Property Acquisition.

<b>Contributing Department</b>	<b>Approval Date</b>
DOCKET OFFICE	07/10/2020

<b>Approving Authority</b>	<b>Approver</b>	<b>Approval Date</b>
HOUSING COMMISSION FINAL DEPARTMENT APPROVER	MARSHALL, SCOTT	06/30/2020
CITY ATTORNEY	MALCOLM, KATE	07/13/2020
EXECUTIVE VICE PRESIDENT	DAVIS, JEFF	07/13/2020