

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

**DATE ISSUED:** September 15, 2020

**REPORT NO:** HAR20-029

**ATTENTION:** Chair and Members of the Housing Authority of the City of  
For the Agenda of October 13, 2020

**SUBJECT:** Residence Inn Hotel Circle & Residence Inn Kearny Mesa— Property Acquisition

**COUNCIL DISTRICTS:** 3, 6 & 7

### **REQUESTED ACTION**

Approve the acquisition of Residence Inn Hotel Circle and Residence Inn Kearny Mesa under the 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) Ratify the execution of a Purchase and Sale Agreement (PSA) for the property located at 1865 Hotel Circle South, San Diego CA, 92108, (referred to as “Residence Inn Hotel Circle”), dated August 20, 2020, with the seller Chatham RIMV LLC;
- 2) Ratify the execution of the broker’s commission to Kidder Matthews in the amount of \$502,500 for Residence Inn Hotel Circle;
- 3) Authorize the San Diego Housing Commission’s (Housing Commission) President & Chief Executive Officer (President & CEO), or designee, upon satisfactory completion and evaluation of Residence Inn Hotel Circle, during the due diligence period to take such actions and perform such acts as are necessary to acquire Residence Inn Hotel Circle, a 5.06-acre property with improvements, for the price of \$67,000,000. Chatham RIMV LLC shall provide clear fee simple title upon acquisition of the property;
- 4) For Residence Inn Hotel Circle, ratify the funding of the refundable escrow deposit of \$250,000 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 November 17, 2020;
- 5) Authorize the Housing Commission’s President & CEO, or designee, to execute and record an affordability covenant against the Residence Inn Hotel Circle for 55 years, with 190 units remaining affordable at or below 80 percent of the San Diego Area Median Income (AMI) plus two unrestricted managers’ units, for a total of 192 units;

- 6) Authorize the purchase of the Residence Inn Hotel Circle, associated closing costs as well as remediation and upgrades to the property utilizing \$27,700,000 in State of California Department of Housing and Community Development (HCD) Homekey Program (Homekey) Funds; \$32,840,399 in a permanent loan from Chase Bank; \$928,174 in federal Moving to Work (MTW) funds; \$10,000,000 in federal Community Development Block Grant funds; and \$3,500,000 in a Deferred Developer Fee. HCD informed the Housing Commission that it has reserved \$27,700,000 in Homekey grant funds for the Housing Commission for the acquisition of Residence Inn Hotel Circle. However, in the unlikely event that such an HCD grant is not finally committed by HCD, this gap will be filled with \$27,700,000 in eligible funds from the City of San Diego. In addition, the Housing Commission's President & CEO, or designee, is hereby granted the authority to substitute alternative funds, provided that the amount of the substituted funding does not exceed the original funding amount(s), when in the best interests of the Housing Commission and when such funds are available, as referenced in this report;
- 7) Authorize the Housing Commission's President & CEO, or designee, to substitute approved funding sources for Residence Inn Hotel Circle 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;
- 8) Authorize the Housing Commission's 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 Residence Inn Hotel Circle on terms and conditions described in this report, as approved by General Counsel of the Housing Commission;
- 9) Approve all budgets associated with Residence Inn Hotel Circle. This includes the transfer and/or reallocation of funds between any and all funding use line items within the total approved development/project budget provided the total project/development budget amount after any and all transfers/reallocations does not exceed the previously approved budget total, in any instances when the operational need(s) arise and/or when such actions are to the benefit of the Housing Commission and its mission;
- 10) Ratify the execution of a PSA for the property located at 5400 Kearny Mesa Road, San Diego, CA 92111 (referred to as "Residence Inn Kearny Mesa"), dated July 20, 2020, with the seller RT San Diego, LLC;
- 11) Authorize the Housing Commission's President & CEO, or designee, upon satisfactory completion and evaluation of Residence Inn Kearny Mesa during the due diligence period to take such actions and perform such acts as are necessary to acquire Residence Inn Kearny Mesa, a 3.63-acre property with improvements for the price of \$39,500,000. RT San Diego, LLC shall provide clear fee simple titles upon acquisition of the property;
- 12) For Residence Inn Kearny Mesa, 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 November 17, 2020;

- 13) Authorize the Housing Commission's President & CEO, or designee, to execute and record an affordability covenant against the Residence Inn Kearny Mesa for 55 years, with 142 units remaining affordable at or below 80 percent of the San Diego Area Median Income (AMI) and two unrestricted managers' units, for a total of 144 units;
- 14) Authorize the purchase of the Residence Inn Kearny Mesa, associated closing costs as well as remediation and upgrades to the property utilizing \$10,000,000 in State Homekey Funds; \$17,425,852 in a permanent loan, from Chase Bank; \$6,594,517 in MTW funds; \$10,000,000 in City Coronavirus Aid, Relief, and Economic Security (CARES) Act Fund from the City of San Diego; and \$2,469,310 in a Deferred Developer Fee. The State Department of Housing and Community Development (HCD) informed the Housing Commission that it has reserved \$10,000,000 in Homekey grant funds for the Housing Commission for this property acquisition. However, in the unlikely event that such an HCD grant is not finally committed by HCD, this gap will be filled with an additional \$10,000,000 in CARES Act Funds from the City of San Diego. In addition, the Housing Commission's President & CEO, or designee, is hereby granted the authority to substitute alternative funds, provided that the amount of the substituted funding does not exceed the original funding amount(s), when in the best interests of the Housing Commission and when such funds are available, as referenced in this report;
- 15) Authorize the Housing Commission's President & CEO, or designee, to substitute approved funding sources for Residence Inn Kearny Mesa 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;
- 16) Authorize the Housing Commission's 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 Residence Inn Kearny Mesa on terms and conditions described in this report, as approved by General Counsel of the Housing Commission;
- 17) Approve all budgets associated with Residence Inn Kearny Mesa, as referenced within this report. This includes the transfer and/or reallocation of funds between any and all funding use line items within the total approved development/project budget provided the total project/development budget amount after any and all transfers/reallocations does not exceed the previously approved budget total, in any instances when the operational need(s) arise and/or when such actions are to the benefit of the Housing Commission and its mission.
- 18) Approve the execution of such funding agreements with the City of San Diego that may be necessary to allow for the acquisition of the Residence Inn Hotel Circle and Residence Inn Kearny Mesa properties, including but not limited to agreements to allow for the substitution of City of San Diego CARES Act Funding in the amount of \$10,000,000.00 in the unlikely event

that the reservation of \$10,000,000 in HCD Funds for the acquisition of the Residence Inn Kearny Mesa property is not finally awarded by HCD and to allow for the substitution of eligible funds from the City of San Diego in the amount of \$27,700,000 in the unlikely event that the reservation of \$27,700,000 in HCD funds for the acquisition of Residence Inn Hotel Circle is not finally awarded by HCD. Housing Commission staff anticipate these funds will be awarded, but because of timing issues to close the purchase of the properties this year, there is not sufficient time to bring another action item forward at a later date, which makes this approval of a substitute funding source necessary. This is also necessary to allow the Housing Commission to submit a Subsidy Lawyering Review (SLR) to the U.S. Department of Housing and Urban Development in a timely manner, which is a prerequisite to final funding from all federal sources of funds.

- 19) Authorize the execution of the First Amendment to the CDBG Affordable Housing Revolving Loan Fund Memorandum of Understanding (MOU) between the City of San Diego and the Housing Commission.

## **SUMMARY**

### **Background**

In response to the COVID-19 pandemic, the City of San Diego, in partnership with the Housing Commission, the County of San Diego, the Regional Task Force on the Homeless (RTFH) and the San Diego Convention Center launched Operation Shelter to Home (OSTH) on April 1, 2020, temporarily moving hundreds of those experiencing sheltered or unsheltered homelessness within the City to the Convention Center in an effort to prevent the spread of COVID-19 among people experiencing homelessness by achieving appropriate social distancing and providing access to a variety of sanitation and hygiene facilities. Many of those currently residing in the Convention Center are identified through the RTFH's Coordinated Entry System as needing long-term permanent housing with supportive services to successfully end their homelessness and provide the appropriate level of resources and supportive services to best meet their needs and ensure long-term tenancy stability. The acquisition of the hotels that are the subject of this report will provide permanent housing for some of those individuals currently being temporarily housed in the Convention Center.

The City of San Diego Community Action Plan on Homelessness, which was accepted by the City Council in October 2019, identified the need for an additional 2,659 units of permanent housing with supportive services in the next 10 years for individuals experiencing homelessness in the City of San Diego, with the need for 60 percent of those units (1,595) to be developed within the first four years.

In addition to the current crisis caused by the COVID-19 pandemic, the City adopted a Shelter Crisis resolution pursuant to Government Code Section 8698, et seq., which is currently operative. The Shelter Crisis Law was enacted in an effort to provide shelter and mitigate the effects of the ongoing housing emergency.

As the current situation represents a state of emergency, the Housing Commission has worked with a real estate broker to identify multiple potential hotel sites and has initiated extensive due diligence activities to vet items such as zoning, presence of potential environmental hazards, potential hazardous materials, immediate capital needs, pest control, and any immediate needs, including accessibility of

each site. The Housing Commission also obtained appraisals and market studies for each site. Due diligence allows the Housing Commission to identify the best candidates amid the preliminary hotel sites. The Housing Commission's review of 29 properties has resulted in the selection of the two candidates set forth herein.

### **Site Descriptions**

#### **Residence Inn Hotel Circle**

Residence Inn Hotel Circle is a 192-unit building located on a 5.06-acre site at 1865 Hotel Circle South (92108) in the Hotel Circle Neighborhood of Central San Diego (Attachment 1 – Location Maps).

Built in 2003, the property is currently used for short-term and long-term rentals. The site consists of two buildings with 152 one-bedroom/one-bath, 24 two-bedroom/one-bath, and 16 two-bedroom/two-bath units. Of the 40 two-bedroom units, two will be utilized as managers' units. All units have kitchenettes.

Community spaces at the site include laundry facilities, library, clubhouse, fitness center, barbecue grill area, and congregate eating area. One meeting room and seven staff offices also are on-site.

#### **Residence Inn Kearny Mesa**

Residence Inn Kearny Mesa is a 144-unit building located on a 3.63-acre site at 5400 Kearny Mesa Road (92111) in the Kearny Mesa Neighborhood of Central San Diego (Attachment 1 – Location Maps).

The property was built in 1990 and was renovated in 2013. It is currently used for short-term and long-term rentals. The site consists of 11 two-story buildings with 36 two-bedroom/two-bath units and 108 studios with private baths. Of the 36 two-bedroom units, two will be utilized as managers' units. All units have kitchenettes.

Community spaces at the site include laundry facilities, fitness center, clubhouse, barbecue grill area, tennis court, congregate eating area and ample green space. Two conference rooms and five staff offices also are on-site.

### **Rehabilitation Plan**

The properties will be acquired and undergo upgrades to fire and life safety systems, accessibility and path of travel, termite fumigation, and minimal remediation for issues identified on the physical needs assessments for each of the properties. No changes are currently planned to building and unit footprints or property use. There will be no new construction. A comprehensive renovation effort is not contemplated for these properties at this time.

### **Housing Affordability**

The Housing Commission has committed 190 federal Project-Based Housing Vouchers to Residence Inn Hotel Circle. This property has the capacity to provide housing for 228 individuals because 38 of the 190 available non-managers' units are two-bedroom units.

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## Residence Inn Hotel Circle and Residence Inn Kearny Mesa – Property Acquisition

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The Housing Commission has committed 142 federal Project-Based Housing Vouchers to Residence Inn Kearny Mesa. The property has the capacity to provide housing for 176 individuals because 34 of the 142 available non-managers' units are two-bedroom units. Hotel Circle.

### **Deal Terms**

#### **Residence Inn Hotel Circle**

The Housing Commission executed a PSA with Chatham RIMV LLC to allow staff to investigate the property during the due diligence period, which started on August 20, 2020, and is scheduled to expire on November 17, 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. This is a voluntary sale and is not a public taking of this property. The key PSA terms are:

Purchase Price:	The purchase price for Residence Inn Hotel Circle is \$67,000,000.
Due Diligence Period:	The due diligence period begins with the effective date of the PSA (August 20, 2020) and ends on November 17, 2020.
Broker's Commission:	The Broker's Commission will be paid by the Housing Commission via a separate agreement in the amount of \$502,500 (.75 percent).
Earnest Money Deposit:	The Housing Commission has placed a refundable deposit of \$250,000 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 December 17, 2020, it may be possible to close the Escrow earlier.

#### **Residence Inn Kearny Mesa**

The Housing Commission executed a PSA with RT San Diego, LLC to allow staff to investigate the property during the due diligence period, which started on July 20, 2020, and is scheduled to expire on November 17, 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. This is a voluntary sale and is not a public taking of this property. The key PSA terms are:

Purchase Price:	The purchase price for Residence Inn Kearny Mesa is \$39,500,000.
Due Diligence Period:	The due diligence period begins with the effective date of the PSA (July 20, 2020) and ends on November 17, 2020.
Broker's Commission:	The Broker's Commission will be paid by RT San Diego, LLC via a separate agreement in the amount of \$670,000 (1 percent). The Housing Commission will pay no part of this broker's commission, which will be paid by the seller.
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 January 17 2021. It should be noted, however that this escrow must and will close no later than December 30, 2020 because of HCD and CARES Act funding requirement. The current plan is to try to close both this escrow and the Hotel Circle escrow at approximately the same time.

### **Due Diligence**

As a public agency, and in compliance with the Housing Commission's acquisition policy, the Housing Commission performs rigorous due diligence inspections on a property prior to initiating acquisition activities. These due diligence activities are in compliance with the Housing Commission's Acquisition Policy and are summarized for each property below. The Housing Commission retained 17 consultants/vendors as follows: Chicago Title for preliminary title reviews; CBRE for market studies and appraisals; BASIS Architecture and Consulting (BASIS) and LDCo Inc. (general contractor) for Physical Needs Assessments; Alta, Land, Surveying for an ALTA survey; VM3 Environmental for inspections of hazardous materials; SCS Engineers for Phase I and II environmental reviews; Thrasher Termite and Pest Control and RED-E-Pest Prevention for insect and pest inspections; Cable, Pipe and Leak Detection (CPL) and GPS Plumbing for sewer line inspections; Atlantis Group Land Use Consultants and Zoning Research Group for zoning conformance; CPSI/Interwest for relocation planning; Ross Financial for Financial consulting; CVR Associates for subsidy layering review consulting; and HR&A Advisors for a review of all third-party reports and financial feasibility.

### **Residence Inn Hotel Circle Due Diligence**

**Appraisal** - CBRE 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 \$68,100,000 (\$354,688 per unit). This value is slightly higher than the asking purchase price of \$67,000,000 (\$348,958 per unit).

**Physical Needs Assessment** – BASIS and LDCo Inc. have 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 BASIS that summarizes the existing conditions of the property, determines the remaining useful life of the building's components, identifies immediate and short-term repairs, and provides estimates for the costs of upgrades. In addition, a crib wall located on the property is in need of repair and will be repaired in accordance with recommendations from Ninyo and Moore, a geotechnical firm.

**CEQA and NEPA** – Environmental reviews were conducted for Residence Inn Hotel Circle, 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 29 units (15%) and common areas for microbial growth, and asbestos. Elevated air samples were detected in only four of the 29 units inspected. 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. The elevated levels were found under sinks, and in one instance in adjacent flooring, which are common and capable of being remediated.

Several materials were tested for asbestos at the property, but no asbestos was detected.

Residence Inn Hotel Circle'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 & II 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. The report indicated there are no environmental concerns or needs for additional testing.

**Pest Inspections** - Thrasher Termite and Pest Control completed a drywood termite inspection of 24 units and common areas. One common exterior area was found to have evidence of drywood termites. The Housing Commission will use local spot treatment to the area that has evidence of drywood termites.

Red-E-Pest looked for other pests such as cockroaches, bed bugs, rodents, etc., and concluded there were no problems with pests.

**Sewer Lines**- Cable, Pipe and Leak Detection (CPL) performed video inspections on the interior and exterior sewer lines and determined the sewer lines were in good condition.

**Zoning Conformance** – Atlantis Group Land Use Consultants and Zoning Research Group evaluating the zoning conformance at Residence Inn Hotel Circle and found that it is in the Commercial Office CO-2-2 zone, which is intended to accommodate office uses that serve as an employment center. The CO-2-2 does not allow multifamily residential uses; however, the Visitor Accommodations use is allowed by-right. A Single-Room Occupancy (SRO) hotel use is considered a Visitor Accommodations use outside of the Coastal Overlay Zone. The SRO hotel use must meet the definition of efficiency unit in California Health and Safety Code section 17958.1. The City of San Diego Development Services Department has confirmed that the units meet or exceed the requirements for efficiency units per this section.

### **Residence Inn Kearny Mesa Due Diligence**

**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 \$39,600,000 (\$275,000 per unit). This value is slightly higher than the asking purchase price of \$39,500,000 (\$274,306 per unit).

**Physical Needs Assessment** – BASIS Architecture and Consulting (BASIS) 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 BASIS that summarizes the existing conditions of the property, determines the remaining useful life of the building's components, identifies immediate and short-term repairs, and provides estimates for the costs of upgrades. Per the report "The Subject Property appears to be in good condition. The building is well maintained."

**CEQA and NEPA** - Environmental reviews were conducted for Residence Inn Kearny Mesa, 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 24 units (17%) and common areas for microbial growth, and asbestos. Elevated air samples were detected in seven of the 24 units inspected. 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 on the exterior roof in the penetration mastic and sporadic patches near damaged roof shingles, which the lab results found to be "fair/non-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.

Residence Inn Kearny Mesa'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 & II Environmental Site Assessments** - 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. A Limited Soil Vapor Survey and Human Health Risk Screening was recommended due to the site's proximity to a gas station adjacent to the south. The Limited Soil Vapor Survey and Human Health Risk Screening results indicated that the type and concentrations of constituents of concern reported in soil vapor at the site are below residential screening levels, and would not be expected to pose any significant risk to humans from vapor intrusion.

**Pest Inspections** - Thrasher Termite and Pest Control completed a drywood termite inspection of 24 units and common areas. Some common exterior areas were found to have evidence of drywood termites. The Housing Commission will use local spot and/or tent treatment to the areas that had evidence of drywood termites.

Red-E-Pest looked for other pests such as cockroaches, bed bugs, rodents, etc., and concluded there were no problems with pests.

**Sewer Lines-** After GPS Plumbing jetted a portion of the blocked sewer lines, Cable, Pipe and Leak Detection (CPL) performed video inspections on the interior and exterior sewer lines and determined that they were in good condition.

**Zoning Conformance** – The existing use on the site is a hotel use, which is classified as Visitor Accommodations use in the San Diego Municipal Code (SDMC) use regulations. The Visitor Accommodations use on the site has previously conforming rights, pursuant to Chapter 12, Article 7, Division 1. A Single-Room Occupancy (SRO) hotel use is considered a Visitor Accommodations use outside of the Coastal Overlay Zone. Therefore, an SRO hotel use would be allowed on the site because it would retain the previously conforming rights, pursuant to SDMC Section 127.0107(a). The SRO hotel use must meet the definition of efficiency unit in California Health and Safety Code section 17958.1. The City of San Diego Development Services Department has confirmed that the units meet or exceed the requirements for efficiency units per this section.

The Housing Commission confirmed with City zoning staff that the Single-Room Occupancy (SRO) Hotel Use is considered a commercial services use, and that units may be occupied by more than two people, subject to minimum floor area requirements.

### **Program Operations**

The Housing Commission is seeking to implement a housing program initiative that leverages the opportunity to acquire hotels to secure sites to operate a supportive housing program model, including wraparound services, and client-centric property management at Residence Inn Hotel Circle and Residence Inn Kearny Mesa. The program will be targeted to persons previously experiencing homelessness, currently accessing Operation Shelter to Home. Referrals to and prioritization of available units will be determined by the Housing Commission in collaboration with the Regional Task Force on the Homeless, via the standardized Coordinated Entry System prioritization process.

The overall goals of the program align with the City’s Community Action Plan on Homelessness and the Housing Commission’s homelessness action plan, HOUSING FIRST – SAN DIEGO, to create a client-centered homeless assistance system and increase the production of/access to permanent housing solutions within the City.

Permanent housing with supportive services is an intensive, best practice intervention for addressing homelessness that combines permanent, subsidized housing with voluntary, wraparound supportive services, including case management for populations with disabilities and the most significant needs. Programs are operated according to a Housing First model, which recognizes the need to provide housing and shelter without preconditions, in conjunction with the provision of supportive services to ensure low-barrier entry into housing programs.

The program utilizes trauma-informed care to promote a culture of safety, empowerment, healing, and motivational interviewing, a client-centered approach to counseling and therapy, with the goals of increasing the person’s motivation and personal commitment to change. A harm reduction model, which does not require sobriety and addresses heavy drinking and/or drug use and its consequences, will also be utilized. The program design will effectively serve the target population in a welcoming and solutions-focused environment.

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The Housing Commission will contract supportive services via a Request for Qualifications that was issued in May 2020. The selected contractor for each property will also subcontract with qualified property management firms to oversee the safe and efficient day-to-day operation of the property. This includes leasing up the property, collecting rents, filling vacancies, handling maintenance and repair issues, and responding to tenant complaints. Property management works in partnership with the supportive service team to support tenants in remaining housed. Property management teams that understand the needs of the tenant population and focus on providing good customer service are critical to the success of a project that provides permanent housing with supportive services. This procurement for services and property management is being presented to the Housing Authority in a separate item, Report No. HAR20-032.

### **FISCAL CONSIDERATIONS**

The proposed Fiscal Year 2021 (FY) 2021 funding sources and uses included in this report were partially approved by the Housing Authority in the FY 2021 Housing Commission Budget. Approving this action increases the FY 2021 budget by \$97,966,251 for acquisition and \$4,026,389 for operations. Operating sources and uses have been prorated to eight months for FY 2021 based on an anticipated closing date in November or early December.

FY 2021 funding sources and uses approved by this action will be as follows, and it should be noted that funding to be provided by the City of San Diego, is referenced within the Funding Agreements for each of the properties:

#### **Acquisition**

##### **FY21 Acquisition Funding Sources:**

	<b>Hotel Circle</b>	<b>Kearny Mesa</b>	<b>Total</b>
Federal Funds	\$ 10,928,174	\$ 16,594,517	\$ 27,522,691
State Funds	27,700,000	10,000,000	37,700,000
Local Funds - First Mortgage	<u>32,840,399</u>	<u>17,425,852</u>	<u>50,266,251</u>
<b>Total Sources</b>	<b>71,468,573</b>	<b>44,020,369</b>	<b>115,488,942</b>

##### **FY21 Acquisition Funding Uses:**

Acquisition Costs & Capital Improvements	<u>71,468,573</u>	<u>44,020,369</u>	<u>115,488,942</u>
<b>Total Uses</b>	<b>\$ 71,468,573</b>	<b>\$ 44,020,369</b>	<b>\$ 115,488,942</b>

#### **Operations**

##### **FY21 Operations Funding Sources:**

	<b>Hotel Circle</b>	<b>Kearny Mesa</b>	<b>Total</b>
Local Funds (Rental Income)	\$ <u>2,463,753</u>	\$ <u>1,562,636</u>	\$ <u>4,026,389</u>
<b>Total Sources</b>	<b>2,463,753</b>	<b>1,562,636</b>	<b>4,026,389</b>

##### **FY21 Operations Funding Uses:**

Property Expenses	1,281,965	927,129	2,209,094
Debt Service	1,143,388	606,707	1,750,095
Reserves	<u>38,400</u>	<u>28,800</u>	<u>67,200</u>
<b>Total Uses</b>	<b>\$ 2,463,753</b>	<b>\$ 1,562,636</b>	<b>\$ 4,026,389</b>

The State Department of Housing and Community Development (HCD) informed the Housing Commission that it has reserved \$10,000,000 in Homekey grant funds for the Housing Commission for the Kearny Mesa property acquisition. However, in the unlikely event that such an HCD grant is not awarded, this gap will be filled with \$10,000,000 in CARES Act Funds from the City of San Diego. In

addition, the actions in this report grant the Housing Commission’s President & CEO, or designee, the authority to substitute alternative funds, without further action by the Housing Commission Board or the Housing Authority, but only if and to the extent that funds are determined to be available for such purposes and provided that the amount of the substituted funding does not exceed the original funding amount(s), when in the best interests of the Housing Commission and when such funds are available, as referenced in this report. “Available” funding as referenced in the staff recommendations includes any funds referenced in reserves in the Housing Authority-approved FY 2021 Housing Commission Budget.

HCD also informed the Housing Commission that it has reserved \$27,700,000 in Homekey grant funds for the Housing Commission for the Hotel Circle property acquisition. However, in the unlikely event that such an HCD grant is not finally awarded by HCD, this gap will be filled with \$27,700,000 in eligible funds from the City of San Diego. In addition, the actions in this report grant the Housing Commission’s President & CEO, or designee, the authority to substitute alternative funds, provided that the amount of the substituted funding does not exceed the original funding amount(s), when in the best interests of the Housing Commission and when such funds are available, as referenced in this report. “Available” funding as referenced in the staff recommendations includes any funds referenced in reserves in the Housing Authority-approved FY 2021 Housing Commission Budget.

Developers’ Fee

\$3,500,000 – gross developer fee – Residence Inn Hotel Circle

-3,500,000 – deferred developer fee – Residence Inn Hotel Circle

\$ 0 – net cash developer fee

\$2,469,310 – gross developer fee – Residence Inn Kearny Mesa

-2,469,310 – deferred developer fee – Residence Inn Kearny Mesa

\$ 0 – net cash developer fee

The Housing Commission is deferring the entire allowable developer fee for the acquisition of these properties. The developer fees are consistent with the Housing Authority of the City of San Diego’s April 25, 2017, approval of the Housing Commission’s Request for Approval of Updated Developer Fees (Report No. HAR17-011 and Resolution No. HA-1727).

**COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS**

Council Offices for each of the Council Districts in which the properties are located have been informed of the potential acquisition of units.

County leadership and State officials from HCD and Governor Gavin Newsom’s office have been informed of the proposed acquisition of hotel properties to create permanent housing solutions for San Diegans experiencing homelessness.

On July 21, 2020, information about the Housing Commission and the City of San Diego working together to acquire hotel properties to increase access to permanent housing solutions, including the application for State Homekey funds, was presented to the Leadership Council of the City of San Diego’s Community Action Plan on Homelessness.

City of San Diego Economic Development Department staff will be presenting information about the proposed hotel acquisitions to the City of San Diego’s Consolidated Plan Advisory Board.

## **KEY STAKEHOLDERS and PROJECTED IMPACTS**

Key stakeholders for these potential acquisitions include the sellers of the properties, the Housing Commission, the Hotel Circle and Kearny Mesa communities, the City of San Diego, and some individuals/households experiencing homelessness currently residing in the Convention Center.

## **ENVIRONMENTAL REVIEW**

Each of the proposed acquisitions and rehabilitations of Residence Inn Hotel Circle and Residence Inn Kearny Mesa are 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. Residence Inn Hotel Circle and Residence Inn Kearny Mesa are existing facilities 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 NEPA 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,

Approved by,



Pari Zaker  
Vice President of Real Estate Development  
Real Estate Division



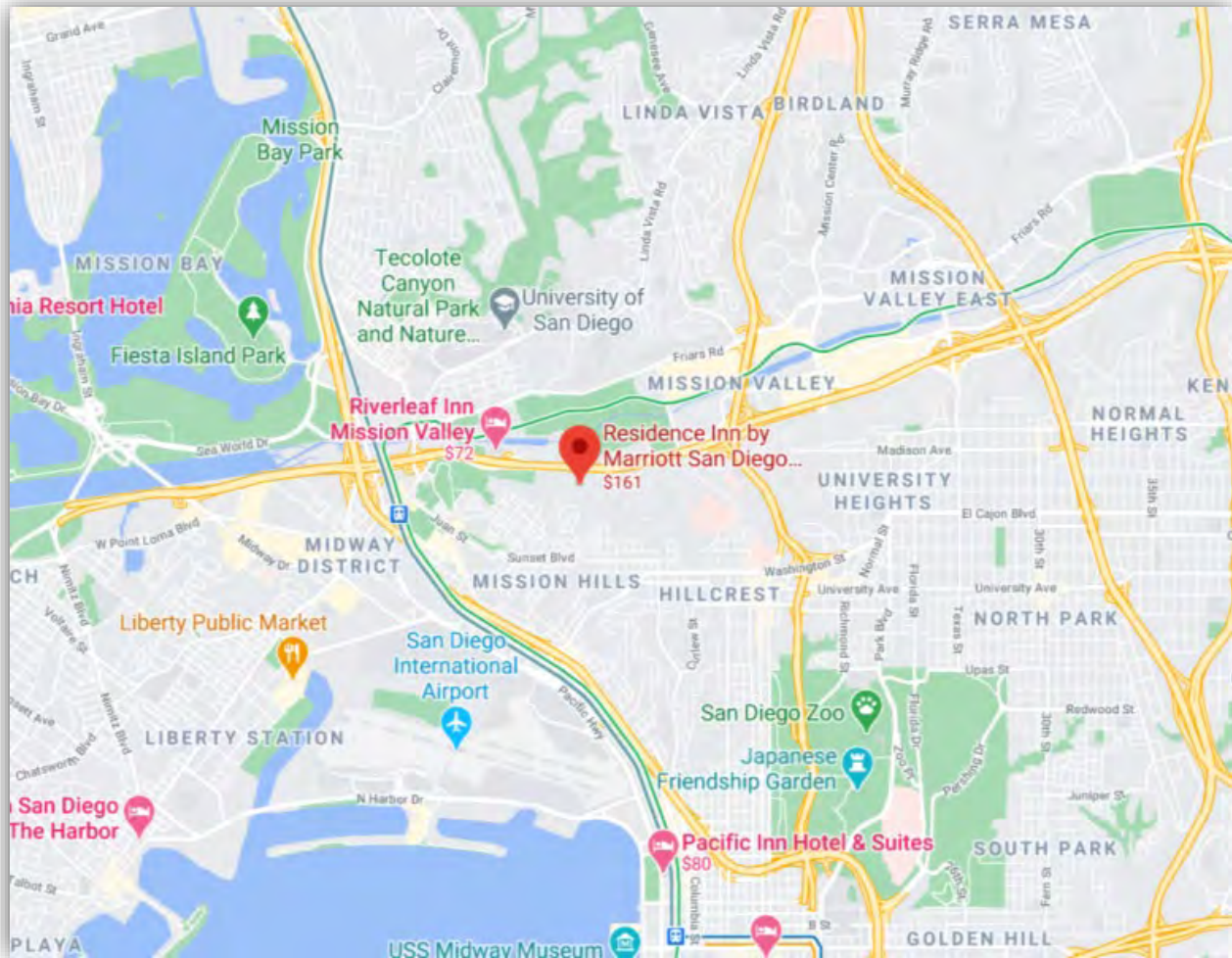
Jeff Davis  
Executive Vice President & Chief of Staff  
San Diego Housing Commission

Attachments: 1) Location Maps  
2) Pro formas  
3) PSA Hotel Circle  
4) PSA Kearny Mesa  
5) Funding Agreement Kearny Mesa  
6) First Amendment to MOU for CDBG Affordable Housing Revolving Loan Fund

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

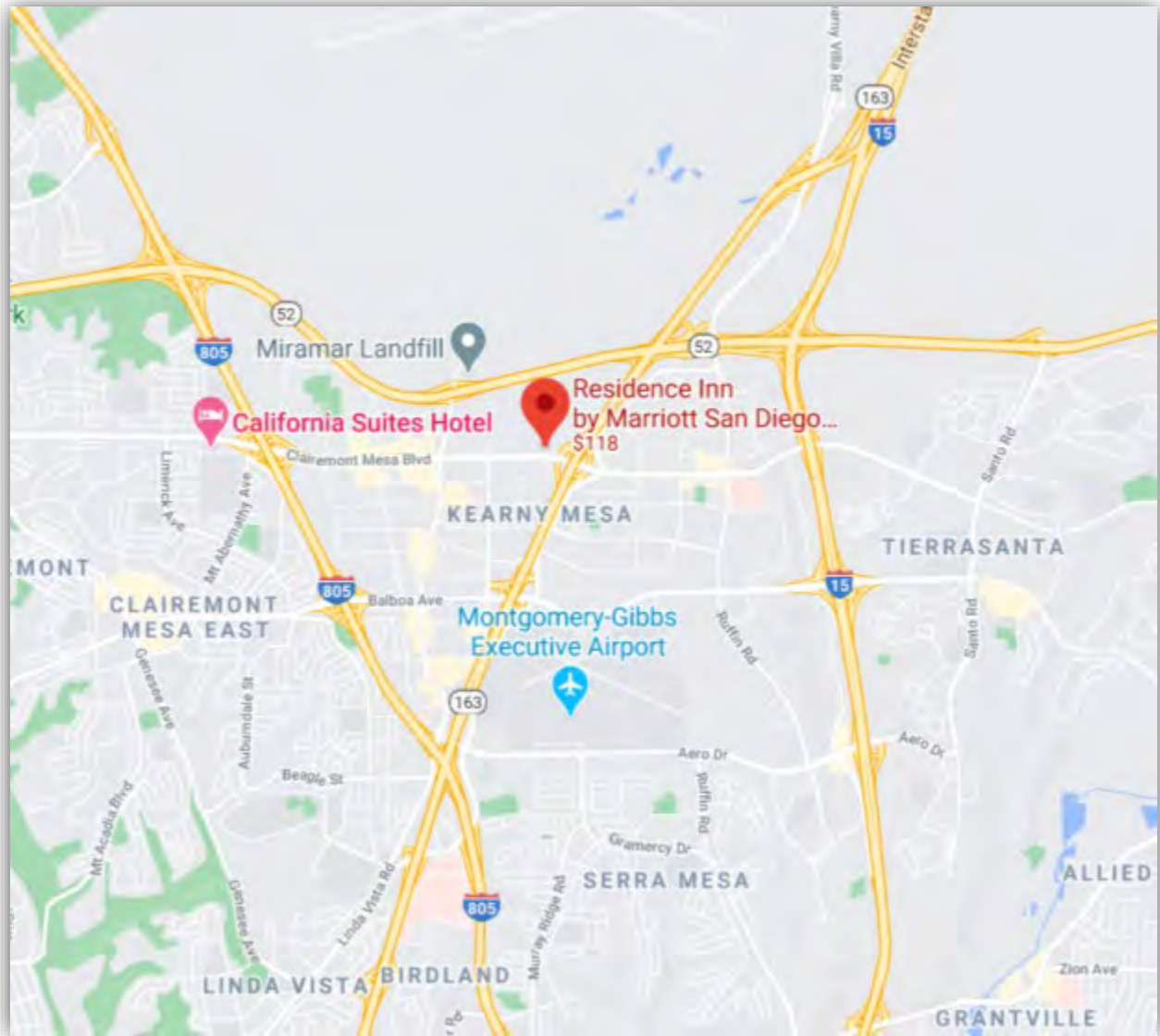
## Attachment 1a: Location Maps

Residence Inn Hotel Circle  
1865 Hotel Circle South, San Diego, CA 92108



## Attachment 1b: Location Maps

Residence Inn Kearny Mesa  
5400 Kearny Mesa Road, San Diego, CA 92111





## Residence Inn - Hotel Circle

Draft Date: 09/15/2020 - 7:01 AM

## SECTION 1: PROJECT INFORMATION AND ACQUISITION ASSUMPTIONS

## GENERAL PROJECT INFORMATION

Project Name **Residence Inn - Hotel Circle**  
 Purchase Price **\$67,000,000**  
 Project Address **1865 Hotel Circle South, San Diego CA**  
 Year Built **2003**  
 Total Units **192**  
 MSA **San Diego County**  
 Area Media Income  
 Project Type  
 Prospected Owner Entity **SDHC**

## BUILDING AREA

Gross Building Square Footage - sf

## LAND SQUARE FOOTAGE

Land - sf

## Subtotal Commercial SF

Parking Structure 0 Spaces @ 390 sf per space - sf

On Grade Parking 0 Spaces @ 300 sf per space - sf

Subtotal Parking SF - sf

Approximate Gross Building Area - sf

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

## RESIDENTIAL INCOME

Bedroom Type	Number of Units	% of Total	Net Area (SF)	Gross Square Feet	Section 8 Payment Standard	Utility Allowance	Max Rent	Monthly Income	Annual Income
PSH Studio	0	0.0%		0	\$1,453	\$0	\$1,453	\$0	\$0
PSH One Bedroom	152	79.2%		0	\$1,610	\$0	\$1,610	\$244,720	\$2,936,640
PSH Two Bedroom	38	19.8%		0	\$2,091	\$0	\$2,091	\$79,458	\$953,496
Manager Two Bedroom	2	1.0%	202	404	\$0	\$0	\$0	\$0	\$0
Total/Average	192	100.0%	2	404	\$0	\$0.00	\$1,688	\$324,178	\$3,890,136

## COMMERCIAL INCOME (NNN)

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

## OTHER INCOME

Residential	\$/unit/Month	Monthly	Annual
Parking Income	\$0.00	\$0	\$0
Storage Income	\$0.00	\$0	\$0
Laundry Income	\$0.00	\$0	\$0
Fees and Charges	\$0.00	\$0	\$0
Other	\$0.00	\$0	\$0
Total other income/month	\$0.00	\$0	\$0

## ESCALATORS &amp; VACANCY

Item	Rate
Escalator for Income	2.5%
Escalator for Expenses	3.5%
Escalator for P'ship Expenses	3.0%
Escalator for Misc Expenses	0.0%
Residential Vacancy	5.0%

## SECTION 3: EXPENSES

Category	PUPA	Total Annual
Admin	\$1,588 per unit	\$304,907
Utilities	\$2,591 per unit	\$497,445
Maintenance	\$2,499 per unit	\$479,715
Insurance/Taxes	\$703 per unit	\$135,057
Compliance Monitoring	\$0 per unit	\$0
Replacement Reserves	\$300 per unit	\$57,600
Supportive Services	\$1,295 per unit	\$248,561
Total Expenses	\$8,975	\$1,723,285

## SECTION 4: PROJECT MILESTONES

Approval Milestones	Date

## SECTION 5: ASSUMPTIONS

Waterfall Assumptions

## SECTION 6: FINANCING SOURCE ASSUMPTIONS

## RESERVED (PERM LOAN)

DCR	1.15
Amort (Years)	30
All-in Rate	3.25%
Annual PMT	1,715,082
Perm Loan Amt	\$32,840,399
	32840399

## SOFT FUNDING TBD

Principal	\$0
Interest (Simple)	3.00%
Term	55
Annual Payment	Residual Rec.

## SOFT FUNDING TBD

Principal	\$0
Interest (Simple)	3.00%
Term	55
Annual Payment	Residual Rec.

## SOFT FUNDING TBD

Principal	\$0
Interest (Simple)	3.00%
Term	55
Annual Payment	Residual Rec.

## RESERVED (CONSTRUCTION LOAN)

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## RESERVED (LIHTC EQUITY)

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## ACQUIRED RESERVES

Existing Reserves	\$0
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## RESERVED (PAY-IN SCHEDULE)

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## SECTION 7: QUICK LOOK SUMMARY

Operating Summary	Total	Per Unit	% of EG
Gross Rental Income	\$3,890,136	\$20,261	
Other Income	\$0	\$0	
(Less) Vacancy @ 5%	(\$194,507)	(\$1,013)	
Effective Gross	\$3,695,629	\$19,248	
Commercial Income	\$0	\$0	
(Less) Vacancy @ 0%	\$0	\$0	
Total Gross	\$3,695,629	\$19,248	
(Less) Operating Exp	(\$1,723,285)	(\$8,975)	
(Less) Other Expenses	\$0	\$0	
Net Operating Income	\$1,972,344	\$10,273	
(Less) Debt Service	(\$1,715,082)	(\$8,933)	
Net Cash Flow	\$257,262	\$1,340	

## Developer Fee Installments

Total Developer Fee	

Sources:	Total	Per Unit	% of Total
STATE HCD FUNDS	\$27,700,000	\$144,271	36.9%
PERM LOAN	\$32,840,399	\$171,044	43.8%
MTW FUNDING	\$928,174	\$4,834	1.2%
CDBG	\$10,000,000	\$52,083	13.3%
DEFERRED DEVELOPER FEE	\$3,500,000	\$18,229	4.7%
GAP	\$0	\$0	0.0%
Total Sources	\$74,968,573	\$390,461	100%

Uses:	Total	Per Unit	% of Total
ACQUISITION COSTS	\$67,000,000	\$348,958	89.4%
HARD COSTS	\$1,224,960	\$6,380	1.6%
PERMITS & FEES	\$36,749	\$191	0.0%
A&E	\$61,248	\$319	0.1%
THIRD PARTY REPORTS	\$212,501	\$1,107	0.3%
FINANCING COSTS	\$430,904	\$2,244	0.6%
RESERVES	\$1,386,413	\$7,221	1.8%
OTHER SOFT COSTS	\$1,115,798	\$5,811	1.5%
DEVELOPER FEE	\$3,500,000	\$18,229	4.7%
Total Uses	\$74,968,573	\$390,461	100.0%



## Residence Inn - Hotel Circle

### DEVELOPMENT COSTS

	Unit Cost	Total	Per Unit	% of Total
<b>ACQUISITION COSTS</b>				
1010 ACQUISITION COSTS	\$67,000,000	\$67,000,000	\$348,958	89.4%
1015 ESCROW DEPOSIT - Refundable		\$0	\$0	0.0%
<b>TOTAL ACQUISITION &amp; CLOSING COSTS</b>		\$67,000,000	\$348,958	89.4%
<b>HARD COSTS</b>				
2030 REHABILITATION (RESIDENTIAL) Prevail. Wage	\$5,000	\$960,000	\$5,000	1.3%
2045 GENERAL CONDITIONS/REQUIREMENTS	6.00%	\$57,600	\$300	0.1%
2050 GENERAL CONTRACTOR FEE (OHP)	8.00%	\$76,800	\$400	0.1%
2055 BONDING & INSURANCE	2.00%	\$19,200	\$100	0.0%
2060 HARD COST CONTINGENCY (OWNER)	10.00%	\$111,360	\$580	0.1%
<b>TOTAL HARD COSTS</b>		\$1,224,960	\$6,380	1.6%
<b>PERMITS &amp; FEES</b>				
3030 MUNICIPAL	3.00%	\$36,749	\$191	0.0%
<b>TOTAL PERMITS &amp; FEES</b>		\$36,749	\$191	0.0%
<b>ARCHITECTURE &amp; ENGINEERING</b>				
4005 ARCHITECT	5.00%	\$61,248	\$319	0.1%
<b>TOTAL ARCHITECTURE &amp; ENGINEERING</b>		\$61,248	\$319	0.1%
<b>THIRD PARTY REPORTS</b>				
5005 APPRAISAL	\$6,000	\$6,000	\$31	0.0%
5010 MARKET STUDY	\$6,500	\$6,500	\$34	0.0%
5020 ENVIRONMENTAL (PH1 & PH2)	\$15,000	\$15,000	\$78	0.0%
5025 PHYSICAL NEEDS ASSESSMENT	\$6,800	\$6,800	\$35	0.0%
5035 ALTA SURVEY	\$12,400	\$12,400	\$65	0.0%
5040 OTHER CONSULTANTS	\$59,003	\$59,003	\$307	0.1%
5040 OTHER TECHNICAL REPORTS	\$87,480	\$87,480	\$456	0.1%
8075 THIRD PARTY REPORT CONTINGENCY	10.00%	\$19,318	\$101	0.0%
<b>TOTAL DILIGENCE COSTS</b>		\$212,501	\$1,107	0.3%
<b>FINANCING COSTS</b>				
6130 PERM LOAN FEE	1%	\$328,404	\$1,710	0.4%
6115 LENDER DUE DILIGENCE / LEGAL / OTHER FEES	\$50,000	\$50,000	\$260	0.1%
6405 SDHC FEES	\$27,500	\$27,500	\$143	0.0%
6135 SDHC LOAN LEGAL	\$25,000	\$25,000	\$130	0.0%
<b>TOTAL FINANCING COSTS</b>		\$430,904	\$2,244	0.6%
<b>RESERVES</b>				
7005 REPLACEMENT RESERVE - INITIAL DEPOSIT	\$500	\$96,000	\$500	0.1%
7010 LEASE UP RESERVE	3	\$859,592	\$4,477	1.1%
7010 OPERATING RESERVE	3	\$430,821	\$2,244	0.6%
<b>TOTAL RESERVES</b>		\$1,386,413	\$7,221	1.3%

## Residence Inn - Hotel Circle

### DEVELOPMENT COSTS

	Unit Cost	Total	Per Unit	% of Total
<b>OTHER SOFT COSTS</b>				
8020 LEGAL - DEVELOPER	\$50,000	\$50,000	\$260	0.1%
8035 ACCOUNTING/COST CERT	\$16,000	\$16,000	\$83	0.0%
8037 BANK FEES	\$12,000	\$12,000	\$63	0.0%
8045 RELOCATION COSTS	\$50,000	\$50,000	\$260	0.1%
8045 RELOCATION STUDY	\$15,000	\$15,000	\$78	0.0%
8055 PREPAID INSURANCE	\$100,000	\$100,000	\$521	0.1%
8060 TITLE/ESCROW/RECORDING/TRANSFER TAX	\$100,000	\$100,000	\$521	0.1%
8065 REAL ESTATE TAXES	\$0	\$0	\$0	0.0%
8060 BROKER COMMISSION	\$502,500	\$502,500	\$2,617	0.7%
8087 LABOR COMPLIANCE	\$12,862	\$12,862	\$67	0.0%
8085 BORROWER FINANCIAL ANALYST	\$35,000	\$35,000	\$182	0.0%
8030 FF&E - RESIDENTIAL	\$500	\$96,000	\$500	0.1%
8080 FF&E - COMMON AREA	\$25,000	\$25,000	\$130	0.0%
8075 SOFT COST CONTINGENCY	10.00%	\$101,436	\$528	0.1%
<b>TOTAL OTHER SOFT COSTS</b>		\$1,115,798	\$5,811	1.5%
<b>DEVELOPER FEE</b>				
9005 DEVELOPER FEE	5%	\$3,350,000	\$17,448	4.5%
9010 DEVELOPER FEE ON REHAB	15%	\$397,688.46	\$2,071	0.5%
<b>TOTAL DEVELOPER FEE</b>		\$3,500,000	\$18,229	4.7%
<b>GRAND TOTAL DEVELOPMENT COSTS</b>		<b>\$74,968,573</b>	<b>\$390,461</b>	<b>99.4%</b>

Residence Inn - Hotel Circle															
Cash Flow Analysis 1.1															
OPERATING BUDGET	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
GROSS RENTAL INCOME	3,890,136	3,987,389	4,087,074	4,189,251	4,293,982	4,401,332	4,511,365	4,624,149	4,739,753	4,858,247	4,979,703	5,104,196	5,231,800	5,362,595	5,496,660
Other Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
(Less) Vacancy @ 5%	(194,507)	(199,369)	(204,354)	(209,463)	(214,699)	(220,067)	(225,568)	(231,207)	(236,988)	(242,912)	(248,985)	(255,210)	(261,590)	(268,130)	(274,833)
EFFECTIVE GROSS INCOME	3,695,629	3,788,020	3,882,720	3,979,788	4,079,283	4,181,265	4,285,797	4,392,942	4,502,765	4,615,334	4,730,718	4,848,986	4,970,210	5,094,466	5,221,827
Commercial Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL GROSS INCOME	3,695,629	3,788,020	3,882,720	3,979,788	4,079,283	4,181,265	4,285,797	4,392,942	4,502,765	4,615,334	4,730,718	4,848,986	4,970,210	5,094,466	5,221,827
(Less) Total Operating Expenses	(1,723,285)	(1,783,600)	(1,846,026)	(1,910,637)	(1,977,509)	(2,046,722)	(2,118,357)	(2,192,500)	(2,269,237)	(2,348,661)	(2,430,864)	(2,515,944)	(2,604,002)	(2,695,142)	(2,789,472)
NET OPERATING INCOME	1,972,344	2,004,420	2,036,694	2,069,152	2,101,774	2,134,543	2,167,440	2,200,442	2,233,528	2,266,674	2,299,854	2,333,042	2,366,208	2,399,324	2,432,355
(Less) Debt Service	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)
NET PROJECT CASH FLOW	257,262	289,338	321,613	354,070	386,692	419,461	452,358	485,360	518,446	551,592	584,772	617,960	651,127	684,242	717,273
DCR	(1.15)	(1.17)	(1.19)	(1.21)	(1.23)	(1.24)	(1.26)	(1.28)	(1.30)	(1.32)	(1.34)	(1.36)	(1.38)	(1.40)	(1.42)
CASH WATERFALL															
DEFERRED DEVELOPER FEE															
Beginning Balance	3,500,000	3,242,738	2,953,400	2,631,787	2,277,717	1,891,025	1,471,564	1,019,206	533,846	15,400	-	-	-	-	-
Interest on Deferred Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
(Less) Developer Fee PMT	(257,262)	(289,338)	(321,613)	(354,070)	(386,692)	(419,461)	(452,358)	(485,360)	(518,446)	(15,400)	-	-	-	-	-
Developer Fee Balance	3,242,738	2,953,400	2,631,787	2,277,717	1,891,025	1,471,564	1,019,206	533,846	15,400	-	-	-	-	-	-
Remaining Cash Flow	-	-	-	-	-	-	-	-	-	536,192	584,772	617,960	651,127	684,242	717,273

Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
5,634,077	5,774,929	5,919,302	6,067,285	6,218,967	6,374,441	6,533,802	6,697,147	6,864,576	7,036,190	7,212,095	7,392,397	7,577,207	7,766,637	7,960,803
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
(281,704)	(288,746)	(295,965)	(303,364)	(310,948)	(318,722)	(326,690)	(334,857)	(343,229)	(351,809)	(360,605)	(369,620)	(378,860)	(388,332)	(398,040)
5,352,373	5,486,182	5,623,337	5,763,920	5,908,018	6,055,719	6,207,112	6,362,290	6,521,347	6,684,380	6,851,490	7,022,777	7,198,347	7,378,305	7,562,763
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5,352,373	5,486,182	5,623,337	5,763,920	5,908,018	6,055,719	6,207,112	6,362,290	6,521,347	6,684,380	6,851,490	7,022,777	7,198,347	7,378,305	7,562,763
(2,887,103)	(2,988,152)	(3,092,737)	(3,200,983)	(3,313,018)	(3,428,973)	(3,548,987)	(3,673,202)	(3,801,764)	(3,934,826)	(4,072,545)	(4,215,084)	(4,362,612)	(4,515,303)	(4,673,339)
2,465,269	2,498,030	2,530,599	2,562,937	2,595,001	2,626,745	2,658,124	2,689,088	2,719,583	2,749,555	2,778,945	2,807,694	2,835,735	2,863,002	2,889,424
(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)	(1,715,082)
750,188	782,948	815,518	847,855	879,919	911,664	943,042	974,006	1,004,501	1,034,473	1,063,863	1,092,612	1,120,653	1,147,920	1,174,342
(1.44)	(1.46)	(1.48)	(1.49)	(1.51)	(1.53)	(1.55)	(1.57)	(1.59)	(1.60)	(1.62)	(1.64)	(1.65)	(1.67)	(1.68)
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
750,188	782,948	815,518	847,855	879,919	911,664	943,042	974,006	1,004,501	1,034,473	1,063,863	1,092,612	1,120,653	1,147,920	1,174,342

## Residence Inn - Kearny Mesa

Draft Date: 09/15/2020 - 6:44 AM

## SECTION 1: PROJECT INFORMATION AND ACQUISITION ASSUMPTIONS

## GENERAL PROJECT INFORMATION

Project Name	Residence Inn - Kearny Mesa
Purchase Price	\$39,500,000
Project Address	5400 Kearny Mesa Road
Year Built	1990
Total Units	144
MSA	San Diego County
Area Media Income	
Project Type	
Prospected Owner Entity	SDHC

## BUILDING AREA

Gross Building Square Footage	-	sf
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## LAND SQUARE FOOTAGE

Land	-	sf
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## Subtotal Commercial SF

Parking Structure	0 Spaces @ 390	sf per space	-	sf
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On Grade Parking	0 Spaces @ 300	sf per space	-	sf
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## Subtotal Parking SF

	-	sf
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## Approximate Gross Building Area

	-	sf
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## SECTION 2: UNIT MIX &amp; PROJECT INCOME

## RESIDENTIAL INCOME

Bedroom Type	Number of Units	% of Total	Net Area (SF)	Gross Square Feet	Section 8 Payment Standard	Utility Allowance	Max Rent	Monthly Income	Annual Income
PSH Studio	108	75.5%		0	\$1,311	\$0	\$1,311	\$141,588	\$1,699,056
PSH One Bedroom	0	0.0%		0	\$0	\$0	\$0	\$0	\$0
PSH Two Bedroom	34	23.6%		0	\$1,883	\$0	\$1,883	\$64,022	\$768,264
Manager Two Bedroom	2	1.4%	202	404	\$0	\$0	\$0	\$0	\$0
Total/Average	144	100.5%	3	404	\$0	\$0.00	\$1,428	\$205,610	\$2,467,320

## COMMERCIAL INCOME (NNN)

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

## OTHER INCOME

Residential	\$/unit/Month	Monthly	Annual
Parking Income	\$0.00	\$0	\$0
Storage Income	\$0.00	\$0	\$0
Laundry Income	\$0.00	\$0	\$0
Fees and Charges	\$0.00	\$0	\$0
Other	\$0.00	\$0	\$0
Total other income/month	\$0.00	\$0	\$0

## ESCALATORS &amp; VACANCY

Item	Rate
Escalator for Income	2.5%
Escalator for Expenses	3.5%
Escalator for P'ship Expenses	3.0%
Escalator for Misc Expenses	0.0%
Residential Vacancy	5.0%

## SECTION 3: EXPENSES

Category	PUPA	Total Annual
Admin	\$1,546 per unit	\$222,634
Utilities	\$2,688 per unit	\$387,000
Maintenance	\$2,580 per unit	\$371,514
Insurance/Taxes	\$1,371 per unit	\$197,448
Compliance Monitoring	\$0 per unit	\$0
Replacement Reserves	\$300 per unit	\$43,200
Supportive Services	\$525 per unit	\$75,588
Total Expenses	\$9,010	\$1,297,384

## SECTION 4: PROJECT MILESTONES

Approval Milestones	Date

## SECTION 5: ASSUMPTIONS

Waterfall Assumptions
Other Assumptions

## SECTION 6: FINANCING SOURCE ASSUMPTIONS

## RESERVED (PERM LOAN)

DCR	1.15
Amort (Years)	30
All-in Rate	3.25%
Annual PMT	910,061
Perm Loan Amt	\$17,425,852

## RESERVED (CONSTRUCTION LOAN)


## RESERVED (LIHTC EQUITY)


## ACQUIRED RESERVES

Existing Reserves	\$0
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## RESERVED (PAY-IN SCHEDULE)


## TBD SOFT FUNDING

Principal	\$0
Interest (Simple)	3.00%
Term	55
Annual Payment	Residual Rec.

## SOFT FUNDING TBD

Principal	\$0
Interest (Simple)	3.00%
Term	55
Annual Payment	Residual Rec.

## SOFT FUNDING TBD

Principal	\$0
Interest (Simple)	3.00%
Term	55
Annual Payment	Residual Rec.

## SECTION 7: QUICK LOOK SUMMARY

## Operating Summary

	Total	Per Unit	% of EGI
Gross Rental Income	\$2,467,320	\$17,134	
Other Income	\$0	\$0	
(Less) Vacancy @ 5%	(\$123,366)	(\$857)	
Effective Gross	\$2,343,954	\$16,277	
Commercial Income	\$0	\$0	
(Less) Vacancy @ 0%	\$0	\$0	
Total Gross	\$2,343,954	\$16,277	
(Less) Operating Exp	(\$1,297,384)	(\$9,010)	
(Less) Other Expenses	\$0	\$0	
Net Operating Income	\$1,046,570	\$7,268	
(Less) Debt Service	(\$910,061)	(\$6,320)	
Net Cash Flow	\$136,509	\$948	

## Developer Fee Installments

Closing		
25% Completion		
50% Completion		
75% Completion		
100% Completion		
8609s		
Deferred		
Total Developer Fee		0%

## Sources:

	Total	Per Unit	% of Total
STATE HCD FUNDS	\$10,000,000	\$69,444	21.5%
PERM LOAN	\$17,425,852	\$121,013	37.5%
MTW FUNDING	\$6,594,517	\$45,795	14.2%
CITY CARES ACT FUNDS	\$10,000,000	\$69,444	21.5%
DEFERRED DEVELOPER FEE	\$2,469,310	\$17,148	5.3%
GAP	\$0	\$0	0.0%
Total Sources	\$46,489,679	\$322,845	100%

## Uses:

	Total	Per Unit	% of Total
ACQUISITION COSTS	\$39,500,000	\$274,306	85.0%
HARD COSTS	\$2,388,672	\$16,588	5.1%
PERMITS & FEES	\$71,660	\$498	0.2%
A&E	\$119,434	\$829	0.3%
THIRD PARTY REPORTS	\$170,074	\$1,181	0.4%
FINANCING COSTS	\$276,759	\$1,922	0.6%
RESERVES	\$948,207	\$6,585	2.0%
OTHER SOFT COSTS	\$545,563	\$3,789	1.2%
DEVELOPER FEE	\$2,469,310	\$17,148	5.3%
Total Uses	\$46,489,679	\$322,845	100.0%

## Residence Inn - Kearny Mesa

### DEVELOPMENT COSTS

	Unit Cost	Total	Per Unit	% of Total
<b>ACQUISITION COSTS</b>				
1010 ACQUISITION COSTS	\$39,500,000	\$39,500,000	\$274,306	85.0%
1015 ESCROW DEPOSIT - Refundable		\$0	\$0	0.0%
<b>TOTAL ACQUISITION &amp; CLOSING COSTS</b>		\$39,500,000	\$274,306	85.0%
<b>HARD COSTS</b>				
2030 REHABILITATION (RESIDENTIAL) Prevail. Wage	\$13,000	\$1,872,000	\$13,000	4.0%
2045 GENERAL CONDITIONS/REQUIREMENTS	6.00%	\$112,320	\$780	0.2%
2050 GENERAL CONTRACTOR FEE (OHP)	8.00%	\$149,760	\$1,040	0.3%
2055 BONDING & INSURANCE	2.00%	\$37,440	\$260	0.1%
2060 HARD COST CONTINGENCY (OWNER)	10.00%	\$217,152	\$1,508	0.5%
<b>TOTAL HARD COSTS</b>		\$2,388,672	\$16,588	5.1%
<b>PERMITS &amp; FEES</b>				
3030 MUNICIPAL	3.00%	\$71,660	\$498	0.2%
<b>TOTAL PERMITS &amp; FEES</b>		\$71,660	\$498	0.2%
<b>ARCHITECTURE &amp; ENGINEERING</b>				
4005 ARCHITECT	5.00%	\$119,434	\$829	0.3%
<b>TOTAL ARCHITECTURE &amp; ENGINEERING</b>		\$119,434	\$829	0.3%
<b>THIRD PARTY REPORTS</b>				
5005 APPRAISAL	\$6,000	\$6,000	\$42	0.0%
5010 MARKET STUDY	\$6,500	\$6,500	\$45	0.0%
5020 ENVIRONMENTAL (PH1 & PH2)	\$15,000	\$15,000	\$104	0.0%
5025 PHYSICAL NEEDS ASSESSMENT	\$6,800	\$6,800	\$47	0.0%
5035 ALTA SURVEY	\$11,100	\$11,100	\$77	0.0%
5040 OTHER CONSULTANTS	\$59,003	\$59,003	\$410	0.1%
5040 OTHER TECHNICAL REPORTS	\$50,210	\$50,210	\$349	0.1%
8075 THIRD PARTY REPORT CONTINGENCY	10.00%	\$15,461	\$107	0.0%
<b>TOTAL DILIGENCE COSTS</b>		\$170,074	\$1,181	0.4%
<b>FINANCING COSTS</b>				
6130 PERM LOAN FEE	1%	\$174,259	\$1,210	0.4%
6115 LENDER DUE DILIGENCE / LEGAL / OTHER FEES	\$50,000	\$50,000	\$347	0.1%
6405 SDHC FEES	\$27,500	\$27,500	\$191	0.1%
6135 SDHC LOAN LEGAL	\$25,000	\$25,000	\$174	0.1%
<b>TOTAL FINANCING COSTS</b>		\$276,759	\$1,922	0.6%
<b>RESERVES</b>				
7005 REPLACEMENT RESERVE - INITIAL DEPOSIT	\$500	\$72,000	\$500	0.2%
7010 LEASE UP RESERVE	3	\$551,861	\$3,832	1.2%
7010 OPERATING RESERVE	3	\$324,346	\$2,252	0.7%
<b>TOTAL RESERVES</b>		\$948,207	\$6,585	1.3%

## Residence Inn - Kearny Mesa

### DEVELOPMENT COSTS

	Unit Cost	Total	Per Unit	% of Total
<b>OTHER SOFT COSTS</b>				
8020 LEGAL - DEVELOPER	\$50,000	\$50,000	\$347	0.1%
8035 ACCOUNTING/COST CERT	\$16,000	\$16,000	\$111	0.0%
8037 BANK FEES	\$12,000	\$12,000	\$83	
8045 RELOCATION COSTS	\$50,000	\$50,000	\$347	0.1%
8045 RELOCATION STUDY	\$15,000	\$15,000	\$104	0.0%
8055 PREPAID INSURANCE	\$100,000	\$100,000	\$694	0.2%
8060 TITLE/ESCROW/RECORDING/TRANSFER TAX	\$100,000	\$100,000	\$694	0.2%
8065 REAL ESTATE TAXES	\$0	\$0	\$0	0.0%
4025 CONSTRUCTION MANAGEMENT	\$0	\$0	\$0	0.0%
8087 LABOR COMPLIANCE	\$25,081	\$25,081	\$174	0.1%
8085 BORROWER FINANCIAL ANALYST	\$35,000	\$35,000	\$243	0.1%
8030 FF&E - RESIDENTIAL	\$500	\$72,000	\$500	0.2%
8080 FF&E - COMMON AREA	\$25,000	\$25,000	\$174	0.1%
8075 SOFT COST CONTINGENCY	10.00%	\$45,482	\$316	0.1%
<b>TOTAL OTHER SOFT COSTS</b>		\$545,563	\$3,789	1.2%
<b>DEVELOPER FEE</b>				
9005 DEVELOPER FEE ON ACQUISITION	5%	\$1,975,000	\$13,715	4.2%
9010 DEVELOPER FEE ON REHAB	15%	\$494,310.48	\$3,433	1.1%
<b>TOTAL DEVELOPER FEE</b>		\$2,469,310	\$17,148	5.3%
<b>GRAND TOTAL DEVELOPMENT COSTS</b>		<b>\$46,489,679</b>	<b>\$322,845</b>	<b>99.3%</b>

Residence Inn - Kearny Mesa															
Cash Flow Analysis 1.1															
OPERATING BUDGET	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
GROSS RENTAL INCOME	2,467,320	2,529,003	2,592,228	2,657,034	2,723,460	2,791,546	2,861,335	2,932,868	3,006,190	3,081,345	3,158,378	3,237,338	3,318,271	3,401,228	3,486,259
Other Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
(Less) Vacancy @ 5%	(123,366)	(126,450)	(129,611)	(132,852)	(136,173)	(139,577)	(143,067)	(146,643)	(150,309)	(154,067)	(157,919)	(161,867)	(165,914)	(170,061)	(174,313)
EFFECTIVE GROSS INCOME	2,343,954	2,402,553	2,462,617	2,524,182	2,587,287	2,651,969	2,718,268	2,786,225	2,855,880	2,927,277	3,000,459	3,075,471	3,152,358	3,231,166	3,311,946
Commercial Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL GROSS INCOME	2,343,954	2,402,553	2,462,617	2,524,182	2,587,287	2,651,969	2,718,268	2,786,225	2,855,880	2,927,277	3,000,459	3,075,471	3,152,358	3,231,166	3,311,946
(Less) Total Operating Expenses	(1,297,384)	(1,342,792)	(1,389,790)	(1,438,433)	(1,488,778)	(1,540,885)	(1,594,816)	(1,650,634)	(1,708,407)	(1,768,201)	(1,830,088)	(1,894,141)	(1,960,436)	(2,029,051)	(2,100,068)
NET OPERATING INCOME	1,046,570	1,059,761	1,072,827	1,085,750	1,098,509	1,111,084	1,123,452	1,135,590	1,147,474	1,159,076	1,170,371	1,181,330	1,191,922	1,202,115	1,211,878
(Less) Debt Service	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)
PROJECT CASH FLOW	136,509	149,700	162,766	175,688	188,448	201,023	213,391	225,529	237,413	249,015	260,310	271,269	281,861	292,054	301,817
DCR	(1.15)	(1.16)	(1.18)	(1.19)	(1.21)	(1.22)	(1.23)	(1.25)	(1.26)	(1.27)	(1.29)	(1.30)	(1.31)	(1.32)	(1.33)
CASH WATERFALL															
Parking Lease	(16,000)	(16,000)	(18,000)	(18,000)	(18,000)	(18,000)	(18,000)	(18,000)	(18,000)	(18,000)	(18,000)	(18,000)	(18,000)	(20,000)	(20,000)
NET PROJECT CASH FLOW	120,509	133,700	144,766	157,688	170,448	183,023	195,391	207,529	219,413	231,015	242,310	253,269	261,861	272,054	281,817
DEFERRED DEVELOPER FEE															
Beginning Balance	2,469,310	2,348,801	2,215,102	2,070,336	1,912,648	1,742,200	1,559,177	1,363,786	1,156,257	936,844	705,829	463,518	210,250	-	-
Interest on Deferred Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
(Less) Developer Fee PMT	(120,509)	(133,700)	(144,766)	(157,688)	(170,448)	(183,023)	(195,391)	(207,529)	(219,413)	(231,015)	(242,310)	(253,269)	(210,250)	-	-
Developer Fee Balance	2,348,801	2,215,102	2,070,336	1,912,648	1,742,200	1,559,177	1,363,786	1,156,257	936,844	705,829	463,518	210,250	-	-	-
Remaining Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	51,611	272,054	281,817



Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
3,573,415	3,662,750	3,754,319	3,848,177	3,944,382	4,042,991	4,144,066	4,247,668	4,353,859	4,462,706	4,574,273	4,688,630	4,805,846	4,925,992	5,049,142
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
(178,671)	(183,138)	(187,716)	(192,409)	(197,219)	(202,150)	(207,203)	(212,383)	(217,693)	(223,135)	(228,714)	(234,432)	(240,292)	(246,300)	(252,457)
3,394,744	3,479,613	3,566,603	3,655,768	3,747,162	3,840,842	3,936,863	4,035,284	4,136,166	4,239,570	4,345,560	4,454,199	4,565,554	4,679,692	4,796,685
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
3,394,744	3,479,613	3,566,603	3,655,768	3,747,162	3,840,842	3,936,863	4,035,284	4,136,166	4,239,570	4,345,560	4,454,199	4,565,554	4,679,692	4,796,685
(2,173,570)	(2,249,645)	(2,328,383)	(2,409,876)	(2,494,222)	(2,581,520)	(2,671,873)	(2,765,389)	(2,862,177)	(2,962,353)	(3,066,036)	(3,173,347)	(3,284,414)	(3,399,369)	(3,518,346)
1,221,174	1,229,968	1,238,220	1,245,892	1,252,941	1,259,322	1,264,990	1,269,896	1,273,989	1,277,217	1,279,524	1,280,852	1,281,140	1,280,324	1,278,338
(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)	(910,061)
311,113	319,906	328,159	335,831	342,879	349,261	354,929	359,835	363,928	367,156	369,463	370,791	371,079	370,263	368,277
(1.34)	(1.35)	(1.36)	(1.37)	(1.38)	(1.38)	(1.39)	(1.40)	(1.40)	(1.40)	(1.41)	(1.41)	(1.41)	(1.41)	(1.40)
-----														
(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(22,000)	(22,000)	(22,000)	(22,000)	(22,000)	(22,000)	(22,000)	(22,000)
291,113	299,906	308,159	315,831	322,879	329,261	334,929	337,835	341,928	345,156	347,463	348,791	349,079	348,263	346,277
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
291,113	299,906	308,159	315,831	322,879	329,261	334,929	337,835	341,928	345,156	347,463	348,791	349,079	348,263	346,277

**PURCHASE AND SALE AGREEMENT**  
**(Residence Inn - 1865 Hotel Circle South, San Diego)**

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is dated as of the 20<sup>th</sup> day of August ("Effective Date"), by and between Chatham RIMV LLC, a Delaware limited liability company ("Seller"), and the San Diego Housing Commission ("Purchaser").

**RECITALS**

A. The Seller owns that certain 192-unit Residence Inn located at 1865 Hotel Circle South, San Diego, California 92108, which 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 the Seller is agreeing to sell the Property under threat of condemnation referenced in the offer letter dated August 5, 2020, from Purchaser to Seller and in lieu of the Purchaser condemning the Property. The Property is being compulsorily or involuntarily converted and 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 subject only to the Property

Documents (except for the Franchise Agreement and the Hotel Management Agreement) 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.

“Appurtenant Rights and Interests” means collectively: (i) 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, if any; (ii) all development rights, air rights, and water rights relating to the Real Property, if any; and (iii) all easements, rights-of-way or appurtenances which run with the Real Property, if any; and (iv) all of the 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, if any.

“Assignment” means the Assignment of Personal Property and Assignment and Assumption of Contracts duly executed and acknowledged by the Seller and Purchaser, in 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 recordation of the Grant Deed.

“Closing Date” means one (1) Business Day after the later 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 thirty (30) days after expiration of the Due Diligence Period.

“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.

“Confidential Materials” shall mean any books, computer software, records or files (whether in a printed or electronic format) that contain any of the following: appraisals; internal analyses; information regarding the marketing of the Property for sale; submissions relating to obtaining internal authorization for the sale of the Property by Seller or any direct or indirect owner of any beneficial interest in Seller; attorney and accountant work product; attorney-client privileged documents; internal correspondence of Seller, any direct or indirect owner of any

beneficial interest in Seller, or any of their respective Affiliates and correspondence between or among such parties.

“Consumables” shall mean all food and beverages (including alcoholic and non-alcoholic), engineering, maintenance and housekeeping supplies (including soap, cleaning materials and matches), paper goods, printing and other supplies or consumable items of all kinds used in connection with the ownership, operation or maintenance of the Property as a hotel and FF & E, but in no event shall Consumables be deemed to include any items of excluded personal property as set forth in the below definition of “Personal Property”.

“Contracts” shall have the meaning set forth in Section 14 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 November 17, 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 whose mailing address is 2365 Northside Drive, San Diego, CA 92108, Attention: Verna Gregory, in its capacity as escrow agent. Use of the term “Escrow Agent” does not create a general agency and does not confer on Escrow Agent any right or authority to act for Purchaser or Seller without express instructions, whether as set forth in this Agreement or otherwise.

“Excluded Property” excluding (i) property of guests, (ii) items, equipment, computers, computer software, websites, URLs or information owned by or proprietary to Franchisor, (iii) items or information owned by or proprietary to Hotel Manager, (iv) Seller’s accounts receivable, (v) any property that is subject to any of the Contracts or Equipment Leases unless the applicable Contract or Equipment Lease is assumed by Purchaser at Closing, (vi) any and all deposits, cash and other accounts owned or held by Seller or Hotel Manager or their respective affiliates, (vii) any property tax refunds for the period prior to the Closing, (viii) any alcohol or liquor permits of Seller or Hotel Manager or their respective affiliates, (ix) the Confidential Materials, (x) the Consumables, and (xi) all bar equipment.

“Franchise Agreement” shall mean that certain Relicensing Franchise Agreement dated as of July 14, 2011, between Seller’s affiliate and Franchisor, as amended from time to time.

“Franchisor” shall mean Marriott International Inc.

“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

States Government. Provided, however, the term “Hazardous Materials” shall not include substances typically used in the ordinary course of developing, operating and maintaining hotels 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.

“Hotel Employees” shall mean the persons employed by Seller or Hotel Manager to operate the Hotel or work at the Hotel for all other purposes.

“Hotel Management Agreement” means that certain Hotel Management Agreement dated as of July 14, 2011, between Seller’s affiliate and Island Hospitality Management III LLC, as amended and extended from time to time.

“Hotel Manager” shall mean Island Hospitality Management III LLC.

“Immediately Available Funds” means a bank wire transfer.

“Improvements” means collectively any and all buildings, structures and improvements, of any kinds whatsoever, located at or affixed to 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 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 delinquent; (iv) all easements, covenants, conditions, restrictions, reservations, declarations, and other matters of record, (v) discrepancies, conflicts in boundary lines, shortages in area, encroachments and any state of facts which a survey of the Property would disclose; and (v) any title exceptions caused, consented to or preapproved by Purchaser.

“Personal Property” means 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 and all furniture fixtures and equipment at the Real Property, but specifically excluding the Excluded Property.

“Property” means collectively, the Real Property, the Improvements, the Appurtenant Rights and Interests and the Personal Property, but specifically excluding the Excluded Property.

“Property Documents” means the documents and agreements listed on Exhibit C 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” is defined in Recital A.

“Seller” means Chatham RIMV LLC, a Delaware limited liability company.

“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.

“Title Report” means Preliminary Report Order No. 00133994-993-SD2-CFU dated as of July 20, 2020, issued by Chicago Title Insurance Company.

“WARN Act” shall mean the Workers Adjustment and Retraining Notification Act and the Regulations promulgated thereunder, as the same has been amended, as well as any similar California “WARN” type Laws, rules or regulations.

### 3. Purchase Price.

(a) Purchase Price and Payment of the Purchase Price. The total purchase price to be paid by the Purchaser for all of the Property shall be Sixty-Seven Million and No/100 Dollars (\$67,000,000.00) (“Purchase Price”). The Purchase Price shall be paid by the Purchaser to the Seller with Immediately Available Funds.

(b) Deposit; Liquidated Damages.

(1) Deposit. Purchaser shall make an initial deposit into Escrow of Immediately Available Funds equal to the sum of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) within five (5) Business Days of the Effective Date. Upon approval of this Agreement by the Purchaser’s board, Purchaser shall make an additional deposit into Escrow of Immediately Available Funds equal to the sum of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00). Upon the expiration of the Due Diligence Period if Purchaser elects to proceed with the purchase of the Property, Purchaser shall make an additional deposit into Escrow of Immediately Available Funds equal to the sum of One Million Five Hundred Thousand Dollars and No/100 Dollars (\$1,500,000.00) as an earnest money deposit, for a total deposit of Two Million and No/100 Dollars (\$2,000,000.00). The foregoing deposits shall be referred to individual or collectively as the (“Deposit”). The Deposit shall be invested by the Escrow Agent in an interest-bearing account reasonably acceptable to the Purchaser and the Seller. All interest earned on the Deposit shall be paid over to the party entitled to the receipt of the Deposit. The Deposit shall be credited against the Purchase Price and shall be nonrefundable (i.e., constitute

liquidated damages in the event of Purchaser's breach, as provided in Section 3(b)(2)) 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 and any interest earned on the Deposit, shall be credited in favor of the Seller 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 PARTIES AGREE THAT, IN SUCH EVENT, THE DEPOSIT SHALL BE PAID BY THE ESCROW AGENT TO SELLER, AND SELLER SHALL RETAIN THE DEPOSIT, AS LIQUIDATED DAMAGES AND AS THE SELLER'S SOLE REMEDY, AND THAT SUCH PAYMENT IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, (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 PARTIES 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 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.

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Seller's Initials

  
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Purchaser's Initials

(c) Delivery of Remainder of Purchase Price into Escrow. 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 plus or minus any adjustments for prorations and expenses required under this Agreement, at such time as is necessary for either party or both parties to be ready and able to consummate the Closing on the Closing Date.

(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 sixty (60) days of the Due Diligence Period, the Purchaser and its representatives, consultants and attorneys, at Purchaser's own risk, cost and expense, shall have access to the Real Property and the Improvements, during regular business hours, subject to the rights of occupants, and upon not less than two (2) business days' prior notice to Seller. Representatives of Seller shall have the right to accompany Purchaser or any Purchaser representatives during each such visit. Purchaser and Seller shall cooperate in order to allow for and ensure the minimum disturbance to occupants. All inspections shall be consistent with all applicable laws, rules and regulations regarding coronavirus risks, including, without limitation, social distancing, the maximum number of Purchaser representatives in any unit at any time, the wearing of face masks and the appropriate evaluation of the health of those conducting inspections. Purchaser shall conduct, and ensure that each of its agents, employees, contractors or representatives conducts, each such entry in a manner that does not unreasonably interfere with the guests of the hotel. Seller shall make commercially reasonable efforts to provide Purchaser with access to all unoccupied units subject to the consent of each occupant and the compliance by Purchaser and its representatives of all laws, rules and regulations regarding coronavirus risks, however Seller's inability to provide such access shall not be a default hereunder and shall not provide Purchaser with additional rights not otherwise expressed in this Agreement. Purchaser shall indemnify and defend the Seller, and shall hold the Seller, the Seller's agents and employees



THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE PROVISIONS OF THIS SECTION 3(b)(2) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ELK  
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Seller's Initials

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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 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 sixty (60) days of the Due Diligence Period, the Purchaser and its representatives, consultants and attorneys, at Purchaser's own risk, cost and expense, shall have access to the Real Property and the Improvements, during regular business hours, subject to the rights of occupants, and upon not less than two (2) business days' prior notice to Seller. Representatives of Seller shall have the right to accompany Purchaser or any Purchaser representatives during each such visit. Purchaser and Seller shall cooperate in order to allow for and ensure the minimum disturbance to occupants. All inspections shall be consistent with all applicable laws, rules and regulations regarding coronavirus risks, including, without limitation, social distancing, the maximum number of Purchaser representatives in any unit at any time, the wearing of face masks and the appropriate evaluation of the health of those conducting inspections. Purchaser shall conduct, and ensure that each of its agents, employees, contractors or representatives conducts, each such entry in a manner that does not unreasonably interfere with the guests of the hotel. Seller shall make commercially reasonable efforts to provide Purchaser with access to all unoccupied units subject to the consent of each occupant and the compliance by Purchaser and its representatives of all laws, rules and regulations regarding coronavirus risks, however Seller's inability to provide such access shall not be a default hereunder and shall not provide Purchaser with additional rights not otherwise expressed in this Agreement. 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 (including Purchaser's Consultants) 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 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 obtaining Seller's prior written consent to the same, which consent may be withheld or granted on conditions in Seller's sole discretion. The Purchaser shall promptly restore the Property to the condition the Property was in immediately prior to any tests or inspections conducted pursuant to this Section 4(a), 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). Before any of Purchaser's Consultants or other contractors, consultants or agents acting for or on behalf of Purchaser enter onto the Property, Purchaser shall furnish to Seller evidence that the Purchaser's Consultant or other contractor, consultant or agent of Purchaser has procured commercial general liability insurance from an insurer authorized to do business in the State of California, which is reasonably acceptable to Seller, insuring against claims for bodily injury, death or damage to property in a single limit amount of not less than \$5,000,000.00, endorsed to name Seller and Seller's affiliated property Hotel Manager and Franchisor as additional insureds. Seller shall have the right to have a representative of Seller or Hotel Manager be present during any physical testing of the Property.

(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 physical copies or digital copies (e.g. a pdf, tif or jpg file) of all documents evidencing Property Documents by physical delivery, "dropbox" or similar on-line data site, email or on a memory medium. If this Agreement is terminated before Closing, the Purchaser shall return all copies to the Seller; however, if any such information was delivered or made available to the Purchaser in electronic form, the Purchaser shall (i) delete all copies thereof so that the same cannot be retrieved; and (ii) certify to the Seller in writing under penalty of perjury that such deletion has been effected.

(c) Occupant Noticing and Relocation Costs. 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 occupants of the Property. Within five (5) Business Days after the Effective Date, the Seller shall provide the names and addresses of all occupants of the Property, if any, to the Purchaser. The Seller agrees to allow the Purchaser to provide any and all notices to

occupants of the Property that are required in order for the Purchaser to comply with any applicable laws; provided, however, (i) no relocations will be requested nor relocation notices provided prior to the end of the Due Diligence period and (ii) prior to delivering notices to any occupants 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. Purchaser shall bear all responsibility for complying with such notice requirements, shall bear all relocation costs and expenses payable to occupants under applicable laws, and shall indemnify Seller for all claims related to these relocations.

(d) Title. Purchaser's obligation to Close is contingent upon Purchaser's approval or failure to provide disapproval during the Due Diligence Period 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. Purchaser shall have until September 21, 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 Closing; 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 Closing (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 Closing 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 Seller caused mechanics' liens or deeds of trust to be eliminated as exceptions to title on the Title Policy at Seller's sole expense prior to the Closing, 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; and (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 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, at such time as is necessary for either party or both parties to be ready and able to consummate the Closing on the Closing Date.
- (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 or covenants 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) or 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, including, without limitation, the Deposit and all interest thereon; 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 Property 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.

(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 materially affects the Property, except for the, Property Documents (except that the Franchise Agreement shall have terminated), any tenancies of guests who have stayed in excess of thirty (30) days which California law requires an eviction process to relocate, and the Permitted Exceptions.

(g) Except as described in Recital B, as of the Closing Date, there is no pending, or threatened to be pending, any action or proceeding by any person or before any government authority, the outcome of which could materially prohibit the use of the Property as intended by the Purchaser.

(h) 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 material exceptions to the Title Policy, except for the Permitted Exceptions.

(i) As of the Closing Date, Seller is not in 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.

(j) The Franchise Agreement affecting the Property is terminated.

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; and

(2) Except as described in Recital B, to the knowledge of the Seller, 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) Intentionally Deleted.

(f) Seller Representation and Warranty Pertaining to Occupancy. The Seller hereby represents and warrants to the Purchaser that to the current actual knowledge of Seller, there will be no occupancy or leasing agreements by which the Purchaser would be bound following the Closing except for the tenancies of certain extended stay hotel guests under California law.

(g) Seller Representation and Warranty Regarding Operation of the Property. The Seller hereby represents and warrants to the Purchaser that to the current actual knowledge of Seller, the Property Documents (except for the Franchise Agreement and the Hotel Management Agreement) 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.

(h) Seller Representations and Warranties Regarding Discovery of New Information. The Seller hereby represents and warrants to the Purchaser that 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, AND 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, ENTITLEMENTS, EXACTIONS AND EXTRACTIONS; (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, INCLUDING ANY APPLICABLE PLUMBING RETROFIT REQUIREMENTS AND ANY APPLICABLE ENERGY-RELATED REQUIREMENTS; (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 EXPRESSLY 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, CONTRACTORS, CONSULTANTS 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) (I) BASED ON A THEN-EXISTING WARRANTY OF A NON-RELEASED PARTY FOR WORK PERFORMED AT THE REAL PROPERTY BEFORE THE CLOSING OR MATERIALS OR EQUIPMENT SUPPLIED TO THE REAL PROPERTY BEFORE THE CLOSING, INCLUDING RECOVERY AGAINST ANY INSURANCE POLICY OF THE NON-RELEASED PARTY; OR (II) IF THE NON-RELEASED PARTY IS AN OCCUPANT, BASED ON A PRE-CLOSING BREACH OF THE OCCUPANT'S OCCUPANCY AGREEMENT. **"NON-RELEASED PARTIES"** MEANS PERSONS PERFORMING WORK AT THE REAL PROPERTY BEFORE THE CLOSING (OTHER THAN SELLER OR ANY OF THE SELLER PARTIES) AND/OR ANY INSURANCE POLICIES HELD BY ANY OR ALL SUCH PERSONS AND THE OCCUPANTS.

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 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 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. 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.

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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, 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.

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(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, 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 this Agreement. Purchaser, on behalf of itself, its successors, assigns and successors-in-interest (“Successors”), hereby agrees to indemnify, defend and hold Seller and each and all of the Seller Parties (defined in Section 7(i)) 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 this 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, 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 on or after the Closing, 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 Closing, including any judgment, order or settlement under or otherwise pursuant to a 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 Seller or 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 Seller’s or the Seller Party’s 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 entered into this 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 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.

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SELLER'S INITIALS

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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 that would exceed ten percent (10%) of the Purchase Price or the outcome of which would prohibit the use of the Property as intended by the Purchaser is commenced by any party other than the Purchaser that will result in the taking of the entire Property or any part of the Property, Purchaser may 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. In any condemnation or eminent domain proceeding other than those described in the first sentence of this Section 8(a), Purchaser may 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.

9. Broker's Commission. The Purchaser is represented by Jim Neil of Kidder Matthews ("Purchaser's Broker"). The Purchaser shall satisfy the \$502,500.00 broker commission due and owing to Jim Neil of Kidder Matthews at Closing. 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



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.

SELLER'S INITIALS

  
PURCHASER'S INITIALS

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(a) Condemnation. If between the Effective Date and the Closing Date, any condemnation or eminent domain proceeding that would exceed ten percent (10%) of the Purchase Price or the outcome of which would prohibit the use of the Property as intended by the Purchaser is commenced by any party other than the Purchaser that will result in the taking of the entire Property or any part of the Property, Purchaser may 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. In any condemnation or eminent domain proceeding other than those described in the first sentence of this Section 8(a), Purchaser may 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.

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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 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) 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, (b) by personal delivery, in which case notice shall be deemed delivered upon the actual date of delivery, or (c) 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:	Chatham RIMV LLC. Attn: Eric Kentoff 222 Lakeview Ave., Suite 200 West Palm Beach, FL 33401 Email: <a href="mailto:ekentoff@cl-trust.com">ekentoff@cl-trust.com</a>
If to Purchaser:	San Diego Housing Commission Attn: Michael Pavco 1122 Broadway, Suite 300 San Diego, CA 92101 Email: <a href="mailto:mpavco@hdpartners.org">mpavco@hdpartners.org</a>
Copy to:	Christensen & Spath LLP Attn: Walter F. Spath III, Esq. 550 West C Street, Suite 1660 San Diego, CA 92101 Email: <a href="mailto:wfs@candslaw.net">wfs@candslaw.net</a>
If to Escrow Agent:	Chicago Title Company Attn: Verna Gregory 2365 Northside Drive San Diego, CA 92108 Email: <a href="mailto:verna.gregory@ctt.com">verna.gregory@ctt.com</a>

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.

(a) Real property taxes and assessments, utility costs, rents, security deposits, service and maintenance contract payments for contracts and equipment leases 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 by their terms assignable) ("Contracts") 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 Closing. Seller shall pay all real property taxes and assessments applicable to the period prior to the Closing, and if any such taxes are unpaid after

the Closing, then Seller shall pay them promptly and in any event within ten (10) Business Days after Purchaser's written request (which shall include a copy of the relevant tax bill). Seller shall have the right, but not the obligation, to pursue after the Closing collection from tenants of any rents due at the Closing 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. Seller shall be entitled to the full amount of any refunds or rebates resulting from any property tax appeals or requests for reassessments by Seller for tax years prior to the tax year in which the Closing occurs. Seller shall have the right but not the obligation to file a tax appeal or request for reassessment for the tax year in which the Closing occurs, and, if it does so, Seller shall be responsible for processing and settling any such appeals and Seller and Purchaser shall share the amount of any rebate or refund resulting therefrom (after first paying to Seller all reasonable costs and expenses incurred by Seller in pursuing such appeal or reassessment) in proportion to their respective periods of ownership of the Property for such tax year. For purposes of determining the rebate or refund resulting from any such reassessment relative to the tax year in which the Closing occurs, all reasonable costs and expenses of Seller incurred in connection with the filing or prosecution of such claim shall be deducted and paid to Seller before making the allocations set forth in the preceding sentence. This Section 14(a) shall survive the Closing as well as the termination of this Agreement.

(b) All revenues received or to be received on account of room rents and hotel operations for the period prior to and including the Closing Date shall belong to Seller (with Purchaser to remit such revenues to Seller to the extent any such revenues are paid to Purchaser following Closing). All accounts receivable and accounts payable relating to the Hotel in respect of the period prior to the Closing Date shall be for Seller's sole account, and Purchaser shall not be responsible to Seller for the collection or payment of same. Notwithstanding the foregoing, payments received by Purchaser that are identified or otherwise recognized as relating to such accounts receivable shall be promptly turned over to Seller. The provisions in this Section 14(b) shall survive Closing.

15. Franchise De-Identification. The parties acknowledge that Seller shall terminate the Franchise Agreement at Closing but that additional time may be needed for Seller to fulfill all of its de-identification obligations under such terminated Franchise Agreement, all at Seller's sole cost and expense (the "De-Identification Obligations"). Therefore, Purchaser will allow Seller and its affiliates and agents reasonable access to the Property for thirty (30) days after the Closing in order for Seller to fulfill the De-Identification Obligations.

16. 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, the representations and warranties made by Seller in this Contract shall survive the Closing through but not beyond one hundred and eighty (180) days after the date of Closing (the "Survival Period"), after which such representations and warranties shall merge into the Grant Deed or any other closing documents; provided, further, that any law suit claiming a breach or any representation and warranty made herein by Seller must be filed within two (2) years and one (1) day of the of the date of Closing. Notwithstanding anything to the contrary contained in this Agreement, any claim of a breach or any representation and warranty made herein by Seller that Purchaser may have at any time against Seller will not be valid or effective, and Seller shall have no liability with respect thereto, unless the aggregate of all such breaches exceed \$25,000.00. Seller's liability for damages resulting from such breaches shall in no event exceed one percent (1%) of the Purchase Price in the aggregate.

(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 attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") Section 1033.5 and 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, if any, and all other stamps, intangible, documentary, recording and surtax imposed by law with reference to any other documents delivered in connection with this Agreement, if any. 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 in San Diego County, California.

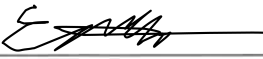
(s) Hotel Employees. Seller shall, or shall cause Hotel Manager to, terminate or arrange for the termination of all Hotel Employees, including Employees who are absent due to vacation, family leave, short-term disability or other approved leave of absence (the Hotel Employees who accept such employment and commence employment on the Closing Date, the "Transferred Employees") to be effective as of the Closing. Within thirty (30) days after the Effective Date, Purchaser may provide Seller written notice of its intention to offer employment prior to Closing (to be effective as of the Closing) to a sufficient number of Hotel Employees and for a sufficient period of time so that the actions of the parties pursuant to this Agreement shall not trigger the application of the WARN Act or applicable state Laws with respect to employees regarding transfers of businesses. If Purchaser should provide notice pursuant to this Section 16(s) but fail to fulfill its stated obligations thereunder, Purchaser shall be responsible for, and indemnify, defend and hold the Seller Indemnitees harmless from and against, any Losses imposed or incurred by the Seller, directly or indirectly, arising out of, resulting from or relating to (i) any failure to offer employment pursuant to the notice that leads to a failure to comply with the WARN Act as a result of the impact of this transaction on employees of the Seller and/or Hotel Manager, or (ii) any liability under the Hotel Management Agreement as a result of the termination of any Hotel employee including, without limitation, severance pay, unemployment compensation, employment relocation and other employee liability costs other than payment of accrued compensation and benefits that would otherwise be payable to an employee notwithstanding such termination. If Purchaser should not provide notice pursuant to this Section 16(s), Seller shall have the right to provide the Hotel Employees with any and all notices required by the WARN Act or applicable state Laws. The Parties acknowledge that Seller intends, but is not obligated to, provide that notice upon the expiration of the Due Diligence Period. To the extent that there is insufficient time between the end of the Due Diligence Period and the Closing Date to allow Seller to provide the requisite amount of paid notice to comply with the WARN Act, Purchaser agrees to give Seller a credit at Closing equal to the . For the purposes of example only, if the WARN Act required sixty (60) days' paid notice and there were only thirty (30) days between the end of the Due Diligence Period and Closing, Seller would provide hotel employees with sixty (60) days warning and then at Closing would pay employees for all sixty (60) days' paid notice and Purchaser would give Seller a credit at Closing in an amount equal to thirty (30) days' paid notice. The provisions of this Section 16(s) shall survive the Closing.

(t) Confidentiality. Until the Closing, Purchaser and its partners, members, attorneys, agents, employees and consultants will treat the information disclosed to it by Seller, or otherwise gained through Purchaser's access to the Property and Seller's books and records, as confidential, giving it the same care as Purchaser's own confidential information, and make no use of any such disclosed information not independently known to Purchaser except in connection with the transactions contemplated hereby. In the event of a termination of this Agreement, Purchaser shall promptly return all such confidential information to Seller.

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

**SELLER:**

Chatham RIMV LLC, a Delaware limited liability company

By:   
Eric Kentoff  
Vice President and Secretary

**[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:

PARCEL 2 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN AT PAGE NO. 18040 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JUNE 4, 1998.

APN: 443-040-39-00



## **Exhibit B**

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

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby expressly acknowledged, Chatham RIMV LLC, a Delaware limited liability company (“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 occupancy agreements, if any, of space in the real property more particularly described in Exhibit “1” attached hereto and by this reference made a part hereof (“Real Property”);

(b) the Contracts, as defined in that certain Purchase and Sale Agreement between the parties dated as of August 20, 2020 (the “PSA”), attached hereto as Exhibit D to the PSA; and

(c) the Personal Property, as defined in the PSA.

The Personal Property is 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 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 Contracts.

The provisions of this Assignment of Personal Property and Assignment and Assumption of 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 Contracts as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ASSIGNOR:**

Chatham RIMV LLC, a Delaware limited liability company

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**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**

### **Property Documents**

Seller makes no representation that any of the following exist; and Seller has no obligation to create or obtain any of the following that do not exist on the Effective Date of the Agreement.

#### 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 (2016-Present)

Major Capital Contracts (2016-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 (2016-Present)

Utility Bills (2016-Present)

Capital Expenditures (2016-Present) – General Ledger Detail

Drawings, Plans and Specifications, including as-builts

## Exhibit D

### Contracts

PROVIDER	SERVICE
Uniguest	Software
Guest Tek HSIA	High Speed Internet/VIOP/Video on Demand
Valley Aqua Chill	Water - Hot and Cold Cooler and Service
Valley Ving Card	Key Card Service
Cintas	Fire Prevention – Multiple Facility Services
Lodgenet	In-Room Television and Internet Services
Valley Generator	Generator Maintenance
Valley Washer Dryer	Laundry Equipment Maintenance
Otis Elevator	Elevator Maintenance
Benchmark Landscaping	Landscaping Maintenance
Ricoh	Copier Lease and Maintenance
Brinks	Currency Transport
United Security	Contract Security Guards
Micros	Software Agreement
Oracle	Computer Hardware and Consulting
Freedom Pay	Credit Card Terminals and Service

**PURCHASE AND SALE AGREEMENT**  
**(Residence Inn – 5400 Kearny Mesa Road, San Diego)**

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is dated as of the 20<sup>th</sup> day of July, 2020 (“Effective Date”), by and between RT San Diego, LLC, a Delaware limited liability company (“Seller”), and the San Diego Housing Commission (“Purchaser”).

**RECITALS**

A. The Seller owns that certain 144-unit Residence Inn located at 5400 Kearny Mesa Road, San Diego, California 92111, which is legally described on Exhibit A attached hereto and made a part hereof.

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 the Seller is agreeing to sell the Property under threat of condemnation made concurrently with the parties’ entering into this Agreement 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 subject only to the Property Documents 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.

“Appurtenant Rights and Interests” means collectively: (i) all rights, privileges and easements, if any, appurtenant to the Real Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Real Property; (ii) all development rights, air rights, and water rights, if any, relating to the Real Property; and (iii) all easements, rights-of-way or appurtenances, if any, which run with the Real Property; and (iv) all of the 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, if any.

“Assignment” means the Assignment of Personal Property and Assignment and Assumption of Contracts duly executed and acknowledged by the Seller and Purchaser, in 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 recordation of the Grant Deed.

“Closing Date” means 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 sixty (60) days after expiration of the Due Diligence Period.

“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 November 17, 2020 (*120 days after the Effective Date*).

“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. Use of the term “Escrow Agent” does not create a general agency and does not confer on Escrow Agent any right or authority to act for Purchaser or Seller without express instructions, whether as set forth in this Agreement or otherwise.

“Excluded Property” means, collectively, any lump sum or upfront payments paid to Seller or its predecessors under any of the Property Contracts prior to Closing, (ii) any unearned insurance premiums, (iii) any insurance policies or insurance contracts owned or held by Seller or its affiliates in connection with the Property, (iv) any and all deposits, cash and other accounts owned or held by Seller or its affiliates, (v) any property tax refunds for the period prior to the Closing, (vi) Seller’s existing property management contract, which shall be terminated by Seller on or before the Closing, (vii) to the extent owned by Seller’s property manager, any computers, computer operating systems, and computer software programs, social media accounts, service mark or other proprietary or intellectual property used or maintained in connection with its management of the Property, (viii) any property of whatever nature, including but not limited to any personal property, intangible property or intellectual property, owned by Seller’s property manager in connection with its management of the Property, owned by Seller’s franchisor any such franchisor’s affiliates, or owned by any tenant or guest of the Property, (ix) any alcohol or liquor permits of Seller or its property manager, (x) Seller’s existing franchise or license agreement allowing for its operation of the Property under the Residence Inn brand, and (xi) any national service contracts entered into by Seller or any of its affiliates.

“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 States Government. Provided, however, the term “Hazardous Materials” shall not include substances typically used in the ordinary course of developing, operating and maintaining hotels 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.

“Improvements” means collectively any and all buildings, structures and improvements, of any kinds whatsoever, located at or affixed to the Real Property.

“Parking Lease” means that certain lease more particularly described on Exhibit D attached hereto and made a part hereof, as the same may be amended, restated, supplemented, assigned or otherwise modified from time to time.

“Permitted Exceptions” means (i) the printed exceptions and exclusions in the Title Policy; (ii) the exceptions to title set forth in the Title Report 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 delinquent; (iv) any title exceptions caused,

consented to or preapproved by Purchaser; (vi) upon Closing, any matter affecting title to the Property which was disclosed in writing by Seller to Purchaser prior to Closing, or of which Purchaser had knowledge prior to Closing, (vi) zoning and other regulatory laws and ordinances affecting the Property; and (vii) any easement, right of way, limitation, encroachment, conflict, discrepancy, overlapping of improvements, protrusion, lien, encumbrance, restriction, condition, covenant, exception or other matter with respect to the Property that would be shown on an accurate survey of the Property.

“Personal Property” means 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 occupants or renters of all of any portion of the Real Property.

“Property” means collectively, the Real Property, the Improvements, the Appurtenant Rights and Interests and the Personal Property, but excludes the Excluded Property.

“Property Documents” means the documents and agreements listed on Exhibit C 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, collectively, (i) the real property legally described on Exhibit A attached hereto and made a part hereof, and (ii) the leasehold interest of Seller created by the Parking Lease.

“Seller” means RT San Diego, LLC, a Delaware limited liability company.

“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.

“Title Report” means Preliminary Report Order No. 00131818-993-SD2-CFU dated as of June 18, 2020, issued by Chicago Title Insurance Company.



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 Thirty-Nine Million Five Hundred Thousand and No/100 Dollars (\$39,500,000.00) ("Purchase Price"). The Purchase Price shall be paid by the Purchaser to the Seller partially with Immediately Available Funds.

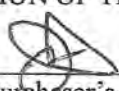
(b) Deposit; Liquidated Damages.

(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 (i.e., constitute liquidated damages in the event of Purchaser's breach, as provided in Section 3(b)(2)) 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 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 PARTIES 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 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.

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Seller's Initials

  
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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 sixty (60) days of the Due Diligence Period, the Purchaser and its representatives, consultants and attorneys shall have access to the Real Property and the Improvements, subject to the rights of occupants, upon not less than twenty four (24) hours' prior written notice (which may be by e-mail) to Seller. Purchaser and Seller shall cooperate in order to allow for and ensure that no occupants are disturbed. All

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.

  
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Seller's Initials

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Purchaser's Initials

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inspections shall be consistent with all applicable laws, rules and regulations regarding coronavirus risks, including without limitation social distancing, the maximum number of Purchaser representatives in any unit at any time, the wearing of face masks and the appropriate evaluation of the health of those conducting inspections. Seller shall make commercially reasonable efforts to provide Purchaser with access to all unoccupied units subject to compliance by Purchaser and its representatives of all laws, rules and regulations regarding coronavirus risks, however Seller's inability to provide such access shall not be a default hereunder and shall not provide Purchaser with additional rights not otherwise expressed in this Agreement. Purchaser acknowledges that it shall not have access to any occupied units during times when such units are occupied by guests. 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 (including Purchaser's Consultants) 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 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 (including, without limitation, a Phase II environmental assessment), the Purchaser may do so only after obtaining Seller's prior written consent to the same, which consent may be withheld or granted on conditions in Seller's sole discretion. The Purchaser shall promptly restore the Property to the condition the Property was in immediately prior to any tests or inspections conducted pursuant to this Section 4(a), 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). Before any of Purchaser's Consultants or other contractors, consultants or agents acting for or on behalf of Purchaser enter onto the Property, Purchaser shall furnish to Seller evidence that the Purchaser's Consultant or other contractor, consultant or agent of Purchaser has procured commercial general liability insurance from an insurer authorized to do business in the State of California, which is reasonably acceptable to Seller, insuring against claims for bodily injury, death or damage to property in a single limit amount of not less than \$2,000,000.00, endorsed to name Seller and Seller's affiliated property manager as additional insureds.

(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 physical copies or digital copies (e.g. a pdf, tif or jpg file) of all documents evidencing the Operating Statements and Property Documents by physical delivery, "dropbox" or similar on-line data site, email or on a memory medium. Seller's

failure to deliver or make available to Purchaser any such documents or information shall not result in an extension of the Due Diligence Period nor give Purchaser the right to terminate this Agreement as a result of such failure following expiration of the Due Diligence Period, and Purchaser's sole remedy therefor shall be Purchaser's right to terminate this Agreement by delivering written notice thereof to Seller prior to expiration of the Due Diligence Period. If this Agreement is terminated before Closing, the Purchaser shall return all copies to the Seller; however, if any such information was delivered or made available to the Purchaser in electronic form, the Purchaser shall (i) delete all copies thereof so that the same cannot be retrieved; and (ii) certify to the Seller in writing under penalty of perjury that such deletion has been effected.

(c) Occupant Noticing and Relocation Costs. Certain local, State and Federal relocation laws (including, without limitation, California state law, laws or ordinances of the City of San Diego or San Diego County, and/or rules and regulations promulgated by Purchaser or by the U.S. Department of Housing and Urban Development) may be applicable to the Purchaser, as a public agency, or the transactions contemplated by this Agreement which would require the Purchaser to provide certain notices to the occupants of the Property. The Seller agrees to allow the Purchaser to provide any and all notices to occupants of the Property that are required in order for the Purchaser to comply with any applicable laws; provided, however, prior to delivering notices to any occupants 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. Purchaser shall bear all responsibility for complying with such notice requirements and shall bear all relocation costs and expenses payable to occupants under applicable laws.

(d) Title. Purchaser's obligation to Close is contingent upon Purchaser's approval or deemed approval of all matters affecting title to or use of the Real Property (collectively, "Title Matters") during the Due Diligence Period. 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. Purchaser shall have until August 19, 2020 (*thirty (30) days after the Effective Date*), 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) Business 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) Business 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 caused by Seller or deeds of trust to be eliminated as exceptions to title on the Title Policy at Seller's sole expense prior to the close of Escrow, and shall not be party to and record any documents against the Real Property from and after the Effective Date without Purchaser's prior written consent.

(e) Parking Lease. At Closing, Purchaser shall succeed to Seller's interest in, and shall otherwise assume and accept Seller's interest in and to, the Parking Lease. Promptly following the Effective Date, Purchaser and Seller shall make application to the Parking Lease lessor for the assignment and assumption of the Parking Lease, and Purchaser agrees to exercise good faith and commercially reasonable due diligence in making a complete application and diligently pursuing approval of such assumption. Seller agrees to reasonably cooperate with Purchaser in seeking such approval by providing such information as the Parking Lease lessor may reasonably require in order to consider Purchaser's application for the assumption of the Parking Lease. Purchaser and Seller shall share, on a 50/50 basis, any review costs or fees imposed by the Parking Lease lessor in connection with its review of the assignment and assumption request. Purchaser and Seller shall reasonably cooperate in good faith to agree upon the forms of the Parking Lease assignment and assumption agreement on or before the expiration of the Due Diligence Period.

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.
- (f) The Parking Lease lessor has approved, in writing, the assignment by Seller and assumption by Purchaser of the Parking Lease.

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) or 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 (except in the case of clause (g), (h) or (i) below, the failure of which shall not be considered a default by 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. In the event of Seller's default (following notice and cure as aforesaid) under this Agreement, Purchaser's sole and exclusive remedies shall be (A) to terminate this Agreement and receive a refund of the Deposit, and (B) to receive reimbursement of Purchaser's actual, documented (by paid invoices or similar evidence), out-of-pocket expenses paid by Purchaser in connection with the transactions described in this Agreement in an amount not to exceed \$500,000 in the aggregate. 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 Property 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 (i) the Property Documents and (ii) long-term hotel guests with tenancy rights under California state or local law.

(g) Except as described in Recital B, as of the Closing Date, there is no pending, or threatened to be pending, any action or proceeding by any person or before any government authority, the outcome of which could prohibit the use of the Property as intended by the Purchaser.

(h) 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.

(i) The Parking Lease lessor has approved, in writing, the assignment by Seller and assumption by Purchaser of the Parking Lease.

(j) As of the Closing Date, Seller is not in 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 in all material respects as of the Closing Date.

(k) The Residence Inn franchise agreement affecting the Property is terminated.

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 and correct, in all material respects, as of the date hereof and shall be and are true and correct, in all material respects, as of the Closing Date. The representations and warranties of each party shall survive the Closing for a period of one hundred eighty (180) days (the "Limitation Period"). No claim for a breach of any representation or warranty shall be actionable by Purchaser or payable by Seller (a) if that breach results from or is based on a condition, state of facts or other matter that was known to Purchaser or disclosed to Purchaser in writing prior to expiration of the Due Diligence Period, (b) unless the valid claims for all such breaches collectively aggregate Ten Thousand and No/100 Dollars (\$10,000.00) (the "Floor") or more, in which event the amount of such valid claims and any claims against Seller under this Agreement in excess of the Floor shall be actionable with respect to the Property up to, but not exceeding, the amount of the Cap (as defined below), and (c) unless written notice containing a description of the specific nature of such breach is given by Purchaser to Seller prior to the commencement of any action and any action is commenced by Purchaser against Seller with respect to any such claims prior to the expiration of the Limitation Period. Seller shall not be liable to Purchaser's to the extent Purchaser's claim is recoverable from any other party pursuant to any insurance policy, service contract, warranty, guaranty or other indemnity. As used herein, the term "Cap" shall mean the total aggregate amount equal to Five Hundred Thousand and No/100 Dollars (\$500,000.00). In no event shall Seller's aggregate liability to Purchaser for any and all breaches of any Seller representations or warranties in this Agreement exceed the amount of the Cap, and Purchaser hereby waives and disclaims any right to damages or compensation for any and all such breaches in excess of the Cap.

(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; and

(2) Except as described in Recital B, to the knowledge of the Seller, 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, except that the Property's current franchisor has a right of first refusal for any sale of the Property to a Competitor. For purposes hereof, "Competitor" means any person or entity that owns, has an interest in, or is an affiliate, principal or director of a person or entity that owns or has an interest in a hotel brand, tradename, system or chain that is comprised of at least (i) twenty (20) full-service or (ii) fifty (50) limited-service hotels. Purchaser hereby represents and warrants to Seller that Purchaser is not a Competitor.

(e) Seller Representation and Warranty Pertaining to Operating Statements. The Seller hereby represents and warrants to the Purchaser that to the current actual knowledge of Seller, the operating statements referenced in Exhibit C (the "Operating Statements"), which Seller shall deliver to Purchaser, are the same Operating Statements prepared by Seller's property manager and used by Seller in its ownership of the Property.

(f) Seller Representation and Warranty Pertaining to Occupancy. The Seller hereby represents and warrants to the Purchaser that to the current actual knowledge of Seller, there will be no occupancy or leasing agreements by which the Purchaser would be bound following the Closing, except for tenancy rights of long-term hotel guests under California state or local law. Following the expiration of the Due Diligence Period, Seller shall not enter into any new occupancy agreement with a hotel guest that that would allow such guest to obtain tenancy rights in the Property under California law.

(g) Seller Representation and Warranty Regarding Operation of the Property. The Seller hereby represents and warrants to the Purchaser that to the current actual knowledge of Seller, 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.

(h) Seller Representations and Warranties Regarding Discovery of New Information. The Seller hereby represents and warrants to the Purchaser that if the Seller obtains actual knowledge of any new 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, AND 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, ENTITLEMENTS, EXACTIONS AND EXTRACTIONS; (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, INCLUDING ANY APPLICABLE PLUMBING RETROFIT REQUIREMENTS AND ANY APPLICABLE ENERGY-RELATED REQUIREMENTS; (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 EXPRESSLY 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, CONTRACTORS, CONSULTANTS 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) (I) BASED ON A THEN-EXISTING WARRANTY OF A NON-RELEASED PARTY FOR WORK PERFORMED AT THE REAL PROPERTY BEFORE THE CLOSING OR MATERIALS OR EQUIPMENT SUPPLIED TO THE REAL PROPERTY BEFORE THE CLOSING, INCLUDING RECOVERY AGAINST ANY INSURANCE POLICY OF THE NON-RELEASED PARTY; OR (II) IF THE NON-RELEASED PARTY IS AN OCCUPANT, BASED ON A PRE-CLOSING BREACH OF THE OCCUPANT'S OCCUPANCY

AGREEMENT. **“NON-RELEASED PARTIES”** MEANS PERSONS PERFORMING WORK AT THE REAL PROPERTY BEFORE THE CLOSING (OTHER THAN SELLER OR ANY OF THE SELLER PARTIES) AND/OR ANY INSURANCE POLICIES HELD BY ANY OR ALL SUCH PERSONS AND THE OCCUPANTS.

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 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 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. 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, 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 this Agreement. Purchaser, on behalf of itself, its successors, assigns and successors-in-interest ("Successors"), hereby agrees to indemnify, defend and hold Seller and each and all of the Seller Parties (defined in Section 7(i)) 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 this 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, 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

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.

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SELLER'S INITIALS

  
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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, 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 this Agreement. Purchaser, on behalf of itself, its successors, assigns and successors-in-interest ("Successors"), hereby agrees to indemnify, defend and hold Seller and each and all of the Seller Parties (defined in Section 7(i)) 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 this 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, 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 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 a 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 Seller or 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 Seller's or the Seller Party's 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 entered into this 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 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.

  
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SELLER'S INITIALS

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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).

(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.

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SELLER'S INITIALS

  
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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 Material Condemnation is commenced by any party other than the Purchaser that will result in the taking of the entire Property or any part of the Property, Purchaser may, at Purchaser's election, 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.

For purposes hereof, "Material Condemnation" shall mean any condemnation or eminent domain proceeding (i) that would exceed ten percent (10%) of the Purchase Price, or (iii) the outcome of which would prohibit the use of the Property as intended by the Purchaser. For any condemnation or eminent domain proceeding other than a Material Condemnation, the parties shall proceed to Closing under subpart (2) above.

(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.

9. Broker's Commission. The Purchaser and the Seller each agree that, except as otherwise set forth in a separate commission agreement between Purchaser or Seller, on the one hand, and any broker or real estate agent, on the other hand, 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 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) 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, (b) by personal delivery, in which case notice shall be deemed delivered upon the actual date of delivery, or (c) 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: RT San Diego, LLC  
c/o AVR Realty Company  
1 Executive Boulevard  
Yonkers, NY 10701  
Attn: Allan V. Rose  
Email: [allan.rose@avrrealty.com](mailto:allan.rose@avrrealty.com)

Copy to: c/o AVR Realty Company  
1 Executive Boulevard  
Yonkers, NY 10701  
Attn: Lily Ann Marden  
Email: [lamarden@avrrealty.com](mailto:lamarden@avrrealty.com) and  
[legalnotices@avrrealty.com](mailto:legalnotices@avrrealty.com)

And

Dimension Development Company  
769 Highway 494  
Natchitoches, LA 71457  
Attn: Sam Friedman  
Email: [sam@dimdev.com](mailto:sam@dimdev.com)

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

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.

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 attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") Section 1033.5 and 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, if any, and all other stamps, intangible, documentary, recording and surtax imposed by law with reference to any other documents delivered in connection with this Agreement, if any. 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 in San Diego County, California.

(s) Employees. Effective at and upon Closing, Seller or its property manager shall cause the termination of the employment of all employees employed at the Property as of the Closing Date ("Employees").

(i) During the Due Diligence Period, Purchaser may inform Seller, in writing, that Purchaser will make an offer to employ and, effective upon the Closing, that Purchase will employ a sufficient number of Employees at the Property, without interruption in service and on terms and conditions substantially similar to those in effect prior to Closing, so as not to cause Seller to be subject to the notification requirements of the United States Worker Adjustment and Retraining Notification Act, as amended, and any other similar applicable state or local law (collectively, the "WARN Act"). In the event that Purchaser delivers such a notice (an "Employment Notice") and thereafter fails to comply with the above obligations set forth in this Section, Purchaser shall be responsible for all obligations, damages, fines or penalties arising under the National Labor Relations Act, the WARN Act or other applicable law and with respect to any Employees, and Purchaser shall indemnify, defend, and hold Seller Parties free and harmless from and against any and all Claims (including reasonable attorneys' fees, expenses and disbursements) arising out of or resulting from the same. The provisions of this Section shall survive the Closing.

(ii) In the event that Purchaser does not deliver an Employment Notice to Seller during the Due Diligence Period, then following expiration of the Due Diligence Period, Seller shall have the right to provide the Employees with any and all notices required under the WARN Act or other applicable law with respect to any Employees, and, in connection therewith, Seller shall have the right to extend the Closing Date in order to provide such notices, provided that Seller may not extend the Closing Date beyond ninety (90) days after the expiration of the Due Diligence Period.

[Signature Pages to Follow]




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

**SELLER:**

RT San Diego, LLC, a Delaware limited liability company

By: RT SD-Denver, L.P., a Delaware limited partnership,  
its sole member


By: RT-SD Special Corp., a Delaware corporation,  
its general partner

By:   
Name: Lily Ann Hadden  
Its: Vice 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:

#### PARCEL A:

PARCEL 1 OF PARCEL MAP NO. 15207, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, APRIL 14, 1988.

#### LEASE PARCEL B:

ALL THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 3253 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 22, 1974, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE ABOVE MENTIONED PARCEL MAP 3253; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL MAP NORTH 4°48'35" WEST, 462.00 FEET; THENCE LEAVING SAID EASTERLY LINE OF SOUTH 85°10'25" WEST, 151.00 FEET; THENCE SOUTH 4°49'35" EAST, 36.00 FEET; THENCE SOUTH 85°10'25" WEST, 61.00 FEET TO A POINT HEREINAFTER DESCRIBED AS POINT "A" SAID POINT BEING ON THE EAST LINE OF THE PREVIOUS DESCRIBED PARCEL 1, SAID POINT "A" BEING THE TRUE POINT OF BEGINNING; THENCE ALONG THE EAST LINE OF SAID PARCEL 1 NORTH 4°49'35" WEST, 53.00 FEET; THENCE NORTH 11°10'16" WEST, 65.39 FEET; THENCE LEAVING SAID EAST LINE NORTH 85°10'25" EAST, 46.12 FEET; THENCE SOUTH 4°49'35" EAST, 117.00 FEET; THENCE SOUTH 85°10'25" WEST, 39.00 FEET TO THE POINT OF BEGINNING.

#### LEASE PARCEL C:

ALL THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 3253, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 22, 1974, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE PREVIOUSLY DESCRIBED PARCEL 1; THENCE NORTH 4°49'35" WEST, 39.00 FEET; THENCE SOUTH 85°10'25" WEST, 134.00 FEET; THENCE SOUTH 4°49'35" EAST, 39.00 FEET TO THE NORTH LINE OF SAID PARCEL 1; THENCE ALONG SAID NORTH LINE NORTH 85°10'25" EAST, 134.00 FEET TO THE POINT OF BEGINNING.

LEASE PARCEL D:

ALL THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 3253, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 22, 1974, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE PREVIOUSLY DESCRIBED PARCEL 1; THENCE SOUTH 4°49'35" EAST, 16.70 FEET; ALONG THE EASTERLY LINE OF PARCEL 1, TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY LINE, NORTH 85°10'25" EAST, 15.00 FEET; THENCE SOUTH 4°49'35" EAST, 140.00 FEET; THENCE SOUTH 85°10'25" WEST, 10.20 FEET TO THE EASTERLY LINE OF PARCEL 1; THENCE NORTH 11°10'16" WEST, 43.74 FEET ALONG THE EASTERLY LINE OF PARCEL 1; THENCE NORTH 4°49'35" WEST, ALONG SAID EASTERLY LINE, 96.80 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL E:

AN EASEMENT OVER AND ACROSS PROPOSED DRIVEWAYS, PARKING LOTS SIDEWALKS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AND RECIPROCAL EASEMENT FOR USE AND MAINTENANCE OF PROPOSED COMMON ELEMENTS AND/OR UTILITY LINES SEWER AND WATER LINES AS SET OUT IN INSTRUMENT ENTITLED "GRANT OF EASEMENTS AND AGREEMENTS REGARDING DESIGN, CONSTRUCTION, MAINTENANCE AND OPERATION", RECORDED APRIL 22, 1988 AS INSTRUMENT NO. 1988-0188210 OF OFFICIAL RECORDS.

APN: 356-030-53-00, 356-030-55-00

## **Exhibit B**

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

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby expressly acknowledged, RT San Diego, LLC, a Delaware limited liability company ("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 occupancy agreements, if any, of space in the real property more particularly described in Exhibit "1" attached hereto and by this reference made a part hereof ("Real Property");

(b) all service agreements, maintenance agreements and other contracts listed on Exhibit "2" 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 "3" ("Personal Property"); and

(d) all of Assignor's right, title and interest, if any, 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, 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 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 Contracts.

The provisions of this Assignment of Personal Property and Assignment and Assumption of 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 Contracts as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ASSIGNOR:**

RT San Diego, LLC, a Delaware limited liability company

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

Name:\_\_\_\_\_

Its:\_\_\_\_\_

**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**

### **Property Documents**

Seller makes no representation that any of the following exist; and Seller has no obligation to create or obtain any of the following that do not exist on the Effective Date of the Agreement.

Operating Statements:

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

Year-to-Date Operating Statements (which shall include length of stay)

Disclosure Reports

- Natural Hazard Zone

Parking Lease

Property Tax Bill History (2016-Present)

Major Capital Contracts (2016-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, without limitation, those listed on Exhibit C-1 attached hereto) including Service Contracts, management contracts (other than the management agreement with Seller's affiliate, which will be terminated as of Closing), 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 (2016-Present)

Utility Bills (2016-Present)

Capital Expenditures (2016-Present) – General Ledger Detail

Drawings, Plans and Specifications, including as-builts

**Exhibit C-1**

**Contract List**

<b>Contract Type</b>	<b>Contract Sub Type</b>	<b>Vendor</b>
<b>Maintenance</b>	<b>Landscaping</b>	<b>VIVO Landscaping</b>
<b>Service</b>	<b>V.M. Support</b>	<b>Pinnacle Comm</b>
<b>Service</b>	<b>Parking lot lease</b>	<b>Al Bahr Shrine</b>
<b>Service</b>	<b>Service Agreements</b>	<b>Uniguest</b>
<b>Maintenance</b>	<b>Assa Abloy</b>	<b>Lock system support</b>
<b>Service</b>	<b>Internet support</b>	<b>Single Digits</b>
<b>Service</b>	<b>Waste Management</b>	<b>Retriever Waste mgmt</b>
<b>Maintenance</b>	<b>Pest Treatment</b>	<b>Pestgon</b>
<b>Service</b>	<b>TV Programming</b>	<b>DirecTV</b>
<b>Service</b>	<b>Lobby music and recording</b>	<b>5 Media North</b>
<b>Service</b>	<b>Interior flowers</b>	<b>Flowers by Coley</b>
<b>Service</b>	<b>Newspapers</b>	<b>Dow Jones/USA Today/Union Tribune</b>
<b>Service</b>	<b>Mat Cleaning and Rental</b>	<b>Cintas</b>
<b>Maintenance</b>	<b>Maintenance tracking</b>	<b>Quore</b>
<b>Maintenance</b>	<b>Johnson Controls</b>	<b>Quarterly Inspection/Fire sprinkler system.</b>
<b>Service</b>	<b>HSIA</b>	<b>Airespring</b>
<b>Service</b>	<b>Music License</b>	<b>ASCAP/ BMI/Sesac</b>



## **Exhibit D**

### **Parking Lease**

Lease Agreement between Al Bahr Temple of San Diego, California as landlord, and Ssangyong/Kearney Mesa Associates Joint Venture, a California partnership, as tenant, dated April 20, 1998, recorded April 22, 1988 as Document No. 1988-0188213 of Official Records of San Diego County, California.

Said interest of Ssangyong/Kearny Mesa Associates Join Venture was transferred to Ssangyong International, Inc., a California corporation, by a Quitclaim Deed recorded November 25, 1991 as document no. 1991-0609999, of Official Records.

Said interest of Ssangyong International, Inc., a California corporation was transferred to Pacific American Property Exchange Corporation, a California corporation, by Grant Deed recorded December 30, 1997 as document no. 1997-0665516, of Official Records.

Said interest of Pacific American Property Exchange Corporation was transferred to Sunstone Hotels, LLC, a Delaware limited liability company, by Grant Deed recorded August 7, 1998 as document no. 1998-0498543, of Official Records.

Said interest of Sunstone Hotels, L.L.C., a Delaware limited liability company was transferred to Sunstone SH Hotels, L.L.C., a Delaware limited liability company, by Assignment recorded December 1, 1998 as document no. 1999-0786343, of Official Records.

Said interest of Sunstone SH Hotels, L.L.C., a Delaware limited partnership was assigned to SD-Denver, L.P., a Delaware limited partnership by Assignment and Assumption of Lease Agreement dated as of February 20, 2001.

Said interest of SD-Denver, L.P. was assigned to RT San Diego LLC by that certain Assignment and Assumption of Lease Agreement dated May 28, 2015 and recorded in the Official Records.

**FUNDING AGREEMENT**  
**(Residence Inn - 5400 Kearny Mesa Road, San Diego)**

**THIS FUNDING AGREEMENT** (“Agreement”) is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of San Diego (“City”) and the San Diego Housing Commission (“Commission”).

**RECITALS**

A. The Commission and RT San Diego, LLC, a Delaware limited liability company, entered into that certain Purchase and Sale Agreement, dated as of July 20, 2020 (“Purchase Agreement”), attached as Exhibit 1. As set forth in more detail in the Purchase Agreement, the Commission has agreed to purchase that certain 144-unit Residence Inn located at 5400 Kearny Mesa Road, San Diego, California 92111 (“Property”) for Thirty-Nine Million Five Hundred Thousand and No/100 Dollars (\$39,500,000.00) (“Purchase Price”).

B. The Commission intends to use the Property for the purpose of providing approximately 142 units of permanent housing to formerly homeless citizens of San Diego. Given the immediate need for permanent housing for formerly homeless persons and to address the current public health emergency and impacts due to COVID-19, the City has agreed to contribute \$10,000,000.00 in funds received as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Coronavirus Relief Funds), as further defined below, to the Commission to be used to fund a portion of the Purchase Price.

C. The Commission has also obtained, for the purpose of acquisition, remediation, and upgrades to the Property, the following funding commitments and funding awards: \$10,000,000 in State of California Department of Housing and Community Development (HCD) Homekey Program (Homekey) Funds; \$17,425,852 in a permanent loan from Chase Bank; \$6,594,517 in federal Moving to Work (MTW) funds; and \$2,469,310 in a Deferred Developer Fee.

D. There is no current indication that any of the funding sources are in jeopardy or will not be available for the purchase of the hotels. However, in the unlikely event that any of the funding sources are not available before the close of escrow, the City will use best efforts to locate alternative sources of funds to facilitate timely purchase of the Property and Commission agrees to reimburse City for any additional funds City provides as substitute for funding sources identified in Recital C.

**AGREEMENT**

NOW, THEREFORE, for valid consideration, the City and Commission agree, pledge and covenant as follows:

1. Contributions of Funds.

(a) Coronavirus Relief Funds.

(1) Grant and Amount. The City hereby agrees to grant the \$10,000,000.00 of Coronavirus Relief Funds, in accordance with the CARES Act and the terms of this Agreement, to the Commission to partially fund the Commission's acquisition of the Property and payment of the Purchase Price.

(2) Timing. The City shall disburse all \$10,000,000.00 of the Coronavirus Relief Funds to the Commission for deposit to Escrow (as defined in the Purchase Agreement), or directly to Escrow, at such time as is sufficient for the Commission to close on the Property in accordance with the Purchase Agreement and as required by the lenders on the Property. Should Closing (as defined in the Purchase Agreement) not occur by \_\_\_\_\_, the \$10,000,000 in Coronavirus Relief Funds shall be returned by Escrow to the City, unless the Mayor or designee, has provided otherwise in writing.

(3) Use Covenant. Commission shall use the Property to provide approximately 142 units of permanent housing to formerly homeless citizens of San Diego to address the current public health emergency and impacts due to COVID-19 in accordance with the CARES Act.

(b) Project Homekey Funds.

(1) Grant and Amount. The Commission has obtained a commitment of Project Homekey funds from the State of California in the amount of \$10,000,000.00 ("Project Homekey Funds"). It is uncertain whether the Project Homekey Funds will be received by the Commission at such time as is sufficient for the Commission to close on the Property in accordance with the Purchase Agreement and as required by the lenders on the Property.

(2) Substitution of Grant Funds in the Event of Delay. The City agrees that in the event the Project Homekey Funds are not received in time for the Commission to close on the Property in accordance with the Purchase Agreement and as required by the lenders on the Property, the City will use best efforts to locate alternative sources of funds to facilitate the purchase of the Property. The Commission acknowledges that any additional funding allocation is discretionary on the part of the City Council and nothing contained in the provision, shall, nor does it, in any way, commit the City Council to any specific future action concerning alternative funding sources. Nothing contained herein shall impair, in any way, the legislative discretion of the City Council of the City of San Diego. The purpose of this provision is to memorialize the current intent and expectations of the parties to make best efforts to allow the acquisition of the Property, in a timely manner before December 30<sup>th</sup>, 2020.

(3) Reimbursement in the event of Substitution. If the \$10,000,000.00 of the Project Homekey Backstop Funds are disbursed by the City to partially fund the Commission's acquisition of the Property as set forth in Section 1(b)(2) above, then the Commission shall reimburse such \$10,000,000.00 of the Project Homekey Backstop Funds to the City, upon the Commission's receipt of the \$10,000,000.00 of Project Homekey Funds. Any arrangement whereby the Commission is not obligated to reimburse the City in whole or in part, including in

the event that the Commission never receives the \$10,000,000.00 of Project Homekey Funds, shall be determined by future City Council action.

2. Notices. All notices under this Agreement shall be in writing and sent (a) by certified or registered U.S. mail, return receipt requested, (b) overnight by a nationally recognized overnight courier such as UPS Overnight or FedEx, (c) by personal delivery, or (d) by email, in which case notice shall be deemed delivered upon the actual date of delivery. All notices shall be effective upon receipt (or refusal to accept delivery). All notices shall be delivered to the following addresses or such other addresses as changed by any party from time to time by written notice to the other parties hereto:

Commission: San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, CA 92101  
Attn: Jeff Davis  
Email: [jeffd@sdhc.org](mailto:jeffd@sdhc.org)

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

If to City: City of San Diego  
Attn: Christina Bibler  
1200 Third Avenue  
San Diego, CA 92101  
Email: [cbibler@sandiego.gov](mailto:cbibler@sandiego.gov)

Copy to: Mara Elliott, City Attorney  
Attn: Daphne Skogen  
1200 Third Avenue, Suite 1100  
San Diego, CA 92101  
Email: [dskogen@sandiego.gov](mailto:dskogen@sandiego.gov)

3. General Provisions.

(a) Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then such provision shall be severed from the rest of this Agreement and the remaining provisions shall remain in full force and effect.

(b) Construction of Agreement. The provisions contained in this Agreement shall not be construed in favor of or against either City or the Commission, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed in accordance with the laws of the State of California.

(c) Counterparts. This Agreement may be executed in any number of counterparts and, as so executed, the counterparts shall constitute one and the same Agreement. City and the Commission agree that each such counterpart is an original and shall be binding upon all of the parties, even though all of the parties are not signatories to the same counterpart.

(d) Recitals Incorporated. The Recitals to this Agreement are hereby incorporated in this Agreement by this reference.

(e) Signature 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, covenant to one another 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.

**CITY:**

CITY OF SAN DIEGO, a municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:  
MARA W. ELLIOTT, City Attorney

By: \_\_\_\_\_  
Daphne Z. Skogen

**[SIGNATURES CONTINUED ON FOLLOWING PAGE]**

**COMMISSION:**  
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, General Counsel  
San Diego Housing Commission

DRAFT

## EXHIBIT 1 TO FUNDING AGREEMENT

### **PURCHASE AND SALE AGREEMENT (Residence Inn – 5400 Kearny Mesa Road, San Diego)**

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is dated as of the 20<sup>th</sup> day of July, 2020 (“Effective Date”), by and between RT San Diego, LLC, a Delaware limited liability company (“Seller”), and the San Diego Housing Commission (“Purchaser”).

#### **RECITALS**

A. The Seller owns that certain 144-unit Residence Inn located at 5400 Kearny Mesa Road, San Diego, California 92111, which is legally described on Exhibit A attached hereto and made a part hereof.

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 the Seller is agreeing to sell the Property under threat of condemnation made concurrently with the parties’ entering into this Agreement 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 subject only to the Property Documents 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.

“Appurtenant Rights and Interests” means collectively: (i) all rights, privileges and easements, if any, appurtenant to the Real Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Real Property; (ii) all development rights, air rights, and water rights, if any, relating to the Real Property; and (iii) all easements, rights-of-way or appurtenances, if any, which run with the Real Property; and (iv) all of the 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, if any.

“Assignment” means the Assignment of Personal Property and Assignment and Assumption of Contracts duly executed and acknowledged by the Seller and Purchaser, in 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 recordation of the Grant Deed.

“Closing Date” means 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 sixty (60) days after expiration of the Due Diligence Period.

“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 November 17, 2020 (*120 days after the Effective Date*).

“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. Use of the term “Escrow Agent” does not create a general agency and does not confer on Escrow Agent any right or authority to act for Purchaser or Seller without express instructions, whether as set forth in this Agreement or otherwise.

“Excluded Property” means, collectively, any lump sum or upfront payments paid to Seller or its predecessors under any of the Property Contracts prior to Closing, (ii) any unearned insurance premiums, (iii) any insurance policies or insurance contracts owned or held by Seller or its affiliates in connection with the Property, (iv) any and all deposits, cash and other accounts owned or held by Seller or its affiliates, (v) any property tax refunds for the period prior to the Closing, (vi) Seller’s existing property management contract, which shall be terminated by Seller on or before the Closing, (vii) to the extent owned by Seller’s property manager, any computers, computer operating systems, and computer software programs, social media accounts, service mark or other proprietary or intellectual property used or maintained in connection with its management of the Property, (viii) any property of whatever nature, including but not limited to any personal property, intangible property or intellectual property, owned by Seller’s property manager in connection with its management of the Property, owned by Seller’s franchisor any such franchisor’s affiliates, or owned by any tenant or guest of the Property, (ix) any alcohol or liquor permits of Seller or its property manager, (x) Seller’s existing franchise or license agreement allowing for its operation of the Property under the Residence Inn brand, and (xi) any national service contracts entered into by Seller or any of its affiliates.

“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 States Government. Provided, however, the term “Hazardous Materials” shall not include substances typically used in the ordinary course of developing, operating and maintaining hotels 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.

“Improvements” means collectively any and all buildings, structures and improvements, of any kinds whatsoever, located at or affixed to the Real Property.

“Parking Lease” means that certain lease more particularly described on Exhibit D attached hereto and made a part hereof, as the same may be amended, restated, supplemented, assigned or otherwise modified from time to time.

“Permitted Exceptions” means (i) the printed exceptions and exclusions in the Title Policy; (ii) the exceptions to title set forth in the Title Report 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 delinquent; (iv) any title exceptions caused,

consented to or preapproved by Purchaser; (vi) upon Closing, any matter affecting title to the Property which was disclosed in writing by Seller to Purchaser prior to Closing, or of which Purchaser had knowledge prior to Closing, (vi) zoning and other regulatory laws and ordinances affecting the Property; and (vii) any easement, right of way, limitation, encroachment, conflict, discrepancy, overlapping of improvements, protrusion, lien, encumbrance, restriction, condition, covenant, exception or other matter with respect to the Property that would be shown on an accurate survey of the Property.

“Personal Property” means 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 occupants or renters of all of any portion of the Real Property.

“Property” means collectively, the Real Property, the Improvements, the Appurtenant Rights and Interests and the Personal Property, but excludes the Excluded Property.

“Property Documents” means the documents and agreements listed on Exhibit C 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, collectively, (i) the real property legally described on Exhibit A attached hereto and made a part hereof, and (ii) the leasehold interest of Seller created by the Parking Lease.

“Seller” means RT San Diego, LLC, a Delaware limited liability company.

“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.

“Title Report” means Preliminary Report Order No. 00131818-993-SD2-CFU dated as of June 18, 2020, issued by Chicago Title Insurance Company.

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 Thirty-Nine Million Five Hundred Thousand and No/100 Dollars (\$39,500,000.00) ("Purchase Price"). The Purchase Price shall be paid by the Purchaser to the Seller partially with Immediately Available Funds.

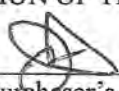
(b) Deposit; Liquidated Damages.

(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 (i.e., constitute liquidated damages in the event of Purchaser's breach, as provided in Section 3(b)(2)) 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 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 PARTIES 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 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.

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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 sixty (60) days of the Due Diligence Period, the Purchaser and its representatives, consultants and attorneys shall have access to the Real Property and the Improvements, subject to the rights of occupants, upon not less than twenty four (24) hours' prior written notice (which may be by e-mail) to Seller. Purchaser and Seller shall cooperate in order to allow for and ensure that no occupants are disturbed. All

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.

  
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Seller's Initials

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Purchaser's Initials

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(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 sixty (60) days of the Due Diligence Period, the Purchaser and its representatives, consultants and attorneys shall have access to the Real Property and the Improvements, subject to the rights of occupants, upon not less than twenty four (24) hours' prior written notice (which may be by e-mail) to Seller. Purchaser and Seller shall cooperate in order to allow for and ensure that no occupants are disturbed. All

inspections shall be consistent with all applicable laws, rules and regulations regarding coronavirus risks, including without limitation social distancing, the maximum number of Purchaser representatives in any unit at any time, the wearing of face masks and the appropriate evaluation of the health of those conducting inspections. Seller shall make commercially reasonable efforts to provide Purchaser with access to all unoccupied units subject to compliance by Purchaser and its representatives of all laws, rules and regulations regarding coronavirus risks, however Seller's inability to provide such access shall not be a default hereunder and shall not provide Purchaser with additional rights not otherwise expressed in this Agreement. Purchaser acknowledges that it shall not have access to any occupied units during times when such units are occupied by guests. 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 (including Purchaser's Consultants) 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 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 (including, without limitation, a Phase II environmental assessment), the Purchaser may do so only after obtaining Seller's prior written consent to the same, which consent may be withheld or granted on conditions in Seller's sole discretion. The Purchaser shall promptly restore the Property to the condition the Property was in immediately prior to any tests or inspections conducted pursuant to this Section 4(a), 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). Before any of Purchaser's Consultants or other contractors, consultants or agents acting for or on behalf of Purchaser enter onto the Property, Purchaser shall furnish to Seller evidence that the Purchaser's Consultant or other contractor, consultant or agent of Purchaser has procured commercial general liability insurance from an insurer authorized to do business in the State of California, which is reasonably acceptable to Seller, insuring against claims for bodily injury, death or damage to property in a single limit amount of not less than \$2,000,000.00, endorsed to name Seller and Seller's affiliated property manager as additional insureds.

(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 physical copies or digital copies (e.g. a pdf, tif or jpg file) of all documents evidencing the Operating Statements and Property Documents by physical delivery, "dropbox" or similar on-line data site, email or on a memory medium. Seller's

failure to deliver or make available to Purchaser any such documents or information shall not result in an extension of the Due Diligence Period nor give Purchaser the right to terminate this Agreement as a result of such failure following expiration of the Due Diligence Period, and Purchaser's sole remedy therefor shall be Purchaser's right to terminate this Agreement by delivering written notice thereof to Seller prior to expiration of the Due Diligence Period. If this Agreement is terminated before Closing, the Purchaser shall return all copies to the Seller; however, if any such information was delivered or made available to the Purchaser in electronic form, the Purchaser shall (i) delete all copies thereof so that the same cannot be retrieved; and (ii) certify to the Seller in writing under penalty of perjury that such deletion has been effected.

(c) Occupant Noticing and Relocation Costs. Certain local, State and Federal relocation laws (including, without limitation, California state law, laws or ordinances of the City of San Diego or San Diego County, and/or rules and regulations promulgated by Purchaser or by the U.S. Department of Housing and Urban Development) may be applicable to the Purchaser, as a public agency, or the transactions contemplated by this Agreement which would require the Purchaser to provide certain notices to the occupants of the Property. The Seller agrees to allow the Purchaser to provide any and all notices to occupants of the Property that are required in order for the Purchaser to comply with any applicable laws; provided, however, prior to delivering notices to any occupants 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. Purchaser shall bear all responsibility for complying with such notice requirements and shall bear all relocation costs and expenses payable to occupants under applicable laws.

(d) Title. Purchaser's obligation to Close is contingent upon Purchaser's approval or deemed approval of all matters affecting title to or use of the Real Property (collectively, "Title Matters") during the Due Diligence Period. 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. Purchaser shall have until August 19, 2020 (*thirty (30) days after the Effective Date*), 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) Business 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) Business 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 caused by Seller or deeds of trust to be eliminated as exceptions to title on the Title Policy at Seller's sole expense prior to the close of Escrow, and shall not be party to and record any documents against the Real Property from and after the Effective Date without Purchaser's prior written consent.

(e) Parking Lease. At Closing, Purchaser shall succeed to Seller's interest in, and shall otherwise assume and accept Seller's interest in and to, the Parking Lease. Promptly following the Effective Date, Purchaser and Seller shall make application to the Parking Lease lessor for the assignment and assumption of the Parking Lease, and Purchaser agrees to exercise good faith and commercially reasonable due diligence in making a complete application and diligently pursuing approval of such assumption. Seller agrees to reasonably cooperate with Purchaser in seeking such approval by providing such information as the Parking Lease lessor may reasonably require in order to consider Purchaser's application for the assumption of the Parking Lease. Purchaser and Seller shall share, on a 50/50 basis, any review costs or fees imposed by the Parking Lease lessor in connection with its review of the assignment and assumption request. Purchaser and Seller shall reasonably cooperate in good faith to agree upon the forms of the Parking Lease assignment and assumption agreement on or before the expiration of the Due Diligence Period.

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.
- (f) The Parking Lease lessor has approved, in writing, the assignment by Seller and assumption by Purchaser of the Parking Lease.

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) or 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 (except in the case of clause (g), (h) or (i) below, the failure of which shall not be considered a default by 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. In the event of Seller's default (following notice and cure as aforesaid) under this Agreement, Purchaser's sole and exclusive remedies shall be (A) to terminate this Agreement and receive a refund of the Deposit, and (B) to receive reimbursement of Purchaser's actual, documented (by paid invoices or similar evidence), out-of-pocket expenses paid by Purchaser in connection with the transactions described in this Agreement in an amount not to exceed \$500,000 in the aggregate. 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 Property 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 (i) the Property Documents and (ii) long-term hotel guests with tenancy rights under California state or local law.

(g) Except as described in Recital B, as of the Closing Date, there is no pending, or threatened to be pending, any action or proceeding by any person or before any government authority, the outcome of which could prohibit the use of the Property as intended by the Purchaser.

(h) 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.

(i) The Parking Lease lessor has approved, in writing, the assignment by Seller and assumption by Purchaser of the Parking Lease.

(j) As of the Closing Date, Seller is not in 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 in all material respects as of the Closing Date.

(k) The Residence Inn franchise agreement affecting the Property is terminated.

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 and correct, in all material respects, as of the date hereof and shall be and are true and correct, in all material respects, as of the Closing Date. The representations and warranties of each party shall survive the Closing for a period of one hundred eighty (180) days (the "Limitation Period"). No claim for a breach of any representation or warranty shall be actionable by Purchaser or payable by Seller (a) if that breach results from or is based on a condition, state of facts or other matter that was known to Purchaser or disclosed to Purchaser in writing prior to expiration of the Due Diligence Period, (b) unless the valid claims for all such breaches collectively aggregate Ten Thousand and No/100 Dollars (\$10,000.00) (the "Floor") or more, in which event the amount of such valid claims and any claims against Seller under this Agreement in excess of the Floor shall be actionable with respect to the Property up to, but not exceeding, the amount of the Cap (as defined below), and (c) unless written notice containing a description of the specific nature of such breach is given by Purchaser to Seller prior to the commencement of any action and any action is commenced by Purchaser against Seller with respect to any such claims prior to the expiration of the Limitation Period. Seller shall not be liable to Purchaser's to the extent Purchaser's claim is recoverable from any other party pursuant to any insurance policy, service contract, warranty, guaranty or other indemnity. As used herein, the term "Cap" shall mean the total aggregate amount equal to Five Hundred Thousand and No/100 Dollars (\$500,000.00). In no event shall Seller's aggregate liability to Purchaser for any and all breaches of any Seller representations or warranties in this Agreement exceed the amount of the Cap, and Purchaser hereby waives and disclaims any right to damages or compensation for any and all such breaches in excess of the Cap.

(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; and

(2) Except as described in Recital B, to the knowledge of the Seller, 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, except that the Property's current franchisor has a right of first refusal for any sale of the Property to a Competitor. For purposes hereof, "Competitor" means any person or entity that owns, has an interest in, or is an affiliate, principal or director of a person or entity that owns or has an interest in a hotel brand, tradename, system or chain that is comprised of at least (i) twenty (20) full-service or (ii) fifty (50) limited-service hotels. Purchaser hereby represents and warrants to Seller that Purchaser is not a Competitor.

(e) Seller Representation and Warranty Pertaining to Operating Statements. The Seller hereby represents and warrants to the Purchaser that to the current actual knowledge of Seller, the operating statements referenced in Exhibit C (the "Operating Statements"), which Seller shall deliver to Purchaser, are the same Operating Statements prepared by Seller's property manager and used by Seller in its ownership of the Property.

(f) Seller Representation and Warranty Pertaining to Occupancy. The Seller hereby represents and warrants to the Purchaser that to the current actual knowledge of Seller, there will be no occupancy or leasing agreements by which the Purchaser would be bound following the Closing, except for tenancy rights of long-term hotel guests under California state or local law. Following the expiration of the Due Diligence Period, Seller shall not enter into any new occupancy agreement with a hotel guest that that would allow such guest to obtain tenancy rights in the Property under California law.

(g) Seller Representation and Warranty Regarding Operation of the Property. The Seller hereby represents and warrants to the Purchaser that to the current actual knowledge of Seller, 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.

(h) Seller Representations and Warranties Regarding Discovery of New Information. The Seller hereby represents and warrants to the Purchaser that if the Seller obtains actual knowledge of any new 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, AND 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, ENTITLEMENTS, EXACTIONS AND EXTRACTIONS; (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, INCLUDING ANY APPLICABLE PLUMBING RETROFIT REQUIREMENTS AND ANY APPLICABLE ENERGY-RELATED REQUIREMENTS; (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 EXPRESSLY 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, CONTRACTORS, CONSULTANTS 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) (I) BASED ON A THEN-EXISTING WARRANTY OF A NON-RELEASED PARTY FOR WORK PERFORMED AT THE REAL PROPERTY BEFORE THE CLOSING OR MATERIALS OR EQUIPMENT SUPPLIED TO THE REAL PROPERTY BEFORE THE CLOSING, INCLUDING RECOVERY AGAINST ANY INSURANCE POLICY OF THE NON-RELEASED PARTY; OR (II) IF THE NON-RELEASED PARTY IS AN OCCUPANT, BASED ON A PRE-CLOSING BREACH OF THE OCCUPANT'S OCCUPANCY

AGREEMENT. **“NON-RELEASED PARTIES”** MEANS PERSONS PERFORMING WORK AT THE REAL PROPERTY BEFORE THE CLOSING (OTHER THAN SELLER OR ANY OF THE SELLER PARTIES) AND/OR ANY INSURANCE POLICIES HELD BY ANY OR ALL SUCH PERSONS AND THE OCCUPANTS.

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 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 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. 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.

  
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SELLER'S INITIALS

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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, 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 this Agreement. Purchaser, on behalf of itself, its successors, assigns and successors-in-interest ("Successors"), hereby agrees to indemnify, defend and hold Seller and each and all of the Seller Parties (defined in Section 7(i)) 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 this 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, 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



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.

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SELLER'S INITIALS

  
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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, 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 this Agreement. Purchaser, on behalf of itself, its successors, assigns and successors-in-interest ("Successors"), hereby agrees to indemnify, defend and hold Seller and each and all of the Seller Parties (defined in Section 7(i)) 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 this 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, 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 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 a 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 Seller or 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 Seller's or the Seller Party's 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 entered into this 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 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.

  
\_\_\_\_\_  
SELLER'S INITIALS

\_\_\_\_\_  
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).

(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.

\_\_\_\_\_  
SELLER'S INITIALS

  
\_\_\_\_\_  
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 Material Condemnation is commenced by any party other than the Purchaser that will result in the taking of the entire Property or any part of the Property, Purchaser may, at Purchaser's election, 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.

For purposes hereof, "Material Condemnation" shall mean any condemnation or eminent domain proceeding (i) that would exceed ten percent (10%) of the Purchase Price, or (iii) the outcome of which would prohibit the use of the Property as intended by the Purchaser. For any condemnation or eminent domain proceeding other than a Material Condemnation, the parties shall proceed to Closing under subpart (2) above.

(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.

9. Broker's Commission. The Purchaser and the Seller each agree that, except as otherwise set forth in a separate commission agreement between Purchaser or Seller, on the one hand, and any broker or real estate agent, on the other hand, 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 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) 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, (b) by personal delivery, in which case notice shall be deemed delivered upon the actual date of delivery, or (c) 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: RT San Diego, LLC  
c/o AVR Realty Company  
1 Executive Boulevard  
Yonkers, NY 10701  
Attn: Allan V. Rose  
Email: [allan.rose@avrrealty.com](mailto:allan.rose@avrrealty.com)

Copy to: c/o AVR Realty Company  
1 Executive Boulevard  
Yonkers, NY 10701  
Attn: Lily Ann Marden  
Email: [lamarden@avrrealty.com](mailto:lamarden@avrrealty.com) and  
[legalnotices@avrrealty.com](mailto:legalnotices@avrrealty.com)

And

Dimension Development Company  
769 Highway 494  
Natchitoches, LA 71457  
Attn: Sam Friedman  
Email: [sam@dimdev.com](mailto:sam@dimdev.com)

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

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.

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 attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") Section 1033.5 and 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, if any, and all other stamps, intangible, documentary, recording and surtax imposed by law with reference to any other documents delivered in connection with this Agreement, if any. 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 in San Diego County, California.

(s) Employees. Effective at and upon Closing, Seller or its property manager shall cause the termination of the employment of all employees employed at the Property as of the Closing Date ("Employees").

(i) During the Due Diligence Period, Purchaser may inform Seller, in writing, that Purchaser will make an offer to employ and, effective upon the Closing, that Purchase will employ a sufficient number of Employees at the Property, without interruption in service and on terms and conditions substantially similar to those in effect prior to Closing, so as not to cause Seller to be subject to the notification requirements of the United States Worker Adjustment and Retraining Notification Act, as amended, and any other similar applicable state or local law (collectively, the "WARN Act"). In the event that Purchaser delivers such a notice (an "Employment Notice") and thereafter fails to comply with the above obligations set forth in this Section, Purchaser shall be responsible for all obligations, damages, fines or penalties arising under the National Labor Relations Act, the WARN Act or other applicable law and with respect to any Employees, and Purchaser shall indemnify, defend, and hold Seller Parties free and harmless from and against any and all Claims (including reasonable attorneys' fees, expenses and disbursements) arising out of or resulting from the same. The provisions of this Section shall survive the Closing.

(ii) In the event that Purchaser does not deliver an Employment Notice to Seller during the Due Diligence Period, then following expiration of the Due Diligence Period, Seller shall have the right to provide the Employees with any and all notices required under the WARN Act or other applicable law with respect to any Employees, and, in connection therewith, Seller shall have the right to extend the Closing Date in order to provide such notices, provided that Seller may not extend the Closing Date beyond ninety (90) days after the expiration of the Due Diligence Period.

[Signature Pages to Follow]


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

**SELLER:**

RT San Diego, LLC, a Delaware limited liability company

By: RT SD-Denver, L.P., a Delaware limited partnership,  
its sole member

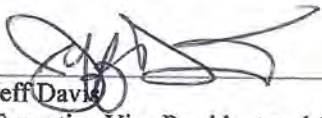
By: RT-SD Special Corp., a Delaware corporation,  
its general partner

By:   
Name: Lily Ann Hadden  
Its: Vice President

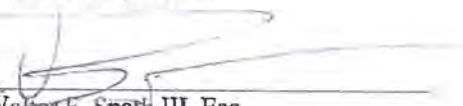
[SIGNATURES CONTINUED ON FOLLOWING PAGE]

**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:

#### PARCEL A:

PARCEL 1 OF PARCEL MAP NO. 15207, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, APRIL 14, 1988.

#### LEASE PARCEL B:

ALL THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 3253 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 22, 1974, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE ABOVE MENTIONED PARCEL MAP 3253; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL MAP NORTH 4°48'35" WEST, 462.00 FEET; THENCE LEAVING SAID EASTERLY LINE OF SOUTH 85°10'25" WEST, 151.00 FEET; THENCE SOUTH 4°49'35" EAST, 36.00 FEET; THENCE SOUTH 85°10'25" WEST, 61.00 FEET TO A POINT HEREINAFTER DESCRIBED AS POINT "A" SAID POINT BEING ON THE EAST LINE OF THE PREVIOUS DESCRIBED PARCEL 1, SAID POINT "A" BEING THE TRUE POINT OF BEGINNING; THENCE ALONG THE EAST LINE OF SAID PARCEL 1 NORTH 4°49'35" WEST, 53.00 FEET; THENCE NORTH 11°10'16" WEST, 65.39 FEET; THENCE LEAVING SAID EAST LINE NORTH 85°10'25" EAST, 46.12 FEET; THENCE SOUTH 4°49'35" EAST, 117.00 FEET; THENCE SOUTH 85°10'25" WEST, 39.00 FEET TO THE POINT OF BEGINNING.

#### LEASE PARCEL C:

ALL THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 3253, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 22, 1974, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE PREVIOUSLY DESCRIBED PARCEL 1; THENCE NORTH 4°49'35" WEST, 39.00 FEET; THENCE SOUTH 85°10'25" WEST, 134.00 FEET; THENCE SOUTH 4°49'35" EAST, 39.00 FEET TO THE NORTH LINE OF SAID PARCEL 1; THENCE ALONG SAID NORTH LINE NORTH 85°10'25" EAST, 134.00 FEET TO THE POINT OF BEGINNING.

LEASE PARCEL D:

ALL THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 3253, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 22, 1974, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE PREVIOUSLY DESCRIBED PARCEL 1; THENCE SOUTH 4°49'35" EAST, 16.70 FEET; ALONG THE EASTERLY LINE OF PARCEL 1, TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY LINE, NORTH 85°10'25" EAST, 15.00 FEET; THENCE SOUTH 4°49'35" EAST, 140.00 FEET; THENCE SOUTH 85°10'25" WEST, 10.20 FEET TO THE EASTERLY LINE OF PARCEL 1; THENCE NORTH 11°10'16" WEST, 43.74 FEET ALONG THE EASTERLY LINE OF PARCEL 1; THENCE NORTH 4°49'35" WEST, ALONG SAID EASTERLY LINE, 96.80 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL E:

AN EASEMENT OVER AND ACROSS PROPOSED DRIVEWAYS, PARKING LOTS SIDEWALKS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AND RECIPROCAL EASEMENT FOR USE AND MAINTENANCE OF PROPOSED COMMON ELEMENTS AND/OR UTILITY LINES SEWER AND WATER LINES AS SET OUT IN INSTRUMENT ENTITLED "GRANT OF EASEMENTS AND AGREEMENTS REGARDING DESIGN, CONSTRUCTION, MAINTENANCE AND OPERATION", RECORDED APRIL 22, 1988 AS INSTRUMENT NO. 1988-0188210 OF OFFICIAL RECORDS.

APN: 356-030-53-00, 356-030-55-00

## **Exhibit B**

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

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby expressly acknowledged, RT San Diego, LLC, a Delaware limited liability company ("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 occupancy agreements, if any, of space in the real property more particularly described in Exhibit "1" attached hereto and by this reference made a part hereof ("Real Property");

(b) all service agreements, maintenance agreements and other contracts listed on Exhibit "2" 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 "3" ("Personal Property"); and

(d) all of Assignor's right, title and interest, if any, 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, 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 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 Contracts.

The provisions of this Assignment of Personal Property and Assignment and Assumption of 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 Contracts as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ASSIGNOR:**

RT San Diego, LLC, a Delaware limited liability company

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

Name:\_\_\_\_\_

Its:\_\_\_\_\_

**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**

### **Property Documents**

Seller makes no representation that any of the following exist; and Seller has no obligation to create or obtain any of the following that do not exist on the Effective Date of the Agreement.

Operating Statements:

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

Year-to-Date Operating Statements (which shall include length of stay)

Disclosure Reports

- Natural Hazard Zone

Parking Lease

Property Tax Bill History (2016-Present)

Major Capital Contracts (2016-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, without limitation, those listed on Exhibit C-1 attached hereto) including Service Contracts, management contracts (other than the management agreement with Seller's affiliate, which will be terminated as of Closing), 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 (2016-Present)

Utility Bills (2016-Present)

Capital Expenditures (2016-Present) – General Ledger Detail

Drawings, Plans and Specifications, including as-builts

**Exhibit C-1****Contract List**

<b>Contract Type</b>	<b>Contract Sub Type</b>	<b>Vendor</b>
<b>Maintenance</b>	<b>Landscaping</b>	<b>VIVO Landscaping</b>
<b>Service</b>	<b>V.M. Support</b>	<b>Pinnacle Comm</b>
<b>Service</b>	<b>Parking lot lease</b>	<b>Al Bahr Shrine</b>
<b>Service</b>	<b>Service Agreements</b>	<b>Uniguest</b>
<b>Maintenance</b>	<b>Assa Abloy</b>	<b>Lock system support</b>
<b>Service</b>	<b>Internet support</b>	<b>Single Digits</b>
<b>Service</b>	<b>Waste Management</b>	<b>Retriever Waste mgmt</b>
<b>Maintenance</b>	<b>Pest Treatment</b>	<b>Pestgon</b>
<b>Service</b>	<b>TV Programming</b>	<b>DirecTV</b>
<b>Service</b>	<b>Lobby music and recording</b>	<b>5 Media North</b>
<b>Service</b>	<b>Interior flowers</b>	<b>Flowers by Coley</b>
<b>Service</b>	<b>Newspapers</b>	<b>Dow Jones/USA Today/Union Tribune</b>
<b>Service</b>	<b>Mat Cleaning and Rental</b>	<b>Cintas</b>
<b>Maintenance</b>	<b>Maintenance tracking</b>	<b>Quore</b>
<b>Maintenance</b>	<b>Johnson Controls</b>	<b>Quarterly Inspection/Fire sprinkler system.</b>
<b>Service</b>	<b>HSIA</b>	<b>Airespring</b>
<b>Service</b>	<b>Music License</b>	<b>ASCAP/ BMI/Sesac</b>

## **Exhibit D**

### **Parking Lease**

Lease Agreement between Al Bahr Temple of San Diego, California as landlord, and Ssangyong/Kearney Mesa Associates Joint Venture, a California partnership, as tenant, dated April 20, 1998, recorded April 22, 1988 as Document No. 1988-0188213 of Official Records of San Diego County, California.

Said interest of Ssangyong/Kearny Mesa Associates Join Venture was transferred to Ssangyong International, Inc., a California corporation, by a Quitclaim Deed recorded November 25, 1991 as document no. 1991-0609999, of Official Records.

Said interest of Ssangyong International, Inc., a California corporation was transferred to Pacific American Property Exchange Corporation, a California corporation, by Grant Deed recorded December 30, 1997 as document no. 1997-0665516, of Official Records.

Said interest of Pacific American Property Exchange Corporation was transferred to Sunstone Hotels, LLC, a Delaware limited liability company, by Grant Deed recorded August 7, 1998 as document no. 1998-0498543, of Official Records.

Said interest of Sunstone Hotels, L.L.C., a Delaware limited liability company was transferred to Sunstone SH Hotels, L.L.C., a Delaware limited liability company, by Assignment recorded December 1, 1998 as document no. 1999-0786343, of Official Records.

Said interest of Sunstone SH Hotels, L.L.C., a Delaware limited partnership was assigned to SD-Denver, L.P., a Delaware limited partnership by Assignment and Assumption of Lease Agreement dated as of February 20, 2001.

Said interest of SD-Denver, L.P. was assigned to RT San Diego LLC by that certain Assignment and Assumption of Lease Agreement dated May 28, 2015 and recorded in the Official Records.

**FIRST AMENDMENT TO  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF SAN DIEGO AND  
THE SAN DIEGO HOUSING COMMISSION  
REGARDING THE COMMUNITY DEVELOPMENT BLOCK GRANT AFFORDABLE  
HOUSING REVOLVING LOAN FUND**

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This First Amendment (First Amendment) to the Memorandum of Understanding between the SAN DIEGO HOUSING COMMISSION, a public agency (“Commission”), and the CITY OF SAN DIEGO, a municipal corporation (“City”) is dated as of September \_\_, 2020. Commission and City are sometimes referred to in this First Amendment, individually, as a “Party” and, collectively, as the “Parties.” The Parties enter into this First Amendment with reference to the following recited facts (each, a “Recital”).

**RECITALS**

A. The Commission and City entered into that certain Memorandum of Understanding regarding the Community Development Block Grant (“CDBG”) Affordable Housing Revolving Loan Fund, dated as of July 1, 2019 (“MOU”).

B. The purpose of the CDBG Affordable Housing Revolving Loan Fund (“Fund”) is to contribute to the creation and preservation of affordable rental housing opportunities for low and moderate income (“LMI”) households, with a focus on permanent supportive housing options.

C. In response to the COVID-19 pandemic, the City and Commission, in partnership with the County of San Diego, the Regional Task Force on the Homeless (“RTFH”) and the San Diego Convention Center, launched Operation Shelter to Home (“OSTH”) on April 1, 2020, temporarily moving hundreds of those experiencing sheltered or unsheltered homelessness within the City to the Convention Center in an effort to prevent the spread of COVID-19 among people experiencing homelessness.

D. The Fund will use a forgivable loan model to implement a housing program initiative, which leverages the opportunity to acquire hotels to secure sites to operate a permanent supportive housing program, targeted to persons experiencing homelessness and persons temporarily housed in the Convention Center.

NOW, THEREFORE, in consideration of the above Recitals, the covenants, conditions and agreements set forth in this First Amendment, and other good and valuable consideration the Commission and City agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are true and correct and are incorporated into this First Amendment by this reference, as though fully set forth in this First Amendment.
2. **Forgivable Loan.** As used in the MOU, including, without limitation, the Exhibits to the MOU, the term “Forgivable Loan,” includes forgivable grants, which shall incorporate the same forgiveness as set forth in the MOU.
3. **Amendment to Term.** Sections 6 and 6.1 to the MOU are deleted in their entirety from the MOU and replaced as follows:

**Term.** This MOU, as amended by this First Amendment, shall be effective from July 1, 2020 through and including June 30, 2021. Any further amendments or extensions to this MOU, as amended by this First Amendment, shall require City Council approval. Any amendment to this MOU shall be memorialized in a written instrument signed by the Parties.

4. **Amendment to Program Income.** Section 8 to the MOU is deleted in its entirety from the MOU and replaced as follows:

**Program Income.** Any income that accrues to the Commission as a result of the Commission's receipt or use of CDBG funds under this Agreement is "Program Income," as defined and further described in 24 C.F.R. § 570.500(a). The Commission shall return to City all Program Income balances (including investments thereof) held by the Commission within thirty (30) calendar days after the later of: (a) expiration of the Term; (b) termination of this MOU; or (c) Commission's receipt of the Program Income.

5. **Amendment to Exhibit C.** Exhibit C to the MOU is deleted in its entirety from the MOU and replaced with Exhibit C attached to this First Amendment.
6. **Amendment to Exhibit D.** Exhibit D to the MOU is deleted in its entirety from the MOU and replaced with Exhibit D attached to this First Amendment.
7. **Deletion of Exhibit E.** Exhibit E to the MOU is deleted in its entirety from the MOU.
8. **Compliance and Indemnification.** Commission is aware of the federal regulations and eligibility requirements that must be met when receiving and expending CDBG funds and implementing the Fund. Commission is solely responsible for meeting all legal requirements, demonstrating that the activities receiving CDBG funds meet all criteria, provide necessary documentation, and adhere to all required and customary practices in implementing the funded activities. Commission will defend and indemnify the City from and against any claim or loss, including any statutory obligation of reimbursement, arising from the improper expenditure of CDBG funds.
9. **Entire Agreement.** The MOU, as amended by this First Amendment, represents the entire understanding between the Parties about the subject matter of the MOU, as so amended.
10. **Counterparts.** This First Amendment may be signed by the authorized representatives of the Parties in multiple counterpart originals (including facsimile or electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.
11. **Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this First Amendment. The Parties have each participated substantially in the negotiation, drafting, and revision of this First Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this First Amendment may be used in the singular, plural, past tense or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this First Amendment.

The words "include" and "including" in this First Amendment shall be construed to be followed by the words: "without limitation." Each collective noun in this First Amendment shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this First Amendment, refers to such document, as modified from time to time (excepting any modification that violates the MOU), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this First Amendment includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement in this First Amendment refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

12. **Governing Law.** The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this First Amendment, without application of conflicts of laws principles or statutes.
13. **Binding on Successors and Assigns.** This First Amendment shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.
14. **No Other Representations or Warranties.** Except as expressly set forth in this First Amendment, no Party makes any representation or warranty material to this First Amendment to any other Party.
15. **Incorporation of Defined Terms.** All terms, phrases and words indicated to be defined terms by initial capitalization in this First Amendment that are not specifically defined in this First Amendment (if any) shall have the meaning ascribed to the same term, phrase or word in the MOU.

***Remainder of page intentionally blank. Signatures appear on the following page.***

**SIGNATURE PAGE  
TO  
FIRST AMENDMENT TO  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF SAN DIEGO AND  
THE SAN DIEGO HOUSING COMMISSION  
REGARDING THE COMMUNITY DEVELOPMENT BLOCK GRANT AFFORDABLE  
HOUSING REVOLVING LOAN FUND**

IN WITNESS WHEREOF, the Commission and the City sign and enter into this First Amendment, by and through the signatures of their respective authorized representatives, as follows:


**CITY OF SAN DIEGO,**  
a municipal corporation

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

APPROVED AS TO FORM:  
MARA W. ELLIOTT  
City Attorney

By: \_\_\_\_\_  
Marguerite E. Middaugh  
Deputy City Attorney

**SAN DIEGO HOUSING COMMISSION,**  
a public agency

By:  \_\_\_\_\_  
Jeff Davis  
Executive Vice President and Chief of Staff

**CHRISTENSEN & SPATH LLP**

By:  \_\_\_\_\_  
Walter F. Spath III, General Counsel  
San Diego Housing Commission

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 RESIDENCE  
INN HOTEL CIRCLE AND RESIDENCE INN KEARNY MESA  
AND RELATED ACTIONS.

WHEREAS, in response to COVID-19, the City of San Diego (City), in partnership with the San Diego Housing Commission (Housing Commission), the County of San Diego, the Regional Task Force on the Homeless (RTFH), and the San Diego Convention Center created Operation Shelter to Home (OSTH) that provides shelter at the Convention Center for people experiencing homelessness; and

WHEREAS, RTFH'S coordinated entry system has identified that many residents currently residing at the Convention Center need long-term permanent housing; and

WHEREAS, through extensive due diligence, the Housing Commission has selected two hotels that are best suited to provide permanent housing for people experiencing homelessness; and

WHEREAS, Residence Inn Hotel Circle is a 192-unit building located at 1865 Hotel Circle South in the Hotel Circle Neighborhood of Central San Diego (Residence Inn Hotel Circle); and

WHEREAS, Residence Inn Kearny Mesa is a 144-unit building located at 5400 Kearny Mesa Road in the Kearny Mesa Neighborhood of Central San Diego (Residence Inn Kearny Mesa); and



WHEREAS, the Housing Commission, has negotiated a Purchase and Sale Agreement (Hotel Circle Agreement) with Chatham RIMV, LLC, related to Residence Inn Hotel Circle, for the purchase price of \$67,000,000, a copy of which is included in the backup materials to this Resolution; and

WHEREAS, the Housing Commission desires to ratify the execution of the broker's commission to Kidder Matthews in the amount of \$502,500 for Residence Inn Hotel Circle; and

WHEREAS, the Housing Commission, has negotiated a Purchase and Sale Agreement (Kearny Mesa Agreement) with RT San Diego, LLC, related to Residence Inn Kearny Mesa, for the purchase price of \$39,500,000, a copy of which is included in the backup materials to this Resolution; and

WHEREAS, the Housing Commission will provide 190 units at or below 80 percent area median income at Residence Inn Hotel Circle (Hotel Circle Project), subject to 55-year affordability covenants to be recorded against the property, and 2 unrestricted manager's unit; and

WHEREAS, the Housing Commission will provide 142 units at or below 80 percent area median income at Residence Inn Kearny Mesa (Kearny Mesa Project), subject to 55-year affordability covenants to be recorded against the property, and 2 unrestricted manager's unit; and

WHEREAS, the Housing Commission is funding the acquisition and rehabilitation for the Hotel Circle Project from the following sources: \$27,700,000 from the State of California's Department of Housing and Community Development (HCD) Homekey Program (Homekey) funds; \$32,840,399 in a loan from Chase Bank; \$10,000,000 from the federal Community Development Block Grant (CDBG) funds; \$928,174 from the U.S. Department of Housing and

Urban Development (HUD) Moving to Work (MTW) funds; and \$3,500,000 from the Deferred Developer Fee; and

WHEREAS, in the event the \$27,700,000 HCD grant is not committed by HCD, the financing gap will be filled in eligible funds from the City; and

WHEREAS, the Housing Commission is funding the acquisition and rehabilitation for the Kearny Mesa Project from the following sources: \$10,000,000 from HCD Homekey funds; \$17,425,852 in a loan from Chase Bank; \$10,000,000 from the Coronavirus Aid, Relief, and Economic Security (CARES) Act funding from the City; \$6,594,517 from HUD MTW funds; and \$2,469,310 from the Deferred Developer Fee; and

WHEREAS, any funding from the City regarding the Kearny Mesa Project will be provided to the Housing Commission pursuant to an executed funding agreement (Funding Agreement), a copy of which is included in the backup materials to this Resolution; and

WHEREAS, the City and the Housing Commission are parties to that certain Memorandum of Understanding (MOU) that approved the Housing Commission's administration of the City's CDBG Affordable Housing Revolving Loan Fund (AHRLF), which was approved by the Housing Authority with Resolution HA-1818 on June 25, 2019, and by the San Diego City Council with Resolution R-312442 on April 26, 2019; and

WHEREAS, the City and the Housing Commission now propose to enter into an amendment to the MOU, a copy of which is included in the backup materials accompanying this Resolution, that will allow the AHRLF to be used as forgivable loans for the acquisition of properties to operate as permanent housing with supportive services (MOU Amendment); and  
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 ratifies the execution of the Residence Inn Hotel Circle Agreement and all other attachments and exhibits to the Residence Inn Hotel Circle Agreement.
4. The Housing Authority ratifies the execution of the Residence Inn Kearny Mesa Agreement and all other attachments and exhibits to the Residence Inn Kearny Mesa 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 President & CEO, or designee, is authorized and directed to sign the Funding Agreement.

7. The President & CEO, or designee, is authorized and directed to sign the MOU Amendment.

APPROVED: MARA W. ELLIOTT, General Counsel

By \_\_\_\_\_  
Katherine A. Malcolm  
Deputy City Attorney

KAM:soc  
09/25/2020  
Or.Dept: Housing Authority  
Doc. No. 2489090



The City of San Diego  
Item Approvals

Item Subject: Residence Inn Hotel Circle & Residence Inn Kearny Mesa— Property Acquisition.

Contributing Department	Approval Date
DOCKET OFFICE	09/17/2020

Approving Authority	Approver	Approval Date
HOUSING COMMISSION FINAL DEPARTMENT APPROVER	MARSHALL, SCOTT	09/15/2020
EXECUTIVE VICE PRESIDENT	DAVIS, JEFF	09/21/2020