SAN DIEGO HOUSING COMMISSION

REPORT TO THE HOUSING AUTHORITY AND SAN DIEGO CITY COUNCIL

DATE ISSUED: August 15, 2022 **REPORT NO**: HAR22-026

ATTENTION: Council President and Members of the City Council
Chair and Members of the Housing Authority of the City of San Diego
For the Agenda of September 12, 2022

SUBJECT: Settlement of a Lawsuit brought by the San Diego Housing Commission, the Housing Authority of the City of San Diego and the City of San Diego against Jim Neil, Kidder Mathews of California, Inc., Kidder Mathews, Inc., RT San Diego, LLC and Chatham RIMC, LLC; San Diego County Superior Court Case No. 37-2021-00033006-CU-BC-CTL.

COUNCIL DISTRICT: 3 and 7 (Hotel Circle Property), 6 (Kearny Mesa Property)

REQUESTED ACTION

That the Housing Authority of the City of San Diego (Housing Authority) authorize the San Diego Housing Commission's (Housing Commission) President and Chief Executive Officer to execute the Settlement Agreement on behalf of the Housing Commission in a final form as approved by counsel for the Housing Authority; that the Housing Authority authorize the Executive Director of the Housing Authority to execute the Settlement Agreement on behalf of the Housing Authority in a final form as approved by counsel for the Housing Authority; and that the City Council authorize the Mayor, or designee, to execute the Settlement Agreement on behalf of the City in a final form as approved by counsel for the Housing Authority.

STAFF RECOMMENDATION

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

Housing Authority:

1) Authorize the Housing Commission's President and Chief Executive Officer (President & CEO), or designee, to execute the Settlement Agreement attached to this report on behalf of the Housing Commission in a final form as approved by counsel for the Housing Authority.
2) Authorize the Executive Director of the Housing Authority, or designee, to execute the Settlement Agreement attached to this report on behalf of the Housing Authority in a final form as approved by counsel for the Housing Authority.
3) Authorize the Housing Commission's President & CEO, or designee, on behalf of the Housing Commission, to accept $845,000.00 from Kidder Mathews, Inc. and Jim Neil.
4) Authorize the Housing Commission's President & CEO, or designee, to execute all necessary documents and instruments that are necessary and/or appropriate to implement the Settlement Agreement in a final form as approved by counsel for the Housing Authority. Housing Commission staff will notify the Housing Authority and the City Attorney's Office about any

subsequent amendments or modifications to the transaction, and other required documents, including amendments to any documents.

City Council:

1) Authorize the Mayor, or designee, to execute the Settlement Agreement attached to this report on behalf of the City of San Diego in a final form as approved by counsel for the Housing Authority.
2) Authorize the Mayor, or designee, on behalf of the City of San Diego, to accept $155,000.00 from Kidder Mathews, Inc. and Jim Neil.
3) Authorize the Mayor, or designee, to execute all necessary documents and instruments that are necessary and/or appropriate to implement the Settlement Agreement in a final form as approved by counsel for the Housing Authority.

SUMMARY

The COVID-19 pandemic created an emergency situation as to homelessness in the City of San Diego. As a result of the state of emergency, the Housing Commission entered into the Agreement for Real Estate Broker Services with Kidder Mathews, Inc. (collectively with Kidder Mathews of California, Inc., Kidder) and Jim Neil (Neil) to provide real estate broker services, including identifying hotel properties for potential purchase and negotiating hotel purchase transactions (the Broker Agreement). The Broker Agreement limited commission compensation to Kidder and Neil to no more than $250,000 per transaction unless additional commission was approved by the Housing Commission Board.

Kidder and Neil identified two properties that the Housing Commission eventually purchased with public funds: (a) the Residence Inn at 5400 Kearny Mesa Road, San Diego, CA 92111 (Kearny Mesa Property) for $39,500,000; and (b) the Residence Inn at 1865 Hotel Circle South, San Diego, CA 92108 (Hotel Circle Property) for $67,000,000. For the Kearny Mesa Property, Kidder, Neil and the seller RT San Diego, LLC (RT San Diego) negotiated a commission of $592,500 to be paid to Kidder and Neil by the seller. For the Hotel Circle Property, Kidder, Neil and the seller Chatham RIMV, LLC (Chatham RIMV) negotiated a commission of $502,500 to be paid by to Kidder and Neil by the purchaser, the Housing Commission.

After identifying the Hotel Circle Property as a potential purchase option, but before the close of Housing Commission's purchase, Neil purchased 40,000 shares of stock in Chatham Lodging Trust (Chatham). Chatham is the parent company of the Chatham RIMV, the seller of the Hotel Circle Property.

On or about August 3, 2021, the Housing Commission, through its Deputy CEO, filed a complaint with the California Department of Real Estate (DRE) against Neil related to the Hotel Circle transaction (DRE Complaint). The DRE Complaint alleged, among other things, that (i) the Housing Commission's General Counsel first became aware of Neil's stock ownership in Chatham on February 23, 2021; and (ii) Neil, without any Housing Commission involvement, negotiated his commission to be paid by the Housing Commission on the Hotel Circle transaction to be $252,500.00 more than allowed under the Brokerage Agreement.

On August 3 2021, the City Attorney's Office brought an action on behalf of the Housing Commission, the City and the Housing Authority, alleging 13 causes of action for fraud, breach of fiduciary duty, breach of contract and violation of section 1090 against defendants Kidder, Neil, and Chatham RIMV arising from the two transactions (the Action). RT San Diego and Kidder Matthews of California, Inc.

were later added as defendants in the Action. The Action seeks a refund of commissions paid and damages from Kidder and Neil. The section 1090 claim seeks to void the transactions and disgorge and return the sale proceeds from RT San Diego and Chatham to the Housing Commission.
The City Attorney's Office recently negotiated a settlement with the five defendants. The Settlement Agreement executed by all defendants is attached. The key terms of the settlement are as follows:

1) Neil and Kidder will pay the Housing Commission a total of Eight Hundred Forty-Five Thousand Dollars and No Cents ($845,000.00);
2) Neil and Kidder will pay the City a total of One Hundred Fifty-Five Thousand Dollars and No Cents ($155,000.00) to compensate the City for City attorney resources used to prosecute the Action;
3) Neil stipulates to permanent debarment from entering any agreement to perform brokerage services or from performing brokerage services for the City of San Diego, the Housing Commission, or the Housing Authority;
4) Kidder stipulates to debarment from entering any agreement to perform brokerage services or from performing any brokerage services for the City of San Diego, the Housing Commission, or the Housing Authority for a period of two years from the Effective Date;
5) Neil will agree to an administrative stipulated settlement with the Fair Political Practices Commission that is approved as to form by the San Diego District Attorney's office;
6) Within five (5) days of the Settlement Sum being paid, Plaintiffs shall dismiss the Action with prejudice, including all claims and causes of actions as to all Parties;
7) Except as reserved, the Housing Commission, City of San Diego and Housing Authority waive all claims against the defendants based upon or arising out of the Broker Agreement, the Kearny Mesa Property transaction and the Hotel Circle Property transaction.
8) Except as reserved, the defendants waive all claims against the Housing Commission, City of San Diego and Housing Authority based upon or arising out of the Broker Agreement, the Kearny Mesa Property transaction and the Hotel Circle Property transaction.
9) The releases set forth in (7) and (8) above do not include any rights and obligations between RT San Diego and the Housing Commission set forth in the Kearny Mesa Purchase and Sale Agreement.
10) The releases set forth in (7) and (8) above do not include any rights and obligations between Chatham RIMV and the Housing Commission set forth in the Hotel Circle Purchase and Sale Agreement.
11) With the exception of (2) above, the Parties shall bear their own attorneys' fees and costs incurred in or arising from the Action and waive any claim to seek costs.

AFFORDABLE HOUSING IMPACT

The settlement will provide funds that the Housing Commission may use to fund affordable housing projects.

PRIOR ACTIONS

On September 18, 2020, the Housing Commission made a recommendation that the Housing Authority take actions to approve and ratify the Kearny Mesa Property and Hotel Circle Property transactions. On October 13, 2020, the Housing Authority adopted Resolution Number HA-1880 ratifying the Housing Commission purchases of the Kearny Mesa Property and the Hotel Circle Property and ratifying the Housing Commission's execution of documents relating to the transactions.

On August 19, 2022, the Housing Commission Board of Commissioners voted 4 to 1, with one abstention, to approve the staff-recommended actions.

FISCAL CONSIDERATIONS

The proposed action has no negative fiscal impact. The action will cause the Housing Commission to receive a payment of $845,000.00.

KEY STAKEHOLDERS and PROJECTED IMPACTS

The settlement will have no impact on the current or future residents of the Kearny Mesa Property and the Hotel Circle Property.

ENVIRONMENTAL REVIEW

This activity is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Section 15378(b)(5), as it is an administrative activity of government that will not result in direct or indirect physical changes in the environment. The determination that this activity is not subject to CEQA, pursuant to Section 15060(c)(3), is not appealable and a Notice of Right to Appeal the Environmental Determination (NORA) is not required. Processing under the National Environmental Policy Act is not required as no federal funds are involved in this action.

Respectfully submitted,

Emily S. Jacobs
Executive Vice President, Real Estate
San Diego Housing Commission

Approved by,

Jeff Davis
Interim President & Chief Executive Officer
San Diego Housing Commission

Attachments: 1) Settlement Agreement

Docket materials are available in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at www.sdhc.org

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement"), is dated for reference purposes as of September 13, 2022, and is entered in San Diego, California by and among San Diego Housing Commission ("SDHC"), City of San Diego ("City"), Housing Authority of the City of San Diego ("HASD"), James N. Neil aka Jim Neil ("Neil"), Kidder Mathews, Inc. ("Kidder"), Kidder Mathews of California, Inc. ("KMCA"), Chatham RIMV, LLC ("Chatham RIMV"), and RT San Diego, LLC ("RT San Diego"). In this Agreement, SDHC, City, HASD, Neil, Kidder, KMCA, Chatham RIMV, and RT San Diego are sometimes referred to collectively as the "Parties" and individually as a "Party." Additionally in this Agreement, SDHC, City, and HASD are sometimes referred to collectively as "Plaintiffs" and Neil, Kidder, KMCA, Chatham RIMV, and RT San Diego as sometimes referred to collectively as "Defendants".

The "Effective Date" of this Agreement shall be the last date on which each of the following events has occurred: (a) the HASD has adopted a resolution approving this Agreement; (b) a duly authorized representative of each Party has signed this Agreement; and (c) the San Diego City Attorney has approved this Agreement as to form.

RECITALS

A. On or about June 10, 2020, KMCA entered a Real Estate Broker Agreement with SDHC, which named Neil as the real estate broker for KMCA to perform brokerage services for SDHC ("Brokerage Agreement").

B. On July 20, 2020, SDHC and RT San Diego entered in the Purchase and Sale Agreement for the Kearny Mesa Residence Inn located at 5400 Kearny Mesa Road, San Diego, CA 92111 (the "Kearny Mesa PSA").

C. On August 20, 2020, SDHC and Chatham RIMV entered in the Purchase and Sale Agreement for the Mission Valley Residence Inn located at 1865 Hotel Circle South, San Diego, CA 92108 (the "Mission Valley PSA").

D. On or about October 13, 2020, the HASD approved the purchase of the Mission Valley Residence Inn from Chatham RIMV for $67,000,000.00 ("Mission Valley Transaction") and the Kearny Mesa Residence Inn ("Kearny Mesa Transaction") from RT San Diego for $39,500,000.00. Neil was the SDHC's real estate broker under the Brokerage Agreement for both the Mission Valley Transaction and the Kearny Mesa Transaction. KMCA, and in turn, Neil, was paid a commission by SDHC for the Mission Valley Transaction and a commission by RT San Diego for the Kearny Mesa transaction ("Broker Commissions").

E. On or about May 19, 2021, SDHC claimed Neil was conflicted in the Mission Valley Transaction because Neil had acquired shares of stock in Chatham RIMV's parent company, Chatham Lodging Trust ("CLDT"), a publicly traded company, and demanded Neil and Kidder return the commission paid for the Mission Valley Transaction ("Conflict of Interest Claim"). Neil disputes the Conflict of Interest Claim.

Initials: _____/_____/_____/JN/_____/_____/_____/_____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

F. On or about August 3, 2021, Plaintiffs filed San Diego Superior Court Case No. 37-2021-00033006 ("Action") against Neil, Kidder, and Chatham RIMV ("Complaint"). The Complaint brought causes of action against Neil, Kidder, and Chatham RIMV for violation of Government Code Section 1090 seeking the return $67,000,000.00 paid in the Mission Valley Transaction based on alleged conflicts of interest by Neil. The Complaint also brought claims for fraud, breach of fiduciary duty, negligence, breach of contract and breach of the covenant of good faith and fair dealing against Neil and KMCA and sought damages including but not limited to the return of the commission paid to Kidder and Neil in the Mission Valley Transaction.

G. The Defendants dispute the allegations, claims, and causes of action asserted in the Action and Complaint. On or about September 17, 2021, in regard to certain disputed claims in the Action and Complaint relating to Plaintiffs' Government Code Section 1090 allegations, counsel for Neil transmitted to counsel for Plaintiffs a correspondence titled, "Demand for Dismissal of Gov. Code Section 1090 Claims."

H. On or about August 3, 2021, the SDHC, through its Deputy CEO, filed a complaint with the California Department of Real Estate ("DRE") against Neil related to the Mission Valley Transaction ("DRE Complaint"). The DRE Complaint alleges, among other things, that (i) the SDHC General Counsel first became aware of Neil's stock ownership in CLDT on February 23, 2021; and (ii) Neil, without any SDHC involvement, negotiated his commission to be paid by SDHC on the Mission Valley Transaction to be $252,500.00 more than allowed under the Brokerage Agreement. Neil disputes the allegations and claims asserted in the DRE Complaint. Neil contends he disclosed his possible CLDT stock ownership to senior SDHC staff, Mike Pavco and Pari Zaker, while the Mission Valley Transaction was being considered by the SDHC. Neil also contends Mike Pavco approved Neil's CLDT stock purchase before Mr. Pavco presented, on behalf of the SDHC, the Mission Valley Transaction to the HASD for final approval. Neil further contends the commission for the Mission Valley Transaction was paid in accordance with the terms of the Brokerage Agreement. Neil maintains he negotiated the terms of the commission as allowed by the terms of the Brokerage Agreement and, thereafter, the SDHC unilaterally decided to pay Neil's commission for the Mission Valley Transaction without objection to the amount. Neil's commission for the Mission Valley Transaction was approved by the HASD, as reflected in the HASD Resolution Number HA-1880, dated October 13, 2020.

I. On or about October 22, 2021, Plaintiffs filed a First Amended Complaint ("FAC") in the Action, which, among other things, added RT San Diego as a defendant. As to RT San Diego, the Plaintiffs alleged a violation of Government Code Section 1090 seeking the return $39,500,000.00 paid in the Kearny Mesa Transaction based on alleged conflicts of interest by Neil. The FAC also added claims for fraud, breach of fiduciary duty, negligence, breach of contract and breach of the covenant of good faith and fair dealing against Neil and Kidder arising from the Kearny Mesa Transaction and sought damages including but not limited to the commission paid to KMCA and Neil in the Kearny Mesa Transaction.

Initials: _____/_____/_____/  /_____/_____/_____/_____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

J. On or about January 19, 2022, Plaintiffs filed a "Doe" Amendment to add KMCA to the Action and FAC.

K. The Defendants dispute the allegations, claims, and causes of action asserted in the FAC. Each Defendant filed the below respective dispositive motions to the FAC:

1. On or about December 9, 2021, Chatham RIMV filed a demurrer to, and motion to strike portions of, the FAC related to the FAC's Government Code Section 1090 causes of action for the Mission Valley Transaction;

2. On or about December 13, 2021, Kidder filed a demurrer to the FAC. Kidder's demurrer included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the negligence, fraud and breach of fiduciary duty causes of action. On or about December 16, 2021, Kidder also filed a motion to strike portions of the FAC related to the fraud and Government Code Section 1090 causes of action;

3. On or about December 13, 2021, Neil filed a demurrer to, and motion to strike portions of, the FAC. Neil's demurrer and motion to strike included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the fraud and breach of fiduciary duty causes of action;

4. On or about February 1, 2022, RT San Diego filed a demurrer to, and motion to strike portions of, the FAC related to the FAC's Government Code Section 1090 causes of action for the Kearny Mesa Transaction;

5. On or about March 18, 2022, KMCA filed a demurrer to, and motion to strike portions of, the FAC. KMCA's demurrer and motion to strike included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the negligence, fraud and breach of fiduciary duty causes of action.

L. The Parties wish to settle the Action and release all claims and/or liabilities pursuant to the terms of this Agreement.

TERMS AND CONDITIONS

For good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1.0 PAYMENT AND RELATED PROVISIONS

1.1 Payment by Neil and Kidder to SDHC

a. Neil and Kidder will pay SDHC a total of Eight Hundred Forty-Five Thousand Dollars and No Cents ($845,000.00) (the "SDHC Settlement Sum"). The SDHC Settlement Sum will be paid by wire payable to the San Diego Housing Commission and not later than 45 days from the Effective Date. Wiring instructions will be provided by contacting:

Julienne Conserva, CPA
Director of Finance – Real Estate
San Diego Housing Commission
juliec@sdhc.org
858.336.1715

b. Neil and Kidder will pay the City a total of One Hundred Fifty-Five Thousand Dollars and No Cents ($155,000.00) (the "City Settlement Sum"). The City Settlement Sum will be paid by wire payable to the City of San Diego and not later than 45 days from the Effective Date. Wiring instructions will be provided by contacting:

Kent Morris
Chief Investment Officer
City of San Diego
Office of the City Treasurer
kmorris@sandiego.gov
619.533.6253

1.2 Non-Monetary Terms

a. Neil stipulates to permanent debarment from entering any agreement to perform brokerage services or from performing brokerage services for the City of San Diego, SDHC, or HASD.

b. Kidder stipulates to debarment from entering any agreement to perform brokerage services or from performing any brokerage services for the City of San Diego, SDHC, or HASD for a period of two years from the Effective Date.

Initials: _____/_____/_____/_____/_____/_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

c. Neil will agree to an administrative stipulated settlement with the Fair Political Practices commission that is approved as to form by the San Diego District Attorneys' office.

1.3 Dismissal of the Action

Within five (5) days of the SDHC Settlement Sum and the City Settlement Sum being paid, Plaintiffs shall dismiss the Action with prejudice, including all claims and causes of actions as to all Parties.

1.4 Waiver of Attorneys' Fees and Costs

Except as may be included in the SDHC Settlement Sum and the City Settlement Sum, the Parties shall bear their own attorneys' fees and costs incurred in or arising from the Action or the FAC and waive any claim to seek costs based on the dismissal of the Action by Plaintiffs.

1.5 HASD's Approval of this Agreement

The Parties acknowledge that the effectiveness of this Agreement is contingent on the final passage of a resolution adopted by the HASD upon referral by SDHC, by which the HASD approves this Agreement ("HASD Authorization"). The Parties further acknowledge that the HASD Authorization may or may not be granted in the HASD's sole discretion. If there is no HASD Council Authorization on or before September 30,2022, this Agreement shall terminate automatically, without requirement of notice by any Party, unless otherwise agreed to in writing by the Parties. If this Agreement is terminated under this Section 1.5, the Parties shall have no obligations or liabilities to each other under this Agreement.

2.0 RELEASE

2.1 Release of Claims by Plaintiffs

Except as reserved in section 2.7 below, Plaintiffs release and discharge all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Plaintiffs or any of their agents, shareholders, council members, commissioners, board members, representatives, employees, predecessors, successors and/or assigns, assert or could assert against Neil, Kidder, KMCA, Chatham RIMV, RT San Diego, and their agents, shareholders, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Plaintiffs' Releases").

Initials: _____/_____/_____/JW/_____/_____/_____/_____/_____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

2.2 Release of Claims by Neil

Except as reserved in section 2.7 below, Neil releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Neil or any of his agents, shareholders, representatives, employees, predecessors, successors and/or assigns, asserts or could assert against Plaintiffs, Kidder, KMCA, Chatham RIMV, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Neil Releases").

2.3 Release of Claims by Kidder and KMCA

Except as reserved in section 2.7 below, Kidder and KMCA release and discharge all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Kidder and KMCA or any of their agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, assert or could assert against Plaintiffs, Neil, Chatham RIMV, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Kidder and KMCA Releases").

2.4 Release of Claims by Chatham RIMV

Except as reserved in section 2.7 below, Chatham RIMV releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Chatham RIMV or any of its agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, asserts or could assert against Plaintiffs, Neil, Kidder, KMCA, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, or the Action ("Chatham RIMV Releases").

Initials: _____/_____/_____/  /_____/_____/_____/_____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

2.5 Release of Claims by RT San Diego

Except as reserved in section 2.7 below, RT San Diego releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which RT San Diego or any of its agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, asserts or could assert against Plaintiffs, Neil, Kidder, KMCA, Chatham RIMV, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, or the Action ("RT San Diego Releases").

2.6 Released Matters

The Plaintiffs' Releases, Neil Releases, Kidder and KMCA Releases, Chatham RIMV Releases, and RT San Diego Releases are collectively referred to as the "Released Matters."

2.7 Matters Not Included in the Released Matters

2.7.1 The Released Matters do not include any liability or obligation created by this Agreement.

2.7.2 The Released Matters do not include any rights and obligations between Chatham RIMV and SDHC set forth in the Mission Valley Purchase Agreement. Those rights and obligations remain in full force and effect and shall survive as they would have existed in the absence of this Agreement.

2.7.3 The Released Matters do not include any rights and obligations between RT San Diego and SDHC set forth in the Kearny Mesa Purchase Agreement. Those rights and obligations remain in full force and effect and shall survive as they would have existed in the absence of this Agreement.

2.7.4 Except as to claims based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, and the Action, the Neil Releases and Kidder and KMCA Releases do not release, waive, discharge, modify, or alter any existing agreements, obligations, or liabilities between Neil and KMCA or Kidder.

2.8 Waiver of Rights Pursuant to Civil Code Section 1542

With respect to the Released Matters, each Party expressly waives any and all rights which it may have under the provisions of section 1542 of the California Civil Code, which section 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.*

Thus, with knowledge of the provisions of section 1542, and for the purpose of implementing a full and complete release of the Released Matters, each Party acknowledges this Agreement is intended to include in its effect, without limitation, all of the claims that were or could have been raised, even those which a Party did not know of or suspect to exist in its favor at the time of execution of this Agreement and that this Agreement contemplates extinguishment of all such claims that were or could have been raised, even those which would have materially affected the releasing Party's decision to enter into this Agreement.

3.0 GENERAL PROVISIONS

3.1 Admissibility of Release

No evidence of this Agreement or any of its terms, and no evidence of any discussion or communications made or information or materials transmitted in the course of negotiations for this Agreement, shall be admissible or presented in any action or proceeding before any court, agency, or other tribunal, as evidence of or relevant to any Released Matters, or as evidence that a Party or any of their respective agents, shareholders, representatives or employees have committed any violation of contract or law, or are liable to any person for any reason other than for the enforcement of this Agreement.

3.2 No Reliance

Each Party individually acknowledges, declares and represents: (i) it is executing this Agreement in reliance solely on its own judgment, belief, and knowledge of the facts surrounding the transactions described in this Agreement; (ii) this Agreement is made without reliance upon any statement or representation not contained in this Agreement of any other Party, or any representative, agent or attorney of any other Party; (iii) no promise, inducement or agreement not expressed in this Agreement has been made to any Party; and (iv) the recitals, terms and conditions contained in this Agreement are contractual and not mere recitals.

3.3 Discovery

Each Party acknowledges it may subsequently discover facts different from, or in addition to, those which it now believes to be true with respect to the Released Matters, and agree this Agreement shall be and remain effective in all respects notwithstanding such different or additional facts.

3.4 Opportunity for Advice of Attorneys

Each Party further represents, warrants and agrees that in executing this Agreement, it does so with full knowledge of any and all rights which it may have with respect to the other Party and that each Party has received, or had the opportunity to receive, independent legal advice from such Party's attorneys with respect to the facts involved in the controversy compromised by this Agreement and with regard to such Party's rights and asserted rights arising out of such facts.

3.5 Assignment of Rights

Each Party represents and warrants it has not assigned its rights in any of its claims against the other to any other person or entity and each Party has full authority to bind the Party for which it signs to this Agreement.

3.6 Entire Agreement

The provisions of this Agreement constitute the entire agreement among the Parties and supersede all prior negotiations, proposals, agreements and understandings regarding the subject matter of this Agreement.

3.7 Additional Documents

The Parties agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary or appropriate to carry out the intent or provisions of this Agreement.

3.8 Assignees

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties, and to all affiliates, dba's or any other associated entities.

3.9 Interpretation of Agreement

This Agreement and its provisions shall not be construed or interpreted for or against any Party because that Party drafted or caused the Party's attorney to draft any of its provisions.

Initials: _____/_____/_____/  /_____/_____/_____/_____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

3.10 Execution in Counterparts

This Agreement may be signed by the Parties in multiple counterparts, all of which shall be taken together as a single document. A facsimile, electronic, or PDF signature constitutes an original and all evidentiary objections to same other than for authenticity of signature are waived.

3.11 No Promise or Warranty

No promise or warranty shall be binding on any Party except as expressly contained in this Agreement.

3.12 Modification

No modification of this Agreement shall be valid unless agreed to in writing by the Parties.

3.13 Choice of Law

This Agreement shall be construed and enforced in accordance with the laws of the State of California and the Parties agree the court in the Action shall retain jurisdiction for purposes of enforcing this Agreement.

3.14 Enforcement of Agreement

In the event that any portion of this Agreement is deemed illegal, invalid or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision of this Agreement and this Agreement shall be construed as though such illegal, invalid or unenforceable provision had never been contained herein, unless a court determines the primary purpose of this Agreement would be frustrated.

PLEASE READ THIS DOCUMENT CAREFULLY. IT CONTAINS A GENERAL RELEASE OF CLAIMS KNOWN AND UNKNOWN.

The Parties have executed and delivered this Agreement consisting of twelve (12) pages and no exhibits.

SAN DIEGO HOUSING COMMISSION

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Initials: _____/_____/_____/_____/_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

CITY OF SAN DIEGO

Signature:_____

Printed Name:_____

Title:_____

Date:_____

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

Signature:_____

Printed Name:_____

Title:_____

Date:_____

REVIEWED AND APPROVED AS TO FORM

MARA W. ELLIOTT, City Attorney

By: _____ Date: _____
Meghan Ashley Wharton
Senior Deputy City Attorney
Attorneys for Plaintiffs San Diego Housing Commission,
City of San Diego and the Housing Authority of the City of San Diego

JIM NEIL

Signature:_____

Date: 8/4/22

Initials: _____/_____/_____/JN/_____/_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

KIDDER MATHEWS, INC.

Signature:_____

Printed Name:_____

Title:_____

Date:_____

KIDDER MATHEWS OF CALIFORNIA, INC.

Signature:_____

Printed Name:_____

Title:_____

Date:_____

CHATHAM RIMV, LLC

Signature:_____

Printed Name:_____

Title:_____

Date:_____

RT SAN DIEGO, LLC

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Initials: _____/_____/_____/ JN /_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement"), is dated for reference purposes as of September 13, 2022, and is entered in San Diego, California by and among San Diego Housing Commission ("SDHC"), City of San Diego ("City"), Housing Authority of the City of San Diego ("HASD"), James N. Neil aka Jim Neil ("Neil"), Kidder Mathews, Inc. ("Kidder"), Kidder Mathews of California, Inc. ("KMCA"), Chatham RIMV, LLC ("Chatham RIMV"), and RT San Diego, LLC ("RT San Diego"). In this Agreement, SDHC, City, HASD, Neil, Kidder, KMCA, Chatham RIMV, and RT San Diego are sometimes referred to collectively as the "Parties" and individually as a "Party." Additionally in this Agreement, SDHC, City, and HASD are sometimes referred to collectively as "Plaintiffs" and Neil, Kidder, KMCA, Chatham RIMV, and RT San Diego as sometimes referred to collectively as "Defendants".

The "Effective Date" of this Agreement shall be the last date on which each of the following events has occurred: (a) the HASD has adopted a resolution approving this Agreement; (b) a duly authorized representative of each Party has signed this Agreement; and (c) the San Diego City Attorney has approved this Agreement as to form.

RECITALS

A. On or about June 10, 2020, KMCA entered a Real Estate Broker Agreement with SDHC, which named Neil as the real estate broker for KMCA to perform brokerage services for SDHC ("Brokerage Agreement").

B. On July 20, 2020, SDHC and RT San Diego entered in the Purchase and Sale Agreement for the Kearny Mesa Residence Inn located at 5400 Kearny Mesa Road, San Diego, CA 92111 (the "Kearny Mesa PSA").

C. On August 20, 2020, SDHC and Chatham RIMV entered in the Purchase and Sale Agreement for the Mission Valley Residence Inn located at 1865 Hotel Circle South, San Diego, CA 92108 (the "Mission Valley PSA").

D. On or about October 13, 2020, the HASD approved the purchase of the Mission Valley Residence Inn from Chatham RIMV for $67,000,000.00 ("Mission Valley Transaction") and the Kearny Mesa Residence Inn ("Kearny Mesa Transaction") from RT San Diego for $39,500,000.00. Neil was the SDHC's real estate broker under the Brokerage Agreement for both the Mission Valley Transaction and the Kearny Mesa Transaction. KMCA, and in turn, Neil, was paid a commission by SDHC for the Mission Valley Transaction and a commission by RT San Diego for the Kearny Mesa transaction ("Broker Commissions").

E. On or about May 19, 2021, SDHC claimed Neil was conflicted in the Mission Valley Transaction because Neil had acquired shares of stock in Chatham RIMV's parent company, Chatham Lodging Trust ("CLDT"), a publicly traded company, and demanded Neil and Kidder return the commission paid for the Mission Valley Transaction ("Conflict of Interest Claim"). Neil disputes the Conflict of Interest Claim.

Initials: _____/_____/_____/_____/ BH /BH/_____/_____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

F. On or about August 3, 2021, Plaintiffs filed San Diego Superior Court Case No. 37-2021-00033006 ("Action") against Neil, Kidder, and Chatham RIMV ("Complaint"). The Complaint brought causes of action against Neil, Kidder, and Chatham RIMV for violation of Government Code Section 1090 seeking the return $67,000,000.00 paid in the Mission Valley Transaction based on alleged conflicts of interest by Neil. The Complaint also brought claims for fraud, breach of fiduciary duty, negligence, breach of contract and breach of the covenant of good faith and fair dealing against Neil and KMCA and sought damages including but not limited to the return of the commission paid to Kidder and Neil in the Mission Valley Transaction.

G. The Defendants dispute the allegations, claims, and causes of action asserted in the Action and Complaint. On or about September 17, 2021, in regard to certain disputed claims in the Action and Complaint relating to Plaintiffs' Government Code Section 1090 allegations, counsel for Neil transmitted to counsel for Plaintiffs a correspondence titled, "Demand for Dismissal of Gov. Code Section 1090 Claims."

H. On or about August 3, 2021, the SDHC, through its Deputy CEO, filed a complaint with the California Department of Real Estate ("DRE") against Neil related to the Mission Valley Transaction ("DRE Complaint"). The DRE Complaint alleges, among other things, that (i) the SDHC General Counsel first became aware of Neil's stock ownership in CLDT on February 23, 2021; and (ii) Neil, without any SDHC involvement, negotiated his commission to be paid by SDHC on the Mission Valley Transaction to be $252,500.00 more than allowed under the Brokerage Agreement. Neil disputes the allegations and claims asserted in the DRE Complaint. Neil contends he disclosed his possible CLDT stock ownership to senior SDHC staff, Mike Pavco and Pari Zaker, while the Mission Valley Transaction was being considered by the SDHC. Neil also contends Mike Pavco approved Neil's CLDT stock purchase before Mr. Pavco presented, on behalf of the SDHC, the Mission Valley Transaction to the HASD for final approval. Neil further contends the commission for the Mission Valley Transaction was paid in accordance with the terms of the Brokerage Agreement. Neil maintains he negotiated the terms of the commission as allowed by the terms of the Brokerage Agreement and, thereafter, the SDHC unilaterally decided to pay Neil's commission for the Mission Valley Transaction without objection to the amount. Neil's commission for the Mission Valley Transaction was approved by the HASD, as reflected in the HASD Resolution Number HA-1880, dated October 13, 2020.

I. On or about October 22, 2021, Plaintiffs filed a First Amended Complaint ("FAC") in the Action, which, among other things, added RT San Diego as a defendant. As to RT San Diego, the Plaintiffs alleged a violation of Government Code Section 1090 seeking the return $39,500,000.00 paid in the Kearny Mesa Transaction based on alleged conflicts of interest by Neil. The FAC also added claims for fraud, breach of fiduciary duty, negligence, breach of contract and breach of the covenant of good faith and fair dealing against Neil and Kidder arising from the Kearny Mesa Transaction and sought damages including but not limited to the commission paid to KMCA and Neil in the Kearny Mesa Transaction.

Initials: _____/_____/_____/_____/ BH /BK/_____/_____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

J. On or about January 19, 2022, Plaintiffs filed a "Doe" Amendment to add KMCA to the Action and FAC.

K. The Defendants dispute the allegations, claims, and causes of action asserted in the FAC. Each Defendant filed the below respective dispositive motions to the FAC:

1. On or about December 9, 2021, Chatham RIMV filed a demurrer to, and motion to strike portions of, the FAC related to the FAC's Government Code Section 1090 causes of action for the Mission Valley Transaction;

2. On or about December 13, 2021, Kidder filed a demurrer to the FAC. Kidder's demurrer included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the negligence, fraud and breach of fiduciary duty causes of action. On or about December 16, 2021, Kidder also filed a motion to strike portions of the FAC related to the fraud and Government Code Section 1090 causes of action;

3. On or about December 13, 2021, Neil filed a demurrer to, and motion to strike portions of, the FAC. Neil's demurrer and motion to strike included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the fraud and breach of fiduciary duty causes of action;

4. On or about February 1, 2022, RT San Diego filed a demurrer to, and motion to strike portions of, the FAC related to the FAC's Government Code Section 1090 causes of action for the Kearny Mesa Transaction;

5. On or about March 18, 2022, KMCA filed a demurrer to, and motion to strike portions of, the FAC. KMCA's demurrer and motion to strike included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the negligence, fraud and breach of fiduciary duty causes of action.

L. The Parties wish to settle the Action and release all claims and/or liabilities pursuant to the terms of this Agreement.

Initials: _____ / _____ / _____ / _____ / GH / GH / _____ / _____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

TERMS AND CONDITIONS

For good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1.0 PAYMENT AND RELATED PROVISIONS

1.1 Payment by Neil and Kidder to SDHC

a. Neil and Kidder will pay SDHC a total of Eight Hundred Forty-Five Thousand Dollars and No Cents ($845,000.00) (the "SDHC Settlement Sum"). The SDHC Settlement Sum will be paid by wire payable to the San Diego Housing Commission and not later than 45 days from the Effective Date. Wiring instructions will be provided by contacting:

Julienne Conserva, CPA
Director of Finance – Real Estate
San Diego Housing Commission
juliec@sdhc.org
858.336.1715

b. Neil and Kidder will pay the City a total of One Hundred Fifty-Five Thousand Dollars and No Cents ($155,000.00) (the "City Settlement Sum"). The City Settlement Sum will be paid by wire payable to the City of San Diego and not later than 45 days from the Effective Date. Wiring instructions will be provided by contacting:

Kent Morris
Chief Investment Officer
City of San Diego
Office of the City Treasurer
kmorris@sandiego.gov
619.533.6253

1.2 Non-Monetary Terms

a. Neil stipulates to permanent debarment from entering any agreement to perform brokerage services or from performing brokerage services for the City of San Diego, SDHC, or HASD.

b. Kidder stipulates to debarment from entering any agreement to perform brokerage services or from performing any brokerage services for the City of San Diego, SDHC, or HASD for a period of two years from the Effective Date.

Initials: _____/_____/_____/_____/BH/BH/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

c. Neil will agree to an administrative stipulated settlement with the Fair Political Practices commission that is approved as to form by the San Diego District Attorneys' office.

1.3 Dismissal of the Action

Within five (5) days of the SDHC Settlement Sum and the City Settlement Sum being paid, Plaintiffs shall dismiss the Action with prejudice, including all claims and causes of actions as to all Parties.

1.4 Waiver of Attorneys' Fees and Costs

Except as may be included in the SDHC Settlement Sum and the City Settlement Sum, the Parties shall bear their own attorneys' fees and costs incurred in or arising from the Action or the FAC and waive any claim to seek costs based on the dismissal of the Action by Plaintiffs.

1.5 HASD's Approval of this Agreement

The Parties acknowledge that the effectiveness of this Agreement is contingent on the final passage of a resolution adopted by the HASD upon referral by SDHC, by which the HASD approves this Agreement ("HASD Authorization"). The Parties further acknowledge that the HASD Authorization may or may not be granted in the HASD's sole discretion. If there is no HASD Council Authorization on or before September 30,2022, this Agreement shall terminate automatically, without requirement of notice by any Party, unless otherwise agreed to in writing by the Parties. If this Agreement is terminated under this Section 1.5, the Parties shall have no obligations or liabilities to each other under this Agreement.

2.0 RELEASE

2.1 Release of Claims by Plaintiffs

Except as reserved in section 2.7 below, Plaintiffs release and discharge all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Plaintiffs or any of their agents, shareholders, council members, commissioners, board members, representatives, employees, predecessors, successors and/or assigns, assert or could assert against Neil, Kidder, KMCA, Chatham RIMV, RT San Diego, and their agents, shareholders, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Plaintiffs' Releases").

Initials: _____ / _____ / _____ / _____ / GH GH / _____ / _____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

2.2 Release of Claims by Neil

Except as reserved in section 2.7 below, Neil releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Neil or any of his agents, shareholders, representatives, employees, predecessors, successors and/or assigns, asserts or could assert against Plaintiffs, Kidder, KMCA, Chatham RIMV, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Neil Releases").

2.3 Release of Claims by Kidder and KMCA

Except as reserved in section 2.7 below, Kidder and KMCA release and discharge all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Kidder and KMCA or any of their agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, assert or could assert against Plaintiffs, Neil, Chatham RIMV, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Kidder and KMCA Releases").

2.4 Release of Claims by Chatham RIMV

Except as reserved in section 2.7 below, Chatham RIMV releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Chatham RIMV or any of its agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, asserts or could assert against Plaintiffs, Neil, Kidder, KMCA, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, or the Action ("Chatham RIMV Releases").

Initials: _____/_____/_____/_____/ BH BH /_____/_____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

2.5 Release of Claims by RT San Diego

Except as reserved in section 2.7 below, RT San Diego releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which RT San Diego or any of its agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, asserts or could assert against Plaintiffs, Neil, Kidder, KMCA, Chatham RIMV, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, or the Action ("RT San Diego Releases").

2.6 Released Matters

The Plaintiffs' Releases, Neil Releases, Kidder and KMCA Releases, Chatham RIMV Releases, and RT San Diego Releases are collectively referred to as the "Released Matters."

2.7 Matters Not Included in the Released Matters

2.7.1 The Released Matters do not include any liability or obligation created by this Agreement.

2.7.2 The Released Matters do not include any rights and obligations between Chatham RIMV and SDHC set forth in the Mission Valley Purchase Agreement. Those rights and obligations remain in full force and effect and shall survive as they would have existed in the absence of this Agreement.

2.7.3 The Released Matters do not include any rights and obligations between RT San Diego and SDHC set forth in the Kearny Mesa Purchase Agreement. Those rights and obligations remain in full force and effect and shall survive as they would have existed in the absence of this Agreement.

2.7.4 Except as to claims based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, and the Action, the Neil Releases and Kidder and KMCA Releases do not release, waive, discharge, modify, or alter any existing agreements, obligations, or liabilities between Neil and KMCA or Kidder.

2.8 Waiver of Rights Pursuant to Civil Code Section 1542

With respect to the Released Matters, each Party expressly waives any and all rights which it may have under the provisions of section 1542 of the California Civil Code, which section 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.*

Thus, with knowledge of the provisions of section 1542, and for the purpose of implementing a full and complete release of the Released Matters, each Party acknowledges this Agreement is intended to include in its effect, without limitation, all of the claims that were or could have been raised, even those which a Party did not know of or suspect to exist in its favor at the time of execution of this Agreement and that this Agreement contemplates extinguishment of all such claims that were or could have been raised, even those which would have materially affected the releasing Party's decision to enter into this Agreement.

3.0 GENERAL PROVISIONS

3.1 Admissibility of Release

No evidence of this Agreement or any of its terms, and no evidence of any discussion or communications made or information or materials transmitted in the course of negotiations for this Agreement, shall be admissible or presented in any action or proceeding before any court, agency, or other tribunal, as evidence of or relevant to any Released Matters, or as evidence that a Party or any of their respective agents, shareholders, representatives or employees have committed any violation of contract or law, or are liable to any person for any reason other than for the enforcement of this Agreement.

3.2 No Reliance

Each Party individually acknowledges, declares and represents: (i) it is executing this Agreement in reliance solely on its own judgment, belief, and knowledge of the facts surrounding the transactions described in this Agreement; (ii) this Agreement is made without reliance upon any statement or representation not contained in this Agreement of any other Party, or any representative, agent or attorney of any other Party; (iii) no promise, inducement or agreement not expressed in this Agreement has been made to any Party; and (iv) the recitals, terms and conditions contained in this Agreement are contractual and not mere recitals.

Initials: _____/_____/_____/_____/BK/BK/_____/_____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

3.3 Discovery

Each Party acknowledges it may subsequently discover facts different from, or in addition to, those which it now believes to be true with respect to the Released Matters, and agree this Agreement shall be and remain effective in all respects notwithstanding such different or additional facts.

3.4 Opportunity for Advice of Attorneys

Each Party further represents, warrants and agrees that in executing this Agreement, it does so with full knowledge of any and all rights which it may have with respect to the other Party and that each Party has received, or had the opportunity to receive, independent legal advice from such Party's attorneys with respect to the facts involved in the controversy compromised by this Agreement and with regard to such Party's rights and asserted rights arising out of such facts.

3.5 Assignment of Rights

Each Party represents and warrants it has not assigned its rights in any of its claims against the other to any other person or entity and each Party has full authority to bind the Party for which it signs to this Agreement.

3.6 Entire Agreement

The provisions of this Agreement constitute the entire agreement among the Parties and supersede all prior negotiations, proposals, agreements and understandings regarding the subject matter of this Agreement.

3.7 Additional Documents

The Parties agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary or appropriate to carry out the intent or provisions of this Agreement.

3.8 Assignees

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties, and to all affiliates, dba's or any other associated entities.

3.9 Interpretation of Agreement

This Agreement and its provisions shall not be construed or interpreted for or against any Party because that Party drafted or caused the Party's attorney to draft any of its provisions.

Initials: _____/_____/_____/_____/BTD/AHG/_____/_____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

3.10 Execution in Counterparts

This Agreement may be signed by the Parties in multiple counterparts, all of which shall be taken together as a single document. A facsimile, electronic, or PDF signature constitutes an original and all evidentiary objections to same other than for authenticity of signature are waived.

3.11 No Promise or Warranty

No promise or warranty shall be binding on any Party except as expressly contained in this Agreement.

3.12 Modification

No modification of this Agreement shall be valid unless agreed to in writing by the Parties.

3.13 Choice of Law

This Agreement shall be construed and enforced in accordance with the laws of the State of California and the Parties agree the court in the Action shall retain jurisdiction for purposes of enforcing this Agreement.

3.14 Enforcement of Agreement

In the event that any portion of this Agreement is deemed illegal, invalid or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision of this Agreement and this Agreement shall be construed as though such illegal, invalid or unenforceable provision had never been contained herein, unless a court determines the primary purpose of this Agreement would be frustrated.

PLEASE READ THIS DOCUMENT CAREFULLY. IT CONTAINS A GENERAL RELEASE OF CLAIMS KNOWN AND UNKNOWN.

The Parties have executed and delivered this Agreement consisting of twelve (12) pages and no exhibits.

SAN DIEGO HOUSING COMMISSION

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Initials: _____/_____/_____/_____/BB/BK/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

CITY OF SAN DIEGO

Signature:_____

Printed Name:_____

Title:_____

Date:_____

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

Signature:_____

Printed Name:_____

Title:_____

Date:_____

REVIEWED AND APPROVED AS TO FORM

MARA W. ELLIOTT, City Attorney

By:_____ Date:_____
Meghan Ashley Wharton
Senior Deputy City Attorney
Attorneys for Plaintiffs San Diego Housing Commission,
City of San Diego and the Housing Authority of the City of San Diego

JIM NEIL

Signature:_____

Date:_____

Initials: _____/_____/_____/_____/BH/BH/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

KIDDER MATHEWS, INC.

Signature: _____

Printed Name: BRIAN HATCHER

Title: PRES

Date: 8/8/22

KIDDER MATHEWS OF CALIFORNIA, INC.

Signature: _____

Printed Name: Brian Hatcher

Title: PRES

Date: 8/8/22

CHATHAM RIMV, LLC

Signature: _____

Printed Name: _____

Title: _____

Date: _____

RT SAN DIEGO, LLC

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Initials: ____/____/____/____/BH BH/____/____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

SETTLEMENT AND RELEASE AGREEMENT

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RECITALS

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Initials: _____/_____/_____/_____/_____/_____/ GMA /_____

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

J. On or about January 19, 2022, Plaintiffs filed a "Doe" Amendment to add KMCA to the Action and FAC.

K. The Defendants dispute the allegations, claims, and causes of action asserted in the FAC. Each Defendant filed the below respective dispositive motions to the FAC:

1. On or about December 9, 2021, Chatham RIMV filed a demurrer to, and motion to strike portions of, the FAC related to the FAC's Government Code Section 1090 causes of action for the Mission Valley Transaction;

2. On or about December 13, 2021, Kidder filed a demurrer to the FAC. Kidder's demurrer included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the negligence, fraud and breach of fiduciary duty causes of action. On or about December 16, 2021, Kidder also filed a motion to strike portions of the FAC related to the fraud and Government Code Section 1090 causes of action;

3. On or about December 13, 2021, Neil filed a demurrer to, and motion to strike portions of, the FAC. Neil's demurrer and motion to strike included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the fraud and breach of fiduciary duty causes of action;

4. On or about February 1, 2022, RT San Diego filed a demurrer to, and motion to strike portions of, the FAC related to the FAC's Government Code Section 1090 causes of action for the Kearny Mesa Transaction;

5. On or about March 18, 2022, KMCA filed a demurrer to, and motion to strike portions of, the FAC. KMCA's demurrer and motion to strike included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the negligence, fraud and breach of fiduciary duty causes of action.

L. The Parties wish to settle the Action and release all claims and/or liabilities pursuant to the terms of this Agreement.

Initials: _____/_____/_____/_____/_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

TERMS AND CONDITIONS

For good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1.0 PAYMENT AND RELATED PROVISIONS

1.1 Payment by Neil and Kidder to SDHC

a. Neil and Kidder will pay SDHC a total of Eight Hundred Forty-Five Thousand Dollars and No Cents ($845,000.00) (the "SDHC Settlement Sum"). The SDHC Settlement Sum will be paid by wire payable to the San Diego Housing Commission and not later than 45 days from the Effective Date. Wiring instructions will be provided by contacting:

Julienne Conserva, CPA
Director of Finance – Real Estate
San Diego Housing Commission
juliec@sdhc.org
858.336.1715

b. Neil and Kidder will pay the City a total of One Hundred Fifty-Five Thousand Dollars and No Cents ($155,000.00) (the "City Settlement Sum"). The City Settlement Sum will be paid by wire payable to the City of San Diego and not later than 45 days from the Effective Date. Wiring instructions will be provided by contacting:

Kent Morris
Chief Investment Officer
City of San Diego
Office of the City Treasurer
kmorris@sandiego.gov
619.533.6253

1.2 Non-Monetary Terms

a. Neil stipulates to permanent debarment from entering any agreement to perform brokerage services or from performing brokerage services for the City of San Diego, SDHC, or HASD.

b. Kidder stipulates to debarment from entering any agreement to perform brokerage services or from performing any brokerage services for the City of San Diego, SDHC, or HASD for a period of two years from the Effective Date.

Initials: _____/_____/_____/_____/_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

c. Neil will agree to an administrative stipulated settlement with the Fair Political Practices commission that is approved as to form by the San Diego District Attorneys' office.

1.3 Dismissal of the Action

Within five (5) days of the SDHC Settlement Sum and the City Settlement Sum being paid, Plaintiffs shall dismiss the Action with prejudice, including all claims and causes of actions as to all Parties.

1.4 Waiver of Attorneys' Fees and Costs

Except as may be included in the SDHC Settlement Sum and the City Settlement Sum, the Parties shall bear their own attorneys' fees and costs incurred in or arising from the Action or the FAC and waive any claim to seek costs based on the dismissal of the Action by Plaintiffs.

1.5 HASD's Approval of this Agreement

The Parties acknowledge that the effectiveness of this Agreement is contingent on the final passage of a resolution adopted by the HASD upon referral by SDHC, by which the HASD approves this Agreement ("HASD Authorization"). The Parties further acknowledge that the HASD Authorization may or may not be granted in the HASD's sole discretion. If there is no HASD Council Authorization on or before September 30,2022, this Agreement shall terminate automatically, without requirement of notice by any Party, unless otherwise agreed to in writing by the Parties. If this Agreement is terminated under this Section 1.5, the Parties shall have no obligations or liabilities to each other under this Agreement.

2.0 RELEASE

2.1 Release of Claims by Plaintiffs

Except as reserved in section 2.7 below, Plaintiffs release and discharge all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Plaintiffs or any of their agents, shareholders, council members, commissioners, board members, representatives, employees, predecessors, successors and/or assigns, assert or could assert against Neil, Kidder, KMCA, Chatham RIMV, RT San Diego, and their agents, shareholders, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Plaintiffs' Releases").

2.2 Release of Claims by Neil

Except as reserved in section 2.7 below, Neil releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Neil or any of his agents, shareholders, representatives, employees, predecessors, successors and/or assigns, asserts or could assert against Plaintiffs, Kidder, KMCA, Chatham RIMV, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Neil Releases").

2.3 Release of Claims by Kidder and KMCA

Except as reserved in section 2.7 below, Kidder and KMCA release and discharge all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Kidder and KMCA or any of their agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, assert or could assert against Plaintiffs, Neil, Chatham RIMV, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Kidder and KMCA Releases").

2.4 Release of Claims by Chatham RIMV

Except as reserved in section 2.7 below, Chatham RIMV releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Chatham RIMV or any of its agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, asserts or could assert against Plaintiffs, Neil, Kidder, KMCA, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, or the Action ("Chatham RIMV Releases").

Initials: _____/_____/_____/_____/_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

2.5 Release of Claims by RT San Diego

Except as reserved in section 2.7 below, RT San Diego releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which RT San Diego or any of its agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, asserts or could assert against Plaintiffs, Neil, Kidder, KMCA, Chatham RIMV, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, or the Action ("RT San Diego Releases").

2.6 Released Matters

The Plaintiffs' Releases, Neil Releases, Kidder and KMCA Releases, Chatham RIMV Releases, and RT San Diego Releases are collectively referred to as the "Released Matters."

2.7 Matters Not Included in the Released Matters

2.7.1 The Released Matters do not include any liability or obligation created by this Agreement.

2.7.2 The Released Matters do not include any rights and obligations between Chatham RIMV and SDHC set forth in the Mission Valley Purchase Agreement. Those rights and obligations remain in full force and effect and shall survive as they would have existed in the absence of this Agreement.

2.7.3 The Released Matters do not include any rights and obligations between RT San Diego and SDHC set forth in the Kearny Mesa Purchase Agreement. Those rights and obligations remain in full force and effect and shall survive as they would have existed in the absence of this Agreement.

2.7.4 Except as to claims based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, and the Action, the Neil Releases and Kidder and KMCA Releases do not release, waive, discharge, modify, or alter any existing agreements, obligations, or liabilities between Neil and KMCA or Kidder.

2.8 Waiver of Rights Pursuant to Civil Code Section 1542

With respect to the Released Matters, each Party expressly waives any and all rights which it may have under the provisions of section 1542 of the California Civil Code, which section 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.*

Thus, with knowledge of the provisions of section 1542, and for the purpose of implementing a full and complete release of the Released Matters, each Party acknowledges this Agreement is intended to include in its effect, without limitation, all of the claims that were or could have been raised, even those which a Party did not know of or suspect to exist in its favor at the time of execution of this Agreement and that this Agreement contemplates extinguishment of all such claims that were or could have been raised, even those which would have materially affected the releasing Party's decision to enter into this Agreement.

3.0 GENERAL PROVISIONS

3.1 Admissibility of Release

No evidence of this Agreement or any of its terms, and no evidence of any discussion or communications made or information or materials transmitted in the course of negotiations for this Agreement, shall be admissible or presented in any action or proceeding before any court, agency, or other tribunal, as evidence of or relevant to any Released Matters, or as evidence that a Party or any of their respective agents, shareholders, representatives or employees have committed any violation of contract or law, or are liable to any person for any reason other than for the enforcement of this Agreement.

3.2 No Reliance

Each Party individually acknowledges, declares and represents: (i) it is executing this Agreement in reliance solely on its own judgment, belief, and knowledge of the facts surrounding the transactions described in this Agreement; (ii) this Agreement is made without reliance upon any statement or representation not contained in this Agreement of any other Party, or any representative, agent or attorney of any other Party; (iii) no promise, inducement or agreement not expressed in this Agreement has been made to any Party; and (iv) the recitals, terms and conditions contained in this Agreement are contractual and not mere recitals.

3.3 Discovery

Each Party acknowledges it may subsequently discover facts different from, or in addition to, those which it now believes to be true with respect to the Released Matters, and agree this Agreement shall be and remain effective in all respects notwithstanding such different or additional facts.

3.4 Opportunity for Advice of Attorneys

Each Party further represents, warrants and agrees that in executing this Agreement, it does so with full knowledge of any and all rights which it may have with respect to the other Party and that each Party has received, or had the opportunity to receive, independent legal advice from such Party's attorneys with respect to the facts involved in the controversy compromised by this Agreement and with regard to such Party's rights and asserted rights arising out of such facts.

3.5 Assignment of Rights

Each Party represents and warrants it has not assigned its rights in any of its claims against the other to any other person or entity and each Party has full authority to bind the Party for which it signs to this Agreement.

3.6 Entire Agreement

The provisions of this Agreement constitute the entire agreement among the Parties and supersede all prior negotiations, proposals, agreements and understandings regarding the subject matter of this Agreement.

3.7 Additional Documents

The Parties agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary or appropriate to carry out the intent or provisions of this Agreement.

3.8 Assignees

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties, and to all affiliates, dba's or any other associated entities.

3.9 Interpretation of Agreement

This Agreement and its provisions shall not be construed or interpreted for or against any Party because that Party drafted or caused the Party's attorney to draft any of its provisions.

Initials: _____/_____/_____/_____/_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

3.10 Execution in Counterparts

This Agreement may be signed by the Parties in multiple counterparts, all of which shall be taken together as a single document. A facsimile, electronic, or PDF signature constitutes an original and all evidentiary objections to same other than for authenticity of signature are waived.

3.11 No Promise or Warranty

No promise or warranty shall be binding on any Party except as expressly contained in this Agreement.

3.12 Modification

No modification of this Agreement shall be valid unless agreed to in writing by the Parties.

3.13 Choice of Law

This Agreement shall be construed and enforced in accordance with the laws of the State of California and the Parties agree the court in the Action shall retain jurisdiction for purposes of enforcing this Agreement.

3.14 Enforcement of Agreement

In the event that any portion of this Agreement is deemed illegal, invalid or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision of this Agreement and this Agreement shall be construed as though such illegal, invalid or unenforceable provision had never been contained herein, unless a court determines the primary purpose of this Agreement would be frustrated.

PLEASE READ THIS DOCUMENT CAREFULLY. IT CONTAINS
A GENERAL RELEASE OF CLAIMS KNOWN AND UNKNOWN.

The Parties have executed and delivered this Agreement consisting of twelve (12) pages and no exhibits.

SAN DIEGO HOUSING COMMISSION

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Initials: _____/_____/_____/_____/_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

CITY OF SAN DIEGO

Signature:_____

Printed Name:_____

Title:_____

Date:_____

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

Signature:_____

Printed Name:_____

Title:_____

Date:_____

REVIEWED AND APPROVED AS TO FORM

MARA W. ELLIOTT, City Attorney

By: _____ Date: _____
Meghan Ashley Wharton
Senior Deputy City Attorney
Attorneys for Plaintiffs San Diego Housing Commission,
City of San Diego and the Housing Authority of the City of San Diego

JIM NEIL

Signature:_____

Date:_____

Initials: _____/_____/_____/_____/_____/_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

KIDDER MATHEWS, INC.

Signature:_____

Printed Name:_____

Title:_____

Date:_____

KIDDER MATHEWS OF CALIFORNIA, INC.

Signature:_____

Printed Name:_____

Title:_____

Date:_____

CHATHAM RIMV, LLC

Signature:_____

Printed Name: Eric Kentoff

Title: VP + Secretary

Date: 8/4/22

RT SAN DIEGO, LLC

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Initials: _____/_____/_____/_____/_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement"), is dated for reference purposes as of September 13, 2022, and is entered in San Diego, California by and among San Diego Housing Commission ("SDHC"), City of San Diego ("City"), Housing Authority of the City of San Diego ("HASD"), James N. Neil aka Jim Neil ("Neil"), Kidder Mathews, Inc. ("Kidder"), Kidder Mathews of California, Inc. ("KMCA"), Chatham RIMV, LLC ("Chatham RIMV"), and RT San Diego, LLC ("RT San Diego"). In this Agreement, SDHC, City, HASD, Neil, Kidder, KMCA, Chatham RIMV, and RT San Diego are sometimes referred to collectively as the "Parties" and individually as a "Party." Additionally in this Agreement, SDHC, City, and HASD are sometimes referred to collectively as "Plaintiffs" and Neil, Kidder, KMCA, Chatham RIMV, and RT San Diego as sometimes referred to collectively as "Defendants".

The "Effective Date" of this Agreement shall be the last date on which each of the following events has occurred: (a) the HASD has adopted a resolution approving this Agreement; (b) a duly authorized representative of each Party has signed this Agreement; and (c) the San Diego City Attorney has approved this Agreement as to form.

RECITALS

A. On or about June 10, 2020, KMCA entered a Real Estate Broker Agreement with SDHC, which named Neil as the real estate broker for KMCA to perform brokerage services for SDHC ("Brokerage Agreement").

B. On July 20, 2020, SDHC and RT San Diego entered in the Purchase and Sale Agreement for the Kearny Mesa Residence Inn located at 5400 Kearny Mesa Road, San Diego, CA 92111 (the "Kearny Mesa PSA").

C. On August 20, 2020, SDHC and Chatham RIMV entered in the Purchase and Sale Agreement for the Mission Valley Residence Inn located at 1865 Hotel Circle South, San Diego, CA 92108 (the "Mission Valley PSA").

D. On or about October 13, 2020, the HASD approved the purchase of the Mission Valley Residence Inn from Chatham RIMV for $67,000,000.00 ("Mission Valley Transaction") and the Kearny Mesa Residence Inn ("Kearny Mesa Transaction") from RT San Diego for $39,500,000.00. Neil was the SDHC's real estate broker under the Brokerage Agreement for both the Mission Valley Transaction and the Kearny Mesa Transaction. KMCA, and in turn, Neil, was paid a commission by SDHC for the Mission Valley Transaction and a commission by RT San Diego for the Kearny Mesa transaction ("Broker Commissions").

E. On or about May 19, 2021, SDHC claimed Neil was conflicted in the Mission Valley Transaction because Neil had acquired shares of stock in Chatham RIMV's parent company, Chatham Lodging Trust ("CLDT"), a publicly traded company, and demanded Neil and Kidder return the commission paid for the Mission Valley Transaction ("Conflict of Interest Claim"). Neil disputes the Conflict of Interest Claim.

Initials: _____/_____/_____/_____/_____/_____/_____/_____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

F. On or about August 3, 2021, Plaintiffs filed San Diego Superior Court Case No. 37-2021-00033006 ("Action") against Neil, Kidder, and Chatham RIMV ("Complaint"). The Complaint brought causes of action against Neil, Kidder, and Chatham RIMV for violation of Government Code Section 1090 seeking the return $67,000,000.00 paid in the Mission Valley Transaction based on alleged conflicts of interest by Neil. The Complaint also brought claims for fraud, breach of fiduciary duty, negligence, breach of contract and breach of the covenant of good faith and fair dealing against Neil and KMCA and sought damages including but not limited to the return of the commission paid to Kidder and Neil in the Mission Valley Transaction.

G. The Defendants dispute the allegations, claims, and causes of action asserted in the Action and Complaint. On or about September 17, 2021, in regard to certain disputed claims in the Action and Complaint relating to Plaintiffs' Government Code Section 1090 allegations, counsel for Neil transmitted to counsel for Plaintiffs a correspondence titled, "Demand for Dismissal of Gov. Code Section 1090 Claims."

H. On or about August 3, 2021, the SDHC, through its Deputy CEO, filed a complaint with the California Department of Real Estate ("DRE") against Neil related to the Mission Valley Transaction ("DRE Complaint"). The DRE Complaint alleges, among other things, that (i) the SDHC General Counsel first became aware of Neil's stock ownership in CLDT on February 23, 2021; and (ii) Neil, without any SDHC involvement, negotiated his commission to be paid by SDHC on the Mission Valley Transaction to be $252,500.00 more than allowed under the Brokerage Agreement. Neil disputes the allegations and claims asserted in the DRE Complaint. Neil contends he disclosed his possible CLDT stock ownership to senior SDHC staff, Mike Pavco and Pari Zaker, while the Mission Valley Transaction was being considered by the SDHC. Neil also contends Mike Pavco approved Neil's CLDT stock purchase before Mr. Pavco presented, on behalf of the SDHC, the Mission Valley Transaction to the HASD for final approval. Neil further contends the commission for the Mission Valley Transaction was paid in accordance with the terms of the Brokerage Agreement. Neil maintains he negotiated the terms of the commission as allowed by the terms of the Brokerage Agreement and, thereafter, the SDHC unilaterally decided to pay Neil's commission for the Mission Valley Transaction without objection to the amount. Neil's commission for the Mission Valley Transaction was approved by the HASD, as reflected in the HASD Resolution Number HA-1880, dated October 13, 2020.

I. On or about October 22, 2021, Plaintiffs filed a First Amended Complaint ("FAC") in the Action, which, among other things, added RT San Diego as a defendant. As to RT San Diego, the Plaintiffs alleged a violation of Government Code Section 1090 seeking the return $39,500,000.00 paid in the Kearny Mesa Transaction based on alleged conflicts of interest by Neil. The FAC also added claims for fraud, breach of fiduciary duty, negligence, breach of contract and breach of the covenant of good faith and fair dealing against Neil and Kidder arising from the Kearny Mesa Transaction and sought damages including but not limited to the commission paid to KMCA and Neil in the Kearny Mesa Transaction.

Initials: _____/_____/_____/_____/_____/_____/_____/ SP
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

J. On or about January 19, 2022, Plaintiffs filed a "Doe" Amendment to add KMCA to the Action and FAC.

K. The Defendants dispute the allegations, claims, and causes of action asserted in the FAC. Each Defendant filed the below respective dispositive motions to the FAC:

1. On or about December 9, 2021, Chatham RIMV filed a demurrer to, and motion to strike portions of, the FAC related to the FAC's Government Code Section 1090 causes of action for the Mission Valley Transaction;

2. On or about December 13, 2021, Kidder filed a demurrer to the FAC. Kidder's demurrer included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the negligence, fraud and breach of fiduciary duty causes of action. On or about December 16, 2021, Kidder also filed a motion to strike portions of the FAC related to the fraud and Government Code Section 1090 causes of action;

3. On or about December 13, 2021, Neil filed a demurrer to, and motion to strike portions of, the FAC. Neil's demurrer and motion to strike included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the fraud and breach of fiduciary duty causes of action;

4. On or about February 1, 2022, RT San Diego filed a demurrer to, and motion to strike portions of, the FAC related to the FAC's Government Code Section 1090 causes of action for the Kearny Mesa Transaction;

5. On or about March 18, 2022, KMCA filed a demurrer to, and motion to strike portions of, the FAC. KMCA's demurrer and motion to strike included challenges to the FAC's Government Code Section 1090 causes of action for both the Mission Valley Transaction and Kearny Mesa Transaction and to the negligence, fraud and breach of fiduciary duty causes of action.

L. The Parties wish to settle the Action and release all claims and/or liabilities pursuant to the terms of this Agreement.

TERMS AND CONDITIONS

For good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1.0 PAYMENT AND RELATED PROVISIONS

1.1 Payment by Neil and Kidder to SDHC

a. Neil and Kidder will pay SDHC a total of Eight Hundred Forty-Five Thousand Dollars and No Cents ($845,000.00) (the "SDHC Settlement Sum"). The SDHC Settlement Sum will be paid by wire payable to the San Diego Housing Commission and not later than 45 days from the Effective Date. Wiring instructions will be provided by contacting:

Julienne Conserva, CPA
Director of Finance – Real Estate
San Diego Housing Commission
juliec@sdhc.org
858.336.1715

b. Neil and Kidder will pay the City a total of One Hundred Fifty-Five Thousand Dollars and No Cents ($155,000.00) (the "City Settlement Sum"). The City Settlement Sum will be paid by wire payable to the City of San Diego and not later than 45 days from the Effective Date. Wiring instructions will be provided by contacting:

Kent Morris
Chief Investment Officer
City of San Diego
Office of the City Treasurer
kmorris@sandiego.gov
619.533.6253

1.2 Non-Monetary Terms

a. Neil stipulates to permanent debarment from entering any agreement to perform brokerage services or from performing brokerage services for the City of San Diego, SDHC, or HASD.

b. Kidder stipulates to debarment from entering any agreement to perform brokerage services or from performing any brokerage services for the City of San Diego, SDHC, or HASD for a period of two years from the Effective Date.

Initials: _____/_____/_____/_____/_____/_____/_____/ ST
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

c. Neil will agree to an administrative stipulated settlement with the Fair Political Practices commission that is approved as to form by the San Diego District Attorneys' office.

1.3 Dismissal of the Action

Within five (5) days of the SDHC Settlement Sum and the City Settlement Sum being paid, Plaintiffs shall dismiss the Action with prejudice, including all claims and causes of actions as to all Parties.

1.4 Waiver of Attorneys' Fees and Costs

Except as may be included in the SDHC Settlement Sum and the City Settlement Sum, the Parties shall bear their own attorneys' fees and costs incurred in or arising from the Action or the FAC and waive any claim to seek costs based on the dismissal of the Action by Plaintiffs.

1.5 HASD's Approval of this Agreement

The Parties acknowledge that the effectiveness of this Agreement is contingent on the final passage of a resolution adopted by the HASD upon referral by SDHC, by which the HASD approves this Agreement ("HASD Authorization"). The Parties further acknowledge that the HASD Authorization may or may not be granted in the HASD's sole discretion. If there is no HASD Council Authorization on or before September 30,2022, this Agreement shall terminate automatically, without requirement of notice by any Party, unless otherwise agreed to in writing by the Parties. If this Agreement is terminated under this Section 1.5, the Parties shall have no obligations or liabilities to each other under this Agreement.

2.0 RELEASE

2.1 Release of Claims by Plaintiffs

Except as reserved in section 2.7 below, Plaintiffs release and discharge all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Plaintiffs or any of their agents, shareholders, council members, commissioners, board members, representatives, employees, predecessors, successors and/or assigns, assert or could assert against Neil, Kidder, KMCA, Chatham RIMV, RT San Diego, and their agents, shareholders, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Plaintiffs' Releases").

2.2 Release of Claims by Neil

Except as reserved in section 2.7 below, Neil releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Neil or any of his agents, shareholders, representatives, employees, predecessors, successors and/or assigns, asserts or could assert against Plaintiffs, Kidder, KMCA, Chatham RIMV, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Neil Releases").

2.3 Release of Claims by Kidder and KMCA

Except as reserved in section 2.7 below, Kidder and KMCA release and discharge all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Kidder and KMCA or any of their agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, assert or could assert against Plaintiffs, Neil, Chatham RIMV, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, the Action, or any other matter or event occurring on or prior to the Effective Date ("Kidder and KMCA Releases").

2.4 Release of Claims by Chatham RIMV

Except as reserved in section 2.7 below, Chatham RIMV releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which Chatham RIMV or any of its agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, asserts or could assert against Plaintiffs, Neil, Kidder, KMCA, RT San Diego, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, or the Action ("Chatham RIMV Releases").

Initials: _____/_____/_____/_____/_____/_____/_____/ SP

SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

2.5 Release of Claims by RT San Diego

Except as reserved in section 2.7 below, RT San Diego releases and discharges all claims of every kind whatsoever (including without limitation claims for fraud, breach of contract, breach of fiduciary duty, negligence, breach of statutory duties, any criminal violation, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which RT San Diego or any of its agents, shareholders, representatives, employees, predecessors, affiliates, parents, subsidiaries, successors and/or assigns, asserts or could assert against Plaintiffs, Neil, Kidder, KMCA, Chatham RIMV, and their agents, shareholders, council members, commissioners, board members, representatives, insurers, employees, predecessors, affiliates, parents, subsidiaries successors and/or assigns, based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, or the Action ("RT San Diego Releases").

2.6 Released Matters

The Plaintiffs' Releases, Neil Releases, Kidder and KMCA Releases, Chatham RIMV Releases, and RT San Diego Releases are collectively referred to as the "Released Matters."

2.7 Matters Not Included in the Released Matters

2.7.1 The Released Matters do not include any liability or obligation created by this Agreement.

2.7.2 The Released Matters do not include any rights and obligations between Chatham RIMV and SDHC set forth in the Mission Valley Purchase Agreement. Those rights and obligations remain in full force and effect and shall survive as they would have existed in the absence of this Agreement.

2.7.3 The Released Matters do not include any rights and obligations between RT San Diego and SDHC set forth in the Kearny Mesa Purchase Agreement. Those rights and obligations remain in full force and effect and shall survive as they would have existed in the absence of this Agreement.

2.7.4 Except as to claims based upon or arising out of the Brokerage Agreement, Mission Valley Transaction, Kearny Mesa Transaction, Broker Commissions, Conflict of Interest Claim, the FAC, and the Action, the Neil Releases and Kidder and KMCA Releases do not release, waive, discharge, modify, or alter any existing agreements, obligations, or liabilities between Neil and KMCA or Kidder.

Initials: _____/_____/_____/_____/_____/_____/_____/ SP
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

2.8 Waiver of Rights Pursuant to Civil Code Section 1542

With respect to the Released Matters, each Party expressly waives any and all rights which it may have under the provisions of section 1542 of the California Civil Code, which section 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.*

Thus, with knowledge of the provisions of section 1542, and for the purpose of implementing a full and complete release of the Released Matters, each Party acknowledges this Agreement is intended to include in its effect, without limitation, all of the claims that were or could have been raised, even those which a Party did not know of or suspect to exist in its favor at the time of execution of this Agreement and that this Agreement contemplates extinguishment of all such claims that were or could have been raised, even those which would have materially affected the releasing Party's decision to enter into this Agreement.

3.0 GENERAL PROVISIONS

3.1 Admissibility of Release

No evidence of this Agreement or any of its terms, and no evidence of any discussion or communications made or information or materials transmitted in the course of negotiations for this Agreement, shall be admissible or presented in any action or proceeding before any court, agency, or other tribunal, as evidence of or relevant to any Released Matters, or as evidence that a Party or any of their respective agents, shareholders, representatives or employees have committed any violation of contract or law, or are liable to any person for any reason other than for the enforcement of this Agreement.

3.2 No Reliance

Each Party individually acknowledges, declares and represents: (i) it is executing this Agreement in reliance solely on its own judgment, belief, and knowledge of the facts surrounding the transactions described in this Agreement; (ii) this Agreement is made without reliance upon any statement or representation not contained in this Agreement of any other Party, or any representative, agent or attorney of any other Party; (iii) no promise, inducement or agreement not expressed in this Agreement has been made to any Party; and (iv) the recitals, terms and conditions contained in this Agreement are contractual and not mere recitals.

3.3 Discovery

Each Party acknowledges it may subsequently discover facts different from, or in addition to, those which it now believes to be true with respect to the Released Matters, and agree this Agreement shall be and remain effective in all respects notwithstanding such different or additional facts.

3.4 Opportunity for Advice of Attorneys

Each Party further represents, warrants and agrees that in executing this Agreement, it does so with full knowledge of any and all rights which it may have with respect to the other Party and that each Party has received, or had the opportunity to receive, independent legal advice from such Party's attorneys with respect to the facts involved in the controversy compromised by this Agreement and with regard to such Party's rights and asserted rights arising out of such facts.

3.5 Assignment of Rights

Each Party represents and warrants it has not assigned its rights in any of its claims against the other to any other person or entity and each Party has full authority to bind the Party for which it signs to this Agreement.

3.6 Entire Agreement

The provisions of this Agreement constitute the entire agreement among the Parties and supersede all prior negotiations, proposals, agreements and understandings regarding the subject matter of this Agreement.

3.7 Additional Documents

The Parties agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary or appropriate to carry out the intent or provisions of this Agreement.

3.8 Assignees

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties, and to all affiliates, dba's or any other associated entities.

3.9 Interpretation of Agreement

This Agreement and its provisions shall not be construed or interpreted for or against any Party because that Party drafted or caused the Party's attorney to draft any of its provisions.

3.10 Execution in Counterparts

This Agreement may be signed by the Parties in multiple counterparts, all of which shall be taken together as a single document. A facsimile, electronic, or PDF signature constitutes an original and all evidentiary objections to same other than for authenticity of signature are waived.

3.11 No Promise or Warranty

No promise or warranty shall be binding on any Party except as expressly contained in this Agreement.

3.12 Modification

No modification of this Agreement shall be valid unless agreed to in writing by the Parties.

3.13 Choice of Law

This Agreement shall be construed and enforced in accordance with the laws of the State of California and the Parties agree the court in the Action shall retain jurisdiction for purposes of enforcing this Agreement.

3.14 Enforcement of Agreement

In the event that any portion of this Agreement is deemed illegal, invalid or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision of this Agreement and this Agreement shall be construed as though such illegal, invalid or unenforceable provision had never been contained herein, unless a court determines the primary purpose of this Agreement would be frustrated.

PLEASE READ THIS DOCUMENT CAREFULLY. IT CONTAINS A GENERAL RELEASE OF CLAIMS KNOWN AND UNKNOWN.

The Parties have executed and delivered this Agreement consisting of twelve (12) pages and no exhibits.

SAN DIEGO HOUSING COMMISSION

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Initials: _____/_____/_____/_____/_____/_____/_____/SF
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

CITY OF SAN DIEGO

Signature:_____

Printed Name:_____

Title:_____

Date:_____

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

Signature:_____

Printed Name:_____

Title:_____

Date:_____

REVIEWED AND APPROVED AS TO FORM

MARA W. ELLIOTT, City Attorney

By: _____ Date: _____
Meghan Ashley Wharton
Senior Deputy City Attorney
Attorneys for Plaintiffs San Diego Housing Commission,
City of San Diego and the Housing Authority of the City of San Diego

JIM NEIL

Signature:_____

Date:_____

Initials: _____/_____/_____/_____/_____/_____/_____/ SV _____
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

KIDDER MATHEWS, INC.

Signature:_____

Printed Name:_____

Title:_____

Date:_____

KIDDER MATHEWS OF CALIFORNIA, INC.

Signature:_____

Printed Name:_____

Title:_____

Date:_____

CHATHAM RIMV, LLC

Signature:_____

Printed Name:_____

Title:_____

Date:_____

RT SAN DIEGO, LLC

Signature:_____

Printed Name: SAM FRIEDMAN

Title: Authorized Signatory

Date: 8/3/22

Initials: _____/_____/_____/_____/_____/_____/_____/SF
SDHC City HASD Neil Kidder KMCA Chatham RIMV RT San Diego

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 SETTLEMENT AGREEMENT BETWEEN THE SAN DIEGO HOUSING COMMISSION, THE HOUSING AUTHORITY OF THE CITY OF SAN DIEGO, THE CITY OF SAN DIEGO, JIM NEIL, KIDDER MATHEWS OF CALIFORNIA, INC., KIDDER MATHEWS, INC., RT SAN DIEGO, LLC AND CHATHAM RIMV, LLC AND RELATED ACTIONS

WHEREAS, on or about June 10, 2020, Kidder Mathews of California, Inc. (Kidder California) entered into a Real Estate Broker Agreement with the San Diego Housing Commission (Housing Commission), which named James N. Neil (Neil) as the real estate broker for Kidder California to perform brokerage services for the Housing Commission (Broker Agreement); and

WHEREAS, Neil and Kidder California identified two properties for potential Housing Commission Purchase with public funds: (a) the Kearny Mesa Residence Inn located at 5400 Kearny Mesa Road, San Diego, CA 92111 (Kearny Mesa Property); and (b) the Mission Valley Residence Inn located at 1865 Hotel Circle South, San Diego, CA 92108 (Hotel Circle Property); and

WHEREAS, on or about October 13, 2020, the Housing Authority for the City of San Diego (Housing Authority) approved the purchase of the Kearny Mesa Property from RT San Diego, LLC for $39,500,000.00 and the Hotel Circle Property from Chatham RIMV, LLC for $67,000,000.00; and

WHEREAS, Neil and Kidder California were the Housing Commission's real estate broker under the Broker Agreement for both the Housing Commission's purchase of the Kearny Mesa Property and the Hotel Circle Property; and

WHEREAS, Kidder California and Neil were paid a commission by the Housing Commission for the for the Kearny Mesa Property transaction and a commission by RT San Diego for the Mission Valley Property transaction; and

WHEREAS, after identifying the Hotel Circle Property as a potential purchase option for the Housing Commission, but before the close of the Hotel Circle Property transaction, Neil purchased 40,000 shares of stock in Chatham Lodging Trust. Chatham Lodging Trust is the parent company of the Chatham RIMV, LLC, the seller of the Hotel Circle Property; and

WHEREAS, on August 3, 2021, the City Attorney's Office brought an action on behalf of the Housing Commission, the City of San Diego, and the Housing Authority, alleging 13 causes of action for fraud, breach of fiduciary duty, breach of contract and violation of section 1090 against defendants Neil, Kidder Mathews, Inc., and Chatham RIMV, LLC arising from the two transactions (the Action); and

WHEREAS, RT San Diego, LLC and Kidder California were later added as defendants in the Action; and

WHEREAS**,** the City Attorney's Office recently negotiated a settlement with the Neil, Kidder California, Kidder Mathews, Inc., RT San Diego, LLC and Chatham RIMV, LLC which is documented in a settlement agreement (Settlement Agreement).

WHEREAS, the Settlement Agreement executed by all defendants is attached to Housing Commission Staff Report No. HCR22-102; and

WHEREAS, on August 19, 2022, the Housing Commission Board of Commissioners recommended approval of the Settlement Agreement; and

WHEREAS, Housing Commission staff have determined that this activity is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Section 15378(b)(5), as it is an administrative activity of government that will not result in direct or indirect physical changes in the environment. The determination that this activity is not subject to CEQA, pursuant to Section 15060(c)(3), is not appealable and a Notice of Right to Appeal the Environmental Determination (NORA) is not required. Processing under the National Environmental Policy Act is not required as no federal funds are involved in this action; NOW, THEREFORE,

BE IT RESOLVED, the Executive Director of the Housing Authority, or designee, is authorized and directed to execute the Settlement Agreement on behalf of the Housing Authority in a final form as approved by counsel for the Housing Authority.

BE IT FURTHER RESOLVED, that the Housing Commission's President & CEO, or designee, is authorized and directed to execute the Settlement Agreement on behalf of the Housing Commission in a final form as approved by counsel for the Housing Authority.

BE IT FURTHER RESOLVED, that the Housing Commission's President & CEO, or designee, is authorized and directed to accept $845,000.00 from Kidder Mathews, Inc. and Jim Neil.

BE IT FURTHER RESOLVED, that the Housing Commission's President & CEO, or designee, is authorized and directed to execute all documents and instruments that are necessary

or appropriate to implement the Settlement Agreement in a final form as approved by counsel for the Housing Authority.

BE IT FURTHER RESOLVED, that the Housing Commission staff is directed to notify the Housing Authority and the City Attorney's Office about any subsequent amendments or modifications to the transaction, and other required documents, including amendments to any documents.

APPROVED: MARA W. ELLIOTT, General Counsel

By _____
Meghan Ashley Wharton
Senior Deputy General Counsel

MAW:slc
07/28/2022
Or.Dept: Housing Authority
Doc. No. 3043387

The City of San Diego
Item Approvals

Item Subject: Settlement of a Lawsuit brought by the San Diego Housing Commission, the Housing Authority of the City of San Diego and the City of San Diego against Jim Neil, Kidder Mathews of California, Inc., Kidder Mathews, Inc., RT San Diego, LLC and Chatham RIMC, LLC; San Diego County Superior Court Case No. 37-2021-00033006-CU-BC-CTL.

Contributing Department	Approval Date
DOCKET OFFICE	08/29/2022

Approving Authority	Approver	Approval Date
HOUSING COMMISSION FINAL DEPARTMENT APPROVER	MARSHALL, SCOTT	08/15/2022
CITY ATTORNEY	CARTER, SHELLEY	08/23/2022
EXECUTIVE VICE PRESIDENT	DAVIS, JEFF	08/29/2022