



## EXECUTIVE SUMMARY

### HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

MEETING DATE: April 20, 2023

HCR23-055

SUBJECT: Extended Stay America Portfolio – Purchase and Sale Agreement and  
Broker Finder's Fee

COUNCIL DISTRICT: 3 and 7

ORIGINATING DEPARTMENT: Real Estate Division

CONTACT/PHONE NUMBER: Emily S. Jacobs (619) 578-7423

#### REQUESTED ACTION:

Approve: (i) the execution of a Purchase and Sale Agreement (PSA) for three Extended Stay America hotel properties, located at: 2085-95 Hotel Circle South, San Diego, 92108; 3860 Murphy Canyon Road, San Diego, 92123; and 7440-50 Mission Valley Road, San Diego, 92108, in an amount not to exceed \$157,875,000 under the terms and conditions described in this report; (ii) the execution of a Compensation Agreement with Marcus and Millichap, authorizing payment by the San Diego Housing Commission of a finder's fee to Marcus and Millichap in an amount not to exceed \$783,469 under the terms and conditions described in this report; and (iii) the Due Diligence budget not to exceed \$750,000 as set forth in this report.

#### EXECUTIVE SUMMARY OF KEY FACTORS:

- The San Diego Housing Commission (Housing Commission) has worked to identify sites to potentially create affordable housing units to address the continuing City Council-declared shelter crisis in the City.
- Executing a Purchase and Sale Agreement (PSA) for the properties identified in this report is necessary before the Housing Commission can obtain site control to perform required and necessary due diligence.
- The due diligence process will enable the Housing Commission to identify potential risks, if any, associated with purchasing and converting these properties to permanent affordable rental housing with supportive services for people experiencing homelessness.
- After due diligence, if the Housing Commission proceeds with the potential acquisitions of any of these properties, the proposed funding sources for the potential acquisitions would include State of California Homekey funds and other local funding sources. The Housing Commission's potential purchase of these properties is contingent upon receipt of Homekey funds.
- The aggregate purchase price for all three properties is not to exceed \$157,875,000. The Housing Commission may purchase any one or two of the properties, rather than all of the properties, for the individual purchase prices included in this report.
- An initial refundable deposit of \$150,000 will be deposited into escrow within five days of PSA execution. If the Housing Commission proceeds with the purchase of one or more properties after completion of due diligence, a second nonrefundable Earnest Money Deposit not to exceed \$50,000 per property will be deposited into escrow.
- Marcus & Millichap (M&M) is waiving its rights to receive compensation regarding any other properties it previously presented to Housing Commission staff if the Housing Commission pays M&M a finder's fee for any of these three properties, which is equal to one half of the amount M&M would be entitled to receive under the Housing Commission's prior contract with M&M.



## REPORT

**DATE ISSUED:** April 17, 2023

**REPORT NO:** HCR23-055

**ATTENTION:** Chair and Members of the San Diego Housing Commission  
For the Agenda of April 20, 2023

**SUBJECT:** Extended Stay America Portfolio – Purchase and Sale Agreement and Broker  
Finder's Fee

**COUNCIL DISTRICT:** 3 and 7

*Advance notice of San Diego Housing Commission Hearing of the following matter has been provided to the Housing Authority Members pursuant to the provisions of San Diego Municipal Code Section 98.0301(e)(4)(A)-(B).*

### **REQUESTED ACTION:**

Approve: (i) the execution of a Purchase and Sale Agreement (PSA) for three Extended Stay America hotel properties, located at: 2085-95 Hotel Circle South, San Diego, 92108; 3860 Murphy Canyon Road, San Diego, 92123; and 7440-50 Mission Valley Road, San Diego, 92108, in an amount not to exceed \$157,875,000 under the terms and conditions described in this report; (ii) the execution of a Compensation Agreement with Marcus and Millichap, authorizing payment by the San Diego Housing Commission of a finder's fee to Marcus and Millichap in an amount not to exceed \$783,469 under the terms and conditions described in this report; and (iii) the Due Diligence budget not to exceed \$750,000 as set forth in this report.

### **STAFF RECOMMENDATION**

That the San Diego Housing Commission (Housing Commission) Board of Commissioners (Board) take the following actions:

- 1) Authorize the Housing Commission's President & CEO, or designee, to execute a Purchase and Sale Agreement (PSA) between the Housing Commission and ESA P. Portfolio, LLC (Seller), with an aggregate purchase price not to exceed \$157,875,000 for the properties located at 2085-95 Hotel Circle South, San Diego, California 92108 (\$65,175,000); 3860 Murphy Canyon Road, San Diego, CA 92123 (\$40,700,000); and 7440-50 Mission Valley Road, San Diego, CA 92108 (\$52,000,000); provided that the Housing Commission may purchase any one or two of the Properties, rather than all of the Properties, for the individual purchase prices set forth herein.
- 2) Authorize an initial refundable Earnest Money Deposit not to exceed \$150,000 as detailed in the staff report, and if the Housing Commission elects to proceed with the purchase of one or more of the Properties after completion of Due Diligence, authorize an additional, but nonrefundable, Earnest Money Deposit not to exceed \$50,000 per Property, as detailed in the staff report.
- 3) Authorize the commencement of Due Diligence and a Due Diligence budget not to exceed \$750,000 as set forth in the staff report.

- 4) Authorize the Housing Commission's President & CEO, or designee, to execute a Compensation Agreement between the Housing Commission and Marcus & Millichap (M&M), regarding the Housing Commission's payment of a finder's fee to M&M not to exceed \$783,469, payable upon escrow closing of the Properties.
- 5) Authorize the Housing Commission's President & CEO, or designee, to substitute approved funding sources with any other available funds as deemed appropriate, contingent upon budget availability.
- 6) Authorize the Housing Commission's President & CEO, or designee, to execute all documents and instruments that are necessary and/or appropriate to implement these approvals, in a form approved by General Counsel, and to take such actions as are necessary and/or appropriate to implement these approvals upon the advice of General Counsel, provided that a copy of the documents, signed as to form by General Counsel, is submitted to each Housing Commissioner.

### **BACKGROUND**

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

In addition, the City Council on February 7, 2022, renewed its declaration of a Shelter Crisis pursuant to Government Code Section 8698, et seq., which remains in effect (Resolution No. R-313888). The Shelter Crisis resolution was enacted to help provide shelter and mitigate the effects of the ongoing housing emergency in the City.

As the current situation represents a state of emergency, the Housing Commission has worked to identify sites to potentially create affordable housing units to address the shelter crisis. Executing a PSA for the Properties is necessary before the Housing Commission can obtain site control to perform required and necessary due diligence. Obtaining site control will allow the Housing Commission to initiate extensive due diligence activities to assess items, including but not limited to, review of zoning, presence of potential environmental hazards, potential hazardous materials, immediate and long-term capital needs, vector control needs, and the accessibility of the sites. The Housing Commission will also obtain appraisals (including peer review appraisals) and market studies for the Properties during the due diligence process.

This due diligence process will enable the Housing Commission to identify potential risks, if any, associated with purchasing and converting the Properties to permanent affordable rental housing.

After due diligence, if the Housing Commission proceeds with the potential acquisitions of any of the properties discussed in this report, the proposed funding sources for the potential acquisitions would include State of California Homekey funds and other local funding sources. The Housing Commission's potential purchase of these properties is contingent upon receipt of an award of Homekey funds. The Housing Commission anticipates applying for Homekey funds in Spring 2023, subject to Housing Commission Board approval, and that the State will announce Homekey funding awards in late summer 2023.

The Homekey program is designed to rapidly produce housing for persons experiencing homelessness or at risk of homelessness. Eligible uses for Homekey funds include acquisition or rehabilitation of hotels, apartments or homes to be converted into permanent or interim housing; conversion of nonresidential properties into residential units; new construction; and master leasing of properties for non-congregate housing.

### **SUMMARY**

A development summary for each property is below and included in Tables 1-3.

**Table 1 – Development Details, Extended Stay America Hotel Circle (ESA HC)**

Address	2085-95 Hotel Circle South, San Diego, CA 92108
Council District	Council District 3
Community Plan Area	Mission Valley
Purchase Price	\$65,175,000
Development Type	Acquisition and Rehabilitation
Construction Type	Type V, 3-story building
Parking Type	122 parking spaces (surface parked)
Transit Information	Bus service route 88
Housing Type	Permanent Affordable Rental Housing with Supportive Services for Households Experiencing Homelessness
Lot Size	4.58 Acres
Units	165 units (163 affordable plus two unrestricted managers' units)
Density	36.67 units/acre (165 units ÷ 4.58 acres)
Unit Mix	163 studios and 2 studio managers' units.
Gross Building Area	80,000 square feet
Affordable Units in Service by Council District	Council District 3 includes 8,317 affordable rental housing units currently in service, which represents 32.7% of the 25,446 affordable rental housing units in service citywide.

ESA HC is a 165-unit building on an approximately 199,505-square-foot site at 2085-95 Hotel Circle South in the Mission Valley/Hotel Circle District of Central San Diego (Attachment 1 – Location Maps).

The property was built in 1999 with surface parking. It is currently used as a hotel for short- or long-term stays.

The building is contained within one, three-story structure that consists of 165 rooms equipped with private bathrooms and private cooking facilities. Two units will be designated as the managers' units.

The property includes a main office, lobby and a common laundry room.



**Table 2 – Development Details, Extended Stay America Murphy Canyon Road (ESA MCR)**

Address	3860 Murphy Canyon Road, San Diego, CA 92123
Council District	Council District 7
Community Plan Area	Kearny Mesa
Purchase Price	\$40,700,000
Development Type	Acquisition and Rehabilitation
Construction Type	Type V, 3-story building, elevator-served
Parking Type	150 parking spaces (surface parking)
Transit Information	Bus service route 25
Housing Type	Permanent Affordable Rental Housing with Supportive Services for Households Experiencing Homelessness
Lot Size	4.80 Acres
Units	107 (106 plus one manager's unit)
Density	22.29 units/acre (107 units ÷ 4.8 acres)
Unit Mix	107 studios, 1 two-bedroom manager's unit
Gross Building Area	45,546 square feet
Affordable Units in Service by Council District	Council District 7 includes 1,743 affordable rental housing units currently in service, which represents 6.8% of the 25,446 affordable rental housing units in service citywide.

ESA MCR is a 107-unit building on an approximately 4.8-acre site at 3860 Murphy Canyon Road in the Kearny Mesa District of Central San Diego (Attachment 1 – Location Maps).

The property was built in 2002 with approximately 150 surface parking spaces. It is currently used as a hotel for short- or long-term stays.

The building is contained within one, three-story structure with an elevator. The property consists of 107 rooms equipped with private bathrooms and private cooking facilities. One unit will be designated as the manager's unit.

The property includes a main office, lobby and a common laundry room.

**Table 3 – Development Details, Extended Stay America – Mission Valley Road (ESA MV)**

Address	7440-50 Mission Valley Road, San Diego, CA 92108
Council District	Council District 7
Community Plan Area	Mission Valley
Purchase Price	\$52,000,000
Development Type	Acquisition and Rehabilitation
Construction Type	Type V, 3 buildings, 2-story walk-up
Parking Type	140 parking spaces (surface parked)
Transit Information	Bus service route 928
Housing Type	Permanent Affordable Rental Housing with Supportive Services for Households Experiencing Homelessness
Lot Size	3.40 Acres
Units	140 (138 affordable plus two unrestricted managers' units)
Density	41.47 units/acre (141 units ÷ 3.4 acres)
Unit Mix	138 studio units and two studio managers' units.
Gross Building Area	52,236 square feet
Affordable Units in Service by Council District	Council District 7 includes 1,743 affordable rental housing units currently in service, which represents 6.8% of the 25,446 affordable rental housing units in service citywide.

ESA MV is a 140-unit building on an approximately 3.4-acre site at 7440-50 Mission Valley Road, in the Mission Valley District of Central San Diego (Attachment 1 – Location Maps).

The property was built in 1997 and consists of three buildings that are two-story walk-ups with surface-level parking. It is currently used as a hotel for short- or long-term stays.

The building is contained within three, two-story structures that consists of a total of 140 rooms equipped with private bathrooms and private cooking facilities. Two units will be designated as managers' units.

The property includes a main office, lobby, a common laundry room and picnic area.

### **Deal Terms**

The Housing Commission intends to execute a PSA with the Seller to enable staff to investigate the properties during the due diligence period, which will commence upon mutual execution of the PSA and end 180 days following the date the PSA is executed.

The purchase of the properties is explicitly contingent upon the approval by the Housing Commission Board of Commissioners and the Housing Authority of the City of San Diego.

The key PSA deal terms are as follows:

**Purchase Prices:** The aggregate purchase price for all three Properties is not to exceed \$157,875,000. This not-to-exceed price is based on comparable sales, as shown in Table 4. If the Housing Commission elects to purchase fewer than all Properties, the sales prices for the individual Properties will be as follows:

ESA HC	\$65,175,000
ESA MCR	\$40,700,000
ESA MV	\$52,000,000
<b>TOTAL</b>	<b>\$157,875,000</b>

**Due Diligence Period:** The due diligence period will begin upon mutual execution of the PSA and expires 180 days after PSA execution.

**Earnest Money Deposit:** An initial refundable deposit of \$150,000 will be deposited into escrow with Chicago Title Company within five days of PSA execution. If the Housing Commission elects not to proceed with the transaction at the end of the due diligence period, the \$150,000 deposit will be refunded to the Housing Commission. If the Housing Commission elects to proceed with the purchase of one or more of the Properties after completion of Due Diligence, a second nonrefundable Earnest Money Deposit not to exceed \$50,000 per Property will be deposited into escrow with Chicago Title Company.

**Finder's Fee:** M&M agreed to waive its rights to receive compensation with respect to any other properties that M&M previously presented to the Housing Commission, provided that the Housing Commission shall pay a finder's fee to M&M, as detailed in the Compensation Agreement in an amount not to exceed \$783,469, payable upon escrow closing (or the closings) of the Properties. If the Housing Commission elects to purchase fewer than all three Properties, the finder's fee payable by the Housing Commission to M&M will be as follows:

ESA HC	\$323,437
ESA MCR	\$201,977
ESA MV	\$258,055
<b>TOTAL</b>	<b>\$783,469</b>

**Close of Escrow:** The PSA provides for the close of escrow within 12 months of execution of the PSA unless extended by an additional three-month period at the Housing Commission's sole discretion.

### **Project Comparison Chart**

Multiple factors and variables influence the cost of developing multifamily affordable rental housing, including but not limited to project location, site conditions, site improvements needed, environmental factors, land use approval process, community involvement, construction type, design requirements/constraints, economies of scale, City of San Diego impact fees, developer experience and capacity, and amenities necessary to gain tax credit approval.

Table 4 shows a comparison of the subject property and other recent developments of the same construction type.

**Table 4 – Comparable Market Acquisitions**

Project Name	Year Built	Year Acquired	Construction Type	Units	Total Acquisition Cost	Acquisition Cost Per Unit
<b>Extended Stay America, Hotel Circle</b>	<b>1999</b>	<b>TBD</b>	<b>V</b>	<b>165</b>	<b>\$65,175,000</b>	<b>\$395,000</b>
<b>Extended Stay America, Murphy Canyon Road</b>	<b>2002</b>	<b>TBD</b>	<b>V</b>	<b>107</b>	<b>\$40,700,000</b>	<b>\$380,374</b>
<b>Extended Stay America, Mission Valley</b>	<b>1997</b>	<b>TBD</b>	<b>V</b>	<b>140</b>	<b>\$52,000,000</b>	<b>\$371,429</b>
Embassy Suites, UTC	1987	2021	V	340	\$215,724,214	\$634,483
2137 Pacific Hwy	2016	2021	V	160	\$57,090,083	\$358,813
Fashion Terrace Apts, Mission Valley	1991	2021	V	73	\$32,600,000	\$446,575

#### **Due Diligence**

As a public agency, and in compliance with the Housing Commission's Policy for Acquisition and/or Purchase of Real Estate, the Housing Commission performs rigorous due diligence inspections on a property prior to initiating acquisition activities. These due diligence activities are summarized below.

Pursuant to the Policy for Acquisition and/or Purchase of Real Estate, Housing Commission staff will engage third-party consultants to prepare the following due diligence reports, including, but not limited to:

- Preliminary Title Report
- Physical Needs Assessment
- Zoning Conformance
- Review of Entitlements
- Termite/Pest Inspections
- Sewer Line and Supply Line Inspections
- Phase 1 & II Environmental Report
- Appraisal
- Peer Review of Appraisal
- Market Study

- American Land Title Association (ALTA) Survey
- Soils / Geotechnical Testing
- Hazardous Materials testing (microbial growth, lead and asbestos, etc.)
- Construction Cost Assumptions Review
- Financial Feasibility Review
- Feasibility Review
- Confirm compliance with the California Environmental Quality Act and the National Environmental Policy Act
- Other reports or studies deemed necessary to analyze the property

### **AFFORDABLE HOUSING IMPACT**

If the Housing Commission elects to proceed with the potential acquisition of the Properties, the acquisition of all three Properties will ultimately result in the addition of 407 units of permanent affordable rental housing with access to supportive services for individuals experiencing homelessness.

After financing is secured, the project will be subject to covenants and restrictions for the applicable lending agreements, which will restrict affordability for a minimum of 55 years. The rent and occupancy restrictions required by all potential lenders and investors will apply. The more stringent of the funding sources' affordability/rent restrictions will take precedence during the term of their applicability.

### **BROKER FINDER'S FEE**

On or about January 24, 2022, M&M made the Housing Commission aware of the Seller's intention to sell the Properties. At that time, the Housing Commission's contract with M&M (approved by the Housing Commission Board on November 12, 2021) provided for the Housing Commission to pay brokerage commissions to M&M in the event the sellers of properties were unwilling to pay the brokerage commission. At that time, the Housing Commission elected not to proceed with respect to the Properties, as the round of Homekey funding then in effect was well underway, and the Housing Commission was pursuing joint applications on other potential projects. There was no certainty at the time of another round of Homekey funds.

In late 2022 (October and November) the Seller's broker approached the Housing Commission. Given the changed circumstances (primarily a new round of Homekey funds), the Housing Commission engaged in negotiations. Under the terms of the prior contract with M&M, the Housing Commission may have a continuing legal obligation to pay M&M the brokerage commission set forth in the prior contract. The Seller would not agree to pay a commission to M&M. However, the Seller agreed to cap the amount payable to its broker to an amount equal to the amount that a Seller's broker would be allowed to receive under the Housing Commission's prior contract with M&M.

Housing Commission staff and M&M compromised, and M&M has agreed to waive its rights to receive compensation with respect to any other properties that M&M previously presented to Housing Commission staff, provided that, if the Housing Commission closes on one or more of the Properties described in this report, the Housing Commission will pay M&M a finder's fee equal to one half of the amount M&M would be entitled to receive under the Housing Commission's prior contract with M&M. Thus, the combined seller commissions and finder's fees payable M&M will be less than the amount set forth in the Housing Commission's prior contract with M&M.

Payment of the finder's fee aligns with the Housing Commission's Policies and Administrative Regulations. Section 4 of Administrative Regulation AR.219.000 (Retention of Real Estate Brokers; Operating Procedures for Brokers and Peer or Desk Review of Appraisals) provides that "the Commission may also deal directly with real estate brokers who present listed properties to the Housing Commission and to cooperate with brokers, as set forth within Acquisition Policy Section 4.1.4." Section 4.1.4 of the Acquisition Policy (Policy PO-RED-374.02) provides that the Housing Commission is "authorized to contract directly with brokers and/or to cooperate with brokers to effectuate the acquisitions." Neither the Administrative Regulation nor the Policy set forth a methodology or cap on the amount of commission payable. Since the prior contract with M&M was previously approved the Housing Commission Board, Housing Commission staff utilized the compensation schedule set forth therein as a point of reference, and M&M agreed to accept one-half of the amount M&M would have been entitled to receive under the prior contract with M&M.

The Housing Commission is utilizing procedure set forth in Administrative Regulation AR.219.000 (Retention of Real Estate Brokers; Operating Procedures for Brokers and Peer or Desk Review of Appraisals) and the Acquisition Policy (Policy PO-RED-374.02) to enter into an agreement with M&M, subject to the Housing Commission Board's approval. Of note, the prior contract with M&M provided for a continuing brokerage relationship, which the Housing Commission does not desire to continue. The new contract with M&M is far simpler and pertains only to the potential acquisition of the Properties. However, the new agreement continues to require M&M to provide all of the various conflict disclosures at all of the various times that were required under the prior contract with M&M.

#### **EQUAL OPPORTUNITY CONTRACTING AND EQUITY ASSURANCE**

The Housing Commission's Strategic Plan for Fiscal Year (FY) 2022-2024 includes the following statement regarding the Housing Commission's commitment to equity and inclusivity: "At SDHC, we are about people. SDHC embraces diverse approaches and points of view to improve our programs, projects and policies.

- We believe in delivering programs and services in innovative and inclusive ways.
- We are committed to advancing equity and inclusion both internally and externally."

#### **HOUSING COMMISSION STRATEGIC PLAN**

This item relates to Strategic Priority Area No. 1 in the Housing Commission Strategic Plan for Fiscal Year (FY) 2022-2024: Increasing and Preserving Housing Solutions.

#### **FISCAL CONSIDERATIONS**

The proposed funding sources and uses approved by this action were included in the Fiscal Year 2023 Housing Commission budget, which the Housing Authority of the City of San Diego approved on June 13, 2022. Approving this action will result in the due diligence for the potential acquisition of the Properties.

Funding sources and uses will be as follows:

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Extended Stay America Portfolio – Purchase and Sale Agreement

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<b>FY 23 Funding Sources</b>	
Federal/Moving to Work	\$900,000
<b>TOTAL</b>	<b>\$900,000</b>
<b>FY 23 Funding Uses</b>	
Acquisition Cost (Deposit)	\$150,000
Due Diligence	\$750,000
<b>TOTAL</b>	<b>\$900,000</b>

#### **PREVIOUS COUNCIL and/or COMMITTEE ACTION**

On March 15, 2022, the Housing Authority of the City of San Diego, by a vote of 8-0, approved the Housing Commission's Administrative Regulation for the Retention of Real Estate Brokers; Operating Procedures for Brokers; and Peer or Desk Review of Appraisals, with changes to sections 5, 6.A and 6.H as set forth in Attachment 1 to the Housing Authority Resolution (Resolution No. HA-1938).

On November 12, 2021, the Housing Commission Board, by a vote of 4-0, approved the agreement with Marcus & Millichap to provide on-call real estate broker services to the Housing Commission (Report No. HCR21-106), with direction to staff to return to the Board with an action that makes the practices set forth within the Marcus & Millichap proposed agreement a requirement for all future SDHC real estate acquisition transactions.

On November 15, 2016, the Housing Authority of the City of San Diego, by a vote of 8-0, approved the Housing Commission's Policy for Acquisition and/or Purchase of Real Estate, PO-RED-374.02 (Resolution No. HA-1705).

#### **KEY STAKEHOLDERS and PROJECTED IMPACTS**

Key stakeholders for these potential acquisitions include the Seller, the Housing Commission, the Mission Valley/Hotel Circle District Community, Kearny Mesa District Community, City of San Diego and individuals/households experiencing homelessness.

#### **ENVIRONMENTAL REVIEW**

The proposed activities are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the State CEQA Guidelines because the Properties are existing facilities and the proposed activities do not involve expansion of the existing use(s). Federal funds will constitute a portion of the funding for these activities. The parties agree that the provision of any federal funds as the result of this action is conditioned on the City of San Diego's final NEPA review and approval. NEPA approval was obtained from the City of San Diego on March 29, 2023.

Respectfully submitted,

*Robert Bohrer*

Robert Bohrer  
Vice President  
Real Estate Finance & Acquisitions  
Real Estate Division

Approved by,

*Jeff Davis*

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

April 17, 2023

Extended Stay America Portfolio – Purchase and Sale Agreement

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Attachments:

- 1) Location Maps
- 2) Preliminary Title Report
- 3) Letter of Intent – Signed
- 4) Draft Purchase and Sale Agreement
- 5) Marcus & Millichap Compensation Agreement
- 6) Housing Commission Administrative Regulation for the Retention of Real Estate Brokers; Operating Procedures for Brokers; and Peer or Desk Review of Appraisals
- 7) Housing Commission Policy PO-RED-374.02 Policy for Acquisition and/or Purchase of Real Estate

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



## Attachment 1

### Extended Stay America Hotel Circle – Map



## Extended Stay America Hotel Circle – Location Map





## Extended Stay America Hotel Circle – Amenities Map

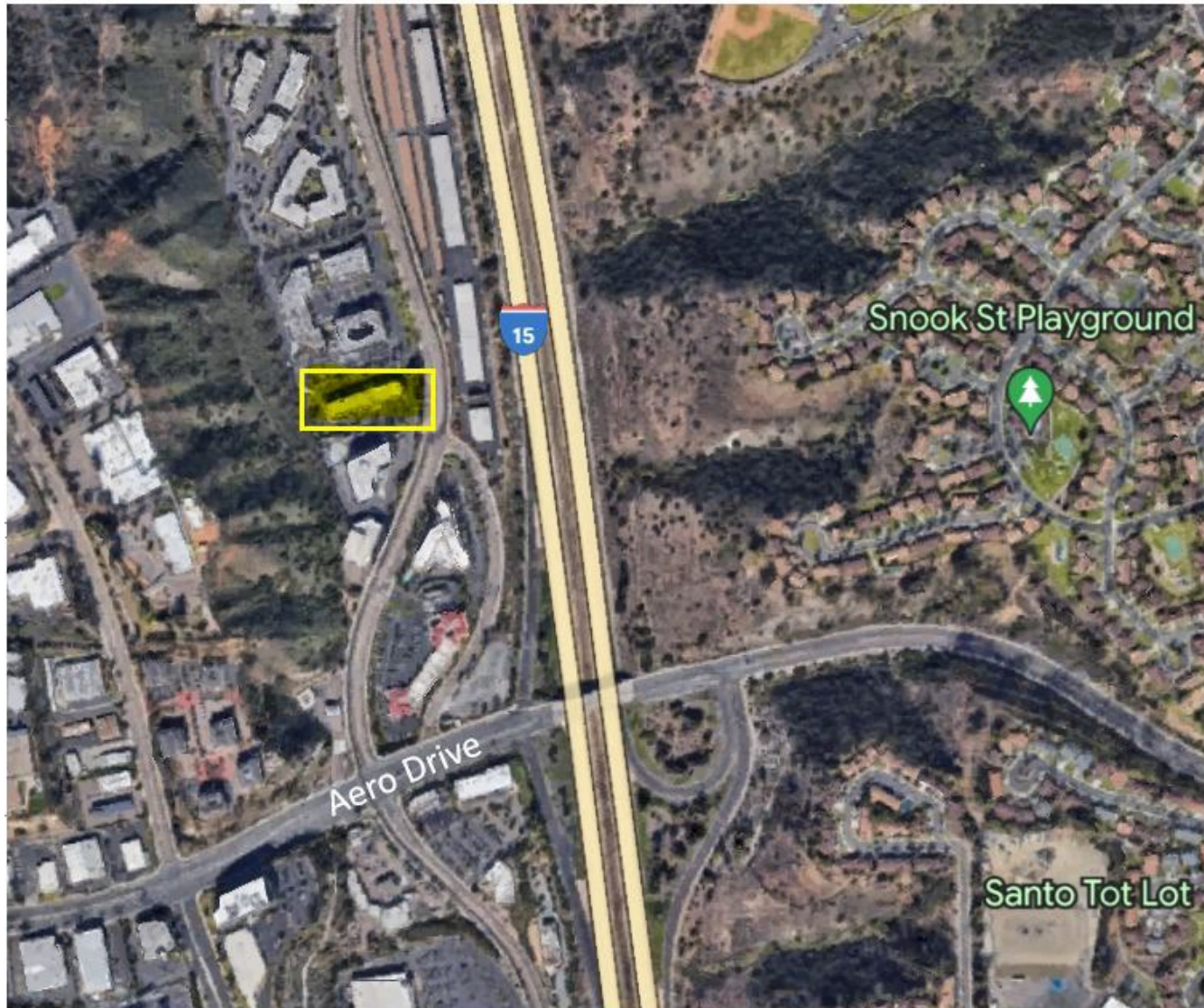


## Extended Stay America Murphy Canyon Road – Map





### Extended Stay America Murphy Canyon Road – Location Map





## Extended Stay America Murphy Canyon Road – Amenities Map

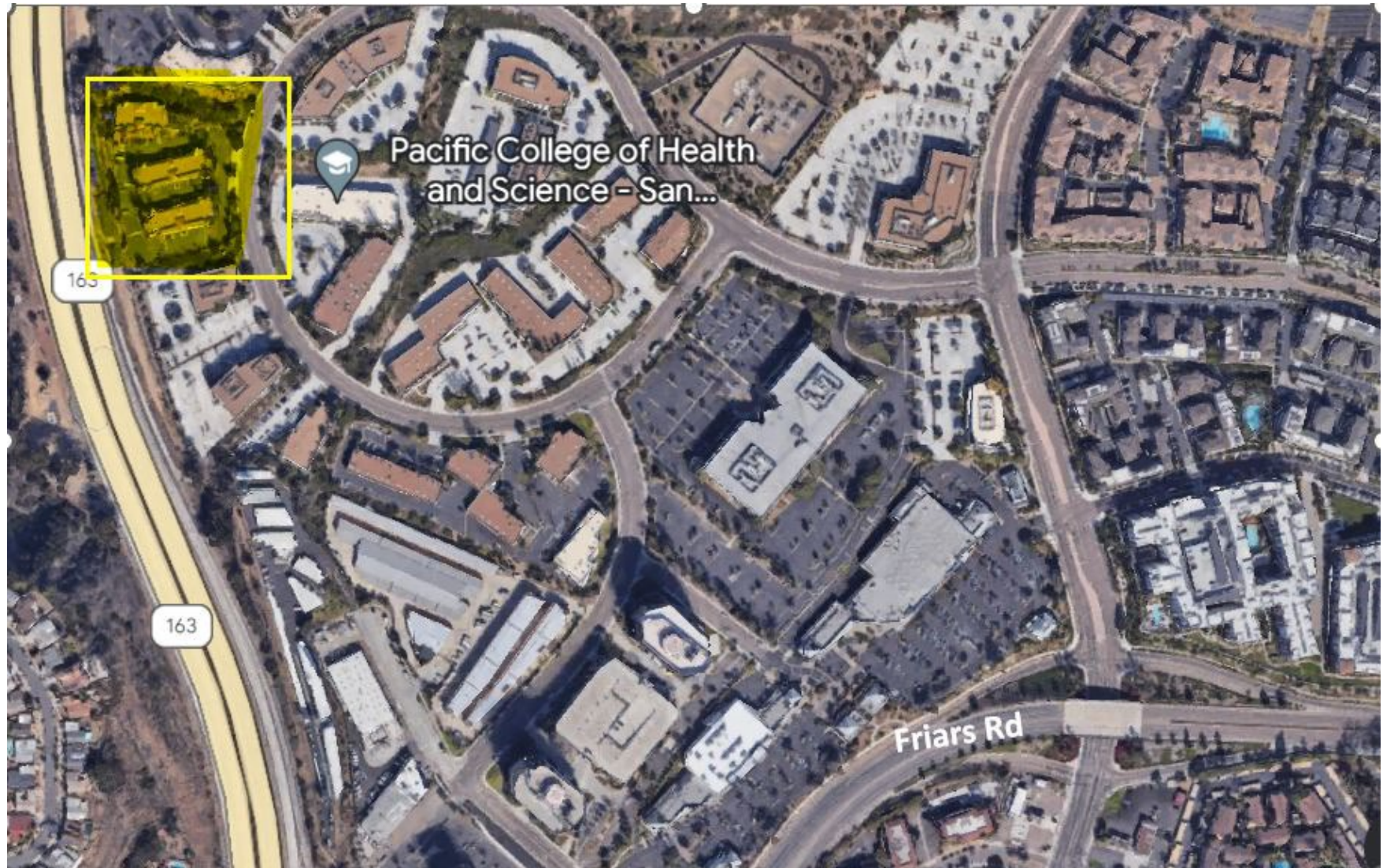


## Extended Stay America Mission Valley – Map



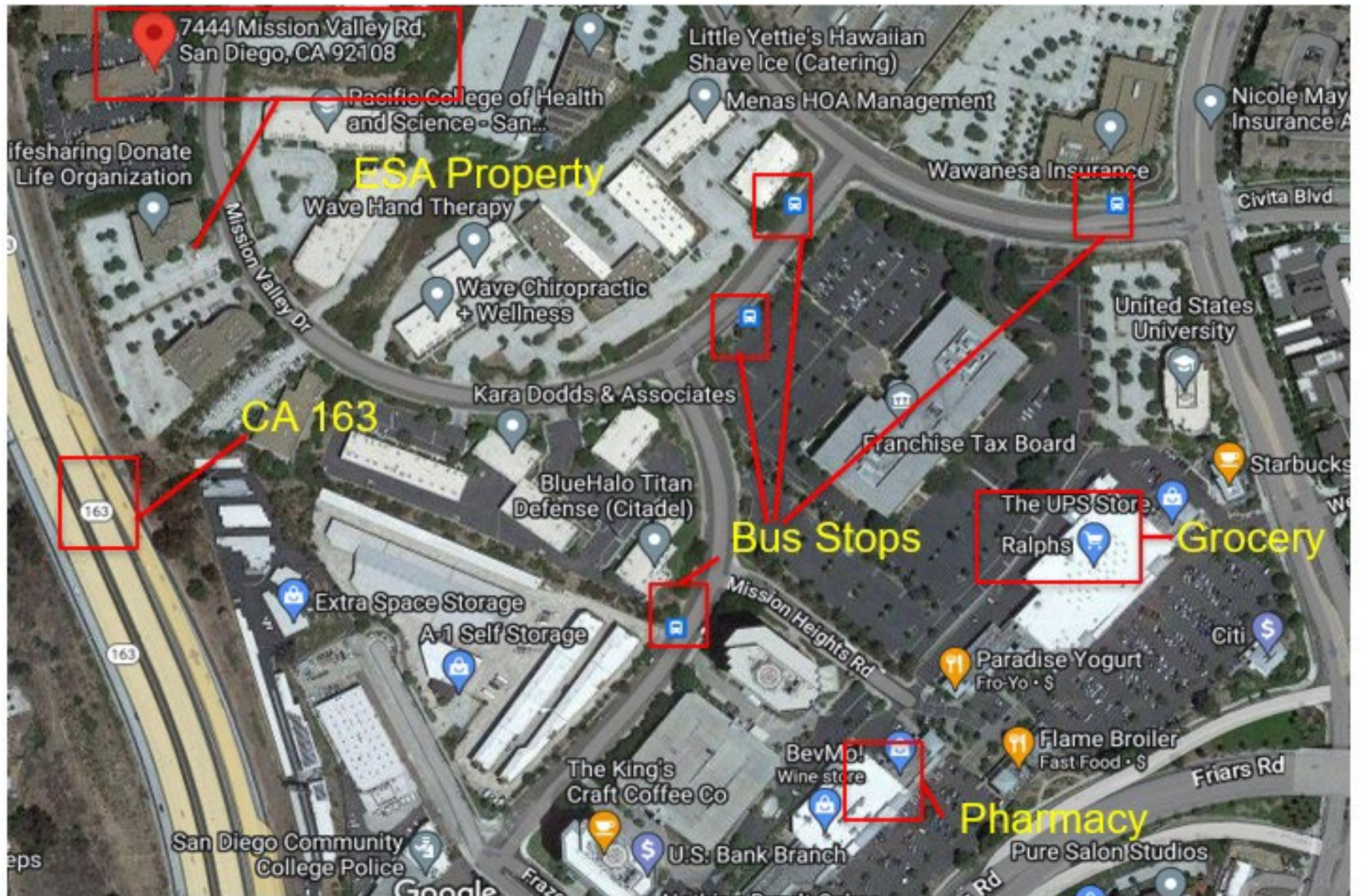


# Extended Stay America Mission Valley – Location Map





## Extended Stay America Mission Valley – Amenities Map







2365 Northside Drive, Suite 600, San Diego, CA 92108  
Phone: (619) 521-3500 • Fax: (619) 521-3608

Issuing Policies of Chicago Title Insurance Company

ORDER NO.: **00189985-993-SD2-CFU**

Main Office Line: **(619) 521-3500**

San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, CA 92101  
ATTN: Buddy Bohrer  
Email: buddyb@sdhc.org  
REF:

Title Officer: Ken Cyr & Mark Franklin  
Title Officer Phone: (619) 521-3673  
Title Officer Fax: (619) 521-3608  
Title Officer Email: TeamCyrFranklin@ctt.com

PROPERTY: **2085 – 2095 SOUTH HOTEL CIRCLE, SAN DIEGO, CA**

**PRELIMINARY REPORT**

*In response to the application for a policy of title insurance referenced herein, **Chicago Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.*

*The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.*

*This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.*

*The policy(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company, a Florida corporation.*

***Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.***

***It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.***


Chicago Title Company

By: 

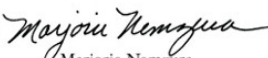
Authorized Signature



By:

  
Michael J. Nolan  
President

ATTEST:

  
Marjorie Nemzura  
Secretary



## **PRELIMINARY REPORT**

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**EFFECTIVE DATE:**                    **March 7, 2023 at 7:30 a.m.**

**ORDER NO.: 00189985-993-SD2-CFU**

The form of policy or policies of title insurance contemplated by this report is:

**ALTA Standard Owner's Policy (6-17-06)**

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

**A FEE**

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS [VESTED IN:](#)

**ESA P PORTFOLIO LLC F/K/A BRE/ESA P PORTFOLIO LLC, a DE limited liability company**

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

**See Exhibit A attached hereto and made a part hereof.**



## EXHIBIT "A"

### LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF [PARCEL MAP NO. 18040](#), IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JUNE 4, 1998 AS FILE NO. [1998-0335824, OF OFFICIAL RECORDS](#).

[APN: 443-040-38-00](#)

## EXCEPTIONS

**AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:**

A. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2023 - 2024.

B. Property taxes, including any personal property taxes and any assessments collected with taxes, are as follows:

Tax Identification No.:	443-040-38-00
Fiscal Year:	2022 - 2023
1st Installment:	\$123,173.03, PAID
2nd Installment:	\$123,173.03, OPEN (Delinquent after April 10)
Penalty and Cost:	\$12,327.30
Homeowners Exemption:	\$0.00
Code Area:	08001

C. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.

1. Privilege and right to extend drainage structures and excavation and embankment slopes beyond the limits of the right of way, where required for the construction and maintenance of said right of way as contained in the document set forth below:

Recording Date:	March 23, 1955
Recording No.:	<a href="#">Book 5577, Page 287</a> , of Official Records

2. Easement(s) for the purpose(s) shown below and rights incidental thereto, as delineated on or as offered for dedication on

Map/Plat:	<a href="#">Map No. 5500</a>
Purpose:	Drainage
Affects:	As shown on <a href="#">Parcel Map No. 18040</a> .

Resolution R-296603, certified resolution for drainage easement located within Parcel 1 of [Parcel Map No. 18040](#), Drawing Nos. 18808-1-B and 18808-2-B, vacating a portion of said easement, as recorded June 13, 2002 as [Instrument No. 2002-0501636, of Official Records](#).

3. Agreement relating to the installation, maintenance and possible removal of a lined drainage ditch as set forth below:

Between:	City of San Diego
And:	Valley Enterprises, Ltd., owner
Recording Date:	August 8, 1979
<a href="#">Recording No.:</a>	<a href="#">79-331889, of Official Records</a>

## EXCEPTIONS (Continued)

4. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Mission Cable TV, Inc., a corporation  
Purpose: Aerial and underground community antenna television equipment  
Recording Date: October 27, 1980  
[Recording No: 80-357046, of Official Records](#)

The exact location and extent of said easement is not disclosed of record.

5. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: The City of San Diego, a municipal corporation  
Purpose: Drainage facilities, drainage access easement and pedestrian and non-motor vehicular easements  
Recording Date: August 20, 1982  
[Recording No: 82-258396, of Official Records](#)  
Affects: As shown on [Parcel Map No. 18040](#).

6. An offer and the rejection of said offer subject to the provisions of Section 66477.2 of the Government Code of the State of California for the dedication of that portion of Parcel 2 of [Parcel Map No. 16469](#) marked "Reserved for Future Street", as shown on the map of said tract, which provides that a rejected Offer of Dedication shall remain.

7. Easement(s) for the purpose(s) shown below and rights incidental thereto, as delineated on or as offered for dedication on

Map/Plat: [Parcel Map No. 16469](#)  
Purpose: Open space  
Affects: As shown on [Parcel Map No. 18040](#).

8. Various matters including, but not limited to, requirements for developing or improving the land, proposed easements, covenants, conditions, restrictions and provisions set forth on [Parcel Map No. 18040](#).

9. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, genetic information, medical condition, citizenship, primary language, and immigration status, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date: March 20, 1992  
[Recording No: 1992-0155627, of Official Records](#)

## EXCEPTIONS (Continued)

10. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, genetic information, medical condition, citizenship, primary language, and immigration status, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date: July 1, 1998  
[Recording No: 1998-0407242, of Official Records](#)

11. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of San Diego, a municipal corporation  
Purpose: Water facilities  
Recording Date: October 20, 1998  
[Recording No: 1998-0677665, of Official Records](#)  
Affects: A portion of said land.

12. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of San Diego, a municipal corporation  
Purpose: Drainage facilities  
Recording Date: October 20, 1998  
[Recording No: 1998-0677666, of Official Records](#)  
Affects: A portion of said land as more particularly described in said document.

13. Matters contained in that certain document

Entitled: Mission Valley Planned District/Resource Protection Ordinance Permit No. 96-7233 Maravilla 1 (Extended Stay America Hotel), City Council  
Dated: September 29, 1998  
Executed by: The City of San Diego, Maravilla I, LLC, Owner and ESA Management, Inc.  
Recording Date: April 22, 1999  
[Recording No: 1999-0271158, of Official Records](#)

Reference is hereby made to said document for full particulars.

14. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of San Diego, a municipal corporation  
Purpose: Water facilities  
Recording Date: May 21, 1999  
[Recording No: 1999-0348081, of Official Records](#)  
Affects: A portion of said land.



## EXCEPTIONS (Continued)

15. Agreement relating to the installation, maintenance and possible removal of curb outlet, 12" storm drain, pvt. 8" sewer, pvt laterals with backflow preventer brow ditch, sidewalk, gazebo, a corporation pavement, curb & landscaping as set forth below:

Between: City of San Diego  
And: Extended Stay CA, Inc., owner  
Recording Date: May 13, 2002  
[Recording No.:](#) [2002-0403112, of Official Records](#)

16. An irrevocable offer to dedicate an easement over a portion of said Land for

Purpose(s): Street and highway  
Recording Date: June 20, 2002  
[Recording No.:](#) [2002-0524129, of Official Records](#)  
Affects: The route thereof affects a portion of said land as more particularly described in said document.

17. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: San Diego Gas and Electric Company  
Purpose: Public utilities, ingress and egress  
Recording Date: March 10, 2006  
[Recording No.:](#) [2006-0167981, of Official Records](#)

The exact location and extent of said easement is not disclosed of record.

18. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Memorandum of Lease  
Lessor: ESA P Portfolio L.L.C., a Delaware limited liability company  
Lessee: ESA P Portfolio Operating Lessee LLC, a Delaware limited liability company  
Recording Date: July 2, 2021  
[Recording No.:](#) [2021-0479339, of Official Records](#)

19. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$22,640,000.00  
Dated: June 16, 2021  
Trustor/Grantor: ESA P Portfolio L.L.C., a Delaware limited liability company and ESA P Portfolio Operating Lessee LLC, a Delaware limited liability company  
Trustee: Chicago Title Insurance Company  
Beneficiary: JPMorgan Chase Bank, National Association, a banking association chartered under the laws of the United States of America, Citi Real Estate Funding Inc., a New York corporation and Deutsche Bank AG, a New York Branch, a branch of Deutsche Bank AG, a German Bank, authorized by the New York Department of Financial Services  
Recording Date: July 2, 2021  
[Recording No.:](#) [2021-0479340, of Official Records](#)

## EXCEPTIONS (Continued)

An assignment of the beneficial interest under said deed of trust which names:

Assignee: German American Capital Corporation, a Maryland corporation  
Recording Date: October 12, 2021  
[Recording No: 2021-0708887, of Official Records](#)

An assignment of the beneficial interest under said deed of trust which names:

Assignee: Wells Fargo Bank, National Association, as Trustee, for the benefit of holders of Extended Stay America Trust 2021-ESH, Commercial Mortgage Pass-Through Certificates, Series 2021-ESH  
Recording Date: October 12, 2021  
[Recording No: 2021-0708888, of Official Records](#)

20. Water rights, claims or title to water, whether or not disclosed by the public records.
21. Matters which may be disclosed by an inspection and/or by a correct ALTA/NSPS Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.
22. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the public records.

The Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage.

The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.

**PLEASE REFER TO THE "INFORMATIONAL NOTES" AND "REQUIREMENTS" SECTIONS WHICH FOLLOW FOR INFORMATION NECESSARY TO COMPLETE THIS TRANSACTION.**

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**END OF EXCEPTIONS**

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## REQUIREMENTS SECTION

1. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance from the entity named below:

Limited Liability Company:      ESA P Portfolio LLC F/K/A BRE/ESA P Portfolio LLC, a DE limited liability company

- a) A copy of its operating agreement, if any, and all amendments, supplements and/or modifications thereto, certified by the appropriate manager or member.
- b) If a domestic Limited Liability Company, a copy of its Articles of Organization and all amendments thereto with the appropriate filing stamps.
- c) If the Limited Liability Company is member-managed, a full and complete current list of members certified by the appropriate manager or member.
- d) A current dated certificate of good standing from the proper governmental authority of the state in which the entity is currently domiciled.
- e) If less than all members, or managers, as appropriate, will be executing the closing documents, furnish evidence of the authority of those signing.
- f) If Limited Liability Company is a Single Member Entity, a Statement of Information for the Single Member will be required.
- g) Each member and manager of the LLC without an Operating Agreement must execute in the presence of a notary public the Certificate of California LLC (Without an Operating Agreement) Status and Authority form.

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**END OF REQUIREMENTS**

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## INFORMATIONAL NOTES SECTION

1. None of the items shown in this report will cause the Company to decline to attach ALTA Endorsement Form 9 to an Extended Coverage Loan Policy, when issued.
2. The Company is not aware of any matters which would cause it to decline to attach CLTA Endorsement Form 116 indicating that there is located on said Land Commercial properties, known as 2085 – 2095 South Hotel Circle, located within the City of San Diego, California, to an Extended Coverage Loan Policy.
3. Note: The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.
4. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
5. Pursuant to Government Code Section 27388.1, as amended and effective as of 1-1-2018, a Documentary Transfer Tax (DTT) Affidavit may be required to be completed and submitted with each document when DTT is being paid or when an exemption is being claimed from paying the tax. If a governmental agency is a party to the document, the form will not be required. DTT Affidavits may be available at a Tax Assessor-County Clerk-Recorder.
6. The following Exclusion(s) are added to preliminary reports, commitments and will be included as an endorsement in the following policies:
  - A. 2006 ALTA Owner's Policy (06-17-06).
    6. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.
  - B. 2006 ALTA Loan Policy (06-17-06).
    8. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.
    9. Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage based on the application of a Tribe's law resulting from the failure of the Insured Mortgage to specify State law as the governing law with respect to the lien of the Insured Mortgage.
  - C. ALTA Homeowner's Policy of Title Insurance (12-02-13) and CLTA Homeowner's Policy of Title Insurance (12-02-13).
    10. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.

**INFORMATIONAL NOTES  
(Continued)**

- D. ALTA Expanded Coverage Residential Loan Policy - Assessments Priority (04-02-15).
12. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.
  13. Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage based on the application of a Tribe's law resulting from the failure of the Insured Mortgage to specify State law as the governing law with respect to the lien of the Insured Mortgage.
- E. CLTA Standard Coverage Policy 1990 (11-09-18).
7. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the public records but that would be disclosed by an examination of any records maintained by or on behalf of a tribe or on behalf of its members.
  8. Any claim of invalidity, unenforceability, or lack of priority of the lien of the insured mortgage based on the application of a tribe's law resulting from the failure of the insured mortgage to specify state law as the governing law with respect to the lien of the insured mortgage.
7. Note: There are NO conveyances affecting said Land recorded within 24 months of the date of this report.

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**END OF INFORMATIONAL NOTES**

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Ken Cyr & Mark Franklin/725

## Wire Fraud Alert

This Notice is not intended to provide legal or professional advice. If you have any questions, please consult with a lawyer.

All parties to a real estate transaction are targets for wire fraud and many have lost hundreds of thousands of dollars because they simply relied on the wire instructions received via email, without further verification. **If funds are to be wired in conjunction with this real estate transaction, we strongly recommend verbal verification of wire instructions through a known, trusted phone number prior to sending funds.**

In addition, the following non-exclusive self-protection strategies are recommended to minimize exposure to possible wire fraud.

- **NEVER RELY** on emails purporting to change wire instructions. Parties to a transaction rarely change wire instructions in the course of a transaction.
- **ALWAYS VERIFY** wire instructions, specifically the ABA routing number and account number, by calling the party who sent the instructions to you. **DO NOT** use the phone number provided in the email containing the instructions, use phone numbers you have called before or can otherwise verify. **Obtain the phone number of relevant parties to the transaction as soon as an escrow account is opened.** **DO NOT** send an email to verify as the email address may be incorrect or the email may be intercepted by the fraudster.
- **USE COMPLEX EMAIL PASSWORDS** that employ a combination of mixed case, numbers, and symbols. Make your passwords greater than eight (8) characters. Also, change your password often and do **NOT** reuse the same password for other online accounts.
- **USE MULTI-FACTOR AUTHENTICATION** for email accounts. Your email provider or IT staff may have specific instructions on how to implement this feature.

For more information on wire-fraud scams or to report an incident, please refer to the following links:

**Federal Bureau of Investigation:**  
<http://www.fbi.gov>

**Internet Crime Complaint Center:**  
<http://www.ic3.gov>



## Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the filed rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for such discount. These discounts only apply to transactions involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

Not all discounts are offered by every FNF Company. The discount will only be applicable to the FNF Company as indicated by the named discount.

### **FNF Underwritten Title Company**

CTC – Chicago Title company  
CLTC – Commonwealth Land Title Company  
FNTC – Fidelity National Title Company of California  
FNTCCA - Fidelity National Title Company of California  
TICOR – Ticor Title Company of California  
LTC – Lawyer's Title Company  
SLTC – ServiceLink Title Company

### **Underwritten by FNF Underwriters**

CTIC – Chicago Title Insurance Company  
CLTIC - Commonwealth Land Title Insurance Company  
FNTIC – Fidelity National Title Insurance Company  
FNTIC - Fidelity National Title Insurance Company  
CTIC – Chicago Title Insurance Company  
CLTIC – Commonwealth Land Title Insurance Company  
CTIC – Chicago Title Insurance Company

### **Available Discounts**

#### **DISASTER LOANS (CTIC, CLTIC, FNTIC)**

The charge for a Lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within twenty-four (24) months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be fifty percent (50%) of the appropriate title insurance rate.

#### **CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (CTIC, FNTIC)**

On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be fifty percent (50%) to seventy percent (70%) of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be forty (40%) to fifty percent (50%) of the appropriate title insurance rate, depending on the type of coverage selected.

# FIDELITY NATIONAL FINANCIAL, INC. PRIVACY NOTICE

**Effective January 1, 2023**

Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, "FNF," "our," or "we") respect and are committed to protecting your privacy. This Privacy Notice explains how we collect, use, and protect personal information, when and to whom we disclose such information, and the choices you have about the use and disclosure of that information.

A limited number of FNF subsidiaries have their own privacy notices. If a subsidiary has its own privacy notice, the privacy notice will be available on the subsidiary's website and this Privacy Notice does not apply.

## **Collection of Personal Information**

FNF may collect the following categories of Personal Information:

- contact information (e.g., name, address, phone number, email address);
- demographic information (e.g., date of birth, gender, marital status);
- identity information (e.g. Social Security Number, driver's license, passport, or other government ID number);
- financial account information (e.g. loan or bank account information); and
- other personal information necessary to provide products or services to you.

We may collect Personal Information about you from:

- information we receive from you or your agent;
- information about your transactions with FNF, our affiliates, or others; and
- information we receive from consumer reporting agencies and/or governmental entities, either directly from these entities or through others.

## **Collection of Browsing Information**

FNF automatically collects the following types of Browsing Information when you access an FNF website, online service, or application (each an "FNF Website") from your Internet browser, computer, and/or device:

- Internet Protocol (IP) address and operating system;
- browser version, language, and type;
- domain name system requests; and
- browsing history on the FNF Website, such as date and time of your visit to the FNF Website and visits to the pages within the FNF Website.

Like most websites, our servers automatically log each visitor to the FNF Website and may collect the Browsing Information described above. We use Browsing Information for system administration, troubleshooting, fraud investigation, and to improve our websites. Browsing Information generally does not reveal anything personal about you, though if you have created a user account for an FNF Website and are logged into that account, the FNF Website may be able to link certain browsing activity to your user account.

## **Other Online Specifics**

**Cookies.** When you visit an FNF Website, a "cookie" may be sent to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. Information gathered using cookies helps us improve your user experience. For example, a cookie can help the website load properly or can customize the display page based on your browser type and user preferences. You can choose whether or not to accept cookies by changing your Internet browser settings. Be aware that doing so may impair or limit some functionality of the FNF Website.

**Web Beacons.** We use web beacons to determine when and how many times a page has been viewed. This information is used to improve our websites.

**Do Not Track.** Currently our FNF Websites do not respond to "Do Not Track" features enabled through your browser.

**Links to Other Sites.** FNF Websites may contain links to unaffiliated third-party websites. FNF is not responsible for the privacy practices or content of those websites. We recommend that you read the privacy policy of every website you visit.

## **Use of Personal Information**

FNF uses Personal Information for three main purposes:

- To provide products and services to you or in connection with a transaction involving you.
- To improve our products and services.
- To communicate with you about our, our affiliates', and others' products and services, jointly or independently.

## **When Information Is Disclosed**

We may disclose your Personal Information and Browsing Information in the following circumstances:

- to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure;
- to affiliated or nonaffiliated service providers who provide or perform services or functions on our behalf and who agree to use the information only to provide such services or functions;



- to affiliated or nonaffiliated third parties with whom we perform joint marketing, pursuant to an agreement with them to jointly market financial products or services to you;
- to law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order; or
- in the good-faith belief that such disclosure is necessary to comply with legal process or applicable laws, or to protect the rights, property, or safety of FNF, its customers, or the public.

The law does not require your prior authorization and does not allow you to restrict the disclosures described above. Additionally, we may disclose your information to third parties for whom you have given us authorization or consent to make such disclosure. We do not otherwise share your Personal Information or Browsing Information with nonaffiliated third parties, except as required or permitted by law.

We reserve the right to transfer your Personal Information, Browsing Information, and any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of bankruptcy, reorganization, insolvency, receivership, or an assignment for the benefit of creditors. By submitting Personal Information and/or Browsing Information to FNF, you expressly agree and consent to the use and/or transfer of the foregoing information in connection with any of the above described proceedings.

### **Security of Your Information**

We maintain physical, electronic, and procedural safeguards to protect your Personal Information.

### **Choices With Your Information**

Whether you submit Personal Information or Browsing Information to FNF is entirely up to you. If you decide not to submit Personal Information or Browsing Information, FNF may not be able to provide certain services or products to you.

**For California Residents:** We will not share your Personal Information or Browsing Information with nonaffiliated third parties, except as permitted by California law. For additional information about your California privacy rights, please visit the "California Privacy" link on our website (<https://fnf.com/pages/californiaprivacy.aspx>) or call (888) 413-1748.

**For Nevada Residents:** We are providing this notice pursuant to state law. You may be placed on our internal Do Not Call List by calling FNF Privacy at (888) 714-2710 or by contacting us via the information set forth at the end of this Privacy Notice. For further information concerning Nevada's telephone solicitation law, you may contact: Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; Phone number: (702) 486-3132; email: [aginqueries@ag.state.nv.us](mailto:aginqueries@ag.state.nv.us).

**For Oregon Residents:** We will not share your Personal Information or Browsing Information with nonaffiliated third parties for marketing purposes, except after you have been informed by us of such sharing and had an opportunity to indicate that you do not want a disclosure made for marketing purposes.

**For Vermont Residents:** We will not disclose information about your creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.

**For Virginia Residents:** For additional information about your Virginia privacy rights, please email [privacy@fnf.com](mailto:privacy@fnf.com) or call (888) 714-2710.

### **Information From Children**

The FNF Websites are not intended or designed to attract persons under the age of eighteen (18). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

### **International Users**

FNF's headquarters is located within the United States. If you reside outside the United States and choose to provide Personal Information or Browsing Information to us, please note that we may transfer that information outside of your country of residence. By providing FNF with your Personal Information and/or Browsing Information, you consent to our collection, transfer, and use of such information in accordance with this Privacy Notice.

### **FNF Website Services for Mortgage Loans**

Certain FNF companies provide services to mortgage loan servicers, including hosting websites that collect customer information on behalf of mortgage loan servicers (the "Service Websites"). The Service Websites may contain links to both this Privacy Notice and the mortgage loan servicer or lender's privacy notice. The sections of this Privacy Notice titled When Information is Disclosed, Choices with Your Information, and Accessing and Correcting Information do not apply to the Service Websites. The mortgage loan servicer or lender's privacy notice governs use, disclosure, and access to your Personal Information. FNF does not share Personal Information collected through the Service Websites, except as required or authorized by contract with the mortgage loan servicer or lender, or as required by law or in the good-faith belief that such disclosure is necessary: to comply with a legal process or applicable law, to enforce this Privacy Notice, or to protect the rights, property, or safety of FNF or the public.

### **Your Consent To This Privacy Notice; Notice Changes**

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of the information in accordance with this Privacy Notice. We may change this Privacy Notice at any time. The Privacy Notice's effective date will show the

last date changes were made. If you provide information to us following any change of the Privacy Notice, that signifies your assent to and acceptance of the changes to the Privacy Notice.

**Accessing and Correcting Information; Contact Us**

If you have questions or would like to correct your Personal Information, visit FNF's [Privacy Inquiry Website](#) or contact us by phone at (888) 714-2710, by email at [privacy@fnf.com](mailto:privacy@fnf.com), or by mail to:

Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Chief Privacy Officer

## ATTACHMENT ONE (Revised 05-06-16)

### CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY – 1990

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

#### EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.  
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

### CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)

### ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE

#### EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; and
  - f. environmental protection.This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;

- c. that result in no loss to You; or
- d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
- 5. Failure to pay value for Your Title.
- 6. Lack of a right:
  - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.
 This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
- 7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
- 8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
- 9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

### **LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
- The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<b>Your Deductible Amount</b>	<b>Our Maximum Dollar Limit of Liability</b>
Covered Risk 16:	1.00% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$ 10,000.00
Covered Risk 18:	1.00% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$ 5,000.00

### **2006 ALTA LOAN POLICY (06-17-06)**

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

{Except as provided in Schedule B - Part II, {t{or T}his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

## **{PART I**

{The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.}

## **PART II**

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:}

### **2006 ALTA OWNER'S POLICY (06-17-06)**

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

{The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

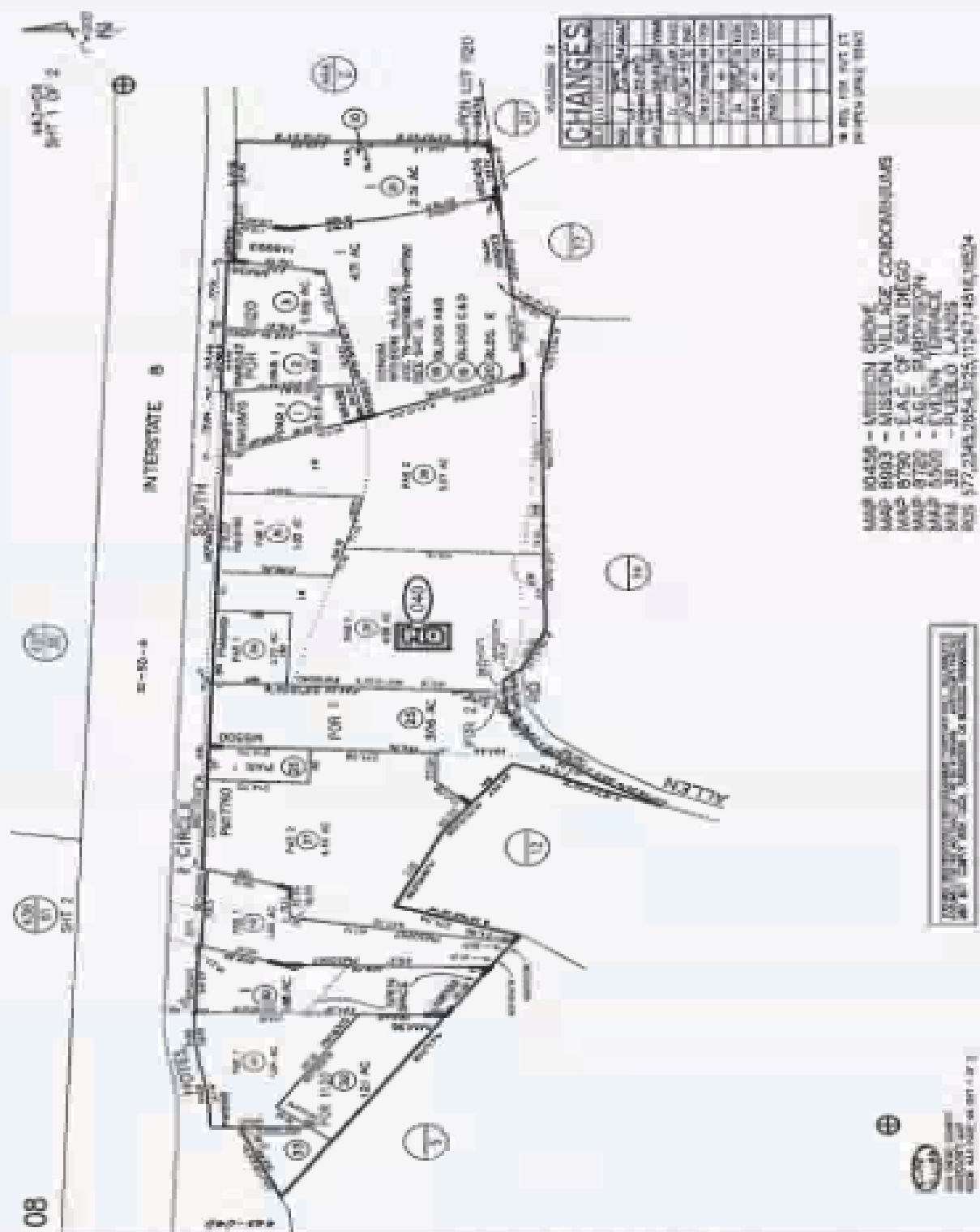
1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records. }
7. {Variable exceptions such as taxes, easements, CC&R's, etc. shown here.}

## ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY – ASSESSMENTS PRIORITY (04-02-15)

### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.





WAD 003 - MISSION WILLAGE CONDOMINIUMS - LOT 1

1000

Requested By: Michael Moore    Printed: 3/16/2013 8:08 AM





## Issuing Policies of Chicago Title Insurance Company

ORDER NO.: **00189986-993-SD2-CFU**

Main Office Line: **(619) 521-3500**

San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, CA 92101  
ATTN: Buddy Bohrer  
Email: buddyb@sdhc.org  
REF:

Title Officer: Ken Cyr & Mark Franklin  
Title Officer Phone: (619) 521-3673  
Title Officer Fax: (619) 521-3608  
Title Officer Email: TeamCyrFranklin@ctt.com

PROPERTY: **7440 - 7450 MISSION VALLEY ROAD, SAN DIEGO, CA**

## PRELIMINARY REPORT

*In response to the application for a policy of title insurance referenced herein, **Chicago Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.*

*The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.*

*This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.*

*The policy(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company, a Florida corporation.*

***Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.***

***It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.***

Chicago Title Company

By: 

Authorized Signature



By:

  
Michael J. Nolan  
President

ATTEST:

  
Marjorie Nemzura  
Secretary



## **PRELIMINARY REPORT**

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**EFFECTIVE DATE:**                    **March 7, 2023 at 7:30 a.m.**

**ORDER NO.: 00189986-993-SD2-CFU**

The form of policy or policies of title insurance contemplated by this report is:

**ALTA Standard Owner's Policy (6-17-06)**

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

**A Fee as to Parcel(s) A;  
Easement(s) more fully described below as to Parcel(s) B**

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS [VESTED IN:](#)

**ESA P PORTFOLIO L.L.C., a Delaware limited liability company successor-in-interest to ESH/HV PROPERTIES L.L.C., a Delaware limited liability company, (F.K.A.) BRE/HV PROPERTIES L.L.C. a Delaware limited liability company**

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

**See Exhibit A attached hereto and made a part hereof.**

## EXHIBIT "A"

### LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

LOTS 15 AND 16 OF MISSION VALLEY HEIGHTS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 11034](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 13, 1984.

PARCEL B:

A NON-EXCLUSIVE EASEMENT ON, OVER, UNDER AND ACROSS THE "COMMON MAINTENANCE AREAS", AS DEFINED IN THE DECLARATION ESTABLISHING COVENANTS, CONDITIONS, AND RESTRICTIONS AND GRANTS OF EASEMENTS FOR MISSION VALLEY HEIGHTS, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, ON JULY 9, 1996 AS [INSTRUMENT NO. 1996-0341915, OF OFFICIAL RECORDS](#) ("DECLARATION") AND AS AMENDED BY DOCUMENT RECORDED NOVEMBER 24, 1997 AS [INSTRUMENT NO. 1997-0594191, OF OFFICIAL RECORDS](#) FOR THE PURPOSES DESCRIBED IN THE DECLARATION AND SUBJECT TO THE TERMS, PROVISIONS AND RESERVATIONS OF THE DECLARATION.

[APN: 677-390-34-00](#)

## EXCEPTIONS

**AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:**

- A. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2023 - 2024.
- B. Property taxes, including any personal property taxes and any assessments collected with taxes, are as follows:

Tax Identification No.:	677-390-34-00
Fiscal Year:	2022 - 2023
1st Installment:	\$81,941.96, PAID
2nd Installment:	\$81,941.96, OPEN (Delinquent after April 10)
Penalty and Cost:	\$8,204.19
Homeowners Exemption:	\$0.00
Code Area:	08001

- C. Pending assessment for the District shown below:

District:	Notice of Assessment
Executed by:	City of San Diego
Recording Date:	September 25, 1990
<u>Recording No:</u>	<u>90-523487, of Official Records</u>

When the Notice of Assessment is recorded in the public records, the assessment shall become a lien on said Land.

- D. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.

1. The ownership of said Land does not include rights of access to or from the street, highway, or freeway abutting said Land, such rights having been relinquished by the document,

Recording Date:	January 5, 1945
Recording No:	1242, <u>Book 1789, Page 426</u> , of Official Records
Affects:	Adjacent thereto in and to Highway 163.

2. The ownership of said Land does not include rights of access to or from the street, highway, or freeway abutting said Land, such rights having been relinquished by the document,

Recording Date:	December 26, 1969
<u>Recording No:</u>	<u>233845, of Official Records</u>
Affects:	Adjacent thereto in and to Highway 395 (also known as Highway 163).

## EXCEPTIONS (Continued)

3. Matters contained in that certain document

Entitled: Planned Industrial Development Permit No. 40-018-0 Planning Director  
Executed by: The Planning Director of the City of San Diego  
Recording Date: May 20, 1982  
[Recording No: 82-152578, of Official Records](#)

Reference is hereby made to said document for full particulars.

and Recording Date: May 24, 1984  
and [Recording No: 84-194565, of Official Records](#)

4. Matters contained in that certain document

Entitled: Planning Director Resolution No. 4888 Granting Planned Industrial Development  
Permit No. 84-0281 Extension of Time  
Executed by: The Planning Director of the City of San Diego  
Recording Date: May 24, 1984  
[Recording No: 84-194564, of Official Records](#)

Reference is hereby made to said document for full particulars.

5. Matters contained in that certain document

Entitled: Declaration of Covenants for Public Improvements  
Executed by: H.G. Penton Materials Co.  
Recording Date: October 4, 1984  
[Recording No: 84-377752, of Official Records](#)

Reference is hereby made to said document for full particulars.

6. Matters contained in that certain document

Entitled: Subdivision Improvement Agreement (Deferred Improvement Development)  
Executed by: The City of San Diego, a municipal corporation and H.G. Fenton Material  
Company, a California corporation  
Recording Date: November 7, 1984  
[Recording No: 84-421109, of Official Records](#)

Reference is hereby made to said document for full particulars.

7. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: San Diego Gas and Electric Company  
Purpose: Public utilities, ingress and egress  
Recording Date: December 22, 1988  
[Recording No: 88-659297, of Official Records](#)  
Affects: A portion of said land as more particularly described in said document.

The exact location and extent of said easement is not disclosed of record.

## EXCEPTIONS (Continued)

8. Matters contained in that certain document

Entitled: Encroachment Removal Agreement  
Executed by: H.G. Penton Material Company  
Recording Date: December 28, 1988  
[Recording No: 88-669513, of Official Records](#)

Reference is hereby made to said document for full particulars.

9. The matters set forth in the document shown below which, among other things, contains or provides for: certain easements; liens and the subordination thereof; provisions relating to partition; restrictions on severability of component parts; and covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, genetic information, medical condition, citizenship, primary language, and immigration status, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.

Entitled: Declaration Establishing Covenants, Conditions and Restrictions and Grants of Easements for Mission Valley Heights San Diego, California  
Recording Date: July 9, 1996  
[Recording No: 1996-0341915, of Official Records](#)

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of any mortgage or deed of trust made in good faith and for value.

Modification(s) of said covenants, conditions and restrictions

Recording Date: November 14, 1997  
[Recording No: 1997-0594191, of Official Records](#)

10. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Reserved by: H.G. Penton Material Company, a California corporation formerly known as Fenton-Parker Material Company  
Purpose: Installation, maintenance, repair and replacement of landscaping, irrigation and other related improvements and for other slope stabilization and brush management purposes, and including incidental rights of access across the land, on the terms set forth in the project restrictions  
Recording Date: September 19, 1996  
[Recording No: 1996-0479057, of Official Records](#)  
Affects: A portion of said land as more particularly described in said document.

11. Matters contained in that certain document

Entitled: Encroachment Removal Agreement  
Executed by: Homestead Village, Inc.  
Recording Date: January 9, 1997  
[Recording No: 1997-0011084, of Official Records](#)

Reference is hereby made to said document for full particulars.

**EXCEPTIONS  
(Continued)**

12. Matters contained in that certain document

Entitled: Fee Deferral Agreement  
Dated: February 12, 1997  
Executed by: Homestead Village Incorporated and City of San Diego  
Recording Date: February 12, 1997  
[Recording No: 1997-0066392, of Official Records](#)

Reference is hereby made to said document for full particulars.

13. Matters contained in that certain document

Entitled: Mission Valley Development, Conditional Use and Planned Industrial  
Development Permit No. 95-0687 (Amendment to Planned Industrial  
Development Permit No. 40-018-0) Homestead Villages Hotel  
Executed by: City of San Diego and Homestead Village Incorporated  
Recording Date: February 27, 1997  
[Recording No: 1997-0088813, of Official Records](#)

Reference is hereby made to said document for full particulars.

14. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: San Diego Gas and Electric Company  
Purpose: Public utilities  
Recording Date: March 26, 1997  
[Recording No: 1997-0137089, of Official Records](#)  
Affects: A portion of said land as more particularly described in said document.

The exact location and extent of said easement is not disclosed of record.

15. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: The City of San Diego, a municipal corporation  
Purpose: Water facilities  
Recording Date: July 18, 1997  
[Recording No: 1997-0342252, of Official Records](#)  
Affects: A portion of said land as more particularly described in said document.

## EXCEPTIONS (Continued)

16. A deed of trust which purports to secure performance of an agreement referred to therein, and any other obligations secured thereby

Dated: June 16, 2021  
Trustor/Grantor: ESA P Portfolio L.L.C., a Delaware limited liability company and ESA P Portfolio Operating Lessee LLC, a Delaware limited liability company  
Trustee: Chicago Title Insurance Company  
Beneficiary: JPMorgan Chase Bank, National Association, a banking association chartered under the laws of the United States of America, Citi Real Estate Funding Inc., a New York corporation and Deutsche Bank AG, a New York Branch, a branch of Deutsche Bank AG, a German Bank, authorized by the New York Department of Financial Services  
Recording Date: July 6, 2021  
[Recording No: 2021-0482258, of Official Records](#)

An assignment of the beneficial interest under said deed of trust which names:

Assignee: German American Capital Corporation, a Maryland corporation  
Recording Date: October 11, 2021  
[Recording No: 2021-0707073, of Official Records](#)

An assignment of the beneficial interest under said deed of trust which names:

Assignee: Wells Fargo Bank, National Association, as Trustee, for the benefit of holders of Extended Stay America Trust 2021-ESH, Commercial Mortgage Pass-Through Certificates, Series 2021-ESH  
Recording Date: October 11, 2021  
[Recording No: 2021-0707074, of Official Records](#)

17. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Memorandum of Lease  
Lessor: ESA P Portfolio L.L.C., a Delaware limited liability company  
Lessee: ESA P Portfolio Operating Lessee LLC, a Delaware limited liability company  
Recording Date: July 6, 2021  
[Recording No: 2021-0482257, of Official Records](#)

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

18. Water rights, claims or title to water, whether or not disclosed by the public records.
19. Matters which may be disclosed by an inspection and/or by a correct ALTA/NSPS Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.



**EXCEPTIONS  
(Continued)**

20. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the public records.

The Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage.

The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.

**PLEASE REFER TO THE "INFORMATIONAL NOTES" AND "REQUIREMENTS" SECTIONS WHICH  
FOLLOW FOR INFORMATION NECESSARY TO COMPLETE THIS TRANSACTION.**

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**END OF EXCEPTIONS**

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## REQUIREMENTS SECTION

1. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance from the entity named below:

Limited Liability Company:      ESA P Portfolio L.L.C., a Delaware limited liability company successor-in-interest to ESH/HV Properties L.L.C., a Delaware limited liability company, (F.K.A.) BRE/HV Properties L.L.C. a Delaware limited liability company

- a) A copy of its operating agreement, if any, and all amendments, supplements and/or modifications thereto, certified by the appropriate manager or member.
- b) If a domestic Limited Liability Company, a copy of its Articles of Organization and all amendments thereto with the appropriate filing stamps.
- c) If the Limited Liability Company is member-managed, a full and complete current list of members certified by the appropriate manager or member.
- d) A current dated certificate of good standing from the proper governmental authority of the state in which the entity is currently domiciled.
- e) If less than all members, or managers, as appropriate, will be executing the closing documents, furnish evidence of the authority of those signing.
- f) If Limited Liability Company is a Single Member Entity, a Statement of Information for the Single Member will be required.
- g) Each member and manager of the LLC without an Operating Agreement must execute in the presence of a notary public the Certificate of California LLC (Without an Operating Agreement) Status and Authority form.

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**END OF REQUIREMENTS**

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## INFORMATIONAL NOTES SECTION

1. None of the items shown in this report will cause the Company to decline to attach ALTA Endorsement Form 9 to an Extended Coverage Loan Policy, when issued.
2. The Company is not aware of any matters which would cause it to decline to attach CLTA Endorsement Form 116 indicating that there is located on said Land Commercial properties, known as 7440 - 7450 Mission Valley Road, located within the City of San Diego, California, to an Extended Coverage Loan Policy.
3. Note: The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.
4. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
5. Pursuant to Government Code Section 27388.1, as amended and effective as of 1-1-2018, a Documentary Transfer Tax (DTT) Affidavit may be required to be completed and submitted with each document when DTT is being paid or when an exemption is being claimed from paying the tax. If a governmental agency is a party to the document, the form will not be required. DTT Affidavits may be available at a Tax Assessor-County Clerk-Recorder.
6. The following Exclusion(s) are added to preliminary reports, commitments and will be included as an endorsement in the following policies:
  - A. 2006 ALTA Owner's Policy (06-17-06).
    6. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.
  - B. 2006 ALTA Loan Policy (06-17-06).
    8. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.
    9. Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage based on the application of a Tribe's law resulting from the failure of the Insured Mortgage to specify State law as the governing law with respect to the lien of the Insured Mortgage.
  - C. ALTA Homeowner's Policy of Title Insurance (12-02-13) and CLTA Homeowner's Policy of Title Insurance (12-02-13).
    10. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.

**INFORMATIONAL NOTES  
(Continued)**

- D. ALTA Expanded Coverage Residential Loan Policy - Assessments Priority (04-02-15).
12. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.
  13. Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage based on the application of a Tribe's law resulting from the failure of the Insured Mortgage to specify State law as the governing law with respect to the lien of the Insured Mortgage.
- E. CLTA Standard Coverage Policy 1990 (11-09-18).
7. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the public records but that would be disclosed by an examination of any records maintained by or on behalf of a tribe or on behalf of its members.
  8. Any claim of invalidity, unenforceability, or lack of priority of the lien of the insured mortgage based on the application of a tribe's law resulting from the failure of the insured mortgage to specify state law as the governing law with respect to the lien of the insured mortgage.
7. Note: There are NO conveyances affecting said Land recorded within 24 months of the date of this report.

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**END OF INFORMATIONAL NOTES**

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Ken Cyr & Mark Franklin/725

## Wire Fraud Alert

This Notice is not intended to provide legal or professional advice. If you have any questions, please consult with a lawyer.

All parties to a real estate transaction are targets for wire fraud and many have lost hundreds of thousands of dollars because they simply relied on the wire instructions received via email, without further verification. **If funds are to be wired in conjunction with this real estate transaction, we strongly recommend verbal verification of wire instructions through a known, trusted phone number prior to sending funds.**

In addition, the following non-exclusive self-protection strategies are recommended to minimize exposure to possible wire fraud.

- **NEVER RELY** on emails purporting to change wire instructions. Parties to a transaction rarely change wire instructions in the course of a transaction.
- **ALWAYS VERIFY** wire instructions, specifically the ABA routing number and account number, by calling the party who sent the instructions to you. DO NOT use the phone number provided in the email containing the instructions, use phone numbers you have called before or can otherwise verify. **Obtain the phone number of relevant parties to the transaction as soon as an escrow account is opened.** DO NOT send an email to verify as the email address may be incorrect or the email may be intercepted by the fraudster.
- **USE COMPLEX EMAIL PASSWORDS** that employ a combination of mixed case, numbers, and symbols. Make your passwords greater than eight (8) characters. Also, change your password often and do NOT reuse the same password for other online accounts.
- **USE MULTI-FACTOR AUTHENTICATION** for email accounts. Your email provider or IT staff may have specific instructions on how to implement this feature.

For more information on wire-fraud scams or to report an incident, please refer to the following links:

**Federal Bureau of Investigation:**  
<http://www.fbi.gov>

**Internet Crime Complaint Center:**  
<http://www.ic3.gov>



## Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the filed rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for such discount. These discounts only apply to transactions involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

Not all discounts are offered by every FNF Company. The discount will only be applicable to the FNF Company as indicated by the named discount.

### **FNF Underwritten Title Company**

CTC – Chicago Title company  
CLTC – Commonwealth Land Title Company  
FNTC – Fidelity National Title Company of California  
FNTCCA - Fidelity National Title Company of California  
TICOR – Ticor Title Company of California  
LTC – Lawyer's Title Company  
SLTC – ServiceLink Title Company

### **Underwritten by FNF Underwriters**

CTIC – Chicago Title Insurance Company  
CLTIC - Commonwealth Land Title Insurance Company  
FNTIC – Fidelity National Title Insurance Company  
FNTIC - Fidelity National Title Insurance Company  
CTIC – Chicago Title Insurance Company  
CLTIC – Commonwealth Land Title Insurance Company  
CTIC – Chicago Title Insurance Company

### **Available Discounts**

#### **DISASTER LOANS (CTIC, CLTIC, FNTIC)**

The charge for a Lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within twenty-four (24) months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be fifty percent (50%) of the appropriate title insurance rate.

#### **CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (CTIC, FNTIC)**

On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be fifty percent (50%) to seventy percent (70%) of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be forty (40%) to fifty percent (50%) of the appropriate title insurance rate, depending on the type of coverage selected.

# FIDELITY NATIONAL FINANCIAL, INC.

## PRIVACY NOTICE

**Effective January 1, 2023**

Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, "FNF," "our," or "we") respect and are committed to protecting your privacy. This Privacy Notice explains how we collect, use, and protect personal information, when and to whom we disclose such information, and the choices you have about the use and disclosure of that information.

A limited number of FNF subsidiaries have their own privacy notices. If a subsidiary has its own privacy notice, the privacy notice will be available on the subsidiary's website and this Privacy Notice does not apply.

### **Collection of Personal Information**

FNF may collect the following categories of Personal Information:

- contact information (e.g., name, address, phone number, email address);
- demographic information (e.g., date of birth, gender, marital status);
- identity information (e.g. Social Security Number, driver's license, passport, or other government ID number);
- financial account information (e.g. loan or bank account information); and
- other personal information necessary to provide products or services to you.

We may collect Personal Information about you from:

- information we receive from you or your agent;
- information about your transactions with FNF, our affiliates, or others; and
- information we receive from consumer reporting agencies and/or governmental entities, either directly from these entities or through others.

### **Collection of Browsing Information**

FNF automatically collects the following types of Browsing Information when you access an FNF website, online service, or application (each an "FNF Website") from your Internet browser, computer, and/or device:

- Internet Protocol (IP) address and operating system;
- browser version, language, and type;
- domain name system requests; and
- browsing history on the FNF Website, such as date and time of your visit to the FNF Website and visits to the pages within the FNF Website.

Like most websites, our servers automatically log each visitor to the FNF Website and may collect the Browsing Information described above. We use Browsing Information for system administration, troubleshooting, fraud investigation, and to improve our websites. Browsing Information generally does not reveal anything personal about you, though if you have created a user account for an FNF Website and are logged into that account, the FNF Website may be able to link certain browsing activity to your user account.

### **Other Online Specifics**

**Cookies.** When you visit an FNF Website, a "cookie" may be sent to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. Information gathered using cookies helps us improve your user experience. For example, a cookie can help the website load properly or can customize the display page based on your browser type and user preferences. You can choose whether or not to accept cookies by changing your Internet browser settings. Be aware that doing so may impair or limit some functionality of the FNF Website.

**Web Beacons.** We use web beacons to determine when and how many times a page has been viewed. This information is used to improve our websites.

**Do Not Track.** Currently our FNF Websites do not respond to "Do Not Track" features enabled through your browser.

**Links to Other Sites.** FNF Websites may contain links to unaffiliated third-party websites. FNF is not responsible for the privacy practices or content of those websites. We recommend that you read the privacy policy of every website you visit.

### **Use of Personal Information**

FNF uses Personal Information for three main purposes:

- To provide products and services to you or in connection with a transaction involving you.
- To improve our products and services.
- To communicate with you about our, our affiliates', and others' products and services, jointly or independently.

### **When Information Is Disclosed**

We may disclose your Personal Information and Browsing Information in the following circumstances:

- to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure;
- to affiliated or nonaffiliated service providers who provide or perform services or functions on our behalf and who agree to use the information only to provide such services or functions;

- to affiliated or nonaffiliated third parties with whom we perform joint marketing, pursuant to an agreement with them to jointly market financial products or services to you;
- to law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order; or
- in the good-faith belief that such disclosure is necessary to comply with legal process or applicable laws, or to protect the rights, property, or safety of FNF, its customers, or the public.

The law does not require your prior authorization and does not allow you to restrict the disclosures described above. Additionally, we may disclose your information to third parties for whom you have given us authorization or consent to make such disclosure. We do not otherwise share your Personal Information or Browsing Information with nonaffiliated third parties, except as required or permitted by law.

We reserve the right to transfer your Personal Information, Browsing Information, and any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of bankruptcy, reorganization, insolvency, receivership, or an assignment for the benefit of creditors. By submitting Personal Information and/or Browsing Information to FNF, you expressly agree and consent to the use and/or transfer of the foregoing information in connection with any of the above described proceedings.

### **Security of Your Information**

We maintain physical, electronic, and procedural safeguards to protect your Personal Information.

### **Choices With Your Information**

Whether you submit Personal Information or Browsing Information to FNF is entirely up to you. If you decide not to submit Personal Information or Browsing Information, FNF may not be able to provide certain services or products to you.

**For California Residents:** We will not share your Personal Information or Browsing Information with nonaffiliated third parties, except as permitted by California law. For additional information about your California privacy rights, please visit the "California Privacy" link on our website (<https://fnf.com/pages/californiaprivacy.aspx>) or call (888) 413-1748.

**For Nevada Residents:** We are providing this notice pursuant to state law. You may be placed on our internal Do Not Call List by calling FNF Privacy at (888) 714-2710 or by contacting us via the information set forth at the end of this Privacy Notice. For further information concerning Nevada's telephone solicitation law, you may contact: Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; Phone number: (702) 486-3132; email: [aginqueries@ag.state.nv.us](mailto:aginqueries@ag.state.nv.us).

**For Oregon Residents:** We will not share your Personal Information or Browsing Information with nonaffiliated third parties for marketing purposes, except after you have been informed by us of such sharing and had an opportunity to indicate that you do not want a disclosure made for marketing purposes.

**For Vermont Residents:** We will not disclose information about your creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.

**For Virginia Residents:** For additional information about your Virginia privacy rights, please email [privacy@fnf.com](mailto:privacy@fnf.com) or call (888) 714-2710.

### **Information From Children**

The FNF Websites are not intended or designed to attract persons under the age of eighteen (18). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

### **International Users**

FNF's headquarters is located within the United States. If you reside outside the United States and choose to provide Personal Information or Browsing Information to us, please note that we may transfer that information outside of your country of residence. By providing FNF with your Personal Information and/or Browsing Information, you consent to our collection, transfer, and use of such information in accordance with this Privacy Notice.

### **FNF Website Services for Mortgage Loans**

Certain FNF companies provide services to mortgage loan servicers, including hosting websites that collect customer information on behalf of mortgage loan servicers (the "Service Websites"). The Service Websites may contain links to both this Privacy Notice and the mortgage loan servicer or lender's privacy notice. The sections of this Privacy Notice titled When Information is Disclosed, Choices with Your Information, and Accessing and Correcting Information do not apply to the Service Websites. The mortgage loan servicer or lender's privacy notice governs use, disclosure, and access to your Personal Information. FNF does not share Personal Information collected through the Service Websites, except as required or authorized by contract with the mortgage loan servicer or lender, or as required by law or in the good-faith belief that such disclosure is necessary: to comply with a legal process or applicable law, to enforce this Privacy Notice, or to protect the rights, property, or safety of FNF or the public.

### **Your Consent To This Privacy Notice; Notice Changes**

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of the information in accordance with this Privacy Notice. We may change this Privacy Notice at any time. The Privacy Notice's effective date will show the



last date changes were made. If you provide information to us following any change of the Privacy Notice, that signifies your assent to and acceptance of the changes to the Privacy Notice.

**Accessing and Correcting Information; Contact Us**

If you have questions or would like to correct your Personal Information, visit FNF's [Privacy Inquiry Website](#) or contact us by phone at (888) 714-2710, by email at [privacy@fnf.com](mailto:privacy@fnf.com), or by mail to:

Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Chief Privacy Officer

## ATTACHMENT ONE (Revised 05-06-16)

### CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY – 1990

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

#### EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.  
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

#### CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)

#### ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE

#### EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; and
  - f. environmental protection.This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;

- c. that result in no loss to You; or
- d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
- 5. Failure to pay value for Your Title.
- 6. Lack of a right:
  - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.
 This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
- 7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
- 8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
- 9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

### LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
- The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<b>Your Deductible Amount</b>	<b>Our Maximum Dollar Limit of Liability</b>
Covered Risk 16:	1.00% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$ 10,000.00
Covered Risk 18:	1.00% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$ 5,000.00

### 2006 ALTA LOAN POLICY (06-17-06)

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### EXCEPTIONS FROM COVERAGE

{Except as provided in Schedule B - Part II, { t{or T}his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

## **{PART I**

{The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.}

## **PART II**

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:}

### **2006 ALTA OWNER'S POLICY (06-17-06)**

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

{The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records. }
7. {Variable exceptions such as taxes, easements, CC&R's, etc. shown here.}

## ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY – ASSESSMENTS PRIORITY (04-02-15)

### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.







## Issuing Policies of Chicago Title Insurance Company

ORDER NO.: **00189983-993-SD2-CFU**

Main Office Line: **(619) 521-3500**

San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, CA 92101  
ATTN: Buddy Bohrer  
Email: buddyb@sdhc.org  
REF:

Title Officer: Ken Cyr & Mark Franklin  
Title Officer Phone: (619) 521-3673  
Title Officer Fax: (619) 521-3608  
Title Officer Email: TeamCyrFranklin@ctt.com

PROPERTY: **3860 MURPHY CANYON ROAD, SAN DIEGO, CA**

## PRELIMINARY REPORT

*In response to the application for a policy of title insurance referenced herein, **Chicago Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.*

*The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.*

*This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.*

*The policy(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company, a Florida corporation.*

***Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.***

***It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.***


Chicago Title Company

By: 

Authorized Signature



By:

  
Michael J. Nolan  
President

ATTEST:

  
Marjorie Nemzura  
Secretary



## **PRELIMINARY REPORT**

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**EFFECTIVE DATE:** March 8, 2023 at 7:30 a.m.

**ORDER NO.:** 00189983-993-SD2-CFU

The form of policy or policies of title insurance contemplated by this report is:

**ALTA Standard Owner's Policy (6-17-06)**

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

**A Fee as to Parcel(s) A;  
Easement(s) more fully described below as to Parcel(s) B**

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS [VESTED IN:](#)

**ESA P PORTFOLIO L.L.C., a Delaware limited liability company successor-in-interest to ESA PROPERTIES L.L.C., a Delaware limited liability company (F.K.A. BRE/ESA PROPERTIES, L.L.C., a Delaware limited liability company**

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

**See Exhibit A attached hereto and made a part hereof.**

## EXHIBIT "A"

### LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

LOT 5 OF MURPHY CANYON GETAWAY UNIT NO. 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 11502](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 2, 1986.

PARCEL B:

A NON-EXCLUSIVE, PERMANENT EASEMENT FOR DRIVEWAY, DRIVEWAY IMPROVEMENTS AND MAINTENANCE THEREOF, FOR THE BENEFIT OF THE OWNER AND ITS TENANTS, AGENTS, VISITORS, GUESTS, CUSTOMERS AND LICENSEE, OVER AND ACROSS THAT PORTION OF LOT 6 OF MURPHY CANYON GATEWAY UNIT NO. 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 11502](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MAY 2, 1986, INCLUDED WITHIN A STRIP OF LAND 16.00 FEET WIDE, LYING 16.00 FEET NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 6, SAID CORNER ALSO BEING ON THE WESTERLY RIGHT OF WAY OF MURPHY CANYON ROAD, AS DEDICATED PER SAID [MAP NO. 11502](#); THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 6;

1. SOUTH 72° 30' 19" WEST 21.16 FEET TO THE POINT OF TERMINATION.

THE SIDELINE OF SAID STRIP TO BE LENGTHENED IN THE EAST TO TERMINATE ON SAID WESTERLY RIGHT-OF-WAY, SAID EASEMENT BEING FURTHER SHOWN AND DEFINED IN THAT CERTAIN DRIVEWAY EASEMENT AGREEMENT B Y AND BETWEEN EXTENDED STAY CA, A DELAWARE CORPORATION AND INCOME OPPORTUNITY REALTY INVESTORS, INC., A NEVADA CORPORATION, RECORDED MARCH 13, 2001 AS [INSTRUMENT NO. 2001-0144352, OF OFFICIAL RECORDS](#).

[APN: 421-392-10-00](#)

## EXCEPTIONS

**AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:**

- A. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2023 - 2024.
- B. Property taxes, including any personal property taxes and any assessments collected with taxes, are as follows:

Tax Identification No.: 421-392-10-00  
Fiscal Year: 2022 - 2023  
1st Installment: \$56,640.19, PAID  
2nd Installment: \$56,640.19, OPEN (Delinquent after April 10)  
Penalty and Cost: \$5,674.01  
Homeowners Exemption: \$0.00  
Code Area: 08100

- C. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.
1. An easement and right of way for all water rights of and upon said property, including the right to drill or bore water wells upon any part of said premises, but not nearer than 100 feet from the present existing well, and including the right of ingress and egress to and from said premises for the purpose of drilling water wells thereon or for any other purposes, looking toward a development of water rights thereon and also reserving onto itself the right to maintain and operate upon said premises such water plant or plants as may be necessary or convenient for its uses for the distribution, handling of said or any water developed upon said premises, including also rights of way over and across said premises or any part thereof for the purpose of laying, constructing, and/or maintaining water ditches, flumes, irrigation ditches or pipelines and incidental purposes as reserved by instrument recorded April 28, 1925 in [Book 1087, Page 132](#), of Deeds, and the right of others to use said easement as conveyed or reserved in various other instruments of record.

The exact location and extent of said easement is not disclosed of record.

2. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: San Diego Consolidated Gas and Electric Company, a corporation  
Purpose: Either or both pole lines and underground conduits  
Recording Date: April 11, 1927  
Recording No: [Book 1328, Page 283](#), of Deeds

The exact location and extent of said easement is not disclosed of record.

3. Matters contained in that certain document

Entitled: Planning Director Resolution No. 5684 Granting Planned Industrial Development Permit No. 84-0902  
Recording Date: October 3, 1985  
[Recording No:](#) [85-367874, of Official Records](#)

Reference is hereby made to said document for full particulars.



## EXCEPTIONS (Continued)

4. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of San Diego, a municipal corporation  
Purpose: Storm drain systems  
Recording Date: December 26, 1985  
[Recording No:](#) [85-486767, of Official Records](#)  
Affects: A portion of said land as more particularly described in said document.

Limitations on the use, by the owners of said Land, of the easement area as set forth in the easement document shown hereinabove.

Reference is hereby made to said document for full particulars.

5. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, genetic information, medical condition, citizenship, primary language, and immigration status, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date: June 18, 1986  
[Recording No:](#) [86-246493, of Official Records](#)

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of any mortgage or deed of trust made in good faith and for value.

Modification(s) of said covenants, conditions and restrictions

Recording Date: October 14, 1986  
[Recording No:](#) [86-463708, of Official Records](#)

Modification(s) of said covenants, conditions and restrictions

Recording Date: November 20, 2000  
[Recording No:](#) [2000-0630692, of Official Records](#)

6. A perpetual easement for open space in favor of the City of San Diego, as dedicated on the map of said tract which provides among other things, that the following shall be performed only as permitted by a special use permit:

Evacuation, grading or filing of said land; construction of buildings, structures or other things whatsoever upon said land use of said land for other than open space and park or recreational purposes affecting a portion of Lot 5 as shown on [Map No. 11502](#).

7. A building restricted easement over a portion of Lot 5 as designated and delineated on [Map No. 11502](#).

## EXCEPTIONS (Continued)

8. An instrument entitled Encroachment Removal Agreement

Executed by: Daley Corporation  
In favor of: City of San Diego  
Recording Date: June 19, 1986  
[Recording No:](#) [86-247827, of Official Records](#)

Which among other things provides: The installation, maintenance and possible removal of private drainage inlet.

Reference is hereby made to said document for full particulars.

9. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: San Diego Gas and Electric Company  
Purpose: Pipelines, underground conduits, ingress and egress  
Recording Date: August 28, 1986  
[Recording No:](#) [86-375322, of Official Records](#)  
Affects: A portion of said land as more particularly described in said document.

Limitations on the use, by the owners of said Land, of the easement area as set forth in the easement document shown hereinabove.

Reference is hereby made to said document for full particulars.

10. Matters contained in that certain document

Entitled: Grant of Non-Exclusive Easement Agreement  
Dated: November 12, 1998  
Executed by: Kaiser Foundation Health Plan, Inc., a California nonprofit public benefit corporation and Dolphinshire, L.P., a California partnership  
Recording Date: November 20, 1998  
[Recording No:](#) [1998-0755940, of Official Records](#)

Reference is hereby made to said document for full particulars.

The exact location and extent of said easement is not disclosed of record.

Amendment to Grant of Non-Exclusive Easement Agreement

Recording Date: September 17, 2001  
[Recording No.:](#) [2001-666477, of Official Records](#)

11. Matters contained in that certain document

Entitled: Driveway Easement Agreement  
Recording Date: March 31, 2001  
[Recording No:](#) [2001-0144352, of Official Records](#)

Reference is hereby made to said document for full particulars.

## EXCEPTIONS (Continued)

12. An instrument entitled Encroachment Maintenance and Removal Agreement

Executed by: EPA Services, Inc.  
In favor of: City of San Diego  
Recording Date: July 16, 2001  
[Recording No: 2001-0488284, of Official Records](#)

Which among other things provides: The installation, maintenance and possible removal of, to install and maintain the improvements.

Reference is hereby made to said document for full particulars.

13. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Memorandum of Lease  
Lessor: ESA P Portfolio L.L.C., a Delaware limited liability company  
Lessee: ESA P Portfolio Operating Lessee LLC, a Delaware limited liability company  
Recording Date: July 2, 2021  
[Recording No: 2021-0479366, of Official Records](#)

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

14. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$13,760,000.00  
Dated: June 16, 2021  
Trustor/Grantor: ESA P Portfolio L.L.C., a Delaware limited liability company and ESA P Portfolio Operating Lessee LLC, a Delaware limited liability company  
Trustee: Chicago Title Insurance Company  
Beneficiary: JPMorgan Chase Bank, National Association, a banking association chartered under the laws of the United States of America, Citi Real Estate Funding Inc., a New York corporation and Deutsche Bank AG, a New York Branch, a branch of Deutsche Bank AG, a German Bank, authorized by the New York Department of Financial Services  
Recording Date: July 2, 2021  
[Recording No: 2021-0479367, of Official Records](#)

An assignment of the beneficial interest under said deed of trust which names:

Assignee: German American Capital Corporation, a Maryland corporation  
Recording Date: October 11, 2021  
[Recording No: 2021-0707020, of Official Records](#)

## EXCEPTIONS (Continued)

An assignment of the beneficial interest under said deed of trust which names:

Assignee: Wells Fargo Bank, National Association, as Trustee, for the benefit of holders of  
Extended Stay America Trust 2021-ESH, Commercial Mortgage Pass-Through  
Certificates, Series 2021-ESH  
Recording Date: October 11, 2021  
[Recording No: 2021-0707021, of Official Records](#)

15. Water rights, claims or title to water, whether or not disclosed by the public records.
16. Matters which may be disclosed by an inspection and/or by a correct ALTA/NSPS Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.
17. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the public records.

The Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage.

The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.

**PLEASE REFER TO THE "INFORMATIONAL NOTES" AND "REQUIREMENTS" SECTIONS WHICH  
FOLLOW FOR INFORMATION NECESSARY TO COMPLETE THIS TRANSACTION.**

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**END OF EXCEPTIONS**

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## REQUIREMENTS SECTION

1. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance from the entity named below:

Limited Liability Company:      ESA P Portfolio L.L.C., a Delaware limited liability company successor-in-interest to ESA Properties L.L.C., a Delaware limited liability company (F.K.A. BRE/ESA Properties, L.L.C., a Delaware limited liability company

- a) A copy of its operating agreement, if any, and all amendments, supplements and/or modifications thereto, certified by the appropriate manager or member.
- b) If a domestic Limited Liability Company, a copy of its Articles of Organization and all amendments thereto with the appropriate filing stamps.
- c) If the Limited Liability Company is member-managed, a full and complete current list of members certified by the appropriate manager or member.
- d) A current dated certificate of good standing from the proper governmental authority of the state in which the entity is currently domiciled.
- e) If less than all members, or managers, as appropriate, will be executing the closing documents, furnish evidence of the authority of those signing.
- f) If Limited Liability Company is a Single Member Entity, a Statement of Information for the Single Member will be required.
- g) Each member and manager of the LLC without an Operating Agreement must execute in the presence of a notary public the Certificate of California LLC (Without an Operating Agreement) Status and Authority form.

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**END OF REQUIREMENTS**

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## INFORMATIONAL NOTES SECTION

1. None of the items shown in this report will cause the Company to decline to attach ALTA Endorsement Form 9 to an Extended Coverage Loan Policy, when issued.
2. The Company is not aware of any matters which would cause it to decline to attach CLTA Endorsement Form 116 indicating that there is located on said Land Commercial properties, known as 3860 Murphy Canyon Road, located within the City of San Diego, California, to an Extended Coverage Loan Policy.
3. Note: The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.
4. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
5. Pursuant to Government Code Section 27388.1, as amended and effective as of 1-1-2018, a Documentary Transfer Tax (DTT) Affidavit may be required to be completed and submitted with each document when DTT is being paid or when an exemption is being claimed from paying the tax. If a governmental agency is a party to the document, the form will not be required. DTT Affidavits may be available at a Tax Assessor-County Clerk-Recorder.
6. The following Exclusion(s) are added to preliminary reports, commitments and will be included as an endorsement in the following policies:
  - A. 2006 ALTA Owner's Policy (06-17-06).
    6. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.
  - B. 2006 ALTA Loan Policy (06-17-06).
    8. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.
    9. Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage based on the application of a Tribe's law resulting from the failure of the Insured Mortgage to specify State law as the governing law with respect to the lien of the Insured Mortgage.
  - C. ALTA Homeowner's Policy of Title Insurance (12-02-13) and CLTA Homeowner's Policy of Title Insurance (12-02-13).
    10. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.



**INFORMATIONAL NOTES  
(Continued)**

- D. ALTA Expanded Coverage Residential Loan Policy - Assessments Priority (04-02-15).
- 12. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.
  - 13. Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage based on the application of a Tribe's law resulting from the failure of the Insured Mortgage to specify State law as the governing law with respect to the lien of the Insured Mortgage.
- E. CLTA Standard Coverage Policy 1990 (11-09-18).
- 7. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the public records but that would be disclosed by an examination of any records maintained by or on behalf of a tribe or on behalf of its members.
  - 8. Any claim of invalidity, unenforceability, or lack of priority of the lien of the insured mortgage based on the application of a tribe's law resulting from the failure of the insured mortgage to specify state law as the governing law with respect to the lien of the insured mortgage.
7. Note: There are NO conveyances affecting said Land recorded within 24 months of the date of this report.

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**END OF INFORMATIONAL NOTES**

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Ken Cyr & Mark Franklin/725

## Wire Fraud Alert

This Notice is not intended to provide legal or professional advice. If you have any questions, please consult with a lawyer.

All parties to a real estate transaction are targets for wire fraud and many have lost hundreds of thousands of dollars because they simply relied on the wire instructions received via email, without further verification. **If funds are to be wired in conjunction with this real estate transaction, we strongly recommend verbal verification of wire instructions through a known, trusted phone number prior to sending funds.**

In addition, the following non-exclusive self-protection strategies are recommended to minimize exposure to possible wire fraud.

- **NEVER RELY** on emails purporting to change wire instructions. Parties to a transaction rarely change wire instructions in the course of a transaction.
- **ALWAYS VERIFY** wire instructions, specifically the ABA routing number and account number, by calling the party who sent the instructions to you. **DO NOT** use the phone number provided in the email containing the instructions, use phone numbers you have called before or can otherwise verify. **Obtain the phone number of relevant parties to the transaction as soon as an escrow account is opened.** **DO NOT** send an email to verify as the email address may be incorrect or the email may be intercepted by the fraudster.
- **USE COMPLEX EMAIL PASSWORDS** that employ a combination of mixed case, numbers, and symbols. Make your passwords greater than eight (8) characters. Also, change your password often and do **NOT** reuse the same password for other online accounts.
- **USE MULTI-FACTOR AUTHENTICATION** for email accounts. Your email provider or IT staff may have specific instructions on how to implement this feature.

For more information on wire-fraud scams or to report an incident, please refer to the following links:

**Federal Bureau of Investigation:**  
<http://www.fbi.gov>

**Internet Crime Complaint Center:**  
<http://www.ic3.gov>



## Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the filed rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for such discount. These discounts only apply to transactions involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

Not all discounts are offered by every FNF Company. The discount will only be applicable to the FNF Company as indicated by the named discount.

### **FNF Underwritten Title Company**

CTC – Chicago Title company  
CLTC – Commonwealth Land Title Company  
FNTC – Fidelity National Title Company of California  
FNTCCA - Fidelity National Title Company of California  
TICOR – Ticor Title Company of California  
LTC – Lawyer's Title Company  
SLTC – ServiceLink Title Company

### **Underwritten by FNF Underwriters**

CTIC – Chicago Title Insurance Company  
CLTIC - Commonwealth Land Title Insurance Company  
FNTIC – Fidelity National Title Insurance Company  
FNTIC - Fidelity National Title Insurance Company  
CTIC – Chicago Title Insurance Company  
CLTIC – Commonwealth Land Title Insurance Company  
CTIC – Chicago Title Insurance Company

### **Available Discounts**

#### **DISASTER LOANS (CTIC, CLTIC, FNTIC)**

The charge for a Lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within twenty-four (24) months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be fifty percent (50%) of the appropriate title insurance rate.

#### **CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (CTIC, FNTIC)**

On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be fifty percent (50%) to seventy percent (70%) of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be forty (40%) to fifty percent (50%) of the appropriate title insurance rate, depending on the type of coverage selected.

# FIDELITY NATIONAL FINANCIAL, INC. PRIVACY NOTICE

**Effective January 1, 2023**

Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, "FNF," "our," or "we") respect and are committed to protecting your privacy. This Privacy Notice explains how we collect, use, and protect personal information, when and to whom we disclose such information, and the choices you have about the use and disclosure of that information.

A limited number of FNF subsidiaries have their own privacy notices. If a subsidiary has its own privacy notice, the privacy notice will be available on the subsidiary's website and this Privacy Notice does not apply.

## **Collection of Personal Information**

FNF may collect the following categories of Personal Information:

- contact information (e.g., name, address, phone number, email address);
- demographic information (e.g., date of birth, gender, marital status);
- identity information (e.g. Social Security Number, driver's license, passport, or other government ID number);
- financial account information (e.g. loan or bank account information); and
- other personal information necessary to provide products or services to you.

We may collect Personal Information about you from:

- information we receive from you or your agent;
- information about your transactions with FNF, our affiliates, or others; and
- information we receive from consumer reporting agencies and/or governmental entities, either directly from these entities or through others.

## **Collection of Browsing Information**

FNF automatically collects the following types of Browsing Information when you access an FNF website, online service, or application (each an "FNF Website") from your Internet browser, computer, and/or device:

- Internet Protocol (IP) address and operating system;
- browser version, language, and type;
- domain name system requests; and
- browsing history on the FNF Website, such as date and time of your visit to the FNF Website and visits to the pages within the FNF Website.

Like most websites, our servers automatically log each visitor to the FNF Website and may collect the Browsing Information described above. We use Browsing Information for system administration, troubleshooting, fraud investigation, and to improve our websites. Browsing Information generally does not reveal anything personal about you, though if you have created a user account for an FNF Website and are logged into that account, the FNF Website may be able to link certain browsing activity to your user account.

## **Other Online Specifics**

**Cookies.** When you visit an FNF Website, a "cookie" may be sent to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. Information gathered using cookies helps us improve your user experience. For example, a cookie can help the website load properly or can customize the display page based on your browser type and user preferences. You can choose whether or not to accept cookies by changing your Internet browser settings. Be aware that doing so may impair or limit some functionality of the FNF Website.

**Web Beacons.** We use web beacons to determine when and how many times a page has been viewed. This information is used to improve our websites.

**Do Not Track.** Currently our FNF Websites do not respond to "Do Not Track" features enabled through your browser.

**Links to Other Sites.** FNF Websites may contain links to unaffiliated third-party websites. FNF is not responsible for the privacy practices or content of those websites. We recommend that you read the privacy policy of every website you visit.

## **Use of Personal Information**

FNF uses Personal Information for three main purposes:

- To provide products and services to you or in connection with a transaction involving you.
- To improve our products and services.
- To communicate with you about our, our affiliates', and others' products and services, jointly or independently.

## **When Information Is Disclosed**

We may disclose your Personal Information and Browsing Information in the following circumstances:

- to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure;
- to affiliated or nonaffiliated service providers who provide or perform services or functions on our behalf and who agree to use the information only to provide such services or functions;

- to affiliated or nonaffiliated third parties with whom we perform joint marketing, pursuant to an agreement with them to jointly market financial products or services to you;
- to law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order; or
- in the good-faith belief that such disclosure is necessary to comply with legal process or applicable laws, or to protect the rights, property, or safety of FNF, its customers, or the public.

The law does not require your prior authorization and does not allow you to restrict the disclosures described above. Additionally, we may disclose your information to third parties for whom you have given us authorization or consent to make such disclosure. We do not otherwise share your Personal Information or Browsing Information with nonaffiliated third parties, except as required or permitted by law.

We reserve the right to transfer your Personal Information, Browsing Information, and any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of bankruptcy, reorganization, insolvency, receivership, or an assignment for the benefit of creditors. By submitting Personal Information and/or Browsing Information to FNF, you expressly agree and consent to the use and/or transfer of the foregoing information in connection with any of the above described proceedings.

### **Security of Your Information**

We maintain physical, electronic, and procedural safeguards to protect your Personal Information.

### **Choices With Your Information**

Whether you submit Personal Information or Browsing Information to FNF is entirely up to you. If you decide not to submit Personal Information or Browsing Information, FNF may not be able to provide certain services or products to you.

**For California Residents:** We will not share your Personal Information or Browsing Information with nonaffiliated third parties, except as permitted by California law. For additional information about your California privacy rights, please visit the "California Privacy" link on our website (<https://fnf.com/pages/californiaprivacy.aspx>) or call (888) 413-1748.

**For Nevada Residents:** We are providing this notice pursuant to state law. You may be placed on our internal Do Not Call List by calling FNF Privacy at (888) 714-2710 or by contacting us via the information set forth at the end of this Privacy Notice. For further information concerning Nevada's telephone solicitation law, you may contact: Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; Phone number: (702) 486-3132; email: [aginquies@ag.state.nv.us](mailto:aginquies@ag.state.nv.us).

**For Oregon Residents:** We will not share your Personal Information or Browsing Information with nonaffiliated third parties for marketing purposes, except after you have been informed by us of such sharing and had an opportunity to indicate that you do not want a disclosure made for marketing purposes.

**For Vermont Residents:** We will not disclose information about your creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.

**For Virginia Residents:** For additional information about your Virginia privacy rights, please email [privacy@fnf.com](mailto:privacy@fnf.com) or call (888) 714-2710.

### **Information From Children**

The FNF Websites are not intended or designed to attract persons under the age of eighteen (18). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

### **International Users**

FNF's headquarters is located within the United States. If you reside outside the United States and choose to provide Personal Information or Browsing Information to us, please note that we may transfer that information outside of your country of residence. By providing FNF with your Personal Information and/or Browsing Information, you consent to our collection, transfer, and use of such information in accordance with this Privacy Notice.

### **FNF Website Services for Mortgage Loans**

Certain FNF companies provide services to mortgage loan servicers, including hosting websites that collect customer information on behalf of mortgage loan servicers (the "Service Websites"). The Service Websites may contain links to both this Privacy Notice and the mortgage loan servicer or lender's privacy notice. The sections of this Privacy Notice titled When Information is Disclosed, Choices with Your Information, and Accessing and Correcting Information do not apply to the Service Websites. The mortgage loan servicer or lender's privacy notice governs use, disclosure, and access to your Personal Information. FNF does not share Personal Information collected through the Service Websites, except as required or authorized by contract with the mortgage loan servicer or lender, or as required by law or in the good-faith belief that such disclosure is necessary: to comply with a legal process or applicable law, to enforce this Privacy Notice, or to protect the rights, property, or safety of FNF or the public.

### **Your Consent To This Privacy Notice; Notice Changes**

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of the information in accordance with this Privacy Notice. We may change this Privacy Notice at any time. The Privacy Notice's effective date will show the

last date changes were made. If you provide information to us following any change of the Privacy Notice, that signifies your assent to and acceptance of the changes to the Privacy Notice.

**Accessing and Correcting Information; Contact Us**

If you have questions or would like to correct your Personal Information, visit FNF's [Privacy Inquiry Website](#) or contact us by phone at (888) 714-2710, by email at [privacy@fnf.com](mailto:privacy@fnf.com), or by mail to:

Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Chief Privacy Officer



## ATTACHMENT ONE (Revised 05-06-16)

### CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY – 1990

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

#### EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.  
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

### CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)

### ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE

#### EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; and
  - f. environmental protection.This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;

- c. that result in no loss to You; or
- d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
- 5. Failure to pay value for Your Title.
- 6. Lack of a right:
  - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.
 This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
- 7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
- 8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
- 9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

### **LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
- The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<b>Your Deductible Amount</b>	<b>Our Maximum Dollar Limit of Liability</b>
Covered Risk 16:	1.00% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$ 10,000.00
Covered Risk 18:	1.00% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$ 5,000.00

### **2006 ALTA LOAN POLICY (06-17-06)**

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

{Except as provided in Schedule B - Part II, {t{or T}his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

## **{PART I**

{The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.}

## **PART II**

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:}

### **2006 ALTA OWNER'S POLICY (06-17-06)**

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

{The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records. }
7. {Variable exceptions such as taxes, easements, CC&R's, etc. shown here.}

## ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY – ASSESSMENTS PRIORITY (04-02-15)

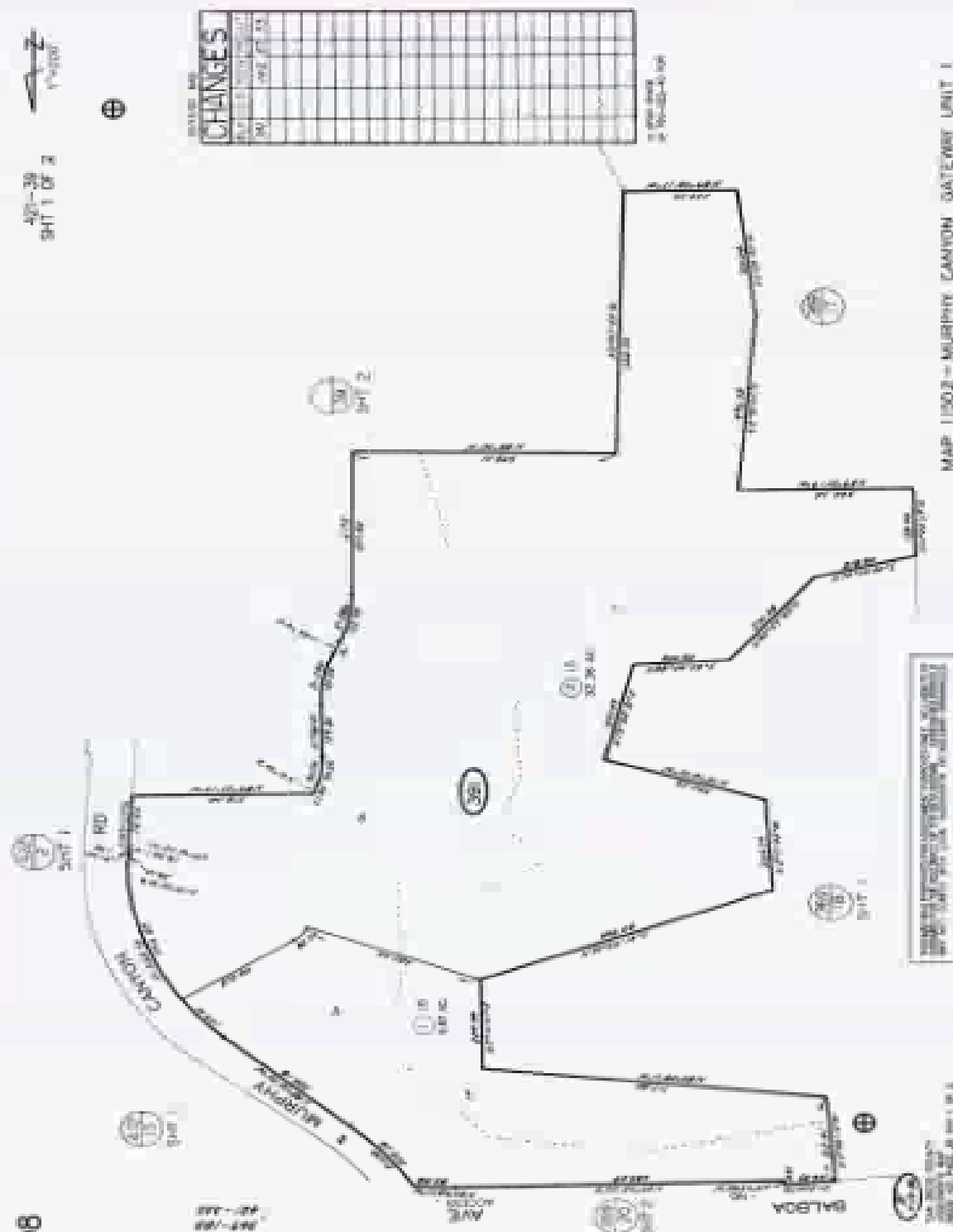
### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

This map/plan is being furnished as an aid in locating the herein described lands in relation to adjoining streets, natural boundaries and other lands, and is not a source of the land depicted. Except to the extent a policy of the insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

Requested By: Michael Moore , Printed: 3/15/2025 8:25 AM



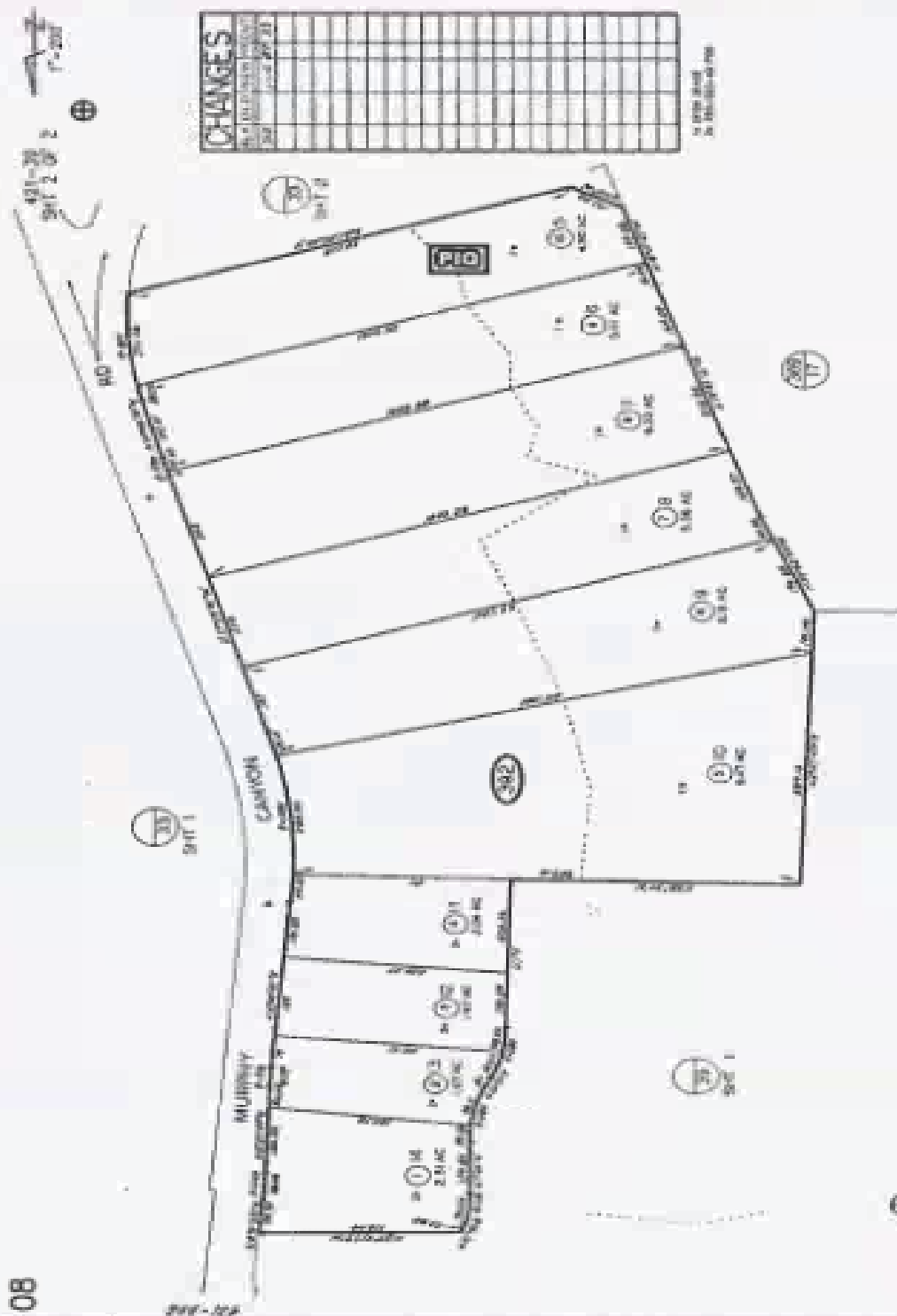
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This mapplate is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly provided by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown hereon.

Order: 153953

Page 2 of 2 Requested By: Michael Moore Printed: 3/15/2022 9:20 AM

Doc: 421-39 MAP ASSOCIATION



MAP 11502 - MURPHY CANYON GATEWAY UNIT I

THIS MAP IS FOR INFORMATION ONLY AND IS NOT A SURVEY. IT IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PREPARED.

MAP ASSOCIATION  
1000 N. 10th St.  
Suite 100  
Phoenix, AZ 85004  
Phone: 602.254.1000  
Fax: 602.254.1001  
www.mapassoc.com





SAN DIEGO  
HOUSING  
COMMISSION

Real Estate Department

February 14, 2023

Ms. Judi Bikulege  
ESA P Portfolio, LLC  
11525 N. Community House Rd., Suite 100  
P.O. Box 49550  
Charlotte, NC 28277-9550

**Re: Letter of Intent for the purchase of three (3) Extended Stay America Hotel Properties in San Diego, California**

The purpose of this non-binding Letter of Intent ("LOI") is to set forth the general terms and conditions under which the San Diego Housing Commission, and/or its successors and assigns (the "Purchaser" or "Buyer"), is interested in purchasing the Property, as defined in Section 3, below, from ESA P Portfolio, LLC (the "Seller"). It is understood that this constitutes an expression of Purchaser's intent only, and that any final and binding agreement shall be subject to the preparation, negotiation, and execution of definitive legal documents (the "Purchase and Sale Agreement" or "PSA").

**1. Property Description** Purchaser to acquire and Seller to sell a fee simple interest in three (3) Extended Stay America hotel properties located at: (1) 3860 Murphy Canyon Road, San Diego, California 92123; (2) 2085-95 Hotel Circle South, San Diego, California 92108; and, (3) 7440-50 Mission Valley Road, San Diego, California 92108 (the "Extended Stay Hotel Properties"), together with any and all improvements therein and all of Seller's right, title, and interest in all common areas, amenities, appurtenances, fixtures, chattels, and (except as provided herein) all personal property located at the Extended Stay Hotel Properties and owned by Seller (collectively referred to as the "Property") free and clear of rights of first refusal, option agreements, franchise agreements, other agreements, covenants against the fee interest, and other encumbrances of any kind, in each instance created by Seller and except any to which Purchaser consents in writing. Notwithstanding the foregoing, the "Property" shall not include the items listed on Schedule 1 attached hereto. Purchaser understands that the Property includes three (3) separate Extended Stay America Hotel Properties with a total of four hundred twelve (412) rooms (the "Rooms" or the "Units"), as set forth in the table below.

Site #	Address	APN	Room Count
8787	3860 Murphy Canyon Road	421-392-10-00	107
8573	2085-95 Hotel Circle South	443-040-38-00	165
9622	7440-50 Mission Valley Road	677-390-34-00	140
	<b>Total</b>		<b>412</b>

**2. Purchase Price.** The Buyer will purchase the Property in cash for the total purchase price of One Hundred Fifty Seven Million Eight Hundred Seventy Five Thousand Dollars (\$157,875,000) as set forth in the table below.

Site #	Address	Purchase Price	Price/Key
8787	3860 Murphy Canyon Road	\$ 40,700,000	\$380,374
		\$	
8573	2085-95 Hotel Circle South	\$ 65,175,000	\$395,000
9622	7440-50 Mission Valley Road	\$ 52,000,000	\$371,429
	<b>Total</b>	<b>\$157,875,000</b>	<b>\$383,192</b>

The Purchase Price shall be conditioned upon independent appraisals of the Properties, which shall be obtained by Purchaser during the Due Diligence Period at Purchaser's expense, supporting the Purchase Prices for each, and other terms contained herein. Current real property taxes, bond and other assessments, fees and monthly charges for any service contracts to be assigned to Buyer at Closing shall be prorated at the close of escrow ("Closing") according to the date of Closing (the "Closing Date").

**3. As-Is Purchase.** Buyer shall purchase the Property "AS IS", "WHERE IS" and "WITH ALL FAULTS", without any representations, warranties or guaranties of any nature, express or implied, oral or written, past, present or future, regarding the Property. Provided, however, the Seller shall cause the hotel franchise agreement / management agreement to be terminated and eliminate any debt against the property prior to Closing.

**4. Deposit.** Buyer will make the deposit for each property in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) within five (5) business days after the mutual execution of the Purchase and Sale Agreement as an earnest money deposit for a total of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) (the "Initial Deposit"). Upon the expiration of the Due Diligence Period (as herein defined) if Buyer elects in writing to proceed with the purchase of the Property in accordance with the terms of the Purchase and Sale Agreement, Buyer will deposit in escrow with the Escrow Agent an additional sum of Fifty Thousand and No/100 Dollars (\$50,000.00) for each Property for a total of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) as an earnest money deposit (the "Additional Deposit" and together with the Initial Deposit, the total deposit shall be the sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00) the "Deposit"). The Deposit will be fully refundable to the Buyer until the expiration of the Due Diligence Period. The Deposit shall be deemed nonrefundable to Buyer after expiration of the Due Diligence Period.

**5. Due Diligence.** Buyer shall have one hundred eighty (180) days from the date the Purchase and Sale Agreement is executed to complete due diligence on the Property ("Due Diligence Period"). During the Due Diligence period, if the Buyer determines in its sole discretion for any reason, or for no reason at all, not to proceed with acquisition of the Property, Buyer may terminate the Purchase and Sale Agreement and receive a full refund of all deposits into escrow (including any interest thereon), less any fees charged by the Escrow Holder. During the Due Diligence Period the Buyer and its representatives, consultants and attorneys shall have access to the Property to observe and perform any and all due diligence with forty-eight (48) hour notice to the Seller.

**6. Seller Approval Conditions.** The Seller acknowledges that in order to bind the Buyer to the terms and conditions of the Purchase and Sale Agreement: (i) the Purchase and Sale Agreement must be approved by

the Buyer's board; (ii) the Purchase and Sale Agreement must also be approved by the Housing Authority of the City of San Diego, in the event the Housing Authority of the City of San Diego elects to hear the matter; and (iii) the Housing Authority of the City of San Diego needs to appropriate funds for the Buyer's acquisition of the Property. After expiration of the Due Diligence Period, the Buyer's right to terminate the Purchase and Sale Agreement for any reason, or for no reason at all, shall expire; provided, however, if the Purchase and Sale Agreement is not formally approved by Buyer's board, and if necessary the Housing Authority of the City of San Diego, or the Housing Authority of the City of San Diego does not appropriate funds for the Buyer's acquisition of the Property, on or before expiration of the Due Diligence Period, then the Purchase and Sale Agreement shall automatically terminate and the Buyer shall receive a full refund of all deposits into escrow (including any interest thereon), less any fees charged by the Escrow Holder.

**7. Homekey Funds.** The Purchase and Sale Agreement shall provide that Buyer's obligation to close shall be conditioned on the State of California Department of Housing and Community Development awarding Homekey funds to the Buyer for Buyer's acquisition of the Property. Receipt of Homekey funds shall not be a requirement during the Due Diligence Period nor for Buyer to waive contingencies and proceed with the acquisition as outlined in Paragraph 5 above.

**8. Liquidated Damages.** If Buyer defaults under the Purchase and Sale Agreement and fails to close as set forth in the Purchase and Sale Agreement, the Seller's sole remedy shall be to terminate the Purchase and Sale Agreement and retain all deposits in escrow and all interest thereon as liquidated damages; provided, however, Buyer shall remain liable for any damages caused by its inspections (to be further described in the Purchase and Sale Agreement).

**9. Title, Escrow & Closing.** Buyer shall clear all title issues with respect to vesting of ownership prior to the parties entering into a Purchase and Sale Agreement. Title insurance shall be issued by, and the sale of the Property shall be carried out through an escrow with, Chicago Title Company ("Escrow Holder"). Escrow Holder shall be responsible for all prorations (i.e., rents, taxes, insurance, etc.) between Seller and Buyer.

**10. Closing Deadline.** Closing of the transaction shall take place not later than one (1) year from the date the Purchase and Sale Agreement is executed. Notwithstanding the foregoing, if prior to such deadline, the Buyer provides written notice to the Seller of the Buyer's extension of the closing deadline, then the closing deadline shall be extended to the date that is not later than fifteen (15) months from the date the Purchase and Sale Agreement is executed.

**11. No Long Term Residents.** Seller and Buyer shall negotiate in the Purchase and Sale Agreement a process for identifying how long guests have been staying in each room of the hotels. Buyer shall identify during the Due Diligence Period all existing guests that are eligible for relocation assistance under state or federal statute ("Eligible Guests"). Seller will cause all guests that are not identified by Buyer as Eligible Guests to vacate the Property prior to Closing.

**12. Purchase Agreement.** Within ten (10) business days of Seller's acceptance of the terms and conditions contained herein, Seller shall prepare and deliver to Buyer, a purchase and sale agreement ("Purchase and Sale Agreement") incorporating the terms and conditions of this letter of intent. Buyer and Seller will

endeavor to negotiate a Purchase and Sale Agreement based on the terms set forth in this letter of intent, provided that the form, terms and conditions of the Purchase and Sale Agreement shall be subject to the approval of Buyer and Seller in their sole discretions. If issues arise during preparation of a Purchase and Sale Agreement which are not resolved to the satisfaction of Buyer and Seller, this letter shall become null and void.

**13. Broker Commission.** Each party represents to the other that it does not have any contact or binding agreement with respect to any real estate broker or other person who can claim a right to a commission or finder's fee with the following exceptions: Marcus and Millichap made Buyer aware of the Seller's current intention to sell property on or about January 24, 2022. Seller is represented by Michael Jokhi of CBRE as its broker. Each party is responsible for paying their respective broker pursuant to a separate fee agreement, which is approved by Marcus and Millichap and CBRE. The total amount of the fee Seller will pay will not exceed the amount set forth in the attached Schedule "2" Commission Structure. The total amount of the fee the Buyer will pay its broker will not exceed ½ the amount set forth in the Attached Schedule "2" Commission Structure.

If any other broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings or communications with a party, then such party shall indemnify, protect, defend and hold the other party harmless from and against all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of the broker's or finder's claim.

**14. Confidentiality.** Seller acknowledges that Buyer is a public agency and that the terms and conditions of this Letter of Intent and the Purchase and Sale Agreement will be disclosed in at least a public meeting of the Buyer's board, and that the Buyer is required by applicable laws to disclose certain documents, writings and other information, including without limitation, this Letter of Intent and the Purchase and Sale Agreement.

This letter shall not constitute a binding agreement by any party, but rather is intended solely as an outline to specify some of the proposed terms and conditions of the proposed transaction. Neither party may claim any legal rights against the other by reason of this letter, nor by taking any action in reliance thereon, whether or not this letter is countersigned. Each party understands that no party shall have any legal obligations to the other, unless and until all of the terms and conditions of the proposed transaction have been negotiated and mutually agreed upon by the parties in an executed written agreement delivered to and exchanged between the parties. In connection with the foregoing, each party acknowledges and agrees that (i) this letter shall not constitute an agreement to negotiate; (ii) this letter constitutes solely an outline of the terms of negotiation; (iii) this Proposal shall not be used to interpret or construe any written agreement the parties may enter into subsequently and shall not be used or introduced in any proceeding involving or related to any such written agreement; (iv) each party is proceeding with negotiations related to the proposed transaction at its sole cost and expense (which may involve substantial transaction costs); and (v) either party may terminate negotiations at any time for any reason, or no reason, without liability or obligation whatsoever. Each party expressly acknowledges and agrees that this letter shall not prohibit or limit further marketing of the Property or negotiation of other proposed transactions on different terms or conditions than set forth herein.

If the foregoing is acceptable to you, contingent upon the parties' execution of a mutually acceptable Purchase and Sale Agreement, please execute this letter and return it to the undersigned on or before the close of business on February 21, 2023.

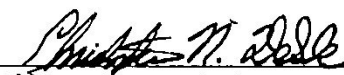
**BUYER:**

San Diego Housing Commission

By:    
 DocuSigned by:   
 Jeff Davis, Interim President & CEO

**SELLER:**

ESA P Portfolio L.L.C.

By:    
 Print Name: Christopher N. Dekle   
 Its: Vice President and Secretary

**SCHEDULE "I"**  
**EXCLUDED PERSONAL PROPERTY**

CHEETAH- Network Infrastructure Equipment	Nomadtx Guest Gateway
	Netware Guest Wi-Fi Switch
	Hallway based Access Point
	V Band
	Wattbox PCU
	FortiGate FG-60E Firewall
	FortiNet FS-124E Switch
Digital Signage	60" Digital Signage if Applicable
ESA TV Marketing Equipment	Pro Centric Server
	Encoder Modulator
Television Equipment	HD TV Service- DISH HD TV Headend
Telephone Equipment	PBX Phone System- Adtram Switch(s)
	Netvant Switch
	IP Phone Set
	Engenius DuraFon 1x Wireless Phone
	VMS Auto-Attendant Setup
ADP Time Clock	ADP Employee Network Timeclock (do not own)
Property Management System	HotelKey PMS- Apple I-Pad WI-FI Tablet
	HotelKey PMS- Verifone PinPads (at front desk)
	HotelKey PMS- Gateway in the MDF
	HotelKey PMS- GM PC
	HotelKey PMS- HP Airprint Printer
	HotelKey PMS- HP MPP
Inventory	Linen and Terry not in guest rooms
Vending Machines	Soda and Snack Machines (do not own)
Intellectual Property	Any Service Marks, copyrights, trade names, trademarks, symbols, logos, and all other intellectual property rights, marks, or characteristics associated with the brand name of the Seller and/or its affiliates, or chattels of any type of kind which is branded with any marks owned, licensed or otherwise used by Seller and/or its affiliates
Other	Any and all fixtures, personal property or intellectual property owned by or proprietary to any guest or customer of the hotel on the Property or the manager of the Property
	Hotel Guest data or information in any database maintained by Seller and any of Seller's affiliates
	Any property management, purchasing, reservation, financial, risk or marketing systems or programs provided for the benefit of Seller of the Property by any affiliate of Seller
	All computer software systems owned or licensed by Seller or its affiliates or otherwise used in connection with the operation of the hotel on the Real Property or any other hotel operated by Seller or any of its managers or affiliates (it being understood that any Personal Property consisting of computers or electronic devices shall be erased and reset to factory settings)



	Panic button system, including gateway devices, all mobile badges, all hubs and all beacons.
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SCHEDULE "2"  
COMMISSION STRUCTURE

PRICE	COMMISSION/FEE
Up to \$10M	2.00%
\$10M - \$15M	\$10M commission plus 1.50% of amount between \$10M - \$15M
\$15M - \$25M	Commission calculated above plus 1.25% of amount between \$15M - \$25M
\$25M - \$50M	Commission calculated above plus 1.0% of amount between \$25M - \$50M
\$50M and over	Commission calculated above plus 0.85% of amount over \$50M

For sake of example, \$12,500,000 sales price would generate a commission not to exceed the amount calculated as follows: (2% of \$10,000,000 = \$200,000) plus (1.5% of \$2,500,000 = \$37,500) so the entire commission is \$237,500 in commission as set forth above.

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY  
AND JOINT ESCROW INSTRUCTIONS

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (this “Agreement”) is entered into as of April 20, 2023, by and between SAN DIEGO HOUSING COMMISSION, INC., a California corporation (“Buyer”), and ESA P PORTFOLIO L.L.C., a Delaware limited liability company (“Seller”), with reference to the Recitals set forth below. This Agreement shall also constitute the joint escrow instructions of Buyer and Seller to Chicago Title Company (“Escrow Holder” or “Title Company”). Seller and Buyer are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

A. Seller is the owner of three (3) real properties in the City of San Diego (the “City”), County of San Diego (the “County”), State of California (the “State”) (each a “Parcel” and, collectively, the “Land”), having street addresses of (a) 3860 Murphy Canyon Road (APN No. 421-392-10-00) (the “Murphy Canyon Land”), (b) 2085-95 Hotel Circle South (APN No. 443-040-38-00) (the “Hotel Circle Land”), and (c) 7440-50 Mission Valley Road (APN No. 677-390-34-00) (the “Mission Valley Land”), which are more particularly described on Exhibit “A” attached hereto.

B. Seller desires to sell the Property (as defined below) to Buyer, and Buyer desires to purchase the Property from Seller for the purpose of rehabilitating each of the Properties and operating multi-family affordable housing rental developments thereon (each a “Project” and, collectively, the “Projects”), upon the terms and conditions set forth in this Agreement. Notwithstanding the foregoing, the Buyer shall have the right to purchase all of the Property or to purchase any one or two of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property.

C. The Parties desire to enter into this Agreement to document the purchase and sale of the Property between Seller and Buyer on all of the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree as follows:

AGREEMENT

1. Purchase and Sale of Property. Seller hereby agrees to sell, grant and convey to Buyer, and Buyer hereby agrees to purchase from Seller, the Property collectively described in Sections 1.1 through 1.3 below. Notwithstanding the foregoing, the Buyer shall have the right to purchase from Seller any one or two of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property.

1.1 Real Property. Each Parcel, together with all improvements located on the Land, including, without limitation, the hotel building located thereon (each a “Hotel” or

“Building” and, collectively, the “Hotels” or “Buildings”), and any and all easements, rights-of-way, privileges, rights and appurtenances benefiting, appertaining or belonging to such Parcel, including, without limitation, any and all streets and roads (whether opened or proposed) abutting such Parcel, riparian rights, water or water rights and stock evidencing any such water rights, and/or oil, gas or other minerals laying under such Parcel (the “Murphy Canyon Real Property,” the “Hotel Circle Real Property” and the “Mission Valley Real Property,” respectively, and each and collectively, as the context may require, the “Real Property”);

1.2 Personal Property. Except as provided hereinbelow, all of Seller’s right, title and interest in and to any tangible personal property owned by Seller that is currently placed or installed on or about each Real Property and used in connection with the development, use, ownership, operation, management, maintenance and/or repair of such Real Property (collectively, the “Personal Property”); and

1.3 Intangible Property. Except as provided hereinbelow, all of Seller’s right, title and interest, to the extent assignable, in and to any governmental permit applications, governmental permits, governmentally-issued licenses, plans, maps, site plans, drawings, specifications, surveys, warranties, guaranties, development agreements, utility rights, development rights, governmental approvals, entitlements, prepaid development fees, sewer credits, governmental certifications, variances, specific plan amendments, general plan amendments, negative declarations, environmental impact reports, CEQA findings and determinations, will serve letters and similar rights which benefit each Real Property, whether granted by governmental or quasi-governmental authorities or private persons or entities (collectively, the “Intangible Property”).

The Building located on the Murphy Canyon Land (the “Murphy Canyon Building”) contains one hundred seven (107) guest rooms. The Building located on the Hotel Circle Land (the “Hotel Circle Building”) contains one hundred sixty-five (165) guest rooms. The Building located on the Mission Valley Land (the “Mission Valley Building”) contains one hundred forty (140) guest rooms.

Each Real Property and its corresponding Personal Property and Intangible Property are collectively referred to herein as the “Murphy Canyon Property,” the “Hotel Circle Property” and the “Mission Valley Property,” respectively, and, each and collectively, as the context may require, as the “Property”. Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, Sections 1.2 or 1.3 above, the “Property” shall not include: vending machines; employee time clocks; any and all fixtures, personal property or intellectual property owned by or proprietary to any guest or customer of any Hotel or the manager of any Hotel; hotel guest data and information in any database maintained by the Seller or any Affiliate (as defined below) of Seller; any property management, purchasing, reservation, financial, risk or marketing systems or programs provided for the benefit of Seller or the Property by any Affiliate of Seller; all computer software systems owned or licensed by Seller or its Affiliates or otherwise used in connection with the operation of any Hotel or any other hotel operated by Seller or any of its managers or Affiliates (it being understood that any Personal Property consisting of computers or electronic devices shall be erased and reset to factory settings); any service marks, copyrights, trade names, trademarks, symbols, logos, and all other intellectual property rights, marks or characteristics associated with the brand name of Seller and/or its Affiliates; any signage

containing the name or logo of Seller and/or its Affiliates (all of which shall be removed from the Building and any existing monument sign with any related penetrations of the surface of the Building being patched and with the cement base of any monument being left in place); any personal property or chattels of any type of kind which is branded with any marks owned, licensed or otherwise used by Seller and/or its Affiliates; and the personal property listed on **Schedule 1.3** attached hereto. Buyer shall not assume any liabilities or obligations relating to the Property unless expressly provided in this Agreement. The term “Affiliate” shall mean any Person (as defined below) that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another Person. The term “control” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall in any event include the ownership or power to vote fifty percent (50%) or more of the outstanding equity or voting interests, respectively, of such other Person. The term “Person” shall mean a natural person, partnership, limited partnership, limited liability company, corporation, trust, estate, association, unincorporated association or other entity.

2. Purchase Price. The purchase price for all of the Property shall be One Hundred Fifty-Seven Million Eight Hundred Seventy-Five Thousand and No/100 Dollars (\$157,875,000.00). In the event the Buyer elects to purchase one or two of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property, the purchase price for each of those Properties individually shall be: (a) \$40,700,000.00 for the Murphy Canyon Property (the “Murphy Canyon Purchase Price”); (b) \$65,175,000.00 for the Hotel Circle Property (the “Hotel Circle Purchase Price”); and (c) \$52,000,000.00 for the Mission Valley Property (the “Mission Valley Purchase Price”) (each of the foregoing, individually, and all of the foregoing, collectively, as the context may require, being referred to herein as the “Purchase Price”). The Purchase Price shall be payable upon the Close of Escrow (as defined in Section 9.2.1 below) in accordance with the following procedures:

2.1 Earnest Money Deposits.

2.1.1 First Deposit. Buyer shall deposit with Escrow Holder, within three (3) business days after the Effective Date (as defined in Section 18.15 below), an initial earnest money deposit in the amount of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) (i.e., \$50,000.00 per Property) (the “First Deposit”), which shall be applied (in its entirety) toward the Purchase Price at the Closing (as defined in Section 9.2.1 below), and which (except for the Independent Consideration and any amounts due to Escrow Holder from Buyer pursuant to this Agreement) shall be fully refundable to Buyer until such time as Buyer delivers to Seller Buyer’s Approval Notice (as defined in Section 4.4 below) approving all matters relating to the Property, and thereafter only in the event of (i) a termination of this Agreement pursuant to Section 4.5 of this Agreement (other than in connection with an Application Failure Termination Notice (as defined in Section 4.5 below)), (ii) a default by Seller under this Agreement, the failure of a condition precedent in Section 5.1 below, or (iii) as otherwise expressly provided in Section 15 of this Agreement, but subject to Section 2.4 below.

2.1.2 Second Deposit. If Buyer has elected not to terminate this Agreement with respect to any of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property pursuant to Section 4.4 below, then concurrently with Buyer’s

delivery to Seller of the Buyer's Approval Notice, but no later than the last day of the Due Diligence Period (as defined in Section 4.4 below), Buyer shall deposit with Escrow Holder an additional sum of Fifty Thousand and No/100 Dollars (\$50,000.00) per Property not so terminated (the "Second Deposit"), which shall be applied (in its entirety) toward the Purchase Price at the Closing, and which shall be non-refundable to Buyer when made, except in the event of a termination of this Agreement pursuant to Section 4.5 of this Agreement (other than in connection with an Application Failure Termination Notice), a default by Seller under this Agreement, the failure of a condition precedent in Section 5.1 below, or as otherwise expressly provided in Section 15 of this Agreement, but subject to Section 2.4 below. The portion of the First Deposit applicable to any of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property which Buyer does not elect to purchase in Buyer's Approval Notice, less the Independent Consideration and any amounts due to Escrow Holder from Buyer pursuant to this Agreement, shall be refunded to Buyer within five (5) business days after Buyer's delivery to Seller and Escrow Holder of Buyer's Approval Notice.

2.1.3 Earnest Money Deposits. Any reference to "Deposits" in this Agreement shall collectively refer to the First Deposit and Second Deposit, if and when any such deposits are made by Buyer.

2.2 Balance of Purchase Price. The balance of the Purchase Price, together with all other funds necessary on the part of Buyer to enable Escrow Holder to comply with these instructions, shall be paid by Buyer to Escrow Holder in immediately available funds not later than the day immediately preceding the Closing Date (as defined in Section 9.2.1 below). For purposes of calculating the balance of the Purchase Price payable by Buyer hereunder, Buyer shall be credited with (i) the Deposits (including all investment earnings on the Deposits), and (ii) Buyer's share of the prorations in Buyer's favor and other credits described in Section 11 below.

2.3 Investment of Deposits. The Deposits and all other cash sums deposited into Escrow by Buyer shall be promptly invested by Escrow Holder in an FDIC insured interest-bearing account with a depository designated by Buyer and reasonably acceptable to Seller. Any and all interest earned on the Deposits while in Escrow shall accrue to the benefit of the party receiving the Deposits pursuant to the terms of this Agreement, and the term "Deposits" shall include all interest earned thereon.

2.4 Independent Consideration. Notwithstanding any provision to the contrary contained in this Agreement, a portion of the First Deposit in the amount of One Hundred and No/100 Dollars (\$100.00) (the "Independent Consideration") shall be deposited with Escrow Holder and be non-refundable to Buyer under any circumstances as independent consideration for the rights extended to Buyer under this Agreement. The Independent Consideration shall be released to Seller immediately following Buyer's deposit of the Independent Consideration into Escrow. The Independent Consideration shall be applicable towards the Purchase Price.

### 3. Title.

3.1 Preliminary Title Report. Within fifteen (15) days after the Opening of Escrow (as set forth in the Consent of Escrow Holder attached hereto) (the "Preliminary Title Report Delivery Date"), Seller shall cause the Title Company to prepare and deliver to Buyer, at

Seller's sole cost, a current preliminary title report describing the state of title of the Real Property (the "Preliminary Title Report"). If a complete copy of the Preliminary Title Report is not delivered to Buyer on or before the Preliminary Title Report Delivery Date, then the Title Objection Date (as defined in Section 3.3 below) shall be automatically extended by one (1) day for (i) each day following the Preliminary Title Report Delivery Date that Buyer has not received a complete copy of the Preliminary Title Report and (ii) the day upon which Buyer receives a complete copy of the Preliminary Title Report.

3.2 Survey. Buyer may, at its sole cost and expense, obtain an ALTA survey, or an update to any ALTA survey previously obtained by Seller, for the Property (the "Survey") prepared by an engineer selected by Buyer in its sole discretion.

3.3 Title and Survey Exceptions. On or before the date which is sixty (60) days following Buyer's receipt of the Preliminary Title Report (the "Title Objection Date"), Buyer shall notify Seller in writing ("Title Objection Notice") of any title exceptions identified in the Preliminary Title Report and/or the Survey that Buyer disapproves in its sole and absolute discretion ("Title Objections"). Subject to Section 3.4 below, any exception shown on the Preliminary Title Report or any matter shown on the Survey that is not listed as a Title Objection in the Buyer's Title Objection Notice will be deemed approved by Buyer and shall constitute a "Permitted Exception" hereunder. Buyer and Seller hereby agree that all non-delinquent property taxes and assessments as of the Closing, as well as such other exceptions as the Title Company shall commit to insure over without any additional cost or liability to Buyer, whether such insurance is made available in consideration of payment, bonding, indemnity of Seller or otherwise, or made pursuant to an endorsement to the Title Policy, shall be deemed a Permitted Exception. Notwithstanding anything to the contrary contained in this Agreement, Buyer hereby disapproves all deeds of trust, delinquent taxes and assessments, mechanics' liens (except those relating to due diligence investigations or other work pursuant to any contracts to which Buyer is a party), and judgment liens against Seller or any operating lessee or management company affecting the Land (collectively, "Automatically Disapproved Liens"), and Seller hereby covenants to cause all such Automatically Disapproved Liens to be satisfied at Seller's sole cost and expense (including all prepayment penalties and charges) before or concurrently with the Close of Escrow from sales proceeds or otherwise. If Buyer fails to timely provide a Title Objection Notice, such failure shall be deemed an election by Buyer to approve all title exceptions identified in the Preliminary Title Report and the Survey, except Automatically Disapproved Liens. Seller shall have a period of twenty (20) days following its receipt of the Title Objection Notice within which to notify Buyer in writing ("Title Objection Response") of its agreement to undertake to cure (i.e., by removing, altering, modifying or otherwise mitigating) any Title Objections to the satisfaction of Title Company (sufficient for Title Company to remove such Seller Cure Items (defined below) from the exceptions set forth in the Owner's Policy (as defined in Section 3.5 below)) and to the reasonable satisfaction of Buyer (such Title Objections that Seller undertakes to cure being referred to herein as "Seller Cure Items"); provided, however, if Seller thereafter fails to cure any such Seller Cure Items (other than any Automatically Disapproved Liens), such failure shall constitute a failure of a condition precedent in Section 5.1 below, but shall not constitute a default by Seller under this Agreement (provided that Seller's failure to remove any Automatically Disapproved Liens shall constitute a default by Seller under this Agreement). Seller's failure to timely provide a Title Objection Response will be deemed an election by Seller not to cure the Title Objections prior to the Close of Escrow. In the event that Seller is not willing to remove, alter, modify or



otherwise mitigate to the satisfaction of Buyer and Title Company any Title Objection, Buyer shall elect, prior to the expiration of the Due Diligence Period, to either (i) waive its disapproval of such exception by delivering (or being deemed to have delivered) an Approval Notice in accordance with Section 4.4 below, in which case such exception shall then be deemed to be a Permitted Exception, or (ii) terminate its obligation to purchase the Property by delivering a Disapproval Notice in accordance with Section 4.4 below.

3.4 Additional Exceptions. In the event of any supplement to or update of the Preliminary Title Report that is issued after Buyer's initial Title Objection Notice (other than to reflect matters shown on or disclosed by the Survey, all of which must be set forth in Buyer's initial Title Objection Notice or waived in accordance with Section 3.3 above) discloses additional material title exceptions (other than any resulting from Buyer's activities on the Property), Buyer shall have an additional ten (10) day period following Buyer's receipt of such supplement or update to approve or disapprove such material title exception in its sole and absolute discretion; provided, however, Seller shall cause any additional Automatically Disapproved Liens to be satisfied at Seller's sole cost and expense before or concurrently with the Close of Escrow from sales proceeds or otherwise. In order to be considered "material" for purposes hereof, an additional title exception must be reasonably expected to interfere with Buyer's intended use of the Property, and must be either (i) reasonably anticipated to cost in excess of the Material Cure Cost to cure (i.e., remove, alter, modify or otherwise mitigate so as not to adversely affect Buyer's intended use of the Property), or (ii) insusceptible of cure. As used herein, the "Material Cure Cost" shall mean an amount equal to Fifty Thousand and No/100 Dollars (\$50,000.00). Any disapproval will be subject to the same notice/response provisions and right to a refund of the Deposits as set forth in Section 3.3 above and Section 4.4 below.

3.5 Title Commitment. Prior to the expiration of the Due Diligence Period, Buyer shall secure from Title Company its commitment (the "Title Commitment") to issue, at the Closing, its standard coverage (or if Buyer has provided the Title Company with the Survey, its ALTA extended coverage) owner's policy of title insurance in a form satisfactory to Buyer, with liability equal to the Purchase Price (to be calculated separately for each applicable Property based upon the Purchase Price for such Property), showing fee title to the Property vested in Buyer, free and clear of any and all tenancies, options, rights of first refusal, other purchase rights, lis pendens, and monetary liens and/or encumbrances and subject only to the Permitted Exceptions (the "Owner's Policy"). If any additional title exceptions are identified in accordance with the terms and conditions of Section 3.4 above, and if this Agreement is not terminated as a result of such additional title exceptions, then it shall be Buyer's responsibility to secure an updated Title Commitment from Title Company in connection therewith.

#### 4. Due Diligence Investigations.

4.1 Physical Inspections. Subject to compliance with the terms and conditions set forth below, from the Effective Date until the Closing, Buyer and Buyer's agents, employees, contractors, engineers, architects, brokers, consultants and representatives (collectively, "Buyer's Agents") shall be entitled to enter onto the Property, during normal business hours (i.e., 8:00 a.m. – 6:00 p.m. California time) on at least forty-eight (48) hours' notice to Seller, to perform a complete review of the Property and all matters related to the Property as Buyer determines is necessary in Buyer's sole and absolute discretion and to perform any inspections, investigations,

surveying, engineering and tests of the Property, including, but not limited to, geotechnical soil borings, test pits, physical inspections and other environmental tests of the Property, all at Buyer's sole cost and expense; provided that no invasive testing or boring or any Phase II environmental assessments shall be performed unless Seller has approved the work plan for such testing or boring or assessments, which approval may be withheld by Seller in its sole and absolute discretion. In connection with Buyer's entry on the Property Buyer shall comply with all of the following:

(a) Buyer shall keep the Property free and clear of all liens arising out of Buyer's and Buyer's Agents activities conducted upon the Property. Buyer shall indemnify, defend and hold Seller and the Property free and harmless of and from any and all Claims (as defined in Section 13.1.5 below) to the extent caused by the entry upon the Property by Buyer and Buyer's Agents, but excluding any Claims to the extent arising out of (i) the gross negligence or willful misconduct of Seller or any of Seller's employees, agents or representatives, (ii) the mere discovery or exposure of an existing condition with respect to the Property, including latent defects or hazardous materials (except to the extent that such existing condition was aggravated or exacerbated by Buyer or Buyer's Agents), or (iii) Seller's violation of any of its obligations with respect to any Bookings (as defined in Section 6.3 below). The foregoing indemnity shall survive the termination of this Agreement or the Closing.

(b) Prior to Buyer or any Buyer's Agents entering the Property, Buyer shall provide Seller with a certificate of commercial general liability insurance, with a combined single limit of liability not less than Three Million Dollars (\$3,000,000.00).

(c) Buyer, at Buyer's sole cost, shall repair all damage or injury caused by Buyer or Buyer's Agents in connection with any such inspection or entry and shall return the Property to the substantially same condition existing prior to such entry, but excluding any correction of any preexisting condition discovered by Buyer during its investigation of the Property, including latent defects or hazardous materials (except to the extent such preexisting condition was aggravated or exacerbated by Buyer or Buyer's Agents).

4.2 Review of Due Diligence Materials. Within five (5) days following the Effective Date, Seller shall make available to Buyer vis-à-vis Seller's online due diligence room relating to the Property copies of those materials described in Schedule 4.2 attached hereto, to the extent within Seller's possession or control (collectively, the "Due Diligence Materials"). The Due Diligence Materials shall include copies of those Property-specific service contracts or service agreements relating to the operation and maintenance of the Property currently in effect and assignable to Buyer at the Close of Escrow, but expressly exclude the Operating Agreements (as defined in Section 6.4 below), any contracts Seller determines are "master contracts" affecting properties other than the Property or any contracts Seller determines are not assignable. Buyer shall advise Seller in writing prior to the expiration of the Due Diligence Period which Property-specific service contracts or service agreements Buyer desires to have assigned to Buyer at the Close of Escrow (collectively, the "Buyer Designated Contracts"), in which event Seller shall use commercially reasonable, good faith efforts to cause the Buyer Designated Contracts to be assigned to Buyer at the Close of Escrow (and Buyer shall assume all obligations accruing thereunder from and after the Close of Escrow); provided that, Seller's failure to cause any Buyer Designated Contracts to be assigned to Buyer at the Close of Escrow shall constitute neither a failure of a condition precedent in favor of Buyer nor a default by Seller under this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, the Due Diligence Materials shall not include any privileged, confidential or proprietary materials or information (including, without limitation, internal memoranda of Seller, budgets, financial analyses or projections, appraisal reports or other valuation information, organizational, financial and other documents relating to Seller or its Affiliates, or any report or studies that have been superseded by subsequent reports or studies, or any documents or information subject to attorney-client privilege or that constitute attorney work product). Seller represents and warrants that, to Seller's knowledge, the Due Diligence Materials are true, correct and complete in all material respects as of the dates set forth thereon, and that, to Seller's knowledge, the copies of the Due Diligence Materials provided to Buyer are complete copies of the same. Buyer acknowledges and understands that all such materials made available by Seller are only for Buyer's convenience in making its own examination and determination prior during the Due Diligence Period as to whether it wishes to purchase the Property, and, in so doing, Buyer shall rely exclusively upon its own independent investigation, verification and evaluation of every aspect of the Property. During the period commencing on the Effective Date until the Closing, Buyer and Buyer's Agents shall have the right to review the Due Diligence Materials. In the event this Agreement is terminated prior to Closing, Buyer shall (i) return to Seller all hard copies of the Due Diligence Materials in Buyer's possession or control, (ii) shall delete all electronic copies of the Due Diligence Materials in Buyer's possession or control, and (iii) shall deliver to Seller copies of all reports, studies, inspections, assessments, surveys and similar documents and materials prepared or commissioned by Buyer with respect to the Property (the "Buyer Prepared Materials"). Notwithstanding anything to the contrary contained in this Agreement, the Buyer Prepared Materials shall not include any privileged, confidential or proprietary materials or information (including, without limitation, internal memoranda of Buyer, budgets, financial analyses or projections, appraisal reports or other valuation information, organizational, financial and other documents relating to Buyer or its Affiliates, or any documents or information subject to attorney-client privilege or that constitute attorney work product). Buyer makes no representations or warranties regarding the sufficiency, truthfulness, completeness or accuracy of the Buyer Prepared Materials or that the Buyer Prepared Materials are complete copies of the same.

4.3 Required Due Diligence Period Approvals. Seller and Buyer acknowledge that Buyer shall have no obligation to purchase the Property as provided in this Agreement unless and until the occurrence, prior to the expiration of the Due Diligence Period, of all of the following (collectively, the "Due Diligence Approval Conditions"): (a) this Agreement is approved by Buyer's Board of Commissioners; (b) this Agreement is approved by the Housing Authority of the City of San Diego (the "Housing Authority"), which is comprised of the nine members of the San Diego City Council, if and only if the Housing Authority elects to hear the matter; and (c) the Housing Authority appropriates funds for Buyer's acquisition of the Property.

4.4 Due Diligence Notice. Buyer shall have the absolute right, during the period commencing on the Effective Date and expiring at 5:00 p.m. California time on the date that is one hundred eighty (180) days following the Opening of Escrow (the "Due Diligence Period"), to elect to approve or disapprove, in Buyer's sole discretion, the suitability of the Property for Buyer's intended purposes. In the event Buyer (for any reason or no reason) disapproves any or all of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property, including, without limitation, if the Due Diligence Approval Conditions are not satisfied, Buyer may terminate its obligation to purchase any or all of the Murphy Canyon

Property, the Hotel Circle Property and/or the Mission Valley Property by delivering written notice of its disapproval of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property to Seller at any time prior to the expiration of the Due Diligence Period (“Disapproval Notice”), in which case the portion of the First Deposit applicable to the Property so disapproved shall be immediately refunded to Buyer, less the Independent Consideration and any amounts due to Escrow Holder from Buyer pursuant to this Agreement, Buyer’s obligation to purchase, and Seller’s obligation to sell, the disapproved Property shall terminate, and neither Party shall have any further obligation to the other with respect to the disapproved Property, except as otherwise provided in this Agreement. In the event that Buyer elects in its sole and absolute discretion to approve all matters relating to any or all of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property, and in the event the Due Diligence Approval Conditions are satisfied with respect to the Property so approved, then, prior to the expiration of the Due Diligence Period, Buyer shall deliver written notice to Seller (“Approval Notice”) confirming Buyer’s approval of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property, as applicable, and confirming the satisfaction of the Due Diligence Approval Conditions with respect to the approved Property. If Buyer fails to timely deliver a Disapproval Notice or an Approval Notice to Seller or the Second Deposit to Escrow Holder prior to the expiration of the Due Diligence Period, Buyer shall be deemed to have delivered a Disapproval Notice.

4.5 Entitlement/Financing. Unless and until this Agreement is terminated as provided herein or until the Close of Escrow, Buyer shall have the exclusive right: (a) to seek and process all applications, plans (including, without limitation, improvement, site and specific plans), drawings, specifications, permits (including, without limitation, 401, 404 and 1603 environmental permits), licenses, maps, zoning changes, amendments (including, without limitation, general plan amendments), entitlements, approvals, agreements, documents and other instruments, and any modifications or changes thereto, that Buyer deems necessary or appropriate to obtain from the City, County and any other governmental or quasi-governmental entities or agencies (collectively, the “Governmental Authorities”) for the design, development, construction, use and operation of the Project on each Property as to which this Agreement has not been terminated, all on terms and conditions that are acceptable to Buyer in its sole and absolute discretion (collectively, the “Entitlements”), and (b) to obtain commitments satisfactory to Buyer to finance the acquisition of the Property and development of the Project on each Property as to which this Agreement has not been terminated, including, without limitation, the receipt by Buyer of an acceptable funding award letter issued by HCD under its Homekey Program in response to Buyer’s application therefor (the “Homekey Funding Award Letter”) (collectively, the “Financing Commitments”). Buyer shall notify Seller in writing of Buyer’s receipt of the Homekey Funding Award Letter within three (3) days following Buyer’s receipt of the Homekey Funding Award Letter. Notwithstanding anything to the contrary contained in this Agreement, if Buyer does not submit to HCD a completed application for Homekey funding (which shall include, without limitation, to the extent applicable, having previously undertaken a pre-application consultation screening with HCD regarding the proposed housing Project on the Real Property, providing project overview and primary applicant information, and submitting all other required documentation, including, without limitation, if and to the extent required, certification and legal documentation, a signed authorizing resolution and a tax ID number form) (collectively, the “Homekey Funding Application”) on or before the date on which the Due Diligence Period expires (which shall be referred to in this Section 4.5 as the “Homekey Application Deadline”), for any

reason whatsoever, and if this Agreement has not otherwise terminated pursuant to Section 4.4 above, then Seller thereafter shall have the right to terminate this Agreement by delivery of written notice of termination to Buyer (the “Application Failure Termination Notice”) at any time after the Homekey Application Deadline and prior to Seller's receipt from Buyer of reasonable evidence that Buyer has submitted to HCD the Homekey Funding Application. It is uncertain when HCD will begin accepting Homekey Funding Applications. Therefore, notwithstanding the foregoing, in the event HCD has not begun accepting Homekey Funding Applications on or before that date which is thirty (30) days prior to expiration of the Due Diligence Period (the “Homekey Target Application Date”), then: (i) the Homekey Application Deadline shall be extended by one day for each day commencing on the Homekey Target Application Date until the date HCD begins accepting Homekey Funding Applications; provided that, the extension of the Homekey Application Deadline shall not otherwise extend the Due Diligence Period; and further provide that, in no event shall the Homekey Application Deadline be extended beyond November 30, 2023. If Seller timely delivers to Buyer the Application Failure Termination Notice, then the First Deposit and the Second Deposit shall be non-refundable to Buyer (except that, if HCD has not begun accepting Homekey Funding Applications thirty (30) days prior to Seller's delivery of the Application Failure Termination Notice, then the First Deposit and the Second Deposit, less the Independent Consideration and any amounts due to Escrow Holder from Buyer pursuant to this Agreement, shall be refundable to Buyer), Buyer's obligation to purchase, and Seller's obligation to sell, the Property shall terminate, and neither Party shall have any further obligation to the other, except as otherwise provided in this Agreement. In addition, if Buyer does not receive the Homekey Funding Award Letter from HCD with respect to the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property, as applicable, on or before that date (the “Homekey Funding Deadline”) which is sixty (60) days prior to the Closing Deadline (as defined in Section 9.2.1 below), as the same may be extended pursuant to Section 9.2.2, then Seller thereafter shall have the right to terminate this Agreement (with respect to each Property as to which Buyer theretofore has not received a Homekey Funding Award letter from HCD) by delivery of written notice of termination to Buyer (the “Funding Failure Termination Notice”) at any time after the Homekey Funding Deadline and prior to Seller's receipt of Buyer's notification that Buyer has received the Homekey Funding Award Letter with respect to any such Property. If Seller timely delivers to Buyer the Funding Failure Termination Notice, then the First Deposit and the Second Deposit applicable to each Property identified in the Funding Failure Termination Notice shall be immediately refunded to Buyer, less the Independent Consideration and any amounts due to Escrow Holder from Buyer pursuant to this Agreement, Buyer's obligation to purchase, and Seller's obligation to sell, each such Property shall terminate, and neither Party shall have any further obligation to the other with respect to each such Property, except as otherwise provided in this Agreement. Buyer's right to process and obtain the Entitlements under this Section shall include, without limitation, the right to (x) meet with the Governmental Authorities to discuss the Project and Entitlements for each Property as to which this Agreement has not been terminated, (y) negotiate any and all applicable fees, including, without limitation, impact fees, engineering fees and plan check fees in connection with the Project on each Property as to which this Agreement has not been terminated, and (z) submit to the Governmental Authorities for approval architectural and other plans for the Project on each Property as to which this Agreement has not been terminated. Notwithstanding the foregoing, prior to any scheduled meeting or scheduled discussion (including by telephone) with the Governmental Authorities, Buyer will provide written notice to Seller and a reasonable opportunity to participate at a time and location

reasonably convenient to Seller. Seller agrees to reasonably cooperate with Buyer, at no cost or liability to Seller, in connection with its processing of the Entitlements. Following any request from Buyer, Seller agrees, at no cost or liability to Seller, to promptly execute any applications, letters, documents and/or maps required or requested by any of the Governmental Authorities and/or the adjoining real property owners to allow Buyer to process the Entitlements. Buyer shall bear all costs, expenses and liability related to the preparation and processing of the Entitlements and any related applications, reports, plans, maps, letters and other documents. Buyer shall be solely responsible for any and all costs associated with implementing any relocation assistance procedures that may be required in connection with the Entitlements (including, without limitation, the fees of any relocation assistance consultant engaged to assist Buyer with such relocation procedures, and the amounts of any relocation assistance payments required to be made to present or former occupants of the Real Property under applicable federal, state or local law), whether such relocations occur prior to or after Closing, and whether or not any present or former occupants of the Real Property entitled to relocation assistance payments are Identified Occupants (as defined in Section 6.3 below). No Entitlements or other agreements with the Governmental Authorities and/or adjoining property owners shall bind the Property prior to the Closing or cause any liability to Seller. Buyer shall indemnify, defend and hold Seller and the Property free and harmless of and from any and all Claims to the extent related to or arising out of (A) any third party claims brought against Seller in connection with any action, lawsuit, challenge, opposition, appeal or protest instituted in connection with Buyer seeking approval of the Entitlements or otherwise in connection with Buyer's contemplated use of the Property (including, without limitation, any action, lawsuit, challenge, appeal or protest brought or threatened by any Governmental Authorities, property owners' associations, community groups or private individuals or entities, to enjoin or block the sale of the Property to Buyer, to enjoin or prevent Buyer's intended use of the Property, to reverse or nullify the sale of the Property to Buyer following the Closing, or to seek damages in connection with the sale of the Property to Buyer or Buyer's intended use of the Property) (all such third party claims described in this item (A) being referred to herein, collectively, as "Entitlement/Use Claims"), and (B) any breach of Buyer's obligations under this Section 4.5; it being understood that Buyer's obligations under this sentence shall survive the termination of this Agreement or the Closing. Seller acknowledges that Buyer makes no representations, warranties or guaranties as to whether the Entitlements will be pursued or obtained, as to the actual timing for receipt of any Entitlements, or with respect to the conditions imposed upon the Entitlements, or with respect to challenges or opposition Buyer may encounter related to its proposed use of the Property. In the event this Agreement is terminated for any reason, Buyer shall have no obligation whatsoever to continue to process any Entitlements. Buyer shall notify Seller and Escrow Holder in writing ("Buyer's Entitlement/Financing Notice") within ten (10) business days following Buyer's receipt of the Homekey Funding Award Letter with respect to the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property, as applicable, of Buyer's approval or disapproval of the Entitlements and the Financing Commitments, as determined by Buyer in its sole and absolute discretion; provided, however, Buyer shall use its commercially reasonable, good faith efforts to pursue any of the Entitlements that Buyer desires and the Financing Commitments, and Buyer's right to terminate this Agreement after the Due Diligence Period shall be limited to Buyer's failure (notwithstanding its commercially reasonable, good faith efforts) to obtain the Entitlements or the Financing Commitments necessary for Buyer's intended use of the Property. Buyer's failure to deliver Buyer's Entitlement/Financing Notice within ten (10) business days following Buyer's receipt of

the Homekey Funding Award Letter shall be conclusively deemed Buyer's disapproval thereof. If Buyer disapproves or is deemed to have disapproved the Entitlements or the Financing Commitments for any of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property: (1) the First Deposit and the Second Deposit with respect to each Property for which the Entitlements or the Financing Commitments are disapproved or deemed disapproved, including interest earned thereon, shall be returned to Buyer, less the Independent Consideration and any amounts due to Escrow Holder from Buyer pursuant to this Agreement; and (2) this Agreement shall terminate with respect to each such Property and neither Party will have any further obligations under this Agreement with respect to each such Property, except for those obligations which specifically survive the termination of this Agreement.

5. Conditions Precedent. The following shall be the conditions precedent to the Parties' obligations to consummate the purchase and sale transaction contemplated herein:

5.1 Conditions to Buyer's Obligations. Buyer's obligations hereunder, including, but not limited to, its obligation to consummate the purchase transaction provided for herein, are subject to the satisfaction, in Buyer's sole and absolute discretion, of each of the following conditions, each of which is for the sole benefit of Buyer and may only be waived by Buyer in writing:

5.1.1 Owner's Policy. Title Company shall be irrevocably committed to issue, at the Closing, the Owner's Policy in the form of the Title Commitment obtained by Buyer prior to the expiration of the Due Diligence Period (as modified to reflect any additional title exceptions in accordance with Section 3.4 above); provided, however, if Buyer failed to obtain the Title Commitment, or if Buyer seeks modifications to the Owner's Policy that are not reflected in the Title Commitment, or if Title Company's refusal to issue the Owner's Policy in the form of the Title Commitment relates to any condition to issuance thereof that is caused by Buyer, then Title Company's failure to commit to issue the Owner's Policy shall constitute a default by Buyer under this Agreement (and not the failure of a condition precedent); and provided, further, however, that Title Company's refusal to issue the Owner's Policy due to any Entitlement/Use Claims shall not constitute a failure of this condition precedent (and Buyer shall not be entitled to a return of any portion of the Deposits on account thereof).

5.1.2 Due Performance. Seller shall not be in material default under this Agreement, and shall have duly performed each and every material covenant, undertaking and agreement to be performed by it prior to the Close of Escrow hereunder.

5.1.3 Seller's Representations and Warranties. Each representation and warranty made in this Agreement by Seller shall be true and correct at the time as of which the same is made and as of the Close of Escrow, subject to the terms and conditions of Section 12.1 below.

5.1.4 Seller Deliveries. Seller shall have delivered to Escrow Holder the items described in Section 7 hereof.

5.1.5 No Pending Action. There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of



creditors, insolvency, bankruptcy, reorganization or other proceedings, against the Seller that would materially and adversely affect the Seller's ability to unconditionally perform its obligations under this Agreement; and there shall exist no pending or threatened action, suit or proceeding with respect to the Seller before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transactions contemplated hereby; provided, however, any Entitlement/Use Claims shall not constitute a failure of this condition precedent (and Buyer shall not be entitled to a return of any portion of the Deposits on account thereof).

5.2 Buyer's Waiver of Conditions. Buyer may at any time or times on or before the Close of Escrow, at its sole election, waive any of the conditions precedent to Buyer's obligations under Section 5.1 or otherwise and consummate the sale, but any such waiver shall be effective only if contained in a writing signed by Buyer and delivered to Seller. In the event any of the conditions precedent for the benefit of Buyer that are contained in this Agreement are not completely fulfilled and satisfied, then in addition to any other rights or remedies Buyer may have, Buyer may terminate its obligation to purchase the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property, as applicable, and (a) the Deposit with respect to each Property as to which Buyer terminates this Agreement (including all accrued interest thereon) shall immediately be returned by Escrow Holder to Buyer, less the Independent Consideration and any amounts due to Escrow Holder from Buyer pursuant to this Agreement, (b) Buyer's obligation to purchase, and Seller's obligation to sell, each such Property shall terminate, and (c) neither Party shall have any further obligation to the other with respect to each such Property except as otherwise provided in this Agreement. Any termination of this Agreement due to a default by Seller shall not be a limitation on Buyer's remedies.

5.3 Conditions to Seller's Obligations. Seller's obligations hereunder, including, but not limited to, its obligation to consummate the purchase transaction provided for herein, are subject to the satisfaction, in Seller's sole and absolute discretion, of each of the following conditions, each of which is for the sole benefit of Seller and may be waived by Seller in writing:

5.3.1 Buyer Deliveries. Buyer shall have delivered to Escrow Holder the items required to be delivered by Buyer pursuant to Section 8 hereof.

5.3.2 Due Performance. Buyer shall not be in material default under this Agreement and shall have duly performed each and every covenant, undertaking and agreement to be performed by it prior to the Close of Escrow hereunder.

5.3.3 Buyer's Representations and Warranties. Each representation and warranty made in this Agreement by Buyer shall be true and correct at the time as of which the same is made and as of the Close of Escrow.

6. Covenants During Escrow. From the Effective Date and until the earlier of the Closing or the termination of this Agreement, Seller covenants and agrees to the following:

6.1 Insurance. Seller shall keep the Hotels insured against fire and other hazards in such amounts and under such terms as Seller deems advisable consistent with past practices.

6.2 Contracts. Seller shall terminate all contracts or agreements relating to the Property to which Seller is a party, including, without limitation, the Operating Agreements (collectively, "Contracts") on or prior to Close of Escrow, except those Buyer Designated Contracts (if any) that Seller assigns to Buyer at the Close of Escrow, or unless otherwise agreed in writing by Seller and Buyer.

6.3 Bookings. As used herein, "Bookings" shall mean contracts, leases or reservations for the use or occupancy of guest rooms, meeting rooms, or any other space within the Real Property entered into by Seller in its ordinary course of operating its hotel business on the Real Property. Prior to the expiration of the Due Diligence Period, Buyer shall identify any then present occupants of the Real Property that may be entitled to any relocation assistance payments under applicable federal, state or local law; and following the expiration of the Due Diligence Period and prior to Closing, Buyer shall identify any subsequent occupants of the Real Property that may be entitled to any relocation assistance payments (all such occupants identified by Buyer shall be referred to herein as "Identified Occupants"). Effective as of Closing, Seller shall terminate (a) any and all Bookings that would otherwise commence on or after the Close of Escrow, and (b) any Bookings or any leases, licenses or other occupancy rights with respect to the Real Property other than those involving Identified Occupants, and all such Bookings and other leases, licenses and occupancy rights involving Identified Occupants shall be assigned to Buyer at Closing as though the same had been identified as Buyer Designated Contracts; provided, however, Buyer acknowledges and agrees that (i) Seller shall have no obligation whatsoever to preserve any Bookings pursuant to the terms of this Agreement, it being understood that Seller shall have no liability whatsoever in the event that any Identified Occupants terminate their respective Bookings, leases, licenses or other occupancy rights; and (ii) Seller shall have the right (but not the obligation) to relocate any Bookings from the Real Property (other than those with respect to Identified Occupants) to another real property owned or operated by Seller or an Affiliate of Seller.

6.4 Termination of Hotel Operations. On or prior to the Closing Date, Seller shall, at its sole cost and expense, (i) cause the hotel operations with respect to the Real Property to be wound up and ceased, and (ii) terminate or relocate all employees involved in the operation and maintenance of each Hotel. Buyer shall not assume (and Buyer shall not be deemed to have assumed) any claim, liability or obligation of Seller related to the hotel operations on the Real Property, including, but not limited to, the following: (a) any liabilities or obligations for indebtedness of Seller; (b) any trade payables and accrued expenses; (c) any liabilities or obligations of Seller arising in connection with or relating to the hotel operations or maintenance that occurred or existed prior to the Closing; (d) any claim, liability, obligation or damage with respect to any warranty or similar claim with respect to any product or service provided by Seller at any time on or prior to the Closing; (e) any liabilities or obligations arising in connection with the employment or termination of employment of any persons prior to or in connection with the Closing, including, without limitation, any workers' compensation claims or claims under the

Occupational Safety and Health Act (29 U.S.C. Chapter 15), any employee grievances, any liabilities with respect to employee benefit plans, any liabilities for accrued vacation, bonus or severance payments arising as a result of the consummation of the transactions contemplated by this Agreement and all liabilities or obligations to be discharged by Seller prior to the Closing; and (f) any agreements concerning the master leasing and/or operation of any Hotel (collectively, the “Operating Agreements”).

7. Seller’s Closing Deliveries. Not less than one (1) business day prior to the Closing Date, Seller shall deliver or cause to be delivered to Escrow Holder the following items:

7.1 One (1) executed and acknowledged grant deed conveying each Real Property to Buyer in the form attached hereto as Exhibit “B” (each a “Grant Deed” and, collectively, the “Grant Deeds”);

7.2 A Certificate of Non-Foreign Status duly executed by Seller certifying that Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, together with the equivalent California form (Form 593) confirming that Seller is not subject to withholding of any portion of the Purchase Price by Buyer pursuant to the California Revenue & Taxation Code (collectively, the “Non-Foreign Affidavits”);

7.3 Two (2) counterpart copies of an assignment agreement (each an “Assignment” and, collectively, the “Assignments”) conveying to Buyer the Intangible Property for each Property in the form attached hereto as Exhibit “C” executed by Seller;

7.4 Two (2) counterpart copies of a bill of sale (each a “Bill of Sale” and, collectively, the “Bills of Sale”) for each Property in the form attached hereto as Exhibit “D” executed by Seller;

7.5 One (1) executed copy of the Title Company’s standard form of owner’s affidavit (in a form reasonably acceptable to Seller) for each Real Property, as required by Title Company to issue the Owner’s Policy;

7.6 Any other document, instrument or agreement necessary to consummate the transactions contemplated herein reasonably requested by Buyer or Escrow Holder.

8. Buyer’s Closing Deliveries. Not less than one (1) business day prior to the Closing Date, Buyer shall deliver to Escrow Holder the following items:

8.1 The balance of the Purchase Price;

8.2 Two (2) counterpart copies of each Assignment executed by Buyer;

8.3 Two (2) counterpart copies of each Bill of Sale executed by Buyer; and

8.4 Any other documents, instruments or agreements necessary to consummate the transactions contemplated herein reasonably requested by Seller or Escrow Holder.

9. Escrow and Closing.

9.1 Escrow Instructions. When this Agreement or counterparts hereof shall have been executed by Seller and Buyer and delivered to Escrow Holder, it shall constitute Escrow Holder's escrow instructions. Any standard form escrow instructions submitted by Escrow Holder or any other clarification or addition to the instructions contained herein shall, when executed by Buyer and Seller, constitute additional escrow instructions. In the event of any conflict between such additional instructions and this Agreement, the terms of this Agreement shall prevail.

9.2 Closing.

9.2.1 Closing Date. The "Close of Escrow" or "Closing" means the date on which the Grant Deeds conveying title to the Property to Buyer are delivered to Escrow Holder and the Purchase Price is disbursed from Escrow. The Close of Escrow shall take place through an escrow ("Escrow") to be established with Escrow Holder and occur on or before the date (the "Closing Date") that is sixty (60) days following Buyer's receipt of the Homekey Funding Award Letter; provided, however, and except as provided in Section 9.2.2 below, in no event shall the Close of Escrow occur later than the date that is twelve (12) months following the Opening of Escrow (the "Closing Deadline").

9.2.2 Closing Date Extension. Buyer shall have the option to extend the Closing Deadline one (1) time for a period of three (3) months by notifying Seller in writing not less than ten (10) business days prior to the initial Closing Deadline.

9.3 Close of Escrow. Provided that Escrow Holder shall not have received written notice in a timely manner from Buyer or Seller of the failure of any condition to the Close of Escrow or of the termination of the Escrow, and if and when Buyer and Seller have deposited into Escrow the funds and documents required by this Agreement, and Title Company is irrevocably committed to issue the Owner's Policy concurrently with the Close of Escrow, Escrow Holder shall:

9.3.1 Record Documents. Cause the Grant Deeds to be recorded in the Official Records of the County;

9.3.2 Deliver to Buyer. Immediately upon the recording of the Grant Deeds, deliver to Buyer: (i) a conformed copy of each Grant Deed; (ii) fully executed originals of the Non-Foreign Affidavits, Assignments and Bills of Sale; (iii) any funds deposited by Buyer, and any interest earned thereon, in excess of the amount required to be paid by Buyer hereunder, including the closing costs, prorations and adjustments to be paid by Buyer pursuant to this Agreement; and (iv) the Owner's Policy issued by Title Company.

9.3.3 Deliver to Seller. Immediately upon the recording of the Grant Deeds, deliver to Seller (i) the balance of the Purchase Price, after satisfying the closing costs, prorations and adjustments to be paid by Seller pursuant to this Agreement; (ii) a conformed copy of each Grant Deed; and (iii) fully executed originals of the Non-Foreign Affidavits, Assignments and Bills of Sale.

9.4 Real Estate Reporting Person. Escrow Holder is hereby instructed to comply with all applicable Federal, state and local reporting and withholding requirements relating to the close of this transaction. Escrow Holder is hereby designated the “real estate reporting person” for purposes of Section 6045 of Title 26 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall, in addition to complying with any applicable state and local requirements, file Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation.

10. Closing Costs. Buyer shall pay (i) one-half (1/2) of Escrow Holder’s escrow fee; (ii) the cost of any increased premium for the extended coverage portion of the Owner’s Policy and any title endorsements requested by Buyer (other than those payable by Seller as provided in this Section 10 below), and (iii) the cost of recording the Grant Deeds. Seller shall pay (a) one-half (1/2) of Escrow Holder’s escrow fee; (b) all of the County documentary transfer taxes; (c) the costs of the standard coverage premium for the Owner’s Policy. Seller shall pay for all of Title Company’s charges for endorsements to the Owner’s Policy required to cure Title Objections that Seller has agreed to cure pursuant to Section 3 hereof. All other closing costs and charges (including, without limitation, any City documentary transfer taxes, if any) shall be paid by the Parties in accordance with the customary practice in the County. The foregoing provisions of this Section notwithstanding, except as otherwise expressly provided in this Agreement to the contrary, should the obligations of Buyer to purchase, and Seller to sell, the Property be terminated in accordance with this Agreement, Buyer and Seller shall each pay one-half (1/2) of the cost of the escrow cancellation fees and other amounts due Escrow Holder and the Title Company; provided, however, that should this Escrow be terminated as a result of the default by one of the Parties hereto, the defaulting Party shall pay the entire amount of the cancellation fees and other amounts due Escrow Holder and the Title Company, and the non-defaulting Party shall have no liability therefor. Buyer and Seller shall each pay their own attorneys’ fees in connection with the preparation and negotiation of this Agreement and in connection with the consummation of the transactions contemplated hereby.

11. Proration of Taxes. To the extent any property taxes and assessments have been paid by Seller for the period following the Closing, such amount shall be credited to Seller and Seller shall be responsible for obtaining a property tax refund from the taxing authorities after Closing. If any property taxes or assessments are owed at Closing, such amounts shall be paid by Seller. Buyer, not Seller, shall be responsible for any and all rollback taxes and ad valorem property taxes (or any equivalent thereof) resulting from any action of Buyer that changes the use of the Real Property. The amount of such prorations shall be subject to adjustment in cash after the Close of Escrow outside of Escrow as and when complete and accurate information becomes available, if such information is not available on the Closing Date. Seller and Buyer agree to cooperate and use their respective commercially reasonable, good faith efforts to make such adjustments prior to ninety (90) days after the Close of Escrow.

12. Representations and Warranties.

12.1 Representations and Warranties of Seller. Seller hereby makes the representations and warranties set forth in Sections 12.1.1 through 12.1.8 below to Buyer (which

Buyer is relying upon), which representations are true in all material respects as of the date hereof and as of the Closing. Seller shall notify Buyer in writing immediately if Seller becomes aware that any representation or warranty has become untrue or misleading in light of information obtained by Seller after the Effective Date.

12.1.1 Due Authorization. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is registered to do business in and in good standing under the laws of the State of California. Seller has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. The execution of delivery of this Agreement by Buyer has been duly authorized.

12.1.2 Eminent Domain. To Seller's knowledge, there are no existing, proposed, threatened or contemplated eminent domain proceedings that would affect the Property in any way whatsoever, except for any Entitlement/Use Claims.

12.1.3 No Conflict. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Seller do not and will not violate any applicable law, ordinance, statute, rule, regulation, order, decree or judgment, conflict with or result in the breach of any terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the property or assets of Seller by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Seller is a part or which is or purports to be binding upon Seller or which otherwise affects Seller, which will not be discharged, assumed or released at the Close of Escrow.

12.1.4 Litigation. There is no litigation or administrative proceeding or investigation (whether for personal injury, property damage, landlord-tenant disputes, property taxes or otherwise) pending or, to the Seller's knowledge, threatened, that does or will affect Seller or the Property and which is not, or would not be, covered by insurance carried by Seller (provided that Buyer acknowledges and agrees that any Entitlement/Use Claims shall not cause this representation and warranty to be untrue).

12.1.5 Violations of Law. To Seller's knowledge, no notices of any uncured violation of governmental regulations, ordinances or laws relating to the Property as the same have been used by Seller and which would be reasonably expected to interfere with Buyer's intended use of the Property have been received by Seller or entered against Seller (provided that Buyer acknowledges and agrees that there might be minor violations currently existing at the Property, of which Seller does not have knowledge, that might be identified upon an inspection of the Property by the Governmental Authorities).

12.1.6 Bankruptcy. No attachments or execution proceedings and no assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against Seller or concerning all or part of the Property, nor are any of such proceedings contemplated by Seller, nor has Seller ever been a debtor under any case commenced under the United States Bankruptcy Code. Seller has not been insolvent for the last one hundred twenty (120) days preceding the Effective Date.

12.1.7 Foreign Person. Seller warrants that no individual or entity which, under the terms of this Agreement, will transfer United States Real Property Interests, as defined in Section 897(c) of the Internal Revenue Code, is a “foreign person” with the meaning of Section 1445(f) of the Internal Revenue Code. Seller agrees to execute and deliver through Escrow, prior to the Close of Escrow, any affidavit required by Buyer verifying the warranty specified in this paragraph.

12.1.8 Anti-Money Laundering and Anti-Terrorism Laws.

(a) None of Seller or, to Seller’s knowledge, its Affiliates, is in violation of any laws, ordinances, statutes, rules, regulations, decrees, judgments, executive orders or other orders relating to terrorism, money laundering or drug-trafficking, or predicate crimes to terrorism, money laundering or drug-trafficking, including, without limitation, the USA Patriot Act of 2001, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Action of 2001, Public Law 107-56 and Executive Order No. 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) (the “Executive Order”), all as amended from time to time (collectively, the “Anti-Money Laundering and Anti-Terrorism Laws”).

(b) None of Seller or, to Seller’s knowledge, its Affiliates, is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons or entities that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the Office of Foreign Assets Control of U.S. Department of Treasury, U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time.

(c) None of Seller or, to Seller’s knowledge, its Affiliates or, without inquiry, any of its brokers or other agents, in any capacity in connection with the sale of the Property (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists set forth in the preceding paragraph; (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws.

(d) Seller understands and acknowledges that Buyer may become subject to further anti-money laundering regulations, and agrees to execute instruments, provide information, or perform any other acts as may reasonably be requested by Buyer, for the purpose of: (A) carrying out due diligence as may be required by Anti-Money Laundering and Anti-Terrorism Laws in effect from time to time to establish Seller’s identity and source of funds; (B) maintaining records of such identities and sources of funds, or verifications or certifications as to the same; and (C) taking any other actions as may be required to comply with and remain in compliance with Anti-Money Laundering and Anti-Terrorism Laws applicable to Seller.



(e) Neither Seller, nor, to Seller's knowledge, any person controlling or controlled by Seller, is a country, territory, individual or entity named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, as updated from time to time, or any other list of terrorists or terrorist organizations maintained pursuant to the Executive Order or any other Anti-Money Laundering and Anti-Terrorism Laws (the "Government Lists"), and the monies used in connection with this Agreement and amounts committed with respect thereto, were not and are not derived from any activities that contravene any of the Anti-Money Laundering and Anti-Terrorism Laws (including funds being derived from any person, entity, country or territory on the Government Lists or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)).

12.1.9 Subsequent Changes. Upon Buyer becoming aware of any fact (whether in written notice from Seller or otherwise) which would materially and adversely change any of the representations or warranties contained in Sections 12.1.1 through 12.1.8 above, or elsewhere in this Agreement or in any Other Documents (as defined in Section 17.5 below) (collectively, "Seller's Representations"), Buyer, as its sole and exclusive remedy at law or in equity, shall have the option of (i) waiving the breach of warranty or change, and proceeding with the Close of Escrow, or (ii) terminating this Agreement with respect to any or all of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property, in which event the Deposits and any other funds deposited by Buyer into the Escrow with respect to each Property as to which this Agreement is terminated and all interest earned thereon shall be returned to Buyer, less the Independent Consideration and any amounts due to Escrow Holder from Buyer pursuant to this Agreement, so long as Buyer is not then in breach or default under this Agreement. Any such election shall be made by Buyer not later than three (3) business days from Buyer becoming aware of such fact. Notwithstanding the foregoing, if Buyer elects to proceed under clause (ii) above, Seller shall have the right, in its sole discretion, within three (3) business days following receipt of such election from Buyer, to elect by written notice to Buyer to cure such matter prior to Closing (and Seller shall have the right to delay the Closing for up to thirty (30) days to effectuate such cure). If Seller makes such foregoing election, then Buyer's original notice under clause (ii) above shall be deemed Buyer's election to not terminate this Agreement and proceed pursuant to clause (i) above. If Buyer does not timely elect to terminate this Agreement pursuant to this Section 12.1.9, then Buyer shall be deemed to have (a) irrevocably elected to waive its rights to terminate this Agreement pursuant to this Section 12.1.9, (b) elected to acquire the Property on the terms set forth in this Agreement, and (c) waived all remedies at law or in equity with respect to any representations or warranties resulting from the facts or circumstances disclosed by Seller in its notice to Buyer or of which Buyer becomes aware prior to Closing and Seller's Representations shall be deemed to have been modified by all such disclosures. Anything contained herein to the contrary notwithstanding, if (x) Buyer has knowledge of any inaccuracy in any of Seller's Representations contained herein or in any Other Documents, whether as a result of notice from Seller, Buyer's own investigations or inquiries or otherwise, or (y) any information contained in any material provided or made available to Buyer by Seller or received by Buyer from any third party (including without limitation any report provided to Buyer by any contractor or consultant engaged by Buyer in connection with Buyer's investigation of the Property) is in any way inconsistent with any of Seller's Representations, whether or not actually known to Buyer, and notwithstanding clause (x) and clause (y) Buyer nonetheless proceeds with the Closing of the

transactions contemplated hereby, then Seller's Representations shall be deemed qualified and amended or modified to the full extent of Buyer's knowledge and such inconsistent information, Buyer shall be deemed to have accepted and approved Seller's Representations as so qualified and amended or modified, and Buyer shall have no right or remedy, and Seller shall have no obligation or liability, on account thereof. In no event shall Seller be liable to Buyer for (except to the extent expressly elected by Seller pursuant to this Section 12.1.9, above), or be deemed to be in default under this Agreement by reason of, any breach of a representation or warranty if Buyer had knowledge thereof prior to Closing and Buyer nonetheless proceeds with the Closing. For the purposes of this Section, Buyer's knowledge shall mean Buyer's knowledge, as described in clause (x) in this Section above or Buyer's obtaining the inconsistent information described in clause (y) in this Section above.

12.1.10 Seller's Knowledge. Whenever phrases such as "to Seller's knowledge" or "Seller has no knowledge" or similar phrases are used in Seller's Representations or otherwise used in this Agreement (including, without limitation, in Section 4.2 above and Section 13.1.4 below) with regard to the "knowledge" of Seller, they will be deemed to refer exclusively to matters within the current actual (as opposed to constructive) knowledge of Seller's Regional Asset Manager Judith Bikulege ("Seller's Representative"). No duty of inquiry or investigation on the part of Seller or Seller's Representative will be required or implied by the making of any representation or warranty which is so limited to matters Seller's knowledge, and in no event shall Seller's Representative have any personal liability therefor.

12.2 Representations and Warranties of Buyer. Buyer hereby makes the representations and warranties set forth in this Section for the benefit of Seller and its successors and assigns. Buyer shall notify Seller in writing immediately if Buyer becomes aware that any representation or warranty has become untrue or misleading in light of information obtained by Buyer after the Effective Date.

12.2.1 Authority. Buyer is a public agency duly organized, validly existing and in good standing under the laws of the State. Buyer has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by Buyer has been duly authorized.

12.2.2 No Conflict. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Buyer do not and will not violate any applicable law, ordinance, statute, rule, regulation, order, decree or judgment, conflict with or result in the breach of any terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the property or assets of Buyer by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Buyer is a part or which is or purports to be binding upon Buyer or which otherwise affects Buyer, which will not be discharged, assumed or released at the Close of Escrow.

12.2.3 Litigation. There are no claims, actions, suits or proceeding continuing, pending or to Buyer's actual knowledge, threatened, which would materially adversely affect Buyer or this transaction.

12.2.4 Bankruptcy. No attachments or execution proceedings and no assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against Buyer, nor are any of such proceedings contemplated by Buyer, nor has Buyer ever been a debtor under any case commenced under the United States Bankruptcy Code. Buyer has not been insolvent for the last one hundred twenty (120) days preceding the Effective Date.

12.2.5 Anti-Money Laundering and Anti-Terrorism Laws.

(a) Neither Buyer nor, to Buyer's knowledge, any of its direct or indirect owners, principals, employees or Affiliates, is in violation of, has been charged with or is under indictment for the violation of, or has pled guilty to or been found guilty of the violation of, any Anti-Money Laundering and Anti-Terrorism Laws.

(b) None of Buyer or, to Buyer's knowledge, its direct or indirect owners, principals, employees or Affiliates, is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons or entities that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the Office of Foreign Assets Control of U.S. Department of Treasury, U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time.

(c) None of Buyer or, to Buyer's knowledge, its Affiliates or, without inquiry, any of its brokers or other agents, in any capacity in connection with the purchase of the Property (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists set forth in the preceding paragraph; (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws.

(d) Buyer understands and acknowledges that Seller may become subject to further anti-money laundering regulations, and agrees to execute instruments, provide information, or perform any other acts as may reasonably be requested by Seller, for the purpose of: (A) carrying out due diligence as may be required by Anti-Money Laundering and Anti-Terrorism Laws in effect from time to time to establish Buyer's identity and source of funds; (B) maintaining records of such identities and sources of funds, or verifications or certifications as to the same; and (C) taking any other actions as may be required to comply with and remain in compliance with Anti-Money Laundering and Anti-Terrorism Laws applicable to Buyer.

(e) Neither Buyer, nor any person controlling or controlled by Buyer, is a country, territory, individual or entity named on the Government Lists, and the monies used in connection with this Agreement and amounts committed with respect thereto, were not and are not derived from any activities that contravene any of the Anti-Money Laundering and Anti-Terrorism Laws (including funds being derived from any

person, entity, country or territory on the Government Lists or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)).

(f) Buyer is not engaging in the transactions contemplated hereunder, directly or indirectly, in violation of any Anti-Money Laundering and Anti-Terrorism Laws. None of the funds of Buyer have been or will be derived from any unlawful activity with the result that the investment of direct or indirect equity owners in Buyer is prohibited by Anti-Money Laundering and Anti-Terrorism Laws or that the transactions contemplated hereunder or this Agreement are or will be in violation of Anti-Money Laundering and Anti-Terrorism Laws.

(g) **Schedule 12.2.5(g)** is a complete list of Buyer's CEO or key person(s), Buyer's "knowledge" party(ies), the natural person(s) authorized to receive notice on behalf of Buyer identified in Section 16 below and Buyer's signatory to this Agreement. In addition, no natural person owns a twenty-five percent (25%) or greater interest in Buyer, directly or indirectly except as disclosed in **Schedule 12.2.5(g)**.

13. **AS-IS Sale.** Buyer acknowledges, by its initials as set forth below, that the provisions of this Section 13 have been required by Seller as a material inducement to enter into the contemplated transactions, and the intent and effect of such provisions have been explained to Buyer by Buyer's counsel and have been understood and agreed to by Buyer.

13.1 **Buyer's Acknowledgement.** As a material inducement to Seller to enter into this Agreement and to convey the Property to Buyer, Buyer hereby acknowledges and agrees as follows in Sections 13.1.1 through 13.1.7 below:

13.1.1 **AS-IS.** Except as otherwise expressly set forth in this Agreement, and subject to Seller's representation and warranties set forth in this Agreement, Buyer is purchasing the Property in its existing condition, "AS-IS, WHERE-IS, WITH ALL FAULTS," and upon the Closing Date has made or has waived all inspections and investigations of the Property and its vicinity which Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property.

Initials:

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

13.1.2 **No Representations.** Other than the express representations and warranties of Seller contained in Section 12.1 of this Agreement and the Other Documents, neither Seller, nor any of its Affiliates, predecessors, successors, partners, members and assigns, and their respective past, present and future partners, members, officers, directors, trustees, employees, agents, lenders, representatives, attorneys and all persons acting by, through, under or in concert with the foregoing, or any of them (Seller and all of said entities and individuals are collectively referred to herein as the "Seller Group") has made any representation, warranty, inducement, promise, agreement, assurance or statement, directly or indirectly, oral or written, of any kind to Buyer upon which Buyer has or is relying, or in connection with which Buyer has made or will make any decisions concerning the Property or its vicinity including, without limitation, its use, condition, value, compliance with Governmental Regulations (as defined below), the existence or

absence of Hazardous Substances (as defined below) in, on, under or about the Property, any relocation assistance issues (including if any relocation assistance is required to be paid to occupants or former occupants of the Real Property), or the permissibility, feasibility, or convertibility of all or any portion of the Property for any particular use or purpose, including, without limitation, its present or future prospects for sale, lease, development, occupancy or suitability as security for financing. As used in this Agreement, the following definitions shall apply: (i) the term “Governmental Regulations” means any laws (including Environmental Laws (as that term is defined below)), ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, Hazardous Substances, occupational health and safety, handicapped access, water, earthquake hazard reduction, and building and fire codes) of any governmental or quasi-governmental body or agency claiming jurisdiction over the Property, (ii) the term “Environmental Laws” shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, whether statutory or common law, as amended from time to time, and all federal and state court decisions, consent decrees and orders interpreting or enforcing any of the foregoing, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., and the Clean Water Act, 33 U.S.C. § 1251, et seq., and (iii) “Hazardous Substances” shall mean any substance or material that is or becomes described as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the Environmental Laws, and includes asbestos or asbestos containing material, petroleum (including, without limitation, flammable explosives, crude, oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum, petroleum-based products and petroleum additives and derived substances, lead-based paint, viruses, mold, fungi or bacterial matter, the group of compounds known as polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity.

Initials:

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Seller

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Buyer

13.1.3 No Implied Warranties. Excluding any representation or warranty set forth in this Agreement or in the Other Documents, Seller hereby specifically disclaims: (i) all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Property, or the performance of Seller’s obligations hereunder including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose; and (ii) any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (a) the nature and condition of the Property or other items conveyed hereunder, including, without limitation, the water, soil, and geology, the suitability thereof and of the Property or other items conveyed hereunder for development or for any and all other activities and uses which Buyer may elect to conduct thereon, the existence of any environmental hazards or conditions thereon (including but not limited to the presence of asbestos or other Hazardous Substances) or compliance with applicable Environmental Laws; (b) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license,

reservation, condition or otherwise; and (c) the compliance of the Property or other items conveyed hereunder or its operation with any Governmental Regulations.

Initials:

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Seller

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Buyer

13.1.4 Information Supplied by Seller. Seller hereby represents and warrants to the Buyer that, to Seller's knowledge, and with the understanding that same have generally been prepared by third parties, all Due Diligence Materials required to be delivered to Buyer are true, correct and complete in all material respects as of the dates set forth thereon. Buyer specifically acknowledges and agrees that, except as expressly contained in this Agreement and the Other Documents, the Seller Group has made no representation or warranty of any nature concerning the accuracy or completeness of any documents delivered or made available for inspection by Seller to Buyer, including, without limitation, the Due Diligence Materials and any other documents or materials distributed with respect to the Property, and that Buyer has undertaken such inspections of the Property as Buyer deems necessary and appropriate and that Buyer is relying solely upon such investigations. As to the Due Diligence Materials, Buyer specifically acknowledges that they have been prepared by third parties with whom Buyer has no privity.

Initials:

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Seller

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Buyer

13.1.5 Release. AS OF THE CLOSE OF ESCROW, BUYER, FOR ITSELF AND ON BEHALF OF THE BUYER PARTIES (AS DEFINED IN SECTION 17.5 BELOW) HEREBY FULLY AND IRREVOCABLY RELEASE AND FOREVER DISCHARGE THE SELLER GROUP OF AND FROM ANY AND ALL MANNER OF ACTION OR ACTIONS, CAUSE OR CAUSES OF ACTION, AT LAW OR IN EQUITY (INCLUDING, WITHOUT LIMITATION, IN TORT), SUITS, DEBTS, LIENS, CONTRACTS, AGREEMENTS, PROMISES, LIABILITIES, CLAIMS, DEMANDS, DAMAGES, LOSSES, CHARGES, COSTS OR EXPENSES, OF ANY NATURE WHATSOEVER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT (COLLECTIVELY, "CLAIMS") THAT THE BUYER PARTIES MAY HAVE OR HEREAFTER ACQUIRE AGAINST EACH AND ANY OF THE SELLER GROUP ARISING FROM OR RELATED TO IN ANY WAY THE PROPERTY, THE CONDITION OF THE PROPERTY, THIS AGREEMENT, THE OTHER DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING, WITHOUT LIMITATION, ANY LATENT OR PATENT CONSTRUCTION DEFECTS, ERRORS OR OMISSIONS, ANY RELOCATION ASSISTANCE ISSUES (INCLUDING IF ANY RELOCATION ASSISTANCE IS REQUIRED TO BE PAID TO OCCUPANTS OR FORMER OCCUPANTS OF THE REAL PROPERTY), COMPLIANCE WITH LAW MATTERS, THE PRESENCE, DISCOVERY OR REMOVAL OF HAZARDOUS SUBSTANCES AND OTHER ENVIRONMENTAL MATTERS WITHIN, UNDER OR UPON, OR IN THE VICINITY OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS. THE FOREGOING RELEASE BY BUYER AND THE BUYER PARTIES SHALL INCLUDE, WITHOUT LIMITATION, ANY CLAIMS BUYER AND/OR THE BUYER PARTIES MAY HAVE PURSUANT TO ANY STATUTORY OR COMMON LAW RIGHT BUYER MAY HAVE TO RECEIVE DISCLOSURES FROM SELLER, INCLUDING,

WITHOUT LIMITATION, ANY DISCLOSURES AS TO THE PROPERTY'S LOCATION WITHIN AREAS DESIGNATED AS SUBJECT TO FLOODING, FIRE, SEISMIC OR EARTHQUAKE RISKS BY ANY FEDERAL, STATE OR LOCAL ENTITY, THE PRESENCE OF HAZARDOUS SUBSTANCES ON OR BENEATH THE PROPERTY, THE NEED TO OBTAIN FLOOD INSURANCE, THE CERTIFICATION OF WATER HEATER BRACING AND/OR THE ADVISABILITY OF OBTAINING TITLE INSURANCE, OR ANY OTHER CONDITION OR CIRCUMSTANCE AFFECTING THE PROPERTY, ITS FINANCIAL VIABILITY, USE OR OPERATION, OR ANY PORTION THEREOF. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, ANY RIGHT WAIVED BY BUYER AND ANY RELEASE BY BUYER, SHALL ONLY RELEASE OR WAIVE BUYER'S RIGHTS TO PURSUE OR ENFORCE ANY CLAIM, DEMAND OR JUDGMENT PERSONALLY AGAINST THE SELLER GROUP OR ANY OF THEM. BUYER IS NOT WAIVING ANY RIGHT TO BRING ANY ACTION AGAINST ANY OF THE NON-RELEASED PARTIES (AS DEFINED BELOW) OR WAIVING RECOVERY AGAINST OR OTHERWISE RELEASING OR AGREEING TO FOREGO BUYER'S RIGHTS WITH RESPECT TO ANY INSURANCE POLICY, OR ANY OTHER PERSON (OTHER THAN THE RIGHT TO ENFORCE A JUDGMENT PERSONALLY AGAINST ANY OF THE SELLER GROUP), INCLUDING WITHOUT LIMITATION PERSONS OBLIGATED TO THE SELLER GROUP, BY RIGHT OF SUBROGATION OR OTHERWISE, PRIOR OWNERS OR OCCUPANTS OF THE REAL PROPERTY, THE TENANTS, PERSONS PERFORMING WORK AT THE PROPERTY AND/OR ANY INSURANCE POLICIES HELD BY ANY OR ALL SUCH PERSONS (COLLECTIVELY, THE "NON-RELEASED PARTIES"); PROVIDED, HOWEVER, BUYER UNDERSTANDS AND AGREES THAT SELLER HERETOFORE MAY HAVE RELEASED AND/OR WAIVED SELLER'S RIGHTS TO PURSUE OR ENFORCE ANY CLAIM, DEMAND OR JUDGMENT AGAINST THE NON-RELEASED PARTIES OR ANY OF THEM, INCLUDING, WITHOUT LIMITATION, WAIVING SELLER'S RIGHTS TO BRING ACTIONS AGAINST THE NON-RELEASED PARTIES OR ANY OF THEM OR WAIVING RECOVER AGAINST OR OTHERWISE RELEASING OR AGREEING TO FOREGO SELLER'S RIGHTS WITH RESPECT TO ANY INSURANCE POLICY OR THE NON-RELEASED PARTIES OR ANY OF THEM, AND NO SUCH WAIVER OR RELEASE BY SELLER SHALL IN ANY WAY OPERATE, OR BE CONSTRUED, TO INCREASE SELLER'S OBLIGATIONS UNDER THIS AGREEMENT OR TO INCREASE THE LIABILITY OF THE SELLER GROUP OR ANY OF THEM UNDER THIS AGREEMENT. THIS RELEASE INCLUDES CLAIMS OF WHICH BUYER IS PRESENTLY UNAWARE OR WHICH BUYER DOES NOT PRESENTLY SUSPECT TO EXIST IN ITS FAVOR WHICH, IF KNOWN BY BUYER, WOULD MATERIALLY AFFECT BUYER'S RELEASE OF THE SELLER GROUP. IN CONNECTION WITH THE GENERAL RELEASE SET FORTH IN THIS SECTION 13.1.5, BUYER SPECIFICALLY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES 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.”

Initials:

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Seller

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Buyer

Notwithstanding anything to the contrary set forth in this Section 13.1.5, the foregoing release is not intended to and does not cover (i) any claims arising from a breach of Seller's representations or warranties set forth in Section 12.1 of this Agreement, (ii) any other breach by Seller of an express obligation of Seller under this Agreement which by its terms survives the Close of Escrow, or (iii) any liability of Seller for fraud.

13.1.6 California Natural Hazard Disclosure. Buyer acknowledges that any seller owning property located in the State of California is required to disclose if such property lies within the following natural hazardous areas or zones: (i) a special flood hazard area (any type Zone “A” or “V”) designated by the Federal Emergency Management Agency (Cal. Gov. Code Section 8589.3); (ii) an area of potential flooding shown on a dam failure inundation map designated pursuant to Cal. Gov. Code Section 8589.5 (Cal. Gov. Code Section 8589.4); (iii) a very high fire hazard severity zone designated pursuant to Cal. Gov. Code Section 51178 or 51179 (in which event the owner maintenance obligations of Cal. Gov. Code Section 51182 would apply) (Cal. Gov. Code Section 51183.5); (iv) a wildland area that may contain substantial forest fire risks and hazards designated pursuant to Cal. Pub. Resources Code Section 4125 (in which event (a) such seller would be subject to maintenance requirements of Cal. Pub. Resources Code Section 4291 and (b) it would not be the State of California's responsibility to provide fire protection services to any building or structure located within the wildland area except, if applicable, pursuant to Cal. Pub. Resources Code Section 4129 or pursuant to a cooperative agreement with a local agency for those purposes pursuant to Cal. Pub. Resources Code Section 4142) (Cal. Pub. Resources Code Section 4136); (v) an earthquake fault zone (Cal. Pub. Resources Code Section 2621.9); or (vi) a seismic hazard zone (and, if applicable, whether a landslide zone or liquefaction zone) (Cal. Pub. Resources Code Section 2694). Buyer acknowledges that Seller will employ the services of Title Company or an Affiliate thereof or another reputable vendor (“Natural Hazard Expert”) to examine the maps and other information specifically made available to the public by government agencies and to report the results of its examination to Buyer in writing. The written report prepared by the Natural Hazard Expert regarding the results of its examination fully and completely discharges such Seller from its disclosure obligations under California Civil Code Section 1103, and, for the purpose of this Agreement, the provisions of Civil Code Section 1103.4 regarding the non-liability of Seller for errors and/or omissions not within its personal knowledge shall be deemed to apply. Buyer acknowledges and agrees that Buyer will independently evaluate and investigate whether any or all of such natural hazards affect the applicable Property, and Seller shall have no liabilities or obligations with respect thereto. Prior to the expiration of the Due Diligence Period, Buyer shall execute and deliver to Seller an acknowledgement of receipt of the Natural Hazard Disclosure Statement. Buyer acknowledges and agrees that the matters set forth in the Natural Hazard Disclosure Statement may change on or following the Closing Date for such Property and that Seller has no obligation to update, modify, or supplement the Natural Hazard Disclosure Statement following such Closing Date. Buyer shall be solely responsible for preparing and delivering its own Natural Hazard Disclosure Statement to subsequent prospective buyers of the Property, to the extent required. BUYER ACKNOWLEDGES AND REPRESENTS THAT

IT HAS EXTENSIVE EXPERIENCE ACQUIRING AND CONDUCTING DUE DILIGENCE REGARDING COMMERCIAL PROPERTIES. THIS PROVISION IS AN ESSENTIAL ASPECT OF THE BARGAIN BETWEEN THE PARTIES.

13.1.7 California Health and Safety Code Section 25359.7. Buyer acknowledges and agrees that the sole inquiry and investigation Seller conducted in connection with the environmental condition of the Property is to obtain the environmental report(s) which are part of the Due Diligence Materials and that, for purposes of California Health and Safety Code Section 25359.7, Seller has acted reasonably in relying upon said inquiry and investigation, and the delivery of this Agreement constitutes written notice to Buyer under such code section.

13.2 Survival. This Section 13 shall survive any termination of this Agreement and the Closing.

14. Further Assurances. Seller will, whenever and as often as it shall be reasonably requested by Buyer and at no cost to Seller, and Buyer will, whenever and as often as it shall be reasonably requested by Seller and at no cost to Buyer, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary, expedient or proper in order to carry out the intent and purpose of this Agreement.

15. Risk of Loss.

15.1 Condemnation and Casualty. If, after the Effective Date but on or before the Closing, any Real Property (including the Hotel thereon) or any portion thereof shall be (i) damaged or destroyed by fire or other casualty or (ii) taken as a result of any condemnation or eminent domain proceeding, Seller shall promptly notify Buyer and, subject to the terms of Section 15.2 below (if such casualty or condemnation constitutes a Material Casualty or Material Condemnation, as applicable), Seller will credit against the Purchase Price payable by Buyer at the Closing an amount equal to the net proceeds (other than on account of business or rental interruption relating to the period prior to Closing), if any, received by Seller as a result of such casualty or condemnation, plus the amount of any deductible payable by Buyer, less any amounts spent by Seller to restore such Real Property (including the Hotel thereon). Subject to Section 15.4 below, if as of the Closing, Seller has not received any such insurance or condemnation proceeds, then the parties shall nevertheless consummate the conveyance of the Property (without any credit for such insurance or condemnation proceeds except for a credit for any deductible payable by Buyer under such insurance) and Seller will at the Closing assign to Buyer all rights of Seller, if any, to the insurance or condemnation proceeds (other than on account of business or rental interruption relating to the period prior to Closing) and to all other rights or claims arising out of or in connection with such casualty or condemnation.

15.2 Right of Termination. Notwithstanding the provisions of Section 15.1 above, if, on or before the Closing, any of the Murphy Canyon Real Property, the Hotel Circle Real Property and/or the Mission Valley Real Property (in each instance including the Hotel thereon) or any portion thereof shall be (i) damaged or destroyed by a Material Casualty or (ii) taken as a result of a Material Condemnation, Buyer shall have the right, exercised by notice to Seller no more than five (5) business days after Buyer has received notice of such Material

Casualty or Material Condemnation, to terminate this Agreement with respect to each Property that has been affected by such Material Casualty or Material Condemnation, in which event the Deposit with respect to such Property as to which this Agreement is terminated shall be refunded to Buyer, less the Independent Consideration and any amounts due to Escrow Holder from Buyer pursuant to this Agreement, and neither party shall have any further rights or obligations hereunder with respect to such Property as to which this Agreement is terminated other than those which expressly survive the termination of this Agreement. If Buyer fails to timely terminate this Agreement in accordance with this Section 15.2, the provisions of Section 15.1 above shall apply. As used in this Section 15.2, a “Material Casualty” shall mean any damage to a particular Real Property (including the Hotel thereon) or any portion thereof by fire or other casualty that in Seller’s reasonable judgment may be expected to cost in excess of five percent (5%) of the Purchase Price for such applicable Real Property to repair. As used in this Section 15.2, a “Material Condemnation” shall mean a taking of a particular Real Property (including the Hotel thereon) or any material portion thereof as a result of a condemnation or eminent domain proceedings that permanently impairs the use and value of such Real Property (including the Hotel thereon), and which cannot be restored to substantially the same use and value as before the taking.

15.3 Seller Risk of Loss. Subject to the provisions of this Section 15, the risk of physical loss or damage to the Real Property (including the Hotels thereon) shall remain with Seller until delivery of the Grant Deeds and disbursement of the Purchase Price from Escrow. Notwithstanding anything to the contrary set forth in this Agreement, it is acknowledged and agreed that the transactions contemplated by this Agreement, and the respective obligations of Buyer and Seller set forth in this Agreement, are not conditioned or contingent upon Seller maintaining pre-Closing performance levels of the Hotels, including, without limitation, the financial or operational condition of the Hotels or the satisfaction of any financial or operational projections, and any related post-Closing risk of loss shall be borne solely by Buyer.

15.4 Extension of Closing. In the event any Real Property (including the Hotel thereon) or any portion thereof shall be (i) damaged or destroyed by fire or other casualty or (ii) taken as a result of any condemnation or eminent domain proceeding, within, in each case, five (5) business days prior to the Closing Date, at Seller’s option, the Closing Date shall be extended by five (5) business days.

15.5 Insurance Proceeds. Buyer and Seller hereby agree that, except as otherwise expressly provided in this Section 15, any insurance claims, insurance proceeds or other recoveries payable in connection with a casualty occurring prior to the Closing shall be retained by or paid to Seller, and are not part of the Property to be transferred to Buyer and Seller may take any action it deems desirable or necessary to collect same. If any such proceeds or recoveries are received by Buyer, Buyer shall promptly deliver the same to Seller. The provisions of this Section 15.5 shall survive the Closing without limitation.

16. Notices. Any notice, request, demand, instruction or other document (each of which is herein called a “Notice”) to be given hereunder to any Party shall be in writing and shall be delivered to the person at the appropriate address set forth below by personal service (including by means of professional messenger, express or courier service), or by nationally recognized overnight courier service, or by email (provided any such email notice shall state in the subject

line in all capital letters: “**OFFICIAL NOTICE SENT UNDER SECTION 16 OF THE SAN DIEGO PORTFOLIO PURCHASE AND SALE AGREEMENT**”).

If to Seller, to: ESA P Portfolio L.L.C.  
11525 North Community House Road, Suite 100  
Charlotte, NC 28277  
Attention: General Counsel  
Attention: Judith Bikulege  
Telephone: (980) 345-1761  
E-Mail: abrockington@extendedstay.com,  
cdekle@extendedstay.com, and  
jbikulege@extendedstay.com  
(prior to April 24, 2023)

or

ESA P Portfolio L.L.C.  
13024 Ballantyne Corporate Place, Suite 1000  
Charlotte, NC 28277  
Attention: General Counsel  
Attention: Judith Bikulege  
Telephone: (980) 345-1761  
E-Mail: abrockington@extendedstay.com,  
cdekle@extendedstay.com, and  
jbikulege@extendedstay.com  
(on or after April 24, 2023)

In either instance with a copy to: Allen Matkins Leck Gamble Mallory & Natsis LLP  
Three Embarcadero Center, 12<sup>th</sup> Floor  
San Francisco, CA 94111-4074  
Attention: Lee A. Edlund, Esq.  
Telephone: (415) 273-7436  
E-Mail: ledlund@allenmatkins.com

If to Buyer, to: San Diego Housing Commission  
1122 Broadway  
San Diego, CA 92101  
Attention: Robert G. Bohrer  
Telephone: 619-578-7524  
E-Mail: buddyb@sdhc.org

With a copy to: Christensen & Spath LLP  
401 West A Street, Suite 2250  
San Diego, CA 92101  
Attention: Walter F. Spath III, Esq.  
Telephone: 619-255-6587  
E-Mail: wfs@candslaw.net

If to Escrow Holder: Chicago Title Company  
2365 Northside Drive  
San Diego, CA 92108  
Attention: Renee Marshall  
E-Mail: marshallr@ctt.com

A copy of any Notice given by Buyer or Seller to the other prior to the Close of Escrow shall also be given to Escrow Holder as above provided. Notices so submitted shall be deemed to have been given (i) on the date actually delivered to the recipient, (ii) on the date delivery is refused by the recipient, or (iii) on the date delivery is first attempted but cannot be made due to a change in address for which no Notice was provided; provided, however, that Notices delivered by email shall be deemed received upon the day of delivery if sent on a business day prior to 5:00 p.m. California time, and otherwise on the next business day. The addresses and addressees, for the purpose of this Section, may be changed by giving written notice of such change in the manner herein provided for giving Notice. Unless and until such written Notice of change is received, the last address and addressee stated by written Notice, or provided herein if no such written Notice of change has been received, shall be deemed to continue in effect for all purposes hereunder. Buyer and Seller hereby agree that Notices may be given hereunder by the Parties' respective counsel and that, if any communication is to be given hereunder by Buyer's or Seller's counsel, such counsel may communicate directly with all principals as required to comply with the provisions of this Section.

17. Default and Remedies.

17.1 Buyer Default; Liquidated Damages. BUYER AND SELLER ACKNOWLEDGE AND AGREE THAT, WITH THE FLUCTUATION IN LAND VALUES, THE UNPREDICTABLE STATE OF THE ECONOMY AND OF GOVERNMENT REGULATIONS, THE FLUCTUATING MONEY MARKET FOR REAL ESTATE LOANS OF ALL TYPES, AND OTHER FACTORS THAT DIRECTLY AFFECT THE VALUE AND MARKETABILITY OF THE PROPERTY, IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN WITH ANY DEGREE OF CERTAINTY THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY SELLER IN THE EVENT OF THE FAILURE OF THE TRANSACTION WHICH IS THE SUBJECT OF THIS AGREEMENT TO CLOSE ESCROW AS A RESULT OF BUYER'S DEFAULT IN ITS OBLIGATION UNDER THIS AGREEMENT TO PURCHASE THE MURPHY CANYON PROPERTY, THE HOTEL CIRCLE PROPERTY AND/OR THE MISSION VALLEY PROPERTY. THE PARTIES HEREBY AGREE THAT THE REASONABLE ESTIMATE OF SAID DAMAGES IS THE AMOUNT OF THE DEPOSITS ACTUALLY MADE BY BUYER (AT THE TIME OF BUYER'S DEFAULT) WITH RESPECT TO THE PROPERTY THAT BUYER SO FAILS TO PURCHASE, AND IN THE EVENT THAT BUYER DEFAULTS IN ITS OBLIGATION UNDER THIS AGREEMENT TO PURCHASE THE MURPHY CANYON PROPERTY, THE HOTEL CIRCLE PROPERTY AND/OR THE MISSION VALLEY PROPERTY, AND THE CLOSE OF ESCROW WITH RESPECT TO SUCH PROPERTY FAILS TO OCCUR AS A RESULT OF SUCH BUYER DEFAULT, SELLER SHALL, AS ITS SOLE AND EXCLUSIVE REMEDY, BE ENTITLED TO SUCH DEPOSITS ACTUALLY MADE BY BUYER (AT THE TIME OF BUYER'S DEFAULT) WITH RESPECT TO THE PROPERTY THAT BUYER SO

FAILS TO PURCHASE AS LIQUIDATED DAMAGES. THE AMOUNT OF THE DEPOSITS ACTUALLY MADE BY BUYER (AT THE TIME OF BUYER'S DEFAULT) HAS BEEN DETERMINED WITH REFERENCE BY THE PARTIES TO THE ABOVE CONSIDERATIONS IN ESTABLISHING A REASONABLE SUM AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER EXPRESSLY WAIVES THE REMEDY OF SPECIFIC PERFORMANCE WITH RESPECT TO ANY BREACH OR DEFAULT BY BUYER UNDER THIS AGREEMENT TO PURCHASE THE MURPHY CANYON PROPERTY, THE HOTEL CIRCLE PROPERTY AND/OR THE MISSION VALLEY PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY RIGHTS IT MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 17 (INCLUDING, WITHOUT LIMITATION, SECTION 17.4 BELOW), SELLER DOES HEREBY WAIVE ANY RIGHT TO PURSUE ANY OTHER REMEDY, AT LAW, OR IN EQUITY, FOR BUYER'S DEFAULT IN ITS OBLIGATION UNDER THIS AGREEMENT TO PURCHASE THE MURPHY CANYON PROPERTY, THE HOTEL CIRCLE PROPERTY AND/OR THE MISSION VALLEY PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY RIGHT TO SEEK, CLAIM OR OBTAIN ANY PUNITIVE, CONSEQUENTIAL OR SPECULATIVE DAMAGES.

Initials:

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Seller

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Buyer

**17.2 Seller Default.** In the event of any material default by Seller under this Agreement with respect to the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property, Buyer may, at its option and as its exclusive remedy, either (i) subject to the terms of Section 12.1.9 above, terminate this Agreement with respect to each Property to which Seller's material default relates by giving written notice of termination thereof to Seller and Escrow Holder whereupon (x) the Deposit with respect to each Property as to which Buyer so terminates this Agreement shall be immediately refunded by Escrow Holder to Buyer, (y) Seller shall reimburse Buyer for its actual out-of-pocket third-party costs incurred in connection with this Agreement with respect to each Property as to which Buyer so terminates this Agreement within thirty (30) days after Seller's receipt from Buyer of reasonably detailed invoices or receipts (provided that in no event shall Seller's reimbursement obligation pursuant to this Section 17.2 exceed One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) per Property as to which Buyer so terminates this Agreement), and (z) Buyer's obligation to purchase, and Seller's obligation to sell, the Property shall terminate, and neither Party shall have any further obligation to the other, except as otherwise provided in this Agreement, or (ii) Buyer may seek specific performance of this Agreement. Buyer shall be deemed to have elected to terminate this Agreement pursuant to clause (i) above if Buyer fails to file suit for specific performance against Seller in a court having jurisdiction in the County and State in which the Property is located, on or before forty-five (45) days following the date upon which the Closing was to have occurred. Except as specifically set forth in this Section 17.2, Buyer does hereby specifically waive any right to pursue any other remedy at law or equity for such default of Seller, including, without limitation, any right to seek, claim or obtain damages, punitive damages or consequential damages.

17.3 Waivers. AS A MATERIAL CONSIDERATION FOR SELLER ENTERING INTO THIS AGREEMENT, BUYER EXPRESSLY WAIVES FOR ANY DEFAULT BY SELLER (i) ANY RIGHT UNDER CALIFORNIA CODE OF CIVIL PROCEDURE, PART 2, TITLE 4.5, SECTION 405 THROUGH 405.61 OR ANY OTHER SIMILAR STATE OR FEDERAL STATUTE, OR AT COMMON LAW OR OTHERWISE TO RECORD OR FILE A LIS PENDENS OR A NOTICE OF PENDENCY OF ACTION OR SIMILAR NOTICE AGAINST ALL OR ANY PORTION OF THE PROPERTY UNLESS AND UNTIL BUYER HAS ELECTED TO SEEK SPECIFIC PERFORMANCE OF THIS AGREEMENT AND HAS FILED AN ACTION SEEKING SUCH REMEDY, (ii) ANY RIGHT TO SEEK DAMAGES IN THE EVENT OF SELLER'S DEFAULT HEREUNDER, EXCEPT AS OTHERWISE SET FORTH IN SECTION 17.2 ABOVE, AND (iii) ANY RIGHT TO BRING ANY ACTION THAT WOULD IN ANY WAY AFFECT TITLE TO OR RIGHT OF POSSESSION OF ALL OR ANY PORTION OF THE PROPERTY, EXCEPT FOR BUYER'S RIGHT TO SEEK SPECIFIC PERFORMANCE OF THIS AGREEMENT PURSUANT TO SECTION 17.2 ABOVE. BUYER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389 AND ANY SIMILAR STATE OR FEDERAL STATUTE. BUYER ACKNOWLEDGES AND AGREES THAT PRIOR TO THE CLOSING, BUYER SHALL NOT HAVE ANY RIGHT, TITLE OR INTEREST IN AND TO THE PROPERTY OR ANY PORTION THEREOF UNLESS AND UNTIL BUYER HAS ELECTED TO SEEK SPECIFIC PERFORMANCE OF THIS AGREEMENT AND HAS FILED AN ACTION SEEKING SUCH REMEDY. BUYER HEREBY EVIDENCES ITS SPECIFIC AGREEMENT TO THE TERMS OF THIS WAIVER BY PLACING ITS SIGNATURE OR INITIALS IN THE SPACE PROVIDED HEREINAFTER.

Initials:

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Seller

\_\_\_\_\_  
Buyer

17.4 Indemnities; Defaults After Closing or Termination. The limitations on the parties' remedies set forth in Sections 17.1 and 17.2, above, will not be deemed to prohibit either party from (i) specifically seeking indemnification from the other for any matter with respect to which such other party has agreed hereunder to provide indemnification or from seeking damages from such other party in the event such other party fails or refuses to provide such indemnification; (ii) subject to the terms, conditions and limitations of this Agreement, seeking damages incurred during the period of time after Closing that a representation or warranty given as of the Closing Date by the other party hereunder survives Closing, for the other party's breach of such representation or warranty discovered after such Closing; or (iii) subject to the terms, conditions and limitations of this Agreement seeking damages or such equitable relief as may be available for the other party's failure to perform after any termination of this Agreement any obligation hereunder which expressly survives such termination; provided, however, that, as contemplated in Sections 17.1 and 17.2 above, in no event whatsoever will either party be entitled to recover from the other any punitive, consequential or speculative damages under or in connection with this Agreement. This Section 17.4 shall survive any termination of this Agreement and the Closing.

Initials:

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

17.5 Limited Liability. Notwithstanding anything to the contrary herein, Buyer on its own behalf and on behalf of its Affiliates, and on behalf of its and its Affiliates' respective agents, members, partners, employees, officers, directors, representatives, successors and assigns (collectively, the "Buyer Parties") hereby agrees that in no event or circumstance shall any of the members, partners, employees, representatives, officers, directors or agents of Seller, of any Affiliate of Seller or of Seller's property management company, have any personal liability under this Agreement. Seller on its own behalf and on behalf of its Affiliates, and on behalf of its and its Affiliates' respective agents, members, partners, employees, officers, directors, representatives, successors and assigns hereby agrees that in no event or circumstance shall any of the Buyer Parties have any personal liability under this Agreement. Notwithstanding anything to the contrary contained herein: (i) the maximum aggregate liability of Seller, and the maximum aggregate amount which may be awarded to and collected by Buyer (including, without limitation, for any breach of any representation, warranty, indemnity and/or covenant of Seller) under this Agreement and any documents executed pursuant hereto or in connection herewith, including, without limitation, the Exhibits attached hereto (collectively, the "Other Documents") shall, under no circumstances whatsoever, exceed, in the aggregate, one and one-half percent (1.5%) of the Purchase Price (which shall be calculated separately for each of the Murphy Canyon Property, the Hotel Circle Property and/or the Mission Valley Property such that the maximum aggregate liability with respect to any particular Property shall not exceed, in the aggregate, one and one-half percent (1.5%) of the Purchase Price for such particular Property) (the "Cap Amount"); and (ii) no claim by Buyer alleging a breach by Seller of any representation, warranty and/or covenant of Seller contained herein or in any of the Other Documents may be made, and Seller shall not be liable for any judgment in any action based upon any such claim, unless and until such claim, either alone or together with any other claims by Buyer alleging a breach by Seller of any such representation, warranty and/or covenant, is for an aggregate amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) (the "Floor Amount"), in which event Seller's liability respecting any final judgment concerning such claim or claims shall be for the entire amount thereof, subject to the Cap Amount set forth in clause (i) above; provided, however, that if any such final judgment is for an amount that is less than or equal to the Floor Amount, then Seller shall have no liability with respect thereto. Notwithstanding anything to the contrary set forth herein, Seller is not released from any liability to Buyer for fraud and the Cap Amount shall not apply to the same. Buyer agrees to first seek recovery under any insurance policies, title policies and other applicable agreements prior to seeking recovery from Seller, and Seller shall not be liable to Buyer to the extent Buyer's claim is actually satisfied from such insurance policies, title policies or other applicable agreements, if any. Notwithstanding any provision of this Agreement to the contrary, in no event shall Seller be liable to Buyer for punitive, consequential or speculative damages with respect to Seller's obligations under this Agreement, the Other Documents or otherwise with respect to the Property. This Section 17.5 shall survive any termination of this Agreement and the Closing.

Initials:

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

## 18. Miscellaneous Provisions.

18.1 No Waiver. The waiver by one Party of the performance of any covenant, condition or promise shall not invalidate this Agreement nor shall it be considered a waiver by



such Party of any other covenant, condition or promise hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or identical act required to be performed at a later time. The exercise of any remedy provided by law and the provisions of this Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

18.2 Construction. As used in this Agreement, the masculine, feminine or neuter gender and the singular or plural numbers shall each be deemed to include the other whenever the context indicates. This Agreement shall be construed as a whole and in accordance with its fair meaning, the captions being for convenience only and not intended to fully describe or define the provisions in the portions of the Agreement to which they pertain. Each Party hereto, and counsel for each Party hereto, has reviewed and revised this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation or construction of this Agreement. This document shall, in all respects, be governed by the laws of the State applicable to agreements executed and to be wholly performed within the State. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the Parties have no legal right to contract, the latter shall prevail but the provision of this document that is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

18.3 Merger/Integration. This Agreement and the Exhibits attached hereto supersede any prior agreement, oral or written, and contain the entire agreement between the Parties on the subject matter hereof. This Agreement (including the Exhibits attached hereto) is intended to be a final expression of the agreement of the Parties. No subsequent agreement, representation or promise made by either Party hereto, or by or to any employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby. There are no contemporaneous separate written or oral agreements between the Parties in any way related to the subject matter of this Agreement.

18.4 Counterparts. This Agreement and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the original or the same counterpart. The Parties may also deliver executed copies of this Agreement to each other by facsimile or electronic mail, which facsimile or electronic mail signatures shall be binding. Any facsimile or electronic mail delivery of signatures shall be followed by the delivery of executed originals.

18.5 Survival. All covenants, agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement, the Close of Escrow, the recording of the Grant Deeds conveying the Property to Buyer and all deliveries contemplated herein for a period of nine (9) months after the Close of Escrow (the "Survival Period"). No claim for a breach of any representation or warranty of Seller will be actionable or payable if (i) Buyer does not notify Seller in writing of such breach and commence a legal action thereon within said nine (9) month period, or (ii) the breach in question results from or is based on a condition, state of facts or other matter which was actually known to Buyer prior to Closing.

18.6 Computation of Periods. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and State or National holidays, unless the period of time specifies “business days”, in which case such period of time shall exclude Saturdays, Sundays and State and National holidays; provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or State or National holiday, such act or notice may be timely performed or given on the next succeeding day that is not a Saturday, Sunday or State or National holiday and the time period in question shall be deemed to have expired on such next succeeding day that is not a Saturday, Sunday or State or National holiday such that any additional computations of time based on the expiration of such period shall be based on such extended date. For purposes of this Agreement, the phrase “State and National holiday” shall refer to any day in which the Escrow Holder, Title Company and/or the Office of the County Recorder for the County is/are closed for business.

18.7 Successors and Assigns; No Third-Party Beneficiaries. The stipulations, terms, covenants and agreements set forth in this Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective permitted successors and assigns (including any successor entity after a public offering of stock, merger, consolidation, purchase or other similar transaction involving a party hereto) and nothing herein expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such assigns, any legal or equitable rights hereunder.

18.8 Assignment. This Agreement may not be assigned by Buyer without the prior written consent of Seller. Notwithstanding the foregoing sentence, Buyer may assign this Agreement once to an Affiliate of Buyer without the written consent of Seller provided that (i) at least five (5) days prior to Closing, Buyer provides Seller with a fully executed and enforceable assignment of this Agreement which includes a statement that all representations and warranties of the Buyer outlined in Section 12.2 are true of such Affiliate of Buyer taking assignment of this Agreement, and (ii) Buyer will continue to remain liable under this Agreement notwithstanding any such assignment. In the event Buyer assigns its rights under this Agreement, Buyer shall be solely responsible for any realty transfer taxes assessed as a result thereof, and shall pay such additional taxes at settlement and recording of the Grant Deeds. Seller shall have no liability for any realty transfer taxes, interest and penalties assessed based on any consideration greater than the Purchase Price set forth herein, and Buyer shall indemnify, defend and hold Seller harmless from any costs, liability or expense incurred by Seller in connection with an assignment of this Agreement by Buyer, including, without limitation, any transfer taxes and legal fees incurred by Seller in connection therewith.

18.9 No Obligation to Third Parties. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate either of the Parties hereto, to any person or entity other than each other.

18.10 Legal Fees. If either Buyer or Seller brings any action, arbitration or suit against the other for any matter relating to or arising out of this Agreement, then the prevailing Party in such action or dispute, whether by final judgment or settlement, shall be entitled to recover from the other Party all costs and expenses of suit, including actual attorneys’ fees and expert witness fees. Any judgment or order entered in any final judgment shall contain a specific

provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees incurred in enforcing, perfecting and executing such judgment.

18.11 Broker. Buyer represents and warrants that Marcus and Millichap ("M&M") made Buyer aware of Seller's willingness to consider a sale of the Property. Seller represents and warrants that it has engaged only CBRE, Inc. ("Seller's Broker") to represent its interests in connection with this transaction. If and only if the Close of Escrow occurs, then Buyer shall pay a Finder's Fee to M&M pursuant to a separate written agreement between the Buyer and M&M, and Seller shall pay a brokerage commission to Seller's Broker pursuant to a separate written agreement between Seller and Seller's Broker. The total amount of the fees paid by Seller to Seller's Broker shall not exceed the amount set forth in Section 1 of Contract Attachment 3 to San Diego Housing Commission Contract No. RED-21-34, approved by the Housing Commission board on November 12, 2021. Each Party agrees to indemnify and hold the other harmless from and against all liabilities, costs, damages and expenses, including, without limitation, reasonable attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay any broker's commission and/or finder's fee.

18.12 Confidentiality. Buyer and Seller, and each of their respective Affiliates shall hold as confidential all information disclosed or obtained in connection with the transactions contemplated hereby and concerning each other, the Property, this Agreement and the transactions contemplated hereby and shall not release any such information to third parties without the prior written consent of the other parties hereto, except (i) any information which was previously or is hereafter publicly disclosed (other than in violation of this Agreement or other confidentiality agreements with Seller or its Affiliates to which Buyer or Affiliates of Buyer are parties), (ii) to their partners, advisers, underwriters, analysts, employees, Affiliates, officers, directors, consultants, lenders, accountants, legal counsel, title companies or other advisors of any of the foregoing, provided that they are advised as to the confidential nature of such information and are instructed to maintain such confidentiality and (iii) to comply with any law, rule or regulation (including without limitation those of the United States Securities and Exchange Commission). Notwithstanding anything to the contrary set forth herein, Seller acknowledges that Buyer is a public agency and is bound by the terms of the California Public Records Act (Government Code Section 6250, et seq.). Nothing set forth in this Agreement shall impose liability on Buyer with respect to any disclosures required by any applicable laws or otherwise be interpreted to require Buyer to violate the terms of any applicable law concerning the disclosure of records. Certain State and Federal relocation laws may be applicable to Buyer, as a public agency, require Buyer to provide certain notices to the tenants of the Property. Within five (5) Business Days after the Effective Date, Seller shall provide to Buyer the names and addresses of all guests of each Hotel who have been in house for thirty (30) days or longer, if any. Seller agrees to allow Buyer to provide any and all notices to tenants of the Property that are required or advisable in order for Buyer to comply with any applicable laws; provided, however, prior to delivering notices to any tenants of the Property, Buyer shall submit a sample of the notice to Seller for Seller's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Without limiting the generality of the foregoing, and except as otherwise provided herein, Buyer acknowledges and agrees that Buyer shall not interview or otherwise discuss this Agreement or the terms and conditions hereof with any employee or guest of the Hotels currently operated at the Real Property without Seller's prior written consent, which may be granted or denied in Seller's sole discretion. The terms of this Section 18.12 shall constitute a modification of any prior confidentiality agreement that may have been entered into by the parties.

The provisions of this Section 18.12 shall survive the Closing or the termination of this Agreement for a period of one (1) year; provided that the Buyer may not at any time following Closing or termination of this Agreement disclose the identity of Seller's direct or indirect owners, except to the extent such disclosure is required by law.

18.13 Press Release. Seller or Buyer may issue a press release with respect to this Agreement and the transactions contemplated hereby, provided that the content of any such press release shall be subject to the prior written consent of the other party hereto and in no event shall any such press release issued by Buyer disclose the identity of Seller's direct or indirect beneficial owners by name or the consideration paid to Seller for the Property.

18.14 Governing Law. The terms and provisions of this Agreement shall be construed in accordance with the laws of the State.

18.15 Effective Date. The term "Effective Date" shall mean that date on which both Parties have executed this Agreement and Buyer and Seller have each received a fully executed counterpart of this Agreement.

**[Signature page follows.]**

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

SELLER:

ESA P PORTFOLIO L.L.C.,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BUYER:

SAN DIEGO HOUSING COMMISSION, INC.,  
a California corporation

By: \_\_\_\_\_  
Jeff Davis, Interim President & CEO

Approved as to Form:

Christensen & Spath LLP

By: \_\_\_\_\_  
Walter F. Spath III, Esq.  
Buyer's General Counsel

## CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to (i) accept the foregoing Agreement, (ii) be Escrow Holder under said Agreement, (iii) make all filings required under Section 6045 of the Internal Revenue Code of 1986, as amended, and (iv) be bound by said Agreement in the performance of its duties as Escrow Holder; provided, however, the undersigned shall have no obligations, liability or responsibility under (a) this consent or otherwise, unless and until said Agreement, fully signed by the Parties, has been delivered to the undersigned, or (b) any amendment to said Agreement unless and until the same is delivered to the undersigned.

Date of Opening of Escrow: \_\_\_\_\_, 2023

CHICAGO TITLE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

### **SCHEDULE 1.3**

#### **LIST OF ADDITIONAL EXCLUDED PERSONAL PROPERTY**

CHEETAH- Network Infrastructure Equipment	Nomadtx Guest Gateway
	Netware Guest Wi-Fi Switch
	Hallway based Access Point
	V Band
	Wattbox PCU
	FortiGate FG-60E Firewall
	FortiNet FS-124E Switch
Digital Signage	60" Digital Signage if Applicable
ESA TV Marketing Equipment	Pro Centric Server
	Encoder Modulator
Television Equipment	HD TV Service- DISH HD TV Headend
Telephone Equipment	PBX Phone System- Adtram Switch(s)
	Netvant Switch
	IP Phone Set
	Engenius DuraFon 1x Wireless Phone
	VMS Auto-Attendant Setup
ADP Time Clock	ADP Employee Network Timeclock (do not own)
Property Management System	HotelKey PMS- Apple I-Pad WI-FI Tablet
	HotelKey PMS- Verifone PinPads (at front desk)
	HotelKey PMS- Gateway in the MDF
	HotelKey PMS- GM PC
	HotelKey PMS- HP Airprint Printer
	HotelKey PMS- HP MPP
Inventory	Linen and Terry not in guest rooms
Vending Machines	Soda and Snack Machines (do not own)
Intellectual Property	Any Service Marks, copyrights, trade names, trademarks, symbols, logos, and all other intellectual property rights, marks, or characteristics associated with the brand name of the Seller and/or its affiliates, or chattels of any type of kind which is branded with any marks owned, licensed or otherwise used by Seller and/or its affiliates
Other	Any and all fixtures, personal property or intellectual property owned by or proprietary to any guest or customer of the hotel on the Property or the manager of the Property
	Hotel Guest data or information in any database maintained by Seller and any of Seller's affiliates
	Any property management, purchasing, reservation, financial, risk or marketing systems or programs provided for the benefit of Seller of the Property by any affiliate of Seller

	All computer software systems owned or licensed by Seller or its affiliates or otherwise used in connection with the operation of the hotel on the Real Property or any other hotel operated by Seller or any of its managers or affiliates (it being understood that any Personal Property consisting of computers or electronic devices shall be erased and reset to factory settings)
	Panic button system, including gateway devices, all mobile badges, all hubs and all beacons.



## **SCHEDULE 4.2**

### **LIST OF DUE DILIGENCE MATERIALS**

Three years Tax Bills  
Phase I Environmental  
Seismic Report  
Certificate of Occupancy  
Zoning Verification Letter  
Floor Plan with Room Numbers  
Survey  
Architectural Plans  
Civil Plans  
Landscape Plans  
MEP Plans  
Structural Plans  
STEM Battery Storage Agreement  
CA Natural Gas Contract

**SCHEDULE 12.2.5(g)**

**BUYER'S KEY PERSONS AND REPRESENTATIVES**

Counterparty Role	First Name	Last Name	Country of Residence	State of Residence
<b>25+% Owner (if any)</b>	None			
<b>CEO/Key Person</b>	Jeff	Davis	U.S.	California
<b>Buyer's Knowledge Party</b>	Robert G. (Buddy)	Bohrer	U.S.	California
<b>Notice Parties</b>	Robert G. (Buddy)	Bohrer	U.S.	California
	Walter F. III	Spath	U.S.	California
<b>Signatory</b>	Jeff	Davis	U.S.	California

**EXHIBIT “A”**

**LEGAL DESCRIPTION**

**[TO BE INSERTED]**

**EXHIBIT "B"**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

AND MAIL TAX STATEMENTS TO:

Same as above.

---

(Space Above Line For Recorder's Use Only)

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_

☒ Computed on the consideration or value of property  
conveyed, OR

\_\_\_\_\_  
Signature of Declarant or Agent  
determining tax

\_\_\_\_\_ Computed on the consideration or value less  
liens or encumbrances remaining at time of sale.

---

**GRANT DEED**

FOR VALUE RECEIVED, ESA P PORTFOLIO L.L.C., a Delaware limited liability company ("Grantor") hereby grants to \_\_\_\_\_ ("Grantee") all that certain real property situated in the City of San Diego, County of San Diego, State of California, described on **Exhibit "1"** attached hereto ("Property"), together with (a) all improvements owned by Grantor and located on the Property and all fixtures contained in any such improvements, and (b) any and all easements, rights-of-way, privileges, rights and appurtenances benefiting, appertaining or belonging to the Property, including, without limitation, any and all streets and roads (whether opened or proposed) abutting the Property, riparian rights, water or water rights and stock evidencing any such water rights, and/or oil, gas or other minerals laying under the Property. The foregoing grant is subject to all matters of record, all matters which would be disclosed by a survey of the Property, and all real property taxes and assessments not yet due and payable, if any.

[Signature page follows.]

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of \_\_\_\_\_,  
20\_\_\_\_.

**GRANTOR:**

ESA P PORTFOLIO L.L.C.,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature\_\_\_\_\_ (Seal)

**[OR INSERT APPLICABLE NOTARY ACKNOWLEDGE FROM JURISDICTION WHERE GRANT DEED WILL BE SIGNED]**

EXHIBIT “1” TO GRANT DEED

DESCRIPTION OF PROPERTY

**[TO BE INSERTED]**

## **EXHIBIT "C"**

### **GENERAL ASSIGNMENT**

THIS GENERAL ASSIGNMENT ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by ESA P PORTFOLIO L.L.C., a Delaware limited liability company (the "Assignor"), and \_\_\_\_\_ ("Assignee"), in connection with that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions between Assignor as the "Seller" and Assignee as the "Buyer" dated as of \_\_\_\_\_, 20\_\_\_\_, as the same has been or may be amended (the "Purchase Agreement") pursuant to which Assignor agreed to sell to Assignee the "[Murphy Canyon][Hotel Circle][Mission Valley] Property" described therein. All terms with initial capital letters shall have the meaning ascribed thereto in the Purchase Agreement except as otherwise defined herein.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Assignment. Assignor hereby unconditionally assigns and transfers to Assignee all of Assignor's right, title and interest, to the extent assignable, in and to any governmental permit applications, governmental permits, governmentally-issued licenses, plans, maps, site plans, drawings, specifications, surveys, warranties, guaranties, development agreements, utility rights, development rights, governmental approvals, entitlements, prepaid development fees, sewer credits, governmental certifications, variances, specific plan amendments, general plan amendments, negative declarations, environmental impact reports, CEQA findings and determinations, will serve letters and similar rights which benefit the [Murphy Canyon][Hotel Circle][Mission Valley] Real Property, whether granted by governmental or quasi-governmental authorities or private persons or entities (collectively, the "Intangible Property").

2. Further Assurances. Assignor shall execute and deliver to the Assignee any additional instrument or other document that Assignee reasonably requests to evidence the assignment of the Assigned Rights hereunder promptly upon request. Assignor shall cooperate and assist Assignee in obtaining any consents required to effectuate this Agreement.

**[signature page follows]**



IN WITNESS WHEREOF, the Assignor has executed this Agreement as of the year and date first above written.

**ASSIGNOR:**

ESA P PORTFOLIO L.L.C.,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT "D"**

### **BILL OF SALE**

THIS BILL OF SALE ("Bill of Sale") is made as of \_\_\_\_\_, 20\_\_, ("Effective Date"), by ESA P PORTFOLIO L.L.C., a Delaware limited liability company (collectively, "Seller"), in favor of \_\_\_\_\_ ("Buyer"), with reference to the following facts:

WHEREAS, Seller and Buyer entered into that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions, dated as of \_\_\_\_\_, 20\_\_, between Seller and Buyer (the "Purchase Agreement"), respecting the sale of certain Property, which includes any tangible personal property owned by Seller that is currently placed or installed on or about the [Murphy Canyon][Hotel Circle][Mission Valley] Real Property and used in connection with the development, use, ownership, operation, management, maintenance and/or repair of the [Murphy Canyon][Hotel Circle][Mission Valley] Real Property, except to the extent any such tangible personal property is expressly excluded from the [Murphy Canyon][Hotel Circle][Mission Valley] Property pursuant to the terms of the Purchase Agreement (all such tangible personal property included in the [Murphy Canyon][Hotel Circle][Mission Valley] Property being referred to herein, collectively, as the "Personal Property"). All capitalized terms used herein, unless indicated to the contrary, have the meanings ascribed to them in the Purchase Agreement.

NOW, THEREFORE, for good and valuable consideration, Seller hereby grants, sells, transfers, assigns, conveys and delivers to Buyer the Personal Property.

Notwithstanding anything to the contrary contained in this Bill of Sale, the "Personal Property" shall not include: vending machines; employee time clocks; any and all fixtures, personal property or intellectual property owned by or proprietary to any guest or customer of the Hotel on the [Murphy Canyon][Hotel Circle][Mission Valley] Real Property or the manager of the Hotel on the [Murphy Canyon][Hotel Circle][Mission Valley] Real Property; hotel guest data and information in any database maintained by the Seller or any Affiliate of Seller; any property management, purchasing, reservation, financial, risk or marketing systems or programs provided for the benefit of Seller of the [Murphy Canyon][Hotel Circle][Mission Valley] Property by any Affiliate of Seller; all computer software systems owned or licensed by Seller of its Affiliates or otherwise used in connection with the operation of the Hotel on the [Murphy Canyon][Hotel Circle][Mission Valley] Real Property or any other hotel operated by Seller or any of its managers or Affiliates (it being understood that any Personal Property consisting of computers or electronic devices shall be erased and reset to factory settings); any service marks, copyrights, trade names, trademarks, symbols, logos, and all other intellectual property rights, marks or characteristics associated with the brand name of Seller and/or its Affiliates; any signage containing the name or logo of Seller and/or its Affiliates (all of which shall be removed from the Building on the [Murphy Canyon][Hotel Circle][Mission Valley] Real Property and any existing monument sign with any related penetrations of the surface of the Building on the [Murphy Canyon][Hotel Circle][Mission Valley] Real Property being patched and with the cement base of any monument being left in place); and any personal property or chattels of any type of kind which is branded with any marks owned, licensed or otherwise used by Seller and/or its Affiliates.

The Personal Property is conveyed in its “AS-IS, WHERE-IS, WITH ALL FAULTS” condition, and (except as expressly set forth herein) without any representation or warranty from Seller, express or implied, and without any recourse against Seller whatsoever. Any warranty of merchantability, warranty of quality, warranty of fitness for a particular purpose, warranty against interference, warranty as to the accuracy of the quantities or description of the Personal Property, or warranty against infringement of any patent, copyright, trademark, trade secret or other proprietary rights of a third party, whether express or implied, is hereby expressly disclaimed.

Notwithstanding the foregoing, Seller does hereby represent and warrant that (i) Seller is the owner of the Personal Property, and the Personal Property is not subject to any liens, encumbrances or claims of any kind, (ii) the transfer of the Personal Property to Buyer does not, and shall not, require the consent of any third party, and (iii) Seller has the legal power, right and authority to transfer the Personal Property to Buyer.

Seller shall, upon request by Buyer, execute and deliver to Buyer such additional documents as Buyer may reasonably request in order to assign and transfer fully to and vest in Buyer all rights, title or interest in and to the Personal Property, or to enable Buyer to realize upon or otherwise enjoy the Personal Property.

This Bill of Sale shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of Buyer and Seller.

**[signature page follows]**

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the Effective Date of this Bill of Sale.

**SELLER:**

ESA P PORTFOLIO L.L.C.,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SAN DIEGO HOUSING COMPENSATION AGREEMENT  
WITH MARCUS & MILLICHAP**

Contract No. RED-23-25

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2023, between

the Commission:           SAN DIEGO HOUSING COMMISSION  
                                  1122 Broadway, Suite 300  
                                  San Diego, California  
                                  92101 (619) 231-9400

and the Contractor:       MARCUS & MILLICHAP  
                                  5001 Spring Valley Road Suite 100W  
                                  Dallas, TX 75244  
                                  (972) 755-5302

As used herein, the terms MARCUS & MILLICHAP and Contractor shall be deemed to include Marcus & Millichap Real Estate Investment Services, Inc., Marcus & Millichap Real Estate Investment Services of Nevada, Inc., and Marcus & Millichap's other related affiliated entities and subsidiaries.

**RECITALS**

A.       On or about January 24, 2022, the Contractor made the Commission aware of ESA P Portfolio, LLC's ("Seller") intention to sell the three (3) Extended Stay America hotel properties located at: (1) 3860 Murphy Canyon Road, San Diego, California 92123; (2) 2085-95 Hotel Circle South, San Diego, California 92108; and, (3) 7440-50 Mission Valley Road, San Diego, California 92108 (collectively, the "Extended Stay Hotel Properties" or individually an "Extended Stay Hotel Property"). The Commission and Seller are entering into, or have entered into, an agreement ("Purchase and Sale Agreement") for the purchase and sale of the Extended Stay Hotel Properties.

B.       Section 4 of Commission Administrative Regulation AR.219.000 (Retention of Real Estate Brokers; Operating Procedures for Brokers and Peer or Desk Review of Appraisals) provides in pertinent part that "the Commission may also deal directly with real estate brokers who present listed properties to the Housing Commission and to cooperate with brokers, as set forth within Acquisition Policy Section 4.1.4." Section 4.1.4 of the Acquisition Policy (Policy PO-RED-374.02) provides that the Housing Commission is "authorized to contract directly with brokers and/or to cooperate with brokers to effectuate the acquisitions." The Commission and Contractor are entering into this Agreement pursuant to the authority granted to the Commission by the aforementioned Administrative Regulation AR.219.000 and Policy PO-RED-374.02.

C. The Commission and Contractor previously entered into a contract ("Prior Contract") which provided for the Contractor to provide certain real estate brokerage services to the Commission. The Prior Contract expired. The Commission and Contractor have agreed that Contractor shall receive the compensation set forth in this Agreement.

101. CONTRACT ATTACHMENTS. The following listed documents are attached hereto and made a part hereof:

1. General Provisions, Contract Attachment No. 1
2. Specifications/Scope of Work, Contract Attachment No. 2

102. PERFORMANCE. The Contractor performed all services required by this Agreement by making the Commission aware of Seller's intention to sell Extended Stay Hotel Properties; provided, however, the Contractor shall only be entitled to receive compensation hereunder in the event the Commission closes on and acquires one or more of the Extended Stay Hotel Properties.

103. COMPENSATION AND METHOD OF PAYMENT.

(a) Payment of any amount from the Commission to the Contractor, including the amounts described in this Section 103, is subject to Section 204 of the General Conditions, below. If no conflict exists as described in Section 204 of the General Conditions, below, and the Commission closes on and acquires all of the Extended Stay Hotel Properties, on or before March 31, 2024, then upon closing the Contractor shall be paid \$783,469.00. If no conflict exists as described in Section 204 of the General Conditions, below, and the Commission acquires fewer than all of the Extended Stay Hotel Properties, then upon the closing for each Extended Stay Hotel Property which is acquired by the Commission, provided the same occurs on or before March 31, 2024, the Contractor shall be entitled to receive the following amounts, respectively:

\$201,977.00 for 3860 Murphy Canyon Road, San Diego, California 92123

\$323,437.00 for 2085-95 Hotel Circle South, San Diego, California 92108

\$258,055.00 for 7440-50 Mission Valley Road, San Diego, California 92108

(b) The latest possible closing date for the Commission's acquisition of the Extended Stay Hotel Properties under the Purchase and Sale Agreement is March 31, 2024. In the event the Commission and Seller amend the Purchase and Sale Agreement or otherwise agree to extend such closing date ("Extended Closing Date"), the references to March 31, 2024 set forth in Section 103(a), above, shall be deemed amended to be the same date as the Extended Closing Date.

(c) Notwithstanding anything to the contrary set forth in this Section 103, the Contractor acknowledges and agrees that Contractor shall only be entitled to compensation under this Agreement with respect to any of the the Extended Stay Hotel Properties which the Commssion acquires from the Seller. If the Commission does not acquire one or more of the the Extended Stay Hotel Properties from the Seller, then the Contractor will not be entitled to receive any amounts with respect to such property or properties. If the Commission does not acquire any of the Extended

Stay Hotel Properties pursuant to the Purchase and Sale Agreement, then the Contractor shall not be entitled to receive any compensation from the Commission. Furthermore, the Contractor waives any right to receive any other compensation with respect to the Prior Contract whether such compensation would be payable with respect to the Extended Stay Hotel Properties or any other properties or otherwise.

104. NOTICES. Notices to the parties shall, unless otherwise requested in writing, be sent to the Commission and the Contractor at the addresses set forth above.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

**Contractor:**

MARCUS & MILLICHAP

By: \_\_\_\_\_  
Ben Tashakorian, Senior Managing Director

**Commission:**

SAN DIEGO HOUSING COMMISSION

By: \_\_\_\_\_  
Jeff Davis  
Interim President & Chief Executive Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Emily Jacobs  
Executive Vice President, Real Estate

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Buddy Bohrer  
Vice President, Real Estate Finance & Acquisitions

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Debra Fischle-Faulk  
Senior Vice President, Compliance & Equity Assurance

Date: \_\_\_\_\_

Approved as to Form:  
Christensen & Spath LLP

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

Walter F. Spath III, Esq.  
Commission General Counsel



## CONTRACT ATTACHMENT NO. 1

### 200. GENERAL PROVISIONS

201. Status of Contractor. This Agreement calls for the performance of the services of the Contractor as an independent contractor. Contractor will not be considered a partner or an employee of the Commission for any purpose.

202. Ownership of Materials and Documents. Any and all sketches, drawings and other materials and documents prepared by the Contractor shall be the property of the Commission from the moment of their preparation, and the Contractor shall deliver such materials and documents to the Commission whenever requested to do so by the Commission. However, the Contractor shall have the right to make duplicate copies of such materials and documents for his own file, or for other purposes as may be authorized in writing by the Commission.

203. Non-Disclosure. The designs, plans, reports, investigations, materials, and documents prepared or acquired by the Contractor pursuant to this Agreement (including any duplicate copies kept by the Contractor) shall not be shown or disclosed to any other public or private person or entity directly or indirectly, except as authorized by the Commission. The Contractor shall not disclose to any other public or private person or entity directly or indirectly, any information regarding the activities of the Commission during the term of this Agreement or at any time thereafter except as authorized by the Commission.

204. Conflict of Interest. No dual agency arrangement shall be permitted. In the event that an Extended Stay Hotel Property has been listed by Contractor, Contractor shall not represent the Commission. In such event, the Commission may either represent itself, or may use an alternative broker, not affiliated with the Contractor. If an Extended Stay Hotel Property has been listed by Contractor including any and all brokers employed by Contractor, the Commission shall not pay any commission nor compensation of any type or kind in connection with any transaction involving the purchase of the Extended Stay Hotel Property by the Commission, including, without limitation, any and all portions of the listing commission, which shall be paid for solely by the seller of the property.

- (a) The Contractor acknowledges that the Commission, and by virtue of Contractor entering into this Agreement, the Contractor and its individual brokers and employees, are legally bound by and shall comply with all applicable Federal, State and local laws, rules and regulations with respect to conflicts of interest, as the same may be amended from time to time.
- (b) The Contractor shall provide the Commission with a written disclosure notice with respect to each of the Extended Stay Hotel Properties stating the owner of the property and the names of all persons employed by or otherwise working for Contractor with respect to such property, and any and all prior business or personal relationships between the Contractor (including its individual agents, brokers and employees) and the owners of the Extended Stay Hotel Properties. Such disclosures shall identify all financial interests set forth in Government Code Section 87103, and all regulations promulgated pursuant to such code section. In addition, such

disclosures shall report any and all potential violations of Government Code Section 1090.

- (c) In addition to section 204(b) above, Contractor shall disclose in writing to Commission any direct or indirect financial interests and/or ownership interests the Contractor or any of its individual agents, brokers and employees may have in any of the Extended Stay Hotel Properties. Such disclosure of any direct or indirect financial interests and/or ownership interests in the applicable Extended Stay Hotel Property must be updated in writing immediately before the execution of a Letter of Intent, immediately before the execution of a Purchase and Sale Agreement, and again immediately before the close of any and all escrows. Time is of the essence in this regard.
- (d) The Commission will thereafter determine, in its sole discretion, whether the Contractor's participation in the transaction with respect to the acquisition of any of the Extended Stay Hotel Properties is likely prohibited by any Federal, State or local law, rule or regulation. If the Commission determines that Contractor's participation in the transaction **are not prohibited** by any Federal, State or local law, rule or regulation, then the Contractor shall be entitled to receive the compensation described in this Agreement. Provided, however, if either: (i) the Commission determines that Contractor's participation in the transaction is **prohibited** by any Federal, State or local law, rule or regulation; or (ii) Contractor represents any seller with respect to a property, then the Contractor shall not be entitled to receive any compensation with respect to such Extended Stay Hotel Property or this Agreement and the Contractor consents to the Commission's acquisition of such Extended Stay Hotel Property utilizing another broker or without a broker and the Contractor waives the right to receive a commission or other compensation of any kind whatsoever with respect to the Commission's acquisition of such Extended Stay Hotel Property. The Commission's determination under this section must be in writing and signed by the designated officer of the Commission.
- (e) The Contractor shall not disclose the confidential information of the Commission to any person.

205. Contractor's Liability

(a) The Contractor and the Commission shall each be responsible for all injuries to persons and for all damages to real or personal property, caused by or resulting from the negligence of themselves, their employees, or their agents during the progress of or connected with the rendition of services hereunder.

(b) Contractor shall indemnify, hold harmless, and defend, with counsel of the Indemnatee's choosing, at Indemnitor's sole cost and expense, the Commission, the Housing Authority, the City of San Diego, and all commissioners, officers, employees, members, council members and agents of each public agency (hereinafter collectively referred to as the "Indemnitees" or individually as an "Indemnatee") from and against any and all damages, liabilities, claims, fines,

fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (Contractor's employees included) and damage to real or personal property, or any other losses, damages or expenses, arising directly or indirectly out of the acts, failure to act or negligence of the Contractor, all obligations of this Agreement, or out of the operations conducted by Contractor including those in part due to the negligence of any of the Indemnitees save and except for liabilities, claims, judgments or demands arising through the sole negligence or sole willful misconduct of such Indemnitee.

206. Insurance.

(a) Contractor shall not commence work until Contractor has obtained, at its sole cost and expense, all insurance required under this Section. The insurance obtained must be approved by the Commission. Contractor shall obtain a single limit general liability insurance and automobile liability insurance in the minimum amount checked and initialed below:

		Initials		Initials
<input checked="" type="checkbox"/>	General Liability \$5,000,000.00	_____	<input checked="" type="checkbox"/>	Workers Compensation \$1,000,000.00
<input checked="" type="checkbox"/>	Automobile Liability \$500,000.00	_____	<input type="checkbox"/>	Other: \$

(b) This coverage is in addition to workers compensation insurance and other insurance coverages required by law. The Commission, the Authority, and the City of San Diego ("City"), shall be named as certificate holders on all insurance policies and shall be named as additional insured on all general liability and automobile policies. The policies shall provide that coverage on all policies may not be canceled, amended, terminated or otherwise modified without thirty (30) days advance written notice to the Commission, the Authority, and the City. Coverage shall remain in full force and effect during the entire term of the policy and for such term thereafter as the Commission shall determine.

(c) If the box shown below, marked "Errors and Omissions" is checked and initialed, then professional errors and omissions liability coverage is also required in the amount stated below:

<input checked="" type="checkbox"/>	Errors and Omissions \$5,000,000.00	_____
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(d) For any claims arising out of or in connection with Contractor's performance under this Agreement, the insurance required to be purchased and maintained by the Contractor shall be primary and non-contributory to any insurance carried by the Commission, the Housing Authority and/or the City of San Diego.

(e) All insurance required to be purchased and maintained by the Contractor shall be endorsed with a waiver of subrogation. Contractor's insurers, in their endorsements, agree to

waive all rights of subrogation against the Commission, the Housing Authority, the City of San Diego, and their employees and agents for losses paid by Contractor's insurers that arise out of or in connection with Contractor's performance under this Agreement.

207. Intentionally Omitted.

208. Equal Opportunity Programs. During the performance of this Agreement, the Contractor agrees as follows:

(a) Contractor shall comply with all applicable local, state and federal Equal Opportunity Programs, as well as any other applicable local, state and federal law. Each month, the Contractor will report to the project manager, payments made to all vendors by month, contract to date and percentage of overall contract value.

(b) Contractor and each subcontractor, if any, shall fully comply with and shall submit a Report of San Diego County Work Force Report and Certificate of Compliance with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal and State law and regulations hereinafter enacted.

(c) Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin or any other basis prohibited by law. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin or any other basis prohibited by law.

(d) If any underrepresentation is found after submission of Contractor's workforce report, the Commission may request an Equal Employment Opportunity Plan (EEOP). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEOP has been approved by the Commission, the Contractor must adhere to said plan. In the case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEOP updates as requested.

(e) Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, the Contractor may, at the election of the Commission, be disbarred from participating in Commission projects for not less than one (1) year.

209. Cost Records. In accordance with generally accepted accounting principles, the Contractor shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to the inspection of the Commission or to the appropriate federal agencies after reasonable notice, and at reasonable times.

210. Subcontracting.

(a) No services covered by this Agreement will be subcontracted. In the event Contractor nevertheless determines a need to subcontract any services, Contractor shall obtain the prior written

consent of the Commission, and shall otherwise comply with the Commission's standard terms and conditions pertaining to Subcontracting.

(b) In order to obtain consent, Contractor shall submit a list of all potential subcontractors, and a description of work to be performed by each subcontractor, to the Commission. Once this list has been approved, no changes to the list will be allowed except by written approval of the Commission.

(c) The Contractor shall be as fully responsible to the Commission for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for acts and omissions of persons directly employed by him.

(d) Consistent with Presidential Executive Orders 11625, 12138, and 12432, Commission requires Contractor to take positive steps to ensure that small and minority-owned businesses, women's business enterprises, and other individuals and firms located in or owned in substantial part by persons residing in the area of the Commission and/or labor surplus areas are used whenever possible, if the subcontracting of services or work covered by this Agreement is anticipated. Such efforts shall include, but shall not be limited to: (i) including such firms, when qualified, on solicitation mailing lists; (ii) encouraging their participation through direct solicitation of proposals whenever they are a potential source; (iii) dividing total subcontract requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms; (iv) establishing delivery schedules, where the requirement permits, which encourages participation by such firms; and (v) using the services and assistance of the Small Business Commerce.

(i) A small business is defined as a business that is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) A minority-owned business is defined as a business which is at least 51% owned by one or more minority groups; or in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operation are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

(iii) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

(iv) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

(v)

211. Assignability

(a) The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Commission.

(b) Claims for money due or to become due to the Contractor from the Commission under this Agreement may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commission.

212. Changes. The Commission may, from time to time, request changes in the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon, by and between the Commission and the Contractor, shall be incorporated into this Agreement.

213. Documents and Written Reports. The Contractor, when preparing any document or written report for or under the direction of the Commission, the Housing Authority, or the City of San Diego, shall comply with the provisions of Government Code Section 7550; to wit:

- (a) Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the numbers and dollar amounts of such contracts and subcontracts relating to the preparation of such document or written report; provided, however, if the total cost for work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.
- (b) When multiple documents or written reports are the subject or product of this Agreement, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.
- (c) Any document or written report prepared under this Section 213 shall be prepared by Contractor only in the event the Commission decides not to use Contractor for any acquisition, but nevertheless asks Contractor to advise Commission on price and terms, for which Contractor will be compensated on an hourly basis, as set forth in this Agreement, pursuant to Contract Attachment No. 2, Specifications/Scope of Work.

214. Termination.

(a) For Convenience. The Commission, thirty (30) days after mailing written notice to Contractor, or Contractor, one-hundred and eighty (180) days after mailing written notice to the Commission, may terminate this Agreement, in whole or in part, when it is in their interest. If this

Agreement is terminated, the Commission shall be liable only for payment under the payment provisions of this Agreement for services rendered and/or supplied before the effective date of termination.

(b) For Lack of Funding. This Agreement may be terminated without notice, by the Commission, upon the cessation of funding of the state, local or federal program, which funds this Agreement.

(c) For Default. Contractor's failure to timely and satisfactorily perform any obligations under this Agreement shall constitute a default. If Contractor fails to cure a default within ten (10) calendar days of receiving written notice from Commission specifying the nature of the default, the Commission may immediately terminate the right of the Contractor to proceed under the terms of this Agreement. If the Commission terminates the right to proceed under this Agreement, the Commission may procure equivalent services, and Contractor shall be liable to the Commission for any extra costs incurred by the Commission. These rights are in addition to any other rights and remedies provided by law or under this Agreement. In the event that the termination is for violation of conflict of interest laws, the right to proceed under the contract may be terminated immediately, without a right to cure, by written notice to the Contractor.

215. Attorneys' Fees and Costs. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

216. Entire Agreement. This Agreement represents the sole and entire agreement between the Commission and Contractor and supersedes all prior negotiations, representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both the Commission and Contractor.

217. Partial Invalidity. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

218. Contract Governed by Laws of State of California. This Agreement and its performance and all suits and special proceedings under this Agreement shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under, or because of this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

219. Interest of Member of Congress. No member or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

220. Interest of Current or Former Members, Officers, Employees. No member, officer or employee of the Commission, no member of the governing body of the locality in which the work is situated, no member of the governing body in which the Commission was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the assignment of work, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this section shall result in unilateral and immediate termination of this Agreement by the Commission.

221. Drug-free Workplace. Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

(a) Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

(b) Establish a drug-free awareness program to inform employees about all of the following:

(i) The dangers of drug abuse in the workplace.

(ii) The Contractor's policy of maintaining a drug-free workplace.

(iii) Any available drug counseling, rehabilitation and employee assistance programs.

(iv) The penalties that may be imposed upon employees for drug abuse violations.

(c) Post the statement required by subdivision 221(a) in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

222. Intentionally Omitted.

223. Labor Provisions. It is the responsibility of the Contractor and the Contractor shall be fully aware of and shall comply with each and every requirement of State, Federal and Local law concerning the provision of labor concerning this Agreement, including but not limited to, the payment of applicable wage rates, if any.

☐ If checked, additional state prevailing wage terms are contained in Attachment No. 6.

☐ If checked, additional federal prevailing wage terms are contained in Attachment No. 6.



224. Contract Work Hours and Safety Standards Act. In the event Contractor's performance of this Agreement entails the use of laborers or mechanics, and this Agreement is for more than the sum of \$100,000, and uses Federal funds, then Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.) as supplemented by Department of Labor regulations (29 CFR Part 5).

225. Intentionally Omitted.

226. Statement of Economic Interest Disclosure Form. Contractor shall assure that each principal of the Contractor that is supervising the Contractor's work under this Agreement shall file a completed and executed Statement of Economic Interest Disclosure Form (Form 700) with the City Clerk's Office of the City of San Diego at all times required by the state and local law. In addition, the Contractor shall deliver written copies of Form 700's for each principal of the Contractor that is supervising the Contractor's work under this Agreement: (i) prior to the execution of this Agreement to allow the Commission to verify that there are no conflicts existing at the commencement of the term of the Agreement; and (ii) prior to the Commission and Seller entering into a purchase and sale agreement for the Extended Stay Hotel Properties. Such Form 700's shall also be filed:

(a) Annually on or before April 1 of each year;

(b) Within thirty (30) days after completion of this Agreement or departure, reassignment, or termination of principal.

Filing may be submitted electronically, through the City Clerk's Office electronic filing system [eFile San Diego](#). Contractor shall email a copy of the filed Form 700, for each filer, to Maurcell Gresham, Director of Procurement at [maurcell@sdhc.org](mailto:maurcell@sdhc.org) within five (5) business days of filing in accordance with the requirements of General Provision 31 (a), (b) or (c) as applicable.

227. Conflict between Agreement and Attachments. To the extent that the provisions of the Agreement and the Attachments and Schedules conflict, the following order of construction shall apply:

(a) To the extent that the Agreement and any Attachments or Schedules conflict, the terms and conditions of the Agreement shall prevail; and,

(b) To the extent that any Contract Attachment and any Schedule conflicts, the Contract Attachment shall prevail.

228. Section 3 Contract Clauses. The parties to this Agreement agree to comply and effectuate the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3), implemented at 24 C.F.R. Part 75. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which Federal assistance is spent. Consistent with existing federal, state and local laws and

regulations, Contractor shall ensure that training and employment opportunities generated by HUD financial assistance or arising in connection with housing rehabilitation, housing construction, or other public construction projects are provided to Section 3 Workers, and provided in the order of priority set forth at 24 C.F.R. Part 75.9 and Part 75.19.

229. Audit Requirements. Where this Agreement is funded by federal funding, 24 CFR 84.26 requires that nonprofit institutions and institutions of higher education shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996, and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." All entities other than non-profit institutions shall be subject to the audit requirements of HUD or the prime recipient as incorporated into the award document. Where this Agreement is funded by non-federal funds, Contractor shall be subject to audit requirements as set forth in the award document, if it exists. Otherwise Contractor shall adhere to those requirements as set forth in the Single Audit Act Amendments of 1996 and revised OMB Circular A-133.

230. Lobbying Provisions. Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of this Agreement, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

(c) Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and

(d) Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 U.S.C. 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

231. Energy Conservation. Provided this Agreement uses Federal funds, Contractor hereby certifies compliance with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94- 163, 89 Stat. 871).

232. Disputes. Unless otherwise required by applicable law, all disputes arising under or relating to this Agreement shall be resolved under the terms of this clause by litigation in State Court. All disputes shall be resolved by litigation in San Diego County Superior Court, Downtown Branch, after first attempting resolution of the dispute through non-binding mediation through JAMS.

233. Contractor Evaluation Program. An essential component of public works contract administration is the regular evaluation and documentation of contractor performance. During the course of this Agreement, the Commission shall conduct performance evaluations to document the Contractor's record of meeting the various terms of this Agreement. Commission shall proactively monitor and manage the performance of the Contractor during the term of this Agreement, and shall create an objective record of performance that can and may be utilized when evaluating the Contractor as a responsible bidder for future bid and proposal submissions, contract extension or renewal consideration, or termination of the contract due to unsatisfactory performance. Contractor Evaluation program and appeal procedures are located on the Commission website at [www.sdhc.org](http://www.sdhc.org) and are included by reference as a provision of this Agreement.

**CONTRACT ATTACHMENT NO. 2**  
**SPECIFICATIONS/SCOPE OF WORK**

The Contractor is, at all times during the rendition of services pursuant to this Agreement shall be, a real estate agent(s) licensed by the State of California's Department of Real Estate.

- A. Non-Exclusivity: The relationship between the Contractor and Commission is non-exclusive. Contractor acknowledges that the Commission is may engage other real estate brokers at any time.
- B. Contractor further agrees to and acknowledges and shall strictly comply with the obligations set forth in Section 203 Non-Disclosure and Section 204 Conflict of Interest of the General Provisions.

San Diego Housing Commission <b>ADMINISTRATIVE REGULATION</b>		
Subject: <b>RETENTION OF REAL ESTATE BROKERS; OPERATING PROCEDURES FOR BROKERS; AND PEER OR DESK REVIEW OF APPRAISALS</b>		
Number: <b>AR.219.000</b>	Effective Date: March 15, 2022	Page 1 of 7

1. Purpose. The Housing Authority of the City of San Diego [“Housing Authority”] previously approved Policy for Acquisition and or Purchase of Real Estate, Policy PO-RED-374.02 [the “Acquisition Policy”], effective December 15, 2016, which allows for the adoption of Administrative Regulations to implement that policy. It is the intent of this Administrative Regulation for the Retention of Real Estate Brokers; Operating Procedures for Brokers; and Peer or Desk Review of Appraisals [“Broker and Appraisal Review Administrative Regulation”] to provide a methodology for procuring the services of real estate brokers; to provide operating procedures to be utilized by retained brokers to ensure that all applicable conflict of interest rules and regulations are complied with in a timely and complete manner; and to provide a requirement for a peer or desk review of appraisals obtained pursuant to the Acquisition Policy.
2. Scope. The scope of this Broker and Appraisal Review Administrative Regulation is to provide for an approved method of procurement of real estate brokers for the acquisition of real estate by the San Diego Housing Commission [“Housing Commission”], in accordance with the terms and conditions of its Statement of Procurement Policy, Policy PO-PUR-373.01 [“Procurement Policy”]. This Broker and Appraisal Review Administrative Regulation is adopted to provide operating procedures to ensure the Fair Political Practices Act [FPPA] rules and regulations are timely satisfied, and to further require certain financial disclosures by Real Estate Brokers to the Housing Commission at set times throughout the term of the agreement. These disclosures are necessary to ensure that no prohibited conflicts of interest under any and all applicable local, state, and federal laws and/or regulations will occur as the result of the acquisition by the Housing Commission, or, if such interests are shown to exist, that the Housing Commission shall be allowed to proceed to acquire the real estate without the aid and assistance of the conflicted broker/agent without the Housing Commission being required to pay any real estate commission or without payment of any compensation to said broker/agent. This Broker and Appraisal Review Administrative Regulation shall also require an independent peer or desk review of appraisals obtained by the Housing Commission pursuant to the Acquisition Policy.
3. Definitions. Terms utilized within this Broker and Appraisal Review Administrative Regulation are either defined the first time that the term is utilized or there is a cross reference to other sources that provide those definitions. In addition, terms that are defined in the Acquisition Policy, as amended from time to time, shall have the same meaning in this Broker and Appraisal Review Administrative Regulation.
4. Approved Real Estate Broker Retention Procedures. Processes for procurement of real

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estate brokers are generally set forth within the Procurement Policy, as amended from time to time. These methods include, but are not limited to, Requests for Qualifications, Requests for Proposals, Sealed Bids, and Non-Competitive Procurements, to the extent permissible under applicable law. In addition, as set forth within the Acquisition Policy, the Housing Commission may also deal directly with real estate brokers who present listed properties to the Housing Commission and to cooperate with brokers, as set forth within Acquisition Policy Section 4.1.4.

5. Recommendation of Brokers from Other Governmental Entities. In addition to the processes set forth in the Procurement Policy, the Housing Commission shall seek recommendations from other governmental entities that have worked with the potential brokers. Potential brokers shall provide the Housing Commission with three recommendations, preferably from governmental entities.

6. Required Contractual Provisions: Any contract between the Housing Commission and a retained real estate broker shall include terms and conditions that accomplish the following:

**A. Conflicts of Interest**

- i. **Compliance with all applicable conflict laws.** Brokers and agents shall comply with any and all local, state, and federal conflict of interest laws, rules and regulations, as they shall hereafter be amended from time to time.

All brokers retained by the Housing Commission shall avoid any and all appearances of impropriety in fulfilling their duties under the terms of their contract. In addition, each broker shall comply with all terms and conditions of City Council Policy 000-04, and specifically shall comply with the terms of the Code of Conduct set forth within the City Council Policy 000-04, to assure that in addition to not violating any and all applicable laws, that there be no appearance of an impropriety in the performance of their real estate broker services for the Housing Commission.

Brokers and agents are solely responsible for compliance with all applicable conflict laws, rules and regulations.

- ii. **Statement of Economic Interest Disclosure Form (Form 700).** Any real estate brokers or agents representing the Housing Commission which are defined by the Fair Political Practices Act

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Commission (FPPC) as “consultants” of the Housing Commission shall be required to file a Form 700 disclosure form at all times required by the state and local law, and in addition, prior to the execution of any contract the “consultant” shall provide an executed paper Form 700 for Housing Commission review to ensure that at the date of execution of the contract that no conflicts of interest exist. Brokers and agents are solely responsible for ensuring their filed Form 700 remains current and shall notify the Housing Commission within three business days of filing a Form 700 amendment.

- iii. **Updated Conflict Attestations.** Prior to Housing Commission entering into any Letters of Intent, Purchase and Sale Agreements, and prior to closing escrow to purchase real estate, brokers and agents shall update prior written disclosures in writing and deliver the same to Housing Commission so that Housing Commission may verify that the broker/agent has no conflicts of interest that would preclude the Housing Commission from working with the broker/agent and purchasing the real estate.
- iv. **Dual Agency.** In the event the broker/agent retained by the Housing Commission represents the owner or owners of property that the broker/agent believes may be suitable for the Housing Commission’s consideration, the broker/agent shall provide the Housing Commission with a written disclosure notice stating the address of the property, the owner of the property, the names of all persons employed or otherwise working for the broker/agent with respect to the property, and any and all prior and current business or personal relationships between the broker/agent and the seller(s) of the property.

No dual agency arrangement shall be permitted.

In the event that a property has been listed by the broker that has been selected to represent the Housing Commission and the Housing Commission desires to explore potential acquisition of the listed property, the retained broker shall not represent the Housing Commission. In such event, the Housing Commission shall either represent itself, or shall use an alternative broker, not affiliated with the listing broker, that was a retained broker.

If a property has been listed by a broker otherwise retained by the

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Housing Commission, including any and all brokers employed by the retained brokerage company, the Housing Commission shall not pay any commission nor compensation of any type or kind in connection with any transaction involving the purchase of the listed property by the Housing Commission, including, without limitation, any and all portions of the listing commission, which shall be paid for solely by the seller of the property.

- v. **Housing Commission's Retention of Conflict/Fraud Detection Software and Professional Services.** The Housing Commission shall procure pursuant to its Procurement Policy, software and professional services to analyze potential conflicts of interest involved in any purchase transaction, in which the Housing Commission is a purchaser or seller. Examples of potential vendors include those companies determined to be most qualified to evaluate conflict and/or potential fraud, in connection with each transaction.
- vi. **Abstention in the Event of Conflict.** The Housing Commission will determine in its sole discretion whether the broker/agent's representation with respect to the acquisition of a property or interest in the property or seller is prohibited or likely prohibited by federal, state, or local law, rule or regulation.

If the Housing Commission determines that such representation or other financial, business, or other interest ARE NOT PROHIBITED by any federal, state, or local law, rule or regulation, then the broker/agent shall represent the Housing Commission with respect to the potential acquisition of such a property.

However, if either the Housing Commission determines that such representation or other interest ARE prohibited by any federal, state, or local law, rule or regulation or broker/agent represents any seller with respect to a property, then broker/agent shall not represent the Housing Commission with respect to the potential acquisition and the broker/agent consents to the Housing Commission's acquisition of such property utilizing another broker/agent, or without a broker and the broker/agent waives the right to receive a commission or other compensation of any kind whatsoever with respect to the Housing Commission's acquisition of such property.



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The Housing Commission's determination under this section must be in writing and signed by the designated officer of the Housing Commission.

Nothing herein shall prohibit or otherwise limit the broker/agent's right to compensation from the seller of the property which compensation of any type or kind shall be disclosed and detailed to the Housing Commission in writing prior to the execution of the purchase and sale agreement.

- vii. **Confidential Information.** The broker/agent shall not disclose to anyone any information the Housing Commission has deemed in its sole discretion to be confidential. Confidential information shall be disclosed to the Housing Authority and the City Attorney's Office.

**B. Termination**

- i. **For Convenience.** The Housing Commission may terminate the agreement for convenience with thirty (30) days' notice to the broker/agent.
- ii. **For Cause.** The broker/agent's failure to timely and satisfactorily perform any obligations under the agreement shall constitute a default. Should the broker/agent fail to cure the default within a reasonable time, the Housing Commission may terminate the right to proceed under the agreement and procure equivalent services. Broker/agent shall be liable to Housing Commission for any extra costs incurred by the Housing Commission due to the default.
- iii. **For Lack of Funding.** The agreement may be terminated immediately by Housing Commission upon cessation of funding of the state, local or federal program that funds the agreement.

**C. Attorneys' Fees and Costs.** If any legal action or arbitration is brought for the enforcement of the action, the successful party shall be entitled to recover reasonable attorneys' fees and other costs incurred, in that action, in addition to any other relief to which it may be entitled.

**D. Disputes.** All disputes arising under the agreement shall be resolved by litigation in San Diego Superior Court, Downtown Branch after first attempting resolution of the dispute through non-binding mediation.

**E. Qualifications.** The broker/agent shall, at all times during the rendition of services, be a real estate agent licensed by the State of California's Department of Real Estate and shall exercise the standard

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- of care used by brokers within the City of San Diego.
- F. Retained Brokers.** The relationship between the broker/agent and the Housing Commission will be a non-exclusive representation. Housing Commission may retain several brokers and will refer properties to a retained broker on a rotating basis or based on experience of the broker as determined by the Housing Commission in its sole discretion. The Housing Commission will track properties referred by retained brokers to properly determine the appropriate broker/agent that is entitled to compensation for the acquisition of a property.
  - G. Processes based on Property Status.** The agreement between the broker/agent and the Housing Commission will include specified processes each for Listed Properties, Unlisted Properties and Off-Market Properties.
  - H. Compensation.** The agreement between the broker/agent and the Housing Commission will include different compensation structures as agreed upon by the parties for Listed Properties, Unlisted Properties, and Off-Market Properties. In situations where the broker/agent obtains compensation of any type or kind from a seller or co-operating brokers, the broker/agent will disclose and detail all such compensation obtained and to be obtained prior to the execution of the purchase and sale agreement for each transaction.
  - I. Approval.** The Housing Commission will seek and secure appropriate approvals from the President and CEO, San Diego Housing Commission Board, or the Housing Authority for the City of San Diego as required by the Procurement Policy and San Diego Municipal Code Section 98.0301 prior to the payment of any funds under the agreement.

The above terms are in addition to any and all other terms suggested by the Housing Commission's general counsel.

7. Appraisal Peer Review. For any acquisition made by the Housing Commission pursuant to the Acquisition Policy, the Housing Commission shall obtain an independent peer review or desk review of the certified appraisal of value obtained by the Housing Commission pursuant to Section 4.1.12 of the Acquisition Policy.

**History: Adopted 3/15/22**

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Authorized

DocuSigned by:  
  
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Jeff Davis, Interim President & Chief Executive Officer

4/14/2022

DATE



## POLICY

**EFFECTIVE DATE:** December 15, 2016

**NO:** PO-RED-374.02

**SUBJECT:** **POLICY FOR ACQUISITION AND/OR PURCHASE OF REAL ESTATE**

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### **1** **Purpose**

To state San Diego Housing Commission (“Housing Commission”) Policy and program parameters for acquiring real estate of types, including, without limitation existing dwelling units/homes and/or multifamily rental projects for Housing Commission ownership.

### **2.** **Scope**

To provide guidance and direction to Housing Commission staff for the acquisition of real estate for Housing Commission ownership. This Policy also provides a mechanism for the approval of such acquisitions.

### **3** **Definitions**

Terms utilized within this policy are either defined the first time that the term is utilized or there is a cross reference to other sources that provide those definitions.

### **4** **Policy**

#### **4.1** Implementation of Acquisition

4.1.1 In order to allow the Housing Commission to acquire homes, condominium units and/or multifamily rental projects, leasehold interests, unimproved land, and any and all other types and kinds of real property for Housing Commission ownership and operation, including units in foreclosure or that are in jeopardy of being foreclosed [collectively defined as “real estate” within this policy], with or without the use of real estate brokers, the Housing Authority of the City of San Diego (“Housing Authority”) delegates to the Housing Commission, the right, power and authority to purchase and acquire real estate as set forth and subject to the criteria of this policy.

4.1.2 In addition to utilizing brokers and/or dealing directly with individual developers and owners, the Housing Commission is encouraged to deal directly with lenders, to the extent feasible, including, without limitation, FNMA and FHLMC, to purchase properties acquired by such lender(s) through foreclosure, or by deeds



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in lieu of foreclosure, and/or to acquire real estate which is the subject of a Notice of Default during the foreclosure procedure, but prior to actual foreclosure. In addition, the Housing Commission is encouraged and authorized to acquire real estate not at risk of foreclosure, to meet the City's Balanced Communities Policy.

- 4.1.3 The Housing Commission is authorized to review, approve, and execute any and all documents necessary and/or appropriate to effectuate the acquisition(s) referenced in this policy.
- 4.1.4 The Housing Commission is authorized to contract directly with brokers and/or to cooperate with brokers to effectuate the acquisitions.
- 4.1.5 Any acquisitions of single family homes/condominium units [Single Family Residences] may be accomplished by the President and Chief Executive Officer of the Housing Commission ("CEO"), or designee, subject to the provisions of Section 4.8 of this policy, without further action from or by the Board of Commissioners of the Housing Commission (Board of Commissioners), provided that the acquisition(s) is/are based upon a purchase price(s) at or below an appraised value and provided further the clear fee simple title may be acquired by the Housing Commission at the close of escrow. The CEO is authorized to execute any and all documents necessary and/or appropriate to allow for the acquisition of the Single Family Residences, as approved by the General Counsel of the Housing Commission.
- 4.1.6 The CEO is delegated the power and authority to approve due diligence efforts, up to the limits as set forth by the Housing Authority (currently \$250,000), in order to determine a property's value and suitability for acquisition. Due diligence efforts may include, but shall not be limited to, appraisal, physical needs assessment, lead paint and asbestos containing materials assessment, Phase I and Phase II environmental reports, geotechnical studies, and environmental review.
- 4.1.7 Acquisitions of real estate other than Single Family Residences shall be approved by the Board of Commissioners.
- 4.1.8 Any action taken by the Board of Commissioners, as authorized in this policy, may be reviewed by the Housing Authority within seven (7) days of the date of



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any Housing Commission approval of an acquisition, by notice from any two (2) members of the Housing Authority (City Councilmembers) in addition to the other methods of causing review by the Housing Authority as set forth within the applicable provisions of San Diego Municipal Code, as amended from time to time.

- 4.1.9 Any action of the Housing Commission concerning any acquisition shall become final if no request for review by the Housing Authority is received within such seven (7) days period, in accordance with the provisions of San Diego Municipal Code.
- 4.1.10 The Housing Commission is delegated the power and authority to acquire loans, tax credits or other financing necessary and appropriate, if any, for any acquisition approved by it.
- 4.1.11 The property acquired shall be utilized by the Housing Commission, either as rental properties for low or moderate income housing, and/or the homes and/or units may be resold to qualified low and/or moderate income purchasers as permitted under applicable law. Any property to be resold shall be in safe, decent and sanitary condition.
- 4.1.12 No property may be acquired unless and until a certified appraisal of value has been obtained for each property to be acquired. The purchase price for the property to be acquired must be at or below the appraised value.
- 4.1.13 The Housing Commission shall comply with federal and/or state relocation law, as required in connection with any acquisition.
- 4.1.14 The Commission shall report to the Housing Authority and the City Council annually not less frequently than twice a year on the status of the acquisition(s) by written informational report(s).
- 4.1.15 The Housing Commission shall endeavor to balance the acquisitions of housing among neighborhoods so as to not overly concentrate low and moderate income residential dwelling units in any one geographic area.



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4.1.16 To the extent that any real estate being acquired is to be utilized for public housing, any all applicable federal law and regulations concerning public housing shall be addressed by the Housing Commission prior to the close of escrow for the acquisition. For the purposes of the subsection "addressed" means developing a workable and cost effective plan to meet the federal requirements.

**Approved:**

  
Jeff Davis

Executive Vice President & Chief of Staff

12-6-16  
Date

**History:**

4/13/1979

**Revision Date:**

2/12/2009

**Legislative Authority:**

Health & Safety Code Sections: 34312.3, 34320, 34315, 34312.5, 34315.7

San Diego Municipal Code: Section 98.0301 (d) and (e)