

EXHIBIT "B"
SCOPE OF WORK
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EXHIBIT "C"

PROPERTY MITIGATION PLAN

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EXHIBIT "F"

First Amended
Scope of Development

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FIRST AMENDED
SCOPE OF DEVELOPMENT

A. 1. General

The development is planned to be located on the “Site,” which is on approximately 1.4 acres located on the north side of University Avenue, between 43rd Street and Fairmount Avenue, more specifically set forth in Attachment No’s. 1 and 2 of the DDA. The Improvements shall consist of a mixed-use residential/commercial project consisting of 92 residential apartment units (6 1-bedroom, 20 2-bedroom, and 66 3-bedroom, subject to minor revisions to bedroom mix approved by the Executive Director or designee) to include a minimum of 14 units for affordable housing (the “Affordable Apartments”), approximately 20,500 square feet of retail space, approximately 3,000 square feet of office space, two (2) levels of subterranean parking (to include a minimum of 210 parking spaces), and a minimum of 45 covered surface level parking spaces.

2. Affordable Apartments

The “Affordable Apartments” shall mean a minimum of 14 residential apartment units constructed by Developer in accordance with the DDA and this First Amended Scope of Development which shall be restricted by Developer for rental to and occupancy by Very-Low Income and Low-Income households at an Affordable Rent, as determined and implemented through the terms and conditions of the DDA between the Agency and the Developer, and by covenants to be recorded by the Agency consistent with Section 33413(c) of the California Health and Safety Code. The allocation of Affordable Apartments and their rents shall be consistent with the proportions of unit mixes reflected in the chart below.

# of Units	# of Bedrooms	Income Level	% of Affordable Apartments	# of Years
10	3	65% AMI	71%	55
4	3	50% AMI	29%	55

The Developer shall market the availability of apartment units and select residents for occupancy in the Affordable Apartments in accordance with all applicable local, State and Federal laws and regulations.

The Developer shall enter into an agreement with the Agency and the City of San Diego Housing Commission in accordance with the DDA to monitor the long term affordable restrictions for the units qualifying as affordable units prior to the issuance of building permits for the project.

B. Urban Design Standards

The proposed development, including its architectural design concepts, landscape features and off-site improvements, shall be subject to design review by the Agency in accordance with adopted procedures. The following specific conditions, will be used as a basis for evaluating the development through all stages of the design review process.

1. Architectural Standards

The architecture of the development shall establish a high quality of design and complement the City Heights community. The design shall be developed in collaboration with the City Heights Area Planning Committee and the City Heights Redevelopment Project Area Committee.

Building facades shall be varied both horizontally and vertically to create visual interest.

The structures shall emphasize the scale, proportion, and massing of City Heights with contemporary design features satisfactory to Agency

2. Building Materials

Storefront framing elements such as bulkheads may be painted wood, metal, tile, fiberglass, or other highly finished materials.

Window frames should be painted wood, extruded vinyl or high quality metal finishes. Reflective silver aluminum storefront and window systems are not permitted unless approved by the City and the Executive Director of the Agency (or designee).

No grates, grills, bars, either permanent, retractable or temporary shall be permitted on windows, doors or alcoves unless otherwise approved by the City and the Executive Director of the Agency (or designee).

The project shall use a variety of materials and façade treatments to break the large building massing into smaller design components in substantial conformance with the project concept drawings provided as Attachment 1.

Reflectivity of the glass shall be the minimum reflectivity required by Title 24.

A materials board which illustrates the location, color, quality and texture of

proposed exterior materials shall be submitted with Design Development Drawings.

3. Street Level Design

Ground floors shall be a minimum of 12 feet height.

All first floor building walls that face public streets shall be devoted to pedestrian entrances, display windows and windows which afford views into restaurants or retail. Such windows shall be clear glass.

Architectural features such as recessed storefronts, awnings, or other design features which add human scale to the streetscape, are encouraged where they are consistent with the design theme of the structure.

The building and entry shall be designed to integrate storefronts, signage and window display space into the overall building form.

Active commercial uses shall front University Avenue by placing multiple storefronts along the University Avenue frontage in substantial conformance with the project concept drawings provided as Attachment 1.

4. Roof Tops

Mechanical equipment, vents or other roof top appurtenances must be grouped, painted out and architecturally screened or enclosed from view of surrounding buildings.

Ventilation devices shall conform to requirements set forth in the Uniform Building Code and Uniform Mechanical Code.

A rooftop equipment and appurtenance location and screening plan shall be prepared and submitted with Final Construction Drawings.

Subject to approval by the City of San Diego, a decorative tower component shall be included in the project, in substantial conformance with the project concept drawings provided as Attachment 1.

5. Signing

A comprehensive sign plan prepared in accordance with Municipal Code and standards contained in Chapter XI of the San Diego Municipal Code shall be prepared and submitted in conjunction with submittal of Design Development Drawings.

No sign, inflatable display or banner may be located on the roof of any structure.

6. Noise Control

All mechanical equipment, including but not limited to, air conditioning, heating and exhaust systems, shall comply with the City of San Diego Noise ordinance and California Noise Insulation Standards as set forth in Title 24 of the California Code of Regulations. The exhaust system for mechanically ventilated structures shall be located to mitigate noise and exhaust impacts on adjoining development, particularly residential.

7. Energy Considerations

The design of the improvements shall include, where feasible, energy conservation construction techniques and design, including co-generation facilities, and active and passive solar energy design. The Developer shall be required to demonstrate consideration of such energy features during the design review process.

C. Off-site Improvements

1. City Utilities (sewer, water and storm drain)

The Developer shall be responsible for the connection of on-site sewer, water and roof drain laterals to the appropriate utility mains within the street and beneath the sidewalk. The Developer may use existing laterals if acceptable to the City, and if not, the Developer shall cut and plug existing laterals at such places and in the manner required by the City, and install new laterals.

2. Franchise Public Utilities

The Developer shall be responsible for the installation or relocation of franchise utility connections including, but not limited to, gas, electric, telephone and cable, to the project and all extensions of those utilities in public street.

No overhead utility poles or wires shall be included in the project. Agency shall cooperate in good faith with Developer to cause the City of San Diego to take all steps necessary or appropriate, consistent with all applicable City laws and policies, in order to cause San Diego Gas & Electric (or any other applicable utility) to contribute the maximum amount of funds which such utility is obligated to bear for such undergrounding of utility lines under current arrangements between the City and such utility with respect to undergrounding

efforts.

D. Site Preparation

Except to the extent of the Agency's responsibilities with respect to the Acquisition Parcel as provided in Section 202 and 214 of the DDA, the Developer, at its cost and expense, shall prepare the Site for development. Such Site preparations shall consist of the following:

1. Complete demolition and removal to the surface elevation of the adjoining ground of all existing buildings, other structures and improvements including the removal of all asphaltic concrete, concrete, bricks, lumber, pipes, equipment and other material and all debris and rubbish resulting from such demolition.
2. Complete removal of all subsurface improvements, foundations, walls, slabs, basements, tanks and abandoned utilities as necessary to construct the project.
3. Disconnection, capping and removal of utility lines, installations, facilities and related equipment within or on the Site.
4. Performing remediation work as and to the extent required in Section 214 of the DDA.

All of items (1) through (4) inclusive shall be performed in accordance with City requirements.

E. Removal and/or Remedy of Soil and/or Water Contamination

The Developer shall (at its own cost and expense) remove and/or otherwise remedy as required by law and implementing rules and regulations, and as required by appropriate governmental authorities, any contaminated or hazardous soil and/or water conditions on the Developer's Parcel. Such work may include without limitation the following:

1. Remove (and dispose of) and/or treat any contaminated soil and/or water on the Developer's Parcel as necessary to comply with applicable governmental standards and requirements.
2. Design and construct all Improvements in a manner which will assure protection of occupants and all improvements from any contamination, whether in vapor or other form, and/or from the direct and indirect effects thereof.

F. Environmental Impact Mitigation

The Developer shall implement all mitigation measures and/or mitigation monitoring

requirements as identified in the Environmental Impact Secondary Study for this project. The Developer shall demonstrate how any impacts identified in Exhibit A of the Environmental Secondary Study will be mitigated prior to the issuance of a building permit.

G. Assessment Districts

The Developer shall agree to participate in the City Heights University Avenue Maintenance Assessment District. Said district was formed for the purpose of providing or maintaining transportation, landscape enhancement, park, open space or similar improvements in the City Heights area of the City of San Diego.

H. Construction Fence

The Developer shall install a construction fence pursuant to specifications of, and a permit from, the City Engineer. The construction fence shall be maintained free of litter and in good repair for the duration of its installation.

I. Development Identification Signs

Prior to commencement of construction on the Site, the Developer shall prepare and install, at its cost and expense, one sign on the barricades around the Site which identifies the development. The sign shall be at least four (4) feet by six (6) feet and be visible to passing pedestrian and vehicular traffic. The design of the sign as well as its proposed location shall be submitted to the Agency for review and approval prior to installation. The sign shall at a minimum include:

- Illustration of the development
- Development name
- Developer
- The phrase: "A project of the Redevelopment Agency of the City of San Diego"

Council Members: Mayor Jerry Sanders
Scott Peters
Kevin Faulconer
Toni Atkins
Tony Young
Brian Maienschein
Donna Frye
Jim Madaffer
Ben Hueso

- Completion Date _____
- For information call _____

The Developer shall obtain a current roster of Redevelopment Agency members before signs are manufactured.

J. Americans with Disabilities Act (ADA)

The Developer acknowledges and agrees that it is aware of and will comply with City of San Diego Council Policy 100-04, adopted by Resolution No. R-282 153 relating to the federally-mandated Americans with Disabilities Act (ADA).

K. Fees and Assessments

The Developer shall be responsible for all fees required by the City or other public agency for the construction of the proposed project.

L. Applicable City Codes and Ordinances

Notwithstanding the approval of the project plans by the Agency, the project must meet all requirements of the Uniform Building Code and Uniform Fire Code and all Applicable City Codes and Ordinances.

M. Nondiscrimination and Equal Opportunity

1. The Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Developer shall provide equal opportunity in all employment practices. The Developer shall ensure that its contractor and subcontractors comply with the City of San Diego's Equal Opportunity Program.
2. The Developer has received, read, understands and agrees to be bound by the City of San Diego Municipal Code Division 27 (Equal Opportunity Program) and the City Manager's Policies and Procedures implementing that Program, contained in the Equal Opportunity Packet provided by the Agency.
3. The Developer has submitted, and the Agency acknowledges receipt of either a Work Force Report or an Equal Opportunity Plan, as required by Section 22.2705 of the City of San Diego Municipal Code.
4. The Developer has received, read and understands the Equal Opportunity Contracting Information Packet provided by the Agency.
5. The Developer has submitted, and the Agency acknowledges receipt of, an initial Equal Opportunity Report. The Developer agrees periodically to provide updated reports as requested by the Agency.

EXHIBIT "G"

(Revised)
Agreement Affecting Real Property

[Behind This Page]

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383.

Recording Requested By:
THE REDEVELOPMENT AGENCY OF THE CITY
OF SAN DIEGO
1200 Third Avenue; Suite 1400
San Diego, California 92101
Attention: City Heights Project Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT AFFECTING REAL PROPERTY

THIS AGREEMENT AFFECTING REAL PROPERTY [Agreement] is entered into as of this ____ day of _____, 200__, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic [Agency] and CITY HEIGHTS REALTY, LLC, a California limited liability company, [Developer].

A. Developer holds fee title to that certain real property described in the legal description attached hereto as Exhibit "A" and incorporated herein by this reference [Developer's Parcel]. Developer holds fee title in that certain real property described in the legal description attached hereto as Exhibit "B" and incorporated herein by this reference [Acquisition Parcel]. The Developer's Parcel and the Acquisition Parcel are collectively referred to herein as the "Site."

B. The Site is within the City Heights Redevelopment Project Area [Project Area] in the City of San Diego and is subject to the provisions of the Redevelopment Plan for the Project Area which was approved and adopted on May 11, 1992, by Ordinance No. 0-17768 [New Series] of the City Council of the City of San Diego.

C. San Diego Revitalization Corporation [SDRC] and Agency entered into that certain Disposition and Development Agreement dated as of May 3, 2005, as amended by that certain First Implementation Agreement dated November 30, 2007 and by that Second Implementation Agreement dated _____ [collectively, the DDA], and incorporated herein by this reference, pursuant to which the Agency, among other things, acknowledged and approved the official corporate name change of San Diego Revitalization Corporation to Price Charities, a California public benefit corporation. The DDA, the Loan Agreement, the Promissory Note, the Pledge Agreement and other associated agreements were assigned by Price Charities to the Developer by that certain Assignment and Assumption Agreement dated _____

City Heights Square
Revised AARP

_____.

D. Pursuant to the DDA, the Agency acquired and conveyed to Developer by Grant Deed of even date herewith and recorded of even date herewith as Document No. _____ in the Official Records of San Diego County, California that portion of the Site referred to therein as the Acquisition Parcel for the purpose of constructing and operating certain improvements on the Site [Improvements] at a purchase price herein called "Purchase Price."

E. This Agreement is entered into and recorded in accordance with the Redevelopment Plan and the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

NOW, THEREFORE, AGENCY AND DEVELOPER AGREE AS FOLLOWS:

1. Construction Covenants. Developer, on behalf of itself and its successors, assigns, and each successor in interest to Developer's interest in the Site or any part thereof, hereby covenants and agrees that Developer and such successors and assigns shall develop and construct on the Site a mixed-use residential/commercial project consisting of 92 residential apartment units (6 1-bedroom, 20 2-bedroom, and 66 3-bedroom, subject to minor revisions to bedroom mix approved by the Executive Director or designee) to include a minimum of 14 units for affordable housing (the "Affordable Apartments" as defined below), approximately 20,500 square feet of retail space, approximately 3,000 square feet of office space, two (2) levels of subterranean parking (to include a minimum of 210 parking spaces), and a minimum of 45 covered surface level parking spaces, in accordance with the DDA (including but not limited to the Scope of Development, as amended), the Grant Deed, this Agreement, and plans approved by the City of San Diego.

2. Use of Site. Developer, on behalf of itself and its successors, assigns, and each successor in interest to Developer's interest in the Site or any part thereof, hereby covenants and agrees that Developer and such successors and assigns shall develop, maintain, and use the Site only as follows:

a. Developer, its successors and assigns, shall use the Site exclusively for the construction and use of a mixed-use residential/commercial project, all as described in the Scope of Development, as amended, attached to the DDA. Developer shall use the Site for such uses and purposes and in accordance with plans and specifications for the redevelopment of the Site approved by the Agency. No change in the use of the Site and no new construction or material exterior modification or alteration of any structure on the Site shall be permitted without the prior written approval of the Agency.

b. A minimum of 14 Affordable Apartments, of which a minimum of four (4) apartment units shall be restricted to households with incomes not exceeding 50% of the Area

Median Income adjusted for household size (the “Very Low-Income” households as defined below) and a minimum of ten (10) apartment units shall be restricted to households with incomes not exceeding 65% of the Area Median Income adjusted for household size (the “Low-Income” households as defined below) consistent with the chart below, all of which shall be dispersed throughout the Site.

# of Units	# of Bedrooms	Income Level	% of Affordable Apartments	# of Years
10	3	65% AMI	71%	55
4	3	50% AMI	29%	55

c. For purposes of this Agreement, the following capitalized terms shall have the following definitions:

(1) “Affordable Apartments” shall mean a minimum of 14 residential apartment units constructed by Developer which shall be restricted by Developer for rental to and occupancy by Very-Low Income and Low-Income households at an Affordable Rent.

(2) “Affordable Rent” shall mean monthly rent (including a reasonable utility allowance) which does not exceed for a Low Income household, one-twelfth of the product of 30 percent times 65 percent of the Area Median Income, adjusted for household size appropriate to the unit, and which does not exceed for a Very Low Income household, one-twelfth of the product of 30 percent times 50 percent of the Area Median Income, adjusted for household size appropriate to the unit. As used in this paragraph, “household size appropriate to the unit” shall equal the number of bedrooms in the unit plus one.

(3) “Area Median Income” shall mean the area median income for San Diego County as published annually by California’s Housing and Community Development Department pursuant to Health and Safety Code section 50093.

(4) “Low-Income” shall mean household income that does not exceed 65% of the Area Median Income, adjusted for household size, as determined annually by the United States Department of Housing and Urban Development and published by the California Department of Housing and Community Development.

(5) “Very Low-Income” shall mean household income that does not exceed 50% of the Area Median Income, adjusted for household size, as determined annually by the United States Department of Housing and Urban Development and published by the California Department of Housing and Community Development.

3. Administration. To satisfy the requirements of California Health and Safety Code

Section 33418, prior to the initial occupancy of the Affordable Apartments by Low-Income and Very Low-Income households, the Developer shall enter into a reporting and monitoring agreement with the Agency and the San Diego Housing Commission [Administration Agreement]. The Administration Agreement for this purpose shall be substantially in the form attached hereto as Exhibit "C" and incorporated herein by this reference. The Administration Agreement shall establish a Five Hundred Dollar (\$500.00) initial set up fee and Sixty Five Dollar (\$65.00) monitoring fee per year for each Affordable Apartment.

4. Marketing. Developer, its successors and assigns, shall market the availability of apartment units and select residents for occupancy in the Affordable Apartments in accordance with all applicable local, State and Federal laws and regulations.

5. Maintenance. Developer, its successors and assigns, shall maintain the Improvements on the Site in the same aesthetic and sound condition (or better) as the condition of the Site at the time the Agency issues a Release of Construction Covenants pursuant to the Agreement, reasonable wear and tear excepted. This standard for the quality of maintenance of the Site shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks adjacent to the Site, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular basis and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; and maintaining security devices in good working order.

6. Grant of Maintenance and Operations Easement and Agreement. Developer, its successors and assigns, shall participate, together with the other property owners on the block, in paying for the management and operations of the park to be developed on the approximately 5,348 square foot parcel of real property adjacent to the Site on the north, consisting of an approximately 49 foot by 109 foot parcel along 43rd Street, legally described as the "Park Site" in Exhibit "D", in accordance with the terms and conditions of that certain Grant of Maintenance and Operations Easement and Agreement dated _____ by and between Developer, City Heights Square, L.P. (the developer of the senior housing project adjacent to the Site), La Maestra Family Clinic, Inc. [La Maestra], the City or Agency, as may be appropriate, and other parties as mutually agreed to by the parties therein _____ [Park Agreement], attached hereto as Exhibit "E" and which is incorporated herein by this reference.

7. Non-Discrimination. Developer herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them,

that this Agreement is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in Subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, Subdivision (m) and Paragraph (1) of Subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall Developer itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Site. The foregoing covenants shall run with the land.

8. Non-Discrimination Clause. Developer, its successors and assigns, shall refrain from restricting the rental, sale, or lease of the Site or any portion thereof, on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and contract entered into with respect to the Site, Improvements thereon, or any portion thereof, after the date of this Agreement shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- a. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, successors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in Subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, Subdivision (m) and Paragraph (1) of Subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”
- b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, successors, assigns, and all persons claiming under or through him or her, that this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in

Sections 12926, 12926.1, Subdivision (m) and Paragraph (1) of Subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

- c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, Subdivision (m) and Paragraph (1) of Subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

9. Tax Increment.

- a. Developer acknowledges the following:

(1) The Agency will be entitled to receive that portion of property taxes in the City Heights Redevelopment Project Area [Project Area], referred to as “tax increments” or “tax increment revenue”, which are in excess of property taxes generated from the application of tax rates to the “base year value” of the taxable Site in the Project Area (i.e., the assessed value of the taxable Site in the Project Area as shown upon the assessment roll used in connection with the taxation of the Site, last equalized prior to the effective date of the ordinance adopting the redevelopment plan for the Project Area), as provided in and pursuant to California Health and Safety Code Section 33670.

(2) Consequently, any reduction in the assessed value of the Site or reduction in the anticipated property taxes relating to the Site will result in a reduction in tax increment revenue to be received by the Agency.

(3) The Agency agreed to enter into the DDA with San Diego Revitalization Corporation and to accept the obligations set forth in the DDA, in part, because of the tax increment revenue anticipated to be received by the Agency in the Project Area with

respect to the Site.

(4) The Agency would not have entered into the DDA except for the tax increment revenue anticipated to be received by the Agency with respect to the Site.

b. Therefore, in consideration of the assistance provided by the Agency pursuant to the DDA, the Developer herein covenants and agrees by and for itself, its successors and assigns, and all persons claiming under or through them, that it shall not apply for any tax exemption or file any property tax assessment appeal based on a claim of exemption from tax with the County assessor or any other applicable taxing agency, or otherwise contest or appeal the obligation to pay property taxes or the assessed value of the Site based on a claim of exemption from tax, at any time during which the Agency is entitled to receive tax increments with respect to the Site (provided that the foregoing shall not be construed as precluding appeals based upon mathematical or procedural errors or differing views regarding valuation, rather than appeals based upon claims of exemption).

c. In the event the Site is determined to be tax exempt or the assessed value of the Site is reduced as the result of any application for tax exemption or any property tax assessment appeal in violation of Section b. above, the Developer, its successors and assigns, or all persons claiming under or through them, shall be liable to the Agency for any reduction in the amount of tax increment revenue payable to the Agency which results from such tax exemption or appeal (the "Lost Revenue"), and the Agency shall be entitled to receive such Lost Revenue from the Developer, its successors and assigns, or all persons claiming under or through them.

d. Lost Revenue shall be calculated on the basis of the amount of tax increment which the Agency would have received in the absence of such tax exemption or appeal, out of each property tax installment that is payable by the Developer, its successors and assigns, or all persons claiming under or through them, with respect to the Site to the County or any other taxing agency, during the entire time period in which the Agency is entitled to receive tax increments with respect to the Site.

e. The Developer, its successors and assigns, and all persons claiming under or through them, shall pay the applicable amount of Lost Revenue to the Agency not later than the date on which the corresponding property tax installment is due and payable to the County or other applicable taxing agency.

f. In the event the Developer, its successors and assigns, or all persons claiming under or through them, fails to pay any Lost Revenue to the Agency when due, the delinquent amount shall bear interest, compounded, at the rate of ten percent (10%) per annum, or the highest rate of interest permitted under applicable law, whichever is less, calculated from the date that the corresponding property tax installment was due and payable, until the Lost Revenue is paid, and the Agency shall have a lien on the Site for the full amount of the Lost

Revenue that is due and payable, plus interest, until paid in full.

g. In the event the tax increments to be paid to the Agency are reduced as the result of any tax exemption or any property tax assessment appeal in violation of Section b. above, then as an alternative to Sections d., e. and f., the Developer, its successors and assigns, and all persons claiming under or through them, shall have the right, upon thirty (30) calendar days' prior written notice to the Agency Executive Director, to capitalize the full liability amount, and pay to the Agency, in a lump sum, the present value of the total Lost Revenue, as reasonably determined by the Agency, calculated for the entire time period during which the Agency is entitled to receive tax increments with respect to the Site, which payment shall satisfy in full the liability to the Agency resulting from such property tax assessment appeal. The present value of the total Lost Revenue shall be calculated by applying to the Lost Revenue for the tax year in which the lump sum payment is due, a present value discount rate equal to the Agency's cost of capital for a tax exempt bond issue, as published by the Bond Buyer Revenue Index or similarly recognized national publication. The discount rate shall be determined using the average daily rate over a five (5) business day period beginning on, and including, the date of written notice to the Agency Executive Director. Payment of the lump sum Lost Revenue shall be made to the Agency no later than thirty (30) calendar days from the date of written notice to the Agency Executive Director.

h. All covenants and conditions contained in this Section 9 shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the Agency, its successors and assigns, against the Developer, its successors, assigns, heirs, legatees, devisees, administrators, executors, and all persons claiming under or through them. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the Agency shall be deemed a beneficiary of the covenants provided for in this Section 9, both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency for the entire period during which such covenants shall be in force and effect, without regard to whether the Agency is or remains an owner of any land or interest therein to which such covenants relate. The Agency shall have the right, in the event of any breach of any such covenant or condition, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of covenant or condition.

10. Transfers Prohibited. Prior to the recordation of a Release of Construction Covenants pursuant to the DDA, Developer shall not, except as permitted by this Section 10, make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Site or the Improvements thereon, without prior written approval of the Agency. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the

development of the Site, nor shall it prohibit leases for occupancy in the ordinary course of business or Permitted Transfers.

a. For purposes of this Section 10, the term “Permitted Transfer” shall mean any of the following:

(1) An assignment of the DDA and all of Developer’s interests in the Site to (i) a limited liability company in which the Developer owns majority interest and is the controlling and managing member with control over management; (ii) a limited partnership in which the Developer owns majority interest and is the controlling and managing partner with control over management; (iii) an Affiliate; or (iv) Price Charities;

(2) Either before or after Completion, any Permitted Mortgage (as defined in the DDA), or the conveyance of title to the Mortgagee or its assignee in connection with a foreclosure or a deed in lieu of foreclosure of such Permitted Mortgage;

(3) A conveyance of the Site to (i) any limited partnership or limited liability company in which it is the controlling and managing general partner or managing member, (ii) a sale back from such partnership or limited liability company to such general partner or member, and the assignment of the DDA to such Assignee, as provided in Section 106.c of the DDA, if in the reasonable determination of the Agency’s Executive Director, the reconstituted “Developer” is comparable in all material respects (including experience and financial capability) to City Heights Realty, LLC, (iii) an Affiliate, or (iv) Price Charities;

(4) The inclusion of equity participation in Developer by transfer of or addition of limited partners or members to the Developer or similar mechanism, provided the Developer retains majority interest and remains the controlling and managing member with control over management.

b. Any transfer described in clauses (1) through (4) shall be subject to the reasonable approval of the Agency Executive Director or designee. The foregoing prohibitions shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site, nor shall they be construed to prohibit leases for occupancy in the ordinary course of business or Permitted Transfers.

c. Except as permitted by Section 10.a, in the event that the Developer does sell, transfer, convey or assign any part of the Site or buildings or structures thereon, prior to the recordation of a Release of Construction Covenants, in violation of this Grant Deed, the Agency shall be entitled to increase the Purchase Price paid by the Developer for the Site by the amount that the consideration payable for such sale, transfer, conveyance or assignment is in excess of the Purchase Price paid by the Developer, plus the cost of improvements and development, including carrying charges and costs related thereto. The consideration payable for such sale,

transfer, conveyance or assignment to the extent it is in excess of the amount so authorized shall belong and be paid to the Agency and until paid the Agency shall have a lien on the Site and any part involved for such amount. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property, nor shall it apply to any Permitted Mortgage permitted by the DDA for financing the development of the Site.

d. In the absence of a specific written agreement by the Agency, and except as otherwise provided in this Section 10, no such sale, transfer, conveyance or assignment of the Site (or any portion thereof), or approval by the Agency of any such sale, transfer, conveyance or assignment, shall be deemed to relieve the Developer or any other party from any obligations under the DDA.

e. The prohibitions set forth in this Section 10 shall remain in effect only until the issuance of a Release of Construction Covenants.

11. Beneficiary of Covenants. All conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Agency, its successors and assigns, and the City of San Diego (the "City") and its successors and assigns, against Developer, its successors and assigns, to or of the Site or any portion thereof or any interest therein, and any party in possession or occupancy of said Site or portion thereof. Agency and the City shall be deemed the beneficiaries of the covenants, conditions and restrictions of this Agreement both for and in their own rights and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of the Agency and the City, without regard to whether the Agency or City has been, remains, or is an owner of any land or interest therein in the Site or the Project area. Except as provided in the preceding sentence, the covenants, conditions and restrictions contained in this Agreement shall not benefit nor be enforceable by any owner of any other real property within or outside the Project Area or any person or entity having any interest in any such other real property.

12. Enforcement. Agency shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

13. Covenants Run with the Land. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage permitted by the DDA. This Agreement and the covenants contained herein shall not be subordinate to the lien of any deed of trust securing any construction and/or permanent loan affecting the Site. Any subsequent owner of the Site shall be bound by such remaining covenants, conditions, restrictions,

limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

14. Effect and Duration of Covenants. The covenants established in this Agreement and any amendments hereto approved by the Agency and the Developer shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency, its successors and assigns, and the City of San Diego. Except as provided below in this Section 14, every covenant and condition and restriction contained in this Agreement in connection with the Affordable Apartments shall remain in effect until the date that is for the longest feasible time, but not less than fifty five (55) years after the date of recordation of this Agreement. The covenants, conditions and restrictions contained in this Agreement shall remain in effect upon the sale of the Site or upon any refinancing.

a. The construction covenants set forth in Section 1 and the covenants set forth in Section 10 of this Agreement shall terminate and be released upon the recordation of the Release of Construction Covenants by the Agency pursuant to the DDA.

b. The covenants set forth in Section 6 shall remain in effect for the term set forth in the Park Agreement.

c. The covenants against discrimination set forth in Section 7 and Section 8 of this Agreement shall remain in perpetuity.

d. The covenants set forth in Section 9 of this Agreement shall remain in effect for the period of effectiveness of the Redevelopment Plan (currently scheduled to expire May 11, 2032).

15. Notice. Prior to exercising any remedies hereunder, Agency shall give Developer notice of such default. Agency shall also give notice of default to any person or entity having a security interest in the Site secured by a lien. If the default is reasonably capable of being cured within thirty (30) calendar days, Developer shall have such period to effect a cure prior to exercise of remedies by Agency. If the default is such that it is not reasonably capable of being cured within thirty (30) calendar days, and Developer (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Agency. In no event shall Agency be precluded from exercising remedies if the Site becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) calendar days after the first notice of default is given.

16. Effect of Delay. If a violation of any of the covenants or provisions of this Agreement remains uncured after the respective time period set forth in Section 15, above,

Agency and its successors and assigns, without regard to whether Agency or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Developer of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

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IN WITNESS WHEREOF, the Agency and the Developer have signed this Agreement as of the date set forth above.

AGENCY:

REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY
ON THIS _____ day of _____.

MICHAEL J. AGUIRRE
Agency General Counsel

By: _____
Kendall D. Berkey,
Deputy General Counsel

APPROVED AS TO FORM AND LEGALITY
ON THIS _____ day of _____.

KANE, BALLMER & BERKMAN
Special Counsel Redevelopment Agency

By: _____
Murray O. Kane

DEVELOPER:

CITY HEIGHTS REALTY, LLC
a California limited liability company

By: PRICE CHARITIES,
a California non-profit benefit corporation;
Formerly named SAN DIEGO
REVITALIZATION CORPORATION, a
California non-profit public benefit
corporation

Its: Sole and Managing Member

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF DEVELOPER'S PARCEL

Parcel 1 of Parcel Map No. 19854 in the City of San Diego, County of San Diego, State of California per map thereof filed in the Office of the County Recorder of San Diego County, October 7, 2005 as File No. 2005-0871269 of Official Records.

EXHIBIT "B"

LEGAL DESCRIPTION OF THE ACQUISITION PARCEL

PARCEL 10:

All of Lots 25, 26, 27 and 28 in Block 46 of City Heights, in the City of San Diego, County of San Diego, State of California, according to Amended Map thereof No. 1007, filed in the Office of the County Recorder of San Diego County, October 3, 1906.

Together with Easterly 10.00 feet of the alley adjacent to said Lots 25 through 28 as vacated by Resolution No. 200796, recorded September 16, 1970 as File No. 167930 of Official Records of said County.

EXCEPTING THEREFROM the Easterly 10.00 feet of Lots 26, 27 and 28, Block 46, City Heights, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 1007, filed in the Office of the County Recorder of San Diego County, October 3, 1906, together with that portion of Lot 25 of said Block 46 lying Easterly and Southeasterly of a line described as follows:

Beginning at the intersection of the North line of said Lot 25 with the West line of the Easterly 10.00 feet of said Lot 25; thence South along said West line, a distance of 10.00 feet to the beginning of a tangent curve concave Northwesterly, having a radius of 15.00 feet; thence Southwesterly along the arc of said curve, through a central angle of 90°00'00" a distance of 23.56 feet to the point of tangency in the South line of said Lot 25, said point being 25.00 feet Westerly of the Southeast corner of said Lot 25.

PARCEL 10A:

An easement and right of way for road, access and utility purposes over and through the following described property in the City of San Diego, County of San Diego, State of California:

Beginning at a point in the center line of the alley in Block 46 of City Heights, according to Amended Map thereof No. 1007, filed in the Office of the County Recorder of San Diego County, October 3, 1906, which point is on the Easterly prolongation of the Northerly line of Lot 21; in said Block 46, thence Southerly along the center line of said alley to a point in the Easterly prolongation of the Southerly line of Lot 24 in said Block 46; thence Westerly along the prolongation of the Southerly line of said Lot 24 in said Block 46 to the Southeasterly corner of said Lot 24 in said Block 46; thence Northerly along the Westerly line of said alley to the Northeasterly corner of Lot 21 in said Block 46; thence Easterly along the Easterly prolongation of the Northerly line of said Lot 21 in said Block 46 to the Point of Beginning.

(APN: 471-452-27; 471-452-30)

EXHIBIT "C"

ADMINISTRATION AGREEMENT

[Behind this Page]

EXHIBIT "D"

LEGAL DESCRIPTION OF THE PARK SITE

Parcel 4 of Parcel Map No. 19854 in the City of San Diego, County of San Diego, State of California per map thereof filed in the Office of the County Recorder of San Diego County, October 7, 2005 as File No. 2005-0871269 of Official Records.

EXHIBIT "E"

GRANT OF MAINTENANCE AND
OPERATIONS EASEMENT AND AGREEMENT

[Behind this Page]

EXHIBIT "H"

Administration Agreement

[Behind This Page]

ADMINISTRATION AGREEMENT

This Administration Agreement (“Agreement”) is entered into as of _____, 2008 by and between the Redevelopment Agency of the City of San Diego, a public body, corporate and politic (“Agency”), the San Diego Housing Commission, a public agency (“Administrator”), and City Heights Realty LLC, a California limited liability corporation (“Participant”), which shall collectively be referred to as the “Parties”.

RECITALS

WHEREAS, Participant is developing a rental housing project located at University Avenue and 43rd Street, San Diego, California (“Property”), which includes constructing and developing 92 living units, with a minimum of 14 apartments to be rented exclusively to low and very-low income households (“Project”). The affordable rental apartments (referred to as the “Affordable Apartments” in the DDA, as described below) are the subject of this Agreement and referenced herein as the “Affordable Units”; and

WHEREAS, the Affordable Units and real property on which they are constructed are the subject of that Agreement Affecting Real Property entered into by and between the Participant and the Agency, dated _____ (the “AARP”), and recorded against the Property on _____, and that Disposition and Development Agreement dated May 3, 2005, as amended by that First Implementation Agreement dated November 30, 2007 and that Second Implementation Agreement dated _____ (collectively, the “DDA”), entered into by and between the Agency and Participant (referred to as the Developer therein); and

WHEREAS, the DDA and the AARP collectively require the construction and rental of a minimum of 14 Affordable Units priced at and made available to households earning between 50-65% of area median income for a period of not less than fifty five (55) years from the date of recordation of the Release of Construction Covenants pursuant to Section 405 of the DDA; and

WHEREAS, pursuant to California Health and Safety Code Section 33418 et seq. of the California Community Redevelopment Law (“CRL”), the Agency is a public agency charged with enforcing the affordable housing obligations of the Participant contained in the DDA and the AARP including, without limitation, determining the eligibility of renters and rental restrictions of the Affordable Units; and

WHEREAS, the Agency desires to use the staff, skills, and facilities of the Administrator to provide monitoring and reporting requirements on the Project, as regulated by the DDA and the AARP; and

WHEREAS, the Parties have the capability and the legal right to enter into this Agreement; and

WHEREAS, the Participant, the Agency and the Administrator desire to enter into this Agreement to, inter alia, provide that (i) Participant shall pay a fee to Administrator in consideration for monitoring the Affordable Units for the period of affordability; and (ii)

Administrator shall administer and perform all monitoring and reporting requirements on the Project as regulated by the DDA and the AARP, and provide the reports set forth in Section VII.

NOW, THEREFORE, the Parties hereby agree as follows:

AGREEMENT

I. Purpose of Agreement

The purpose of this Agreement is to provide for the administration of the affordable housing obligations of the Participant arising under the DDA and the AARP, in accordance with the CRL.

II. Scope of Work

A. Definitions.

“Affordable Apartments” shall mean a minimum of 14 residential apartment units constructed by Developer in accordance with this DDA and the Scope of Development, as amended by the Second Implementation Agreement, which shall be restricted by Developer for rental to and occupancy by Very-Low Income and Low-Income households at an Affordable Rent, as determined and implemented through the terms and conditions of this DDA between the Agency and the Developer, and by covenants to be recorded by the Agency consistent with Sections 33334.3 and 33413(c) of the California Health and Safety Code.

“Affordable Rent” shall mean monthly rent (including a reasonable utility allowance) which does not exceed for a Low Income household, one-twelfth of the product of 30 percent times 65 percent of the Area Median Income, adjusted for household size appropriate to the unit, and which does not exceed for a Very Low Income household, one-twelfth of the product of 30 percent times 50 percent of the Area Median Income, adjusted for household size appropriate to the unit. As used in this paragraph, “household size appropriate to the unit” shall equal the number of bedrooms in the unit plus one.

“Area Median Income” shall mean the area median income for San Diego County as published annually by California’s Housing and Community Development Department pursuant to Section 50093 of the California Health and Safety Code.

“Low-Income” shall mean household income that does not exceed 65% of the Area Median Income, adjusted for household size, as determined annually by the United States Department of Housing and Urban Development and published by the California Department of Housing and Community Development.

“Very Low-Income” shall mean household income that does not exceed 50% of the Area Median Income, adjusted for household size, as determined annually by the United States Department of Housing and Urban Development and published by the California Department of Housing and Community Development.

B. Services. In addition to the reporting requirements set forth in Section VII below, the Administrator shall monitor Participant's compliance with the affordable housing requirements of the Project as set forth in the DDA and the AARP, including, without limitation: (i) establishing the eligibility criteria for renters of the Affordable Units in accordance with the requirements of the DDA and the AARP; and (ii) monitoring ongoing compliance with the terms of the DDA and the AARP as applicable, including an annual certification that the Affordable Units remain occupied by eligible tenants. The Agency will notify the Administrator of any amendments to the CRL that would affect the affordable housing requirements of the Project as set forth in the DDA and the AARP.

C. Administrator and Agency Approval of Rents. The maximum amount which Participant may charge for rent of each of the Affordable Units is set forth in Exhibit "A", attached hereto and incorporated herein by this reference.

D. Agency Rights and Obligations. All rights, obligations, and/or duties of the Agency under the DDA and the AARP, not otherwise the subject of this Agreement, shall remain the rights, obligations, and/or duties of the Agency.

III. Parties to Agreement

The Parties to this Agreement are:

A. The Redevelopment Agency of the City of San Diego, California, a public entity, corporate and politic, having its principal office at 1200 Third Avenue; Suite 1400, San Diego, California 92101.

B. The San Diego Housing Commission, a public agency, having its principal office at 1122 Broadway; Suite 300, San Diego, California 92101.

C. City Heights Realty, LLC, a California limited liability company, with notices mailed to c/o Jack McGrory at 7979 Ivanhoe Ave., Suite 520, La Jolla, California 92037.

IV. Representatives of the Parties

The representatives of the respective Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

A. The representative of the Agency shall be:

Janice L. Weinrick, Deputy Executive Director
Redevelopment Agency of the City of San Diego
1200 Third Avenue; Suite 1400, MS 56D
San Diego, California 92101

B. The representatives of the Administrator shall be:

City Heights Square
Administration Agreement

Rick Gentry, President and Chief Executive Officer
Occupancy Monitoring Department
San Diego Housing Commission
1122 Broadway; Suite 300
San Diego, California 92101

C. The representative of the Participant shall be:

Jack McGrory, Executive Vice President
Price Charities (Sole and Managing Member of City Heights Realty,
LLC)
7979 Ivanhoe Ave, Suite 520
La Jolla, California 92037

Any Party may designate another representative by providing written notice to the other Parties.

V. Time of Performance

Services pursuant to this Agreement shall commence as of the date of the execution of this Agreement by all of the Parties and shall terminate upon the earlier of: (i) expiration of the affordable rental restriction requirements, as defined in the DDA and the AARP; or (ii) termination of this Agreement pursuant to Section XV, below.

VI. Monitoring of the Administrator by the Agency

The Agency may monitor the Administrator's performance of its duties under this Agreement. The Administrator shall reasonably cooperate with the Agency in connection with such monitoring.

VII. Monitoring and Reporting Requirements

Administrator Requirements

- A. The Administrator shall determine whether proposed applicants qualify as tenants for the Affordable Units.
- B. The Administrator shall monitor the following, pursuant to Exhibit "A" attached hereto:
 - (1) Each unit's occupancy by eligible residents (i.e., at low- and very low-income levels); and
 - (2) The period of each unit's affordability (i.e., not less than 55 years for rental units).

- C. The Administrator shall submit to the Agency annual reports of its monitoring activities pursuant to this Agreement, which may include the most recent Certification of Continuing Program Compliance report, no later than July 31st for the prior fiscal year (July 1- June 30).
- D. The Administrator shall re-certify household income annually. If a household's income increases to above 140% of the applicable income limitation, the household will be required to move out or, if another unit in the project is vacant and can be converted to an affordable rent, pay the market rate rent. Participant shall be solely responsible for eviction of tenants; the Administrator shall have no obligation to evict any persons.

Agency Requirements

- A. Provide evidence of the Participant's advance notification of any fees required under this Agreement, as demonstrated by Exhibit "B" attached hereto and incorporated herein by this reference.
- B. Annually, upon request from the Administrator, provide updated rent chart based upon the San Diego Median Income, CRL and applicable regulations for the other project funding sources.

Participant Requirements

- A. Provide complete and accurate information required by the Administrator with regard to the affordable housing obligations of the Participant contained in the DDA and the AARP, immediately upon request.
- B. One (1) year prior to the expiration of an affordability restriction, the tenants will be provided with a written notice from the Participant.

VIII. Books and Records

A. Complete Books. The Administrator shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Agreement, the DDA and the AARP. The Participant shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Agreement, the DDA and the AARP.

B. Availability. All records prepared in accordance with this Agreement shall be made available to the Agency for copying and inspection at any time without notice during normal business hours.

IX. Access to Records

City Heights Square
Administration Agreement

A. The Agency shall have full and free access to all books, papers, documents, and records of the Administrator and/or Participant that are pertinent to the obligations of all Parties under this Agreement.

B. The Administrator shall have full and free access to all books, papers, documents and records of the Participant and/or Agency that are pertinent to the Administrator's obligations under this Agreement.

X. Ownership, Use and Distribution of Documents

A. All records, reports, books, papers, documents, computer discs or other information prepared or developed by the Administrator or Participant on behalf of the Agency in connection with services rendered under this Agreement, are and shall remain the exclusive property of the Agency.

B. The Agency and Administrator may use and distribute in each of their sole discretions any records, reports, books, papers, documents, computer discs or other information prepared by the Administrator and/or Participant pursuant to this Agreement. Such purposes include, but are not limited to, annual reports, reports required by the CRL, and responses to public information requests. The Agency shall identify the Administrator as the author of any such reports prepared by the Administrator that are distributed by the Agency. Neither the Agency, nor the Administrator shall be required to secure any prior authorization, written or otherwise, from one another prior to any such distribution.

C. Upon expiration of this Agreement or in the event of termination of this Agreement by the Agency or the Administrator as provided in Section XV of this Agreement, the Administrator agrees to provide to the Agency and the Participant copies of all records, reports, books, papers, documents, computer discs or other information prepared as a result of this Agreement not previously provided to the Agency or the Participant.

XI. Payment of Compensation

A. Amount. In consideration for the Services provided by the Administrator with respect to the Affordable Units as referenced in this Agreement, the Administrator may establish and collect annually a fee ("Annual Monitoring Fee") from the Participant for services rendered pursuant to this Agreement to monitor and enforce the affordability covenants of the Project contained in the DDA and the AARP. The amount of the Annual Monitoring Fee charged shall be based upon the current San Diego Housing Commission Annual Occupancy Monitoring Fee Schedule, Exhibit "B", attached hereto, which Exhibit is subject to revision annually, based upon the increase in the Consumer Price Index for the San Diego Metropolitan Area. Each year the Annual Monitoring Fee shall be increased based upon the percentage of increase in the Cost of Living as referenced in the Consumer Price Index for the San Diego Metropolitan Area. In no event, shall the initial Annual Monitoring Fee decrease, however.

B. Time of Payment. Concurrently with Participant's execution and delivery of this Agreement, Participant shall pay to the Administrator a System Set-Up and Implementation Fee as referenced in Exhibit "B", attached hereto. The Administrator's right to the Annual Monitoring Fee referenced in Exhibit "B" shall commence concurrent with activities referenced in Section VII of this Agreement. The Participant shall pay to the Administrator the Annual Monitoring Fee in accordance with, and as calculated by, Section XI.A, above. Failure to timely pay the System Set-Up and Implementation Fee and/or Annual Monitoring Fee shall constitute a material default under this Agreement. Such breach shall entitle the Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section XV of this Agreement.

C. Administrator Entitled to All Fees. The Participant also agrees to pay additional fees as necessary to reasonably compensate the Administrator in the event Administrator's monitoring results in a need to take additional steps to enforce the covenants and conditions contained in the AARP and referenced in this Agreement (see Exhibit "B" attached hereto). Participant further agrees that failure to pay all such fees within fifteen (15) business days after receipt of a billing statement for such fees shall, subject to the notice to cure provision at Section XII below, constitute a material breach of the covenants and conditions of this Agreement. Such breach shall entitle the Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section XV of this Agreement.

XII. Default

In the event of any breach or default hereunder, which the defaulting or breaching Party fails to satisfactorily cure within ten (10) calendar days of receiving written notice from a non-defaulting Party specifying the nature of the default or breach, the non-defaulting Party may immediately cancel and/or terminate this Agreement and/or maintain any and all legally permissible actions at law or in equity against the defaulting Party to enforce the correction of any such default or breach or to enjoin any such default or breach.

XIII. Independent Contractor

The Parties hereto are entering into this Agreement independently from one another and shall not be deemed officers, officials, agents, partners or employees of one another.

XIV. Amendment or Assignment of Agreement

All amendments to this Agreement must be in writing and executed with mutual consent of the Administrator, the Agency and the Participant. This Agreement may not be assigned by any Party without the written approval of the remaining Parties subject to the Participant's rights under the DDA and AARP, and such approval shall not be unreasonably withheld.

XV. Termination

This Agreement may be terminated with or without cause by the Agency or the Administrator upon thirty (30) calendar days' written prior notice to all other Parties.

XVI. Complete Agreement

This Agreement contains the full and complete agreement between the parties concerning the matters contained herein. No verbal agreements or conversation with any officer, official, agent or employee of any Party shall effect or modify any of the terms and conditions of this Agreement.

XVII. Limitations on Agreement

Notwithstanding anything in this Agreement to the contrary, in no event shall the obligations of the Participant under this Agreement be any greater than the obligations of the Participant as the "Developer" under the DDA and the AARP (referenced to as "Owner" therein). The Parties agree that this Agreement is not in any way intended to, and does not, revise, amend or otherwise affect any of the terms, conditions or priority of the DDA or the AARP, nor the enforcement thereof, except as specifically set forth herein. The Parties hereby agree that, except as expressly provided herein, the provisions of the DDA and the AARP shall be and remain unmodified and in full force and effect.

XVIII. Counterparts

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

XIX. Time of Essence

Time is expressly declared to be of the essence in this Agreement, and of each and every provision in which time is an element.

XX. Captions

Section or paragraph titles and captions contained in this Agreement are inserted as a matter of convenience and for reference, and are not a substantive part of this Agreement.

XXI. Additional Documents

The Parties each agree to sign any additional documents, which are reasonably necessary to carry out this Agreement or to accomplish its intent.

XXII. Benefit and Burden

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns. This Agreement is not intended to benefit any person other than the Parties hereto.

XXIII. Governing Law

This Agreement has been entered into in the State of California and shall be interpreted and enforced under California law.

XXIV. Venue

Any action that may be filed to enforce or interpret the terms of this Agreement shall be filed in a court located within the City of San Diego, California.

XXV. Attorney's Fees

The prevailing party in any action including, but not limited to, arbitration, a petition for writ of mandate, and/or an action for declaratory relief, brought to enforce, interpret or reform the provisions of this Agreement shall be entitled to reasonable attorney's fees and costs (including, but not limited to, expert's fees and costs, and including "costs" regardless of whether recoverable as such under statute) incurred in such action.

XXVI. Waiver

No breach of any provision hereof may be waived unless in writing by all Parties. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

XXVII. Number of Pages and Exhibits

This Agreement includes twelve (12) pages and two (2) Exhibits.

XXVIII. Signing Authority

The representative signing on behalf of each Party to this Agreement represents that authority has been obtained to sign on behalf of the Party.

XXIX. Exhibits and Recitals Incorporated

All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The recitals to this Agreement are hereby incorporated in this Agreement by this reference.

XXX. Severability of Provisions

If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

XXXI. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the dates set opposite their signatures.

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

By: _____

Janice L. Weinrick
Deputy Executive Director

Date: _____

Approved as to form and legality:

MICHAEL AGUIRRE, Redevelopment Agency General Counsel

By: _____

Kendall Berkey
Deputy General Counsel

ADMINISTRATOR:

SAN DIEGO HOUSING COMMISSION

By: _____

Rick Gentry
Chief Executive Officer

Date: _____

Approved as to form:

CHRISTENSEN SCHWERDTFEGER & SPATH, LLP

By: _____

Walter F. Spath, III
General Counsel
San Diego Housing Commission

PARTICIPANT:

CITY HEIGHTS REALTY, LLC, a California limited liability corporation

By: PRICE CHARITIES,
a California non-profit benefit corporation; Formerly named SAN DIEGO
REVITALIZATION CORPORATION, a California non-profit public benefit corporation

Its: Sole and Managing Member

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

EXHIBIT "A"

QUALIFIED TENANT AND RENT SCHEDULE

City Heights Square Mixed Use Development

A "Qualified Tenant" shall be a person of low or very low income as defined below. Qualified Tenants shall meet the income limits and shall not pay more than the rental rates identified and illustrated in the following tables:

RESTRICTIONS FOR TENANT ELIGIBILITY AND ILLUSTRATION OF MAXIMUM RENTS

# of Units	# of Bedrooms	Income Level¹	Maximum Rents²	# of Years
10	3	65% AMI	\$1,236	55
4	3	50% AMI	\$853	55

¹ Income Level = Eligible Households earning up to **% of AMI based on household size.

² Maximum Rents = 30% of **% AMI (less utility allowance) based upon household size and appropriate regulatory agreement. The rents in this chart are illustrative based upon the 2008 San Diego Median Income. Actual rents at time of lease-up may be different due to fluctuations in the San Diego Median Income.

ILLUSTRATION OF ELIGIBLE HOUSEHOLDS

Based upon 2008 San Diego Median Income (HUD):

<u>Size of Household</u>	<u>Maximum Household Income</u>	
	Up to: 50% AMI	65% AMI
One Person Household	\$27,650	\$35,950
Two Person Household	\$31,600	\$41,400
Three Person Household	\$35,550	\$46,200
Four Person Household	\$39,500	\$51,350
Five Person Household	\$42,650	\$55,450
Six Person Household	\$45,800	\$59,550
Seven Person Household	\$49,000	\$63,650
Eight Person Household	\$52,150	\$67,800

The Median Income for San Diego County is determined by the U.S. Department of Housing and Urban Development (HUD Schedule), revised periodically and distributed by the San Diego Housing Commission. Utility allowance calculations may vary depending on actual services provided.

EXHIBIT "B"

OCCUPANCY MONITORING FEE SCHEDULE – Rental Units

City Heights Square Mixed Use Development

Initial Monitoring Fee

System Set-up and Implementation

\$500

The initial monitoring fee is a one-time, not to exceed charge to cover costs for setting up and implementing the monitoring system and procedures for the Project, and is due and payable upon execution of this Agreement.

Annual Monitoring Fee

The base monitoring fee per unit is: \$65 per unit for the first 40 units,
\$55 per unit for the next 40 units,
\$45 per unit for all units in excess of 80.

The monitoring fee is subject to annual adjustments to reflect changes in the Consumer Price Index over the term of this Agreement as set forth below.

Maximum Annual Fee

Pursuant to this Agreement and recorded AARP, the maximum initial annual fee charged by the Administrator shall not exceed **\$910** plus the initial monitoring fee of **\$500**. This maximum initial annual amount may be adjusted for changes in the Consumer Price Index as set forth in Section XI of this Agreement, and may exceed the **\$910** maximum in any year succeeding the initial year of the Agreement.

Enforcement Fees

In the event the Administrator, in monitoring compliance, determines that the Participant is not in compliance with the covenants and conditions in the Agreement or the AARP, the Participant shall pay Administrator's additional reasonable costs of enforcement. Such costs shall be equal to Administrator's total documented costs for employee and attorney time expended in securing compliance. In no event shall such additional fees exceed \$500 without Agency's approval. If Agency disapproves such additional fees, Agency shall assume the enforcement function for the specific non-compliance situation then at issue.

Billing and Payment of Fees

City Heights Square
Administration Agreement

The Administrator shall bill/invoice Participant for all fees at the address of record on an annual basis. Participant shall pay fees to the Administrator within fifteen (15) calendar days of the date of the invoice.

EXHIBIT "I"

Grant of Maintenance and Operations Easement and Agreement

[Behind This Page]

OFFICIAL BUSINESS.
Document entitled to free
recording per Government Code
Sections 6103 and 27383.

Recording Requested by and
When Recorded Mail to:

CITY OF SAN DIEGO

San Diego, California 92101

Attn: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF MAINTENANCE AND OPERATIONS EASEMENT
AND
AGREEMENT

THIS GRANT OF MAINTENANCE AND OPERATIONS EASEMENT AND AGREEMENT [Grant] is made as of this ___ day of _____, 2008, by and between THE CITY OF SAN DIEGO, a California municipal corporation [GRANTOR], and CITY HEIGHTS REALTY, LLC, a California limited liability company [CITY HEIGHTS REALTY], CITY HEIGHTS SQUARE, L.P., a California limited partnership [CITY HEIGHTS SQUARE], and LA MAESTRA FAMILY CLINIC, INC., a California non-profit public benefit corporation [LA MAESTRA], referred to herein as the GRANTEES, collectively referred to herein as the Parties, to be effective when executed by the parties and approved by the San Diego City Attorney, and as of the date of its recordation in the Office of the San Diego County (California) Recorder [Effective Date], as follows:

RECITALS

WHEREAS, GRANTOR holds fee title to that certain real property consisting of a public park site referenced by Assessor Parcel Number _____, located at _____, in the City of San Diego, State of California, [GRANTOR Property], and more particularly described in **Exhibit "A": Description of GRANTOR Property**, attached hereto; and

WHEREAS, CITY HEIGHTS REALTY holds fee title to that certain real property that will be developed as a mixed-use commercial/residential rental project, referenced by Assessor Parcel Number _____, and located at _____ (or bounded on the south by University Avenue, on the east by Fairmont Avenue, and on the west by 43rd Street), in the City of San Diego, State of California, [CITY HEIGHTS REALTY Property], which is located immediately adjacent to the easternmost boundary of the GRANTOR Property,

and more particularly described in **Exhibit "B": Description of CITY HEIGHTS REALTY (Grantee) Property**, attached hereto; and

WHEREAS, CITY HEIGHTS SQUARE holds fee title to that certain real property developed as a low income senior citizen residential rental project, referenced by Assessor Parcel Number _____, and located at _____, in the City of San Diego, State of California, [CITY HEIGHTS SQUARE Property], which is located immediately adjacent to the _____ most boundary of the GRANTOR Property, and more particularly described in **Exhibit "C": Description of CITY HEIGHTS SQUARE (Grantee) Property**, attached hereto; and

WHEREAS, LA MAESTRA holds fee title to that certain real property developed as a primary care medical facility, referenced by Assessor Parcel Number 471-452-38-00, and located at 4056 Fairmont Avenue, City of San Diego, State of California, [LA MAESTRA Property], which is located immediately adjacent to the easternmost boundary of the GRANTOR Property, and more particularly described in **Exhibit "D": Description of LA MAESTRA (Grantee) Property**, attached hereto; and

WHEREAS, the Redevelopment Agency of the City of San Diego [AGENCY] is engaged in activities necessary and appropriate to carry out the Redevelopment Plan for the City Heights Redevelopment Project within the City Heights Redevelopment Project Area [Project Area]; a copy of the Redevelopment Plan is on file in the office of the secretary to the Agency as Document No. D-1920, and in the office of the City Clerk as Document No. O-17768, which was amended by the First Amendment to the Redevelopment Plan on file in the office of the City Clerk as Document No. O-18120, by the Second Amendment to the Redevelopment Plan on file in the office of the City Clerk as Document No. O-18294, by the Third Amendment to the Redevelopment Plan on file with the office of the City Clerk as Document No. O-18881; and

WHEREAS, the AGENCY purchased the GRANTOR Property on February 9, 2006, for redevelopment purposes and thereafter transferred title of the GRANTOR Property to GRANTOR on the date concurrently herewith, upon developing it as a public park consistent with the Redevelopment Plan and Implementation Plan adopted for the City Heights Redevelopment Project; and

WHEREAS, the AGENCY and CITY HEIGHTS REALTY (formerly San Diego Revitalization Corporation) entered into a Disposition and Development Agreement on May 3, 2005, a copy of which is on file in the office of the secretary to the Agency as Document No. D-03900 / R-03900, as amended by that First Implementation Agreement to the Disposition and Development Agreement, a copy of which is on file in the office of the secretary to the Agency as Document No. D-04225 / R-04225, as amended by that Second Implementation Agreement to the Disposition and Development Agreement, a copy of which is on file in the office of the secretary to the Agency as Document No. D-_____ / R-_____, collectively referred to herein as the DDA, that requires the AGENCY to design and development the GRANTOR Property as a public park and that requires CITY HEIGHTS REALTY to maintain and pay for the costs of maintenance and operations of the GRANTOR Property as a public park; and

WHEREAS, pursuant to Section 78 of the Planned Development Permit No. 514696 and Amendment to Planned Development Permit No. 308092, Neighborhood Use Permit No. 518933 and Amendment to Neighborhood Use Permit No. 327436, Conditional Use Permit No. 518932 and Amendment to Conditional Use Permit No. 308101, Site Development Permit No. 519775 and Amendment to site Development permit No. 308102, relating to City Heights Square – Project No. 146605 [MMRP], the GRANTEES are obligated to enter into an agreement with the GRANTOR to provide maintenance and operations for the GRANTOR Property as a public park in perpetuity; and

WHEREAS, the AGENCY and CITY HEIGHTS SQUARE entered into a Disposition and Development Agreement on May 3, 2005, a copy of which is on file in the office of the secretary to the Agency as Document No. D-03905 / R-03905, as amended by that First Implementation Agreement to the Disposition and Development Agreement, a copy of which is on file in the office of the secretary to the Agency as Document No. D-03999/ R-03999, that requires CITY HEIGHTS SQUARE to maintain and pay for the costs of maintenance and operations of the GRANTOR Property as a public park; and

WHEREAS, CITY HEIGHTS REALTY and LA MAESTRA have entered into a separate agreement whereby LA MAESTRA agrees to maintain and pay for the costs of maintenance and operations of the GRANTOR Property as a public park; and

WHEREAS, GRANTOR and CITY HEIGHTS REALTY, CITY HEIGHTS SQUARE, and LA MAESTRA (as the GRANTEES) desire to enter into this Grant of Maintenance and Operations Easement and Agreement for the purpose of GRANTEES to provide all necessary and required maintenance and operational services, and to pay all costs and expenses associated therewith, in connection with the maintenance and operations of the GRANTOR Property as a public park; and

WHEREAS, under the terms and conditions of this Grant, GRANTOR will grant to GRANTEES a non-exclusive maintenance and operations easement [Easement] on and across the GRANTOR Property [Easement Area] for the sole purpose of maintaining and operating the GRANTOR Property as a public park [Easement Use], and for no other purpose whatsoever.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the Parties agree as follows:

1. Grant. GRANTOR hereby grants to the GRANTEES a non-exclusive easement [Easement] over, across and through the Easement Area legally described in Exhibit “A” for the GRANTOR Property, attached hereto and incorporated herein by this reference, and as referenced in the Map of Easement Area set forth in Exhibit “E”, attached hereto and incorporated herein by this reference. The purpose of the Easement Area is for all uses connected with the maintenance and operations of the GRANTOR Property as a public park, as set forth in Section 3 below. The Easement Area includes the following elements of a public park including park amenities and furnishings:
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The use of the word “grant” shall not imply any warranty on the part of GRANTOR with respect to the Easement or the Easement Area.

2. Designated Representatives.

a. GRANTOR. The Park and Recreation Director for the City of San Diego is GRANTOR’S contract administrator for this Grant, who can be contacted at the address listed in Section 39. GRANTEES shall provide the maintenance and operations services required by this Grant under the direction of the Park and Recreation Director for the City of San Diego. The Park and Recreation Director will communicate with GRANTEES on all matters related to the administration of this Grant and GRANTEE’S performance of the services rendered hereunder. When this Grant refers to communications to or with GRANTOR or the City of San Diego [City], those communications will be made to or with the Park and Recreation Director, unless the Park and Recreation Director or the Grant specifies otherwise. However, when this Grant refers to an act or approval to be performed by the GRANTOR, that act or approval shall be performed by the Mayor or designee, unless the Grant specifies otherwise.

b. GRANTEES. _____ is GRANTEES’ contract administrator for this Grant, who can be contacted at: _____ will communicate with GRANTOR on all matters related to the administration of this Grant. When this Grant refers to communications to or with GRANTEES, those communications will be made to or with _____, unless the GRANTEES or the Grant specify otherwise. However, when this Grant refers to an act or approval to be performed by the GRANTEES, that act or approval shall be performed by each GRANTEE, unless the Grant specifies otherwise.

3. Maintenance and Operations of the Easement Area. The Easement Area shall be operated as a public park, open to the public 24 hours each day unless GRANTOR’S City Council by Ordinance sets hours for closure. GRANTEES shall maintain the Easement Area, at GRANTEES’ sole cost and expense and to GRANTOR’S satisfaction, in a decent, safe, healthy and sanitary condition. GRANTEES shall have the sole responsibility for repair and maintenance of the Easement Area and shall be jointly and severally responsible and liable for the payment of all costs and expenses associated with the maintenance and operations of the Easement Area as a public park including, without limitation, water, power, electric and other utility expenses associated therewith and all required repairs and replacement work [Park Maintenance and Operations Costs]. All recreational facilities shall be maintained in accordance with the GRANTOR’S existing public park maintenance standards. All irrigation equipment and site amenities shall be replaced, if necessary, with irrigation equipment and site amenities as approved per the current edition of the *Consultant’s Guide to Park Design and Development, which can be located online at <http://www.sandiego.gov/park-and-recreation/general-info/consultantguide.shtml>.*

- a. Ongoing Maintenance Services. At a minimum, GRANTEES shall provide within the Easement Area all maintenance and operational services, and perform said services within the stated schedule, as set forth in the "Scope of Services and Schedule of Performance" attached hereto as Exhibit "F" and incorporated herein by this reference. The GRANTOR may, without invalidating this Grant, order changes to in the attached services by altering, adding to, or deducting from the Scope of Services and Schedule of Performance to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Grant.
 - b. Park Landscape Maintenance Specifications. In performing the services referenced in Section 3 a. above, GRANTEES shall comply with the "Park Landscape Maintenance Specifications" attached hereto as Exhibit "G" and incorporated herein by this reference. The GRANTOR may, without invalidating this Grant, order changes in the attached specifications by altering, adding to, or deducting from the Park Landscape Maintenance Specifications to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Grant.
 - c. Incident Reports: GRANTEES shall provide GRANTOR with weekly Incident Reports listing all repairs, accidents, vandalism and other incidents relating to the safety of the Easement Area.
 - d. No Interference. GRANTEES shall provide the maintenance services required herein in a manner which results in the least interference with the GRANTOR'S and the public's use of the Easement Area. Closures of the Easement Area shall be permitted for repairs and/or maintenance as reasonably required, and on reasonable notice to GRANTOR.
 - e. Encroachments. Immediately upon GRANTOR'S demand, GRANTEES shall promptly remove any improvement that improperly or unlawfully encroaches on or off the Easement Area.
4. Failure to Maintain Easement Area. Should GRANTEES fail to maintain the Easement Area in accordance with this Grant to the reasonable satisfaction of the GRANTOR, such failure of GRANTEES shall constitute a default under this Grant. The GRANTOR shall, in addition to all other remedies it may have under this Grant or at law or in equity, have the right, but not the obligation, to take all necessary and appropriate steps to maintain the Easement Area. GRANTEES shall reimburse GRANTOR for all costs and fees incurred as a result of maintaining the Easement Area pursuant to this Section, in accordance with Section 5 a. below.
 5. Payment of Park Maintenance and Operations Costs:

- a. Joint and Several Liability. GRANTEES shall be jointly and severally responsible and liable to GRANTOR for the payment of all Park Maintenance and Operations Costs and associated costs and fees. Should GRANTEES fail to make any full, faithful and punctual payment of the Park Maintenance and Operations Costs as required by this Grant, such failure of GRANTEES shall constitute a default under this Grant. The GRANTOR shall, in addition to all other remedies it may have under this Grant or at law or in equity, have the right, but not the obligation, to pay all past due Park Maintenance and Operations Costs and associated costs and fees and be reimbursed by the GRANTEES for all said costs thereof, together with interest thereon commencing on the date of the default at the maximum allowable legal rate then in effect in California. Should GRANTEES fail to reimburse the GRANTOR in full for all Park Maintenance and Operations Costs and associated costs and fees and pay accrued interest, the GRANTOR shall have the right to pursue any remedies at law or in equity to collect the Park Maintenance and Operations Costs and associated costs and fees including, without limitation, collection costs and fees, from GRANTEES jointly and severally.
- b. Apportionment of Park Maintenance and Operations Costs. GRANTOR and GRANTEES hereby acknowledge that GRANTEES shall be jointly and severally responsible and liable to GRANTOR for the payment of all Park Maintenance and Operations Costs and associated costs and fees. Without affecting the rights of GRANTOR to recover any respective Park Maintenance and Operations Costs and associated costs and fees from the GRANTEES jointly and severally, GRANTEES agree among themselves that the Park Maintenance and Operations Costs shall be apportioned to each GRANTEE based on the size of each GRANTEE'S respective adjacent parcel as follows:

	Square Feet	Percentage
LA MAESTRA Property	25,947 SF	22%
CITY HEIGHTS SQUARE Property	31,246 SF	26%
CITY HEIGHTS REALTY Property	<u>61,922 SF</u>	<u>52%</u>
Total	119,115 SF	100%

- c. Payment Procedure Among GRANTEES.
- (1) Without affecting the rights of GRANTOR to recover any respective Park Maintenance and Operations Costs and associated costs and fees from GRANTEES jointly and severally, GRANTEES agree among themselves that CITY HEIGHTS REALTY shall, on a monthly basis, advance all funds necessary to pay for all monthly Park Maintenance and Operations Costs. In addition, GRANTEES agree among themselves that on the first day of each calendar month, CITY HEIGHTS REALTY shall submit an invoice to LA MAESTRA and CITY HEIGHTS SQUARE for payment of

their percentage share of the monthly Park Maintenance and Operations Costs based on the apportionment detailed in Section 5 b. above. Each invoice shall reflect in detail total Park Maintenance and Operations Costs for the previous calendar month. GRANTEES agree among themselves that CITY HEIGHTS SQUARE and LA MAESTRA shall reimburse CITY HEIGHTS REALTY for their respective percentage share of the Park Maintenance and Operations Costs for the previous calendar month within thirty (30) days after receipt of the invoice.

- (2) Without affecting the rights of GRANTOR to recover any respective Park Maintenance and Operations Costs and associated costs and fees from GRANTEES jointly and severally, GRANTEES agree among themselves that if either CITY HEIGHTS SQUARE and LA MAESTRA shall fail to make the full, faithful and punctual payment of their percentage share of the Park Maintenance and Operations Costs as required above, and if, at the end of thirty (30) days after written notice from CITY HEIGHTS REALTY stating with particularity the nature and the extent of such default, the defaulting GRANTEE has not paid its percentage share of the Park Maintenance and Operations Costs as required, then CITY HEIGHTS REALTY shall, in addition to all other remedies it may have at law or in equity, have the right to be reimbursed by the defaulting GRANTEE for the costs thereof, together with interest thereon commencing on the date of the default at the lesser of ten percent (10%) per annum or the maximum rate allowed by law. Should the defaulting GRANTEES fail to reimburse CITY HEIGHTS REALTY for their percentage share of the Park Maintenance and Operations Costs and pay accrued interest, CITY HEIGHTS REALTY shall have the right to pursue any remedies at law or in equity to collect the Park Maintenance and Operations Costs and associated costs and fees including, without limitation, collection costs and fees, from the defaulting GRANTEES.

6. Rights Reserved. This Grant of Easement is non-exclusive. GRANTOR expressly reserves for itself, its successors and its assigns, the right to enter upon and use the Easement Area to maintain, repair, and improve the GRANTOR Property, including without limitation the Easement Area, and to grant other easements or licenses in and to the Easement Area, provided such uses do not unreasonably interfere with GRANTEES' rights granted herein. GRANTEES' expressly acknowledge that LA MAESTRA is the Grantee of a Grant of Easement and Agreement entered into by and between LA MAESTRA and the Redevelopment Agency of the City of San Diego and dated _____, 2007, in connection with storm drain improvements and necessary related facilities that were installed within and under the Easement Area to service the LA MAESTRA Property.
7. Inspection Rights of GRANTOR. GRANTOR may, at any and all times, enter and inspect the Easement Area to evaluate compliance with the maintenance obligations and standards set forth in this Grant. In the GRANTOR determines that any maintenance

obligation or standard is not complied with by GRANTEES in accordance with this Grant, GRANTOR shall prepare and submit to GRANTEES a City of San Diego inspection report which will describe in detail the deficient maintenance obligation or standard and require GRANTEES to correct the deficient obligation or standard within one week from the date of the inspection report. Should GRANTEES fail to promptly correct the deficient obligation or standard, such failure shall constitute a default under this Grant.

8. Covenants, Conditions and Restrictions Run with the Land. All conditions, covenants and restrictions contained in this Grant shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by GRANTOR, its successors and assigns, against GRANTEES, their successors and assigns, to or of the CITY HEIGHTS REALTY Property, CITY HEIGHTS SQUARE Property, and LA MAESTRA Property, or any portion thereof or any interest therein, and any party in possession or occupancy of said Properties or portions thereof. The covenants, conditions, and restrictions shall run in favor of the GRANTOR, without regard to whether the GRANTOR has been or remains the owner of any land or interest therein in the GRANTOR Property or the Easement Area. Except as provided in the preceding sentence, the covenants, conditions and restrictions contained in this Grant shall not benefit nor be enforceable by any developer or owner of any other real property within or outside the City or any person or entity having any interest in any such other real property.
9. Default. GRANTEES shall be in default of this Grant if GRANTEES breach any of their obligations under this Grant and fail to cure the breach within thirty (30) calendar days following written notice thereof from GRANTOR, or if not curable within thirty (30) calendar days, fails to commence to cure the breach within thirty (30) calendar days and diligently pursue the cure to completion as soon as reasonably practicable, but in no event longer than six (6) months. Notwithstanding the foregoing, if the nature of the breach could endanger the public's health and safety, GRANTEES shall cure the breach within twenty-four (24) hours of receipt of notice of the breach. If GRANTEES fail to actually and timely cure the breach, GRANTOR may terminate this Grant.
10. Delay in Maintenance and Operations Services.
 - a. Notification. GRANTEES shall immediately notify the GRANTOR in writing if GRANTEES experience or anticipate experiencing a delay in performing the maintenance and operations services required by this Grant within the time frames required, as set forth in the Scope of Services and Schedule of Performance (Exhibit "F"). The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the GRANTOR, the delay affects a material part of the GRANTOR'S requirements for the services required by this Grant, such delay shall constitute a default under this Grant and the GRANTOR may exercise its rights and remedies under this Grant or as provided at law or in equity.

- b. Force Majeure. If delays in the performance of the maintenance and operations services, except any obligation for the payment of any funds, are caused by unforeseen events beyond the control of all Parties, such delay may entitle GRANTEES to a reasonable extension of time, but such delay shall not entitle GRANTEES to damages or compensation. Any such extension of time must be approved in writing by the GRANTOR. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of GRANTEES' work; inability to obtain materials, equipment or labor; or other specific reasons agreed to between the GRANTOR and GRANTEES; provided, however, that (a) this provision shall not apply to, and GRANTEES shall not be entitled to an extension of time for, a delay caused by the acts or omissions of GRANTEES; and, (b) a delay caused by the inability to obtain materials, equipment or labor shall not entitle GRANTEES to an extension of time unless GRANTEES furnish the GRANTOR, in a timely manner, with documentary proof, to the GRANTOR'S satisfaction, of GRANTEES' inability to obtain materials, equipment or labor.
11. Maintenance of Records. GRANTEES shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of the maintenance and operations services pursuant to this Grant, throughout the performance of the services and for a period of ten (10) years following termination of the Grant. GRANTEES further agree to allow the GRANTOR to inspect, copy, and audit such books, records, documents and other evidence at all reasonable times.
12. Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services related to this Grant rendered as a result of this Grant, upon the GRANTOR'S request, GRANTEES, their agents, officers, and employees agree to assist in resolving the dispute or litigation. GRANTEES' assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.
13. Termination. GRANTOR may terminate the Easement and this Grant: (a) at any time after any change in use of the Easement Area by GRANTEES, (b) upon GRANTEES' default of this Grant; or (c) upon GRANTOR'S closure of the GRANTOR Property as a public park.
- a. Quitclaim. Upon termination or expiration of the Easement, GRANTEES shall deliver to GRANTOR a recordable quitclaim deed in form and content satisfactory to GRANTOR granting to GRANTOR any and all interest GRANTEES may have in and to the GRANTOR Property and the Easement.
- b. Costs. In the event GRANTOR terminates this Grant for default, GRANTEES shall pay all costs and expenses incurred by GRANTOR in obtaining performance of GRANTEES' obligations under this Grant, including costs of suit and reasonable attorney's fees.

- c. No Liability. GRANTOR shall not be obligated for any loss, financial or otherwise, which GRANTEES may incur as a result of the termination of the Easement. GRANTEES expressly waive any claim against GRANTOR for expense or loss which GRANTEES might incur as a result of the termination of the Easement.
14. Restoration. Upon the expiration or earlier termination of the Easement, upon GRANTOR'S demand, GRANTEES shall promptly remove any and all improvements it installed in, on, under, or above the Easement Area that are owned by GRANTEES and restore the Easement Area to its original condition, all at GRANTEES' sole cost and expense and to GRANTOR'S satisfaction.
15. Superior Interests. The Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, licenses, easements, and rights-of-way pertaining to the GRANTOR Property, whether or not of record. GRANTEES shall obtain all licenses, permits, agreements, and Grants from such third parties as may be or become necessary or reasonably advisable to allow its use of the Easement Area, relative to any such superior interest.
 - a. Accommodation. If GRANTEES' use of the Easement Area is or becomes inconsistent or incompatible with a preexisting superior interest, GRANTEES shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
 - b. Conflicting Repairs; Notice. Except in the case of an emergency, if any facilities on, in, or under the GRANTOR Property are to be repaired, replaced, or relocated, and such work may adversely affect GRANTEES' use of the Easement Area, as reasonably determined by GRANTOR, GRANTOR shall notify GRANTEES in writing at least ten (10) days prior to commencement of the work. Such notice shall state the scope and expected duration of such work. GRANTOR shall not be obligated for any loss, financial or otherwise, which GRANTEES may incur as a result of any repair, replacement or relocation work. GRANTEES expressly waive any claim against GRANTOR for expense or loss which GRANTEES might incur as a result of any repair, replacement or relocation work.
16. Governmental Approvals. By entering into this Grant, neither GRANTOR nor GRANTOR'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Easement, or to GRANTEES' use of the Easement Area. Discretionary action includes, but is not limited to, re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required.
17. Hazardous Substances. GRANTEES shall not allow the installation or release of hazardous substances in, on, under, or from the Easement Area or the GRANTOR Property. GRANTEES and GRANTEES' employees, agents, contractors, subcontractors, invitees and guests shall not store, utilize, or sell any hazardous substance on the Easement Area or the GRANTOR Property without GRANTOR'S prior written consent. For the purposes of this provision, a release shall include, but not be limited to,

any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances.

“Hazardous substances” shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California’s list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is hereby incorporated into this Grant.

- a. Remediation. If GRANTEES’ occupancy, use, development, maintenance, or restoration of the Easement Area results in a release of a hazardous substance, GRANTEES shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.
- b. Indemnity. GRANTEES shall protect, defend, indemnify, and hold GRANTOR, the AGENCY and their agents, employees, contractors, officers, and officials harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from GRANTEES’ occupancy, use, development, maintenance, or restoration of the Easement Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- c. Notice of Release. If GRANTEES know or have reasonable cause to believe that a hazardous substance has been released on or beneath the Easement Area or the GRANTOR Property, GRANTEES shall immediately notify GRANTOR and deliver a written report thereof to GRANTOR within three (3) calendar days of receipt of the knowledge or cause for belief. If GRANTEES know or have reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, GRANTEES shall take all actions necessary to alleviate the danger. GRANTEES shall notify GRANTOR immediately of any notice of violation received or initiation of environmental actions or private suits related to the Easement Area or the GRANTOR Property.
- d. Environmental Assessment. Upon reasonable cause to believe that GRANTEES’ occupancy, use, development, maintenance, or restoration of the Easement Area (“GRANTEES’ Operations”), resulted in any hazardous substance being released on or beneath the Easement Area or the GRANTOR Property, GRANTOR may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at GRANTEES’ sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by GRANTEES’ Operations on, in, or under the Easement Area or the GRANTOR Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or