

## **ADDENDUM C**



## **Summary of the Key Points DEVELOPMENT AGREEMENT**

**Between Palomar Pomerado Healthcare and JRM-ERTC I, L.P. ("Developer")**

**February 2006**

- The Development Agreement provides the framework for the agreement between PPH and Developer to jointly develop medical office buildings of up to 300,000 square feet on a portion of the land to be acquired by PPH from the Developer.
- Term is 20 years, or until the parties jointly develop 300,000 square feet of medical office buildings. § 1.4.
- The Development Agreement contains major terms; details of implementation will occur through a ground lease and LLC agreement that will be negotiated prior to commencement of work on each medical office building project. §§ 8, 9.
  - Each party will initially own 50% of each LLC. § 9.
  - PPH may sell a portion of its interest to hospital medical staff. § 9.
  - Each ground lease and LLC agreement is subject to PPH Board approval. § 8.
- Developer has rights to jointly develop with PPH up to 300,000 (plus or minus 25,000) square feet of medical office buildings. § 1.
  - Development may be in one or more phases, with an initial phase of up to 150,000 (plus or minus 10,000) square feet. § 1.1, 1.2.
  - If PPH does not construct a hospital, Developer gets the right to jointly develop up to 300,000 square feet with PPH of other income producing structures on the campus
- **Hospital's major obligations:**
  - Designate, with absolute discretion, the property where the medical office buildings will be constructed. § 3.1.
  - Contribute to the LLC: 1/3 of the equity needed to fund tenant improvement allowances greater than \$50.00/square foot if not capable of being debt funded
  - Pro-rata share of LLC operating cash shortfalls for each project that occur after project stabilization (§ 4.4(i))
- **Hospital's major rights:**
  - Absolute approval rights over architectural matters pertaining to the exterior of each phase of medical office buildings. § 4.2.
  - Absolute discretion over whether to publicly bid each phase of medical office buildings. Recital E.
  - Approval rights over financing documents. § 4.4(ii).
  - Reasonable approval rights over the development plan. § 4.5.
  - Rights to pursue development of medical office buildings that Developer declines as being infeasible. § 7.1.
  - The ground lease for each phase of medical office buildings will contain use restrictions designed to prevent the medical office buildings from competing with PPH. § 8.5.1.
  - Developer is required to record deed restrictions on any parcel it sells in the ERTC restricting uses that would compete with PPH. § 8.5.2.
    - Developer commits not to compete with the medical office buildings built pursuant to the development agreement for 10 years. § 8.6.
    - PPH has right of first offer if LLC sells a project. § 8.10.1.
    - PPH has right of first offer to lease space in each project. § 8.10.2.
- **Developer's major rights and obligations:**
  - Provide site planning and architectural design services. §§ 4.1, 4.2.
  - Implement public bidding process if PPH determines it is necessary. § 4.3.
  - Pursue financing and contribute all equity (other than PPH's contributions, described above) to the LLC needed to secure financing to build the shell and core of the medical office buildings. § 4.4.
  - Prepare a development plan, which includes a financing plan, conceptual design, construction budget, marketing and leasing plan, and operating pro forma. § 4.5.

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## Development Agreement

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made as of \_\_\_\_\_, 2006 (the "Effective Date"), by PALOMAR POMERADO HEALTH, a California health care district ("Hospital"), and JRM-ERTC I, L.P., a California limited partnership ("Developer"; and together with Hospital, the "Parties").

### RECITALS

A. Hospital intends to construct and operate an acute-care general hospital consisting of not less than approximately 850,000 square feet of interior building area with 450 patient beds and related parking facilities and other improvements (the "New Hospital") in the initial phase, with additional square feet and beds in subsequent phases, on approximately 56 gross acres (approximately 35 net acres) of land identified as Lots 27 through 36 of the Escondido Research and Technology Center business park (the "Campus") located in the City of Escondido (the "City"), in the State of California.

B. The Parties desire that Hospital grant to Developer (or an affiliate of Developer, which shall have JRM Holdings, Inc. or another entity which is controlled by James McCann as its general partner or manager and as the party that shall control the day-to-day operations of such affiliate (a "Developer Affiliate")) the exclusive right to develop on a joint venture basis with Hospital up to 300,000 gross square feet (plus or minus 25,000 square feet, at Hospital's discretion) of medical office space ("M.O.B.") in one or more phases. Each phase of M.O.B. developed upon the terms and subject to the conditions of this Agreement may be referred to as a "Project", and all Projects under this Agreement are collectively referred to as the "Projects".

C. Hospital shall have the right to sublease for its own use space in each Project, as more particularly described in Section 8.10.2 below.

D. Developer and Hospital intend to create one limited liability company (or, if the Parties agree, one limited partnership) to own each Project. Each such limited liability company (or, if the Parties agree to form a limited partnership for one or more Projects, each such limited partnership) is hereinafter referred to as an "LLC", and all LLCs created pursuant to this Agreement are collectively referred to as the "LLCs". Developer (or a Developer Affiliate) and Hospital shall each have membership interests in each LLC, with their respective percentage interests therein to be as described in this Agreement. Hospital contemplates that it may offer to sell a portion of its LLC membership interest in each LLC to tenants in the Project owned by such LLC or to other members of Hospital's medical staff, in each case on fair market value terms, and that it will confer with Developer to determine whether Developer would like to so sell a portion of Developer's interest in such LLC as well.

E. Each Project shall be constructed on a portion of the Campus to be designated by Hospital (each such portion of the Campus is hereinafter referred to as the "Property") which shall be leased by Hospital to the LLC formed to own such Project pursuant to a Ground Lease as more particularly described in Section 8 below. Hospital and Developer acknowledge and agree that the exact location and description of the Property for any given Project may change to

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some extent prior to commencement of construction of such Project. Hospital and Developer intend to hire one or more creditworthy, unaffiliated, third-party general contractors with substantial experience in constructing M.O.B. or commercial office buildings (each a "Contractor", and collectively, "Contractors") to construct each Project. Such Contractor or Contractors shall be selected by the Parties through a public bidding process to be implemented by Developer under Hospital's oversight if Hospital determines, in its sole discretion, that such public bidding process is required in order to comply with applicable laws. Notwithstanding any provision in this Agreement to the contrary, if Hospital determines that public bidding is required, Hospital shall have the right to direct Developer, and Developer shall cooperate with Hospital, to take whatever steps Hospital determines are reasonably necessary to comply with applicable laws regarding public bidding. The Parties agree that Hospital shall not receive any compensation for its oversight of the public bidding process.

F. It is the intent of the Parties hereto that the rights and obligations of the Parties, and of the LLCs to be formed by the Parties, shall be incorporated into the Ground Leases and LLC Agreements for the LLCs to be entered into by the Parties pursuant to the terms of this Agreement.

For valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

## TERMS

1. **Grant of Development Rights.** Hospital grants to Developer (or a Developer Affiliate) the exclusive right to develop, on a joint venture basis with Hospital, up to 300,000 gross square feet of M.O.B. (plus or minus 25,000 square feet, at Hospital's discretion) on the Campus upon the terms and subject to the conditions set forth in this Agreement. Notwithstanding the foregoing, Hospital acknowledges that Developer's exclusive right to develop M.O.B. shall remain in full force and effect until expiration of the Term of this Agreement as set forth in Section 1.4 below, unless otherwise terminated pursuant to the terms of this Agreement.

1.1 **Initial Project.** The Parties desire that an initial phase of at least 150,000 gross square feet of M.O.B. (plus or minus 10,000 square feet, at Hospital's discretion) be completed on or before the date the New Hospital opens to provide services to the public (the "Initial Project"). As such, the Parties shall meet in the first quarter of 2007 to make a determination, on or before June 30, 2007, regarding the following: (a) the size, design, and Development Plan (as defined in Section 4.5 of this Agreement) for the Initial Project, (b) the terms of the LLC Agreement for the LLC formed to own such Initial Project, and (c) the terms of the Ground Lease that Hospital and such LLC shall enter into for the Initial Project. Subject to Section 3.1 below, the portion of the Campus that will be used for the Initial Project and any subsequent Projects shall be determined by Hospital in Hospital's sole discretion. Developer and LLC shall not be required to break ground on construction of the Initial Project until after ground breaking for the New Hospital has occurred.

1.2 **Subsequent Projects.** Hospital expects that it may have a need for up to 150,000 square feet of M.O.B. (plus or minus 15,000 square feet, at Hospital's discretion) in

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addition to the M.O.B. space provided by the Initial Project. As such, after the New Hospital commences operations, the Parties shall confer from time to time during the Term of this Agreement to evaluate whether market conditions, demand for additional M.O.B., and other conditions are such that Hospital desires to construct additional Project(s) totaling up to 150,000 square feet of M.O.B. (plus or minus 15,000 square feet, at Hospital's discretion). The provisions of this Section 1.2 assume that the Initial Project will contain 150,000 square feet of M.O.B. If the Initial Project is larger than 150,000 square feet, then the 150,000 square feet of M.O.B. described in this Section 1.2 shall be reduced accordingly (such that this Agreement will provide for the joint development of no more than 300,000 square feet of M.O.B. in the aggregate).

1.3 **Pursuit and Timing of Projects.** For each Project, except as set forth in Section 1.5 with respect to compliance with CEQA, Developer shall cause the LLC created to pursue such Project to diligently pursue obtaining all entitlements, approvals, consents and permits required for such Project (collectively, the "Entitlements") from the relevant governmental agencies (the "Agencies") having jurisdiction over such Project, and shall cooperate with such LLC in its efforts to obtain the Entitlements as described in this Agreement. All costs of each Project shall be borne by the LLC formed to own such Project, and not by Hospital or Developer individually; provided, however, in the event (i) either Party's involvement with such Project ceases by virtue of a breach by the other Party to this Agreement, or (ii) one Party notifies the other Party in writing that it intends to decline or abandon any such Project in accordance with the terms of this Agreement (other than a withdrawal from a Project by Developer pursuant to Sections 7.1 or 7.2 of this Agreement), then the breaching or abandoning Party shall bear all expenses and liabilities that have theretofore accrued, as well as any damages that such breach or abandonment causes to the other Party or to the applicable LLC. If the non-breaching, non-abandoning Party elects to continue to develop such Project, then such Party shall bear the costs of such Project that accrue after the breach or abandonment by the other Party. For each Project, Developer shall cause Project construction to be commenced and completed in accordance with the timetable specified in the Development Plan for such Project (the "Construction Period"), provided that any delays experienced during construction of such Project that are beyond Developer's, Hospital's or such LLC's reasonable control shall cause the Construction Period to be extended by the number of days equal to such delays.

1.4 **Term.** The term of this Agreement ("Term") shall begin on the Effective Date and end on the earlier to occur of (i) when the Parties have completed the development of 300,000 gross square feet of M.O.B., or (ii) twenty (20) years after the Effective Date. Upon the expiration of such Term, this Agreement shall automatically terminate and be of no further force and effect, except for those provisions herein that expressly state that they survive such termination. Each Party agrees to promptly execute and deliver to the other Party such documentation as such other Party may reasonably request to confirm such termination.

1.5 **Compliance with CEQA.** Developer acknowledges that Hospital is committed to compliance, and has a legal obligation to comply, with the requirements of the California Environmental Quality Act ("CEQA") prior to committing itself to participate in the development of any Project. Hospital and Developer agree, therefore, that the implementation of this Agreement and any obligations of the Parties hereunder (including, without limitation, to

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enter into any Ground Lease or LLC Agreement described below) are expressly made contingent on Hospital first conducting an independent environmental analysis in accordance with CEQA, and determining at that time whether to commit to, permit or conduct further development of any Project. Compliance with CEQA may include, but need not be limited to, approving or disapproving of such Project, or specific activities relating to the construction, siting, obtaining of Entitlements and other development of such Project, based upon Hospital's review and assessment, in its discretion, of (a) environmental effects of such Project and mitigation measures proposed to avoid or substantially lessen any environmental effects of such Project, (b) the extent to which additional mitigation measures will or must be incorporated into the design, development and construction of such Project, and (c) the determination by Hospital of whether the adverse environmental impacts from development of such Project identified during the CEQA environmental analysis can be mitigated to below a level of significance, or are offset by economic, legal, social, technological, or other benefits of the Project. If Hospital determines not to proceed with the development of such Project, in whole or in part, then this Agreement shall terminate with respect to such elements of such Project (up to and including, if applicable, the entirety of such Project) disapproved by Hospital in connection with the CEQA environmental review and related consideration of the results of such review by Hospital. Notwithstanding the foregoing, (i) if Hospital determines that it is required by applicable law, Hospital shall be the lead agency for the CEQA review for each Project, and (ii) Hospital shall be responsible for leading the application process for the CEQA approvals through a final, non-appealable decision in connection with the Initial Project and Developer shall be responsible for leading the application process on behalf of the applicable LLC for the CEQA approvals through a final, non-appealable decision in connection with any Subsequent Projects developed by the Parties under this Agreement.

**1.6 Compliance with Covenants and Restrictions in Bond Documents.** If and to the extent that any bond proceeds are used directly or indirectly by Hospital for the Property and/or for any Project or to meet any obligation under this Agreement for such Project, the Ground Lease and the LLC Agreement for such Project shall include terms provided by Hospital to ensure that the terms of such Ground Lease and such LLC Agreement do not cause Hospital to violate the covenants or restrictions contained in any bond documents to which Hospital may now or hereafter be subject.

**1.7 Developer's Development Rights if New Hospital or M.O.B. is Not Constructed.** If Hospital does not complete development of the New Hospital, or if M.O.B. development pursuant to this Section 1 is not completed in accordance with the Agreement for any reason whatsoever, Developer shall have the right to jointly develop, with Hospital, such income-producing structures (other than structures that house hospital facilities or facilities that are used for those certain "Restricted Uses" as defined in Section 8.5.1 of this Agreement (collectively, the "Hospital Facilities")) that Hospital does elect to undertake on the Campus (e.g., office, R&D, etc.). Such development rights shall be of the same general nature and scope as those that have been granted to Developer under this Agreement to jointly develop M.O.B. on the Campus for support of the New Hospital. In no event shall said development rights extend beyond the right to jointly develop more than 300,000 gross square feet of income-producing structures (other than Hospital Facilities) and/or M.O.B. Hospital shall execute and record concurrently with its acquisition of the portion of the Campus that it does not yet own a memorandum of this Agreement with the San Diego County Recorder to indicate that the rights

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of Developer under this Agreement are encumbrances on a portion of the Campus sufficient to support development of 300,000 gross square feet of income-producing structures. Such portion shall consist of one or more parcels located within the Campus to be selected by Hospital; provided, however, such memorandum shall encumber the entire Campus until such time as Hospital has designated the property for such income-producing structures in accordance with this Agreement. Upon such designation by Hospital, Developer shall execute and record with the San Diego County Recorder documentation to release the non-designated portion of the Campus from such encumbrance. In no event shall said encumbrance extend beyond the right to jointly develop more than 300,000 gross square feet of income-producing structures (other than Hospital Facilities) and/or M.O.B.

2. **[Intentionally omitted.]**

3. **Hospital's Responsibilities.** During the Term, Hospital shall use commercially reasonable efforts to cooperate with the Project development activities of Developer and each LLC, including the following:

3.1 **Designate Property.** For each Project that Hospital elects to pursue pursuant to this Agreement, Hospital shall designate Property of sufficient size to accommodate such Project. The location and dimensions of such Property shall be determined by Hospital in Hospital's discretion. Such Property shall not contain any environmental hazard or require any clean up, removal or remediation by reason of the presence of any such environmental hazard, except that after Hospital designates the Property for the Initial Project, the Property Hospital designates for any subsequent Project may contain environmental hazards or require clean up, but only if such hazards or the condition requiring clean up existed at the time Hospital purchased such Property, and only if Hospital determines that no other portion of the Campus is available for the construction of such Project. For each such Project, in addition to Property needed for construction of the M.O.B. space, Hospital shall provide sufficient Property for the construction of structured or surface (or a combination thereof) parking facilities, in each case in Hospital's sole discretion, sufficient to provide five (5) parking spaces per 1,000 square feet of M.O.B. contained in such Project, which parking facilities shall be (i) for the exclusive use of such Project, (ii) no further than 200 feet measured from the closest point of such M.O.B. to the closest point of such parking facility and no further than 500 feet measured from the closest point of such M.O.B. to the farthest point of such parking facility, (iii) no more than 2 stories taller than such M.O.B. Project, and (iv) no more than one (1) subterranean level and/or five (5) above ground levels without Developer's consent, in its sole and absolute discretion. Parking shall be non-gated (unless in the event such parking facilities become used by parties other than owners, tenants, occupants, guests or patients of such Project).

3.2 **Encumbrances to Title.** Within thirty (30) days after Hospital identifies the Property for any Project, Hospital shall, at its sole cost and expense, deliver to Developer and the applicable LLC a current preliminary report of title to such Property, together with legible copies of all documents referenced in the preliminary report as exceptions to title (collectively, the "Preliminary Report"). Within thirty (30) days after Developer's and such LLC's receipt of the Preliminary Report, Developer and such LLC shall notify Hospital of their objections to title, if any ("Disapproved Exceptions"), provided that Developer and such LLC may not object to any exceptions to title that existed when Hospital purchased such Property. If Developer and such



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LLC do not notify Hospital of any Disapproved Exceptions within said thirty (30) day period, then Developer and such LLC shall be deemed to have approved the status of title. Within ten (10) days after receipt of the list of Disapproved Exceptions, Hospital shall notify Developer and such LLC regarding whether Hospital intends to use commercially reasonable efforts to remove any or all of the Disapproved Exceptions. If Hospital notifies Developer and such LLC that it does not intend to remove all of the Disapproved Exceptions, Developer and such LLC may, within ten (10) days of receipt of such notice, elect not to participate in such Project upon (10) days' written notice to Hospital and thereafter the Parties shall proceed in accordance with Section 7 below with respect to such Project. If Hospital notifies Developer and such LLC that it does not intend to use commercially reasonable efforts to remove all of the Disapproved Exceptions and Developer and such LLC do not timely deliver a notice of their election not to participate in such Project, Hospital shall have no obligation to attempt to remove such Disapproved Exceptions. If Hospital notifies Developer and such LLC that it will attempt to remove any or all of the Disapproved Exceptions (a "Removal Notice") and, despite using commercially reasonable efforts to effect such removal, Hospital is unable to eliminate such Disapproved Exceptions, Hospital shall notify Developer and such LLC in writing (the "Title Notice") of such failure and the reason(s) for such failure. Developer and such LLC shall then notify Hospital in writing within ten (10) days of receipt of the Title Notice of Developer's and such LLC's election to either (i) waive their disapproval, in which case Developer and such LLC shall be deemed to have approved title in its "as is" condition, or (ii) elect not to participate in such Project upon ten (10) days' written notice to Hospital and thereafter the Parties shall proceed in accordance with Section 7 below with respect to such Project. If Developer and such LLC fail to deliver their election notice within said ten (10) day period, then Developer and such LLC shall be deemed to have waived their disapproval and accepted title in its "as is" condition. Notwithstanding any provision of this Section 3.2, the leasehold interest Hospital shall deliver to Developer and such LLC for each Project shall be for a legal parcel free and clear of any and all monetary liens and encumbrances, provided, however, that such LLC shall bear all costs of pursuing and obtaining the necessary parcelization (whether directly, or by reimbursing Hospital for expenses Hospital incurs related to such parcelization).

3.3 **Easements.** For each Project, subject to obtaining all required governmental approvals and the completion of construction of such Project, Hospital shall grant to the applicable LLC, for the benefit of the Property underlying such Project, access, drainage, signage, and utility easements, in form and substance reasonably acceptable to Hospital and Developer, in each case to the extent (a) necessary for construction and operation of such Project, (b) Hospital has the right to grant such easements and (c) such easements do not interfere with Hospital's rights to (i) develop, operate or maintain other portions of the Campus or (ii) provide parking and access to other portions of the Campus. Neither Developer nor any LLC shall grant any easements or other real property rights affecting the Property or the areas encumbered by the easements contemplated by this Section without Hospital's prior written consent, not to be unreasonably withheld.

4. **Developer's Responsibilities.** During the Term, Developer shall use its commercially reasonable efforts to perform, or assist the LLCs and Hospital in performing, at Developer's expense all services required to develop, cause to be built and manage the Projects, including the matters described in this Section 4. For each Project, Developer shall receive compensation from the LLC for providing such services in an amount (the "Shell Development

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Fee”) equal to: (i) if public bidding is required for a Project, as determined by Hospital in its discretion, six percent (6%) of the hard costs (excluding land costs) of building the core, shell, lobby, and common areas (including, without limitation, hallways and demising walls to complete the hallways) of the M.O.B. and the parking facilities for such Project (for each Project, the core, shell, lobby, and common areas (including, without limitation, hallways and the hallway side of the demising walls to complete the hallways) of the M.O.B. and the parking facilities for such Project are collectively referred to as the “Project Shell”); or (ii) if public bidding is not required for a Project, as determined by Hospital in its discretion, four and one half percent (4.5%) of the hard costs (excluding the cost of land) of building the Project Shell for such Project. The Shell Development Fee shall be paid according to the following schedule: (a) fifteen percent (15%) upon execution of the LLC Agreement for each Project, (b) twenty percent (20%) upon the issuance of building permits for each Project; (c) twenty percent (20%) upon the recordation of the construction loan for such Project (“Construction Loan”); (d) thirty five percent (35%) to be disbursed proportionately with disbursements applied toward the cost of construction of such Project; and (e) ten percent (10%) to be paid after the issuance of a certificate of occupancy for such Project. The Shell Development Fee shall be funded initially from Developer’s capital contribution, if any, and the proceeds from any Developer loans, and when available, through proceeds from the Construction Loan or other Project loans. For the purposes of calculating such fees, in no event shall the hard costs exceed the hard costs set forth in a budget for such Project which has been approved in advance by Hospital and the applicable LLC. For space that Hospital subleases within any Project, Hospital may complete its own tenant improvement, repair, or reconstruction (that is, any capital improvement and/or construction work beyond the above described Project Shell), or hire any party that it chooses to provide such services, and Developer shall not be entitled to compensation for such services unless Hospital selects Developer to provide them. For each tenant improvement, repair, or reconstruction (other than those performed by Hospital or its non-Developer contractors for space that Hospital subleases within any Project), Developer shall provide the applicable development services described in this Section 4 and shall receive compensation (“TI Fees”) from the applicable LLC for providing such services in an amount calculated pursuant to the following sliding scale:

<u>TI FEE</u>	<u>TI COST RANGE</u>
8%	\$0.00 - \$50,000
6%	\$50,001 - \$100,000
4%	\$100,001 - \$250,000
3%	\$250,001 - and above

Notwithstanding the foregoing, tenants of any Project may request to complete their own non-structural tenant improvements (by example, casework, wall coverings, etc.), which request shall not be unreasonably withheld. Tenants completing their own non-structural tenant improvements shall not be obligated to pay TI Fees to Developer for such work. The TI Fees to which Developer is entitled shall be calculated as a percentage of the greater of (a) the tenant improvement allowance for such tenant improvement, repair, reconstruction, and (b) the actual

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costs of constructing such tenant improvement, repair, and reconstruction. If Developer abandons development of any Project, or is terminated from developing any Project due to a default under this Agreement or the applicable LLC Agreement or Ground Lease, Developer shall forfeit the right to receive the unearned portion of any future Development Fee and the TI Fees for such Project. The provisions of this Section 4 are not intended to grant Developer any right to forego its obligation to develop any Project, or any right to abandon development of any Project.

Developer's responsibilities with respect to each Project shall include, without limitation, the following:

4.1 **Site Planning.** Developer shall perform site planning for the Property for each Project. Hospital shall have the right to approve of all site planning submittals and decisions in its reasonable discretion.

4.2 **Architectural Design.** Developer shall perform architectural design for each Project, which conforms with the applicable Development Plan, and present such architectural design to Hospital for its review and approval, not to be unreasonably withheld, conditioned, or delayed. Developer shall accommodate Hospital's reasonable requests and shall incorporate any requests made by Hospital that are commercially feasible and within the costs budgeted in the Development Plan for such Project (including, without limitation, any requests made that are intended to facilitate any future development contemplated by Section 8.8) provided such requests do not result in a material delay in completion of such Project. If Developer's proposed architectural design conforms with the applicable Development Plan, and if Hospital requires either architectural design modifications or improvements that would cause the costs of such Project to exceed the costs budgeted in the applicable Development Plan, then Hospital shall pay for the incremental costs of such architectural design modifications and improvements. Notwithstanding any provision in this Agreement to the contrary, and subject to Hospital's contingent obligation to pay those costs and operating shortfalls set forth in Sections 4.2, 4.4, 4.5(ii) and 7.2, Hospital shall have absolute approval rights over architectural matters pertaining to the exterior of each Project and any other portions of each Project that are visible from the exterior of each Project.

4.3 **Bidding Process.** For each Project, Developer shall implement a bidding process (which, if Hospital, in its sole discretion, determines is required by law, shall be a public bidding process acceptable to Hospital). Developer shall select the Contractor or Contractors for such Project and finalize the terms of an arm's length, fair market value construction contract or construction contracts with such Contractor or Contractors, in each case subject to any steps Hospital may take or reasonably direct Developer to take to comply with applicable laws regarding public bidding.

4.4 **Financing.** (i) Pursuant to Recital E, Section 3.1, and Article 8 of this Agreement, Hospital shall lease to each LLC, at a base rent of one dollar (\$1.00) per year, land sufficient to accommodate the Project such LLC was formed to develop in accordance with the applicable Development Plan. For each Project, subject to Hospital's contingent obligation to pay those costs and operating shortfalls set forth in Sections 4.2, 4.5(ii) and 7.2 and to contribute one third (1/3) of the equity needed to finance the Aggregate TI Allowance (as defined below)

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and such funds as may be needed to cover Operating Shortfalls (as defined in Section 7.2 below) after Project Stabilization in accordance with this Section 4.4(i), Developer shall be responsible for any and all debt or equity necessary to develop the Project Shell for such Project and for two thirds (2/3) of the equity needed to finance the Aggregate TI Allowance. For each such Project, Developer shall provide all customary guarantees and indemnities required by the lender providing financing for such Project. Except as provided in Sections 4.2, 4.5(ii) and 7.2, and except as required to fund one third (1/3) of the equity needed to finance the Aggregate TI Allowance and to cover Operating Shortfalls after Project Stabilization in accordance with this Section 4.4(i), in no event shall Hospital be required to make any contribution of funds to such LLC. For each Project, Developer shall pursue financing in such amounts that, when combined with equity contributed by Developer and Hospital to such LLC, shall (a) be sufficient to finance construction of the Project Shell for such Project in accordance with plans, the construction schedule and a construction budget to be contained in the applicable Development Plan and mutually approved by the Parties in advance in their reasonable discretion, (b) include the Aggregate TI Allowance, to the extent feasible, and (c) be sufficient to finance any other Project costs (including Operating Expenses as defined below in this Section 4.4) that are reasonably expected to be incurred through the date when Developer has completed construction of the Project Shell for such Project and subleased M.O.B. space sufficient to cover direct operating expenses (including, without limitation, utilities, janitorial, property taxes, management fees, repairs and maintenance, general and administrative costs of the applicable LLC, trash, sewer, water, HVAC maintenance, insurance, security, fire and life safety, landscaping, capital improvement reserves, and the interest portion of debt service) (the "Operating Expenses") for such Project ("Project Stabilization") in accordance with the terms of this Agreement and the LLC Agreement for the LLC formed to pursue such Project. Operating Shortfalls that occur after Project Stabilization shall be borne equally by Hospital and Developer through contributions to the applicable LLC. Notwithstanding the foregoing, nothing contained herein shall relieve Hospital of its obligation to fund Operating Shortfalls after providing an Operating Shortfall Notice pursuant to Section 7.2 below. Such financing shall not be permitted to cause Hospital to violate the covenants or restrictions contained in any bond documents to which Hospital may now or hereafter be subject.

(ii) For each Project, the financing shall consist of a construction loan on terms and conditions reasonably acceptable to Developer and Hospital. If Hospital does not disapprove the construction loan documents in writing to Developer within thirty (30) days after the receipt thereof by Hospital, then Hospital shall be deemed to have consented to the terms and conditions of such construction loan documents. For each Project, the financing shall provide for cure rights and assumption rights on the part of Hospital in its capacity as ground lessor, such that Hospital shall, in the event of a default by Developer or the LLC for such Project under the financing documents, have the right (but not the obligation) to (i) step in and cure defaults under the Ground Lease for such Project (as defined below) and the financing documents, (ii) draw remaining funds available to the LLC for such Project under the financing documents and (iii) complete construction of such Project. Developer shall use its best efforts to obtain favorable terms for the financing. Notwithstanding the foregoing, Developer's inability to obtain conventional construction financing available at the time the Development Plan anticipated for the financing of such Project, despite Developer's commercially reasonable efforts to do so, shall not constitute a default or breach under this Agreement or under the LLC Agreement the Parties enter into for such Project. The terms of any subsequent refinancings that are obtained with

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respect to such Project shall be subject to Hospital's and Developer's reasonable approval. If Hospital does not disapprove the refinancing documents in writing to Developer within thirty (30) days after the receipt thereof by Hospital, then Hospital shall be deemed to have consented to the terms and conditions of such refinancing documents.

(iii) Each LLC shall have the right to encumber such LLC's leasehold interest under the Ground Lease for the Project such LLC was formed to develop in order to secure the financing for such Project, subject to the terms of such Ground Lease. For each Project, Hospital shall not (A) be obligated to subordinate or encumber its fee interest in the Property in order to help the applicable LLC to secure the financing, (B) be directly or indirectly liable under the financing documents or (C) act as a guarantor of, or indemnitor with respect to, the financing.

(iv) For each Project, subject to the terms of the preceding paragraph and the approval of Hospital, Hospital shall provide and/or execute such documentation as may reasonably be required by the construction lender and each subsequent lender (including, without limitation, an estoppel certificate; a lease subordination, non-disturbance and attornment agreement; and other such documents reasonably and customarily required by lenders, in each case in a form reasonably acceptable to Developer and Hospital); provided, however, that the terms of the financing documents shall not require Hospital to waive any rights that Hospital may have to enforce the terms of any ground lease or sublease, other than customary provisions exempting the lender from the pre-attornment non-monetary liabilities of the lessee under the Ground Lease for such Project (so long as the lender proceeds to cure any then existing defaults under such Ground Lease).

(v) For each Project, a default under the loan documents shall not constitute a default under the Ground Lease for such Project, unless the condition constituting such default independently constitutes a default under such Ground Lease. For each Project, no asset of Hospital other than its indirect interest in such Project (by way of its ownership interest in the LLC) shall be used as collateral for the financing, and the financing documentation shall explicitly provide that the lender shall not have any recourse to Hospital for breaches thereunder.

(vi) For each Project, the Parties intend to seek financing sufficient to provide a tenant improvement allowance of fifty dollars (\$50.00) per square foot of M.O.B. space (the "Aggregate TI Allowance"). To the extent that the Parties are unable to obtain one hundred percent (100%) financing for the Aggregate TI Allowance, Developer shall contribute one third (1/3) of the equity needed to finance the Aggregate TI Allowance and the applicable LLC shall contribute two thirds (2/3) of the equity needed to finance the Aggregate TI Allowance (to be borne equally by Hospital and Developer through contributions to the applicable LLC).

(vii) For each Project, all funds Developer provides to the LLC formed to own such Project to cover cost overruns (as calculated based on such Project's projected costs in the approved Development Plan, as updated by the Parties as of a date immediately prior to the commencement of construction of such Project) shall constitute loans from Developer to such LLC which shall bear interest at the prime rate (as listed in the "Money Rates" section of The Wall Street Journal from time to time) plus three percent (3%). Such LLC shall repay Developer for such loans at the sale or refinancing of such Project, or at such earlier time as the manager of

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such LLC determines is in the best interest of such LLC. Such LLC shall repay Developer for such loans before any distributions (other than the repayment of loans pursuant to Section 7.2) to the members of such LLC, including upon the liquidation of such LLC. Such LLC's repayment of loans received from Developer and of loans received from Hospital shall be on a pro rata basis.

4.5 **Development Plan.** (i) For each Project, Developer shall prepare and provide to Hospital a proposed plan of development for such Project (the "**Development Plan**"), which plan shall be subject to Hospital's reasonable approval. Such Development Plan shall comply with fraud and abuse laws and any other legal requirements governing Hospital's operations. A sample form of Development Plan is attached hereto as **Exhibit A**. The Parties acknowledge that given the uncertainty regarding the location, design and other specifications of the Projects as of the Effective Date of this Agreement, such sample form of Development Plan does not include all components of the final Development Plan for each Project. Each Development Plan shall include, without limitation, provisions implementing the terms of Sections 3.1 and 4.1 through 4.4 of this Agreement, and the following major components:

(a) description of the size and types of improvements proposed for construction upon the Property;

(b) a development budget consisting of a pre-construction budget, a construction budget and construction schedule which includes a detailed estimate of projected costs to be incurred in the development of the Project, including the cost of obtaining governmental permits and Entitlements required for the development and construction, the amount of fees required to be paid in connection therewith, all costs related to site preparation, grading, design, planning, preparation of plans and specifications and renderings for the proposed improvements and those other items identified as hard costs and soft costs;

(c) a construction plan setting forth the timing and sequence of matters relating to planning, development, site preparation, construction and leasing of improvements to be constructed upon the Property and the projected completion dates for the various aspects of the construction work related to the Project;

(d) subject to Section 4.10 below, a marketing plan and leasing pro forma setting forth projected lease rates, commissions and other material economic terms for subleasing of space in the completed improvements;

(e) operating pro formas for the Project including projected lease and sublease revenues and expenses including, without limitation, property taxes, operating costs, maintenance costs, management costs, replacement reserves, depreciation and other expenses; and

(f) subject to Section 4.4(ii) above, a financing plan including projected principal loan amounts, interest rates and maturity dates for a pre-development loan (including site preparation, grading, project design, planning and entitlements), construction loans and permanent loans.

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(ii) Developer shall exercise commercially reasonable efforts to prosecute to completion the Development Plan diligently and in an expeditious manner. Once Hospital has approved Developer's proposed Development Plan for a Project, Hospital shall have the right at any time to comment on and suggest changes or additions to the approved Development Plan and Developer will discuss any such comments, suggestions and recommendations and, if mutually agreed upon, to use commercially reasonable efforts to carry them out; provided, however, Developer shall be under no obligation to consent to a request by Hospital to revise the Development Plan unless Hospital agrees to bear any additional costs caused by such revision.

(iii) Developer may make non-material revisions to the Development Plan without the approval of Hospital, provided such modifications do not result in a delay in completion of construction of building improvements after construction has commenced of more than ninety (90) days; or a reduction in the unleveraged rate of return of more than 2.5% (with the unleveraged rate of return being that percentage shown in the Project Financial Summary section of the Development Plan under the heading "Return on Cost"); or any modification which when taken together with other non-material modifications to the Development Plan would, in the aggregate, result in a delay in completion of construction of building improvements after construction has commenced of more than one hundred twenty (120) days or a reduction in the unleveraged rate of return of more than 5% (collectively and severally a "Material Modification"). For the purposes of this Agreement, any changes to the exterior of a Project (including, without limitation, the size, bulk, materials, design, or layout) shall be deemed a Material Modification. Any Material Modification to the Development Plan shall require the approval of both Parties.

**4.6 Land Use Approvals and Other Entitlements.** For each Project, and subject to Section 1.3 of this Agreement, Developer shall cooperate with the applicable LLC in its efforts to obtain land use approvals, building permits and all other entitlements necessary for construction and operation of such Project. Developer shall obtain such environmental impact reports, traffic studies, parking studies, and other studies as are required by the Agencies, at such LLC's sole cost and expense. Such LLC, Developer and Hospital shall consult with each other to determine the appropriate scope of such studies and reports. Developer shall provide such LLC and Hospital with adequate prior notice and copies of all submissions required to obtain land use approvals or other entitlements so such LLC and Hospital may review and approve such submissions. Developer shall provide such LLC and Hospital with at least forty-eight (48) hours' prior written notice of any meeting with public agencies so such LLC's and Hospital's representatives may have the opportunity to attend. Such LLC and Hospital shall have the right to review and approve the tentative map and final design for each Project, such approval not to be unreasonably withheld, conditioned, or delayed. Neither Developer nor any LLC shall alter the land use rights or development rights of any Project (or Property pertaining thereto) without Hospital's prior written consent. For each Project, Hospital shall use commercially reasonable efforts to obtain all internal Hospital consents and signatures necessary to implement any parcel or subdivision map necessary to establish the Property on which such Project shall be constructed as a separate legal lot.

**4.7 Survey, Soils Investigation and Hazardous Materials Studies.** For each Project, Developer shall cause a survey to be prepared, soils investigations to be conducted, and a Phase I report (and, if recommended in the Phase I report, a Phase II report) to be prepared,

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or if Hospital or Developer has caused any of the foregoing to be prepared or conducted which are sufficient for the applicable LLC's use in connection with such Project, such LLC shall reimburse Hospital or Developer, as the case may be, for any costs incurred by Hospital or Developer for the same.

4.8 **Project Management.** For each Project, Developer shall provide project management services as more fully detailed in the Development Plan attached hereto as Exhibit A.

4.9 **Property Management.** For each Project, Developer shall provide property management until substantial completion of the Project Shell for such Project has occurred, at which time the Parties shall cause the applicable LLC to hire a property manager (which may be a third party, Hospital, an affiliate of Hospital, Developer, or a Developer Affiliate) to provide such property management services. Hospital shall have the right to approve the individuals who shall provide leasing and property management services, including the person or persons responsible for day-to-day operations of such Project, which approval Hospital shall not unreasonably withhold. Any party selected to provide management services pursuant to this Section 4.9 shall do so pursuant to an arm's length property management agreement for fair market compensation.

4.10 **Leasing.** For each Project, Developer shall sublease out available space in such Project on an ongoing basis until substantial completion of the Project Shell for such Project has occurred, upon which time the property manager described in Section 4.9 above shall provide such subleasing services. All subleases shall be pursuant to a form of sublease reasonably approved by Hospital. During the Term, Hospital shall use its commercially reasonable efforts to assist Developer and LLCs in subleasing space in a Project to members of Hospital's medical staff and other medical service providers. On or before the fifteenth (15<sup>th</sup>) day of March, June, September, and December, Developer or such property manager, as applicable, shall provide to Hospital a report (a "Leasing Status Report") summarizing the leasing status of such Project as of the end of the preceding month, which report shall include (a) a list of all tenants in such Project (b) the number of square feet currently subleased by each tenant, (c) the expiration date of each corresponding sublease, (d) the number of square feet not currently under sublease, (e) a list of prospective tenants with whom Developer or such property manager, as applicable, has entered into negotiations to sublease a portion of such Project, (f) a summary of the status of any such negotiations and (g) a description of space that is currently unoccupied and available to sublease. The person responsible for subleasing space in such Project shall meet with a Hospital representative at least once per calendar quarter to discuss the most recent Leasing Status Reports. Any person acting as leasing agent pursuant to this Section shall have substantial experience leasing space in California for the type of Project undertaken, and shall otherwise be subject to Hospital's reasonable approval. Developer's or such property manager's, as applicable, compensation for leasing services, if any, shall when added to 3<sup>rd</sup> party brokerage costs shall be no more than a fair market value of total leasing costs.

4.11 **Insurance.** For each Project, in addition to the insurance required pursuant to Section 6 below, Developer shall cause the LLC for such Project to obtain insurance coverage of such types and in such amounts as are customary for private and commercial



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development reasonably acceptable to Developer and Hospital, a description of which shall be included in the Ground Lease for such Project.

4.12 **Security.** For each Project, if Hospital shall so request, the LLC for such Project shall provide to Hospital, at such LLC's sole expense, such completion guarantees and environmental indemnities as Hospital may reasonably require; provided, however, such guarantees and/or environmental indemnities shall not impose any obligation on Developer that Developer will not be subject to under the Construction Loan documents (other than that Hospital shall now also be a beneficiary of such obligations).

4.13 **Restrictions and Limitations on Developer and LLCs.** Notwithstanding any term or provision of this Agreement to the contrary, neither Developer nor any LLC shall have the power to undertake any of the following without obtaining the prior approval of Hospital in the manner set forth below:

(a) The merger of any LLC with another limited liability company or corporation, general partnership, limited partnership or other entity;

(b) Any act which would make it impossible or unreasonably burdensome to carry on the ordinary business of any LLC, except as part of the orderly liquidation and winding up of such LLC upon its dissolution and termination;

(c) Causing any LLC to acquire any interest in real property other than its interest in the Property;

(d) Except for financing of and subleasing space in any Project pursuant to this Agreement, selling, exchanging or otherwise transferring or encumbering all or any part of its direct or indirect interest in the Property whether or not improved;

(e) Causing or permitting any LLC to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person or entity;

(f) Dissolving or terminating any LLC;

(g) Except for the payment of any fees and/or reimbursements to Developer or Hospital as prescribed for herein, the repayment of developer loans, if any, (other than repayment of loans pursuant to Sections 4.4(vii) and 7.2 hereof), entering into any contract with, or making any payment to, either Party, or any affiliate or other representative of either Party, or with respect to any such contract, making amendment, modification or rescission thereof; declaring a default thereunder; instituting, settling, or compromising a claim with respect thereto; waiving any rights of any LLC against either Party hereto; or consenting to the assignment of any rights or the delegation of any duties by the other party thereto;

(h) Causing or permitting any LLC to take any action, enter into any agreement, or otherwise bind or obligate such LLC to any liability or obligation that is not

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materially consistent and in substantial accordance with the approved Development Plan then in effect;

- (i) Entering into any agreement other than with third parties at arm's length;
- (j) Entering into any agreement not consistent with the Development Plan then in effect;
- (k) Possessing any interest in property of any LLC other than in the name of such LLC;
- (l) Causing or permitting the LLC to engage in any business or activity outside the scope of the LLC's business;
- (m) Amending this Agreement;
- (n) Doing any act in contravention of this Agreement;
- (o) Admitting an additional member into any LLC (except as otherwise permitted in this Agreement);
- (p) Any other matter requiring the vote or approval of Hospital under the terms of this Agreement, or the LLC Agreement for the applicable LLC, or the Ground Lease for the applicable Project; and
- (q) Any action that may cause Hospital to violate local health care district law or any other law or regulation to which Hospital is subject.

Whenever Developer or the applicable LLC desires to take any proposed action that requires the prior approval of Hospital in accordance with this Agreement, Developer shall give written notice to Hospital describing the proposed action. As soon as practicable thereafter, Hospital shall give Developer written notice that Hospital either approves or disapproves the proposed action (which shall set forth Hospital's reasons therefore if Hospital elects to so disapprove such proposed action). If Hospital does not specifically disapprove such proposed action in writing within thirty (30) days after first receipt thereof, then Developer shall deliver to Hospital, a second time, written notice describing the proposed action accompanied by written notice to Hospital containing the following sentence in bold and all caps: "FAILURE TO SPECIFICALLY DISAPPROVE THE PROPOSED ACTION IN WRITING WITHIN TEN (10) DAYS OF RECEIPT HEREOF SHALL RESULT IN SUCH PROPOSED ACTION BEING DEEMED APPROVED." If Hospital does not specifically disapprove the proposed action in writing within ten (10) days after second receipt of the description thereof and receipt of such notice described in the preceding sentence, then the proposed action shall be deemed approved. At any time prior to the proposed action being deemed approved, if Hospital determines that such proposed action should be submitted to Hospital's Board of Directors for approval, then notwithstanding any provisions herein to the contrary Hospital shall have ten (10) days from the

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next scheduled meeting of Hospital's Board of Directors to approve or disapprove the proposed action.

5. **Intentionally omitted.**

6. **Right of Entry.** Upon reasonable prior written notice to Hospital, during the Term Developer, the LLC formed to own any Project, and their respective agents and independent contractors shall have the right to enter the Property for such Project to the extent necessary to conduct the studies required to develop such Project. Hospital shall have the right to accompany any such parties when they enter the Property. Such parties shall repair any damage caused to the Campus or any improvements thereon and shall indemnify and hold Hospital harmless (on a joint and several basis) from all costs, expenses, losses, attorneys' fees and liabilities incurred or sustained by Hospital, in each case as a result of any acts of Developer, such LLC or their respective employees, agents or independent contractors pursuant to the rights granted in this Section. Each of Developer and the LLC shall, prior to exercising their respective rights under this Section, provide to Hospital a certificate of commercial general liability insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate, covering their respective activities pursuant to this Section. Such policy of insurance shall have a maximum deductible of Ten Thousand Dollars (\$10,000.00) and shall name Hospital as an additional insured. When exercising their respective rights pursuant to this Section, Developer and each LLC shall each use commercially reasonable efforts to minimize any disruptions to any activities of Hospital or any other parties occupying the Campus. The provisions of this Section shall survive termination of this Agreement.

7. **Feasibility Condition.**

7.1 **Developer's Right to Withdraw from Project.** Notwithstanding any other provision of this Agreement to the contrary, if at any time prior to the commencement of construction of any given Project, Developer reasonably determines that development of such Project will not satisfy the criteria set forth in the pro forma set forth in the form of Development Plan attached as Exhibit A to this Agreement, Developer may give written notice to Hospital that it considers it not feasible to develop such Project (a "Feasibility Notice"), in which case Developer's rights to develop such Project shall terminate and Developer shall have no further obligation to Hospital with respect to such Project, except as to those provisions of this Agreement that expressly survive such termination and except with respect to Developer's share of expenses and liabilities incurred by the Parties or the LLC with respect to such Project prior to the Feasibility Notice. Upon such written notice, at Hospital's request, Developer shall promptly execute such documentation as may be reasonably needed to effectuate a redemption of Developer's interest in the LLC relating to such Project, for no additional consideration to Developer. Hospital shall thereafter have the right to pursue the completion of the Project, the scope of which (size, location, and exterior surfacing) shall not deviate in any material respect from the scope set forth in the Development Plan, that Developer considers infeasible and that was the subject of Developer's Feasibility Notice ("Hospital Project"), either itself, through such LLC (after the redemption of Developer's interest in such LLC), or in collaboration with any third party. If Hospital elects to so pursue the Hospital Project, it shall (a) provide written notice of such intent to pursue completion of such Project to Developer within sixty (60) days after

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receipt by Hospital of Developer's Feasibility Notice, (b) provide Developer, within one hundred twenty (120) days after receipt of Developer's Feasibility Notice, with a copy of a commitment letter or other evidence reasonably acceptable to Developer that Hospital has obtained financing for such Project or otherwise has access to funds sufficient to develop such Project; and (c) commence construction of such Project within one hundred fifty (150) days after receipt of Developer's Feasibility Notice. If Hospital fails to provide the written notice under subparagraph (a) within such sixty (60) day period, or fails to provide evidence of financing or sufficient available funds under subparagraph (b) within such one hundred twenty (120) day period, or fails to commence construction under subparagraph (c) within such one hundred fifty (150) day period, Developer's rights with respect to such Hospital Project shall be reinstated. If Hospital elects to pursue such Project, at Hospital's request, all studies, designs, plans, and documents relating to such Project shall be assigned, conveyed, and transferred to Hospital at Developer's actual third-party cost but only to the extent such studies, designs, plans and documents are assignable. If after Hospital has so elected to pursue a Hospital Project, either itself, through such LLC (after the redemption of Developer's interest in such LLC), or in collaboration with any third party, potential subtenant interest in the Hospital Project indicates that it would be desirable to increase the size of the Hospital Project, Hospital shall notify Developer and deliver to Developer a copy of a binding letter of intent or lease with such subtenant. Developer shall have ten (10) days from receipt of such documentation to notify Hospital that it intends to reinstate its right to develop such Project with such subtenant in accordance with this Agreement. Developer's failure to timely deliver such notice shall be deemed a one-time waiver of its right of reinstatement, and Hospital shall be permitted, for a period of one hundred fifty (150) days after expiration of such ten (10) day period to commence construction of such Hospital Project. If Hospital is unable to commence construction within such one hundred fifty (150) day period, Developer's right of reinstatement shall be reinstated with regards to any future development of such Hospital Project. For purposes of calculating the Term of this Agreement, the Parties shall be considered to have completed joint development, pursuant to this Agreement, of any Project that would satisfy the criteria set forth in the form of Development Plan attached as Exhibit A to this Agreement, but that Developer decides not to pursue pursuant to the provisions of this Section.

**7.2 Failure to Satisfy Financial Criteria.** Notwithstanding the foregoing, if any given Project (i) is not at least 50% pre-leased, (ii) will not yield a minimum 3% spread between the return on costs and the terminal cap rate, (iii) will not produce an operating cash on cash return for co-investor of at least 20%, or (iv) will not equal or exceed the "Co-Investment IRR" or "Return on Costs" shown in the Project Financial Summary section of the Development Plan for such Project (collectively, "Financial Criteria"), as reasonably determined by Developer at the time Developer delivers the Feasibility Notice to Hospital, then, in each case, (A) Developer shall have no obligation to proceed with construction of any such Project or to prosecute any other portion of the Development Plan, and (B) Hospital shall have no right to pursue the development or completion of such Project unless Hospital agrees to contribute to the LLC formed to develop such Project cash in an amount equal to the Operating Expenses for such Project minus the income derived by such Project (the "Operating Shortfall") for a period of three (3) years following issuance of a certificate of occupancy for such Project, in which case Developer shall have the option to jointly develop such Project with Hospital in accordance with the procedure set forth below in this Section 7.2. If Hospital elects to pursue the development or completion of such Project and to fund the Operating Shortfall for such Project for a period of

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three (3) years following issuance of a certificate of occupancy for such Project, it shall provide a written notice to Developer of such election (the "Operating Shortfall Funding Notice"). Upon receiving the Operating Shortfall Funding Notice, Developer shall have ten (10) days to provide written notice to Hospital of its intent to jointly develop such Project with Hospital. If Developer fails to respond on or before the tenth (10<sup>th</sup>) day after receipt of the Operating Shortfall Funding Notice from Hospital, then Developer shall be conclusively presumed to have elected not to pursue joint development of such Project with Hospital. All funds Hospital provides to such LLC to cover the Operating Shortfall shall constitute loans from Hospital to such LLC which shall bear interest at the prime rate (as listed in the "Money Rates" section of The Wall Street Journal from time to time) plus three percent (3%). Such LLC shall repay Hospital for such loans at the sale or refinancing of such Project, or at such earlier time as the manager of such LLC determines is in the best interest of such LLC. Such LLC shall repay Hospital for such loans before any distributions (other than the repayment of loans pursuant to Section 4.4(vii)) to the members of such LLC, including upon the liquidation of such LLC. Such LLC's repayment of loans received from Hospital and of loans received from Developer shall be on a pro rata basis. For purposes of calculating the Term of this Agreement, the Parties shall be considered to have completed joint development, pursuant to this Agreement, of any Project that Developer decides not to pursue pursuant to the provisions of this Section after receiving the Operating Shortfall Funding Notice from Hospital.

8. **Ground Lease.** With respect to each Project, Hospital shall enter into a long-term ground lease (each such lease a "Ground Lease") with the applicable LLC. Hospital and Developer shall each use commercially reasonable, good faith efforts to negotiate the terms and provisions of the Ground Lease, which shall be in conformance with the terms of this Agreement. The Ground Lease, which shall not be executed until the LLC Agreement for such LLC is finalized and executed pursuant to Section 9 below, shall be subject to Hospital Board approval. The Ground Lease for each Project shall incorporate, among other things, the following provisions:

8.1 **Lease Term.** Each Ground Lease shall be a lease of the Property designated by Hospital in its discretion at no cost to the LLC for a term of fifty-five (55) years with two (2) ten- (10) year renewal options. Each Ground Lease shall also contain grants of the rights described in Section 3.3 hereof.

8.2 **Ground Tenant.** Each LLC shall be a special purpose entity.

8.3 **Assignment of Ground Lease Interests.** Hospital may freely assign its rights under each Ground Lease. Each LLC shall assign its rights under the applicable Ground Lease only (a) in connection with construction financing satisfying the requirements of this Agreement, (b) in connection with permanent financing that has been approved by Hospital and that is replacing the construction financing upon completion of the applicable Project or (c) pursuant to subleases in the form provided by Developer and approved by Hospital, provided, however, that any such sublease shall contain an acknowledgement by the sublessee that such sublease is subject and subordinate to the applicable Ground Lease.

8.4 **Construction Contract.** Each LLC shall enter into a construction contract or construction contracts with the Contractor or Contractors selected in accordance with

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local health care district law and pursuant to the bidding process described in Recital E and Section 4.3. Such contract or contracts shall include such completion guarantees or completion bonds by the contractors thereunder as may be requested by any lender providing financing for the applicable Project.

## 8.5 Use Provisions.

8.5.1 Project Use Restrictions. The Ground Lease for each Project shall restrict the use of the Property encumbered thereby to the development of M.O.B., which shall be limited to medical office use and related medical services uses to the extent approved by Hospital. At the request of Hospital, Hospital or members in good standing on its medical staff shall be given priority rights (i.e., via an exclusive early pre-leasing period) to lease the space in each Project on fair market value terms. No Project shall be used for any of the following purposes: a hospital or acute care center, inpatient hospital services, inpatient specialty services (including, without limitation, behavioral health and acute rehabilitation), outpatient surgery center, outpatient radiology center, imaging (including, without limitation, mammography, ultrasound, general x-ray, CT, MRI, and nuclear medicine), outpatient rehabilitative care (including, without limitation, physical therapy, occupational therapy, and speech therapy), home health services, outpatient behavioral health services, wound care/hyperbaric oxygen chamber, cardiac catheterization laboratory, cardiac rehabilitation services, sleep laboratory, infusion therapy, radiation oncology and home infusion therapy, occupational medicine and ambulatory services, tele-health services, diabetes services and classes, retail healthcare services (including, without limitation, medically directed spa, fitness, and wellness services), adult and geriatric health screening, urgent care, retail pharmacy, or medical laboratory drawing stations (collectively, "Restricted Uses"), in each case without the express prior written consent of Hospital. In the event that the LLC for any Project has a bona fide intent to enter into a sublease with a specific tenant seeking to engage in a Restricted Use, such LLC shall request in writing the written consent of Hospital. Upon the receipt of such written request, Hospital shall have 60 days to respond and shall not withhold its consent unless the Restricted Use for which such LLC is seeking Hospital consent is a use that Hospital then provides or is actively seeking to provide at the New Hospital. If Hospital does not notify LLC of any objection to such use within said 60 day period, then Hospital shall be deemed to have approved the requested use. If Hospital fails to provide such use at the New Hospital within six (6) months after the later to occur of (i) the expiration of such 60 day period, or (ii) the opening of the New Hospital, then such LLC shall be permitted to sublease such space to a tenant seeking to engage in such Restricted Use. If such LLC has not actually subleased such space to such tenant seeking to engage in such Restricted Use within two (2) years after receiving the right to do so (whether through Hospital's consent, Hospital's deemed consent, or Hospital's failure to provide such use at the New Hospital in the required timeframe), such right shall terminate and such LLC shall be required to seek Hospital's written consent (in accordance with the procedures set forth in this Section 8.5.1) before subleasing such space to a tenant seeking to engage in any Restricted Use. The following uses shall be permitted without Hospital's prior written consent: medical laboratory research, medical laboratory processing, professional physician office services, including medical and surgical specialties, diagnostic and treatment services related to same, chiropractic and related services, non-anesthetized plastic surgery and other minor diagnostic and treatment special procedures spaces solely related to the subtenant's practice of medicine for its patients of record. The use restrictions contained in this Section 8.5.1 shall continue in force and effect for a period of

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twenty five (25) years after the Effective Date, and the Parties agree that such restrictions shall survive the expiration or earlier termination of this Agreement for the full period of twenty five (25) years. However, if an acute-care general hospital of at least 750,000 square feet and 360 beds is not opened on the Campus by December 31, 2013, or if such hospital is not increased in size to at least 850,000 square feet and 450 beds by December 31, 2018, then the use restrictions contained in this Section 8.5.1 shall automatically terminate.

## 8.5.2 Escondido Research and Technology Center Use Restrictions.

No parcel (other than Lots 20, 22, and 24 if Developer is unable to persuade the owners thereof to record deed restrictions limiting Restricted Uses) within the Escondido Research and Technology Center and not owned by Hospital (the "ERTC Property") shall be used for any Restricted Uses without the express prior written consent of Hospital. A description of the ERTC Property is attached hereto as Exhibit B. In the event that the holder of any interest in any ERTC Property has a bona fide intent to engage in or allow a specific Restricted Use on such ERTC Property, the holder of such interest shall request in writing the written consent of Hospital. Upon the receipt of such written request, Hospital shall have 60 days to respond and shall not withhold its consent unless the Restricted Use for which the holder of such interest is seeking Hospital consent is a use that Hospital then provides or is actively seeking to provide at the New Hospital. If Hospital does not notify the holder of such interest of any objection to such use within said 60 day period, then Hospital shall be deemed to have approved the requested use. If Hospital fails to provide such use at the New Hospital within six (6) months after the later to occur of (i) the expiration of such 60 day period, or (ii) the opening of the New Hospital, then the holder of such interest shall be permitted to engage in or allow such Restricted Use on such ERTC Property. If the holder of such interest has not actually engaged in such Restricted Use within two (2) years after receiving the right to do so (whether through Hospital's consent, Hospital's deemed consent, or Hospital's failure to provide such use at the New Hospital in the required timeframe), such right shall terminate and the holder of such interest shall be required to seek Hospital's written consent (in accordance with the procedures set forth in this Section 8.5.2) before seeking to engage in any Restricted Use. If Developer transfers any ERTC Property to a party other than Hospital, then Developer shall include in the grant deed effecting the transfer of such ERTC Property, and cause to be recorded with the San Diego County Recorder, the language included in Exhibit C, which is attached hereto. If Developer transfers any ERTC Property (other than Lots 20, 22, and 24) to a party other than Hospital and does not include the language included in Exhibit C in the grant deed and cause such grant deed to be recorded within 10 days of such transfer, then Developer shall be in breach of its obligations under this Agreement. Upon becoming aware of such breach, Hospital may provide Developer a written notice directing Developer cure such breach. If within thirty (30) days of Hospital sending such written notice Developer has not cured such breach, Developer shall immediately forfeit all, or at Hospital's sole discretion, a portion, of the rights that it has under this Development Agreement. Such forfeiture shall be automatic, and without the need for further documentation. Notwithstanding the foregoing, Developer agrees to execute and deliver any documentation reasonably requested by Hospital to memorialize such forfeiture. Notwithstanding the foregoing, Developer hereby constitutes and appoints Hospital as its true and lawful attorney-in-fact to execute and record with the San Diego County Recorder any documentation that Hospital deems desirable to memorialize such forfeiture, and this power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable. No further direction or authorization from Developer shall be necessary to warrant or permit Hospital to execute and record such

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documentation. The use restrictions contained in this Section 8.5.2 shall continue in force and effect for a period of twenty five (25) years after the Effective Date, and the Parties agree that such restrictions shall survive the expiration or earlier termination of this Agreement for the full period of twenty five (25) years. However, if an acute-care general hospital of at least 750,000 square feet and 360 beds is not opened on the Campus by December 31, 2013, or if such hospital is not increased in size to at least 850,000 square feet and 450 beds by December 31, 2018, then the use restrictions contained in this Section 8.5.2 shall automatically terminate.

8.6 **Non-Competition.** Developer commits that, for a period of ten (10) years following the Effective Date, it shall not, and shall not permit any of its partners, officers, employees (while employed by Developer), or affiliates to develop, construct or operate a medical office building within the Escondido Research and Technology Center business park or within a three (3) mile radius of the Campus (the "Covenant Not to Compete"). Developer shall cooperate with Hospital, and shall execute and record any documents (including, without limitation, any documents necessary to amend or restate the Declaration of Covenants, Conditions and Restrictions of Escondido Research and Technology Center (San Diego County Recorder document number 2005-0222548, recorded on March 18, 2005)) Hospital reasonably requests to prevent third parties from developing, constructing or operating a medical office building within the Escondido Research and Technology Center business park during the Term of this Agreement. Notwithstanding the foregoing, the Covenant Not to Compete shall automatically terminate if (i) the Parties fail to (A) execute a mutually acceptable LLC Agreement or Ground Lease for the Initial Project or (B) obtain the Entitlements for the Initial Project including, without limitation, any approvals, consents or permits required to comply with CEQA, in each case, on or before June 30, 2007, (ii) fail to reach an agreement regarding the final Development Plan for the Initial Project by December 31, 2007 (unless such failure to reach an agreement is a result of Developer's decision to decline to develop the Initial Project in accordance with Section 7.1), (iii) Hospital fails to open the New Hospital on or before December 31, 2011, or (iv) Hospital elects not to proceed with any Project that satisfies the Financial Criteria set forth in Section 7.2 above as reasonably determined by Developer. Upon termination of the Covenant Not to Compete in accordance with the preceding sentence, Hospital shall not, and shall not permit any Hospital controlled affiliates to develop, construct or operate a medical office building within the Campus for a period of five (5) years after the termination of such Covenant Not to Compete. Notwithstanding the foregoing, Hospital shall not be so restricted from building such facilities on its Campus unless, within one year after groundbreaking of the New Hospital, Developer has commenced construction and is diligently pursuing completion of the lesser of (a) 100,000 square feet of M.O.B. within Planning Area 3 of the Escondido Research and Technology Center business park, and (b) the maximum amount of M.O.B. that will fit within Planning Area 3 of the Escondido Research and Technology Center business park.

8.7 **Indemnification.** Each Ground Lease shall contain provisions whereby the applicable LLC shall indemnify Hospital and its affiliates, officers, directors, employees and agents against any claims, damages or losses arising from the LLC leasing, developing or occupying the applicable Project. Such indemnity shall survive the expiration or earlier termination of such Ground Lease or this Agreement for a period of one (1) year following such termination.



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8.8 **Future Development.** Hospital shall have the right to build above- or below-ground walkways, tunnels or other structures connecting any space in a Project owned or subleased by Hospital to other buildings and areas on the Campus. If Hospital determines that it would also like to construct such structures connecting other portions of any Project to other buildings and areas on the Campus, then Hospital must first obtain the applicable LLC's prior approval for such construction, which approval shall not be unreasonably withheld, conditioned or delayed by such LLC. Neither Developer nor any LLC shall permit or engage in any major construction or construction visible from outside the applicable Project without Hospital's prior written approval.

8.9 **Rights to Rooftop.** Hospital shall have the right to use for its purposes only (not as lessor or sublessor), at no additional rental or occupancy fee to Hospital, up to 50% of the rooftop of each Project on an "As Is, Where Is" basis to install, maintain and operate such equipment as Hospital deems necessary or desirable for the operation of such Project or the New Hospital (including, without limitation, telecommunications equipment), subject to the rooftop equipment necessary to operate the core systems of such Project. Hospital shall fully comply with all applicable laws, statutes, ordinances, rules and regulations pertaining to Hospital's installation, use, operation and maintenance of such rooftop equipment. Hospital, at Hospital's sole cost and expense, will be responsible directly to the appropriate utility providers, for obtaining and maintaining all utility services and connections required for Hospital's use of the rooftop equipment. Except to the extent of Developer's gross negligence or willful misconduct, and to the fullest extent permitted by law, Hospital hereby agrees to indemnify, hold harmless, protect, and defend Developer and any LLC, and their agents, employees, representatives and contractors from and against any and all claims, causes of action, liabilities, losses, costs, damages, whether foreseeable or unforeseeable, arising out of or related to any act, omission or neglect of Hospital or Hospital's agents, employees, representatives and contractors, or arising from or related to Hospital's installation, use, operation and maintenance of such rooftop equipment (including, without limitation, any claims related to radio or electromagnetic fields, radiation or emissions created by the rooftop equipment). The indemnification provisions of this Section shall survive the termination, cancellation or expiration of this Agreement.

8.10 **Right of First Offer.**

8.10.1 **Right of First Offer.** Each LLC shall notify Hospital if the LLC intends to sell the Project owned by such LLC and shall state the price and other terms pursuant to which it would offer such a sale. In such event, Hospital shall have sixty (60) days from receipt of such notice to notify such LLC that it intends to purchase such Project at such price and on such terms. Hospital's failure to timely deliver such notice shall be deemed a one-time waiver of its right of first offer, and in such event such LLC shall be permitted, for a period of one (1) year beginning on the date that is sixty (60) days after such LLC delivers to Hospital notice of its intent to sell such Project, to sell the Project to a third party at a price no lower and on terms no more favorable than those proposed to Hospital. If such LLC is unable to consummate such a sale within such period, Hospital's right of first offer shall be reinstated with regards to any future proposed sale of such Project.

8.10.2 **Right of First Offer as to Leasing of Space.** Hospital shall have ten (10) days from receipt of the quarterly Leasing Status Report to notify Developer or the

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applicable LLC, as applicable, that it intends to lease any space in any Project that is available at the price and terms specified in the Leasing Status Report. Hospital's failure to timely deliver such notice shall be deemed a one-time waiver of its right of first offer, and Developer or such LLC, as applicable, shall be permitted, for a period of six (6) months beginning on the date that is ten (10) days after Developer or such LLC, as applicable, delivered to Hospital the applicable Leasing Status Report, to lease such space to a third party at a price no lower and on terms no more favorable than those proposed to Hospital. If Developer or such LLC, as applicable, is unable to lease such space within such period, Hospital's right of first offer shall be reinstated with regards to any future proposed lease of such space.

8.11 **Maintenance of First Class Medical Office Building.** Each Ground Lease shall contain terms requiring the owner of the Project constructed on the land encumbered by such Ground Lease to at all times maintain such Project as a first class medical office building commensurate with the finest medical office buildings in San Diego County.

8.12 **Hospital Approval Rights.** Each Ground Lease shall contain terms granting to Hospital the same approval rights granted to Hospital in this Agreement over the architectural design, use restrictions, maintenance standards, and site planning for any Project developed on the Property encumbered by such Ground Lease.

8.13 **Leasehold Mortgagee Protection Provisions.** The Ground Lease for each Project shall contain customary mortgagee protection provisions in order to achieve Development Plan objectives, including customary cure and assumption rights on the part of any lender providing financing for such Project (the "Leasehold Mortgagee"), such that the Leasehold Mortgagee shall, in the event of a default by Developer or the LLC for such Project, have the right (but not the obligation) to (i) step in and cure defaults under the Ground Lease for such Project, (ii) assign the leasehold estate in the event it acquires the leasehold estate (i.e., through foreclosure), and (iii) enter into a new lease directly with Hospital on the same terms and conditions as the Ground Lease, in each case subject to customary restrictions on the timing and exercise of such rights. Hospital shall cooperate in including in each Ground Lease any additional provisions which any proposed Leasehold Mortgagee reasonably requests for the purposes of allowing such Leasehold Mortgagee reasonable protection of its Leasehold Mortgage lien; provided, however, that any such provision shall not in any material respect adversely affect any rights or increase any obligations of Hospital under any Ground Lease.

9. **Formation of LLC.** For each Project, the Parties intend to form an LLC and to agree as to the form of an operating agreement for each LLC (each such agreement an "LLC Agreement") in accordance with the terms of this Agreement, and shall use good faith, commercially reasonable efforts to do so. Within ninety (90) days after Hospital acquires the portion of the Campus that it does not yet own, Hospital and Developer shall meet and confer regarding a timeline for forming an LLC to pursue joint development of the Initial Project. Upon formation, the membership interests in each LLC shall be owned fifty percent (50.0%) by Hospital and fifty percent (50.0%) by Developer (or a Developer Affiliate). Hospital may sell membership interests in each LLC to tenants and other members of Hospital's medical staff, as contemplated by and described in Recital D, and will confer with Developer to determine whether Developer would like to so sell a portion of Developer's interest in such LLC as well. Notwithstanding any reduction of Hospital's membership interest in such LLC, Hospital's level

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of control over such LLC, Hospital's approval rights under this Agreement, the Ground Lease, and the LLC Agreement for such Project, and Hospital's voting rights in such LLC shall not be diminished so long as Hospital retains any membership interest in such LLC.

9.1 **LLC Agreement.** The formation of each LLC and its LLC Agreement shall be subject to Hospital Board approval.

9.2 **Assignment of LLC Membership Interests.** Hospital may freely assign and encumber its interests in each LLC. Developer shall not assign or encumber a majority of its membership interests in any LLC without Hospital's prior written consent unless construction of the Project such LLC was formed to own has been completed. If either Party (the "**Selling Party**") intends to sell any of its interest in any LLC to a third party (other than to a Developer Affiliate or a member of Hospital's medical staff), such Selling Party shall notify the other Party (the "**Non-Selling Party**") of its intent to sell such interest and shall state the price and other terms pursuant to which it would offer such a sale. In such event, the Non-Selling Party shall have ten (10) days from receipt of such notice to notify the Selling Party that it intends to purchase such LLC interest at such price and on such terms. The Non-Selling Party's failure to timely deliver such notice shall be deemed a one-time waiver of its right of first refusal, and in such event the Selling Party shall be permitted, for a period of one (1) year beginning on the date that is ten (10) days after the Selling Party delivers to the Non-Selling Party notice of its intent to sell such LLC interest, to sell such LLC interest to a third party at a price no lower and on terms no more favorable than those proposed to the Non-Selling Party. If the Selling Party is unable to consummate such a sale within such period, the Non-Selling Party's right of first refusal shall be reinstated with regards to any future proposed sale of such LLC interest. No Party shall sell any of its interest in any LLC if such sale would result in a breach of, or result in such LLC being assessed a penalty under, the financing documents or any other agreement to which such LLC or the applicable Project is subject.

10. **Name of Projects** Hospital shall have the right to name each Project. Hospital shall bear the cost of any signage containing such name located on the Project or the Campus. Any payment, consideration, or benefit obtained in connection with the sale or transfer of such naming rights to any Project shall belong to Hospital alone. Any such signage, to the extent permitted by the Specific Plan for the Escondido Research and Technology Center and applicable governmental laws, regulations and ordinances, shall be limited to a single building identification sign for each Project located on the top floor of each such building.

11. **Marketing Materials.** Developer shall obtain Hospital's prior approval of all materials prepared or employed by Developer or any LLC to market each Project, including materials used to lease space in any Project, which approval shall not be unreasonably withheld, conditioned or delayed.

12. **As-Is Condition.** Hospital shall lease the Property to the LLCs in its "as is" condition, without any representation or warranties of any kind, as of the date of the applicable Ground Lease except that Hospital will warrant that it owns and has all requisite entity authority to lease the Property to the LLC. As such, concurrent with the execution of any Ground Lease, except as set forth below, Developer (including any successors or assigns to any interests of Developer in the Property) and the applicable LLC shall release Hospital and its officers,

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directors, employees, and affiliates, and each of their respective successors and assigns (collectively, the "Released Parties"), from, and waive any and all causes of action, claims, liabilities, obligations, expenses, damages or injury to property or person (or for wrongful death), known or unknown, contingent or liquidated, whether previously or hereafter occurring, to the extent arising from, connected with or otherwise caused by: (a) the physical condition of the Property encumbered by such Ground Lease (or any patent or latent deficiencies (as those terms are used in Sections 337.1 or 337.15 of the California Code of Civil Procedure) with respect to the design, specification, surveying, planning, supervision, or observation of construction or construction of any improvements within the Property encumbered by such Ground Lease); or (b) environmental contamination existing in, at or under the Property encumbered by such Ground Lease, including but not limited to all CERCLA- (Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended) based or related causes of action, claims, liabilities or damages or environmental claims or causes of action arising from any other federal or state based statutory or regulatory cause of action. The foregoing release given by Developer and LLC shall exclude (i) any environmental contamination caused by the Released Parties, and (ii) any claim, liability or causes of action arising out of Released Parties' negligence, willful misconduct, or failure to abide by the terms and conditions of this Agreement.

## 13. General Terms.

13.1 Ownership of Documents. If, during the Term of this Agreement, Developer's involvement with any Project ceases for any reason other than a breach by Hospital of this Agreement, Developer shall transfer control and ownership of all plans, agreements, applications, budgets, drawings, approvals and other documents related to development of such Project to Hospital for no additional consideration. If Developer's involvement with such Project should cease due to a breach by Hospital of this Agreement, Hospital shall have the right to acquire Developer's control and ownership of such documents, provided that Hospital shall reimburse Developer for any third party costs incurred by Developer in preparing such materials.

13.2 Notices. Unless otherwise provided in this Agreement or by law, all notices required or permitted by this Agreement or by law to be served on or delivered to a party shall be in writing and deemed duly served, delivered and received when personally delivered to the party to whom directed, or instead, three (3) business days after deposit in the U.S. mail, certified or registered, return receipt requested, first-class postage prepaid, addressed as indicated below. A party may change this address by giving written notice of the change to the other party. The Parties' addresses for this purpose are:

Hospital:

Palomar Pomerado Health  
15255 Innovation Drive  
San Diego, CA 92128  
Attn: CFO's Office

With a copy to:

Latham & Watkins LLP  
600 West Broadway, Suite 1800  
San Diego, CA 92101  
Attn: Robert Frances

Developer:

With a copy to:

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JRM-ERTC I, L.P.  
c/o JRM Holdings, Inc.,  
c/o JRMC Real Estate, Inc.  
1040 South Andreasen, Suite 200  
Escondido, CA. 92029

Procopio, Hargreaves & Savitch  
Attn: Michael E. Lyon  
1917 Palomar Oaks Way, Suite 300  
Carlsbad, CA 92008

13.3 **Interpretation.** When the context requires, any gender includes all others, the singular number includes the plural, and vice-versa. Captions are inserted for convenience of reference and do not describe or limit the scope or intent of this Agreement. Any recitals above, and any exhibits or schedules referred to and/or attached hereto, are incorporated by reference into this Agreement. "Person" includes any legal entity. "Including" means including without limitation. This Agreement contains the entire agreement between the Parties regarding its subject matter. Any prior oral or written representations, agreements and/or understandings will be of no effect. No waiver, amendment or discharge of this Agreement will be valid unless it is in writing and signed by the party to be obligated. This Agreement will (a) be governed by California law and (b) subject to any provision of this Agreement that may prohibit or curtail assignment of rights, bind and inure to the benefit of the Parties and their heirs, assigns, representatives and successors, provided that there are no intended third-party beneficiaries to this Agreement other than those expressly set forth herein, and only the Parties or their heirs, assigns, representatives and successors are entitled to enforce this Agreement. If any provision of this Agreement is held by a court to be invalid or unenforceable, the other provisions will remain in effect. No inference or presumption will be drawn if a party or its attorney prepared and/or drafted this Agreement; it will be conclusively presumed that the Parties participated equally in its preparation and/or drafting.

13.4 **Warranties.** Each party warrants that it has the legal capacity to enter into this Agreement, its execution has been duly approved and its obligations under this Agreement do not violate any applicable law.

13.5 **Execution of This and Other Documents.** The Parties have signed below voluntarily after having been advised by their counsel of all provisions hereof and, in signing below, they are not relying on any inducements, promises and representations made by or on behalf of the other party except as set forth herein. This Agreement may be executed in counterparts, each of which will be deemed an original. An executed counterpart of this Agreement transmitted by fax will be equally as effective as a manually executed counterpart. Each party will take all reasonable steps and execute, acknowledge and deliver all further instruments necessary or expedient to implement this Agreement.

13.6 **Attorneys' Fees; Jurisdiction.** In any proceeding (including arbitration) involving this Agreement: (a) the prevailing party will be entitled to recover actual attorneys' fees and all litigation-related costs (including expert witnesses' fees) incurred, in addition to all other items of recovery permitted by law; (b) the proper place of trial or hearing will be San Diego County, California, and (c) the Parties irrevocably submit to the jurisdiction of the federal and California courts in San Diego County. Each party shall bear its own legal fees with respect to the preparation of this Agreement and the transactions and agreements referenced herein.

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13.7 **Assignment of This Agreement.** Hospital may freely assign and encumber its rights under this Agreement. Developer shall not assign or encumber its rights under this Agreement or any interest herein without Hospital's prior written consent, provided that after Project Stabilization has been achieved for the Initial Project such consent shall not be unreasonably withheld, conditioned or delayed. Hospital hereby consents to an assignment by Developer to any Developer Affiliate. Any assignment hereunder shall not relieve any Party of its obligations hereunder in the event that that Party's assignee fails to perform hereunder.

13.8 **Breach – Effect on Mortgagee and Right to Cure.** Breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith, but all of the foregoing provisions, restrictions, and covenants shall be binding and effective against any party who acquires title by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale.

13.9 **Mediation.** The Parties shall submit to non-binding mediation of any disputed question or controversy arising under this Agreement or any transaction contemplated by this Agreement. The mediation shall be conducted in San Diego, California, before a neutral mediator approved by each of Developer and Hospital, which approval neither Developer nor Hospital shall withhold, condition or delay.

13.10 **Arbitration.** Any disputes arising out of or relating to this Agreement that are not resolved through mediation or negotiation shall be determined by final, binding arbitration before JAMS pursuant to this Section 13.9. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, as modified pursuant to this Section 13.9. The Parties involved in a dispute shall at all times act in good faith and use reasonable efforts to resolve the dispute before an arbitration proceeding is instituted pursuant to this Agreement and shall, at all times after a dispute has been submitted to arbitration, continue to act in good faith and continue to use reasonable efforts to resolve the dispute. The arbitration shall take place in San Diego, California, before a sole arbitrator, in accordance with the laws of the State of California for agreements made in and to be performed in that State and at the location designated by the arbitrator. The Parties to the dispute may mutually agree to another location. If a Party to a dispute fails to appear at any properly noticed arbitration proceeding, an award may be entered against such Party notwithstanding such failure to appear. Judgment on the award may be entered in any court having jurisdiction. If the Parties to the dispute are unable to agree on the choice for an arbitrator within ten (10) days after the matter has been submitted to arbitration, any Party to the dispute may request JAMS to furnish to the Parties a list of five (5) available arbitrators. After receipt of such list and an opportunity to consider the names, each Party to the dispute may designate in writing to JAMS not more than two (2) names to be eliminated from the selection process. Failure of a Party to the dispute to provide such designation in writing to JAMS within ten (10) days after such Party's receipt of the list of arbitrators from JAMS shall be deemed to be the Party's approval of all of the listed arbitrators. If more than one (1) name remains after such eliminations are timely made, the selection of the arbitrator shall be made by lot from the remaining names. Subject to Section 13.6, the expenses, wages and other compensation of any witnesses called before the arbitrator shall be borne by the Party to the dispute calling the witnesses. Subject to Section 13.6, other expenses incurred, including wages of participants and experts shall be borne separately by the respective Parties to the dispute. Subject to Section 13.6, the fee for the arbitration, the arbitrator's fees and expenses,

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the cost of any hearing room, and the cost of a shorthand or similar reporter and the original transcript shall all be borne by the Parties involved in the dispute on a per capita basis.

13.11 **Recitals Part of Agreement.** The Recitals set forth at the beginning of this Agreement are incorporated herein by reference and are made part of the terms of this Agreement.

13.12 **Confidentiality.** All information relating to Hospital business and the contents herein supplied by Hospital, if any, to Developer or any LLC shall be and remain Hospital's property. Such information shall be treated as confidential by Developer, and shall not, unless otherwise required by law, be disclosed to any third party by Developer without the express or prior written consent of Hospital except as may be required by Developer to develop the Property. All Developer information relating to any Developer business and the contents therein supplied by Developer, if any, shall be and remain Developer's property. Hospital agrees to protect the public interest by using commercially reasonable efforts to avoid disclosing such information if Hospital determines, in its discretion, that disclosing such information would have a material negative impact on Hospital's ability to facilitate construction of any Project on the Campus. Such reasonable commercial efforts would include asserting an applicable exception as a defense to a Public Records Act request for such information if Hospital determines, in its discretion, that such an exception is legally warranted. This provision regarding confidentiality shall survive any termination or expiration of this Agreement.

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Intending to be legally bound, the Parties have signed this Agreement as of the Effective Date.

## **“Hospital”**

Palomar Pomerado Health,  
A California health care district

By: \_\_\_\_\_  
President and Chief Executive Officer

By: \_\_\_\_\_  
Chief Financial Officer

## **“Developer”**

JRM-ERTC I, L.P.,  
a California limited partnership  
By: JRM Holdings, Inc.,  
a California corporation

Its: General Partner

By: \_\_\_\_\_  
James R. McCann

Its: President



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## Exhibit A FORM OF DEVELOPMENT PLAN

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.....*end exhibit*

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## Exhibit B LEGAL DESCRIPTION OF THE ERTC PROPERTY

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..... *end exhibit*

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## Exhibit C GRANT DEED LANGUAGE

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The property ("Property") transferred by this grant deed may not be used for the following uses: a hospital or acute care center, inpatient hospital services, inpatient specialty services (including, without limitation, behavioral health and acute rehabilitation), outpatient surgery center, outpatient radiology center, imaging (including, without limitation, mammography, ultrasound, general x-ray, CT, MRI, and nuclear medicine), outpatient rehabilitative care (including, without limitation, physical therapy, occupational therapy, and speech therapy), home health services, outpatient behavioral health services, wound care/hyperbaric oxygen chamber, cardiac catheterization laboratory, cardiac rehabilitation services, sleep laboratory, infusion therapy, radiation oncology and home infusion therapy, occupational medicine and ambulatory services, tele-health services, diabetes services and classes, retail healthcare services (including, without limitation, medically directed spa, fitness, and wellness services), adult and geriatric health screening, urgent care, retail pharmacy, or medical laboratory drawing stations (collectively, "Restricted Uses"), in each case without the express prior written consent of the owner of Lots 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 of Escondido Tract No. 834, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 14983, filed in the Office of the County Recorder of San Diego County on March 17, 2005 as File No. 2005-0220836, Official Records ("Benefited Property"). In the event that the holder of any interest in any Property has a bona fide intent to engage in or allow a specific Restricted Use on such Property, the holder of such interest shall request in writing the written consent of the owner of the Benefited Property. Upon the receipt of such written request, the owner of the Benefited Property shall have 60 days to respond and shall not withhold its consent unless the Restricted Use for which the holder of such interest is seeking consent is a use that the owner of the Benefited Property then provides or is actively seeking to provide at the Benefited Property. If the owner of the Benefited Property does not notify the holder of such interest of any objection to such use within said 60 day period, then the owner of the Benefited Property shall be deemed to have approved the requested use. If the owner of the Benefited Property fails to provide such use on the Benefited Property within six (6) months after the later to occur of (i) the expiration of such 60 day period, or (ii) the opening of a new hospital on the Benefited Property, then the holder of such interest shall be permitted to engage in or allow such Restricted Use on such Property. If the holder of such interest has not actually engaged in such Restricted Use within two (2) years after receiving the right to do so (whether through the consent or deemed consent of the owner of the Benefited Property, or by the owner of the Benefited Property's failure to provide such use at the Benefited Property in the required timeframe), such right shall terminate and the holder of such interest shall be required to seek written consent of the owner of the Benefited Property (in accordance with the procedures set forth in this grant deed) before seeking to engage in or allow any Restricted Use. This condition, covenant and restriction shall be a covenant running with the land, as an encumbrance upon the Property, for the benefit of the Benefited Property, 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 of, in favor of and enforceable by Palomar Pomerado Health and its successors in interest to the Benefited Property and assigns against the grantee under this grant deed and its successors in interest to the Property and assigns and against any party in possession or

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occupancy of the Property or a portion thereof. The owner of the Benefited Property shall be an express third party beneficiary of the provisions of this paragraph and shall have the right to enforce the provisions set forth herein. The use restrictions contained in this grant deed shall continue in force and effect for a period of twenty five (25) years after \_\_\_\_\_. However, if an acute-care general hospital is not opened on the Benefited Property by December 31, 2013, the use restrictions contained in this grant deed shall automatically terminate. Breach of any of the covenants or restrictions contained in this grant deed shall not defeat or render invalid the lien of any mortgage made in good faith, but all of the foregoing provisions, restrictions, and covenants shall be binding and effective against any party who acquires title by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale.

The grantee of the property transferred by this grant deed hereby executes this grant deed as acknowledgment of and agreement with the restrictions set forth herein.

[Signature block for grantee]

*end exhibit*