

## **ADDENDUM D**



**Summary of the Key Points**  
**First Amended and Restated**  
**Declaration of Covenants, Conditions and Restrictions**  
**of Escondido Research and Technology Center ("CCRs")**  
**February 2006**

- **CCRs establish an association with responsibilities including maintaining association property, and rights including design review of buildings constructed in the business park. Article 3.**
- CCRs currently do not encumber future hospital site. Pursuant to a letter agreement to be entered into with JRM-ERTC I, L.P. ("Developer"), Developer will record the CCRs against the property within 30 days of closing escrow.
- **Voting rights** are structured so Developer will have control over the association as long as Developer owns at least 10 acres in the business park. § 4.2.
  - One of the three association board members appointed by Developer must be a PPH representative. § 4.2.3.
- Association members are assessed monthly, quarterly, or twice-annual fees to support the association. § 5.2.
  - PPH's share of the common expenses is capped at 64.45% of the association's common expenses. § 1.56.
  - Developer may annex and de-annex property without PPH's consent. Article 14
- **CCRs contain use restrictions. Article 6.**
  - A special provision applicable to PPH grants PPH the right (but not the obligation) to use the PPH property for uses it will need for an acute care general hospital and supporting uses. § 6.6.
  - The same section grants PPH the right to develop up to 1,500,000 square feet of buildings without Developer's consent. §6.6.
  - PPH may develop up to 2,000,000 square feet of buildings without Developer's consent once Citricado Parkway is extended. § 6.6.
- **CCRs grant Developer rights over building and site design. Article 8.**
  - A special provision applicable to PPH grants PPH the right to construct improvements that are in substantial conformity to Exhibit A of the CCRs without Developer's approval. § 8.10.
  - PPH must obtain Developer approval for construction and site planning that is not in substantial conformance with Exhibit A.
- **Developer may modify the CCRs without consent of PPH. § 15.**
  - However, certain key provisions may not be modified without PPH's consent.

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Above Space for Recorder's Use

FIRST AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ESCONDIDO RESEARCH AND TECHNOLOGY CENTER

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## FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ESCONDIDO RESEARCH AND TECHNOLOGY CENTER

This First Amended and Restated Declaration of Covenants, Conditions and Restrictions of Escondido Research and Technology Center ("**Declaration**") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by JRM-ERTC, I, L.P., a California limited partnership ("**Declarant**") with reference to the facts set forth below.

### RECITALS

A. Declarant is the owner of that certain real property located in the City of Escondido, County of San Diego, State of California, consisting of the Parcels more particularly described on **Exhibit "A"** attached hereto and incorporated herein ("**Property**") and depicted on the site plan attached hereto as **Exhibit "B"** and incorporated herein ("**Site Plan**").

B. On March 18, 2005, Declarant caused a Declaration of Covenants, Conditions and Restrictions of Escondido Research and Technology Center encumbering a portion of the Property (San Diego County Recorder's Office Document No. 2005-0222548) to be recorded with the San Diego County Recorder ("**Existing Declaration**"). This Declaration amends and restates the Existing Declaration in its entirety.

C. Declarant may add all or any of the real property described in **Exhibit "C"** attached hereto and incorporated herein ("**Additional Property**"), and said Additional Property so annexed will thereupon be subject to this Declaration and become a part of the Property.

D. Declarant has established the Escondido Research and Technology Center Owners Association ("**Association**") to perform certain obligations under this Declaration and to own certain real property for the benefit of all of the Owners.

E. Declarant further desires to create certain easements for the benefit of each of the Parcels and for the benefit of the Property and all of the Owners thereof.

NOW, THEREFORE, Declarant does hereby establish and declare that the Property and every portion thereof shall be owned, held, conveyed, transferred, divided, sold, leased, rented, encumbered, developed, improved, maintained, repaired, occupied and used subject to the covenants, conditions, restrictions, easements, rights, rights-of-way, liens, charges and other protective and beneficial provisions set forth in this Declaration, which (i) are mutual, beneficial and equitable servitudes in favor of and for the mutual use and benefit of the Property and each portion thereof and each Owner of the Parcels and all subsequent Owners of any portion of the Property and their respective heirs, successors, representatives and assigns and (ii) are hereby expressly declared to be binding upon the Property and each portion thereof and shall run with the land and each and every part thereof, inure to the benefit of and be a burden upon the Property and each portion located therein and shall bind the respective heirs, successors and assigns of the Owners of the Project and any portion thereof. Upon recordation of this Declaration, any conveyance, transfer, sale, hypothecation, assignment, lease or sublease made

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by any Owner, shall be and is hereby deemed to incorporate by reference the provisions of this Declaration, as the same may from time to time be amended. Declarant further declares that it is the express intent (i) to establish the Project as a planned development within the meaning of California Civil Code Section 1350 et seq. ("Act"), and (ii) that this Declaration satisfy the requirements of the Act applicable to the Project.

## ARTICLE 1

### DEFINITIONS

1.1 **Accounting Period.** The term "Accounting Period" means any period beginning on January 1 and ending on the following December 31.

1.2 **Additional Charges.** The term "Additional Charges" means costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees, actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

1.3 **Additional Property.** The term "Additional Property" means all of the real property described on Exhibit "C" attached hereto and incorporated herein.

1.4 **Affiliate.** The term "Affiliate" means any Person (a) which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Declarant or (b) which holds five percent (5%) or more of the equity interest held either beneficially or of record by Declarant, as the context may require. "Control" means the possession, directly or indirectly, of the power to cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, family relationship or otherwise.

1.5 **Annexation.** The term "Annexation" means the process by which Additional Property may be made subject to this Declaration as set forth in Article 14 of this Declaration.

1.6 **Articles.** The term "Articles" means the Articles of Incorporation of the Association as they may from time to time be amended which have been filed in the Office of the Secretary of State for the State of California.

1.7 **Assessment Commencement Date.** The term "Assessment Commencement Date" refers to the date upon which assessments shall commence for each of the Parcels as described in Section 5.7 of this Declaration.

1.8 **Association.** The term "Association" means the Escondido Research and Technology Center Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.9 **Association Maintenance Areas.** The term "Association Maintenance Areas" refers to (i) those portions of the Slope Maintenance Areas and the Pedestrian and Equestrian Trails located on Parcels that are subject to this Declaration, (ii) the Project Drainage Facilities, (iii) Lots 37 through 40, inclusive, after such time that such Lots are annexed into the

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Association, and (iv) any other areas within the Property over which the Association shall have an easement for maintenance and repair.

1.10 **Association Property.** The term "Association Property" refers to the real property owned in fee title by the Association and described on **Exhibit "D"**.

1.11 **Board.** The term "Board" means the Board of Directors of the Association.

1.12 **Budget.** The term "Budget" refers to the budget prepared by the Association, pursuant to the terms of this Declaration, which sets forth the Common Expenses.

1.13 **Building.** The term "Building" means any building or structure and related improvements or any portion thereof which is constructed within the Project.

1.14 **Bylaws.** The term "Bylaws" means the Bylaws of the Escondido Research and Technology Center Owners Association, as they may from time to time be amended, which are or shall be adopted by the Board.

1.15 **City.** The term "City" means the City of Escondido.

1.16 **Claims.** The term "Claims" means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys' fees and costs and the costs and expenses of enforcing any indemnification, defense or hold harmless obligation under this Declaration.

1.17 **Common Expenses.** The term "Common Expenses" refers to all reasonable out-of-pocket costs, obligations and expenses of any nature and kind as may be actually paid or incurred by the Association to maintain, repair, replace and insure (including appropriate reserves) the Association Property, the Association Maintenance Areas and the Offsite Maintenance Areas, and the Improvements situated thereon, and to perform its other obligations, including, but not limited to, the following:

1.17.1 maintenance, management, operation, repair and replacement of the Association Property, Association Maintenance Areas, Offsite Maintenance Areas, and any other portion of the Project required to be maintained by the Association under this Declaration;

1.17.2 due but unpaid assessments;

1.17.3 subject to the limitations set forth below, costs of management and administration of the Association;

1.17.4 the costs of any utilities and other services required for the maintenance and operation of the Association Property, Association Maintenance Areas and Offsite Maintenance Areas;

1.17.5 the costs of any insurance maintained by the Association pursuant to this Declaration;

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1.17.6 reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Governing Documents;

1.17.7 the costs of bonding of the members of the Board, and any professional managing agent or any other person handling the funds of the Association;

1.17.8 taxes paid by the Association, if any;

1.17.9 amounts paid by the Association for the discharge of any lien or encumbrance levied against the Association Property or portions thereof; and

1.17.10 any other reasonable and direct expenses incurred by the Association in connection with the operation and/or maintenance of the Association Property, Association Maintenance Areas, and Offsite Maintenance Areas, or in furtherance of the purposes or the discharge of any obligations imposed on the Association by the Governing Documents.

1.18 **Constant Dollars.** The term "Constant Dollars" means the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of June of the sixth (6th) full calendar year following the date of this Declaration, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current-Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the year this Declaration commences; the "Current Index Number" shall be the level of the Index for the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then a Majority of Owners shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.19 **Construction BMP's.** The term "Construction BMP's" shall have the same meaning as the that term is defined in the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity ("General Construction Storm Water Permit") and, as context requires, the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activity ("General Industrial Storm Water Permit") dated August 19, 1999 attached hereto as **Exhibit "K"** and any amendments to same.

1.20 **County.** The term "County" means the County of San Diego.

1.21 **Declarant.** The term "Declarant" means JRM-ERTC, I, L.P., a California limited partnership, and its successors and assigns, if such successors and assigns acquire any or all of Declarant's interest in the Property for the purpose of purchase or sale, excluding any Owners, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to all or any portion of the Project. For any successor or assignee of

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“Declarant” to be deemed a Declarant under the terms of this Declaration, Declarant shall record in the County a certificate so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale. If Declarant assigns a portion of its rights hereunder and a co-declarant situation arises, the multiple declarants shall collectively have no rights greater than the rights of Declarant hereunder.

1.22 **Declaration**. The term “Declaration” means this First Amended and Restated Declaration of Covenants, Conditions and Restrictions of Escondido Research and Technology Center, as it may from time to time be amended.

1.23 **Default Interest Rate**. The term “Default Interest Rate” means the lesser of: (i) four percent (4%) per annum in excess of the “Prime Rate” or (ii) the highest lawful rate allowed by law. The “Prime Rate” shall be the rate announced as such from time to time by Bank of America, N.A. or its successor. If there shall be no such announced rate of such bank or its successor, then the “Prime Rate” shall be such equivalent rate as is charged from time to time by major money-center banks.

1.24 **Environmental Laws**. The term “Environmental Laws” means all present and future federal, state or local laws, ordinances, rules, regulations, decisions and other requirements of governmental authorities relating to the environment or to any Hazardous Material, including without limitation and as context requires the following laws and regulations: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, the California Health & Safety Code, the California Water Code, the General Construction Storm Water Permit, General Industrial Storm Water Permit, the Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego Regional Airport District (“General Municipal Storm Water Permit”) and any amendments to the same and regulations, ordinances and orders adopted, published and/or promulgated pursuant thereto.

1.25 **Final Map**. The term “Final Map” means that certain Map No. 14983, filed in the office of the San Diego County Recorder on March 17, 2005, together with any existing or future recorded lot line or boundary adjustments modifying the legal lots comprising the Property. References herein to lot numbers are to the lots as shown on the Final Map.

1.26 **First Mortgage**. The term “First Mortgage” means a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Parcel in the Project.

1.27 **First Mortgagee**. The term “First Mortgagee” means the Mortgagee of a First Mortgage.

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1.28 **Governing Documents.** The term "Governing Documents" refers to this Declaration, the Bylaws, the Articles and any Supplementary Declarations.

1.29 **Governmental Authorities.** The term "Governmental Authorities" means any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter.

1.30 **Governmental Requirements.** The term "Governmental Requirements" means all applicable laws, rules, regulations, orders, ordinances, subdivision requirements, zoning restrictions, map conditions (including, without limitation, conditions of approval issued by the Governmental Authorities for any portion of the Project), as the same may be amended from time to time.

1.31 **Hazardous Materials.** The term "Hazardous Materials" means materials and substances defined as a "solid waste," "hazardous substances," "pollutant," "contaminant," "hazardous materials," "hazardous waste," "toxic substances," "extremely hazardous substance" or other similar substance, compound, chemical, or product, including without limitation asbestos, polychlorinated biphenyls, petroleum (or petroleum products), motor oil, fuel, solvents, grease, waste oil, brake fluid, gear oil, transmission fluid, radioactive material, urea formaldehyde foam insulation or devices containing polychlorinated biphenyls (PCB), hydrocarbonic substances and constituents of any of the foregoing, or other similar designations under any Environmental Laws or any regulations promulgated thereunder; and further, any substance or material which because of toxicity, corrosivity, reactivity, ignitability, carcinogenicity, magnification or concentration within biologic chains, presents a demonstrated threat to the environment, or to biologic processes when released or discharged into the environment.

1.32 **Improvements.** The term "Improvements" means any improvements installed above or below ground including, without limitation, all Buildings, parking areas, all structures, hardscaping, landscaping, Permanent BMP's and appurtenances thereto of every type and nature.

1.33 **Land Area.** The term "Land Area" means the gross square footage of the real property situated within a Parcel. The Land Area of certain Parcels is set forth on **Exhibit "G"** attached hereto and incorporated herein.

1.34 **Lessee.** The term "Lessees" means each Person who, at any given time, is leasing a Parcel or a building or a portion of a Parcel or a building on a Parcel from an Owner under a written lease. An Owner may designate, by an executed, recorded instrument, a Lessee as primarily responsible for the burdens and obligations imposed herein during the term of the lease, and may further designate to such Lessee the right to exercise the powers granted to such Owner under this Declaration. Any Owner designating a Lessee as a responsible party shall give notice to the Association and the Declarant of such designation and shall include in such notice the name and address of the designated Lessee. Such designation, however, shall not result in a release of such Owner from any responsibility or liability hereunder.

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1.35 **Lot A.** The term “Lot A” means that portion of the Property described and shown as “Lot A” on the Final Map, which contains the Mitigation Area, as described in Section 6.4 herein.

1.36 **Lot 22 Easement Agreement.** The term “Lot 22 Easement Agreement” refers to that certain easement recorded or to be recorded in the Office of the County Recorder of San Diego County, granting the Owner of Lot 22 an easement over certain portions of Lots 23 and 24 for parking purposes.

1.37 **Lot 22 License Agreement.** The term “Lot 22 License Agreement” refers to that certain license agreement between Declarant and the Owner of Lot 22 granting the Owner of Lot 22 a license to use, among other things, certain parking areas located on Lots 23 through 26.

1.38 **Lot 24 Easement Agreement.** The term “Lot 24 Easement Agreement” refers to that certain easement recorded or to be recorded in the Office of the County Recorder San Diego County, granting Declarant an easement over a portion of Lot 24 (“Lot 24 Easement Area”) for the purposes of ingress, egress, parking and maintenance.

1.39 **Majority of Owners.** The term “Majority of Owners” means those Owners collectively owning a majority of the Land Area within the Project (excluding the Association Property). For example, if there are 100 acres in the Project (excluding the Association Property), then a Majority of Owners would be those Owners owning more than an aggregate of 50 acres of Land Area.

1.40 **Member.** The term “Member” means every person or entity who holds a membership in the Association.

1.41 **Mortgage.** The term “Mortgage” means any first or second mortgage, indenture of first or second mortgage, or first or second deed of trust of the interest, whether fee or leasehold, of an Owner in a Parcel and, to the extent applicable, a “sale and leaseback” or “assignment and sub leaseback” transaction.

1.42 **Mortgagee.** The term “Mortgagee” means a mortgagee, or trustee and beneficiary under a Mortgage (as hereinafter defined), and to the extent applicable, a fee owner or lessor or sublessor of any Parcel which is the subject of a lease under which any Owner becomes a lessee in a so-called “sale and leaseback” or “assignment and sublease back” transaction.

1.43 **Occupant.** The term “Occupant” means any Person from time to time entitled to the use and occupancy of any portion of a Parcel as fee title Owner or under any lease or other instrument or other entitlement or arrangement under which such Person acquires its right to such use and occupancy.

1.44 **Offsite Maintenance Areas.** The term “Offsite Maintenance Areas” means those areas outside the boundaries of the Property that the Association has an obligation to maintain, which consist of (i) the Parkway Landscape Areas, (ii) the Lot 24 Easement Area, (iii) the SDG&E Property, (iv) those portions of the Slope Maintenance Areas and Pedestrian and Equestrian Trails located on Parcels within the Additional Property, (v) Lots A, 37 through 40,



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inclusive until such time as such Lots are annexed into the Association, and (vi) Lot 41. The Offsite Maintenance Areas are shown on **Exhibit "E"** attached hereto and incorporated herein.

1.45 **Owner**. The term "Owner" means the fee owner of any of the Parcels.

1.45.1 In the event a Parcel is divided into one or more separate legal lots, each of such separate legal lots shall thereafter be considered to be a "Parcel" and the Owners of each such legal lot shall be an "Owner". Any Parcel or Parcels subdivided as aforesaid shall remain subject to this Declaration. An Owner transferring all or any portion of its fee interest in the Property shall give notice to the Association and the Declarant of such transfer and shall include in such notice at least the following information:

- (a) The name and address of the new Owner;
- (b) A copy of the legal description of the portion of the Parcel transferred by such Owner; and
- (c) A copy of the Grant Deed by which the portion of the Parcel is conveyed.

1.45.2 In the event any of the Owners shall transfer its present interest in a Parcel or a portion of such interest in such manner as to vest its present interest in such Parcel in more than one Person other than by creation of a separate Parcel, then not less than fifty-one percent (51%) in interest of such transferees shall designate one of their number to act on behalf of all of such transferees in the exercise of the powers granted to such Owner under this Declaration. Any person designated hereunder may be removed or replaced by the persons so designating, in accordance with any procedure agreed to between them, provided that notice of such removal or replacement and new designation is given and made in the manner specified above. Any designation referred to above must be in writing and served upon the Declarant and the Association. So long as such designation remains in effect, such designee shall be an Owner hereunder and shall have the power to bind such Parcel and such other Owners. Such designation (by itself) shall not release such Owners from liability hereunder and liability shall continue with respect to any portion of the Parcel transferred by such Owner until the notice of transfer set forth in this Section is delivered to the Association and the Declarant. Until such notice of transfer is given, the transferring Owner shall (for the purpose of this Declaration only) be the transferee's agent. Once the notice of transfer is given, the transferring Owner shall be released from all obligations pertaining to the portion of the Parcel transferred arising subsequent to the notice of transfer. Notwithstanding anything to the contrary, if a notice of transfer is given, any payment made by an Owner to the transferor within thirty (30) days of such notice shall be deemed properly paid, and the transferor and transferee shall resolve any necessary adjustments and/or prorations regarding such payment between themselves. The term "Owner" shall also include any Lessee satisfying the requirements of **Section 1.33** and designated in writing by an Owner (a copy of which shall be delivered to Declarant and the Association) to act on behalf of said Owner in the exercise of some or all of the powers granted to said Owner under this Declaration.

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1.46 **Parcel or Parcels.** The term "Parcel" or "Parcels" means each legal lot comprising the Property from time to time. If the Parcels are subdivided into additional legal lots, then the term "Parcels" shall refer to all of such legal lots shown on any such recorded map. If any further maps are recorded after the date of this Declaration further subdividing such Parcels, then Declarant or the Association may record a Supplementary Declaration, designating the further subdivision of the Parcels. However, the failure of Declarant or the Association to record such Supplementary Declaration shall not affect the designation of such legal lots as Parcels under this Declaration.

1.47 **Parkway Landscape Areas.** The term "Parkway Landscape Areas" refers to the landscaped areas and related irrigation located outside of the boundaries of the Property in the public right-of-way in Citracado Parkway which the Declarant is obligated to maintain pursuant to the requirements set forth in **Exhibit "E"**, as the same may be modified by the City from time to time.

1.48 **Pedestrian and Equestrian Trail.** The term "Pedestrian and Equestrian Trail" refers to the pedestrian and equestrian trails which have been offered for dedication for public use as shown on the recorded Final Map for Tract 834, which area includes the "public trail access area" located on Lots 16, 23, 24 and 25, as shown on **Exhibit "E"** and **Exhibit "F"** attached hereto and incorporated herein.

1.49 **Permanent BMP's.** The term "Permanent BMP's" shall have the same meaning as the term is defined in the City of Escondido Storm Water Management Requirements and Local Standard Urban Storm Water Mitigation Plan dated October 15, 2002 attached hereto as **Exhibit "J"** and any amendments to same.

1.50 **Permittees.** The term "Permittees" means the Owners, all Persons from time to time entitled to the use and occupancy of all or any portion of any Parcel under any lease, deed or other tenancy arrangement where under such Person has acquired a right to the use and occupancy thereof, and their respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires.

1.51 **Person or Persons.** The term "Person" or "Persons" means and include individuals, partnerships, firms, associations, joint ventures, corporations, or any other form of business entity or Governmental Authority.

1.52 **PPH.** The term "PPH" refers to Palomar Pomerado Health, a California local health care district, and its successors and assigns.

1.53 **Project.** The term "Project" means all of the Property together with all Improvements situated thereon and any Additional Property which is hereafter annexed pursuant to a Supplementary Declaration together with all Improvements thereon.

1.54 **Project Drainage Facilities.** The term "Project Drainage Facilities" refers to the detention basins, brow ditches, storm drains and ancillary facilities shown on **Exhibit "H"** attached hereto and incorporated herein, including, without limitation, all Permanent BMP's and Construction BMP's included therein or associated therewith.

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1.55 **Property**. The term "Property" means all of the real property described in **Exhibit "A"** of this Declaration, and any Additional Property which is hereafter annexed pursuant to a Supplementary Declaration.

1.56 **Proportionate Share of Common Expenses**. The term "Proportionate Share of Common Expenses" means each Owner's proportionate share of Common Expenses which shall be a fraction, (a) the numerator of which shall be the square footage of the Land Area of the Parcel and (b) the denominator of which is the total square footage of the Land Area within the Property (excluding the Association Property). Notwithstanding the foregoing, in no event will PPH's Proportionate Share of Common Expenses be greater than 64.45% of the Common Expenses.

1.57 **SDG&E Property**. The term "SDG&E Property" refers to that certain real property located outside of the boundaries of the Property which is owned by the San Diego Gas & Electric Company and over which the City holds an easement for the purpose of landscaping and drainage pursuant to those certain easement agreements between the City and San Diego Gas & Electric Company, recorded in the San Diego County Recorder's Office on March 10, 2005 as Document Nos. 2005-0198391, 2005-0198392, and 2005-0198394 ("SDG&E Easement Agreements").

1.58 **Site Plan**. The term "Site Plan" initially means the Site Plan attached hereto as **Exhibit "B"**. If the Site Plan is modified or amended in accordance with the provisions of Section 9.2 of this Declaration, the definition of "Site Plan" shall mean and include the Site Plan as so amended or modified.

1.59 **Slope Maintenance Areas**. The term "Slope Maintenance Areas" means those landscaped areas located within certain Parcels to be maintained by the Association, as shown on **Exhibit "F"**. The Slope Maintenance Areas may be modified or supplemented in a Supplementary Declaration.

1.60 **Specific Plan**. The term "Specific Plan" means that certain Escondido Research and Technology Center's Specific Plan, Planning Division Case No. 2001-01-SPA, adopted November 25, 2002, as the same may be amended from time to time.

1.61 **State**. The term "State" means the State of California.

1.62 **Supplementary Declaration**. The term "Supplementary Declaration" means the document which may be executed and recorded by Declarant to do any of the following (to the extent Declarant is so permitted pursuant to the provisions of Section 9.1 of this Declaration): (a) impose any additional restrictions applicable to certain Parcels prior to the conveyance of those Parcels to an Owner by Declarant, (b) designate allocations relating to payment of Common Expenses, provided any such designation shall not modify the method of allocating Common Expenses established under this Declaration, (c) impose additional maintenance or other obligations on the Owner of a Parcel prior to the conveyance of such Parcel by Declarant, (d) document any modifications to the Site Plan which are made by Declarant and/or to attach or replace any new Site Plan pursuant to Section 9.2, (e) annex all or a portion of the Additional Property, (f) identify areas referenced in this Declaration to be maintained by the Association, to

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the extent that Declarant is permitted to do so pursuant to this Declaration, (g) make such other complementary additions and/or modifications necessary to reflect the different character of the Additional Property, (h) impose additional covenants and restrictions on the Additional Property, and/or (i) make corrections to this Declaration or any previously recorded Supplementary Declaration.

1.63 **Voting Power.** The term "Voting Power" refers to the voting power of the Association set forth in **Section 4.2.**

## **ARTICLE 2**

### **EASEMENTS**

2.1 **Drainage Easements.** There is hereby reserved, granted and conveyed by each Owner to every other Owner, for the benefit of each Owner's Parcel, and the successor Owners of such Parcels, nonexclusive, perpetual easements in, to, over, under and across the Project Drainage Facilities located within the other Parcels for the purpose of drainage of stormwater runoff through the storm drains and other drainage improvements located on such Owner's Parcel. Each Owner shall also have an easement over the other Parcels for the drainage of surface water, provided that such Owner may not alter or change the "established" surface drainage without the consent of the Owner of the affected Parcel, which consent shall not be unreasonably withheld. As used herein, the term "established" drainage shall mean the drainage shown on the drainage and grading plans (GP-1904 and P-2398 with approved revisions) approved by the City in connection with the original development of the Project and as depicted on **Exhibit "H."** The drainage easements granted and reserved in this Section shall exist in perpetuity and are appurtenant to each Parcel and all future subdivisions thereof and shall inure to the benefit of the present and future Owners of the Parcels and shall burden the Parcels on which the drainage easements are located.

2.1.1 **No Alteration of Drainage.** No Owner shall alter or permit to be altered the surface of the Owner's Parcel or the drainage/retention system constructed on its Parcel if such alteration would materially increase the volume, velocity or quality of surface water onto an adjacent Parcel either within the aggregate or by directing the flow of surface water to a limited area, unless such alteration is required under any Governmental Requirements. Any grading performed on a Parcel and any surface drainage installed by an Owner shall be completed in conformance with the General Construction Stormwater Permit, the City of Escondido Storm Water Management Requirements, and plans approved by the City for such Parcel.

2.2 **Maintenance Easement.** The Association shall have non-exclusive, perpetual easements in, to, over and across the Parcels to the extent necessary to perform its maintenance obligations and exercise its rights under this Declaration and to enforce this Declaration ("Maintenance Easement"), provided that the Association shall not exercise its rights under the Maintenance Easement in a manner that unreasonably interferes with the use and operation of any Parcel by others or the construction of Improvements by Owners. The Maintenance Easement is appurtenant to the Parcels and all future subdivisions thereof and shall inure to the benefit of the Association and shall burden all of the Parcels. Notwithstanding anything to the contrary herein, prior to the sale of any Parcel by Declarant to a party who is not an Affiliate,

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Declarant shall grant to the Association non-exclusive, perpetual easements in, to, over and across the Additional Property to the extent necessary to perform its maintenance obligations and exercise its rights under this Declaration and to enforce this Declaration.

2.3 **Temporary Utility License.** Each Owner hereby grants to each other Owner and its respective contractors, materialmen and laborers a temporary license for access and passage over and across the grantor's Parcel as shall be reasonably necessary for the grantee to construct and/or connect utilities facilities upon the grantee's Parcel; provided, however, that such license shall be in effect only during periods when actual construction is being performed, and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Parcel by others and construction of Improvements by the affected Owner. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the same liability insurance as each Owner is required to carry pursuant to **Section 7.3** of this Declaration. Any Owner exercising the rights to the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as expeditiously as possible, and shall promptly clean the area and restore the affected portion of the Owner's Parcel to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

2.4 **Easements to Declarant.** Declarant shall have and hereby expressly reserves the easements necessary for Declarant to exercise its rights set forth in **Article 9** of this Declaration. Such rights shall include the right to reserve such easements as may be required for the marketing, sale or leasing of the Parcels. Declarant shall not exercise its rights under such easements in a manner that unreasonably interferes with the use and operation of any Parcel by others or the construction of Improvements by Owners.

2.5 **Indemnity.** Each grantee in whose favor an easement has been granted hereunder shall, to the fullest extent allowed by law, indemnify, protect, defend and hold the grantor of such easement harmless from and against all Claims arising out of or in any way connected with or resulting from the use of any easement hereby granted, except to the extent caused by the negligence or willful misconduct of the grantor. Each easement grantee hereunder agrees that its use of any easement granted or reserved under this Article shall not unreasonably interfere with the business operations of the underlying fee Owner or Occupant of the Parcel.

## **ARTICLE 3**

### **ASSOCIATION**

3.1 **The Organization.** The Association is a nonprofit mutual benefit corporation to be formed under the Nonprofit Mutual Benefit Law of the State of California. On the conveyance of the first Parcel to an Owner, the Association shall be charged with the duties and invested with the powers set forth in this Declaration and the other Governing Documents.

3.2 **Association Action; Board of Directors; Members' Approval.** Except as to matters requiring the approval of Owners as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the

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Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws. Except as otherwise provided in this Declaration, the Articles and the Bylaws, all matters requiring the approval of Owners shall be deemed approved if (i) a Majority of the Voting Power assent to them by written consent as provided in the Bylaws, or (ii) such matters are approved by a Majority of the Voting Power of the Owners present at a meeting at which a quorum of Owners is present and which is held in accordance with the Bylaws.

**3.3 Powers and Duties of the Association.** The Association shall have the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation law of California, which are necessary for the Association to perform its obligations and exercise its rights under this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any acts that may be necessary or proper for or incidental to, the exercise of any of the express powers or duties of the Association enumerated in this Declaration, including, but not limited to, the powers set forth herein.

**3.3.1 Operation and Maintenance Obligations.** The Association shall have the duty to perform all of the maintenance and other obligations set forth in **Article 7** of this Declaration.

**3.3.2 Determination of Expenses.** The Association shall have the duty to calculate Common Expenses and assess the Proportionate Share of Common Expenses against the Owners and use its commercially reasonable efforts to collect the assessments as set forth in this Declaration.

**3.3.3 Right of Entry.** The Association and each of its authorized agents, managers and representatives shall have the right, upon twenty-four (24) hours prior written notice, except in the case of an emergency, in which case no prior notice is required, to enter upon and inspect any Parcel for the purpose of ascertaining the condition of the drainage facilities located on an Owner's Parcel and to ensure that the Owner has not caused any obstructions or interference with the Project Drainage Facilities and to take whatever corrective action to the drainage facilities as may reasonably be deemed necessary or proper, consistent with the provisions of this Declaration. The Association shall indemnify, protect, defend and hold the Owner of the Parcel in question harmless from and against all Claims arising out of or in any way resulting from any actions (or failure to act) by the Association or its authorized agents and representatives relating to any entry, inspection or other activities on a Parcel pursuant to this Section, except to the extent caused by the negligence or willful misconduct of the Owner. The Association shall not be deemed guilty of or liable for trespass by reason of such entry conducted in accordance with this Declaration. However, nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any portion of any Parcel or Improvement thereon which is to be maintained or repaired by the Owner thereof. Nothing in this Section shall in any manner limit the right of any Owner to the exclusive occupancy and control over its Parcel. Any actions taken by the Association and its authorized agents and representatives under this Section shall be done in such a manner as to use reasonable efforts to minimize any interference with an Occupant's business operations on the Parcel in question.

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3.3.4 **Contract for Goods and Services.** The Association shall have the power to contract for goods and services to the extent necessary for the Association to perform its duties and obligations hereunder.

3.3.5 **Association Property.** The Association shall have the obligation to accept fee title to any real property, and any easements over the Association Maintenance Areas, conveyed to the Association by the Declarant, the City or any public utility, and/or created under this Declaration.

3.3.6 **Maintenance.** The Association shall maintain the Association Property, the Association Maintenance Areas and the Offsite Maintenance Areas in accordance with the requirements of this Declaration.

3.3.7 **Water and Other Utilities.** The Association shall have the duty to acquire, provide and pay for water, sewer, electrical, and other necessary utility services for the Association Property, Association Maintenance Areas and the Offsite Maintenance Areas.

3.3.8 **Capital Improvements.** The Association may approve the construction, installation or acquisition of a particular capital improvement to the Association Property or the Association Maintenance Areas; provided, however, if the cost of such capital improvement is greater than Twenty-Five Thousand Dollars (\$25,000) the prior approval of the Majority of Owners shall be required.

3.3.9 **Delegation of Powers; Professional Management.** The Association and the Board can delegate its powers, duties and responsibilities, to the extent permitted by law, to committees, employees, or management companies.

3.3.10 **Easements and Rights of Way.** The Association may grant and convey to any third party easements and licenses for use and rights of way in, on, over or under the Association Property in accordance with the provisions of this Declaration, provided that such third party easements and licenses may not be used in a manner that unreasonably interferes with the use and operation of any Parcel by the Owner or Occupant(s) of such Parcel or the construction of Improvements by Owners.

3.3.11 **Taxes and Assessments.** The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association Property, personal property owned by the Association or against the Association, if any. Such taxes and assessments may be contested or compromised by the Association; if they are paid or a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

3.3.12 **Insurance.** The Association shall obtain, from reputable insurance companies and maintain the insurance described in the Article hereof entitled "Insurance."

3.3.13 **Right to Encumber Property.** The Association shall have the right to encumber all or any part of the Association Property for the purpose of improving and maintaining the Improvements located thereon.

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3.3.14 **Assumption of Agreements.** The Association shall maintain the Lot 24 Easement Area and the SDG&E Property in accordance with the Lot 24 Easement Agreement and the SDG&E Easement Agreement, respectively, and shall assume all obligations and responsibilities of Declarant thereunder, including, but not limited to, all indemnity obligations.

3.3.15 **Lot 23.** The Association shall maintain (i) Lots 23 through 26 in accordance with the Lot 22 License Agreement, and (ii) Lots 23 and 24 in accordance with the Lot 22 Easement Agreement and shall assume all obligations and responsibilities of Declarant under the Lot 22 License Agreement and the Lot 22 Easement Agreement, including, but not limited to, all indemnity obligations.

3.4 **Personal Liability and Indemnification.** No member of the Board, or any officer of the Association, or any manager, or Declarant, or any agent or employee or consultant of Declarant (each a "**Management Party**"), shall be personally liable to any Owner, or to any other party, including the Association, for any act or omission of any Management Party if such person has, on the basis of such information as may be possessed by him or her, acted in good faith without willful, wanton or gross misconduct within the scope of the person's Association duties (collectively, an "**Official Act**"). California Civil Code Section 1365.7, as drafted as of the date of recordation of this Declaration, does not apply to common interest developments that are not "exclusively residential." The Project contains only commercial uses. However, the criteria and requirements set forth in California Civil Code Section 1365.7 are hereby incorporated herein by reference, and shall apply to the Management Parties, regardless of the fact that the Project includes commercial uses.

The Association has the power and duty to indemnify, defend, protect and hold harmless each Management Party for all damages, and expenses incurred (including, without limitation, reasonable attorneys' fees), and satisfy any judgment or fine levied as a result of any action or threatened action brought because of an act or omission that such Person reasonably believed was an Official Act. Management Parties are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any Person entitled to such indemnification. The Association has the power, but not the duty, to indemnify any other person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act. The Association also has the power, but not the duty, to contract with any person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

## **ARTICLE 4**

### **MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

4.1 **Membership.** Each Owner of a Parcel which is subject to assessment, including Declarant, shall be a Member of the Association. Ownership of a Parcel shall be the sole qualification for membership in the Association. Such Association membership shall be appurtenant to the Parcels to which it relates. The Association membership of each Person who



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owns one or more Parcels shall be appurtenant to each such Parcel. If the Owners of condominiums within a Parcel are unable to agree among themselves as to how their votes shall be cast, they shall forfeit the vote on the matter in question.

4.2 **Membership Classes and Voting Rights.** The Association shall have three (3) classes of voting membership. The voting rights described in **Sections 4.2.1** and **4.2.2** below shall constitute the Voting Power of the Association.

4.2.1 **Class A Membership.** Each Owner (other than Declarant while the Class B or Class C voting membership is in effect) shall have a number of votes equal to its Land Area with fractional portions of an acre of the Land Area being rounded to the nearest hundredth of a percent (e.g. an Owner with a Land Area of 7.675 acres shall have 7.68 votes).

4.2.2 **Class B Membership.** Until such time as Declarant owns less than twenty (20) acres of the total Land Area of all the Parcels within the Property ("**Class B Membership Termination Date**") the Declarant shall have a number of votes equal to fifteen (15) times its Land Area for each Parcel owned by Declarant. Upon the Class B Membership Termination Date, the Declarant shall no longer have its Class B votes and shall then have the Class A voting rights described above.

4.2.3 **Class C Membership.** Notwithstanding anything to the contrary set forth in this Declaration or the Bylaws, the Declarant shall have a Class C Membership. Under the Class C Membership, the Declarant shall be entitled to appoint two Board members, one of which shall be a representative of PPH. The Class C Membership shall not be considered a part of the Voting Power of the Association and Declarant shall not be entitled to exercise any Class C votes except for the purposes of electing a majority of the members of the Board. The Class C Membership shall expire upon the date that Declarant collectively owns fewer than ten (10) acres within the Property.

4.3 **Consent of Declarant.** Notwithstanding the foregoing, so long as the Declarant's Class B and/or Class C Membership(s) are in effect, no action may be taken on any of the following issues without the prior written consent of Declarant:

- (a) any amendments to this Declaration;
- (b) any change in the method for allocating assessments levied under this Declaration;
- (c) any change in the maintenance obligations of the Association; and
- (d) any increases to assessments under **Section 5.5.**

4.4 **Commencement of Voting Rights.** An Owner's right to vote, including Declarant, shall not vest until Regular Assessments have been levied upon such Owner's Parcel as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the other Governing Documents.

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4.5 **Inspection.** Each Member shall have the right, during regular business hours, to inspect books and records of the Association upon ten (10) days prior written notice to the Association.

## **ARTICLE 5**

### **ASSESSMENTS AND LIENS**

5.1 **Creation of Lien and Personal Obligation for Payment of Assessments.** Each Owner of a Parcel, by acceptance of the deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association its Proportionate Share of Common Expenses levied pursuant to the provisions of this Declaration and all other sums which the Association shall be entitled to levy under this Declaration. All such amounts levied hereunder, together with any Additional Charges assessed hereunder, shall be a charge on each Parcel and shall be a continuing lien upon the Parcel against which each such levy is made, the lien to be effective upon recordation of a notice of delinquency as provided herein. Each such amount, together with any Additional Charges, shall be the personal obligation of the Owner of the Parcel at the time when such amounts became due and may be collected from such Person by any lawful means. No assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract), nor any foreclosure or other release of lien in favor of a Mortgagee pursuant to **Section 5.8** or otherwise shall relieve any Owner from personal liability for a delinquent payment owed by such Owner. If more than one Person was the Owner of a Parcel, the personal obligation to pay such amount respecting such Parcel shall be joint and several. If by virtue of any right or obligation set forth herein a lien shall be placed upon any Parcel, except as otherwise provided in this Declaration, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Parcel; provided, however that upon foreclosure by such first lienholder, any amounts levied under this **Section 5.1** prior to such foreclosure, and any post foreclosure amounts due, shall be and become the obligation of the Owner coming into title to such Parcel. Except as set forth in the preceding sentence, any holder of a first lien on any Parcel and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Declaration.

5.2 **Regular Assessments and Payment of Proportionate Share of Expenses.** Each Owner shall, beginning on the Assessment Commencement Date defined in **Section 5.7** below, pay to the Association such Owner's Proportionate Share of Common Expenses ("Regular Assessment"). Such payments shall be made once a month, on the first day of each month, in the amount of one-twelfth of the Owner's Proportionate Share of Common Expenses based upon the Budget which is adopted by the Board. In the alternative, the Board may require such payments to be made on a quarterly or semi-annual basis, in which case the amount of the payments shall be adjusted accordingly. If at any time PPH's Proportionate Share of Common Expenses would have exceeded 64.45% of the total amount of Common Expenses but for the limitation thereon set forth in Section 1.56, Declarant shall be responsible to pay to the Association the amount of such excess charges.

5.3 **Estimates of Common Expenses.** Estimates of the Proportionate Shares of Common Expenses shall be subject to review and change in accordance with the provisions set forth in this Article. The Board shall use its reasonable efforts to provide to each Owner,

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approximately ninety (90) days prior to the beginning of each calendar year during the term of this Declaration, an estimated Budget for the Common Expenses for the following calendar year.

**5.3.1 Failure to Submit an Estimated Budget.** If the estimated Budget is not submitted at least sixty (60) days prior to the beginning of the calendar year, all Owners shall pay the amounts provided under the previous year's Budget until the estimated Budget is submitted. Once the estimated Budget is submitted, all Owners shall begin paying the new amounts, subject to the provisions of this **Section 5.3**, starting the first day of the subsequent billing period following the submittal of the estimated Budget.

**5.3.2 Reconciliation.** Within ninety (90) days after the end of each Accounting Period, the Association shall give each Owner a statement of the Common Expenses applicable to such Owner for such Accounting Period. If any Owner has paid more than its Proportionate Share of Common Expenses as applicable during any Accounting Period, such Owner shall receive a credit by the Association toward its next Proportionate Share of Common Expenses payment. If any Owner has paid less than its Proportionate Share of Common Expenses for such Accounting Period, then such Owner shall pay to the Association within thirty (30) days following the receipt of the Association's statements the deficiency in its Proportionate Share of Common Expenses.

**5.3.3 Special Assessments for Additional Common Expenses.** In the event that during any Accounting Period, the Board determines that the estimated total amount of funds being collected as provided above to defray the Common Expenses for a given Accounting Period is or will become inadequate to pay such Common Expenses due to unanticipated delinquencies, or to provide funds otherwise required for any authorized activity of the Association, or as a result of any capital improvement required for the maintenance and operation of the Association Property, Association Maintenance Areas or Offsite Maintenance Areas, the Board may levy a Special Assessment chargeable to each Owner based upon such Owners' Proportionate Share of Common Expenses in an amount reasonably estimated by the Board as being sufficient to defray such shortfall, which levy shall, if the Special Assessment exceeds in the aggregate five percent (5%) of the budgeted gross expenses of the Association for that Accounting Period and is not otherwise attributable to an Emergency as provided in **Section 5.5** below, be approved by a Majority of Owners. The Board may, in its discretion, prorate such additional payment over the remaining months of the Accounting Period or may levy it immediately against each Parcel. Any such additional Proportionate Share of Common Expenses payments shall begin to be due and payable with the next payment of the Proportionate Share of Common Expenses that is not less than thirty (30) days after an Owner receives written notice from the Board specifying such Owner's Proportionate Share of Common Expenses thereof, unless the Board specifies in such notice a later date for payments to begin, and shall be subject to charges for late payment and interest as set forth in **Section 5.6** below.

**5.3.4 Assessments After Annexation.** After annexation of Additional Property, the assessments in the budget shall be reallocated among all the Parcels in the Project, including those in the annexed Additional Property, in accordance with each Owner's Proportionate Share of Common expenses. Declarant shall give notice to the Association of the recordation of a Supplementary Declaration annexing the Additional Property within ten (10) days of such recordation. Notice of the new Regular Assessment to be levied against each Parcel

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in the Project shall be delivered by the Association to the Owners and Declarant within thirty (30) days after the recordation of a Supplementary Declaration.

5.4 **Enforcement Assessments.** The Association may levy an enforcement assessment against any Owner for bringing an Owner or its Parcel into compliance with the provisions of this Declaration (to the extent the Association has the right to perform such actions pursuant to the provisions of this Declaration), together with any Additional Charges as provided in this Declaration ("Enforcement Assessment"). Such costs may include (a) all costs incurred by the Association in curing the default by the Owner (b) all costs, expenses, and, if applicable fines and penalties related to the cure of the default by the Association and (c) an administrative fee in an amount not to exceed ten percent (10%) of the total costs incurred by the Association. If an Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as provided herein. All Enforcement Assessments shall be payable within ten (10) days after written notice thereof from the Association.

5.5 **Limitation on Assessments.** Except in the event of an Emergency as defined below, the maximum annual Regular Assessment may not be increased by an amount greater than ten percent (10%) of the Regular Assessments for the preceding Accounting Period without the consent of a Majority of Owners and Special Assessments shall not be imposed which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that Accounting Period, without the consent of a Majority of Owners. For the purpose of this Section, an Emergency shall mean any one of the following:

(a) an extraordinary expense required to comply with any Governmental Requirements or any order of a court;

(b) an extraordinary expense necessary to repair or maintain any part of the Project which is the responsibility of the Association to maintain where a threat to personal safety or the Property is discovered; or

(c) an extraordinary expense necessary to perform its obligations hereunder that could not have been reasonably foreseen by the Board in preparing and distributing the Budget required under this Declaration and the Bylaws; provided, however, that prior to the imposition or collection of a Regular Assessment under this Subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense which is involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Owners with the notice of Regular Assessment or Special Assessment.

5.6 **Late Payments.** If an Owner shall fail to pay such Owner's Proportionate Share of Common Expenses or any other payments due under this Declaration, including without limitation, Special Assessments and Enforcement Assessments within ten (10) days after the due date therefor, then a late charge in the amount of five percent (5%) of the amount of the delinquent amount due, interest charged at the Default Interest Rate commencing from the date of delinquency, and reasonable costs of collection, including attorneys' fees and costs, shall be levied by the Association. All amounts due from any Owner with respect to delinquent payment

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of its Proportionate Share of Common Expenses or any Special Assessment or Enforcement Assessment shall be a lien against the Parcel, which lien shall attach to such Parcel and may be enforced as provided below.

5.7 **Commencement of Assessments.** The Regular Assessments provided for herein shall commence as to all Parcels subject to this Declaration on the first day of the month following the conveyance of the first Parcel to an Owner who is not an Affiliate of the Declarant. As to any Additional Property which is thereafter annexed into the Project pursuant Supplementary Declaration, the Regular Assessments shall commence as to all of the Parcels within such Additional Property upon the first day of the first month following the conveyance of the first Parcel within such Additional Property to an Owner who is not an Affiliate of the Declarant.

## 5.8 **Collection of Assessments, Liens.**

5.8.1 **Right to Enforce.** The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representatives shall have the power to enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 5.8.3** to enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all Additional Charges described in **Section 5.6** shall be maintainable without foreclosing or waiving the lien rights. The Board shall distribute a written notice regarding assessments and foreclosure as set forth in California Civil Code Section 1365.1 during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

5.8.2 **Delinquent Assessments.** The Association shall comply with the requirements of California Civil Code Section 1367.1 and any successor statutes or laws when collecting delinquent assessments. The Board or its authorized representative must send to the delinquent Owner or Owners, at least thirty (30) days prior to the recordation of a lien against the delinquent Owner's Parcel (as set forth in **Section 5.8.3**), a written notice by certified mail, which notice shall contain all of the information specified in California Civil Code Section 1367.1 and any successor statutes or laws ("**Initial Notice**"). The delinquent Owner may dispute the debt noticed pursuant to the Initial Notice by submitting to the Board a written explanation of the reasons for the delinquent Owner's dispute ("**Owner Explanation**"). The Board shall respond to the Owner Explanation in writing to the delinquent Owner within the time frame set forth in California Civil Code Section 1367.1 and any successor laws or statutes. The delinquent Owner may submit a written request to the Board to meet with the Board to discuss a payment plan for the debt noticed in the Initial Notice. The Board shall meet with the delinquent Owner in executive session within the time frame set forth in California Civil Code Section 1367.1 and any successor laws or statutes. The Association shall provide the Owners the standards for payment plans if any exists.

5.8.3 **Creation of Lien.** If there is a delinquency in the payment of any assessment, or installment on a Parcel, any amounts that are delinquent, together with the late charge and interest described in **Section 5.6** above and all Additional Charges that are incurred

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by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees and costs, shall be a lien against such Parcel upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("**Notice of Delinquent Assessment**") as provided in California Civil Code Section 1367.1 or any successor statute or law. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record as provided in California Civil Code Section 1367.1 or any successor statute or law.

**5.8.4 Notice of Default; Foreclosure.** The Board or its authorized representative shall have the power to record a notice of default and can cause the Parcel with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c, or through judicial foreclosure, and as provided in California Civil Code Section 1367.1 or any successor statute or law. However, as a condition precedent to the holding of any such sale under Section 2924c appropriate publication shall be made. In connection with any sale under Section 2924c the Board is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d. If (a) a delinquency is cured before sale, or before completing a judicial foreclosure, or (b) if it is determined that lien previously recorded against a Parcel was recorded in error, the Board or its authorized representative, within the time frame set forth in California Civil Code Section 1367.1 and any successor statutes or laws, shall cause to be recorded in the office of the County Recorder a certificate setting forth the satisfaction of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees by any delinquent Owner. If the lien was satisfied, the Association shall provide the delinquent Owner a copy of the lien release or notice that the delinquent assessment has been satisfied and if the Association filed a rescission of the lien, then the Association shall provide such Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. Any payments made on delinquent assessments shall be applied in accordance with California Civil Code Section 1367.1 and any successor statutes or laws. On becoming delinquent in the payment of any assessments, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of its Parcel to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Parcel at foreclosure sale and to acquire, hold, lease, mortgage and convey the Parcel and vote as an Owner of the Parcel.

**5.8.5 Payments Under Protest.** Notwithstanding any other provisions set forth in this **Section 5.8**, the Owners shall have the right to make certain payments under protest and be entitled to alternative dispute resolution as provided in California Civil Code Sections 1366.3 and 1367.1 and any successor statutes or laws.

**5.9 No Offsets.** All assessments shall be payable in the amounts specified by the particular assessment and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

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5.10 **Subordination of Lien to First Mortgages.** When a Notice of Delinquent Assessment has been recorded, such assessment shall constitute a lien on such delinquent Owner's Parcel prior and superior to all other liens except, (a) all taxes, (b) bonds, assessments and other levies which, by law, would be superior thereto, and (c) any First Mortgage now or hereafter placed upon any Parcel subject to assessment. The sale or transfer of any Parcel pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Parcel from any assessments thereafter becoming due or from the lien of any subsequent assessment. Where the Mortgagee of a First Mortgage or other purchaser of a Parcel obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Parcel which became due prior to the acquisition of title to such Parcel by such acquiror, except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Parcels.

5.11 **Failure to Fix Assessments.** The omission by the Board to fix the assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

## **ARTICLE 6**

### **USE RESTRICTIONS**

6.1 **Use Restrictions.** No use or operation shall be made, conducted or permitted on or with respect to all or any part of the Project, which use or operation violates (i) applicable Government Requirements, or (ii) the provisions of the Specific Plan. Notwithstanding, the foregoing, so long as Declarant owns any portion of the Property or the Additional Property, in no event shall any Parcel, except for Parcels 22, 23, 25 and 26, be used for any "Support Services" business (as described in the Land Use Matrix of the Specific Plan) without the prior written consent of the Declarant.

6.2 **Improvements.** No alteration, addition, or modification to a Parcel that can be seen from outside a Parcel, other than as may be constructed Declarant as part of the construction of the Project, shall be commenced without the prior written approvals required under Article 8 of this Declaration. In addition to the foregoing, all Improvements installed or constructed by an Owner within the Project must be completed in accordance with applicable Governmental Requirements, including, but not limited to, the Specific Plan, the General Construction Storm Water Permit, and the City of Escondido Storm Water Management Requirements. If any Owner other than Declarant or an Affiliate of Declarant has not commenced construction of a Building on its Parcel on or before the date that is one (1) month after the date such Parcel was conveyed to such Owner by Declarant or an Affiliate of Declarant, such Owner shall maintain the Parcel in conformity with the General Construction Storm Water Permit, and the City of

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Escondido Storm Water Management Requirements including, but not limited too, hydroseeding and irrigating its Parcel until construction of a Building thereon is commenced.

6.3 **Offensive Conduct; Nuisances.** No noxious or offensive activities, shall be conducted within the Project. Nothing shall be done on or within the Project that may be or may become a nuisance or a health or safety risk to the Occupants of the Project. No odorous matters shall be emitted upon or about the Project in such quantity as to be readily detectable outside the physical boundaries of the space within which such odor was generated.

6.4 **Lot A.** The restrictions set forth in the Final Map regarding Lot A are for the purpose of protecting sensitive habitat identified in Lot A. The Final Map prohibits all of the following on any portion of Lot A: grading, excavation, placement of soil, rock, gravel or other material and construction, erection, maintenance or placement of any building or structure (except as necessary to accommodate public facilities or recreational purposes, to the extent designated by the City). The Owners of the Parcels shall not enter upon or use Lot A for any purpose, including, without limitation, trash dumping. Notwithstanding the foregoing, as a condition of approval for the Project, the Declarant is required to maintain a portion of Lot A designated on the Site Plan as the "Mitigation Area" pursuant to ACOE Permit #199915066 and CDFG Agreement R5-2002-0363 (collectively, "Habitat Permits").

6.5 **Indemnification.** Each Owner shall be liable, to the fullest extent allowed by law, to the remaining Owners for any damage to the Association Property, Association Maintenance Areas or Offsite Maintenance Areas that may be sustained by reason of the negligence or willful misconduct of that Owner, or the Owner's Invitees. Each Owner, by acceptance of his or her deed, agrees for such Owner and for the Owner's Invitees, to indemnify, to the fullest extent allowed by law, each and every other Owner, and to hold each Owner harmless from, and to defend such other Owner against, any claim of any person for personal injury or property damage caused by the negligence or willful misconduct of such Owner, unless the injury or damage occurred by reason of the negligence or willful misconduct of any other Owner or the Association. Upon demand by the Association, each Owner shall be responsible for the payment of any deductible amount payable under the Association's insurance policy as a result of any claims arising as a result of the negligent or willful misconduct of such Owner or the Owner's Invitees.

6.6 **Applicability to PPH.** Subject to that certain Development Agreement by and between PPH and Declarant, and notwithstanding any provision in this Declaration to the contrary, PPH shall have the right to use Parcels 27 through 36 for the construction, operation, and maintenance of the following uses: (i) 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,



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and wellness services), adult and geriatric health screening, urgent care, retail pharmacy, or medical laboratory drawing stations; (ii) medical office buildings; medical laboratories; medical clinics, including, without limitation, long and short-term medical care, outpatient surgery centers, imaging centers, mental health clinics, outpatient clinics, doctors' offices, emergency treatments, medical-related research and education facilities, ambulance and paramedic services, medical-related helicopter services, parking lots and parking structures, a central power plant to support PPH's primary uses, ancillary support services (including, without limitation, food services, a supply warehouse of not more than fifteen thousand (15,000) square feet, and other uses incidental to PPH's primary uses); support services, including, without limitation, a single delicatessen of not more than five hundred (500) square feet, a PPH-only employee day- and sick-care center of not more than twenty-five hundred (2,500) square feet, a gift/floral shop of not more than one thousand (1,000) square feet, employee cafeteria, guardhouse, auditorium, passive and/or active recreational open space, but excluding the following: restaurants; delicatessens (except as set forth herein); spa, health, and fitness centers (except as set forth in subsection (i) above); daycare (except as set forth herein); and retail services uses (except as set forth herein); (iii) any uses permitted under the Specific Plan for Planning Area 4 in effect as of the date PPH becomes a member of the Association by means of Annexation of Parcels 27 through 36; and (iv) other uses ancillary to an acute care general hospital, in each of the cases described in this Section 6.6 (subject to the qualification in the next sentence of this Section 6.6) without the approval or consent of Declarant, the Association, or any of the Owners. Any such use must comply with all applicable Governmental Requirements in effect as of the date PPH becomes a member of the Association by means of Annexation of Parcels 27 through 36, and in no event shall PPH construct in excess of one million five hundred thousand (1,500,000) square feet of Buildings (including without limitation Medical Office Buildings ("M.O.B.")) on Parcels 27 through 36 without the prior written consent of Declarant, until such time as the extension of Citracado Parkway from its current southerly terminus through to Valley Parkway is completed and operational, whereafter PPH shall be permitted to construct two million (2,000,000) square feet of Buildings on Parcels 27 through 36 without the prior written consent of Declarant. Although PPH is currently contemplating the development of one million two hundred thousand (1,200,000) square feet of Buildings on Parcels 27 through 36, it is conceivable that PPH would pursue additional development at a future time, at which time it would comply with its obligations under the California Environmental Quality Act before any such additional development. Any construction by PPH of Buildings on Parcels 27 through 36 beyond two million (2,000,000) square feet shall require the prior written consent of Declarant, in its sole and absolute discretion; provided, however, should PPH wish to exceed two million (2,000,000) square feet, Declarant shall undertake (at PPH's expense) a traffic analysis to determine if any additional PPH development beyond the two million (2,000,000) square feet can be undertaken without any decline in the levels of service on both the Citracado Parkway roadway and without any additional delay for the intersections along Citracado Parkway from Vineyard Avenue to Valley Parkway.

## ARTICLE 7

### MAINTENANCE OBLIGATIONS

7.1 **Maintenance Obligations of the Association.** Upon the earlier to occur of (a) the conveyance of the Association Property to the Association or (b) the first day of the

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month following the conveyance of the first Parcel to an Owner who is not an Affiliate of the Declarant, the Association shall maintain the Association Property, the Association Maintenance Areas and the Offsite Maintenance Areas in accordance with the provisions set forth below, including, but not limited to, the obligations described below. In no event shall the Association be responsible for such maintenance obligations that are the responsibility of any Occupant(s).

**7.1.1 Maintenance of Project Drainage Facilities.** The Association shall perform the following maintenance obligations for the Project Drainage Facilities: (a) maintaining, repairing and replacing the Project Drainage Facilities in good condition and repair including, but not be limited to, cleaning debris and silt out of storm drains and detention basins on a bi-weekly (semi-monthly) basis and also within forty-eight (48) hours after a rain event, (b) complying with all stormwater requirements of local, state and federal laws relating to the Project Drainage Facilities, and (c) complying with any other requirements imposed by the Governmental Authorities.

**7.1.2 Maintenance of Landscaping.** The Association shall maintain the landscaping, irrigation and ancillary improvements located on the Association Property, the Association Maintenance Areas (including, without limitation, the Slope Maintenance Areas) and the Offsite Maintenance Areas in accordance with the Association landscape maintenance standards as described in the attached **Exhibit "I"**, including, but not limited to, inspecting, repairing and replacing the landscaping and irrigation systems.

**7.1.3 Maintenance of Parkway Landscape Areas.** The Association shall maintain all of the Parkway Landscape Areas in accordance with the Association landscape maintenance standards as described in the attached **Exhibit "I"**, including, but not limited to, inspecting, repairing and replacing the landscaping and irrigation systems in the Parkway Landscape Areas. In addition, if any stamped concrete is installed in Citracco Parkway, and the City removes such stamped concrete in order to perform utility system repairs or replacement, the Association shall be responsible for replacing such stamped concrete to the condition it was in prior to the performance of such repair or replacement work.

**7.1.4 Fencing.** The Association shall maintain, repair and replace any fencing located within or bordering the Association Property.

**7.1.5 Pedestrian and Equestrian Trail.** The Association shall maintain, repair and replace the Pedestrian and Equestrian Trail as depicted on **Exhibit "F"**, located within the Association Maintenance Areas and the Additional Property in accordance with the Association landscape maintenance standards as described in the attached **Exhibit "I"**.

**7.1.6 Maintenance of Lot A.** The Association shall maintain Lot A in accordance with the Habitat Permits.

**7.1.7 Lots 37 through 40.** The Association shall maintain Lots 37, 38, 39, and 40 in a good condition. Such maintenance obligation shall automatically terminate upon the date that the Owner of such Lots receives a building permit or grading permit for development of such Lots.

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7.1.8 **Maintenance of Lot 24.** The Association shall maintain the Lot 24 Easement Area in accordance with the Lot 24 Easement Agreement, including, but not limited to, maintaining, repairing and replacing all paved surfaces and curbs located on Lot 24 in a level, smooth and evenly covered conditioned with a type of material originally installed or of similar quality, use and durability. Such maintenance work shall also include, without limitation, placing, keeping in repair, and replacing any necessary appropriate signage and striping lines, curbs and gutters, and landscaping and periodic sweeping and debris removal.

7.1.9 **Maintenance of Lots 23 through 26.** The Association shall maintain Lots 23 through 26 in accordance with the terms and provisions set forth in the Lot 22 License Agreement, and, if the Lot 22 Easement Agreement is recorded, the Association shall maintain Lots 23 and 24 in accordance with the terms and provisions of the Lot 22 Easement Agreement.

7.1.10 **Maintenance of SDG&E Property.** The Association shall maintain the SDG&E Property, including, without limitation, the detention basins located therein, in a good condition and in accordance with the SDG&E Easement Agreement.

7.1.11 **Monument Signs.** The Association shall maintain any Entry Monument Signs (as defined in the Specific Plan) and their associated water features, lighting and landscaping, as applicable, in a condition comparable to other Class A business parks in San Diego County.

7.1.12 **Hazardous Materials.** Subject to the provisions of Section 12.3 herein, the Association shall be responsible for the prompt clean up and remediation of any resulting contamination of any Hazardous Materials released within the Association Property and Association Maintenance Areas and shall seek recovery and remedies for any such expenses incurred, as applicable. All costs relating to such clean up and remediation shall be considered a Common Expense.

7.2 **Maintenance Obligations of Owners.** Each Owner shall maintain its Parcel and any Buildings and other Improvements constructed thereon in a good condition of maintenance and repair and shall replace the Improvements as necessary. Prior to commencement of construction of any Improvements on a Parcel, the Owners shall maintain the Parcel in a clean condition, and shall use commercially reasonable efforts to keep the Parcel free of debris and litter.

7.2.1 **Maintenance of Parking and Driveway Improvements.** Each Owner shall maintain, repair and replace all paved surfaces and curbs of all parking and driveway Improvements located on its Parcel in a level, smooth and evenly covered condition with the type of material originally installed or of similar quality, use and durability. Such maintenance work shall also include, without limitation, placing, keeping in repair, and replacing any necessary appropriate signage and striping lines, curbs and gutters, and periodic sweeping and debris removal.

7.2.2 **Maintenance of Landscape Improvements.** Each Owner shall maintain all landscape Improvements located on its Parcel in a good condition, including, but not limited to, (i) maintaining and replacing the landscaping, including the trimming, watering, and

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fertilization of all grass, ground cover, shrubs, flowers and trees, and (ii) inspecting the irrigation system on a regularly scheduled basis and maintaining, repairing and replacing the irrigation system as needed. Notwithstanding the forgoing, no Owner shall be required to maintain any landscape Improvements located on its Parcel that are located within the Association Maintenance Areas.

**7.2.3 Maintenance of Storm Drain Improvements.** Each Owner shall maintain the storm drain Improvements (other than the Project Drainage Facilities) located on its Parcel in a good condition, including, but not limited to, (i) cleaning debris out of the drain openings on a regularly scheduled basis, (ii) keeping the storm drain Improvements free and clear of any debris or other obstructions so that there is no interferences or blockages of the flow of water from any Parcel to the Project Drainage Facilities and (iii) maintaining, repairing and replacing the storm drain Improvements as needed.

**7.2.4 Damage Caused by an Owner.** Notwithstanding anything to the contrary set forth in this Declaration, each Owner shall be liable, to the fullest extent allowed by law, for any damage caused by such Owner or such Owner's Permittees to the Association Property, the Association Maintenance Areas and the Offsite Maintenance Areas. The Association shall have the right to cause such repair and charge the costs to the Owner as an Enforcement Assessment or require the Owner to cause such repair. Each Owner shall, to the fullest extent allowed by law, indemnify, protect, defend and hold the Association and the Declarant harmless from and against all Claims arising out of any damage caused by such Owner or Owner's Permittees to the Association Property, Association Maintenance Areas or Offsite Maintenance Areas, except to the extent caused by the negligence or willful misconduct of the Association or the Declarant, as applicable.

**7.3 Compliance with Requirements Regarding Project Storm Water Pollution.** No Person (including, but not limited to, Owners, Lessees, the Association and the Declarant, and their agents, representatives, contractors and others acting on their behalf or at their request) shall discharge any substance prohibited by the General Municipal Storm Water Permit or which might cause or contribute to the exceedance of a Water Quality Objective (as that term is defined by the Water Quality Control Plan for the San Diego Basin) including, without limitation, toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, paints and other such materials and pollutants into any street, public or private, gutters, or into storm drains or stormwater conveyance systems.

**7.3.1 Storm Water Pollution Prevention Best Management Practices.** To comply with the requirements of the City and the State in connection with the storm water pollution prevention Best Management Practices ("BMPs"), each Owner and the Association agrees that it will, at all times, maintain all Improvements on their respective Parcels in conformity with, as applicable, the General Construction Storm Water Permit, the General Industrial Storm Water Permit, the City of Escondido Storm Water Management Requirements and in a reasonably clean, safe and attractive condition, free and clear of any and all debris. All landscaping shall be reasonably maintained by the party obligated for such maintenance that will prevent soil erosion and minimize sediment transport. To the extent that the Declarant has installed any Construction BMP's or Permanent BMP's, neither the Association nor any Owner

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shall remove such devices, except in conformity with all Environmental Laws, or unless and until the Association or the Owner has taken title to the Property, has file a Notice of Intent to Comply with all applicable Storm Water Permits and has prepared and implemented a Storm Water Pollution Prevention Plan in accordance with all applicable Storm Water Permits. The Association and the Owners shall comply with any applicable Storm Water Pollution Prevention Plan ("SWPPP") and all applicable BMPs and perform all operations and maintenance that may be imposed by any operations and maintenance plan or water quality management plan applicable to the Property. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

**7.3.2 Obligations of Owners With Industrial Activities.** As may be required by the Industrial General Storm Water Permit issued by the State Water Resources Control Board (Water Quality Order No. WDID: 9 37C320081) ("**General Permit**"), each Owner shall prepare and file either (i) a Notice of Intent to Comply with the General Permit or (ii) a No Exposure Certification, and shall thereafter implement such BMPs, perform such inspections and tests and prepare and file such documents as are necessary to comply with the General Permit, including, without limitation, any individual SWPPP and annual reports.

**7.3.3 Liability to Declarant.** So long as Declarant owns any portion of the Property or the Additional Property, if an Owner or the Association is not in compliance with any provision of this Section, Declarant shall have the right, but not the obligation, to enter upon the Parcel to correct such non-compliance at the Owner's or Association's expense, as the case may be. As a condition to any such entry, Declarant shall give the Owner or the Association, as the case may be, at least twenty-four (24) hours notice (except in the case of an emergency which threatens imminent danger to person or property, in which case no prior notice is necessary but notice shall be given as soon thereafter as reasonably practical) and if the Owner or Association fails to cure or commence to cure such default within the thirty (30) day period and diligently pursue the same to completion, then Declarant may exercise its rights of entry under this Section, and if the Association fails to cure or commence to cure the default within such additional twenty-four (24) hour period, the Declarant may exercise its rights of entry under this Section. Any such Owner or the Association, as the case may be, and to the fullest extent allowed by law, shall indemnify, protect, defend and hold Declarant and Declarant's officers, directors, agents, successors and assigns entirely free and harmless from and against any Claims arising from or attributed to a violation of this Section or the correction thereof, except to the extent caused by the negligence or willful misconduct of the Declarant, and shall, within thirty (30) days after request from Declarant (which request must be accompanied by reasonable back-up documentation confirming such Damages) reimburse Declarant for any Claims incurred by Declarant arising out of any found violation of this Section by any Owner or the Association.

**7.4 Indemnity for Liens.** Each Owner agrees, to the fullest extent allowed by law, to indemnify, protect, defend and hold the other Owners harmless from and against any Claims arising from any mechanics, materialmen and/or laborers liens attributable to the maintenance and operation by such Owner of the Improvements located on the indemnifying Owner's Parcel. If any Parcel shall become subject to any such lien, the defaulting Owner shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness causing such lien, or by posting such bond or other security as shall be required by law to obtain such release and discharge.

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7.5 **Failure to Maintain.** Except as provided in Section 7.3.3 above, if an Owner fails to maintain its Parcel as provided above or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board shall cause such work to be completed and shall assess the cost thereof to such Owner as an Enforcement Assessment in accordance with the procedures set forth in this Declaration.

## **ARTICLE 8**

### **ARCHITECTURAL APPROVALS**

8.1 **Declarant Approval of Improvement Plans.** So long as Declarant owns any portion of the Property or the Additional Property, no Owner or Permittee shall construct, alter, add to or modify any Building, structure, signage or other Improvements within the Property that is visible from outside such Owner's Parcel ("Alteration") unless the design, architecture, exterior elevations, configuration, height, dimensions, location, color schemes and other attributes thereof shall have first been approved in writing by Declarant. Declarant's approval shall be based upon its determination, in its reasonable discretion, that the Alteration is architecturally and aesthetically harmonious with the balance of the Improvements on the Property and are consistent with the planned development of the Property. Without limiting the foregoing, so long as Declarant owns any Parcel, if any Owner or Permittee elects to repair or rebuild any damage to or destruction of any Building, structure or Improvement, such Owner or Permittee shall obtain Declarant's prior written approval in accordance with this Article 8.

8.2 **Submission of Design Package.** Prior to commencing any Alteration on its Parcel, the Owner or Permittee desiring to perform such Alteration shall submit to Declarant three (3) copies of the specifications, a site plan, a Water Quality Technical Report as that term is defined in the City of Escondido Storm Water Management Requirements and an elevation of the proposed Alteration, including, without limitation, any proposed signage, the dimensions, ingress, egress, parking, colors, materials and landscaping, as appropriate, and such other information as is reasonably requested by Declarant ("Design Package").

8.3 **Procedure for Approval.** The Declarant shall have fifteen (15) days to review the Design Package. In the event the Declarant disapproves the Design Package, the party submitting such Design Package ("Submitting Party") shall modify the Design Package and resubmit the Design Package to the Declarant. Thereafter, Declarant shall have fifteen (15) days to review the modified Design Package. In the event Declarant fails to deliver notice of disapproval during the periods specified above and the Submitting Party delivers a reminder notice ("Reminder Notice") to Declarant advising Declarant of its failure to approve the Design Package and further advising Declarant that if Declarant fails to respond within fifteen (15) days of the delivery of such Reminder Notice such Design Package shall be deemed approved, then, unless Declarant notifies the Submitting Party of the disapproval of all or a portion of such Design Package within such fifteen (15) day period, such Design Package shall be deemed

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approved. Declarant and Submitting Party shall cooperate in good faith to reach an agreement on the Design Package.

8.4 **Review Fee.** Each Owner Submitting Party shall pay to Declarant review fees in amounts reasonably determined by Declarant, at such times as the Design Package are submitted to Declarant for approval. The review fee is intended to pay the costs incurred by Declarant in reviewing such plans, including the cost of hiring a licensed architect, engineer and any other consultant whose services are deemed necessary by Declarant. If an Owner or Submitting Party materially revises such Design Package after it has been approved or disapproved by Declarant, the Owner shall, at Declarant's election, pay to Declarant another review fee at the time such revised Design Package are submitted to Declarant for approval.

8.5 **Changes in the Design Package.** Any material changes in the approved Design Package must be similarly submitted to and approved in writing by Declarant in accordance with the same procedures specified above. Prior to submission to the City of an application for a Building permit for the Improvements to which such Design Package pertain and prior to submission of any application to any other Governmental Agencies, the Submitting Party shall obtain Declarant's approval thereof.

8.6 **Declarant Not Liable.** Declarant shall not be liable for any damage, loss or prejudice suffered or claimed by any person on account of (i) the approval or disapproval of any Design Package, Alteration or Improvements, whether or not in any way defective or in violation of any governmental laws, ordinances, regulations or restrictions ("Governmental Requirements"); or (ii) the construction of any Alteration or Improvement, or performance of any work, whether or not pursuant to approved Design Package or in violation of any Governmental Requirements.

Declarant shall not be responsible for reviewing, nor shall its approval of any Design Package be deemed an approval from the standpoint of structural safety, architectural or engineering design or conformance with Building or other codes or other Governmental Requirements. Declarant (and any agents of Declarant) shall not be liable for any damage, loss or prejudice suffered or claimed by an Owner or Permittee or any successor in interest to an Owner or Permittee, as a result of the approval of Design Package.

8.7 **Inspection and Correction of Work.** For any Alteration as to which the consent of the Declarant was required, the Declarant and or its duly authorized representatives may enter upon any Parcel, from time to time during the course of installation of the Alteration thereon for the purpose of inspecting such installation. If the Declarant determines that such installation is not being done in substantial compliance with the approved Design Package, it shall notify the Owner of the Parcel of such non-compliance and such Owner shall promptly remedy such non-compliance. Nothing contained in this Section shall be construed to require the Declarant to conduct inspections and any determination by the Declarant, as the case may be, not to conduct such an inspection shall not be construed as a waiver of any of the requirements set forth in this Article with respect to the installation of Alterations.

8.8 **Construction Without Approval.** If any Alteration is erected, constructed, placed, maintained, replaced, substantially remodeled, rebuilt or reconstructed upon any Parcel,

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or any different use commenced upon any Parcel, other than in accordance with the approval by Declarant pursuant to the provisions of Article 7 or this Article 8, such Alteration or Improvement or use shall be deemed to have been undertaken in violation of this Declaration. Upon written notice from Declarant, any such Alteration in violation of this Declaration shall be removed or altered so as to conform to this Declaration, and any such use shall cease or be changed so as to conform to this Declaration. If any Owner fails to accomplish such removal or alteration of an Alteration or cessation or amendment of use within thirty (30) days after receipt of such notice, or has failed to commence and diligently pursue such work if it cannot be completed within thirty (30) days, then the Owner and any other party in breach of this Declaration shall be subject to the enforcement procedures set forth in Article 7.

8.9 **Government Regulations.** If there is any conflict between the requirements or actions of the Declarant and the Governmental Requirements of any Governmental Authority relating to the Property, the Government Requirements, to the extent that such Governmental Requirements are more restrictive, shall control. The application to and the review and approval by the Declarant of any Design Package or other submittals by an Owner shall in no way be deemed to be satisfaction or compliance with any building permit process or other applicable Governmental Requirements (collectively, "Additional Requirements") the responsibility for which shall lie solely with the Owner; provided, however, if the Additional Requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply.

8.10 **Applicability to PPH.** The provisions of this Article 8 shall be subject to any express rights possessed by PPH in that certain Development Agreement by and between PPH and Declarant which provides for, among other things, certain architectural rights respecting PPH's proposed new hospital and associated M.O.B. on Parcels 27 through 36. In addition, and notwithstanding any provision in this Declaration to the contrary, PPH shall be permitted to construct, alter, add to or modify any Building, structure, signage or other Improvements within the Parcels 27 through 36 that is visible from outside such Owner's Parcel ("Alteration"); provided, however, the design, architecture, exterior elevations, configuration, height, dimensions, location, color schemes and other attributes shall be in substantial conformity with those pre-approved (by Declarant) elements of design, architecture, exterior elevations, configuration, height, dimensions, location, color schemes attached hereto as Exhibit "L". Alternatively, PPH shall be permitted to construct Alterations consistent with both first class hospital and related ancillary facilities and a first class business park; provided, however, PPH shall have first received approval in writing by Declarant for any and all such Alterations not in substantial conformity with those pre-approved in Exhibit "L". In the event of any difference of opinion as to what may constitute first class, Declarant and PPH agree to be bound by either the City of Escondido's Design Review process or a binding arbitration, which forum shall be made at the election of PPH. Notwithstanding the foregoing, PPH shall not materially deviate from that certain site plan included within Exhibit "L" in a manner that would have a material adverse impact on the remainder of the Property; provided, however, that notwithstanding the foregoing, Section 3.1 of the Development Agreement by and between PPH and Declarant shall control for purposes of locating the M.O.B. Notwithstanding the foregoing, any and all Alterations or Improvements on Parcels 27 through 36 must be in compliance with the Specific Plan in effect as of the date PPH becomes a member of the Association by means of Annexation of Parcels 27 through 36.



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## ARTICLE 9

### DECLARANT'S RIGHTS

9.1 **Supplementary Declaration.** Declarant shall have the right without the consent of the Owners to record a Supplementary Declaration for any purpose for which a Supplementary Declaration can be recorded pursuant to Section 1.58 herein; provided, however, that any Supplementary Declaration must first be approved by any Owners whose obligations are specifically increased (either directly or through an increase in the obligations to be borne by the Association), or whose Parcels are materially adversely affected thereby. If a Supplementary Declaration affects all parcels, such Supplementary Declaration must first be approved by a Majority of Owners. In addition, no Supplementary Declaration shall contain any provisions pertaining to the maintenance of (i) the Parkway Landscape Area, (ii) the Slope Maintenance Areas, (iii) the Project Drainage Facilities, (iv) the Pedestrian and Equestrian Trail and (v) Lot A, without the prior approval of the City.

9.2 **Site Plan.** Declarant shall have the right to make corrections and modifications to the Site Plan which do not materially and adversely alter any use by an Owner of its Parcel or rights or obligations of an Owner under this Declaration without the consent of any Owner by recording a Supplementary Declaration attaching the modified Site Plan.

9.3 **Limitations of Restrictions.** Declarant is undertaking the work of developing Improvements within the Project. The completion of the development work and the marketing and sale, rental and other dispositions of the Parcels is essential to the establishment and marketing of the Property and the Additional Property as a first-class business park. Declarant, its contractors and subcontractors shall have the right to do within any Parcel owned by it, whatever is reasonably necessary or advisable in connection with the completion of the Project and the development, marketing and maintenance thereof, provided that none of the foregoing actions of Declarant are materially inconsistent with the provisions of this Declaration.

9.4 **Maintenance of Lot A.** Whether or not Declarant continues to own any Parcel in the Project, if Declarant in its sole and absolute discretion, determines that the Association has failed to maintain Lot A in accordance with the Habitat Permits, Declarant shall have the right to obtain access over Lot A for the purpose of maintaining Lot A in accordance with the Habitat Permits.

9.5 **Title Rights.** This Declaration shall not be construed to constitute a limitation on Declarant's title rights to any Additional Property owned by Declarant prior to its annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of the Additional Property. The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease.

9.6 **Amendment.** The provisions of this Article may not be amended without the consent of Declarant so long as Declarant owns any portion of the Property or Additional Property.

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## ARTICLE 10

### INSURANCE

#### 10.1 Insurance of Association.

10.1.1 Liability Insurance. The Association shall continuously maintain or cause to be maintained commercial general liability insurance insuring the Association as a named insured and, so long as the Declarant's Class B membership is in effect, the Declarant (with respect to Declarant's actions and duties as Declarant and not merely as an Owner) as additional insureds as their respective interests may appear, against claims for personal injury, death and property damage occurring in, upon or about the Project (including, without limitation, coverage for the public use of the Pedestrian and Equestrian Trail located within the Association Property). Such insurance shall be written by an insurer licensed to do business in the State of California. Such commercial general liability insurance shall afford protection to the limit of not less than Five Million Dollars (\$5,000,000.00) in Constant Dollars for death of, or bodily injury to, or personal injury to, one or more persons, and property damage to the limit of not less than Five Million Dollars (\$5,000,000.00) in Constant Dollars for each occurrence and shall be written as an occurrence policy form and shall at all times be in conformance with Section 1365.9 of the California Civil Code. The insurance maintained by the Association shall be primary insurance and not contributory with the insurance maintained by each of the Owners pursuant to **Section 10.3** below, or any other insurance maintained by the Owners.

10.1.2 Property Insurance. The Association shall maintain or cause to be maintained fire and extended (all risk) coverage policy for the full replacement cost of (i) the Improvements within the Association Property and the Association Maintenance Areas, (ii) the landscape and irrigation systems in the Offsite Maintenance Areas, (iii) the Project Drainage Facilities, and (iv) any other Improvements required to be maintained by the Association under the Declaration. The costs for such insurance shall be included as a Common Expense.

10.1.3 Officers and Directors Insurance. The Association shall maintain policies insuring the Association's officers and directors against liability for those negligent acts or occurrences when acting in the capacity as officers and directors in an amount not less than Three Million Dollars (\$3,000,000.00).

10.2 Indemnification. Each Owner and the Association shall, to the fullest extent allowed by law, indemnify, protect, defend, and hold the other Owners and the Association harmless from and against any and all Claims arising from injury or death to person or damage to property that occurs on the indemnifying Owner's Parcel or the Association Property, respectively, as a result of a breach of the indemnifying Owner or the indemnifying Association of its respective obligations under this Declaration. An Owner and/or the Association shall not be entitled to such indemnification for: (i) any damage caused to such Owner and/or the Association by reason of its negligence or willful misconduct and (ii) any and all demands, liabilities, damages, expenses, causes of action, suits, claims, and judgments arising from any matter covered by the indemnitee's indemnity obligations under this Declaration.

#### 10.3 Owner's Insurance.

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**10.3.1 Owner's Liability Insurance.** Each Owner and Occupant shall procure and maintain (or cause to be procured and maintained) in full force and effect throughout the term of this Declaration commercial general liability insurance against claims for personal injury, death or property damage occurring upon, on or about its Parcel, insuring against all claims for personal injury, death or property damage occurring upon, in or about the Owner's Parcel, with combined single limits of at least Three Million Dollars (\$3,000,000) in Constant Dollars per occurrence for each other Owner or Occupant, which insurance shall include broad form blanket contractual coverage covering the insured's obligations hereunder. The limits of coverage for the foregoing insurance are subject to increase from time to time by the Association for the Parcels based upon customary level of insurance then being maintained by owners or developers of similar projects. In no event shall the limits of any coverage maintained by any Owner pursuant to this Declaration be considered as limiting such Owner's liability under this Declaration.

## **10.3.2 General Requirements.**

(a) Policies of insurance provided for in **Section 10.3.1** and maintained by or on behalf of each Owner shall name the Declarant and the Association as an additional insured as its respective interests may appear. Each Owner and the Association must furnish to Declarant, a certificate(s) of insurance, or statement of self-insurance, as the case may be, or the web address where such information is contained, evidencing that the insurance required to be carried by such Owner or the Association is in full force and effect. Unless otherwise approved in writing by Declarant, all policies of insurance provided for in **Sections 10.1 and 10.3** shall: (i) with respect to CGL be an occurrence basis policy (or policies); (ii) be issued by an insurance company having a General Policyholders Rating of A or better and a financial size of "X" or better, as set forth in the most current issue of Best's Rating Guide, or equivalent rating and licensed to do business in the State; (iii) be primary insurance as to all claims thereunder and provide that any insurance carried by Association is excess and noncontributing with any insurance required of the Owner or Occupant; (iv) with respect to the liability insurance described in this **Section 10.3**, contain a cross-liability endorsement or severability of interest clause reasonably acceptable to Association for the Parcels; (v) shall provide that the policy shall not be cancelled or reduced in amount or coverage below the requirements of this Declaration, nor shall it be allowed to expire without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured; (vi) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds; (vii) shall provide for contractual liability coverage with respect to the indemnity obligation set forth in **Section 10.2**. In addition to the foregoing, with respect to the Owners of any Parcel, the types of coverage and the amounts of the insurance required hereunder shall be subject to change from time to time as requested by Declarant or the Association, based upon the practices of reasonably prudent owners of similar business.

(b) To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with this **Section 10.3**, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed Fifty Thousand Dollars

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(\$50,000) in Constant Dollars unless such Owner complies with the requirements regarding self-insurance pursuant to **Section 10.3.3** below.

(c) Each policy of insurance described herein shall contain a waiver by said insurer of any and all rights of subrogation against each Owner, and their respective officers, employees, agents, associates and representatives and said insurance policy shall provide that any "noncontrol" provision in said policy is excluded or superseded by an endorsement providing that the insurance obtained pursuant to this **Section 10.3** shall not be prejudiced by any act or neglect of any of the insureds when such act or neglect is not within the knowledge and control of all of the insureds collectively and shall likewise not be prejudiced by any failure of the insureds, individually or collectively, to comply with any warranty or condition with regard to any portion of the Property over which each insured individually, or the insureds collectively, have no control. Said insurance policy shall provide that it may not be canceled, suspended or avoided in whole or in part by any reason of any act, omission or breach of any covenant, condition or restriction contained herein.

**10.3.3 Self-Insurance.** Notwithstanding anything to the contrary contained in this Article, so long as the net worth of an Owner or Occupant shall exceed One Hundred Million Dollars (\$100,000,000.00) in Constant Dollars and such Owner or Occupant presents, upon request therefor, audited financial statements to Declarant certifying such net worth, then such Owner or Occupant shall have the right to retain the financial risk for all or part of any claim for damages. In the event an Owner or Occupant elects to self-insure, it shall deliver, upon request therefor, a letter to the other Owners indicating the same.

**10.3.4 Blanket Insurance.** Any insurance required to be carried pursuant to this Article may be carried under a policy or policies covering other liabilities and locations of an Owner; provided, however, that such policy or policies apply to the Parcels required to be insured by this Article in an amount not less than the amount of insurance required to be carried by such Owner with respect thereto, pursuant to this Article.

## **ARTICLE 11**

### **DAMAGE**

**11.1 Restoration by Owners.** Except for the Association Property, Association Maintenance Areas and Offsite Maintenance Areas which shall be restored by the Association pursuant to the provisions set forth below, in the event of the destruction and damage to any Improvements located in an Owner's Parcel, then, to the extent the Owner is restoring the Building(s) on its Parcel, the Owner shall repair and restore the other Improvements in a manner which is substantially equivalent to or better than the condition prior to the damage or destruction.

**11.2 Clearing of Parcel.** If an Owner elects not to restore, repair or rebuild its Building(s) that has or have been damaged or destroyed, such Owner, at its sole cost and expense, shall, within six (6) months after the date of such damage or destruction, raze such Building(s) or such part thereof as has or have been damaged or destroyed, and clear the Parcel of all debris. All areas not restored to their original use or otherwise developed by such Owner

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shall, at the expense of such Owner, be leveled, cleared and improved with, at the option of such Owner, either landscaping or parking area, of like standard and design as the remainder of the Project.

11.3 **Drainage Facilities.** The Association shall be responsible for the restoration of the Association Property, Association Maintenance Areas and Offsite Maintenance Areas and each Owner hereby grants to the Association an easement over such Owner's Parcel as may be reasonably necessary to perform any restoration on the Owner's Parcel as may be required for such restoration for the benefit of the Project. Restoration undertaken by the Association pursuant to this **Section 11.3** shall, with respect to Parcels where businesses of the Occupants thereof are still operating, be conducted in such a way as to minimize interference with such business and shall be conducted outside their normal business hours. If the Association's insurance proceeds are not adequate to cover the restoration of the Association Property, Association Maintenance Areas and Offsite Maintenance Areas each Owner shall be responsible to pay to the Association, based upon its Proportionate Share of Common Expenses, its allocable share of the costs of the restoration of such items within thirty (30) days after receipt of a statement therefor from the Association.

## **ARTICLE 12**

### **ENVIRONMENTAL MATTERS**

12.1 **Duties of Owners.** No Owner shall generate, use, store, transport, or handle Hazardous Materials within the Parcels or otherwise permit the presence of any Hazardous Materials on, under, or about the Parcels or transport any Hazardous Material to or from the Parcels, unless such Hazardous Materials are generated, used, stored, transported, or handled in the ordinary course of business operations of such Owner and in strict compliance with all Environmental Laws. Disposal, dumping or releasing Hazardous Materials or wastes in violation of any Environmental Laws within the Parcels is strictly forbidden. Except with respect to the proper installation, maintenance and operation of underground storage tanks in accordance with Environmental Laws (to the extent permitted herein), no Owner shall install, operate or maintain any underground storage tanks or similar device on or about its Parcel.

Each Owner with respect to its Parcel(s), shall immediately notify the other Owners by providing a copy of the following with respect to such Owner's Parcel(s): (i) any notice of violation or potential or alleged violation of any laws, ordinances or regulations which the Owner shall have received from any third party or governmental agency concerning the use, storage, release and/or disposal of Hazardous Materials; (ii) any and all inquiry, investigation, enforcement, cleanup, removal or other third party or governmental or regulatory actions instituted or threatened relating to such Parcel(s); (iii) all claims made or threatened by any other Owner relating to any Hazardous Materials; and (vi) any release of Hazardous Materials on or about the Parcels which such Owner knows of or reasonably believes may have occurred.

12.2 **Specific Substances.** No Owner or Permittee shall introduce, or permit any other Person to introduce Hazardous Materials into any portion of the Project unless such Hazardous Materials are generated, used, stored, transported, or handled in the ordinary course of business operations.

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12.3 **Cleanup of Hazardous Materials.** In the event Hazardous Materials are released within the Project in violation of these provisions or any Environmental Laws and such release occurred as a direct or indirect result of an Owner's or a Permittee's use, handling, storage or transportation of such Hazardous Materials, such Owner engaged in such activity or whose Permittee engaged in such activity shall be solely responsible and shall be liable for the prompt cleanup and remediation of any resulting contamination and will, to the fullest extent allowed by law, indemnify, protect, defend and hold harmless the Declarant, Association, the other Owners, and any management company from all Claims suffered by or incurred by such parties, except to the extent caused by the negligence or willful misconduct of such other Owner.

## **ARTICLE 13**

### **DURATION AND ENFORCEMENT**

13.1 **Abatement and Suit.** The Owner of a Parcel shall be primarily liable, and the Occupant, if any, secondarily liable for the violation or breach of any condition, covenant or restriction herein contained. Violation or breach of any condition, covenant or restriction herein contained shall give to the Association, following thirty (30) days' written notice to the Owner or Occupant in question (but not for so long as the Owner or Occupant is diligently pursuing the cure of any violation or breach which, by its nature, takes more than thirty (30) days to cure), a right of action at law or in equity against the person or person who have violated or are attempting to violate any of these covenants, conditions or restrictions to enjoin or prevent them from doing so, to cause said violation to be remedied, or to recover damages for said violation in accordance with **Section 13.2** below.

13.2 **Enforcement and Nonwaiver.** The Association shall have a right of action against any Owner, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation and any other right to bring an action for specific performance, injunctive relief or any action for declaratory relief in a court of competent jurisdiction.

13.3 **Failure to Enforce is No Waiver.** The failure of Declarant or the Association to enforce any requirement, restriction or standard herein contained shall in no event be deemed to be a waiver of the right to do so thereafter or in other cases, nor of the right to enforce any other restriction.

## **ARTICLE 14**

### **ANNEXATION OF ADDITIONAL PROPERTY**

14.1 **Annexation.** Any of the Additional Property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article. Declarant may elect not to develop all or any part of such real property, to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order or develop such real property as a separate project.

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Although Declarant shall have the ability to annex the Additional Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such property, and such property shall not become subject to this Declaration unless and until a Supplementary Declaration covering it has been recorded. Notwithstanding anything to the contrary herein, prior to the sale of any Parcel by Declarant to a party who is not an Affiliate, Declarant shall annex such Parcel as set forth in this **Article 14**.

14.2 **Annexation Without Approval.** All or any part of the Additional Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that each Supplementary Declaration effecting the Annexation contemplated under this Section must be executed by Declarant.

14.3 **Covenants Running With The Land.** The restriction on the Additional Property wherein it may be made subject to this Declaration upon the recordation of a Supplementary Declaration is hereby declared to be an equitable servitude upon the Additional Property in favor of the subject Property and any other real property owned by Declarant in the vicinity of the Project and shall run with the land and be binding on and inure to the benefit of all parties having or acquiring any right, title or interest, in such real property.

14.4 **Supplementary Declaration.** The Annexation authorized under the foregoing Sections shall be made by filing of record by or with the consent of Declarant, a Supplementary Declaration, or similar instrument, with respect to the Additional Property which shall extend the plan of this Declaration to such property. Such Declarations of Annexation contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Additional Property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration or any merger or consolidation revoke, modify or add to the covenants established by this Declaration, discriminate between some Owners of such Additional Property and other Owners of any Parcels within the Project except as provided herein, change the general common plan or cost-sharing mechanisms created by this Declaration, nor affect the provisions hereof or thereof as covenants running with the land or equitable servitudes. The express desired intention of Declarant is to establish a cohesive plan of such covenants and servitudes to be uniformly applicable to the Project, including those portions added thereto by annexation.

14.5 **Rights And Obligations Of Owners.** After the required annexation procedures are fulfilled, all Owners of such Property shall thereupon be subject to this Declaration. After each Annexation, the assessments shall be assessed in accordance with the provisions of **Article 5** of this Declaration.

14.6 **De-Annexation.** Declarant may delete all or any portion of the Property and the Additional Property from the coverage of this Declaration and rescind any Supplementary Declaration, provided Declarant is the sole Owner of all of the real property described in the Supplementary Declaration to be rescinded. Such deletion shall be effective upon the recordation of a "Notice of Deletion of Territory," signed by Declarant, in the same manner as the Supplementary Declaration to be rescinded was recorded. In addition, no portion of the

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Property containing (i) the Slope Maintenance Areas, (ii) the Project Drainage Facilities, (iii) the Pedestrian and Equestrian Trail or (iv) Lot A, may be deleted without the prior approval of the City.

## ARTICLE 15

### MISCELLANEOUS

15.1 **Amendments.** This Declaration may be amended only by the mutual agreement of a Majority of Owners and so long as Declarant owns any portion of the Project, the consent of the Declarant shall be required for any such amendment. In addition, no provision of this Declaration pertaining to the maintenance of (i) the Parkway Landscape Area, (ii) the Slope Maintenance Areas, (iii) the Project Drainage Facilities, (iv) the Pedestrian and Equestrian Trail and (v) Lot A, may be amended without the prior approval of the City. Notwithstanding any provision of this Declaration to the contrary, in no event shall the following provisions of this Declaration be amended, deleted, or modified without the prior written consent of PPH: Section 1.3, Section 1.55, Section 1.56, the second sentence of Section 4.2.3, Section 6.6, and Section 8.10 (collectively, the "**PPH Approval Sections**"). In addition, in no event shall this Declaration amended, modified, added to, or deleted from in a manner that would have the practical effect of modifying, changing, limiting, or curtailing any right of PPH under the PPH Approval Sections, without PPH's prior express written consent.

15.2 **Requirements for Consent By Owners.** To the extent that the consent of any of the Owners is required under this Declaration, Owners shall have fifteen (15) days to provide notice of approval or disapproval of the item for which consent is required and if the Owner fails to respond within such fifteen (15) day period, the request shall be deemed approved. All Owners shall, in connection with providing any consents required under this Declaration, have an obligation to the other Owners to act in accordance with the covenant of good faith and fair dealing and all consents shall not be unreasonably withheld, delayed or conditioned unless the provisions of the Declaration with respect to a particular consent or approval expressly provide otherwise.

15.3 **Notices.** Any notice, payment, demand, offer, or communication required or permitted to be given by any provision of this Declaration shall be deemed to have been sufficiently given or served for all purposes if personally delivered (including Federal Express and other express courier services) or if sent by registered or certified mail, postage and charges prepaid, or if such notice is rejected at the then designated address of the Owner intended. Upon at least ten (10) days prior written notice, each Owner shall have the right to change its address to any other address within the United States of America.

To Declarant: JRM-ERTC, I, L.P.  
1040 S. Andreasen Dr., Suite 200  
Escondido, CA 92029



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To the Association: Escondido Research and Technology Center Owners Association  
c/o JRM-ERTC, I, L.P.  
c/o JRMC Real Estate, Inc.  
1040 S. Andreasen Dr., Suite 200  
Escondido, CA 92029

Attn: President  
Telephone: (760) 781-5300  
Fax: (760) 781-5333

To Owners: To each Owner at the address provided to the Association by such Owner.

Any such notice shall be deemed to have been delivered upon receipt if delivered by personal delivery or Federal Express or other express delivery service, or as of the third business day after mailing if sent by registered or certified mail.

In the event any Owner requires the addresses of all other Owners in order to provide notices pursuant to the provisions of this Declaration, the Association shall, upon the Owner's request, promptly provide to such Owner the current addresses for notices of all Owners, as appropriate, of Parcels in the Property, and notices sent by an Owner to the other Owners using such addresses (if sent in compliance with the provisions of this **Section 15.3**) shall be deemed effective. Owners shall provide the Association with their current addresses for notices upon acquisition of a Parcel and at any time such addresses change during ownership of a Parcel.

**15.4 Binding Effect.** All of the limitations, covenants, conditions, easements, and restrictions contained herein shall attach to and run with the Parcels, and shall benefit or be binding upon the successors and assigns of the respective Owners. This Declaration and all the terms, covenants and conditions herein contained shall be enforceable as equitable servitudes in favor of said Parcels and any portion thereof. Every person who now or in the future owns or acquires any right, title or interest in or to any Parcel or portion thereof shall be conclusively deemed to have consented to and agreed to every covenant, restriction, provision, condition and right contained in this Declaration, whether or not the instrument conveying such interest refers to this Declaration.

**15.5 Waiver of Default.** No waiver of any default by any Owner to this Declaration shall be implied from any omission by any other Owner to take any action in respect of such default if such default continues or is repeated. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any term, provision or covenant contained in this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Declaration. The consent or approval by any Owner to or of any act or request by any other Owner requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests. The rights and remedies given to any Owner by this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or

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if any other right or remedy at law or in equity which any such Owner might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by any such Owner shall not impair such Owner's standing to exercise any other right or remedy.

15.6 **Breach - Effect on Mortgagee and Right to Cure.** Breach of any of the covenants or restrictions contained in this Declaration 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 Owner of any portion of the Project, or any part thereof, who acquires title by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale.

15.7 **Attorneys' Fees.** In the event of any action for breach of or to enforce any provision or right hereunder, the non-prevailing party in such action shall pay to the prevailing party all costs and expenses expressly including, but not limited to, reasonable attorneys' fees and costs incurred by the prevailing party in connection with such action.

15.8 **No Partnership.** Neither this Declaration nor any acts of the Owners shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Owners.

15.9 **Severability.** In the event any term, covenant, condition, provision, or agreement contained herein is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity of enforceability of any other term, covenant, condition, provision, or agreement contained herein.

15.10 **Governing Law.** This Declaration and the obligations of the Owners hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of California, without regard to conflict of law rules.

15.11 **Captions.** Article and section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Declaration or any provisions hereof. Whenever required by the context of this Declaration, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter. All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and vice versa.

15.12 **Estoppel Certificate.** The Association shall upon not less than thirty (30) days from receipt of written notice from an Owner execute and deliver to such Owner, a certificate in recordable form stating: (a) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); and (b) whether or not to the best of its knowledge the

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Owner is in default in any respect under this Declaration and if in default, specifying such default. The Association may charge a reasonable fee for the issuance of such estoppel certificates.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts actually known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information.

15.13 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Owner, the Declarant or the Association hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

15.14 **Limitation of Liability.** Any person acquiring fee or leasehold title to any of the Parcels or any portion thereof, shall be bound by this Declaration only as to the Parcel or portion of the Parcel acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such Parcel or portion of the Parcel; and, upon conveyance or transfer of the fee or leasehold interest and delivery of the notices under **Section 1.42** shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this **Section 15.14**, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said tracts running with the land.

15.15 **Time of Essence.** Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

15.16 **Entire Declaration.** This Declaration and the exhibits hereto contain all the representations and the entire Declaration with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and Exhibits hereto. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any Owner.

15.17 **Excuse for Non-Performance.** Each Owner shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions hereof (unless such payment is conditioned upon performance of any obligation or undertaking excused by this Section), in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage; inability to procure or general shortage of labor, equipment, facilities,

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materials or supplies in the ordinary course on the open market; failure of normal transportation; strikes, lockouts, action of labor unions; condemnation, requisition; laws or orders of governmental or civil or military authorities; breach or default of the other Owners of any of its obligations hereunder; failure to obtain necessary governmental approvals or permits despite the exercise of due diligence and good faith efforts by a Owner, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, other than the lack of or inability to obtain funds or causes which were reasonably foreseeable.

15.18 **Duration.** This Declaration and each term, easement, covenant, restriction and undertaking of this Declaration will remain in effect for a term of ninety-nine (99) years from the recordation date hereto and will automatically be renewed for successive ten (10) year periods unless the Majority of Owners elects by written notice to the other Owners not to so renew; provided that any election not to renew must be made not less than ten (10) years prior to the date that such non-renewal is to take effect. The easements under **Article 2** shall survive the termination of this Declaration and shall exist in perpetuity.

15.19 **Occupants.** Any agreement for the leasing or granting of any right to use a Parcel or Building shall provide that the terms of such lease or other agreement shall be subject in all respects to the provisions of this Declaration, and any amendments thereto, and any Governmental Requirements. Any Owner who shall lease or grant any rights to use such Owner's Parcel and/or Building shall be responsible for assuring compliance by such Owner's Occupant with this Declaration. An Owner shall be permitted to assign all or a portion of its obligations and rights under this Declaration to an Occupant but no such assignment shall relieve or release such Owner from its obligation under this Declaration. Such assignment shall become effective upon delivery of written notice of such assignment to the Declarant and Declarant. To the extent only a portion of the duties, obligations and/or rights of the Owner are being assigned, such notice shall so specify the obligations which are being assigned. In addition, any Owner shall upon being requested to do so by the Declarant, immediately take such action or actions in respect to such Owner's Occupants as may be necessary or required to cause such Occupant to fully comply with each and all of the terms and provisions of this Declaration.

15.20 **Easements Reserved And Granted.** Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Parcel.

15.21 **Exhibits.** All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

15.22 **Notification Of Sale Of Parcel.** Concurrently with the consummation of the sale of any Parcel under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and his or her Mortgagee and transferor, the common address of the Parcel purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon

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written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his or her transferor if the Board has received no notice of transfer as above provided, by certified mail return receipt requested, at the mailing address above specified.

15.23 **Cumulative Remedies.** Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver.

15.24 **Exhibits.** The following exhibits are attached to this Declaration and are made a part hereof by reference as though fully set forth herein.

Exhibit "A"	Legal Description of Property
Exhibit "B"	Site Plan
Exhibit "C"	Legal Description of Additional Property
Exhibit "D"	Association Property
Exhibit "E"	Offsite Maintenance Areas
Exhibit "F"	Slope Maintenance Areas and Pedestrian and Equestrian Trails
Exhibit "G"	Land Area
Exhibit "H"	Project Drainage Facilities
Exhibit "I"	Association Landscape Maintenance Standards
Exhibit "J"	City of Escondido Storm Water Management Requirements and Local Standard Urban Storm Water Mitigation Plan
Exhibit "K"	National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity

IN WITNESS WHEREOF, this Declaration has been made and executed as of the date first above written.

DECLARANT:

JRM-ERTC, I, L.P., a California limited partnership

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

Name: James McCann

Title: General Partner

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STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

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## SUBORDINATION AGREEMENT

The undersigned ("Beneficiary") holds the beneficial interest in that certain Deed of Trust recorded in the Office of the County Recorder of San Diego County on October 14, 2004 as Instrument No. 2004-0975182, which Deed of Trust encumbers all or a portion of the real property covered by the First Amended and Restated Declaration of Covenants, Conditions and Restrictions of Escondido Research and Technology Center ("Declaration"). Beneficiary now subordinates the Deed of Trust and its beneficial interest thereunder to (a) the foregoing Declaration, (b) any Supplementary Declaration which is recorded pursuant to the Declaration (c) any amendment or restatement of the Declaration or any Supplementary Declaration and (d) all easements to be conveyed to the Escondido Research and Technology Center Owners Association pursuant to this Declaration or any Supplementary Declaration.

Dated: \_\_\_\_\_

San Diego National Bank, a National Banking Association

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

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## EXHIBIT "A"

### Legal Description of Property

Lots B, 10 through 23, inclusive, 25 and 26 of Escondido Tract No. 834, Map No. \_\_\_\_\_,  
recorded in the Office of the San Diego County Recorder's Office on  
\_\_\_\_\_.



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## EXHIBIT "B"

### Site Plan

*||Needs to show Mitigation Area on Lot A. Do not show Lot 24 or Lot A as part of the Property.||*

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## EXHIBIT "C"

### Legal Description of Additional Property

Lots A, C, D, E, F, G, 1 through 9, inclusive, and 27 through 41, inclusive, of Escondido Tract No. 834, Map No. \_\_\_\_\_, recorded in the Office of the San Diego County Recorder's Office on \_\_\_\_\_.

*||Needs to include description of SDG&E Detention Basin Lots at South end of Project.||*

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## EXHIBIT "D"

### Association Property

*||Insert Lot 23 and Lot B?||*

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## EXHIBIT "E"

### Offsite Maintenance Area

*||Include (1) Parkway Landscape Area; (2) Lot 24 Easement Area; (3) SDG&E Property; (4) Slope Maintenance Area and trails on Additional Property. Add Lots A and 41.||*

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## EXHIBIT "F"

### Slope Maintenance Areas and Pedestrian Trails

*||Should show Slope Maintenance Area and Pedestrian Trail for entire property||*

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## EXHIBIT "G"

### Land Area

LOT #	GROSS ACREAGE	LOT #	GROSS ACREAGE	LOT #	GROSS ACREAGE
2	2.81	6	2.466	10	2.181
3	1.526	7	1.823	11	1.249
4	1.525	8	3.389	12	2.197
37	3.408	39	2.784	13	1.234
5	3.233	9	5.263	14	1.062
38	2.963	40	2.055	15	1.39
16	2.948	22	5.197	27	2.28
17	2.227	23	2.413	28	6.72
18	1.918	24	1.006	29	10.47
19	1.867	25	1.332	30	2.499
20	3.18	26	2.671	31	1.96
21	3.634			32	2.139
41	5.047			33	5.299
				34	10.314
				35	8.522
				36	6.04

**Final Subdivision Gross Acreage for Lots 2 – 42**

**132.241**

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## **EXHIBIT "H"**

### **Project Drainage Facilities**

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## EXHIBIT "I"

### Association Landscape Maintenance Standards

#### **A. Scope of Work**

The work consists of general landscape maintenance within the Association Maintenance Areas. The work includes moving, edging, weeding, fertilizing, litter control, maintenance of all plants, maintenance of the irrigation systems and the replacement of any damaged or vandalized irrigation equipment or plant material.

#### **B. Public Convenience**

The Association shall conduct the work at all times in a manner which will not interfere with normal pedestrian traffic on adjacent sidewalks or vehicular traffic on adjacent streets.

#### **C. Irrigation General**

The Association shall maintain the entire irrigation system. This is included, but is not limited to, the replacement, repair, adjustment, and monitoring of the system to assure continued operation. The controllers and valve boxes shall be kept clean of soil and debris. Water usage shall not exceed the amount approved by Rincon del Diablo Municipal Water District. The irrigation controllers shall be turned off during periods of rain by the Association and turned back on and reprogrammed at the completion of each rainy period. Damages to public or private property resulting from excessive irrigation or irrigation water runoff shall be the responsibility of the Association to correct. The Association shall periodically inspect and test the operation of the system for any malfunction.

All repairs and/or replacement parts shall conform to the type and kind of the existing system. All repairs shall be made in a timely manner.

#### **D. Pruning and Edging**

The Association shall be responsible for the pruning of all shrubs and groundcover within the Association Maintenance Areas to maintain plants in a healthy, growing condition. Dead or damaged limbs or branches shall be removed immediately and all pruning cuts shall be made cleanly with sharp pruning tools, with no projections or stubs remaining. All pruning shall be accomplished in a manner, which will permit the plants to grow naturally in accordance with their normal growth characteristics. All groundcover shall be edged as needed to prevent overgrowth on curb or sidewalk line. All plant growth shall be prevented from entering onto walkways, roadways, hard surface areas, and along fences and walls. Edging by chemical methods around trees, shrubs and along fence lines is approved as long as it does not affect adjacent private landscaping.

#### **E. Tree Maintenance**

All trees shall be maintained in their natural shapes. All pruning shall be done according to approved industry standards and shall be limited to removal and disposal of any dead and/or



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broken branches and any sucker growth located in or on the tree. A minimum clear area of 6' shall be maintained under all trees. The Association shall maintain at his expense all tree stakes and supports. Trees shall be maintained in an erect, upright manner and shall be staked as necessary to maintain this position. The Association shall remove or loosen any and all stakes and/or ties whenever girdling is causing damage to the trunk.

## **F. Mowing**

The Association shall be responsible for mowing and edging all turf grass areas. All turf areas shall be mowed to a height of 1.5" to 2". Mowing shall normally occur once a week. All turf grass shall be edged along sidewalks, walls, fences, planters, rocks, paved and hard surface areas and other features every time the area is mowed. The Association shall be required to pick up and dispose of grass clippings after each mowing operation.

## **G. Removal of Debris**

Promptly after the mowing, trimming, raking, weeding, edging, and other work, the Association shall remove all debris generated by the performance of such work. All Association Maintenance Areas shall be kept free of all debris.

## **H. Weed Control**

All Association Maintenance Areas shall be reasonably kept free of weeds. Weeds shall be controlled by hand or mechanical methods. Herbicides may be used for weed control. All noxious plant materials shall be removed immediately by hand. Weeds and plant material removed shall be disposed of by the Association off-site.

## **I. Disease and Pest Control**

The Association shall regularly inspect all plants for presence of disease or insect infestation. The Association shall implement all necessary control measures exercising extreme caution in the application of any spray material, dusts or other materials utilized.

## **J. Fertilization**

All planted areas shall receive two (2) applications of fertilizer per year. Turf areas shall receive four (4) applications of fertilizer per year. Fertilizer shall be delivered to the site in the original unopened container, bearing the manufacturer's guaranteed analysis. Any fertilizer that becomes caked or damaged, making it unsuitable for use, will not be accepted. Immediately following application at each site, the fertilizer shall be thoroughly watered into the soil.

## **K. Replacement of Plant Material**

Association shall be responsible for the replacement of any tree, shrub or groundcover which is damaged or lost for any reason. In order to insure maximum healthy growth and overall aesthetic appearance of planting, it may be desirable to replace certain plants.

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## **EXHIBIT "J"**

### **City of Escondido Storm Water Management Requirements and Local Standard Urban Storm Water Mitigation Plan**

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## **EXHIBIT "K"**

### **National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity**

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## **EXHIBIT "L"**

### **Architectural Pre-Approvals**

**[to be attached]**