

# **ADDENDUM G**

## **Summary of Key Terms**

### **PDP Pomerado LLC Operating Agreement ("Agreement")**

- The Agreement is the operating agreement for the joint venture entity ("LLC") through which PPH and PMB Poway LLC ("PMB") will jointly develop the Outpatient Services Pavilion ("OSP"). The initial Members of the LLC shall be PPH and PMB, and the initial Manager of the LLC shall be PMB.
- The Agreement contains a non-competition provision which provides that PMB shall not acquire a direct or indirect interest in, develop, construct, or operate a medical office building within the "Protected Area" at any time within the first ten (10) years after the date the Agreement is executed. § 2.7.
- PMB is obligated to:
  - (a) provide the construction lender with all necessary construction loan and other guarantees and related environmental indemnities, and (b) provide PPH with substantially similar guarantees and indemnities. § 2.8.1.
  - use its commercially reasonable efforts to obtain all required architectural plans and governmental entitlements and permits to develop the Project and build it in accordance with approved plans on behalf of the LLC. § 2.8.2.
  - use its commercially reasonable efforts to lease the Project to end-users and to manage, operate, and maintain the Project in a commercially reasonable manner and in accordance with the applicable Business Plan. § 2.8.3.
- PPH's leasing of land shall constitute PPH's initial Capital Contribution. PPH shall receive a credit to its Capital Account in an amount equal to a 30% membership interest in the LLC.
- Except for situations in which the Members' approval is expressly required, the Manager shall have complete and exclusive authority, power, and discretion to manage and control the LLC's business, property, and affairs §§ 5.1 and 5.3.
- The Manager shall be entitled to the following fees:
  - An asset management fee of \$1,500 per month § 5.11.1.
  - A Property Management Fee in the amount of four percent § 5.11.3.
  - During initial construction, a Construction Management Fee in the amount of Eight Hundred Forty-Five Thousand Dollars (\$845,000) § 5.11.4.
  - After completion of initial construction, a Construction Management Fee of three percent. § 5.11.5.
  - A leasing fee equal to four percent (4%) of the total lease consideration over the initial five (5) year lease term, excluding the Lease to be entered into by PPH. § 5.11.8.
  - Interest on loans at a rate of two percent (2%) over the lowest commercial rate available to the LLC. § 5.11.9.
- The LLC shall pay Pacific Medical Buildings, L.P. a Development Fee in the amount of One Million Five Hundred Thirty-Six Thousand Dollars (\$1,536,000). § 5.11.6.
- The Manager shall submit a proposed business plan, which shall include a proposed construction budget and an operating budget § 5.15.
- Distributable Cash to the Members shall be in the following order of priority: (§ 6.5)
  - First, to the Members prorata to pay the unpaid, accrued Preferred Return until the unpaid, accrued Preferred Return is paid in full.
  - Second, to the Members prorata to pay the then-current Preferred Return until the then-current Preferred Return is paid in full.
  - Third, to the Member(s) prorata who make(s) an Additional Capital Contribution in proportion to such Additional Capital Contribution(s), until such Additional Capital Contribution(s) is/are paid in full.
  - Thereafter, 15% to PPH and 85% to PMB.

- Cash From Sale or Refinancing to the Members, in the following order of priority: (§ 6.6)
  - First, to the Members prorata to pay the unpaid, accrued Preferred Return until the unpaid, accrued Preferred Return is paid in full.
  - Second, to the Members prorata to pay the then-current Preferred Return until the then-current Preferred Return is paid in full.
  - Third, to the Member(s) prorata who make(s) an Additional Capital Contribution in proportion to such Additional Capital Contribution(s), until such Additional Capital Contribution(s) is/are paid in full.
  - Fourth, to the Members prorata until they have received Distributions equal to their Net Investment Amount.
  - Thereafter, 30% to PPH and 70% to PMB.
- PPH shall be entitled to Transfer all or part of its Membership Interest subject to certain limitations set forth in § 7.2 and a right of first offer to PMB (§ 7.7). § 7.1.
- PMB may not Transfer all or part of its Membership Interest without Member Approval. Any such transfer shall be subject to certain limitations set forth in § 7.2 and a right of first offer to PPH (§ 7.7).

# OPERATING AGREEMENT

## PDP POMERADO LLC

A CALIFORNIA LIMITED LIABILITY COMPANY

---

THIS OPERATING AGREEMENT ("**Agreement**") is made as of February \_\_\_\_\_, 2006 ("**Effective Date**"), by and among the Members (collectively the "**Members**" and individually as a "**Member**") and the Manager listed on the signature page(s) below.

### RECITALS

On January 6, 2006, Articles of Organization for PDP POMERADO LLC (the "**LLC**"), were filed with the California Secretary of State (the "**SOS**"). The Manager and Members wish to adopt and approve this Operating Agreement for the LLC.

Now, therefore, acknowledging the receipt and adequacy of good and valuable consideration, the parties agree as follows:

### TERMS

#### Article 1 DEFINITIONS

When used in this Agreement, the terms listed in **Exhibit A** shall be defined as set forth therein. Any terms used and defined elsewhere in this Agreement shall be defined as set forth elsewhere.

#### Article 2 ORGANIZATIONAL MATTERS

**2.1. Formation.** Pursuant to the Act, the Members have formed a limited liability company under California law by filing the Articles with the SOS and entering into this Agreement. The Members' respective rights and liabilities shall be determined pursuant to the Act and this Agreement. To the extent the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall control to the maximum extent permitted by the Act.

**2.2. Name.** The LLC's business may be conducted under its name or, in compliance with applicable laws, any other name that the Manager, with Member Approval, deems appropriate or advisable. The Manager shall file any fictitious name certificates and similar filings, and any amendments thereto required by law or that the Manager considers appropriate or advisable.

**2.3. Office and Agent.** The address of the office in California where the LLC shall maintain its records is 12348 High Bluff Drive, Suite 210, San Diego, California 92130. The LLC, with Member Approval, may, from time to time, change the location of its principal office or add additional office(s), in or outside California. Its registered agent shall be as stated in the Articles or as otherwise determined by the Manager.

**2.4. Addresses.** The addresses of the Members and Manager are set forth on **Exhibit B**.

**2.5. Purpose.** The LLC's purpose is to engage in any lawful activity for which a limited liability company may be organized under the Act. Without Member Approval, the LLC shall not engage in any business other than the following:

**2.5.1.** The business of entering into the Ground Lease (with prior Member Approval thereof) and developing and improving the Property with the O.S.P. and related improvements, managing, operating, and leasing the Property and the O.S.P. pursuant to a program and budgets adopted and incurring financing to facilitate the foregoing, all with Member Approval; and

**2.5.2.** Such other activities directly related to the above as may be necessary, advisable, or appropriate, in the Manager's reasonable opinion (but subject to any applicable approval requirement set forth in this Agreement or in any other contract to which the LLC is a party, to further this business.

**2.6. Project Investment.** Without Member Approval (in each Member's sole, absolute discretion), no third party shall be permitted to invest in this LLC. If PMB requires any third party investment capital, it shall obtain same for its own account.

**2.7. Competitive Activities Within District.** PMB shall not, and shall not permit any of its officers, employees, or Affiliates to, acquire a direct or indirect interest in, develop, construct, or operate a medical office building within the "**Protected Area**" (described on the attached **Exhibit F**) at any time within the first ten (10) years after the Effective Date.

**2.8. PMB Obligations.**

**2.8.1. Project Guarantees.** PMB shall cause its Affiliates to provide: (a) to the construction lender, all necessary construction loan and other guarantees and related environmental indemnities, and (b) to PPH, substantially similar guarantees and indemnities.

**2.8.2. Project Entitlements.** PMB shall use its commercially reasonable efforts to obtain all required architectural plans and governmental entitlements and permits to develop the Project and build it in accordance with approved plans on behalf of this LLC.

**2.8.3. Project Leasing.** PMB shall use its commercially reasonable efforts to lease the Project to end-users (subject to any Ground Lease restrictions) and to manage, operate, and maintain the Project in a commercially reasonable manner and in accordance with the applicable Business Plan.

**Article 3**

**CAPITAL CONTRIBUTIONS**

**3.1. Initial Capital Contributions.** PPH's initial Capital Contribution shall be entering into the Ground Lease with the LLC; PPH shall receive a credit to its Capital Account in the amount stated on **Exhibit B**. PMB shall make its initial Capital Contribution in the amount stated on **Exhibit B** on or before the start of construction by the LLC on the O.S.P. The Manager shall revise **Exhibit B** to reflect any additional contributions contributed in accordance with Section 3.2 below.

**3.2. Additional Capital Contributions.** If, at any time, the Manager determines that additional funds are required to meet the obligations of, and/or to conduct the LLC's business, taking into consideration all current and projected liabilities and assets of the LLC, the Manager shall (with Member Approval) use commercially reasonable efforts to do any one or more of the following to raise such additional funds: (a) loan or cause one or more of its Affiliates to loan to the LLC all or part of the amount of the required loan(s), if any, which shall be repaid with interest at the rate of two percent (2%) over the lowest commercial rate available to this LLC, (b) arrange a commercially reasonable loan to the LLC from an independent lender, or (c) contribute or cause to be contributed capital in the form of Additional Capital Contributions and/or permit its Affiliate(s) on its behalf or other consenting Members to do so. In no instance will a Member be required to make an Additional Capital Contribution without its consent (in its sole, absolute discretion). The Manager's decision not to loan or make Additional Capital Contributions shall not be a breach of its fiduciary duty nor shall it be an obligation of the Manager on which any Member is relying.

**3.3. Capital Accounts.** The LLC shall establish an individual Capital Account for each Member and determine and maintain each Capital Account in accordance with Regs § 1.704-1(b)(2)(iv). If a Member Transfers all or part of the Member's Membership Interest in accordance with this Agreement, the Member's Capital Account attributable to the Transferred Membership Interest shall carry over to the new owner of such Membership Interest pursuant to Regs § 1.704-1(b)(2)(iv)(1).

**3.4. No Interest; No Withdrawal.** Except as otherwise provided in this Agreement, no Member shall be entitled to receive any interest or similar return on the Member's Capital Contributions. No Member shall withdraw all or part of its capital in this LLC or receive distributions thereof except as provided in this Agreement.

**Article 4  
MEMBERS**

**4.1. Limited Liability.** Except as required under the Act or expressly set forth in this Agreement, no Member (without its written consent, in its sole, absolute discretion) shall be personally liable for any LLC debt, obligation, or liability, whether that liability or obligation arises in contract, tort, or otherwise.

**4.2. Admission of Additional Members.** The Manager, with Member Approval pursuant to Section 2.6 above, may admit additional Members to the LLC. Any additional Members shall obtain Membership Interests and participate in the LLC's management, Net Profits, Net Losses, and distributions on terms adopted with Member Approval. Notwithstanding the foregoing, substitute members may only be admitted in accordance with Article 7 below.

**4.3. No Withdrawals/Resignations.** Subject to applicable law and except as otherwise provided in this Agreement or adopted with Member Approval, no Member may withdraw or resign from the LLC before the LLC's dissolution and winding up.

**4.4. Termination of Membership Interest.** On Transfer of a Member's Membership Interest in violation of this Agreement, or occurrence of a Dissociation Event as to such Member, a Member's Membership Interest shall be terminated and be subject to being purchased by the LLC or remaining Members as provided herein. Each Member acknowledges and agrees that such termination or purchase of a Membership Interest on the occurrence of any of the foregoing events is reasonable under the circumstances existing as of the Effective Date.

**4.5. Transactions with LLC.** Except as provided in Section 3.2 above, subject to any limitations in this Agreement and with Member Approval after full disclosure of the Member's involvement, a Member may lend money to and transact other business with the LLC. Subject to other applicable law, that Member has the same rights and obligations with respect thereto as a non-Member.

**4.6. Remuneration to Members.** Except as otherwise authorized in or pursuant to this Agreement, no Member is entitled to remuneration for acting in the capacity of a Member or Manager.

**4.7. Members Are Not Agents.** Pursuant to Section 5.1 below and the Articles, the LLC's management is vested solely in the Manager. Members shall have no power to participate in the LLC's management except as expressly authorized by this Agreement or the Articles and except as expressly required by the non-waivable provisions of the Act. No Member acting in the capacity of a Member: (a) is an agent of the LLC, nor (b) can bind or execute any instrument on the LLC's behalf.

**4.8. Voting Rights; Majority Interest.** Except as otherwise required in this Agreement, the Act, or Articles, Members shall have no voting, approval, or consent rights. Members shall have the right to approve or disapprove matters only as specifically stated in this Agreement. Except as may be stated elsewhere in this Agreement, in all other matters in which a vote, approval, or consent of the Members is required, a vote, consent, or approval of PPH and PMB (or, in instances in which either is a defaulting Member, the other) shall be sufficient to authorize or approve such act.

**4.9. Meetings of Members.** The Manager and Members shall call an annual meeting and such other meetings as they deem appropriate. However, no inference shall be drawn from the lack of holding meetings in any timeframe. Except as provided in this Section 4.9, Members' meetings shall be conducted as provided in the Act.

**4.9.1. Call/Notice.** Meetings of the Members may be called at any time by the Manager or by any Member for any purpose (including addressing any matters on which the Members may or are required to vote). If a meeting of the Members is called by a Member, notice of the call shall be delivered to the Manager. Meetings may be held at the principal executive office of the LLC or, with Member Approval, at such other location. After the call of a meeting, the Manager shall give notice of the meeting not less than ten (10), nor more than sixty (60) calendar days before the date of the meeting to all Members. The notice shall state the place, date, and hour of the meeting and the general nature of business to be transacted. No other business may be transacted at the meeting unless agreed to by all Members present at the meeting.

**4.9.2. Quorum.** A quorum at any meeting of Members shall consist of PPH and PMB, represented in person or by proxy. A meeting of Members at which a quorum is not present may be adjourned to another time or place and any business which might have been transacted at the original meeting may be transacted at the adjourned meeting. If a quorum is not present at an original meeting, that meeting may be adjourned by the Member in attendance represented either in person or by proxy. Notice of the adjourned meeting shall be given to each Member.

**4.9.3. Validity.** Attendance of a Member, either in person or by proxy, at a meeting shall constitute waiver of notice, unless that Member objects, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters considered to be described in the notice of the meeting and not so included, if the objection is expressly made at the meeting.

**4.9.4. Proxy.** At all meetings of Members, a Member may vote in person or by proxy. Such proxy shall be filed with the Manager before or at the time of the meeting, and may be filed by facsimile transmission to the Manager at the principal executive office of the LLC or such other address as may be given by the Managers to the Members for such purposes.

**4.9.5. Phone.** Members may participate in a meeting through use of conference telephone or similar communications equipment, provided that all Members participating in such meeting can hear one another. Such participation shall be deemed attendance at the meeting.

**4.9.6. Written Consent.** Any action that may be taken at any meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the Members. Accordingly, all matters referred to in Section 5.3 below may be decided by written action of the Members without a meeting. If the Members are requested to consent to a matter without a meeting, each Member shall be given notice of the matter to be voted upon in the manner described in Section 14.9 below. Any action taken without a meeting shall be effective when the required minimum number of votes have been received. Prompt notice of the action taken shall be given to all Members who have not consented to the action.

**4.10. Certificate of Membership Interest.** A Membership Interest may be represented by a membership certificate, the exact contents of which shall be determined by the Manager. All certificates surrendered to the LLC for transfer shall be cancelled and no new certificates shall be issued in lieu thereof until the former certificates for a like number of Membership Interests shall have been surrendered and cancelled, except with respect to lost, stolen, or destroyed certificates. Any Member claiming that a certificate is lost, stolen, or destroyed may make an affidavit or affirmation of that fact and request a new certificate. On the giving of a satisfactory indemnity to the LLC as reasonably required by the Manager, with Member Approval, a new certificate may be issued of the same tenor representing the same Membership Interest as was represented by the certificate alleged to be lost, stolen, or destroyed.

**4.11. Physician Members.** In consideration of changing laws and regulations governing a hospital's relationships with referral sources, the LLC, its Manager, and its Members shall not allow any physician to become a Member or to otherwise own a direct or indirect interest in the LLC unless PPH and its legal counsel approve the issuance and terms of such Membership Interest or other ownership interest after conducting a regulatory overview. Subject to Member Approval of the offering and availability of any such direct or indirect interests in the LLC, PPH and PMB agree to cooperate and enter into any appropriate and reasonably necessary modifications to this Agreement from time to time to permit the LLC to admit physicians as Members or to otherwise permit physicians to own a direct or indirect ownership interest in the LLC.

## Article 5 LLC MANAGEMENT AND CONTROL

**5.1. Exclusive Management by Manager.** Except as otherwise provided in this Agreement, the LLC's business, property, and affairs shall be managed exclusively by the Manager. Except for situations in which the Members' approval is expressly required by the Articles or this Agreement, the Manager shall have complete and exclusive authority, power, and discretion to manage and control the LLC's business, property, and affairs, to make all decisions regarding those matters and to perform all

other acts or activities customary or incident to the management of the LLC's business, property, and affairs. Subject to Section 5.3 below, the Manager, acting alone, is authorized to: (a) endorse checks, drafts, and other evidences of debt made payable to the LLC's order, (b) execute contracts and incur obligations on the LLC's behalf, (c) pay all invoices, debts, and payables of the LLC, (d) take all actions on its behalf necessary to manage its affairs, as the Manager reasonably determines, (e) sign all checks, drafts, and other instruments obligating the LLC to pay money, and (f) sign contracts and obligations on the LLC's behalf. The Manager shall have the sole power and authority to bind the LLC, except to the extent the Manager delegates such power in writing; any such delegation shall not impair the Manager's power and authority.

**5.2. Powers of Manager.** Without limiting the generality of Section 5.1 above but subject to Section 5.3 below and the express limitations elsewhere in this Agreement, the Manager shall have all necessary powers to manage and carry out the LLC's purposes, business, property, and affairs, including the power to exercise on behalf and in the name of the LLC all powers permitted by law.

**5.3. Limitations on Powers.** The Manager shall not have authority hereunder to cause the LLC to engage in any of the following without first obtaining Member Approval:

- 5.3.1.** Pledge any of the LLC's credit or property for other than LLC purposes.
- 5.3.2.** Assign the LLC's property in contravention of this Agreement.
- 5.3.3.** Confess judgment against the LLC.
- 5.3.4.** Commit any wrongful act making it impossible to carry on the LLC's ordinary business, except for a sale, merger (including a reorganization, acquisition, or similar transaction), or transfer of the LLC or LLC's assets.
- 5.3.5.** Merge the LLC with another entity in a transaction by which a Member is required to become a general partner in a merger with a partnership without the Member's express written consent.
- 5.3.6.** Borrow money on the LLC's behalf and execute and deliver any security instruments necessary to evidence or perfect a lien on all or part of the LLC assets.
- 5.3.7.** Determine the amounts and terms of all financing, whether debt, equity, or otherwise, necessary with respect to the LLC and its business.
- 5.3.8.** Do any act in contravention of this Agreement;
- 5.3.9.** Do any act in contravention of the Ground Lease;
- 5.3.10.** Distribute cash or other property to the Members;
- 5.3.11.** Possess LLC property or assign rights thereto, in either case, other than for the LLC's purpose;
- 5.3.12.** File a voluntary petition for Bankruptcy on the LLC's behalf;
- 5.3.13.** Act in any manner which the Manager knows or should have known after due inquiry will (a) cause the LLC's termination for federal income tax purposes, or (b) cause the LLC to be treated for federal income tax purposes as an association taxable as a corporation;
- 5.3.14.** Transfer the Ground Lease, or any interest in it or in the leasehold estate, to any third party;
- 5.3.15.** Withdraw as, admit, or substitute a Manager to the LLC;
- 5.3.16.** Make a loan of LLC funds to any Person, including either the Manager or any of its Affiliates;
- 5.3.17.** Dissolve the LLC;
- 5.3.18.** Amend this Agreement;
- 5.3.19.** Make income tax elections, except ministerial ones;



**5.3.20.** Acquire any real or personal property, tangible or intangible;

**5.3.21.** Except as provided in this Agreement or the Property Management Agreement, pay any salary, fees, or other compensation to the Manager or any Affiliate thereof;

**5.3.22.** Cause the LLC to redeem or repurchase all or any part of the Membership Interest of a Member;

**5.3.23.** Accept additional Capital Contributions other than those expressly provided for in this Agreement;

**5.3.24.** Admit additional Members to the LLC;

**5.3.25.** Modify or amend the Business Plan;

**5.3.26.** Obtain or refinance any debt secured by LLC assets not expressly contemplated or permitted by this Agreement or the Business Plan;

**5.3.27.** Seek or agree to any material modification of any zoning, permit, or entitlement with respect to the Property or filing a subdivision or parcel map or lot-line adjustment with respect to the Property (or any part of it);

**5.3.28.** Seek or support by any affirmative action any ballot initiative or referendum that may directly and materially adversely affect the Property or attempt to defeat by any affirmative action any ballot initiative or referendum that may directly and materially beneficially affect the Property;

**5.3.29.** Seek or agree to the formation of, or amendment in any material respect not consistent with the Business Plan, a community facilities district, financing district, assessment district, or other municipal financing mechanism that would include within its boundaries or encumber the Property or any part of it;

**5.3.30.** Cause the LLC to enter into an agreement or other arrangement with the Member or its Affiliate, officer, director, equity holder, employee, or agent; or

**5.3.31.** Engage, directly or indirectly, on behalf of the LLC any Person(s) for purposes of constructing any aspect of the O.S.P. or any other improvement on the Property, in excess of One Hundred Thousand Dollars (\$100,000) in any one Fiscal Year.

**5.4. Manager Meetings.** There shall be no mandatory Manager meetings, whether special, annual, or regular. Nothing in this Agreement is intended to require that any Manager meeting be held. The holding of any Manager meeting shall not be deemed to create any obligation to do so thereafter. The Manager may, without a meeting, take any action required or permitted to be taken, if the Manager consents in writing to such action. Such action by written consent shall have the same effect as a vote by the Manager.

**5.5. Members Have No Managerial Authority.** Members shall have no power to participate in the LLC's management except as expressly authorized by this Agreement or the Articles and except as expressly required by the Act. Unless expressly and duly authorized in writing to do so by the Manager, no Member shall have any power or authority to bind or act on the LLC's behalf in any way, to pledge its credit, or to render it liable for any purpose.

**5.6. Number, Term, Election of Manager.** Unless, with Member Approval, the LLC otherwise determines, the LLC shall have one (1) Manager. In no instance shall there be less than one Manager, and if the number of Managers is changed, the Articles shall be amended accordingly. The Manager shall remain Manager unless it resigns or is removed. The Manager need not be a Member, an individual, a resident of California, or a U.S. citizen.

**5.6.1. Resignation.** The Manager may resign with Member Approval. The resignation shall take effect on receipt of that notice or at such later time as shall be specified in the notice. Unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of the Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

**5.6.2. Removal.** PPH alone may remove the Manager only for "**Cause**." As used in this context, "**Cause**" means, while acting as this LLC's Manager: (a) unjustifiable material gross neglect

of the Manager's duties or a material breach of this Agreement or its duties by PMB under law with respect to the LLC, (b) commission of any intentional, wrongful acts, that in each of the foregoing have a material adverse affect on the LLC's business, or (c) failure to complete construction of the Project (i.e., the Building shell and core) as called for in the Ground Lease, subject to all *force majeure* unavoidable delays permitted by the Ground Lease. Cause will be established only after judicial or arbitral determination in accordance with Article 13 below. On removal of the Manager: (x) PPH may select a new Manager, and (y) PMB, as Manager, shall not be entitled to any fees or other remuneration under Section 5.11 below that have not accrued by the effective date of such removal (but PMBRES, if acting as the Project's property manager, shall not be affected by any such removal).

**5.6.3. Vacancies.** Any vacancy occurring for any reason in the Manager position may be filled by Member Approval.

**5.7. Performance of Duties; Manager's Liability.** The Manager shall not be liable to the LLC or any Member for any loss or damage sustained by the LLC or any Member, unless it shall have been the result of fraud, deceit, negligence, reckless, or intentional misconduct, or a knowing violation of law by the Manager. The Manager shall perform its managerial duties in good faith, in a manner it reasonably believes to be in the LLC's and respective Members' best interests, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. The Manager so performing its duties as Manager shall not have any liability by reason of being or having been the LLC's Manager. In performing its duties, the Manager shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, of the following Persons or groups unless it has knowledge concerning the matter in question that would cause such reliance to be unwarranted and provided the Manager acts in good faith and after reasonable inquiry when the need is indicated by the circumstances: (a) one or more officers, employees, or other agents of the LLC whom the Manager reasonably believes to be reliable and competent in the matters presented; (b) any attorney, independent accountant, or other Person as to matters which the Manager reasonably believes to be within such Person's professional or expert competence; or (c) a committee on which the Manager does not serve, duly designated in accordance with the Articles or this Agreement, as to matters within its designated authority, which committee the Manager reasonably believes to merit competence.

**5.8. Devotion of Time.** The Manager's personnel are not obligated to devote all their time or business efforts to the LLC's affairs. The Manager shall, however, cause its personnel to devote whatever time, effort, and skill reasonably necessary or appropriate for the LLC's operation and attainment of its purposes. All Members acknowledge the Manager's personnel act in other capacities for other projects.

**5.9. Competing Activities.** Subject to any contrary provision of the Ground Lease or in this Agreement (including Section 2.7 above), the Manager and each Member and its respective officers, directors, partners, members, managers, agents, employees, and Affiliates may engage or invest in, independently or with others, any business activity of any type or description, including those that might be the same as or similar to the LLC's business and that might be in competition with it. Neither the LLC nor any other Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Manager shall be obligated to present an investment opportunity or prospective economic advantage to the LLC that has been presented to the Manager or any of the Manager's Affiliates, if the opportunity is such that, if presented to the LLC, could reasonably be taken by it in light of its proximity (i.e., a one (1) mile radius from the O.S.P.) to the Project. If the pursuit by the LLC of such opportunity or prospective economic advantage does not obtain Member Approval, the Manager shall have the right to hold any investment opportunity or prospective economic advantage for its own account or to recommend such opportunity to Persons other than the LLC. The Members acknowledge that the Manager and its Affiliates own and/or manage other businesses, including businesses that may compete with the LLC and for the Manager's time. The Members waive all rights and claims which they may otherwise have against the Manager and its officers, directors, shareholders, partners, members, managers, agents, employees, and Affiliates as a result of any of such activities, provided such activities are permitted by this Agreement.

**5.10. Transactions Between LLC and Manager.** Notwithstanding any possible conflict of interest, the Manager may, and may cause its or any Member's Affiliates or Member to, engage in any transaction (including the purchase, sale, lease, or exchange of any property or the rendering of any

service, or the establishment of any salary, compensation, or other terms of employment) with the LLC so long as Member Approval of such transaction first received.

**5.11. Payments to Manager.** The Manager, its Affiliates, and others will perform certain duties for compensation. The Manager and its Affiliates shall receive compensation for such services only as specified in this Agreement. Whenever compensation may be paid to the Manager, its Affiliates, or unaffiliated persons for services rendered to or on the LLC's behalf, the Manager shall determine who shall render which services and, subject to this Agreement, the compensation to be paid. Subject to the LLC's contractual obligations to the Person selected to perform such services, the Manager may from time to time change the Person entitled to render services and receive compensation therefor. Except as otherwise provided in this Agreement, if unaffiliated Persons are engaged to perform all or part of the services for which compensation may be paid to the Manager or its Affiliate under this Agreement, such compensation shall be paid either out of the amounts otherwise to be paid the Manager or its Affiliates for such services under this Agreement or by the Manager or its Affiliates at their own expense without additional cost to the LLC. Unless specifically provided otherwise in this Agreement, the compensation paid for services rendered by the Manager, its Affiliates, or unaffiliated persons shall be similar to the amount that would be paid in the same geographic location for the performance of the same or similar services by a qualified unaffiliated Person as determined on an arm's-length basis.

**5.11.1. Asset Management Fee.** As compensation for its services in managing the LLC, the Manager, or its Affiliates shall be paid an amount equal to One Thousand Five Hundred Dollars (\$1,500) per month for the first ten (10) years of the LLC, and increasing every ten (10) years thereafter by One Thousand Dollars (\$1,000) per month. LLC management services shall include: (a) overall supervision of the LLC and its business; (b) maintenance of the LLC's books and records; (c) disbursement of LLC funds in payment of LLC operating expenses, including taxes and debt service requirements; and (d) preparation and distribution of LLC reports.

**5.11.2. Refinance Commission.** For any loan obtained by the Manager on the LLC's behalf, except the initial construction loan and the initial permanent loan, the LLC shall pay the Manager a loan fee in the amount of one percent (1%) of the loan amount of any Project refinancing (less any commission paid to any cooperating third-party broker(s)). This refinance commission shall be payable on consummation of any such loan.

**5.11.3. Property Management Fee.** The LLC shall pay the Manager (or its Affiliate) a Property Management Fee in the amount of four percent (4%) of the gross revenues received by the LLC (from its tenants or otherwise), but not taking into account common area maintenance charges, or another amount consistent with similar properties in the San Diego area. This fee will be payable monthly in arrears based on actual income received by the LLC during the prior month.

**5.11.4. Construction Management Fee – Initial Construction.** In exchange for services in supervising the O.S.P. initial construction and all related initial improvements to the Property, the LLC shall pay the Manager (or its Affiliate) a Construction Management Fee in the amount of Eight Hundred Forty-Five Thousand Dollars (\$845,000) relating to the initial construction of the Improvements on the Property. This fee shall be payable in equal monthly payments during the Construction Period. In consideration of such fee, PMBLP shall manage and supervise all development, construction, and completion of the Improvements (at no cost to the LLC other than such fee).

**5.11.5. Construction Management Fee – Post-Completion.** In exchange for services in supervising any construction after O.S.P. completion, the LLC shall pay the Manager (or its Affiliate) a Construction Management Fee of three (3%) of all direct construction costs for any construction on the Property after completion of the initial construction of the Improvements or another amount consistent with similar properties in the San Diego area. The Manager will manage and supervise all construction, including manage and control the bidding process, select the contractor(s), award contracts, process change orders, control quality, inspect the construction to insure compliance with drawings and specifications, collect lien waivers, and provide other services required to complete the construction.

**5.11.6. Development Fee.** In exchange for services rendered and to be rendered in the development of the Project, the LLC shall pay PMBLP a Development Fee in the amount of One Million Five Hundred Thirty-Six Thousand Dollars (\$1,536,000). This fee shall be payable 50% at the start of construction and 50% on a monthly basis during the course of construction.

**5.11.7. Project Cost Savings.** Project Cost Savings shall be determined by the Manager, based on the Source and Use of Funds attached hereto as **Exhibit D**, and shall be held in reserve by the LLC until the end of the Construction Period. The Manager, with Member Approval, shall determine whether to pay any bonus(es) from any Project Cost Savings and the amounts of any such bonus(es).

**5.11.8. Leasing Fee.** The LLC shall pay the Manager (or its Affiliate) a leasing fee equal to four percent (4%) of the total lease consideration over the initial five (5) year lease term for any lease entered into by the LLC with a tenant procured by the Manager (or its Affiliate). The 4% fee shall be payable on execution of each lease. No commission shall be payable to any Person with respect to any renewal of a lease. Third party brokers will be compensated from this leasing fee. No leasing fee shall be payable with respect to the Office Space Lease to be signed by PPH at or around the Effective Date. The Members and Manager approve the current commission structure to The Sande Company with respect to the Office Space Lease for the Center for Health Care.

**5.11.9. Interest.** If the Manager or its Affiliate makes loans to the LLC, the LLC shall pay the Manager or its Affiliate interest on such loans. The interest shall be two percent (2%) over the lowest commercial rate available to this LLC.

**5.11.10. Expenses.** The LLC shall reimburse the Manager and its Affiliates for the actual out-of-pocket cost of goods and materials used for or by the LLC. The LLC shall also pay or reimburse the Manager or its Affiliates for organizational expenses (including legal and accounting fees and costs) incurred to form the LLC and prepare the Articles. No Member shall be entitled to reimbursement for legal fees and costs relating to the preparation or negotiation of this Agreement. Except as otherwise provided herein, the Manager and its Affiliates shall not be reimbursed by the LLC for the following expenses: (a) salaries, compensation, or fringe benefits of directors, officers or employees of the Manager or its Affiliates; (b) overhead expenses of the Manager or its Affiliates, including rent and general office expenses; and (c) the cost of providing any service or goods for which the Manager or its Affiliates are entitled to compensation under this Agreement.

**5.11.11. Right to Delegate.** The Manager shall have the right to sub-contract or delegate to any Person, including Affiliate(s), services such as property management, construction management, and/or leasing, at no additional cost to the LLC.

**5.12. Evidence of Authority.** Any note, mortgage, evidence of debt, contract, certificate, statement, conveyance, or other written instrument, and any assignment or endorsement thereof, executed or entered into between the LLC and any other Person, when signed by the Manager, is not invalidated as to the LLC by any lack of authority of the Manager in the absence of actual knowledge on the part of the other Person that the Manager had no authority to execute the same. Any Person dealing with the LLC may rely on a certificate of the Manager as to: (a) the identity of the Manager or any Member of the LLC; (b) the Persons authorized to execute and deliver any document for the LLC or on its behalf; or (c) any act or failure to act by the LLC or as to any other matter involving the LLC, the Manager, or any Member.

**5.13. Officers.** The Manager, with Member Approval, may appoint and remove officers at any time and shall designate all rules and authority relating to them.

**5.14. Limited Liability.** No Person who is the Manager or officer or both the Manager and officer of the LLC shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the LLC, whether that liability or obligation arises in contract, tort or otherwise, solely by reason of being the Manager or officer or both the Manager and officer of the LLC.

**5.15. Business Plan; Budget.** The Manager shall submit to the Members a proposed business plan, which shall include a proposed construction budget and an operating budget (in either case, if applicable for the period covered by the proposed plan) at least ninety (90) days before the start of such period. The initial Business Plan is attached to this Agreement as **Exhibit E**, which plan covers the period from the Effective Date through stabilization of the O.S.P. and refinancing the construction loan with a permanent loan. A proposed business plan that has been approved by the Members for a specified period is referred to herein as the "**Business Plan**" for such period. With respect to a proposed business plan other than the initial Business Plan (**Exhibit E**), each Member shall have thirty (30) days from receipt of the proposed business plan within which to deliver to the Manager its written comments and/or

objections to the proposed business plan; if the Manager has not received such comments and/or objections within such 30-day period from a Member, that Member shall be deemed to have approved the proposed business plan. If a Member timely submits its comments/objections, the Manager and Members shall meet at least once within thirty (30) days after the Manager's receipt of a Member's comments/objections to confer on the subject of the proposed business plan and attempt to resolve any objections before commencement of the period covered by the proposed business plan. If the parties have not agreed to resolve the dispute within thirty (30) days after their first meeting, the Manager and/or any Member may seek to resolve the dispute in accordance with Article 13 below; provided that the Manager and Members shall take all steps to complete such dispute resolution within ninety (90) days after commencement of the dispute resolution process in Article 13 below. Until Member Approval of a proposed business plan for any period Fiscal Year or one is adopted pursuant to Article 13 below: (a) the LLC shall be managed in accordance with the Business Plan for the prior period that ends immediately before commencement of the proposed business plan; and (b) no distributions under this Agreement will be made to Members with respect to the period as to which the proposed business plan for such period exists, until such time as the Business Plan for such Fiscal Year achieves Member Approval or is adopted pursuant to Article 13 below.

## **Article 6**

### **ALLOCATIONS AND DISTRIBUTIONS**

**6.1. Allocations of Net Profit and Net Loss.** Except as otherwise provided in Section 6.2 below, Net Profits shall be allocated to the Members first in proportion to and to the extent of Preferred Return distributions to them and then 15% to PPH and 85% to PMB, and all Net Losses shall be allocated in proportion to and to the extent of the Members' respective Capital Account balances, provided that Net Profit and Net Loss of the LLC for each Fiscal Year or other accounting period that includes a sale of all or substantially all of the LLC's business and assets or an adjustment to Capital Accounts due to a revaluation of the Company's assets pursuant to the regulations promulgated under IRC § 704(b) shall be allocated among the Members in a manner such that, as of the end of such Fiscal Year or other accounting period and taking into account all prior allocations of Net Profit and Net Loss and all distributions made by the LLC through such date, the Capital Account of each Member is, as nearly as possible, equal to the distributions that would be made to such Member pursuant to Section 10.5 below if the LLC were dissolved, its affairs wound up and assets sold for cash equal to their book value, all LLC liabilities were satisfied, and the net assets of the LLC were distributed in accordance with Section 10.5 below immediately after such allocation.

### **6.2. Special Allocations.**

**6.2.1. Minimum Gain Chargeback.** Notwithstanding Section 6.1 above, if there is a net decrease in LLC Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of LLC income and gain for such Fiscal Year (and, if necessary, in subsequent fiscal years) in an amount equal to the portion of such Member's share of the net decrease in LLC Minimum Gain allocable to the disposition of LLC property subject to a Nonrecourse Liability, which share of such net decrease shall be determined in accordance with Regs § 1.704-2(g)(2). Allocations pursuant to this Section 6.2.1 shall be made in proportion to the amounts required to be allocated to each Member under this Section 6.2.1. The items to be so allocated shall be determined in accordance with Regs § 1.704-2(f). This Section 6.2.1 is intended to comply with the minimum gain chargeback requirement contained in Regs § 1.704-2(f) and shall be interpreted consistently therewith.

**6.2.2. Chargeback Minimum Gain / Member Nonrecourse Debt.** Notwithstanding Section 6.1 above, if there is a net decrease in LLC Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the LLC Minimum Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with Regs § 1.704-2(i)(5)) shall be specially allocated items of LLC income and gain for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to that portion of such Member's share of the net decrease in LLC Minimum Gain attributable to such Member Nonrecourse Debt allocable to the disposition of LLC property subject to such Member Nonrecourse Debt (which share of such net decrease shall be determined in accordance with Regs § 1.704-2(i)(5)). Allocations pursuant to this Section 6.2.2 shall be made in proportion to the amounts required to be allocated to each Member under this Section 6.2.2. The items to be so allocated shall be determined in accordance with Regs § 1.704-2(i)(4).

This Section 6.2.2 is intended to comply with the minimum gain chargeback requirement contained in Regs § 1.704-2(i)(4) and shall be interpreted consistently therewith.

**6.2.3. Nonrecourse Deductions.** Notwithstanding Section 6.1 above, any nonrecourse deductions (defined in Regs § 1.704-2(b)(1)) for any Fiscal Year or other period shall be specially allocated in accordance with their respective Percentage Interests.

**6.2.4. Member Nonrecourse Deductions.** Notwithstanding Section 6.1 above, those items of LLC loss, deduction, or IRC § 705(a)(2)(B) expenditures attributable to Member Nonrecourse Debt for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such items are attributable in accordance with Regs § 1.704-2(i).

**6.2.5. Qualified Income Offset.** Notwithstanding Section 6.1 above, if a Member unexpectedly receives any adjustments, allocations, or distributions described in Regs § 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event creates a deficit balance in such Member's Capital Account in excess of such Member's share of LLC Minimum Gain, items of LLC income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible.

**6.2.6. Curative Allocations.** Any special allocations of items of income and gain pursuant to Sections 6.2.1 through 6.2.5 above shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article 6 so that the net amount of any item so allocated and the income, gain, and losses allocated to each Member pursuant to this Article 6 to the extent possible, shall be equal to the net amount that would have been allocated to each such Member had the allocations pursuant to Sections 6.2.1 through 6.2.5 above not occurred.

**6.3. IRC 704(c) Allocations.** Notwithstanding any other provision in this Article 6, in accordance with IRC § 704(c) and the Regs promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the LLC shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the LLC for federal income tax purposes and its fair market value on the date of contribution. Allocations pursuant to this Section 6.3 are solely for purposes of federal, state and local taxes. As such, they shall not affect or in any way be taken into account in computing a Member's Capital Account or share of profits, losses, or other items of distributions pursuant to any provision of this Agreement.

**6.4. Allocation of Net Profits/Losses and Distributions Re Transfer.** If any Membership Interest is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise during any Fiscal Year, each item of LLC income, gain, loss, deduction, or credit for the period before and after the transfer or change in interest shall be determined using an interim closing of the books as of the date of the transfer or change.

**6.5. Distribution of Distributable Cash.** Subject to applicable law and any limitations in this Agreement (including Section 5.15 above), the Manager shall periodically (but not less frequently than annually) distribute any Distributable Cash to the Members, which distributions shall be in the following order of priority:

**6.5.1.** First, to the Members prorata to pay the unpaid, accrued Preferred Return until the unpaid, accrued Preferred Return is paid in full.

**6.5.2.** Second, to the Members prorata to pay the then-current Preferred Return until the then-current Preferred Return is paid in full.

**6.5.3.** Third, to the Member(s) prorata who make(s) an Additional Capital Contribution as provided in Section 3.2 above in proportion to such Additional Capital Contribution(s), until such Additional Capital Contribution(s) is/are paid in full.

**6.5.4.** Thereafter, 15% to Palomar Pomerado Health and 85% to PMB Poway LLC.

**6.6. Distribution of Cash From Sale or Refinancing.** Subject to applicable law and any limitations in this Agreement (including Section 5.15 above), the Manager shall distribute any Cash From Sale or Refinancing to the Members, in the following order of priority:

**6.6.1.** First, to the Members prorata to pay the unpaid, accrued Preferred Return until the unpaid, accrued Preferred Return is paid in full.

**6.6.2.** Second, to the Members prorata to pay the then-current Preferred Return until the then-current Preferred Return is paid in full.

**6.6.3.** Third, to the Member(s) prorata who make(s) an Additional Capital Contribution as provided in Section 3.2 above in proportion to such Additional Capital Contribution(s), until such Additional Capital Contribution(s) is/are paid in full.

**6.6.4.** Fourth, to the Members prorata until they have received Distributions equal to their Net Investment Amount.

**6.6.5.** Thereafter, 30% to Palomar Pomerado Health and 70% to PMB Poway LLC.

**6.7. Setoff.** If a Member is a tenant (or a constituent of a tenant) in the O.S.P. and that tenant is in default under its lease with this LLC, any distributions (whether of Distributable Cash, Cash from Sale or Refinancing, or otherwise) that otherwise would be made to that tenant shall instead be retained by the LLC and applied to all sums due under that lease.

**6.8. Distributees.** All distributions shall be made only to the Persons who, according to the LLC's books and records, are the record holders of the Membership Interests in respect of which such distributions are made on the actual date of distribution. Neither the LLC nor the Manager shall incur any liability for making distributions in accordance with this Section 6.8.

**6.9. Form of Distribution.** A Member, regardless of the nature of the Member's Capital Contribution, has no right to demand and receive any distribution from the LLC in any form other than money. No Member may be compelled to accept from the LLC a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other Members. Except on dissolution and the winding up of the LLC, no Member may be compelled to accept a distribution of any asset in kind.

**6.10. Restriction on Distributions.** No distribution shall be made if and to the extent prohibited by the Act.

**6.11. Return of Distributions.** Except for distributions made in violation of the Act or this Agreement, no Member or Economic Interest Owner shall be obligated to return any distribution to the LLC or pay the amount of any distribution for the LLC's account or to any LLC creditor. The amount of any distribution returned to the LLC by a Member or Economic Interest Owner or paid by a Member or Economic Interest Owner for the LLC's account or to an LLC creditor shall be added to the account(s) from which it was subtracted when it was distributed to the Member or Economic Interest Owner.

**6.12. Obligations of Members to Report Allocations.** The Members are aware of the income tax consequences of the allocations made by this Article 6 and agree to be so bound in reporting their shares of LLC income and loss for income tax purposes.

## Article 7

### TRANSFER AND ASSIGNMENT OF INTERESTS

**7.1. Transfer and Assignment.** PPH shall be entitled to Transfer all or part of its Membership Interest on not less than sixty (60) days prior, written notice to the Manager and all other Members; any Transfer by PPH other than to its Affiliate(s) shall be subject to Sections 7.2 and 7.7 below. PMB may not Transfer all or part of its Membership Interest with Member Approval; provided that PMB may Transfer its Membership Interest to its Affiliate(s) with Member Approval, not to be unreasonably withheld, conditioned, or delayed. Transfers in violation of this Article 7 shall only be effective to the extent set forth in Section 7.6 below. After consummation of any Transfer of all or part of a Membership Interest, the Membership Interest so Transferred shall continue to be subject to this Agreement and any further Transfers shall be required to comply with this Agreement.

**7.2. Further Restrictions on Transfer.** In addition to other restrictions in this Agreement, no Member shall Transfer all or part of the Member's Membership Interest: (a) without compliance with Section 12.11 below, (b) if the Membership Interest to be Transferred, when added to the total of all other

Membership Interests sold or exchanged in the preceding twelve (12) consecutive months, would cause the LLC's termination under the IRC, as determined by the Manager, (c) if the Transfer requires the registration of the Transferred Membership Interest to be registered pursuant to applicable securities laws or subjects the LLC to regulation under the Investment Company Act of 1940, the Investment Advisers Act of 1940, or would implicate ERISA, or (d) if the Transfer violates applicable law. If required by the Manager, the transferor shall provide an opinion of counsel, satisfactory to the Manager, that the proposed transfer would not cause the LLC's termination for federal income tax purposes.

**7.3. Substitution of Members.** A Transferee of a Membership Interest shall have the right to become a substitute Member only if (a) the applicable conditions and requirements of Sections 7.1 and 7.2 above are met, (b) the Person executes an instrument reasonably satisfactory to the Manager accepting and adopting this Agreement, and (c) the Person pays any reasonable expenses in connection with admission as a new Member. The admission of a substitute Member shall not result in the release of the Member who assigned the Membership Interest from any liability such Member may have to the LLC.

**7.4. Permitted Transfers.** The Manager shall provide the Members with written notice of such Transfer as promptly as possible after the requirements of those Sections have been met. Any Transferee of a Membership Interest shall be subject to the restrictions on Transfer imposed by this Agreement.

**7.5. Rights of Representatives.** If a Member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the Member's person or property, that Member's Representative may exercise all that Member's rights for the purpose of settling the estate or administering that Member's property, including any power that Member has under the Articles or this Agreement to give an assignee the right to become a Member, or complying with that Member's obligations under the Agreement. If a Member is an entity and is dissolved or terminated, its Representative shall be likewise empowered.

**7.6. No Effect to Transfers in Violation.** On any Transfer of a Membership Interest in violation of this Article 7, the Transferee shall have no right to vote or participate in the management of the LLC's business, property and affairs or to exercise any rights of a Member. Such Transferee shall only be entitled to become an Economic Interest Owner and thereafter shall only receive the share of one or more of the LLC's Net Profits, Net Losses, and distributions of the LLC's assets to which the Transferor of such Economic Interest would otherwise be entitled. However, if the Manager determines that a Transfer in violation of this Article 7 would cause the LLC's termination under the IRC, the Transfer shall be null and void and the purported Transferee shall not become either a Member or an Economic Interest Owner.

**7.7. Right of First Offer.** Except for Transfers to Affiliates permitted by the above provisions of this Article 7, the Transferring Member ("**Seller**") shall first comply with the following procedure:

**7.7.1.** Seller shall first offer ("**Seller's Offer**") to sell the subject Membership Interest ("**Offered Interest**") to the other Member ("**Other Member**"). Seller's Offer shall be in writing and shall specify the purchase price and the terms and conditions on which Seller would sell the Offered Interest to Other Member.

**7.7.2.** Other Member shall have sixty (60) days after receipt of Seller's Offer to commit to buy the Offered Interest at the price and on such terms contained in Seller's Offer by delivering written notice of such commitment to Seller (the "**Commitment Notice**"). Other Member shall have ninety (90) days after the date of its Commitment Notice to consummate the transaction.

**7.7.3.** Other Member's failure to timely deliver the Commitment Notice shall be deemed a one-time waiver of its right of first offer with respect to the Offered Interest, and Seller shall be permitted, for a period of one (1) year beginning sixty (60) days after the delivery to Other Member of Seller's Offer (the "**Sale Period**"), to sell the Offered Interest to a third party at a price that is no lower than ninety-seven and a half percent (97.5%) of the price, and on terms that are not materially more favorable, than those proposed to Other Member in Seller's Offer; provided that such reduction in price or immaterial alteration of terms shall not pertain to any issue or matter that had been identified by Other Member during its consideration of Seller's Offer and which was a material factor in Other Member's decision not to accept Seller's Offer.



7.7.4. If (a) Other Member decides not to buy the Offered Interest in accordance with this Section 7.7 and Seller fails to consummate the sale or other transfer of the Offered Interest to a third party as set forth in Section 7.7.3 above within the Sale Period, or (b) Other Member fails to consummate its purchase of the Offered Interest within the ninety (90) day period described in Section 7.7.2 above (unless a longer period is agreed on by the Parties), then Seller may not sell or transfer the Offered Interest to a third party without again complying with the procedure set forth in this Section 7.7, and the remaining provisions of this Section 7.7 shall remain in effect.

## **Article 8**

### **DISSOCIATION EVENT RE MEMBER**

8.1. **Dissociation Event.** On occurrence of a Dissociation Event affecting a Member ("Dissociated Member"), the Dissociated Member shall cease to be a Member of the LLC and shall cease to be entitled to vote or participate in the LLC or to demand information except as specifically required by this Agreement. Notwithstanding any contrary provision of the Act, no Dissociated Member shall be entitled to receive any cash or assets from the LLC on occurrence of a Dissociation Event, except as provided in this Article 8.

8.2. **Effect of Dissociation Event.** If a Member suffers a Dissociation Event, the LLC shall not be dissolved. Rather, the Representative of the Dissociated Member must comply with this Article 8. Subject to the right of purchase described in the following subsections, on the winding up and closing of an estate or conservatorship for which the Representative has been acting, the Representative may Transfer the Economic Interest of the Dissociated Member suffering the Dissociation Event to the heirs, legatees, successors-in-interest, or assignees of the Dissociated Member, or to the Person(s) legally entitled thereto, who shall only have the rights of an Economic Interest Holder only unless admitted as a substitute Member as provided in this Agreement.

8.2.1. **Right of Purchase.** If a Member suffers a Dissociation Event, the LLC and other Members shall have the right to buy the Dissociated Member's Membership Interest ("DMMI").

8.2.2. **Purchase Price.** The purchase price for the DMMI shall be the Capital Account balance of the Dissociated Member as adjusted to take into account the value of the LLC's business and assets as of the Dissociation Event; however, if the Dissociated Member, the Dissociated Member's Representative, or the LLC deems the Capital Account balance to vary from the fair market value of the DMMI ("FMV") by more than ten percent (10%), such party shall be entitled to require an appraisal by giving notice of the request for appraisal within thirty (30) days after the Dissociation Event. If so, the FMV shall be determined by three (3) independent appraisers, one selected by the Dissociated Member or that Member's Representative, one selected by a Majority in Interest of the other Members, and one selected by the two appraisers so named. The FMV shall be the average of the two appraisals closest in amount to each other. If the FMV is determined to vary from the Capital Account balance by less than ten percent (10%), the party requesting such appraisal shall pay all expense of all appraisals. In all other events, the party requesting the appraisal shall pay half (½) and the other party shall pay half (½) of such expense. Notwithstanding the foregoing, if the Dissociation Event results from a breach of this Agreement by the Dissociated Member, the purchase price shall be reduced by an amount equal to the damages suffered by the LLC or the other Members as a result of such breach.

8.2.3. **Notice of Intent to Purchase.** Within thirty (30) days after the Manager has notified the other Members as to the DMMI's purchase price determined in accordance with the foregoing, each such Member shall notify the Manager in writing of that Member's desire to buy a portion of the DMMI. The failure of any other Member to submit a notice within this period shall constitute an election by that Member not to buy any of the DMMI. Each other Member electing to buy shall be entitled to buy a portion of the DMMI in the same proportion that the Percentage Interest of the other Member bears to the aggregate of the Percentage Interests of all such Members electing to buy the DMMI.

8.2.4. **Election to Buy Part of DMMI.** If a Member elects to buy none or less than all that Member's prorata share of the DMMI, the other Members may elect to buy more than their prorata share. If the other Members fail to buy the entire interest of the Dissociated Member, the LLC may buy any remaining share of the DMMI.

**8.2.5. Payment of Purchase Price.** The purchase price shall be paid by the LLC or the other Members, as the case may be, by either of the following methods, each of which may be selected separately by the LLC or the other Members:

a. The LLC or the other Members may at the closing pay in cash the DMMI's total purchase price; or

b. The LLC or the other Members may pay at the closing one-fifth (1/5<sup>th</sup>) of the purchase price in which case the balance of the purchase price shall then be paid in four (4) equal annual principal installments, plus accrued interest, payable each year on the anniversary date of the closing. The unpaid principal balance shall accrue interest at the current applicable federal rate as provided in the IRC for the month in which the initial payment is made, but the LLC and the other Members shall have the right to prepay in full or in part at any time without penalty. The obligation to pay shall be evidenced by a promissory note, and if purchased by a Member, secured by a pledge of the Membership Interest being purchased.

**8.2.6. Closing of DMMI Purchase.** The closing for the sale of a DMMI pursuant to this Article 8 shall be held at 10:00 a.m. at the LLC's principal office within sixty (60) days after determination of the purchase price, except that if the closing date falls on a Saturday, Sunday, or California or federal legal holiday, it shall be held on the next succeeding business day. At the closing, the Dissociated Member or that Member's Representative shall deliver to the LLC or the other Members an instrument of transfer (containing warranties of title and no encumbrances) conveying the DMMI. The Dissociated Member or that Member's Representative, the LLC and the other Members shall do all things and execute and deliver all papers necessary fully to consummate such sale and purchase in accordance with this Agreement.

**8.3. Purchase Terms Varied by Agreement.** Nothing contained herein shall prohibit Members from agreeing on other terms and conditions for the purchase by the LLC or Member(s) of the Membership Interest of any Member desiring to retire, withdraw, or resign as a Member in whole or part.

## Article 9

### ACCOUNTING, RECORDS AND REPORTING

**9.1. Financial Statements.** In addition to all other deliveries required by this Article 9, the Manager shall deliver to the Members on a quarterly basis: (a) customary financial statements, including balance sheet, income statement, and cash flow statement, (b) variance reports, and (c) a leasing report detailing all leasing activities and prospective leasing actions.

**9.2. Books and Records.** The LLC's books and records shall be kept, and the financial position and its operational results recorded, in accordance with the accounting methods used for federal income tax purposes unless a different method is required by any agreement or arrangement to which the LLC is a party or by PPH. All books of account, financial statements, reports, and records of the LLC shall be maintained at the LLC's office and be open during reasonable business hours for reasonable inspection and examination by the Members or their authorized representatives who shall have the right to make copies at their expense. The LLC's books and records shall reflect all its transactions and be appropriate and adequate for its business. The LLC shall maintain the following at its principal office in California:

**9.2.1.** A current list of the full name and last known business or residence address of each Member and Economic Interest Owner with the Capital Contributions, Capital Account, and Membership Interest of each Member and Economic Interest Owner;

**9.2.2.** A current list of the Manager's full name and business/residence address;

**9.2.3.** A copy of the Articles and all amendments thereto and executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto have been executed;

**9.2.4.** Copies of the LLC's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

**9.2.5.** A copy of this Agreement and all amendments thereto and executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

**9.2.6.** Copies of the LLC's financial statements, if any, for the six most recent Fiscal Years;

**9.2.7.** The LLC's books and records as they relate to its internal affairs for at least the current and past four Fiscal Years;

**9.2.8.** All records on the cost and value of all property the LLC owns, possesses, or controls in each California county.

**9.3. Delivery to Members; Inspection.** On the request of any Member or Economic Interest Owner for purposes reasonably related to that Person's interest as a Member or Economic Interest Owner, the Manager shall promptly deliver to the requesting Person, at the LLC's expense, a copy of the information described in Sections 9.2.1, 9.2.2, and 9.2.4, and a copy of this Agreement. Each Member, Manager, and Economic Interest Owner has the right, on reasonable request for purposes reasonably related to that Person's interest as Member, Manager or Economic Interest Owner, to: (a) inspect and copy during normal business hours any of the LLC records described in Section 9.1 above; and (b) obtain from the Manager, promptly after their becoming available, a copy of the LLC's federal, state, and local income tax or information returns for each Fiscal Year.

**9.3.1.** Members representing at least five percent (5%) of the Membership Interests, or three or more Members, may make a written request to the Manager for the LLC's income statement for the initial three-month, six-month, or nine-month period of the current Fiscal Year ended more than thirty (30) days prior to the date of the request, and the LLC's balance sheet as of the end of that period. Such statement shall be accompanied by the report thereon, if any, of the LLC's independent accountants or, if there is no report, the Manager's certificate that the statement was prepared without audit from the LLC's books and records. If so requested, the statement shall be delivered or mailed to the Members within thirty (30) days thereafter. The Manager shall, in any event, provide PPH any information that PPH reasonably requests to comply with any reporting or other obligations it may have.

**9.3.2.** Any request, inspection or copying by a Member or Economic Interest Owner under this Section 9.3 may be made by that Person or that Person's agent or attorney.

**9.3.3.** The Manager shall promptly furnish to a Member a copy of any amendment to the Articles or this Agreement executed by the Manager under a power of attorney from the Member.

**9.4. Annual Statements.** The LLC shall send to the Members within ninety (90) days after the close of the Fiscal Year such data necessary (including a statement for that year of each Member's share of Net Income, net gains and losses, and other items of the LLC) for the preparation by the Members of their federal and state income and other tax returns and, if required by applicable law, a copy of the LLC's federal, state, and local tax or information returns for such year.

**9.5. Financial and Other Information.** The Manager shall provide such financial and other information relating to the LLC or any other Person in which the LLC owns, directly or indirectly, an equity interest, as a Member may reasonably request. The Manager shall distribute to the Members, promptly after the preparation or receipt thereof by the Manager, any financial or other information relating to any Person in which the LLC owns, directly or indirectly, an equity interest, including any filings by such Person under the Securities Exchange Act of 1934, that is received by the LLC with respect to any equity interest of the LLC in such Person.

**9.6. Filings.** The Manager, at LLC expense, shall cause: (a) the LLC's income tax returns to be prepared and timely filed with the appropriate authorities, and (b) to be prepared and timely filed, with appropriate federal and state bodies, amendments to or restatements of the Articles and all reports required to be filed by the LLC with those entities under the Act or other applicable laws, rules, and regulations. If the Manager required by the Act to execute or file any document fails, after demand, to do so within a reasonable period of time or refuses to do so, any other Manager or Member may prepare, execute, and file that document with the SOS.

**9.7. Bank Accounts.** The Manager shall maintain the LLC's funds in one or more separate bank accounts in the LLC's name, and shall not permit its funds to be commingled in any fashion with the funds of any other Person.

**9.8. Accounting Decisions; Reliance on Others.** The Manager shall make all decisions as to accounting matters, except as otherwise specifically set forth herein. The Manager may rely on the advice of its accountants as to whether such decisions are in accordance with accounting methods for federal income tax purposes. If PPH's Board requests this LLC to obtain an annual audited financial statement, the Manager shall engage such audit at this LLC's expense.

**9.9. Tax Matters.** The Manager shall from time to time cause the LLC to make such tax elections as it deems to be in the LLC's and Members' best interests. The Tax Matters Partner, defined in IRC § 6231, shall represent the LLC (at its expense) in connection with all examinations of its affairs by tax authorities, including resulting judicial and administrative proceedings, and shall expend LLC funds for professional services and costs associated therewith. The Tax Matters Partner shall oversee LLC tax affairs in the LLC's overall best interests. If for any reason the Tax Matters Partner can no longer serve in that capacity or ceases to be a Manager, the Manager may designate another to be Tax Matters Partner.

## **Article 10 DISSOLUTION AND WINDING UP**

**10.1. Dissolution.** The LLC shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

**10.1.1.** Any event of dissolution specified in the Articles or the expiration of the Term specified in the Articles;

**10.1.2.** The entry of a decree of judicial dissolution pursuant to Code § 17351;

**10.1.3.** Member Approval;

**10.1.4.** The occurrence of any other event that makes it unlawful, impossible, or impractical to carry on the LLC's business; or

**10.1.5.** The sale of all or substantially all the LLC's assets.

The LLC shall not dissolve before the occurrence of any of the above events. If a court of competent jurisdiction determines that the LLC has dissolved before the occurrence of such an event, the Manager and Members shall continue the LLC's business without a winding up or liquidation.

**10.2. Certificate of Dissolution.** As soon as possible after the occurrence of any of the events specified in Section 10.1 above, the Manager (if it has not wrongfully dissolved the LLC or, if it has, the Members) shall execute a Certificate of Dissolution in such form as shall be prescribed by the SOS and file the Certificate as required by the Act.

**10.3. Winding Up.** On occurrence of any event specified in Section 10.1 above, the LLC shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors. The Manager (if it has not wrongfully dissolved the LLC or, if it has, the Members) or such other Person appointed with Member Approval shall be responsible for overseeing the LLC's winding up and liquidation, shall take full account of its liabilities and assets, shall either cause its assets to be sold or distributed, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided in Section 10.5 below. The Persons winding up the LLC's affairs shall: (a) give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the LLC's records; and (b) not be entitled to compensation except for out-of-pocket expenses and for extraordinary services, if any, for which it shall be entitled to receive reasonable compensation in accordance with established practices.

**10.4. Distributions in Kind.** Any non-cash asset distributed to one or more Members shall first be valued at its fair market value to determine the Net Profit or Net Loss that would have resulted if it were sold for such value. Such Net Profit or Net Loss shall then be allocated pursuant to Article 6, and the Members' Capital Accounts shall be adjusted to reflect such allocations. The amount distributed and charged to the Capital Account of each Member receiving an interest in the distributed asset shall be the

fair market value (net of any liability secured by such asset a Member assumes or takes subject to). The asset's fair market value shall be determined by the Manager or by the Members or if any Member objects by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) selected by the Manager or liquidating trustee and approved by the Members.

**10.5. Order of Payment of Liabilities on Dissolution.** After determining that all known LLC debts and liabilities in the process of winding-up, including debts and liabilities to Members who are creditors of the LLC, have been paid or adequately provided for, and after establishing any reserves the Manager (or Members, if applicable) consider necessary, appropriate, or desirable for any future, contingent or unforeseen liabilities, obligations, or debts of the LLC, the remaining assets shall be distributed to the Members in accordance with Section 6.6 above. The liquidating distributions shall be made by the end of the LLC's taxable year in which the LLC is liquidated, or, if later, within ninety (90) days after the date of liquidation.

**10.6. Limitations on Payments Made in Dissolution.** Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely at the LLC's assets for the return of the Member's positive Capital Account balance and shall have no recourse for the Member's Capital Contribution and/or share of Net Profits (on dissolution or otherwise) against the Manager or any other Member except as provided in Article 11.

**10.7. Certificate of Cancellation.** The Manager or Members who filed the Certificate of Dissolution shall cause to be filed in the office of, and on a form prescribed by, the SOS, a certificate of cancellation of the Articles on the completion of the winding up of the LLC's affairs.

**10.8. No Action for Dissolution.** Except as expressly permitted in this Agreement or any agreement to which the LLC is a party or both PPH and PMB are parties, a Member shall not take any voluntary action that directly causes the LLC to dissolve. The Members acknowledge that irreparable damage would be done to the LLC's goodwill and reputation if any Member brings an action in court to dissolve it under circumstances where dissolution is not required by Section 10.1 above. This Agreement has been drawn carefully to provide fair treatment of all parties and equitable payment in liquidation of the Membership Interests. Accordingly, except where the Manager has failed to liquidate the LLC as required by this Article 10, each Member waives and renounces the Member's right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the LLC or seek judicial dissolution of the LLC on the ground that (a) it is not reasonably practicable to carry on its business in conformity with the Articles or this Agreement, or (b) dissolution is reasonably necessary for the protection of the rights or interests of the complaining Member. Damages for breach of this Section 10.8 shall be monetary damages only (and not specific performance), and damages may be offset against distributions by the LLC to which such Member would otherwise be entitled.

## Article 11

### INDEMNIFICATION AND INSURANCE

**11.1. Indemnification of Agents.** The LLC shall indemnify, defend, and hold harmless any Person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding by reason of the fact the Person is/was a Member, Manager, officer, employee, or other agent of the LLC or that, being or having had such status, the Person is/was serving at the LLC's request as a manager, director, officer, employee, or other agent of another entity or other enterprise (all such Persons referred to as "**agent**"), to the fullest extent permitted by applicable law in effect on the Effective Date and to such greater extent as applicable law may later permit; provided such agent agrees to repay any amounts paid to or on behalf of such agent by the LLC if the agent is found to be in material breach of this Agreement or such agent's duty(ies) to the LLC. The Manager shall be authorized, on the LLC's behalf, to enter into indemnity agreements with any Person entitled to be indemnified by the LLC hereunder, on such terms and conditions adopted with Member Approval.

**11.2. Insurance.** The LLC may buy and maintain insurance on behalf of any Person who is or was an agent of the LLC against any liability asserted against such Person and incurred by that Person in such capacity, or arising from such Person's status as an agent, whether the LLC would have power to indemnify such Person against such liability under Section 11.1 above or under applicable law.

**Article 12**  
**INVESTOR REPRESENTATIONS**

Each Member represents and warrants to and agrees with the Manager, the other Members and the LLC as follows:

**12.1. Pre-existing Relationship or Experience.** *The Member has a pre-existing business or personal relationship with the LLC or one or more of its officers, Manager or control Persons or such nature and duration as enables the Manager to be aware of the character, business acumen, and general business and financial circumstances of the person with whom the relationship exists. The Member is a sophisticated or knowledgeable investor who is well aware of the risks involved with this and similar investments. The Member is capable of evaluating the risks and merits of an investment in the LLC and of protecting the Member's interests in connection with this investment. The Member understands the Membership Interests have not been registered under the Securities Act of 1933, as amended (the "Securities Act") or registered or qualified under any state securities law in reliance on the exemptions provided by Section 4(2) of the Securities Act, Regulation D promulgated thereunder, and Section 25102(f) of the California Corporate Securities Law of 1968, as amended, and the regulations promulgated thereunder and similar exemptions under the laws applicable in other states. The Member is buying Membership Interests for the Member's own account for investment and not to resell or distribute to any person. The Member can bear the economic risk of the investment and can afford a complete loss of the Member's investment. The Member agrees that all Membership Interests the Member buys shall not be Transferred contrary to this Subscription Agreement, the Operating Agreement, or any applicable state or federal laws.*

**12.2. Accredited Investor.** *The Member is an "accredited investor," as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.*

**12.3. No Advertising.** *The Member has not seen, received, been presented with, or been solicited by any leaflet, public promotional meeting, newspaper or magazine article or advertisement, radio or television advertisement, or any other form of advertising or general solicitation regarding the sale of the Membership Interests.*

**12.4. Investment Intent.** *The Member is acquiring the Membership Interests for investment purposes for the Member's own account only and not with a view to or for sale in connection with any distribution of all or any part of the Membership Interests. No other Person will have any direct or indirect beneficial interest in or right to the Membership Interests.*

**12.5. Purpose of Entity.** *If the Member is a corporation, partnership, limited liability company, trust, or other entity, it was not organized for the specific purpose of acquiring the Membership Interests.*

**12.6. Residency.** *The Member is a resident of the state listed on the Member Signature Page signed by that Member.*

**12.7. Economic Risk.** *The Member is financially able to bear all economic risks, including a total loss, of an investment in the Membership Interests.*

**12.8. No Registration.** *The Member acknowledges that the Membership Interests have not been registered under the Securities Act or qualified under any state securities law in reliance on the exemptions provided by Section 4(2) of the Securities Act, Regulation D promulgated thereunder, and Section 25102(f) of the California Corporate Securities Law of 1968, as amended, and the regulations promulgated thereunder and similar exemptions under the laws applicable in other states.*

**12.9. Restricted Security.** *The Member understands the Membership Interests are a "restricted security" under the Securities Act in that the Membership Interests will be acquired from the LLC in a transaction not involving a public offering, that the Membership Interests may be resold without registration under the Securities Act only in certain limited circumstances and that otherwise the Membership Interests must be held indefinitely. The Member understands the resale limitations imposed by the Securities Act and is familiar with SEC Rule 144, as presently in effect, and, to the extent this Rule applies, the conditions which must be met in order for that Rule to be available for resale of "restricted securities." The Member understands the LLC has not made such information available to the public and has no present plans to do so.*

**12.10. No Obligation to Register.** The LLC and the Manager are under no obligation to register or qualify the Membership Interests under the Securities Act or under any state securities law, or to assist a Member in complying with any exemption from registration and qualification. The LLC has no plan to become a publicly-traded company at any time.

**12.11. No Disposition in Violation of Law.** Without limiting the representations set forth above, and without limiting Article 7, the Member will not make any disposition of all or part of the Membership Interests that will result in the violation by the Member or by the LLC of the Securities Act, the California Corporate Securities Law of 1968, or any other applicable securities laws. Without limiting the foregoing, the Member will not make any disposition of all or part of the Membership Interests unless and until:

**12.11.1.** There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement and any applicable requirements of state securities laws; or

**12.11.2.** The Member has notified the LLC of the proposed disposition and has furnished the LLC with a detailed statement of the circumstances surrounding the proposed disposition. If reasonably requested by the Manager, the Member has furnished the LLC with a written opinion of counsel, reasonably satisfactory to the LLC, that such disposition will not require registration of any securities under the Securities Act or the consent of or a permit from appropriate authorities under any applicable state securities law.

**12.12. Legends.** The Member understands that the certificates (if any) evidencing the Membership Interests may bear any legend required by applicable state securities laws and/or the following:

"The securities represented by this certificate have not been registered under the Securities Act of 1933 nor registered nor qualified under any state securities laws. Such securities may not be offered for sale, sold, delivered after sale, transferred, pledged, or hypothecated unless qualified and registered under applicable state and federal securities laws or unless, in the opinion of counsel satisfactory to the LLC, such qualification and registration is not required. Any transfer of the securities represented by this certificate is further subject to other restrictions, terms, and conditions which are set forth herein or in the LLC's Operating Agreement."

**12.13. Investment Risk.** The Member acknowledges that an investment in the Membership Interests involves a considerable degree of risk of loss by the Member of the Member's entire investment in the LLC. The Member understands and takes full cognizance of the risk factors related to the purchase of the Membership Interests and that the LLC is newly organized and has no financial or operating history.

**12.14. Investment Experience.** The Member is an experienced investor in unregistered and restricted securities of limited liability companies or limited partnerships and in investments of the type contemplated by this Agreement.

**12.15. Restrictions on Transfer.** The Member acknowledges there are substantial restrictions on the Transferability of the Membership Interests pursuant to this Agreement, there is no public market for the Membership Interests and none is expected to develop, and, accordingly, it may not be possible for the Member's to liquidate the Member's investment in the LLC.

**12.16. Information Reviewed.** The Member has received and reviewed all information the Member considers necessary or appropriate for deciding whether to purchase the Membership Interests. The Member has had an opportunity to ask questions and receive answers from the LLC and its officers, Manager, and employees regarding the terms and conditions of purchase of the Membership Interests and regarding the LLC's business, financial affairs, and other aspects and has had the opportunity to obtain all information (to the extent the LLC possesses or can acquire such information) which the Member deems necessary to evaluate the investment and to verify the accuracy of information otherwise provided to the Member.

**12.17. No Representations by LLC.** Neither the Manager, any agent or employee of the LLC or of the Manager, or any other Person has at any time expressly or implicitly represented, guaranteed or

warranted to the Member that the Member may freely Transfer the Membership Interests, that a percentage of profit and/or amount or type of consideration will be realized as a result of an investment in the Membership Interests, that past performance or experience on the part of the Manager or its Affiliates or any other Person in any way indicates the predictable results of the ownership of the Membership Interests or of the overall LLC business, that any cash distributions from LLC operations or otherwise will be made to the Members by any specific date or will be made at all, or that any specific tax benefits will accrue as a result of an investment in the LLC.

**12.18. Consultation with Attorney.** The Member has been advised to consult with the Member's own attorney regarding all legal matters concerning an investment in the LLC and the tax consequences of participating in the LLC, and has done so, to the extent the Member considers necessary.

**12.19. Tax Consequences.** The Member acknowledges that the tax consequences to the Member's investing in the LLC will depend on the Member's particular circumstances, and neither the LLC, the Manager, the Members, nor the partners, shareholders, members, managers, agents, officers, directors, employees, Affiliates, or consultants of any of them will be responsible or liable for the tax consequences to the Member of an investment in the LLC. The Member will look solely to, and rely on, the Member's own advisers regarding the tax consequences of this investment.

**12.20. No Assurance of Tax Benefits.** The Member acknowledges there can be no assurance the IRC or Regs will not be amended or interpreted in such a manner so as to deprive the LLC and the Members of some or all tax benefits they might now receive, nor that some of the deductions claimed by the LLC or the allocations of items of income, gain, loss, deduction or credit among the Members may not be challenged by the Internal Revenue Service.

**12.21. Indemnity.** To the extent permitted by applicable law, the Member shall indemnify and hold harmless the LLC, each Manager, each other Member, and any officers, directors, shareholders, managers, members, employees, partners, agents, attorneys, registered representatives and control Persons of any such entity who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of or arising from any misrepresentation or misstatement of facts or omission to represent or state facts made by the Member including the information in this Agreement, against losses, liabilities and expenses of the LLC, each Manager, each other Member, and any officers, directors, shareholders, managers, members, employees, partners, attorneys, accountants, agents, registered representatives, and control Persons of any such Person (including attorneys' fees, judgments, fines, and amounts paid in settlement, payable as incurred) incurred by such Person in connection with such action, suit, proceeding, or the like.

**12.22. Member/Tenant.** If I am a tenant in the medical office building owned by the LLC, and I am in default under its lease with this LLC, I understand that any distributions that otherwise would be made to me shall instead be retained by the LLC and applied to all sums due under that lease.

**12.23. Patriot Act.** I am not now nor shall I be at any relevant time a Person with whom a U.S. Person, including a Financial Institution (defined in 31 U.S.C. 5312), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under U.S. law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise. No Member and no Person who owns a direct interest in a Member is now nor shall be at any time during the term of this Agreement a Person with whom a U.S. Person, including a Financial Institution, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under U.S. law, regulation, executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.

**12.24. Member's Funds.** I have taken, and shall continue to take during the term of this Agreement, such measures as are required by law to assure that the funds invested in the LLC and/or used to make payments in connection with the Property are derived (a) from transactions that do not violate U.S. law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (b) from permissible sources under U.S. law or to the



extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated. To the best of my knowledge after making due inquiry, neither I, nor any Affiliate, nor any holder of a direct interest in me, nor any Person providing funds to me (a) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti Money Laundering Laws; (b) has been assessed civil or criminal penalties under any Anti Money Laundering Laws; (c) has been convicted of any crimes involving moral turpitude or tax fraud; and (d) has had any of its funds seized or forfeited in any action under any Anti Money Laundering Laws

### Article 13 ADR

**13.1. ADR.** In the event of any dispute, claim, question, or disagreement (other than as referenced in Section 13.6 below) ("**Dispute**") arising from or relating to this Agreement, the breach or default thereof, or the relationship between the Members and/or the Manager, the Parties shall use their commercially reasonable efforts to settle the Dispute. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to the Parties as follows:

**13.2. Meet & Confer.** A Party may give written notice to the other setting forth the nature of the Dispute ("**Dispute Notice**"). The Parties shall meet and confer to discuss the Dispute in good faith within thirty (30) days of the other Party's receipt of the Dispute Notice in an attempt to resolve the Dispute. All representatives shall meet at such date(s) and time(s) as are mutually convenient to them within such thirty (30) day period.

**13.3. Mediation.** If the Parties are unable to resolve the Dispute by the meet-and-confer process, they shall submit the dispute to mediation in San Diego County with Judicial Arbitration & Mediation Services, Inc. ("**JAMS**") in accordance with JAMS' standard procedures and rules ("**JAMS' Rules**"). If the Parties are unable to resolve the Dispute in mediation, they shall thereafter arbitrate the Dispute in accordance with Section 13.4 below.

**13.4. Arbitration.** Any dispute or controversy arising between the Parties that is not resolved by the foregoing and involves the interpretation or application of any provision of this Agreement, shall be resolved by arbitration conducted in accordance with JAMS' Rules. Either Party may elect to arbitrate by delivering written demand to the other Party, specifying the matter to be arbitrated. In all such cases, the Parties shall select one arbitrator agreeable to both to hear and determine the controversy. If agreement is not reached as to who shall be the arbitrator within ten (10) days after demand of arbitration, the appointment shall be made by a court of competent jurisdiction in San Diego County on application by either Party. The arbitration shall be conducted in accordance with JAMS' Rules. The arbitrator's decision shall be final and binding on the Parties, and the cost of arbitration shall be borne as determined by the arbitrator. The arbitrator shall have no authority or power to award any Party any exemplary or punitive damages.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE OR CONTROVERSY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, EXCEPT AS PROVIDED IN SECTION 13.6 below, DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY STATE LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS FOR DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE ARBITRATION PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA UNIFORM ARBITRATION ACT. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT MATTERS ARISING UNDER THIS AGREEMENT TO NEUTRAL ARBITRATION.

\_\_\_\_\_  
Members' Initials

**13.5. JAMS.** If JAMS does not exist at the time the Dispute arises, the Parties shall use another reputable alternative dispute resolution service.

**13.6. ADR Exclusions.** The above provisions of this Article 13 shall not apply to:

**13.6.1.** Any specific controversy, dispute, or issue as to which this Agreement specifically provides another method of determining such controversy, dispute, or issue and provides that a determination pursuant to such method is final and binding, unless the Parties agree in writing to waive such procedure and to proceed instead pursuant to this Article 13.

**13.6.2.** Any request or application to any state or federal court having jurisdiction thereof for an order or decree granting any provisional or ancillary remedy (such as a temporary restraining order or injunction) in aid of or with respect to any right or obligation of either Party, and any preliminary determination of the underlying controversy, dispute, or issue as is required to determine whether to grant the relief requested or applied for. A final and binding determination of such underlying controversy, dispute, or issue shall be made by an arbitration conducted pursuant to this Article 13 after an appropriate transfer or reference to JAMS on motion or application of either Party. Any ancillary or provisional relief granted pursuant to this Section 13.6.2 shall continue in effect pending an arbitration determination and entry of judgment thereon pursuant to this Article 13.

**13.6.3.** Exercise of any remedies to enforce any judgment entered based on a determination made by arbitration pursuant to this Article 13.

#### **Article 14** **GENERAL TERMS**

**14.1. Complete Agreement.** This Agreement and the Articles (and any Subscription Agreement executed on or about the Effective Date) constitute the complete and exclusive statement of agreement among the Members and Manager with respect to their subject matters and replace and supersede all prior written and oral agreements or statements by and among the Members and Manager or any of them. No representation, statement, condition, or warranty not contained in this Agreement or the Articles will be binding on the Members or Manager or have any effect whatsoever. To the extent that any provision of the Articles conflict with any provision of this Agreement, the Articles shall control.

**14.2. Binding Effect.** Subject to any provision of this Agreement that may prohibit or curtail assignment of any rights hereunder, this Agreement shall bind and inure to the benefit of the respective heirs, assigns, personal representatives, and successors of the Members and Manager.

**14.3. Parties in Interest.** Except as expressly provided in the Act, nothing in this Agreement shall (a) confer any rights or remedies under or by reason of this Agreement on any Persons other than the Members and Manager and their respective successors and assigns, (b) relieve or discharge the obligation or liability of any third person to any party to this Agreement, or (c) give any third person any right of subrogation or action over or against any party to this Agreement.

**14.4. Interpretation.** When the context requires, any gender includes all others, the singular number includes the plural, and vice-versa. Captions are inserted for convenience of reference and do not describe or limit the scope or intent of this Agreement. Reference to any law or regulation will include all amendments or replacements of the specific sections and provisions concerned. Any recitals above, and any exhibits or schedules referred to and/or attached hereto, are incorporated by reference into this Agreement. Numbered or lettered articles, and (sub)sections herein contained refer to articles and (sub)sections of this Agreement unless otherwise expressly stated. If any claim is made by any Member relating to any conflict, omission, or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Person or the Member's counsel. "Including" means including without limitation. This Agreement shall: (a) be governed by California law; and (b) subject to any provision of this Agreement that may prohibit or curtail assignment of rights, bind and inure to the benefit of the parties and their heirs, assigns, representatives, and successors. If any provision of this Agreement is held by a court to be invalid or unenforceable, the other provisions shall remain in effect. No inference or presumption shall be drawn if a party or its attorney prepared and/or drafted this Agreement; it shall be conclusively presumed

that the parties participated equally in its preparation and/or drafting. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any Person may be lawfully entitled.

**14.5. Scope.** This Agreement shall govern the rights and responsibilities of the Members with respect to the LLC, even if some provisions of this Agreement are inconsistent with or different from the provisions of the Act or any other rule or law, except to the extent this Agreement expressly incorporates federal income tax rules by reference to the IRC or Regs or any provision of this Agreement is expressly prohibited or ineffective under the Act or any law or rule. To the extent any provision of this Agreement is expressly prohibited or ineffective under the Act, this Agreement shall be considered amended to the least degree possible to make the Agreement effective under the Act. If the Act is later amended or interpreted to make valid any provision of this Agreement that formerly was invalid, that provision shall be considered valid from the effective date of such interpretation or amendment.

**14.6. Jurisdiction; Venue.** Each Member consents to the exclusive jurisdiction of the state and federal courts sitting in California in any action on a claim arising out of, under, or in connection with this Agreement or the transactions contemplated by this Agreement, provided such claim is not required to be arbitrated pursuant to Article 13 above. Each Member agrees that personal jurisdiction over the Member may be effected by service of process by registered or certified mail addressed as provided in Section 14.9 below, and that when so made shall be as if served on the Member personally within California. Proper venue in any such action shall be in the County in which the LLC's principal office is located.

**14.7. Attorneys' Fees.** If any dispute between the LLC and any of the parties to this Agreement (or among any such parties) results in litigation or arbitration, the prevailing party shall be entitled to recover from the other(s) all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including reasonable attorneys' fees, costs, and expert witnesses' fees.

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

**14.9. Notices.** Any notice to be given or to be served on the LLC or any party hereto in connection with this Agreement must be in writing (which may include fax) and will be deemed to have been given and received when delivered to the address in **Exhibit B** specified by the party to receive the notice, or instead when three (3) business days have elapsed after deposit in the U.S. mail, certified or registered mail, return receipt requested, first-class postage prepaid, addressed to the address indicated in **Exhibit B**. Any party may, at any time by giving five (5) day's prior written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice will be given.

**14.10. Amendments.** All amendments to this Agreement will be in writing, have Member Approval, approval of the Manager, and be signed by the Manager. No waiver or discharge of this Agreement shall be valid unless it is in writing and signed by the party against which its enforcement is or may be sought.

**14.11. Reliance on Authority.** If a Member is not a natural person, neither the LLC nor any Member will be: (a) required to determine the authority of the individual signing below to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing on the existence of the authority of such individual, or (b) responsible for the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

**14.12. No Interest in LLC Property; Waiver of Partition.** No Member or Economic Interest Owner has any interest in specific property of the LLC. Each Member and Economic Interest Owner irrevocably waives during the LLC's term any right that Person may have to maintain any action for partition with respect to the LLC's property.

**14.13. Force Majeure.** The Manager shall be excused from performance of its obligations under this Agreement where it is prevented from so performing by revolutions or similar disorders, wars, acts of enemies, strikes, fires, floods, acts of God, or by any cause not within Manager's control which, by the exercise of reasonable diligence, the Manager is unable to prevent. The Manager shall perform such part of its obligations not interfered with by these causes.

**14.14. Limitations on Creditors' Interests.** No creditor who makes a non-recourse loan to the LLC shall have or acquire at any time, as a result of making such loan, any direct or indirect interest in the LLC's profits, capital, or property, other than a secured creditor.

**14.15. Counsel to LLC.** Counsel to the LLC may also be counsel to the Manager, a Member, or any Affiliate of the Manager or a Member. The Manager may execute on behalf of the LLC and Members any consent to representation of the LLC that counsel may request pursuant to the California Rules of Professional Conduct or similar rules in any other jurisdiction (the "**Rules**").

**14.15.1.** PMB has had its Vice-President/Legal Services, Evan Mead Stone ("**EMS**") negotiate and draft this Agreement on its behalf. PPH acknowledges that EMS has not undertaken any and has no duty or obligation of any kind to PPH or the LLC by virtue of his employment with PMB in drafting and negotiating this Agreement.

**14.15.2.** From time to time, EMS shall be permitted to render legal advice and to provide legal services to PMB and its Affiliates with respect to the LLC. In no event does or will an attorney/client relationship exist between EMS, on the one hand, and the LLC or any Member other than PMB, on the other hand, in the absence of an express written engagement agreement between such Member and EMS. To the extent requested by the Manager, EMS shall be permitted to render legal advice and to provide legal services to the Manager, on the LLC's behalf, from time to time.

**14.15.3.** PPH has retained Latham & Watkins LLP ("**L&W**") to negotiate and draft this Agreement. PMB acknowledges that L&W has not undertaken any and has no duty or obligation of any kind to it or the LLC by virtue of its representation of PPH in drafting and negotiating this Agreement.

**14.15.4.** From time to time, L&W shall be permitted to render legal advice and to provide legal services to PPH and its Affiliates with respect to the LLC. In no event does or will an attorney/client relationship exist between L&W, on the one hand, and any Member other than PPH, on the other hand, in the absence of an express written engagement agreement between such Member and L&W.

↓  
↓  
↓  
↓  
↓

↓ Signatures on next page...

INTENDING TO BE LEGALLY BOUND, the parties have signed this Agreement as of the date first set forth above.

**"Members"**

**"PPH"**

PALOMAR POMERADO HEALTH,  
a California health care district

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

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

**"PMB"**

PMB POWAY LLC,  
a California limited liability company  
By: Pacific Medical Buildings, L.P.,  
A California limited partnership,  
Manager  
By: PMB, Inc.,  
A California corporation,  
General Partner

By: \_\_\_\_\_  
Vice-President

The Manager agrees to the foregoing.

**"Manager"**

PMB POWAY LLC,  
a California limited liability company  
By: Pacific Medical Buildings, L.P.,  
A California limited partnership,  
Manager  
By: PMB, Inc.,  
A California corporation,  
General Partner  
By: \_\_\_\_\_  
Vice-President

**EXHIBITS:**

Exhibit A: ..... Definitions  
Exhibit B: ..... Manager and Member Data  
Exhibit C: ..... Property  
Exhibit D: ..... Source & Use of Funds  
Exhibit E: ..... Business Plan  
Exhibit F: ..... Protected Area

## Exhibit A DEFINITIONS

---

**"Act"** — The Beverly-Killea Limited Liability Company Act (California Corporations Code, §§ 17000 et seq.).

**"Additional Capital Contributions"** — The additional capital contributions referenced in Section 3.2 above.

**"Affiliate"** — Any individual, partnership, corporation, trust, or other entity or association, directly or indirectly, through one or more intermediaries, Controlling, Controlled by or under common Control with the Member.

**"Articles"** — The LLC's Articles of Organization originally filed with the SOS and as amended from time to time.

**"Bankruptcy"** — (a) The filing of an application by a Member for, or the Member's consent to, the appointment of a trustee, receiver, or custodian of the Member's other assets; (b) the entry of an order for relief regarding a Member in proceedings under the U.S. Bankruptcy Code; (c) the Member's making of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of a Member's assets unless the proceedings and the Person appointed are dismissed within sixty (60) days; and/or (e) a Member's failure generally to pay the Member's debts as they become due within the meaning of U.S. Bankruptcy Code § 303(h)(1), as determined by the Bankruptcy Court, or the admission in writing of the Member's inability to pay the Member's debts as they become due.

**"Capital Account"** — The capital account which the LLC establishes and maintains for a Member pursuant to Section 3.3 above.

**"Capital Contribution"** — The total value of cash and fair market value of property (including promissory notes or other obligations to contribute cash or property) contributed and/or services rendered or to be rendered to the LLC by a Member.

**"Cash From Sale or Refinancing"** — Net cash realized by the LLC (excluding Distributable Cash) from the sale, refinancing (including all financing after the initial construction loan), or other disposition of the Property after (a) retirement of affected mortgage/trust deed debt, (b) payment of all expenses related to the transaction and (c) providing for all the LLC's current and owing debts, liabilities, and obligations then due and amounts that the Manager deems necessary to place into reserves for customary and usual claims relating to the LLC's business.

**"Code"** — The California Corporations Code.

**"Construction Period"** — The time from the contribution of the initial capital until the time tenants holding seventy-five percent (75%) of the rentable space in the medical office building to be constructed on the Property commence payment of rent.

**"Control"** — The possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of a Person, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise.

**"Depreciation"** — Includes any book depreciation and amortization of any LLC asset.

**"Dissociation Event"** — The occurrence to a Member of any of the following: (a) the withdrawal from the LLC without Member Approval; (b) a Member attempts to Transfer its Membership Interest in knowing violation of this Agreement; (c) the Bankruptcy of the Member; (d) the death of an individual Member; (e) if the Member is a trust or a Trustee, the termination of the trust or the distribution from the trust of the trust's entire interest in the LLC except as permitted by this Agreement; (f) if the Member is a limited liability company or partnership, the dissolution and commencement of winding up of the entity resulting in the distribution of the entity's entire interest in the LLC except as permitted by this Agreement; (g) if the Member is a corporation, the filing of a certificate of its dissolution or the equivalent, or the revocation of its charter or Articles of Incorporation, and the laps of ninety (90) days after notice to the corporation of the revocation without a reinstatement or revivor during such time, provided this results in the distribution of the corporation's entire Membership Interest except as permitted by this Agreement, or (h) if the Member is an estate, the distribution by the fiduciary of the estate's entire Membership Interest except as permitted by this Agreement. With respect to the Manager, a material breach of its obligations set forth in this Agreement or its duties under law with respect to the LLC (established only after judicial or arbitral determination in accordance with Article 14 above) shall be a Disassociation Event.

**"Distributable Cash"** — The amount of cash the Manager deems available for distribution from operations to the Members, taking into account all the LLC's current and owing debts, liabilities (including any loans payable to Members) and obligations then due and amounts the Manager deems necessary to place into reserves relating to the LLC's business.

**"Economic Interest"** — A Member's or Economic Interest Owner's share of one or more of the LLC's Net Profits, Net Losses and distributions of the LLC's assets pursuant to this Agreement and the Act, but excluding any other rights of a Member, such as the right to vote or participate in the LLC's management, or except as provided in Code § 17106, any right to information concerning its business and affairs.

**"Economic Interest Owner"** — The owner of an Economic Interest who is not a Member.

**"Expense Arising From Depreciation of LLC Property"** — The amortization or Depreciation of LLC Property.

The LLC's **"Fiscal Year"** shall be the calendar year unless/until a different year is required for Federal income tax purposes.

**"Ground Lease"** — The Ground Lease between PALOMAR POMERADO HEALTH and PDP POMERADO LLC dated [REDACTED], 2006.

**"Improvements"** — The medical office building and related improvements.

**"IRC"** — The Internal Revenue Code of 1986 and to the extent applicable, the Regs.

**"LLC Minimum Gain"** — The meaning given "Partnership Minimum Gain" in Regs § 1.704-2(d).

**"LLC Property"** — All assets of the LLC that are depreciable or amortizable for either book or tax purposes.

**"Majority Interest"** — One or more Percentage Interests of the Members (or a group of Members to which reference is made) which taken together exceed fifty percent (50%) of the aggregate of all Percentage Interests (or those held by the group of Members to which reference is made).

**"Manager"** — One or more of the LLC's managers. Specifically, **"Manager"** means PMB or any other Person that succeeds the Manager in that capacity.

**"Member"** — Each Person who (a) is an initial signatory to this Agreement, has been admitted to the LLC as a Member in accordance with the Articles or this Agreement or is an assignee who has become a Member in accordance with Article 7 above and (b) has not been expelled or, if not an individual, dissolved.

**"Member Approval"** — Approved or an approval in writing by, or approved or approval at a duly held meeting by, PMB and PPH only. Notwithstanding the foregoing, at any time that an Event of Default has occurred and is continuing with respect to any Member beyond any applicable cure period(s), **"Member Approval"** means the approval of the Non-Defaulting Member. Except as otherwise expressly provided in this Agreement, Members shall not unreasonably withhold or delay their approval.

**"Member Nonrecourse Debt"** — The meaning given "Partner Nonrecourse Debt" in Regs § 1.704-2(b)(4).

**"Member Nonrecourse Deductions"** — Items of LLC loss, deduction, or IRC § 705(a)(2)(B) expenditures attributable to Member Nonrecourse Debt.

**"Membership Interest"** — A Member's entire interest in the LLC including the Member's Economic Interest, the right to vote on or participate in its management and the right to receive information concerning its business and affairs.

**"Net Investment Amount"** — The gross purchase price of Members' Membership Interests which may be reduced (not below zero) from time to time by Distributions of Cash From Sale or Refinancing proceeds.

**"Net Losses From Capital Events"** — Net losses from the complete or partial sale of LLC Property.

**"Net Losses From Operations Not Arising From Depreciation of LLC Property"** — The LLC's net losses exclusive of Depreciation and amortization of LLC Property and exclusive of Net Profits From Capital Events and Net Losses from Capital Events.

**"Net Profits" and "Net Losses"** — The LLC's income, gain, loss, deductions, and credits in the aggregate or separately stated, as appropriate, determined in accordance with generally accepted accounting principles employed under the method of accounting at the close of each fiscal year on the LLC's information tax return filed for federal income tax purposes.

**"Net Profits From Capital Events"** — Net gain from the complete or partial sale of LLC Property.

**"Net Profits From Operations Not Arising From Depreciation of LLC Property"** — The LLC's net profits exclusive of Depreciation and amortization of LLC Property and exclusive of Net Profits From Capital Events and Net Losses from Capital Events.

**"Nonrecourse Liability"** — The meaning given in Regs § 1.752-1(a)(2).

**"O.S.P."** — The outpatient services pavilion (medical office building) to be constructed by the LLC on the Property.

**"Original Invested Capital"** — In the case of each Member, the principal amount contributed by that Member to the LLC in exchange for that Member's Membership Interest.

**"Percentage Interest"** — The percentage of a Member (attributable to the Member's Membership Interest) set forth in the attached **Exhibit B**, as such percentage may be adjusted periodically pursuant to this Agreement.

**"Person"** — An individual, trust, estate, association, or any entity.

**"PMB"** — PMB POWAY LLC, a California limited liability company.

**"PMBLP"** — Pacific Medical Buildings, L.P., a California limited partnership, and its successors and assigns.

**"PMBRES"** — PMB REAL ESTATE SERVICES, a California partnership.

**"PPH"** — PALOMAR POMERADO HEALTH, a California health care district.

**"Preferred Return"** — With respect to the Members, during the Construction Period, a priority return to the Members of an amount equal to seven percent (7%) per annum (computed daily on a simple, non-compounding basis), cumulative, of the daily balance of such Member's Net Investment Amount. After the Construction Period, the Preferred Return shall be increased from seven percent (7%) to eight percent (8%) for Palomar Pomerado Health and from seven percent (7%) to ten percent (10%) for PMB Poway LLC. This is not intended to be a guaranteed payment within the meaning of IRC § 707.

**"Property Management Agreement"** — The Property Management Agreement dated as of the Effective Date between this LLC, as Owner, and PMBRES, as Agent.

**"Project"** — The development, construction, management, and ownership project described in Section 2.5 above.

**"Project Cost Savings"** — All cost savings. The Manager shall determine Project Cost Savings as of the point in time at which tenants representing seventy-five percent (75%) of the rentable area of the Improvements have begun to pay rent to the LLC.

**"Property"** — The real property described in the attached **Exhibit C**.

**"Regs"** — Unless the context clearly indicates otherwise, the regulations currently in force as final or temporary issued by the U.S. Department of Treasury pursuant to its authority under the IRC.

**"Representative"** — The personal representative, executor, trustee, administrator, guardian, conservator, receiver, or other successor-in-interest of a Member.

**"Tax Matters Partner"** — PMB or any successor designated pursuant to Section 9.9 above.

**"Term"** — The term of this Agreement, which shall be the LLC's duration stated in the Articles, unless extended or sooner terminated as provided in this Agreement or by law.

**"Transfer"** — The sale, transfer, hypothecation, encumbrance, alienation, disposition, merger, reorganization, or other conveyance of all or part of a Membership Interest (including an Economic Interest or any legal or beneficial right or interest therein), whether voluntary, by operation of law, by gift, or otherwise, including a transfer of Control of any Person. **"Transfer"** shall exclude any Transfer by a member of PMB of that member's Percentage Interest in PMB therein to: (a) another PMB member, or (b) an Affiliate of PMB or of PMBLP or a successor entity by way of merger, reorganization, acquisition or similar transaction involving PMBLP (and PMBLP's Affiliate(s)) whereby similar projects associated with PMBLP (or its Affiliate(s)), are acquired by a Person with substantially the same or greater financial wherewithal as PMBLP; provided, with respect to subsection (b), that (i) management of the transferee in such transfer must be controlled (i.e., a majority of managerial control) by PMBLP and/or its partners and/or senior management or Affiliates, and (ii) such transferee does not, and does not presently plan to, own, operate, manage, or have a direct or indirect interest (excluding up to a 3% interest in a publicly-traded entity) in an acute care hospital in direct competition with PPH, as determined by PPH in its reasonable discretion.

..... end exhibit



## Exhibit B

### MANAGER AND MEMBER DATA

---

**MANAGER:** Pacific Medical Buildings, L.P.  
12348 High Bluff Drive, Suite 210  
San Diego, CA 92130

MEMBER NAME / ADDRESS	CAPITAL CONTRIBUTION	PERCENTAGE INTEREST
PALOMAR POMERADO HEALTH, a California health care district	\$ _____	30 %
PMB POWAY LLC, A California limited liability company	\$ _____	70 %
<b>Total:</b>	\$ _____	<b>100 %</b>

..... end exhibit

## Exhibit C PROPERTY

---

See attached legal description of the Property, incorporated by reference.

.....end exhibit

## **Exhibit D**

### **SOURCE AND USE OF FUNDS**

---

See attached Source and Use of Funds, incorporated by reference.

..... end exhibit

## **Exhibit E BUSINESS PLAN**

---

See attached Business Plan, incorporated by reference.

..... end exhibit

## Exhibit F PROTECTED AREA

---

See following description of Protected Area.

..... end exhibit