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DEVELOPMENT AGREEMENT

between

CITY OF ESCONDIDO

and

**PALOMAR POMERADO HEALTH,
a California local health care district**

February 8, 2006

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into by and between the CITY OF ESCONDIDO, a municipal corporation (“City”), and PALOMAR POMERADO HEALTH, a local health care district organized pursuant to Division 23 of the California Health and Safety Code (“PPH”; and together with the City, the “Parties”).

ARTICLE 1

Recitals

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

1.1 Code Authorization. California Government Code Sections 65864 through 65869.5 and Article 58 of City’s Zoning Code (collectively, the “Development Agreement Legislation”) authorize the City to enter into binding development agreements with persons or entities having legal or equitable interests in real property for the purpose of establishing certainty in the development process for both the City and the property owners, and to enable specific terms regarding property development to be negotiated and agreed upon.

1.2 Entire Agreement. Except as this Agreement expressly refers to and/or incorporates other agreements between the City and PPH, or the City or PPH and any third party, this Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all other negotiations and previous agreements between the Parties with respect to the subject matter of this Agreement, except that the Agreement is to be interpreted in a manner consistent with the separate Memorandum of Understanding (“MOU”) between the Parties concerning the PPH downtown Escondido medical campus, such MOU being executed concurrently with this Agreement.

PPH has an interest in certain Property, said interest being described in greater detail in Section 1.3 of this Agreement. With respect to such Property, PPH is a “transferee” as that term is used in Section 3.2 of the development agreement previously entered into by the City, JRM-ERTC I, and Palomar Energy LLC in January 2003 (“2003 ERTC Development Agreement”). In approving the present Agreement, City approves the transfer of the Property from JRM-ERTC I to PPH and determines that the transfer will not affect the timely completion or fulfillment of any requirements in the previously executed 2003 ERTC Development Agreement pertaining to public benefits. Pursuant to Section 3.2 of the 2003 ERTC Development Agreement, as a “transferee” PPH is specifically released from any rights, duties, or obligations set forth in the 2003 ERTC Development Agreement, as respects the Property. This Agreement does not disturb the rights, duties, or obligations of the parties to the 2003 ERTC Development Agreement, including but not limited to their obligations related to the public benefits described in the 2003 ERTC Development Agreement, such rights, duties and obligations being the subject of that prior agreement and remaining in force as respects the parties to that agreement. The terms of this Agreement shall only affect the Property owned by PPH as a “transferee”, except as respects certain offsite improvements described in Article 5 of this Agreement.

1.3 Interest of PPH. PPH is the legal owner and/or optionee of certain real property totaling approximately 56 gross acres, located within the City of Escondido in San Diego County (the “Property”).

More specifically, the Property is located within the Escondido Research and Technology Center (“ERTC”), on land identified as Lots 27 through 36 within Planning Area 4 of the City’s Amended ERTC Specific Plan being adopted concurrently with this Agreement. The Property is further described in Exhibit A, which is attached and incorporated by this reference. PPH anticipates constructing and operating an acute-care general hospital, a tertiary care hospital facility with full emergency and intervention services, associated support and/or medical office buildings, and one or more parking structures on the Property (together, “Palomar West”), to include open space, landscaping, and such other public and private improvements as are required by the conditions of approval of the Amended ERTC Specific Plan, related Entitlements, Future Entitlements (each as hereinafter defined), and this Agreement. Palomar West will occupy a portion of the 56 acres developable within the Property, with the remaining acreage for landscaping, open space and other uses. Palomar West will be the North County San Diego Hospital District’s (“District”) primary acute care facility, regional trauma center, and womens’ and childrens’ service provider. PPH hereby agrees that it will not relocate its corporate and administrative headquarters (currently located at 15255 Innovation Drive in the City of San Diego, California) to Palomar West, such corporate and administrative headquarters being the subject of the separate MOU being executed concurrently with this Agreement.

Palomar West shall be constructed in one or more phases, and shall consist of attractive structures and landscape features consistent with the Amended ERTC Specific Plan. In an effort to support public infrastructure and generate economic benefits in the community, PPH shall make a one-time public benefit payment to the City, shall cooperate in the development of various public and private infrastructure facilities described elsewhere in this Agreement, and will use best efforts to develop Palomar West in a manner that will maximize tax benefits for the City. Subject to this Agreement and the Amended ERTC Specific Plan being adopted concurrently with this Agreement, PPH shall have the sole right and responsibility to design, arrange financing for, construct, own, and operate Palomar West, except that PPH reserves the right to enter into development agreements, joint ventures, or any other arrangement with a third party or third parties, who may participate in the development, ownership, or operation of Palomar West. The decision to proceed with development of Palomar West, and the scope, size, intensity and timing of development, shall be within the sole discretion of PPH, subject to the Existing Laws, Entitlements, Future Entitlements, and this Agreement.

1.4 Intent of Parties. By this Agreement, the City and PPH intend to accomplish certain public and private benefits which include the following:

1.4.1 Palomar West Medical Center: PPH shall construct a medical center in one or more phases to meet the medical demands of the growing and aging population of the District. Palomar West will include an acute care facility, a regional trauma center, one or more support and/or medical office buildings, one or more parking structures, and other medical facilities, all to be located within Lots 27 through 36 of Planning Area 4 of the Amended ERTC Specific Plan, within the City of Escondido.

1.4.2 Citracado Parkway Improvements: City shall complete, with the substantial financial support of PPH, and subject to compliance with the California Environmental Quality Act, the construction and improvement of Citracado Parkway between Valley Parkway and Nordahl Road/Vineyard Avenue (the “Citracado Parkway Improvements”), as further described in Section 5.6.1 of this Agreement. The Citracado Parkway Improvements are separate and independent from the road improvements described in Section 1.4.3 below.

1.4.3 Nordahl Road/Highway 78 Improvements: City shall construct and complete improvements at and near the interchange between Nordahl Road and Highway 78 (“Nordahl/78 Improvements”). The Nordahl/78 Improvements shall include but are not limited to widening the Nordahl Road overpass and upgrading off-ramps and traffic signals, as well as various improvements to Nordahl Road and the intersections between Highway 78 and Citracado Parkway, as further described in Section 5.6.2 of this Agreement. City shall complete the Nordahl/78 Improvements on or before the Office of Statewide Health Planning and Development has issued a letter certifying final approval for occupancy of the primary hospital facility at Palomar West, pursuant to Section 7-155 of the California Code of Regulations, Part 1, Title 24.

1.4.4 Public Benefit Payment: PPH shall make a one-time payment to the City in the amount of \$13,000,000 (“Public Benefit Payment”) to be used for the Citracado Parkway Improvements. Payment shall be deposited in an interest-bearing account, jointly controlled by City and PPH, such interest accumulating for the sole use and benefit of the City so long as it is used for the Citracado Parkway Improvements, as further described in Section 5.2 of this Agreement.

1.4.5 Construction Sales/Use Tax Benefit: To the extent commercially reasonable, PPH shall require all contracts for fixed goods, equipment, and all other materials needed for the development and operation of Palomar West to pass title within the City, so that the City may secure substantial sales and/or use tax benefits, as further described in Section 5.3 of this Agreement. The total cost of developing Palomar West is anticipated to be in excess of \$500,000,000, a significant portion of which will be subject to local sales and use taxes;

1.4.6 Warehouse Facility Sales/Use Tax Benefit: PPH shall transfer the address of record of its warehouse supply facility to the City, and shall use best efforts to physically relocate the warehouse supply facility from the City of San Diego to the City of Escondido. To the extent commercially reasonable, PPH shall process all purchase and sale transactions for the Warehouse Facility within the City such that a substantial local sales and/or use tax benefit will inure to the City, as further described in Section 5.4 of this Agreement;

1.4.7 Vesting Development Rights: The Parties shall eliminate uncertainty in the planning and development of Palomar West by agreeing that PPH may fully develop the Property with hospital and related medical uses in one or more phases in accordance with Existing Laws, Entitlements, and any Future Entitlements (each as hereinafter defined), subject to the terms and conditions contained in this Agreement;

1.4.8 Third-Source Funding: The Parties shall cooperate in the development of Palomar West and related public and private infrastructure improvements that will serve the region and the community, including the securing of financing from other public or private sources to achieve the goals of this Agreement, and shall assure the orderly installation of necessary public improvements and the provision of public services sufficient for the development and long-term operations of Palomar West;

1.5 Procedural Compliance and Effective Date. The execution of this Agreement by the City and PPH shall constitute conclusive evidence that the duly noticed public hearings before the City Planning Commission and the City Council required by the Development Agreement Legislation have been held, and that the City Council has introduced (first reading) and adopted (second reading) an ordinance approving this

Agreement and containing the findings required by the Development Agreement Legislation (the “Adopting Ordinance”). The execution of this Agreement by PPH shall constitute conclusive evidence that the Agreement was adopted in accordance with the laws and procedures governing PPH as a local health care district. The effective date of this Agreement shall be the date the Adopting Ordinance becomes effective (“Effective Date”).

1.6 Entitlements. The City has also approved or certified the following entitlements which are necessary to develop Palomar West, or is approving such Entitlements concurrently with this Agreement:

1.6.1 An amendment to the existing ERTC Specific Plan to accommodate the full development and build out of the Property for hospital and other uses associated with the Palomar West medical campus;

1.6.2 Resolution certifying an Addendum to the Final Environmental Impact Report for the ERTC, CEQA Findings and Mitigation Monitoring and Reporting Program;

1.6.3 Adopting Ordinance for this Agreement.

NOW THEREFORE, in consideration of the Recitals and the mutual covenants and conditions set forth herein, the Parties agree as follows:

ARTICLE 2

Definitions

2.1 “2003 ERTC Development Agreement” means that certain development agreement previously entered into by City, JRM-ERTC I, and Palomar Energy LLC respecting the ERTC.

2.2 “Adopting Ordinance” means the ordinance that the City adopts to approve this Agreement, after its execution by both Parties.

2.3 “Amended ERTC Specific Plan” means the amended Escondido Research and Technology Center Specific Plan, such amendment to be adopted by City concurrently with this Agreement.

2.4 “District” means the legally defined special purpose area of PPH, a roughly 800-square mile area in North San Diego County including all or portions of the cities of Escondido, Poway, Ramona, Rancho Bernardo, Rancho Penasquitos, San Marcos, Valley Center, and Vista, as well as certain unincorporated territories of San Diego County.

2.5 “City” means the City of Escondido.

2.6 “Effective Date” refers to the date on which the Adopting Ordinance becomes effective, as further described in Section 1.5.

2.7 “Entitlements” refers to all City approvals and/or certifications necessary or incidental to accommodate the full development and build out of the Property for hospital and other uses associated with

the Palomar West medical campus, whether discretionary or ministerial, including but not limited to, this Agreement and those items listed in Section 1.6 above.

2.8 “ERTC” means the Escondido Research and Technology Center, a 186-acre area generally located south of Vineyard Avenue and north of Harmony Grove Road, between Enterprise Street and Allenwood Lane in the western portion of the City of Escondido, and more specifically described in the Escondido Research and Technology Center Specific Plan.

2.9 “Exaction” refers to any fee, tax, requirement, condition, dedication, restriction, or limitation imposed by the City upon the development of the Property, in accordance with the Existing Laws.

2.10 “Existing Laws” refers to the ordinances, resolutions, codes, rules, regulations, specific or general plans, and official policies of City in effect on the Effective Date that govern the development of the Property, including, but not limited to, the permitted uses of the Property, the density or intensity of use, the design, improvement and construction standards and specifications for Palomar West, including the maximum height and size of proposed buildings, and the provisions for reservation and dedication of land for public purposes.

2.11 “Force Majeure Event” means any of the following events which prevents a party from performing any obligation under this Agreement: any act of a public enemy, blockade, war, insurrection, civil disturbance, explosion or riot; epidemic; landslide, earthquake, fire, storm, flood, or washout; any act of God, strike, lockout or other industrial disturbance; title dispute, or any litigation relating to the terms or implementation of this Agreement; governmental restraint, action or inaction, either federal, state, county, civil or military, including the adoption of any new law materially affecting either the ability of the Parties to proceed or the costs of proceeding (but expressly excluding any City restraint, action, inaction, law, policy, or ordinance); any initiative or referendum; and failure to obtain any necessary federal, state or county governmental approval despite reasonable efforts to do so.

2.12 “Future Laws” refers to all ordinances, resolutions, codes, rules, regulations, and official policies implemented by City after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order or otherwise. “Future Laws” includes changes to the Existing Laws.

2.13 “Future Entitlements” refers to all Entitlements approved or adopted by the City after the Effective Date which require discretionary review.

2.14 “General Fees” refers to all general development fees which City may levy pursuant to the Government Code Sections 66000 et seq. (“the Mitigation Fee Act”), including, but not limited to, application fees, processing fees, utility connection fees, inspection fees, capital facilities fees, development impact fees, traffic impact fees, park fees and such other similar fees in force as of the Effective Date and generally applied throughout the City.

2.15 “Public Benefit Payment” refers to the one-time payment by PPH in the principle amount of \$13,000,000 plus any earned interest thereon to be used solely for the Citracado Parkway Improvements as more fully defined in Section 5.2.

ARTICLE 3

General Provisions

3.1 Term of Agreement. The term of this Agreement (“Term”) shall commence on the Effective Date and shall continue for a period of thirty (30) years, unless terminated, modified, or extended as permitted by this Agreement.

Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect except for any right or duty arising from City approvals, including, without limitation, the Entitlements and Future Entitlements. The termination of this Agreement shall not affect any additional rights or duties arising from separate agreements contemplated herein or otherwise subsequently entered into by the Parties unless expressly stated in those separate agreements.

3.2 Assignment. Should PPH not substantially construct Palomar West for any reason, including its own choice to abandon the project, the rights and obligations under this Agreement may not be transferred or assigned to a third party. Should PPH substantially construct Palomar West, the rights and obligations under this Agreement may be transferred or assigned to a third party, so long as (1) such assignment is in writing and expressly provides that the assignee shall be subject to this Development Agreement; (2) the assignment is to a medical service provider, hospital, or similar medical/hospital entity whose intended use is consistent with the Amended ERTC Specific Plan being adopted concurrently with this Agreement; (3) the City determines that the assignment will not affect the timely completion or fulfillment of any obligations in the Entitlements, the Future Entitlements, or this Agreement; and (4) City expressly consents to the transfer or assignment of rights and obligations under this Agreement. PPH shall provide no less than thirty (30) days' advance written notice to the City of any proposed intention to transfer or assign the rights or obligations under this Agreement, and City shall make the determination required by subsections (3) and (4) of this Section 3.2 in accordance with applicable City laws and procedures. In making the determinations required by subsections (3) and (4) of this Section 3.2, the City shall approve any assignment or transfer where it can reasonably be demonstrated that the proposed assignment/transfer will not affect or impair the ability to complete in a timely fashion any uncompleted obligations pursuant to this Agreement, the Entitlements, or Future Entitlements. For purposes of this Section 3.2, “substantially construct” shall mean that the Office of Statewide Health Planning and Development has issued a letter certifying final approval for occupancy of an acute care facility at Palomar West, pursuant to Section 7-155 of the California Code of Regulations, Part 1, Title 24.

Upon any transfer or assignment of PPH’s rights and obligations under this Agreement, City agrees to look solely to the assignee/transferee for compliance by such assignee/transferee with the provisions of this Agreement. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way PPH’s rights hereunder with respect to any portion of the Property retained by PPH. Any amendment to this Agreement between City and transferee shall be binding on and only affect the portion of the Property owned by such transferee. Furthermore, in the event PPH transfers or assigns its rights and obligations under this Agreement, City shall retain all rights, benefits, and obligations under this Agreement and shall remain fully obligated with respect to the Public Benefits.

Notwithstanding the foregoing paragraphs, PPH shall have an unfettered right to enter into an agreement or agreements to jointly develop the Property or any portion thereof, so long as it retains an ownership interest in that portion of the Property and all terms of this Agreement remain in force and binding on PPH.

3.3 Amendment of Agreement. This Agreement may be amended by the mutual consent of the Parties in the manner provided by the Development Agreement Legislation. This Agreement shall include any amendment properly approved and executed. The Parties may also agree to release a portion or portions of the Property entirely from this Agreement. Minor modifications in the manner of performance, including, but not limited to changes which relate to the form or timing of payment of “Public Benefits”, other implementing actions, or the design and/or phasing of Palomar West shall not constitute an Amendment to this Agreement, and may be accomplished through the use of “Operating Memoranda” as provided herein.

3.4 Operating Memoranda. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation between City and PPH, and that the refinements and further development of Palomar West hereunder may demonstrate that changes are appropriate with respect to the details of performance of the Parties hereunder. The Parties desire, therefore, to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. If and when, from time to time during the Term, the Parties find that such changes or adjustments are necessary or appropriate, they shall effectuate such changes or adjustments through “Operating Memoranda” approved by the Parties, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further changed and amended from time to time as necessary with further approval by City and PPH. No such Operating Memoranda shall require prior notice or hearing, or constitute an amendment to this Agreement; and in the case of City such Operating Memoranda may be acted upon by City’s Director of Planning and Building. Failure of the Parties to enter into any such Operating Memoranda shall not affect or abrogate any of the rights, duties or obligations of the Parties under or the provisions of this Agreement or agreements outside of this Agreement.

3.5 Enforcement. Unless amended or terminated as provided herein, this Agreement is enforceable by either Party or its successors and assigns throughout the Term, notwithstanding any Future Laws which alter or amend the Existing Laws.

3.6 Hold Harmless. PPH agrees, to the extent permissible under the Local Health Care District Law, California Health and Safety Code, § 32000, et seq., to indemnify, hold harmless, and provide and pay all costs for a defense for the City, with legal counsel of the City’s choice at professionally reasonable rates, in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act or acts of the City, its officers, agents, employees, or representatives.

3.7 Third Party Challenges. In the event the validity, applicability, or implementation of this Agreement is challenged by means of legal proceedings or administrative actions by any party other than the City or PPH, it shall be the option of each Party, at its sole and absolute discretion, whether or not to undertake the defense of such challenge. If either Party determines not to defend such challenge, it shall be the option of the other to defend the validity, applicability or implementation of this Agreement in the

proceeding. Regardless of whether one or both Parties participate, PPH and City agree to cooperate in the defense of any such challenges, and should one Party choose not to participate in the defense, that Party shall not interfere with the other Party's ability to mount a defense to any challenge.

3.8 Processing During Third Party Challenges. The filing of any third party actions against City or PPH relating to this Agreement, the Entitlements, any Future Entitlements or to other development issues affecting the Property, including without limitation lawsuits or administrative actions, shall not delay or stop the development, processing or construction of Palomar West, the processing and approval of Future Entitlements, completion of the Highway 78/Nordahl Improvements, or completion of the Citracado Parkway Improvements unless and until the third party obtains a court order preventing the activity. Should a third party action cause an activity in this Agreement to be delayed, and such activity and its delay should affect any of the timelines in this Agreement, the affected timeline or timelines shall be tolled commensurate with the delay caused by the third party action, in the manner described in Section 7.6 of this Agreement.

3.9 Notices. All notices or communication between the City and PPH pursuant to this Agreement shall be in writing and shall be given by personal delivery (including commercial express delivery services providing acknowledgments of receipt), registered, certified, express mail, facsimile or telecopy, or telegram to the addresses set forth below. Receipt shall be deemed complete as follows:

3.9.1 For personal delivery, upon actual receipt;

3.9.2 For registered, certified, or express mail, upon the delivery date or attempted delivery date as shown on the return receipt; and

3.9.3 For facsimile, upon transmission of the facsimile or, if transmitted after business hours, then the next business day.

Notices shall be addressed as follows:

To the City: City Clerk
 City of Escondido
 201 N. Broadway
 Escondido, CA 92025
 FAX (760) 741-7541

To PPH: CFO's Office
 Palomar Pomerado Health
 15255 Innovation Drive
 San Diego, CA 92128
 FAX (760)781-5333

Copies To: City Attorney
 City of Escondido
 201 N. Broadway
 Escondido, CA 92025
 FAX (760) 741-7541

Allen D. Haynie, Esq.
Latham & Watkins LLP
600 West Broadway, Suite 1800
San Diego, CA 92101
FAX: (619) 696-7419

The addresses to which notices shall be sent may be changed by giving ten (10) days' written notice of change of address in the manner set forth above.

3.10 Conflict of State or Federal Laws. If state or federal laws or regulations enacted after the Effective Date prevent compliance with any provision of this Agreement or require changes in the Entitlements or any Future Entitlements, the federal or state law or regulation shall be controlling and the Parties shall make a good faith and objectively reasonable attempt to modify this Agreement to comply both with the intent of this Agreement and with the new law or regulation.

The City shall cooperate with PPH in securing any permits, including permits from other public agencies, which may be required as a result of the modifications, suspensions, or alternate course of action.

3.11 Conflict With Authorizing Laws. Both PPH and City are public entities whose powers are defined and limited by their respective governing statutes and regulations, including those statutes and regulations that govern the procedures of these entities (collectively, "Governing Provisions"). Therefore, even where not expressly stated herein, any commitments or pledged actions described in this Agreement are strictly contingent upon compliance with City's and PPH's Governing Provisions - which cannot be contractually waived - including without limitation notice and public hearing requirements. Neither party shall be held in default of this Agreement if it uses best efforts to achieve the commitment or action described herein, but is precluded from doing so by virtue of compliance with its Governing Provisions.

ARTICLE 4

Development of Palomar West

4.1 Applicable Rules, Regulations, and Policies. PPH shall have the vested right, to the fullest extent allowed under the Development Agreement Legislation, and except as expressly restricted in this Agreement, to fully develop the Property for hospital and other uses associated with the Palomar West medical campus as described in this Agreement, in accordance with the Amended ERTC Specific Plan and other Entitlements, Future Entitlements and the Existing Laws. During the Term, the Entitlements, Future Entitlements, Existing Laws and this Agreement shall control the overall design, development and construction of Palomar West. Furthermore, hospital building approvals are subject to California state laws governing the construction of hospital buildings ("Hospital Building Laws"), such approvals to be granted by the appropriate state agency. To the extent City laws are not preempted by Hospital Building Laws, then

nothing in this Agreement shall preclude City from applying the non-preempted City laws to Palomar West. Furthermore, to the extent they are not preempted by Hospital Building Laws, nothing in this Agreement shall preclude City from applying changes occurring from time to time in the Uniform Building Code, Uniform Electrical Code, Uniform Fire Code, Uniform Mechanical Code, or Uniform Plumbing Code to those portions of the Palomar West development, provided that such changes (i) are found by City to be necessary to the health or safety of the citizens of City, (ii) are generally applicable to all similar types of property in City, and (iii) do not prevent or unreasonably delay development of Palomar West in accordance with this Agreement. In the event of any inconsistency between the Existing Laws, the Entitlements, and this Agreement, the provisions of this Agreement shall control.

Prior to the Effective Date, City and PPH shall use reasonable efforts to identify two identical sets of the Existing Laws and Entitlements, one set for City and one set for PPH, so that if it becomes necessary in the future to refer to any of the Existing Laws or Entitlements, there will be a common set available to both parties.

4.2 Future Laws. Future Laws shall not apply to the development of Palomar West unless they are non-discriminatory, uniformly applicable throughout the City, not in conflict with the Existing Laws and will not prevent, hinder, delay, or adversely economically impact the development of Palomar West. PPH may give City written notice of its election to voluntarily have any Future Law applied to the Property, in which case such Future Law shall be deemed to be an Existing Law.

4.3 Future Entitlements. Except as set forth in this Agreement, including, but not limited to, in Section 4.4, City retains authority over PPH's applications for Future Entitlements, to the extent that any lot line adjustments or additional entitlements are needed by PPH. When processing PPH applications for Future Entitlements, City must apply the Existing Laws, Entitlements, and the terms and conditions of this Agreement. Furthermore, City shall not condition the granting of any Future Entitlement upon a transfer of money, including but not limited to any form or public benefit payment, or any other valuable consideration from PPH to City, other than the standard General Fees that are generally applicable to other persons seeking similar entitlements from the City, and which are in effect as of the Effective Date. Upon granting any Future Entitlement, such Future Entitlement shall become part of the Entitlements and Existing Laws. To the extent the City attempts to modify the Amended ERTC Specific Plan after the Effective Date and such modification is not made at the express written request of PPH, the modification will have no effect on the development of Palomar West, and Palomar West will continue to be developed in accordance with the terms of this Agreement and the Amended ERTC Specific Plan being adopted concurrently with this Agreement.

Notwithstanding the provisions of this Section, the Parties shall comply with the requirements of the California Environmental Quality Act ("CEQA") in the implementation of the matters set forth in this Agreement, or in future actions related to this Agreement. Nothing in this Agreement restricts the Parties' obligations, rights, or duties with respect to compliance with CEQA.

4.4 Permitted Uses and Density. The permitted uses, density, and intensity of uses at Palomar West, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes, shall substantially conform to those specified in the Amended ERTC Specific Plan and other Entitlements, Future Entitlements, related conditions of approval, Existing Laws, and this Agreement. PPH shall retain sole discretion over the timing, phasing, and intensity of development,

consistent with requirements of the Amended ERTC Specific Plan, the other Entitlements and Future Entitlements, and this Agreement. All other aspects of the Project that are not governed by the Entitlements or Future Entitlements and related conditions of approval shall be determined by the Existing Laws, except as expressly provided herein or pursuant to a subsequent written agreement between the parties. To the extent the City retains any discretion in the Future Entitlements concerning future permitted land uses, density, and intensity of use(s), City agrees, absent conditions that the City establishes are dangerous to the health or safety of the residents of the City specifically resulting from Palomar West, to exercise that discretion in a reasonable manner, not inconsistent with the vested development rights granted to PPH in the Entitlements, Future Entitlements and this Agreement.

4.5 Permitted Fees. Except as otherwise provided in this Agreement, and specifically excluding fees set by entities not controlled by City that are collected by City, City shall only charge and impose those General Fees and Exactions, including, without limitation, dedications and any other fee or tax (including excise, construction or any other tax) relating to development or the privilege of developing, which are in effect on a City-wide basis as of the Effective Date, including generally applicable increases in such fees that may be adopted from time to time and are generally applicable on a City-wide basis. This Section shall not be construed to limit the authority of City to charge customary application, processing, and permit fees for land use approvals, building permits and other similar permits, which fees are designed to reimburse City's expenses attributable to such application, processing and permitting and are in force and effect on a City-wide basis at such time as said approvals and permits are granted by City. Notwithstanding the foregoing, all traffic impact fees have been fully satisfied and waived by the City for the term of this Agreement, as described further in Section 5.6.3.

4.6 Time for Construction and Completion of Palomar West. PPH cannot predict when or the rate or the order in which Palomar West will be developed, if at all. Such decisions depend upon numerous factors that are not within the control of PPH, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Therefore, PPH shall have the right to develop Palomar West in one or more phases, in such order, at such rate, and at such times as PPH deems appropriate in PPH's business judgment, subject only to the provisions of this Agreement and conditions imposed by City on Palomar West through the Entitlements. PPH shall be entitled to apply for and receive approval of permits, building permits, and other Entitlements and Future Entitlements for use at any time and for any or all portions or phases of Palomar West, provided that application is made in a manner consistent with this Agreement. Public Benefits are to be initiated and/or completed in accordance with the specific provisions of Article 5, except to the extent that the Parties mutually agree and consent in writing to modification of the deadlines and timelines provided in Article 5; and provided further, nothing herein shall obligate PPH to construct Palomar West.

4.7 Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy certificates, or other entitlements to services (including, without limitation, water and sewer), that are approved, issued or granted within City, or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this

Agreement; provided, however, the provisions of this Section shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria.

4.8 Infrastructure Capacity. Subject to PPH's installation of public and private infrastructure in accordance with the requirements of the Entitlements and Future Entitlements, City hereby acknowledges that it will have sufficient capacity in its infrastructure, services, and utility systems, including, without limitation, traffic circulation, flood control, sewer collection, sewer treatment, sanitation service and, except for reasons beyond City's control, water supply, treatment, distribution and service, to accommodate Palomar West. To the extent that City renders such services or provides such utilities, including, without limitation, wastewater treatment for Palomar West at City's Hale Avenue Resource Recovery Facility, and disposal of solid waste from Palomar West through City's existing Franchise, City hereby agrees that such services shall be available to Palomar West in the same manner as such services are provided citywide, and that there shall be no restriction on hookups or service except for reasons beyond City's control. With respect to these and all services and utilities provided by City, City will provide the services in accordance with standard rates and rules, such rates not to be greater than rates charged by City to other similarly situated customers. To the extent City does not render such services or provide such utilities, City hereby agrees that upon request, it shall cooperate with PPH in the securing of those services from the applicable provider.

4.9 Easements. Easements dedicated for pedestrian and equestrian use shall be permitted to include easements for underground drainage, water, sewer, gas, electricity, telephone, cable and other utilities and facilities so long as they do not unreasonably interfere with pedestrian and equestrian use.

4.10 Public Rights-of-Way. As requested by PPH and as may be reasonably necessary to finance, construct and operate the "linear facilities" (i.e. facilities outside of the Palomar West site that are necessary for the operation of Palomar West, including electric lines, gas pipelines, etc.), City shall grant to PPH such rights-of-way or other similar rights to property in which City has a property interest. In ordinary circumstances, City's grant of these real property rights shall be at no additional cost to PPH; however, City may need to require payment in certain extraordinary circumstances, such payment to be equivalent to the payment typically made by other developers of City property under analogous extraordinary circumstances.

4.11 Acquisition of Additional Property Rights. If PPH is unable to acquire necessary property for the linear facilities, it may request assistance from City in the acquisition of necessary property rights which City shall exercise as permitted by law. PPH shall reimburse City for all costs associated with acquisition of additional property rights.

4.12 Amendments to Entitlements. It is contemplated by City and PPH that PPH may, from time to time, seek amendments to one or more of the Entitlements. Such amendments are permissible under the Agreement when sought by PPH, and are to be adopted pursuant to standard City laws and procedures as governed by the Existing Laws. Upon approval by City, any such Amendments sought and obtained by PPH shall be incorporated and become a part of the Entitlements of this Agreement.

ARTICLE 5

Public Benefits

5.1 Public Benefits Generally. In addition to the benefits described elsewhere in this Agreement, the City and PPH shall cooperate and work together to accomplish certain “Public Benefits” which are outlined and identified in this Article 5, some of which are also depicted in further detail in Exhibits B and C, which are attached to this Agreement and incorporated by this reference. With respect to the Public Benefits, this Agreement identifies the responsible Party or Parties and the manner in which such Party or Parties shall participate in providing the Public Benefits. The timing and implementation of Public Benefits shall occur at times set forth in this Agreement, and at such times as the Parties may subsequently agree in writing. The Parties’ obligations under this Article 5 shall be subject to enforced delays pursuant to Section 7.6.

5.2 One-Time Public Benefit Payment by PPH. PPH shall pay City a \$13,000,000 Public Benefit Payment to be used exclusively by the City for the Citracado Parkway Improvements described in Section 5.6.1.

5.2.1 Form of Public Benefit Payment. The Public Benefit Payment shall consist of a one-time deposit into a dual-signatory, interest-bearing trust account. The deposited monies shall be managed and invested by PPH consistent with the investment rules and laws applicable to PPH as a local health care district, and earning interest at the rate that would generally be earned on a PPH portfolio of similar funds.

5.2.2 Timing of Public Benefit Payment and Access to Funds. The Public Benefit Payment shall be deposited on or prior to the Effective Date of this Agreement, except that the deposit of the Public Benefit Payment shall be expressly conditioned upon PPH successfully closing escrow on the remainder of the land constituting the Property. If PPH has not closed escrow on the remainder of the Property prior to the Effective Date, then the date of the Public Benefit Payment shall be delayed until such time that escrow has closed. Once the Public Benefit Payment is deposited, City shall not be able to access and use the Public Benefit Payment until (a) all litigation arising out of this Agreement or the Entitlements, if any, is resolved in favor of PPH at the trial court level and no temporary restraining orders or injunctions against the development of Palomar West have been issued by a court; (b) applicable statutes of limitations to challenge the Agreement and the Entitlements have run; and (c) PPH has given City written notice of its intention to commence with the construction of Palomar West. Subject to the preceding limitations, City shall be entitled to draw funds from such account at times and in amounts at its sole discretion, so long as all funds are used exclusively for direct costs associated with the design, engineering, environmental review, and construction of the Citracado Parkway Improvements. City shall provide normal and customary documentation of its usage of the Public Benefit Payment such as invoices, contracts, receipts, and similar documentation clearly demonstrating that funds from the Public Benefit Payment have been used solely for the Citracado Parkway Improvements; such documentation may be provided by City to PPH in connection with the meet and confer provisions of Article 6 of this Agreement.

5.2.3 Interest Proceeds. Any interest accruing to the trust account subsequent to the deposit of the Public Benefit Payment shall accrue to the benefit of the City, and shall be available for use by the City only on the Citracado Parkway Improvements, except that such interest shall be subject to the same access/use restrictions as the principle Public Benefit Payment as defined in Section 5.2.2. In the event the

Public Benefit payment is not made prior to March 31, 2006, interest shall be deemed to accrue on such date and shall be deposited when the Public Benefit payment is made.

5.3 Local Sales and Use Election Public Benefit. In order to assist City in its efforts to receive direct distribution of the local tax on materials associated with the development and operation of Palomar West, the California Sales and Use Tax (the "Local Tax") shall be allocated to the Palomar West site, within the City, to the maximum extent reasonably possible. Palomar West, as currently envisioned, is projected to cost more than \$500,000,000 to construct and furnish, and therefore has the potential to be a significant source of additional local sales and/or use tax revenue to the City. PPH, and all of its contractors, sub-contractors, and suppliers shall cooperate with the City of Escondido to the extent reasonably possible to maximize the allocation of the Local Tax to the City. Such cooperation shall include but not be limited to: (a) Sales Office: To the extent commercially reasonable, PPH's contractor and all sub-contractors shall order purchases from its vendors' and suppliers' sales offices located in the City of Escondido; (b) Use of Tax Direct Payment Permits: PPH's contractor, sub-contractors, and suppliers shall apply for, obtain, and utilize, to the extent commercially reasonable, a California Use Tax Direct Payment Permit, and a complete copy of each quarterly tax return is to be sent to the City of Escondido; and (c) Purchases: to the extent commercially reasonable, PPH's contractor and sub-contractor shall require equipment and material vendors and suppliers from which they make any individual purchases, which are subject to use tax and are to be used in the City, to allocate the local use tax to the City to the extent authorized by law. The incremental Local Tax generated from the construction of Palomar West shall accrue to the City in accordance with applicable law.

5.4 Transfer of Warehouse Facility. PPH presently owns and operates a warehouse distribution facility at 15255 Innovation Drive within the City of San Diego, CA (the "Warehouse Facility"). The Warehouse Facility serves as the distribution center for the medical supplies and other items that are necessary for the daily operations of PPH facilities in the District. The current annual capital budget for the warehouse facility is estimated to be approximately \$10,000,000, with estimated annual consumable and/or retail supply sales transactions exceeding \$30,000,000. The Parties hereby agree that the preceding estimates in no way represent a guarantee as to the Warehouse Facility budget or the amount of sales tax revenue the City can expect to receive from it, such numbers subject to change based on market conditions and/or prevailing tax laws.

PPH shall physically relocate the Warehouse Facility to the City within two years of the Effective Date of this Agreement. PPH shall change its business address of record for the Warehouse Facility to an address within the City within two years of the Effective Date, but in no case will this transfer of the business address of record take place later than the transfer of PPH's Corporate and Administrative Headquarters to the downtown Palomar Medical Center, in accordance with the terms of the separate MOU between the Parties being adopted concurrently with this Agreement. Upon transfer, the business address of record will remain within the City of Escondido for a period of at least ten (10) years. To the extent commercially reasonable, the bill of sale for all orders, including orders that are temporarily warehoused at physical locations outside of the City, shall be billed to the Warehouse Facility business address of record within the City.

5.5 Design Advisory Committee. The parties agree to create an advisory committee to assist PPH in the design of Palomar West ("Design Advisory Committee"). The Design Advisory Committee will consist of a total of four (4) persons; each Party will appoint two of the four persons on the Design Advisory

Committee. The Design Advisory Committee will meet periodically to discuss design issues related to Palomar West and to provide input to the Parties. The Parties may consult with the Design Advisory Committee upon either Party's request.

5.6 Offsite Regional and Citywide Public Improvements. The Parties agree that the \$13,000,000 Public Benefit Payment (plus any interest accrued pursuant to Section 5.2.3) is the total contribution of PPH through full buildout of Palomar West for all offsite traffic/transportation improvements, except as set forth in this Agreement, and therefore, fully satisfies all PPH obligations with respect to traffic/transportation improvements throughout the life of the project. To the extent PPH requests Future Entitlements from the City, the City shall not condition the granting of such Future Entitlements on the transfer of additional money, including without limitation any form of public benefit payment, or other valuable consideration from PPH to City, other than General Fees, as described further in Sections 4.3, 4.4, and 4.5 of this Agreement. Nothing in this section 5.6 shall affect or impair any current or future PPH obligation to implement mitigation measures or other conditions associated with the Entitlements or Future Entitlements, including without limitation the CEQA Addendum adopted in connection with this Agreement and the Amended ERTC Specific Plan.

5.6.1 Citracado Parkway Improvements. The Citracado Parkway Improvements consist of improvements to several intersections [1] Citracado/Valley Parkway; [2] Citracado/Avenida Del Diablo; [3] Citracado/Kauana Loa Dr./Harmony Grove Rd; [4] Citracado/Vineyard Ave and street construction and improvements to Citracado Parkway along the entirety of Citracado Parkway from Valley Parkway to Country Club Drive. The Citracado Parkway Improvements are listed and shown graphically in Exhibit B. Numerical references are to the labeled intersections in Exhibit B. The parties understand that the final configuration of the Citracado/Avenida Del Diablo and Citracado/Kuana Loa Dr/Harmony Grove Rd intersections have not yet been determined by the City, and are subject to final design.

City hereby designates completion of the Citracado Parkway Improvements as one of the City's highest priority transportation capital improvement projects. City shall use the sums identified in Sections 5.2, and may use the sums identified in Section 5.3, and 5.4, and any other available funds, as necessary to fund the actual design, engineering, environmental review, financing, and construction of the Citracado Parkway Improvements. The City shall continue with its present design and engineering activities consistent with the foregoing prioritization, and shall diligently and promptly initiate design and construction of the Citracado Parkway Improvements. City shall be solely responsible for all design, engineering, construction, financing, and the securing of necessary approvals from other government entities, including without limitation compliance with requirements under the California Environmental Quality Act ("CEQA"), except that PPH shall cooperate with and reasonably provide assistance to the City in these endeavors, including efforts to obtain additional financing.

Furthermore, City shall diligently seek funding from CALTRANS, the City of San Marcos, SANDAG and other governmental agencies and shall pursue all potential funding or cost sharing sources. City shall diligently seek reimbursement from other developers who stand to benefit from the completion of the Citracado Parkway Improvements. PPH shall cooperate with City and reasonably provide assistance to City in its efforts to secure reimbursements and contributions from governmental agencies and/or other developers for the construction of the Citracado Parkway Improvements (collectively, "Third-Source Funding").

5.6.2 Completion of Citracado Parkway: Subject to any force majeure event and City's compliance with CEQA, City shall complete the Citracado Parkway Improvements within ten (10) years from the date upon which the combined sum of the public benefit sums identified in Section 5.2 (Public Benefit Payment and interest), Section 5.3 (Local Sales and Use Election Public Benefit), Section 5.4 (Transfer of Warehouse Facility), and Section 5.6.1 (Third-Source Funding) exceeds Total Citracado Parkway Costs. For purposes of this Agreement only, "Total Citracado Parkway Costs" is hereby defined to mean the currently estimated project cost of \$19,000,000, plus any increases or decreases (herein, "Adjustments") in the Estimated Capital Costs of completing Citracado Parkway commencing from April 1, 2010. For purposes of this Agreement only, "Estimated Capital Costs" is hereby defined to mean \$13,000,000. Adjustments based on the Estimated Capital Costs will be calculated on April 1 of each year, starting on April 1, 2010, and will be calculated using the [need to determine appropriate cost index], as compared to the Index Number for the preceding year. Adjustments will only be calculated on the sum of Estimated Capital Costs that has not been spent as of April 1 of the given year. Commencing on April 1, 2010, such calculated Adjustments will be added or subtracted as appropriate from the currently estimated project cost of \$19,000,000 for purposes of calculating Total Citracado Parkway Costs.

5.6.3 Citracado Parkway Reimbursement: To the extent Third Source Funding, as described above, plus the amount of the one-time Public Benefit Payment, plus interest, exceeds the actual cost to complete the Citracado Parkway Improvements as defined in Section 5.6.1, then City shall reimburse PPH the amount of excess funds received up to the sum of five million dollars (\$5,000,000). Such payment shall be considered reimbursement for PPH's contribution to the Citracado Parkway Improvements. City shall report to PPH on an annual basis any Third-Source Funding it has sought, and any Third-Source funding it has received, and shall cooperate with PPH in accounting for the full cost of Citracado Parkway as constructed and total Third-Source funding to determine any such reimbursement.

5.6.4 Nordahl/78 Improvements: To the extent not already completed, the Nordahl/78 Improvements include improvements to the following intersections and interchanges ([1] Citracado Parkway/Country Club Drive; [2] Nordahl Road/West Mission Road; and [3] Highway 78/Nordahl Road interchange, including bridge expansions and off ramp/onramp improvements); and improvements to the entirety of Nordahl Road between Highway 78 and the Citracado Parkway/Country Club Drive intersection. The Nordahl/78 Improvement Intersections are listed and shown graphically in Exhibit C. Numerical references are to labeled intersections on Exhibit C.

To the extent not already completed, City hereby designates completion of the Nordahl/78 Improvements as the City's highest priority transportation capital improvement project. The City shall continue with its present design and engineering activities consistent with the foregoing prioritization, and, to the extent it has not already done so, shall diligently and promptly initiate construction of the Nordahl/78 Improvements and continuously pursue same to completion. Provided that there is no Force Majeure Event, City shall complete the Nordahl/78 Improvements prior to when the Office of Statewide Health Planning and Development has issued a letter certifying final approval for occupancy of an acute care hospital facility at Palomar West, pursuant to Section 7-155 of the California Code of Regulations, Part 1, Title 24. City shall be solely responsible for all design, engineering, construction, financing, and the securing of necessary approvals from other government entities, including without limitation compliance with requirements under the California Environmental Quality Act ("CEQA"), except that PPH shall cooperate with and reasonably

provide assistance to the City in these endeavors, including the City's efforts to obtain additional financing from governmental entities and/or developers who may benefit from the completion of the Nordahl/78 Improvements.

5.6.5 Additional Traffic Improvements. In addition to those traffic related improvements identified specifically in Section 5.6.1 and 5.6.4, PPH shall also be responsible for those traffic improvements required as a condition of the Addendum prepared in connection with the Palomar West project, including those certain improvements identified on Table 13.1 of the LLG Traffic Study attached to the Addendum, according to the fair share contributions identified on such Table.

5.6.6 Discharge/Satisfaction of Palomar West Impact Fees. The parties agree that the share of estimated traffic fees for the development of Palomar West would be less than \$13,000,000 based upon fee schedules in effect as of the Effective Date and payable over time as building permits are obtained for Palomar West. In consideration of the one-time Public Benefit Payment plus interest, the Local Tax, and the Warehouse Facility sales tax described in Sections 5.2, 5.3, and 5.4, respectively, PPH has discharged and satisfied all City traffic/transportation impact fees for the buildout of Palomar West during the duration of this Agreement.

5.7 Additional Provisions Pertaining To The Public Benefits

5.7.1 Contingencies. Should PPH not construct Palomar West, whether due to third-party litigation, a force majeure event including a change in law materially affecting the ability to complete Palomar West, or any other reason, including PPH's discretionary choice to abandon the Palomar West, then the Parties shall not be obligated with respect to any of the Public Benefits described in this Article 5. If for any reason PPH should abandon and decide not to construct Palomar West after which time City has used any portion of the Public Benefit Payment as described in Section 5.2.2, then PPH is to retain full control of the remaining Public Benefit Payment sums and any accrued interest in the trust account at the time PPH decides to abandon the project. City shall not be obligated to reimburse PPH for any sums withdrawn from the trust account and used for the Citracado Parkway Improvements prior to PPH's abandonment of the Palomar West project.

5.7.2 Meet and Confer. If any of the Parties' respective Public Benefits described in this Article 5 are not initiated or likely to be initiated within the timeframes indicated in Article 5, or are not completed or likely to be completed within the timeframes set forth in Article 5, the Parties shall meet and confer in good faith pursuant to Article 6 of this Agreement to mutually consult and explore alternative funding, procedures or other means of expediting the implementation of the Public Benefit obligations. Nothing in this Section 5.7.2 shall excuse the Parties' ongoing obligations to implement the Public Benefits in accordance with the terms of this Article 5, nor shall anything in this Section 5.7.2 require any further contribution or funding from PPH or the Palomar West development.

ARTICLE 6

Meet and Confer

6.1 General. The Parties agree to meet and confer at least once every six months to assess the implementation of this Agreement and the achievement of the activities described herein, and to discuss any ongoing or future efforts towards the same. At such meetings, each Party shall present to the other Party any non-confidential reports, summaries, agreements, contracts, or other tangible documents demonstrating progress towards implementation of this Agreement, including documentation concerning any of the Public Benefit provisions of Article 5. Either party may reasonably request such reports that are relevant to an assessment of the implementation of this Agreement. The meet and confer sessions will be arranged and conducted by senior administrative officials of the Parties at times and locations convenient for the Parties, as determined by the Parties on an informal basis, so long as they take place at least once in every six-month period.

6.2 Periodic Review. Nothing in the foregoing Section 6.1 limits the City's option to periodically undertake public review of the Agreement pursuant to the Development Agreement Legislation provisions in Article 58 of the City's Zoning Ordinance.

6.3 Estoppel Certificates. Any Party may at any time, and from time to time, deliver written notice to another Party requesting that the other Party certify in writing that to the knowledge of the certifying Party:

6.5.1 This Agreement is in full force and effect and is a binding obligation of the Parties.

6.5.2 This Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.

6.5.3 There exists no material default in the performance of the requesting Party's obligations under this Agreement or, if in default, the nature and amount of any material default.

A Party receiving a request under this Section shall execute and return a certificate within thirty (30) days following receipt of the request. The failure to deliver such certificate within such time shall be conclusive upon the party which fails to deliver such certificate that this Agreement is in full force and effect without modification and that there are no uncured defaults in the performance of the requesting party. A certificate given pursuant to this Section may be relied upon by assignees and mortgagees.

ARTICLE 7

Delay, Default, Remedies, and Termination

7.1 Notice and Cure of Default. In the event of a material default, the Party alleging the material default shall give the defaulting Party a notice of default in writing. The notice of default shall specify the nature of the alleged material default, and the manner and period of time of not less than thirty (30) days in which the material default must be cured (the "Cure Period"). The Cure Period must provide sufficient and reasonable time for the material default to be cured. During the Cure Period, the Party charged shall not be

considered in default. If the default is cured within the Cure Period, then no material default shall be deemed to exist.

7.2 Option to Institute Legal Proceedings or to Terminate. If a material default is not cured within the Cure Period, the noticing Party may institute legal proceedings as provided in Section 7.7 and/or give to the defaulting Party a notice of intent to terminate this Agreement. If a notice of intent to terminate this Agreement is given, the City Council, within thirty (30) days after the giving of the Notice, shall hold a public hearing in the manner set forth in the Development Agreement Legislation, as amended, to consider and review the matter.

7.3 Notice of Termination. Consistent with Section 7.1, the Party alleging a material default by the other Party, at its option, may give written notice of termination of this Agreement to the other Party and this Agreement shall be terminated immediately upon the giving of the Notice. The validity of the basis for such a termination may be challenged pursuant to Section 7.7 by the Party alleged to be in default.

7.4 Termination or Modification. Notwithstanding the provisions of Section 33-1149 of City's Zoning Code, City's right to terminate or modify this Agreement may be exercised pursuant to the terms of Section 33-1149 after a public hearing only if City determines that the failure of City to terminate or modify this Agreement would place the residents of City in a condition dangerous to their health or safety; provided, however, nothing in this Section 7.4 shall preclude City from terminating this Agreement in the event of a material default pursuant to the provisions of Sections 7.1 to 7.3 above.

7.5 Waiver. Failure or delay in giving notice of a material default pursuant to Section 7.1 shall not constitute a waiver of any other material default. Except as otherwise expressly provided in this Agreement, a failure or delay in asserting any rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies otherwise available to a Party or deprive a Party of the right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any rights or remedies it may have.

7.6 Enforced Delay, Extension of Time of Performance. Neither Party shall be deemed to be in default where delays or defaults are due to a Force Majeure Event including, without limitation, third-party litigation that delays progress towards accomplishing the goals of this Agreement. If written notice of a delay resulting from a Force Majeure Event is given to the other Party following the commencement of such delay, an extension of time for performance shall be granted in writing for the period of the delay, or longer as may be mutually agreed upon. An extension shall commence to run from time of commencement of the cause of delay.

7.7 Institution of Legal Action. In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default, to enforce any provision of this Agreement, to enjoin any threatened or attempted violation of this Agreement, to recover damages for any default, or to obtain any remedies consistent with the purpose of this Agreement, subject to the provisions of this Agreement regarding notices of non-compliance or material default. Legal actions shall be instituted in the Superior Court of the County of San Diego, North County Branch, State of California, or in the Federal District Court in the Southern District of California.

7.8 Future Litigation Expenses.

7.8.1 If City or PPH brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, or third-party claim) by reason of defaults, breaches, tortious acts, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit including, but not limited to, reasonable attorneys' fees and expert witness fees.

7.8.2 Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

ARTICLE 8

Encumbrances and Releases on Property

8.1 Discretion to Encumber. This Agreement shall not prevent or limit PPH, or any third party with which it contracts to develop any portion of the Property, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage. City acknowledges that lenders providing financing may require modifications to this Agreement and City agrees, upon request, from time to time, to meet with PPH and/or representatives of lenders to negotiate in good faith any lender request for modification. City agrees that it will not unreasonably withhold its consent to any lender-requested modification to this Agreement.

8.2 Entitlement to Written Notice of Default. Any mortgagee and its successors and assigns, upon written request to City, shall be entitled to receive from City written notice of any PPH default at the same time PPH is provided with such notice pursuant to Section 7.1 above.

8.3 Additional Mortgagee Protection. Any mortgagee of a mortgage or a beneficiary of a deed of trust of the Property shall be entitled to the following rights and privileges:

8.3.1 Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.

8.3.2 Any mortgagee receiving the notice referred to in Section 8.2 above shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

ARTICLE 9

Miscellaneous Provisions

9.1 Rules of Construction. The singular includes the plural; the masculine gender includes the feminine; “shall” is mandatory; “may” is permissive.

9.2 Severability. If any non-material provision of this Agreement shall be adjudged by a court of competent jurisdiction to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Agreement. If any material part of this Agreement is adjudged by a court of competent jurisdiction to be invalid, void, or illegal, the Parties shall take all steps necessary to modify this Agreement to implement the original intent of the Parties in a valid and binding manner. These steps may include the waiver by either of the Parties of their right under the unenforceable provision. If, however, this Agreement objectively cannot be modified to implement the original intent of the Parties and the Party substantially benefited by the material provision does not waive its rights under the unenforceable provision, the entire Agreement shall become void.

9.3 Entire Agreement. Except as this Agreement expressly refers to and/or incorporates other agreements between the Parties, this Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all other negotiations and previous agreements between the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all previous agreements between the Parties and third persons with respect to the subject matter of this Agreement.

9.4 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate agents of City or PPH.

9.5 Amendments. All amendments to this Agreement must be in writing signed by the appropriate agents of City and PPH, in a form suitable for recording in the Official Records of San Diego County, California.

9.6 Recording. The City Clerk shall cause a copy of this Agreement to be recorded with the Office of the County Recorder of San Diego County, California within ten (10) days following the Effective Date. Upon the completion of performance of this Agreement or its revocation or termination, a statement evidencing completion, revocation, or termination signed by the appropriate agents of City and PPH shall be recorded in the Official Records of San Diego County, California.

9.7 Palomar West is a Non-Municipal Undertaking. It is specifically understood by the Parties that Palomar West is an independent development being carried out by a public local healthcare district, and that PPH shall have the full power and exclusive control of the Property, subject only to: the provisions of this Agreement, compliance with local healthcare district laws, and any separate agreement PPH enters with respect to the Property that expressly cedes or shares power and control over the Property.

9.8 Incorporation of Recitals. The Recitals set forth in Article I of this Agreement are part of this Agreement.

9.9. Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Agreement.

9.10 Consent. Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be withheld unreasonably.

9.11 Covenant of Good Faith and Fair Dealing. Neither Party shall do anything which shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement. Each Party shall refrain from doing anything which would render its performance under this Agreement impossible. Each Party shall do everything which this Agreement contemplates that such Party shall do to accomplish the objectives and purposes of this Agreement.

9.12 Covenant of Cooperation. The Parties shall cooperate with and assist each other in the performance of the provisions of this Agreement, including assistance in obtaining permits for the development of the Property which may be required from public agencies other than City. The covenant of cooperation shall include, to the maximum extent permitted by law, that City shall use its best efforts to prevent any ordinance, measure, moratorium, or other limitation from invalidating or prevailing over any provision of this Agreement, and the Parties shall cooperate to keep this Agreement in full force and effect. PPH reserves the right to challenge any such ordinance, measure, moratorium, or other limitation in a court of law if it becomes necessary to protect the development rights vested in the Property pursuant to this Agreement.

9.13 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The Mayor of the City shall sign this Agreement on or before the Effective Date.

9.14 Successors and Assigns. Subject to Section 3.2 above, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement inure to, all successors-in-interest and assigns of the Parties.

9.15 Time of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

9.16 Applicable Laws. This Agreement shall be construed and enforced in accordance with the laws of the State of California. All statutory references are to California statutes.

This Agreement has been executed by the Parties as of the dates set forth below:

CITY OF ESCONDIDO,
a municipal corporation

DATED: _____

By: _____
Lori Holt Pfeiler, Mayor

DATED: _____

By: _____
Clay Phillips, City Manager

PALOMAR POMERADO HEALTH,
a California local health care district

DATED: _____

By: _____
Marcelo Rivera, M.D., Chairman

DATED: _____

By: _____
Michael Covert, President and Chief Executive
Officer

APPROVED AS TO FORM AND CONTENT:

By: _____
Jeffrey R. Epp, Esq.
City Attorney, Escondido

APPROVED AS TO FORM AND CONTENT:

By: _____
Allen D. Haynie, Esq.
Legal Counsel, Palomar Pomerado Health,
a California local health care district

EXHIBIT A

PROPERTY DESCRIPTION

Lots 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 of Escondido Tract No. 834, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 14983, filed in the Office of the County Recorder of San Diego County on March 17, 2005 as File No. 2005-0220836, Official Records.

EXHIBIT B

**CITRACADO PARKWAY IMPROVEMENTS
TO BE CONSTRUCTED BY CITY**

[exhibit to follow]

EXHIBIT C

**NORDAHL/78 IMPROVEMENTS
TO BE CONSTRUCTED BY CITY**

[exhibit to follow]