

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR INNOVATION VILLAGE RESEARCH PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR INNOVATION VILLAGE RESEARCH PARK (this “**Declaration**”) is made effective as of April 28, 2003 by **THE CALIFORNIA STATE POLYTECHNIC UNIVERSITY, POMONA** (the “**Declarant**” or “**University**”).

R E C I T A L S

- A.** Declarant is the owner of the real property located in the City of Pomona (the “**City**”), County of Los Angeles (the “**County**”), State of California (the “**State**”) that is depicted on Exhibit A-1 and that is more particularly described on Exhibit A-2 (the “**Project**”). The Project consists of approximately sixty and 9/10 (60.9) acres located at the northwest corner of Temple Avenue and Valley Boulevard.
- B.** In June 2000, the Project received approval from the Board of Trustees for the California State University (the “**BOT**”) to be developed as nine hundred sixty thousand (960,000) square feet of improvements with a mixed-use designation. This approval envisioned improvements that would benefit and enhance the educational mission of the University through public-private partnerships. The Project is and shall be an integral part of the University campus.
- C.** Concurrently with making this Declaration, Declarant is entering into that certain Ground Lease (the “**Prime Lease**”) with the Cal Poly Pomona Foundation, Inc., an Internal Revenue Code section 501 (c)(3) non-profit public benefit educational charitable organization serving the educational mission of the University (“**Lessor**” or the “**Foundation**”), pursuant to which Lessor shall ground lease from Declarant the entirety of the Project.
- D.** Lessor intends from time to time to sublease portions of the Project to subtenants for purposes of developing, improving and occupying such portions of the Project in conformity with this Declaration.
- E.** Declarant wishes, except to the extent reserved herein, to delegate to and confer upon Lessor the authority to act on Declarant’s behalf for purposes of the administration and enforcement of this Declaration for as long as Lessor holds a leasehold interest under the Prime Lease.
- F.** It is Declarant’s intent that the Project shall be held, improved and conveyed subject to those certain protective covenants, conditions and restrictions set forth herein.
- G.** Certain initially capitalized terms used in this Declaration are defined in Section 1.C.

ARTICLE I

GENERAL PROVISIONS

A. **Establishment of Covenants, Conditions and Restrictions**

Declarant hereby declares that the Project is now held, and shall hereafter be leased, improved, conveyed and occupied subject to the covenants, conditions and restrictions set forth herein, each and all of which is and are for, and shall inure to, the benefit of and pass with each and every portion of the Project and shall apply to and bind the heirs, assignees and successors in interest of any owner thereof and any Lessee.

B. **Purpose of Covenants, Conditions and Restrictions**

The purpose of these covenants, conditions and restrictions includes, but is not limited to, (1) encouraging and ensuring the proper development and use of the Project, (2) protecting the Lessee of each Lot against any improper development and use of surrounding Lots, (3) preventing the construction on the Project of structures built of improper design or materials, (4) encouraging the construction of attractive improvements at appropriate locations, (5) preventing the construction of haphazard and inharmonious improvements, (6) ensuring the common use, maintenance, repair and enjoyment of the Common Areas by all Lessees within the Project, and (7) enhancing and protecting the value, desirability and attractiveness of all of the Project.

C. **Defined Terms**

As used in this Declaration, the following initially capitalized terms shall have meanings specified in this Article I. Certain other terms are defined in other provisions of this Declaration.

“**Allocable Share**” means the proportionate share of all Common Expenses attributable to each Lot. The Allocable Share of the Common Expenses for each Lot shall be a fraction whose numerator shall be the approximate total acreage contained within such Lot and whose denominator shall be the aggregate approximate total acreage contained within all Lots. The reasonably estimated Allocable Share for each Lot as of the date hereof is shown on Exhibit B. The acreage listed for each Lot is presumed to be correct and is not subject to change, except to the extent that Lessor reasonably determines that the then Allocable Share of any Lot, based on any recalculation, lot line adjustment, re-parcelization or the like is inaccurate by more than five (5) percent. In the event of any such adjustment, Lessor shall amend Exhibit B by recording an amendment to this Declaration.

“**Assessments**” shall have the meaning set forth in Section VII.A.

“**BOT**” shall have the meaning set forth in the Recitals to this Declaration.

“**Building**” means any Improvement that has a roof and floor.

“**Campus Master Plan**” means the Campus Master Plan for the University, as amended, modified or revised from time to time.

“**CEQA**” means the California Environmental Quality Act, California Government Code section 65941 et seq., as amended.

“**City**” shall have the meaning set forth in the Recitals to this Declaration.

“**Common Areas**” shall mean any portion of the Project that is not a Lot as and when the infrastructure improvements thereon are completed, which shall thereafter be available for the non-exclusive use by Lessees.

“**Common Expenses**” means, as to each Lessee except to the extent expressly provided to the contrary in the Lease with such Lessee, all reasonable costs, fees and expenses incurred by Lessor in performing its obligations hereunder, including reasonable costs, fees and expenses for: (1) the maintenance, management, operation and repair of the Common Areas; (2) management and administration of Lessor, including compensation paid by Lessor to managers, accountants (including the costs of audits and related financial statements and reports with respect to the Lessor’s books and records as concern its duties under this Declaration), attorneys and employees and to any Person retained by Lessor for purposes of performing and discharging Lessor’s duties; (3) utilities, irrigation, gardening and other services, if any, for the Common Areas provided by Lessor (specifically excluding any such services provided by a Lessee for its own Lot pursuant to its Utilities Easement rights provided herein); (4) fire, casualty, liability, workmen’s compensation, earthquake, flood, terrorism, such other insurance covering the Common Areas as Lessor may elect to carry, any deductible amounts paid thereunder and, provided that Lessor is not then in default in its obligation hereunder with respect to the maintenance of insurance, any uninsured claims, expenses and losses; (5) any other insurance obtained by Lessor with respect to or relating to its obligations under this Declaration; (6) reasonable reserves as deemed appropriate by Lessor in its reasonable discretion and in accordance with prudent property management practices generally applied throughout the geographic region in which the Project is located; (7) bonding of Persons employed by Lessor, any professional managing agent or any other Person handling the funds of Lessor; (8) taxes paid by Lessor in connection with the Common Areas or with respect to or relating to the discharge of its duties and obligations under this Declaration; (9) amounts paid by Lessor for the discharge of any lien or encumbrance levied against the Common Areas; (10) incurred by committees established by Lessor in accordance with this Declaration; (11) incurred by Lessor in connection with the storage of documents relating to its duties under this Declaration, including, rents, fees and charges paid to third-party storage providers and facilities in connection therewith; (12) the reasonably allocated cost of extending campus police and shuttle bus services to the Project; (13) the reasonably allocated cost of extending other campus services to the Project provided that such extension of services is approved by Lessees holding in the aggregate at least a majority of Voting Shares; and (14) other expenses reasonably incurred by Lessor for any reason whatsoever in connection with the Common Areas or the full and proper discharge of Lessor’s obligations hereunder. Notwithstanding the foregoing, “Common Area Expenses,” as to each Lessee except to the extent expressly provided to the contrary in the Lease with such Lessee, shall not include (A) the costs and expenses incurred by Lessor to construct the Initial Common Infrastructure (provided that the costs and expenses incurred by Lessor in the maintenance, upkeep, repair and replacement of the Initial Common Infrastructure shall be included in Common Expenses); (B) fees or payments made to any affiliate of Lessor or Declarant for any goods sold or services rendered to Lessor in connection with the performance of its obligations hereunder to the extent

such fees or payments are in excess of the fees or payments that would be owed for such goods or services if delivered or rendered by a third party on under arm's length and prevailing-market terms; and (C) with respect to any period, the costs of capital repairs, replacements or improvements and equipment in excess of the amortization thereof for such period (with amortization calculated over the useful life of such improvement or equipment).

“County” shall have the meaning set forth in the Recitals to this Declaration.

“Declarant” shall have the meaning set forth in the Preamble to this Declaration.

“Design Guidelines and Submittal Requirements” shall mean the Innovation Village Design Guidelines, Design Submittal Requirements and Approval Process Guidelines as issued by Declarant, as amended, modified or revised from time to time.

“Expense Statement” shall have the meaning set forth in Section VII.E.

“Force Majeure Event” shall mean the occurrence of an event, not reasonably foreseeable by or beyond the reasonable control of a Lessee, that unavoidably causes a delay in the completion of construction of any Improvements, such as a labor strike, epidemic, quarantine restriction, freight embargo, adverse weather condition, war, earthquake or act of God.

“Foundation” shall have the meaning set forth in the Recitals to this Declaration.

“Hazardous Materials” means and includes the following substances to the extent such substances would constitute a hazardous substance under the applicable Law as the relevant date: (i) the substances included within the definitions of the terms “hazardous substance” or “hazardous material” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., and regulations promulgated thereunder, as amended, (ii) the substances included within the definitions of the terms “hazardous substance” or “hazardous material” under the California Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code §§ 25300 et seq., and regulations promulgated thereunder, as amended, (iii) the substances included within the definitions of the terms “hazardous substance” or “hazardous waste” under the Hazardous Materials Release Response Plans and Inventory Act, California Health & Safety Code §§ 25500 et seq., and regulations promulgated thereunder, as amended, (iv) any waste listed as or meeting the identified characteristics of a “hazardous waste” under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq., and regulations promulgated thereunder, as amended, and (v) any waste meeting the identified characteristics of “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under the California Hazardous Waste Control Law, California Health & Safety Code, §§ 25100 et seq., and regulations promulgated thereunder, as amended.

“Improvements” shall mean all buildings, outbuildings, parking or loading areas, roads, streets, walkways, utility installations, trackage, fences, walls, poles, signs, hedges, mass or large plantings, and all other improvements and structures of any kind located on any Lot or otherwise within the Project, and any replacements, additions, repairs or alterations thereto of any kind whatsoever.

“Initial Common Infrastructure” shall mean the common infrastructure to serve the Project, as more particularly described on Exhibit C.

“Law” means any law, rule, regulation, ordinance, code, decision or requirement of any municipal, state or federal governmental entity, provided that any law, rule, regulation, ordinance, code, decision or requirement promulgated by any University Entity shall be deemed to be a “Law” only to the extent uniformly applicable to the Project.

“Lease” means any sublease or other occupancy agreement entered into by Lessor and a Lessee pursuant to which Lessor demises to such Lessee a leasehold or similar interest in a Lot subject to the Prime Lease.

“Lessee” means Person that is a party as subtenant, sublessee or the like to a Lease.

“Lessor” shall have the meaning set forth in the Recitals to this Declaration.

“Lot” means each of the separate lots or parcels of real property comprising the Project. Exhibit D attached hereto sets forth the legal descriptions of the Lots which are known as of the date of the recordation of this Declaration. Exhibit D may be revised from time to time by Minor Amendment as legal descriptions become available for other Lots.

“Minor Amendment” shall mean any amendment, modification or revision to this Declaration to (1) reflect an adjustment to the Allocable Share attributable to any Lot in accordance with the definition of “Allocable Share” (including without limitation the subdivision of any Lot and the reallocation of the Allocable Share attributable thereto, provided that Lessor does so in compliance with the terms and provisions of any applicable Lease); (2) incorporate or revise the legal description for any Lot or the Project in accordance with the definitions of “Lot” and “Project” respectively; (3) extend the term of this Declaration pursuant to Section X.A; (4) effect or reflect the annexation to this Declaration and the Project made pursuant to Section X.D of the approximately three and 9/10 (3.9) acre parcel adjacent to the Project currently occupied by NASA/JPL; (5) terminate the delegation made hereunder by Declarant to Lessor, provided that Declarant or another University Entity concurrently assumes the duties of Lessor hereunder; (6) reflect any change in the governance or organizational structure of Declarant, Lessor or any University Entity; (7) change the provisions of Section VIII.F to reflect the reasonable requirements of any Mortgagee; or (8) effect any other change to the terms and provisions of this Declaration provided that, as a result of such change, the burdens or liabilities of any Lessee hereunder are not increased, or the rights and benefits of any Lessee under its Lease are not decreased, by more than a de minimis extent.

“Mortgage” shall have the meaning set forth in the Section VIII.F.

“Mortgagee” shall have the meaning set forth in the Section VIII.F.

“Person” means any natural person or other legal entity, including a corporation, partnership, trust, association or limited liability company.

“Plans” means plans, drawings and specifications for the development and construction of a Lot and Improvements, as applicable, prepared in accordance with the requirements of the Design

Guidelines and Submittal Requirements and referred to therein as the “Construction Documents”.

“**Prime Lease**” shall have the meaning set forth in the Recitals to this Declaration.

“**Project**” shall have the meaning set forth in the Recitals to this Declaration. The legal description for the Project is attached to this Declaration as Exhibit A-2, and may be revised from time to time by amendment pursuant to the terms and provisions of this Declaration (including without limitation as set forth in the definition of “Minor Amendment” above).

“**Project Rules**” means such reasonable rules and regulations for, and uniformly applicable to, the Project as may be adopted by Lessor from time to time, as amended, modified or revised from time to time, provided that no Lessee shall be bound thereby to the extent that Lessor has failed to provide notice of such Project Rules to any Lessee pursuant to the provisions of Section XII.G.

“**Regular Assessment**” shall have the meaning set forth in Section VII.C.

“**Special Assessment**” shall have the meaning set forth in Section VII.D.

“**State**” shall have the meaning set forth in the Recitals to this Declaration.

“**University**” shall have the meaning set forth in the Preamble to this Declaration.

“**University Entity**” means the BOT, the University, the Foundation and any applicable office, department, body or agency of any of the foregoing.

“**Utilities Easement**” shall have the meaning set forth in Section II.A(3).

“**Utilities Facility**” shall have the meaning set forth in Section II.A(3).

“**Voting Share**” shall mean a fraction whose numerator shall be the approximate total acreage contained within the Lot of the applicable Lessee and whose denominator shall be the aggregate total acreage of all Lessees having Leases in effect as of the date of determination, in each case based on the acreage used to determine Allocable Share hereunder; provided, however, for the purpose of determining Voting Share, any Lot used for University purposes pursuant to Section III.B(9) shall be disregarded in both the numerator and the denominator..

ARTICLE II

EASEMENTS

A. Rights and Easements Benefiting Lessees

Subject to the restrictions set forth in Section II.C and elsewhere in this Declaration, Declarant hereby GRANTS AND CONVEYS to each Lessee and their respective tenants, occupants and guests:

- (1) **Vehicular and Pedestrian Access.** A perpetual non-exclusive easement for vehicular and pedestrian access, ingress and egress over, across, to and from the Common Areas and for the right to use the Common Areas for such vehicular and pedestrian purposes, as reasonably necessary for the use and enjoyment of each such Lessee's Lot;
- (2) **Drainage.** A perpetual non-exclusive easement for surface drainage of water over, across and upon adjoining Lots and the Common Areas resulting from the normal use of a Lessee's Lot, as reasonably necessary for the use and enjoyment of each such Lessee's Lot; and
- (3) **Utilities.** A perpetual non-exclusive easement (each a "**Utilities Easement**") to construct and/or install below the surface of the Common Areas, in each case in accordance with the requirements of this Declaration, and to operate, add to, maintain, inspect, enhance, repair and finally remove towers, duct lines, manholes, wires, cables, pipes and other facilities, equipment and apparatus necessary or desirable for such Lessee to receive utility (including, without limitation, gas, water and power), cable and telecommunications services at such Lessee's Lot (each a "**Utility Facility**" and collectively, the "**Utility Facilities**").

B. Easement Benefiting Lessor for Common Area Repair and Maintenance

Declarant hereby GRANTS AND CONVEYS to Lessor and its successors and assigns a perpetual non-exclusive easement for access, ingress and egress to, from, over and across the Lots and Common Areas, as reasonably necessary for the maintenance, repair, operation and replacement of the Common Areas; and

C. Easements Benefiting Lessor and Lessees

Declarant hereby GRANTS AND CONVEYS to the Lessor, each other Lessee and its tenants, occupants and guests, reciprocal, perpetual, non-exclusive easements for access, ingress and egress across, over and on the sidewalks located on each and any Lot, excluding, however, any sidewalks contained within any parking structures located on a Lot.

D. Restrictions on Certain Easement Rights

The exercise of any Lessee's easement rights set forth in Section II.A and II.C shall be subject to the terms and provisions of this Section II.D, all of which terms and provisions shall be enforceable by Lessor against each and every Lessee.

- (1) The ingress, egress and access easements over the Common Areas in favor of each Lessee pursuant to Section II.A are subject to Lessor's prior right to close, from time to time, any portions of such Common Areas as Lessor may reasonably deem necessary in connection with the proper discharge of Lessor's repair and maintenance obligations under this Declaration (provided that, except in the case of an emergency, at least one means of ingress and egress to each Lot shall be available at all times notwithstanding any such closure), and the Declarant's prior right as an owner, and Lessor's prior right as prime lessor, of access over the

Common Areas as reasonably deemed necessary by the Declarant or Lessor in connection with the development of any Lot (including, without limitation, Declarant's and Lessor's right to authorize contractors, lenders of Lots and others to use Declarant's and Lessor's ingress and egress easement rights over and across the Common Areas in connection with the development of any Lot).

- (2) All construction of Utility Facilities shall be performed pursuant to Article IV and other relevant provisions of this Declaration. The use of each Utilities Easement shall be limited in the manner required to reduce the interference with the use of the Common Areas by Lessor and the Lessees to the greatest extent reasonably possible. No Lessee shall perform any excavation, construct any Improvements or permit any condition to exist on its Lot or the Common Areas (including, without limitation, excess irrigation) so as to undermine the structural integrity of any Improvements within the Common Areas.
- (3) Each Lessee shall maintain and repair the Utility Facilities constructed by such Lessee within the Common Areas without cost to Declarant, Lessor or any other Lessee. Any work by any Lessee upon or within the Common Areas shall be done in accordance with the other terms and provisions of this Section II.D and in a manner so as to cause as little interference with the use of the surface of the land as is practicable, and the surface of the land shall be restored in an expeditious manner so that there is minimal disruption of traffic (both vehicular and pedestrian traffic) and any parking provided within the Common Areas. In connection with its entry, such Lessee shall use reasonable efforts not to interfere with the quiet enjoyment of any legal occupant or user of the Common Areas. Without limitation of the foregoing, to the extent commercially feasible, such Lessee shall perform or cause to be performed any such work during hours of the day when the work is least likely to interfere with the use of the Common Areas by the other Lessees, their tenants, occupants and guests. Upon completion of any work by any such Lessee within the Common Areas, the surface of the Common Areas and any portion of the Common Areas affected by such work shall be, at the Lessee's sole cost and expense, promptly restored to its condition immediately prior to the work.
- (4) Each Lessee who performs any work within the Common Areas pursuant to its Utilities Easement, or who otherwise utilizes its Utilities Easement or constructs or installs Utility Facilities within the Common Areas, shall indemnify, defend and hold all University Entities and each other Lessee harmless from and against any and all claims, demands, liabilities, losses, costs and expenses (including reasonable attorneys' fees and costs), including the cost of all repairs, maintenance and improvements necessary to correct or remediate any damage to the Common Areas (including, without limitation, any damages, losses, costs or expenses incurred as a result of Hazardous Materials being placed within the Common Areas in connection with such Lessee's use thereof), made against or incurred by such University Entity or any such other Lessee as a result of or in connection with the indemnifying Lessee's exercise of its Utilities Easement.

- (5) Except to the extent provided in any Lease (in which case such provisions shall apply with respect to the applicable Lot and Lessee), each Lessee who performs any construction, installation, removal, repair or maintenance work in the Common Areas pursuant to its Utilities Easement shall maintain or cause to be maintained by the service provider performing such work such insurance as Lessor may require, all such insurance naming Declarant, Lessor and any other applicable University Entities as additional insureds.
- (6) Lessor shall have the right to institute reasonable, non-discriminatory rules and regulations for the use and operation of the Common Areas in order to assure the free flow of traffic throughout the Common Areas. No Lessee or its tenants, occupants or guests shall use or permit the Common Areas to be used in a manner that would interfere with the free flow of vehicular and pedestrian traffic therein.
- (7) Each easement granted herein is granted subject to taxes, assessments, easements and other matters of record and such rules and regulations as shall be from time to time promulgated by Lessor.

E. Further Easements

Declarant reserves the right to convey, grant additional easements in or across, or dedicate portions of the Project from time to time for such purposes as Declarant deems reasonably necessary or desirable for the full development of the Project as contemplated herein, and, in furtherance thereof, to withdraw said portion from this Declaration, provided, however, that Declarant (1) may not exercise any of its rights under this Section II.E in a manner that would unreasonably interfere with any Lessee's use and enjoyment of its Lot or benefits of its Lease, and (2) may not convey or grant any such easement in or across any Lot without the prior approval of the applicable Lessee, which shall not be unreasonably withheld, conditioned or delayed.

ARTICLE III

PERMITTED USES

A. Statement of Intent

The vision of the Project is to serve both private industry and the University as a synthesizer of new talent, discipline, research and discovery, and to develop collaborations that yield new growth and opportunities.

This Declaration seeks to encourage development of facilities that will house such activities as:

- (1) Research and development;
- (2) Pilot and prototype development;

- (3) Applications employing higher ratios of employees working in the sciences and engineering fields of instruction offered at the University;
- (4) Applications employing higher percentages of total facilities' areas equipped with wet laboratories, analytic, measuring, sensing and testing machinery;
- (5) Applications that commit new infrastructure that will benefit the long-term practical and scientific needs of the Project and the University;
- (6) Corporate and regional headquarters;
- (7) Joint research programs with the University;
- (8) Long-term commitments to programs for internships for undergraduate and graduate students; and
- (9) Classroom, lecture hall, study and laboratory applications offered for University programs.

B. Uses Permitted

Only the following operations and uses shall be permitted on any Lot, within any Improvement and within the Project:

- (1) Laboratories wet and dry; facilities for basic and applied research; testing; information processing; offices and support thereof;
- (2) Design, development, and fabrication and assembly of prototype production; research-based production of limited production of latest evolution products;
- (3) Pilot plants in which either processes or products planned for production elsewhere can be assembled, fabricated, tested, measured, monitored, and otherwise evaluated as part of the pre-production research studies;
- (4) Corporate and regional headquarters with the condition that there be a commitment to incorporating no fewer than two (2) University intern students annually or partnering with the University in other acceptable programs each year;
- (5) General offices, professional, commercial, personal, and retail services in full or partial support of any uses permitted in subsections 1 through 4 above, including food services, accounting and banking facilities, venture capital companies, post office and mailing or courier centers, training services, day care, legal and medical or health services facilities, and dry cleaning and laundry services provided there be no on-site plant or other chemical processes;
- (6) Support and incidental operations required to maintain or enable any use permitted in subsections 1 through 5 above, such as power plants, waste water

treatment facilities, water pumping stations and valves, electrical transformers, waste collection facilities;

- (7) Common Area improvements and facilities, support services and infrastructure;
- (8) Any other uses reasonably related to the intended character of the Project (such as but not limited to so-called “good manufacturing practices” plants provided that the pertinent products and processes are fully disclosed to Lessor, and the same comply with the Project vision), provided the same are first fully authorized in writing by Lessor, which authorization may be granted, conditioned or withheld in Lessor’s sole and absolute discretion;
- (9) Use related to the operations or functions of the University, including but not limited to classrooms, laboratories, research facilities, residential facilities and facilities related to University services; and
- (10) Any other uses that are expressly permitted under any Lease, provided that such uses shall be permitted only on the Lot demised by such Lease, and only by the Lessee that is party thereto (or by any permitted assignee or sublessee under such Lease).

C. Uses Prohibited

Uses not supportive of the vision of the Project, or contrary to the academic mission of the University, in the sole and absolute discretion of the Lessor and Declarant, including the following operations and uses, are expressly prohibited on any Lot, within any Improvement and within the Project:

- (1) Tattoos or body piercing;
- (2) Massage parlor;
- (3) Adult books or adult videos;
- (4) Drug paraphernalia sales;
- (5) Flea market or swap meet;
- (6) Auto supply or repair;
- (7) Sexually oriented business;
- (8) Animal rendering; or
- (9) Heavy manufacturing, storage, warehousing or distribution centers.

D. No Violation of Law or Nuisance

No Lessee shall use or occupy, or allow the use and occupancy, of its Lot (1) in violation of any applicable Law, (2) in violation of this Declaration, the Campus Master Plan or the Project Rules, (3) in such a way as may be or become a nuisance to Lessor or the other Lessees or interfere with the quiet enjoyment by the other Lessees of their respective Lots, (4) in any manner that would increase the fire hazard to any Improvement or any lands adjacent to the Project, or (5) in any manner that would cause vibrations beyond the boundaries of such Lot (except to the extent reasonable and customary in connection with any construction activities performed on such Lot in compliance with this Declaration) or would cause earth tremors.

E. No Further Subdivision

Without the prior written consent of Lessor, which may be granted, conditioned or withheld in Lessor's sole and absolute discretion, no Lessee shall further subdivide or cause the subdivision of its Lot. Any subdivision performed after receiving the consent of Lessor shall be accomplished in accordance with all applicable Laws and the Campus Master Plan.

ARTICLE IV

PLAN SUBMITTAL AND APPROVAL; APPLICABLE LAWS; EXCULPATION

A. Plan Submittal and Approval for Improvements

No Improvements shall be commenced, erected, or constructed, nor shall any addition thereto, or change or alterations therein be made, until there has been full compliance with the provisions of the Applicable Lease, this Declaration and the Design Guidelines and Submittal Requirements.

B. Compliance with Law and Building Code

All Plans and all Improvements, and any Lessee applying for any permit or approval required in connection with planning, development or construction thereof, shall comply with all applicable Law. Without limiting the generality of the foregoing, the design specifications for all Improvements, and such Improvements, shall meet or exceed California Building Code dated 1998, as amended from time to time.

C. No Waivers of Future Approvals; Expansion Plans

Any approval or consent that may be granted by any University Entity with respect to any Plans or other matter shall not waive any right by any University Entity to withhold approval or consent of any similar Plans or other matters subsequently or additionally submitted for review and approval. Any approval or consent that may be granted by any University Entity with respect to any Plans may be revised, amended or conditioned after it is initially given if necessary, in such University Entity's reasonable judgment, as a result of any change in any applicable Law (other than any Law promulgated by a University Entity) or any error found in any Plans. Any approval or consent that may be granted by any University Entity with respect to

any Plans shall apply only to the initial development of the Improvements shown in such Plans and not, for example, to any anticipated expansion or alteration of such initial Improvements. To the extent known or contemplated by any Lessee at the time of submittal to any University Entity of any Plans in accordance with this Declaration, such Plans shall identify any anticipated or contemplated expansion or alteration of the applicable Improvements.

D. Pre-Approvals

Any University Entity may, in its sole and absolute discretion, authorize pre-approval of certain types or classes of Plans, construction, Improvements or other matters otherwise subject to review and approval in accordance with this Declaration.

E. Variances

Any University Entity, for itself alone, may authorize reasonable variances from the design and construction criteria and requirements set forth in this Declaration. Any such variance shall be effective only if in writing and signed by the applicable University Entity, and only for the specific matter described. To the extent that any such variance is granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted.

F. Exculpation

No University Entity or any employee or agent thereof shall be liable in damages to any Lessee or other Person making submittals for design, development or construction approvals as provided in this Declaration, or to any other Lessee or any permittee or invitee of any Lessee or to any other Person, on account of (1) the approval or disapproval of any Plans or other submittal, whether or not defective, (2) any construction, performance or failure of performance by any Lessee of any work on any Lot or Improvements, whether or not pursuant to approved Plans or other submittals, (3) any reasonable mistake in judgment, negligence, action or omission in the exercise of its rights and responsibilities under this Article IV, (4) or the enforcement or failure to enforce any design or construction standards, guidelines or requirements. No University Entity shall be responsible for reviewing any Plan or design, nor may its approval of any such Plan or design be deemed approval thereof, from the standpoint of structural safety or compliance with building codes or other applicable Laws. No Person who makes a submittal of Plans or other materials for approval by any University Entity, and no Lessee, shall bring any suit or action against any University Entity or any employee or agent thereof seeking to recover damages on account of any of the foregoing matters. The approval of any Plans or other submittal by any University Entity shall not constitute the assumption of any responsibility by, or impose any liability upon, such University Entity, Declarant or Lessor.

ARTICLE V

PUBLIC ART

A public outdoor art program shall compliment the Project theme, landscaping, and streetscaping program. All Lessees shall be requested, but shall not be required, to make annual contributions amounting not more than one-half of one percent (0.5%) of its current ground rent for the month of January of each year. The funds will be awarded by the Foundation not less than once each ten (10) years to artworks intended to focus on the accomplishments of human partnerships or reasonably reinforce the research focus of the Project.

ARTICLE VI

MAINTENANCE

A. Maintenance by Lessees

Each Lessee shall, at all times, keep its Lot and Improvements in a safe, clean, and neat and sanitary condition and in compliance with its Lease and all applicable Laws. Without limitation, each Lessee shall provide for the timely removal of trash and rubbish from its Lot.

During any construction activities, it shall be the responsibility of each Lessee to ensure that, while Improvements are under construction, lots are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers and the like are kept in a neat and orderly manner.

B. Maintenance of Common Areas

Except to the extent that the same is the obligation of a Lessee, any municipal entity, any utility provider or any other Person, Lessor shall:

- (1) Operate, maintain, repair, clean, insure, reconstruct, restore and replace the Common Areas (excluding any Utility Facilities constructed or installed within the Common Areas by a Lessee pursuant to its Utilities Easement) and related personal property of Lessor, in a neat, orderly and safe condition and in a manner substantially consistent with the manner of maintenance and operation of other common areas for research parks located within Los Angeles County, California area similar in age, quality and size to the Project; and
- (2) Pay any real and personal property taxes and other charges assessed to or payable by Declarant or Lessor or the Common Areas (excluding any Utility Facilities constructed or installed within the Common Areas by a Lessee pursuant to its Utilities Easement and excluding any such taxes and other charges to the extent arising as a result of the use or occupancy of any Lot by any particular Lessee (whether resulting from such Lessee's non-tax-exempt status or otherwise)).

- (3) Maintain general liability, fire and casualty insurance. For the foregoing purposes: (i) such general liability coverage shall provide commercial general liability and property damage insurance and commercial truck/automobile insurance as per ISO standard forms (or the substantial equivalent thereof) with limits of not less than (x) \$2,000,000 per person and \$5,000,000 per occurrence as respects bodily injury or death, and (y) \$2,000,000 per occurrence as respects property damage; and (ii) such fire and casualty coverage shall provide standard Fire and “Extended Coverage” or “All Risk” coverage and, during construction periods, “Builders Risk” (it being understood that such coverage may exclude the perils of flood and/or earthquake) as per ISO standard forms (or the substantial equivalent thereof) for the full replacement value of the Common Areas.
- (4) In addition, Lessor shall have the right but not the obligation to maintain such other policies of insurance (including without limitation earthquake and flood) as Lessor determines in the commercially reasonable exercise of its judgment to be necessary or appropriate to protect the interests of Lessor, Declarant and the Lessees.
- (5) All policies of insurance maintained for the Common Areas hereunder shall be in the form and shall have deductible amounts as Lessor deems appropriate in the commercially reasonable exercise of its judgment.

C. Right of Lessor to Maintain

In the event that a Lessee fails to accomplish any maintenance or repair required by this Declaration, Lessor may deliver to such Lessee written notice of such failure. If the Lessee does not commence to cure such failure within twenty (20) days after the delivery of such notice or does not continue to diligently thereafter prosecute such cure to completion, Lessor may deliver to such Lessee a second written notice specifying the failure, and if such Lessee does not commence the cure of such failure within ten (10) days after receipt of such second notice and continuously diligently prosecute such cure to completion, Lessor may, but shall not be obligated to, cause such maintenance or repair to be accomplished as provided herein. Lessor shall have the right, following the delivery of both notices and the expiration of both cure periods described in this Section VI.C, to enter upon any such Lot at reasonable times in connection with any maintenance or repair in the exercise of the powers and duties of Lessor provided for in this Section VI.C. All costs incurred by Lessor in connection with the exercise of its rights under this Section VI.C shall be, at the option of Lessor, assessed against the Lessee as a Special Assessment, included as supplemental rent under the applicable Lease (payable as and when determined by Lessor) or payable by Lessee on demand made by Lessor.

D. Right of Entry

Lessor shall have the right following not less than twenty-four (24) hours notice (except in the case of an emergency in which case no notice shall be required), which notice may be given by telephone, email or in writing, to enter upon any Lot at reasonable times when necessary in connection with any maintenance, repair or construction of the Common Areas, to determine whether any Lessee is in compliance with this Declaration, or otherwise in the exercise of the

powers and duties of Lessor provided for in this Declaration. Lessor shall use its reasonable efforts to minimize any interference with or disruption of business activities on the Lot, and will attempt in good faith to co-ordinate with the Lessee of the Lot the entry by Lessor onto such Lessee's Lot prior to such entry.

E. Waiver of Subrogation

Except as may be specifically set forth to the contrary in any other document or agreement between Lessor and the applicable Lessee (including the applicable Lease), each Lessee and Lessor shall be deemed to release each of the other Lessees and Lessor (including their officers, directors, shareholders, members, partners, trustees, beneficiaries, agents, servants and employees) from, and to waive all rights of subrogation for itself and for its insurer (to the extent legally possible) with respect to, all claims, losses or damages to any property located on or as a part of the Common Areas to the extent the same shall be covered by insurance, irrespective of any negligence or other fault on the part of any such Lessee or Lessor which may have contributed to such loss or damage. Except as may be specifically set forth to the contrary in any other document or agreement between Lessor and the applicable Lessee (including the applicable Lease), each Lessee and Lessor shall use its commercially reasonable efforts to obtain or cause to be obtained, for the benefit of the other Lessees and Lessor, as the case may be, a waiver of the right of subrogation which the insurer of such Person may acquire against such other Lessees or Lessor, as the case may be, by virtue of the payment of any loss covered by such insurance.

F. Indemnity

Subject to the waiver of subrogation provided in Section VI.E, and except to the extent arising out of the gross negligence or willful misconduct of Lessor or another applicable indemnified party in failing to perform its obligations hereunder with respect to the Common Areas, each Lessee shall indemnify, defend and hold Lessor and the other Lessees harmless from and against any and all claims, demands, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) made against or incurred by Lessor or other indemnified party as a result of or in connection with the gross negligence or willful misconduct of such indemnifying Lessee (or any other Person acting on behalf of such Lessee in a representative capacity) in the use of the Common Areas, including, without limitation, any unauthorized use of any such Common Areas.

Subject to the waiver of subrogation provided in Section VI.E, and except to the extent arising out of the gross negligence or willful misconduct of such Lessee, Lessor shall indemnify, defend and hold each Lessee harmless from and against any and all claims, demands, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) made against or incurred by such Lessee as a result of or in connection with the failure by Lessor (or any other Person acting on behalf of such Lessor in a representative capacity) to perform its obligations hereunder with respect to the Common Areas.

G. Property and Construction Managers

Lessor may retain independent property or construction managers or consultants to perform any duty or obligation of Lessor under this Declaration. The costs of such managers and consultants shall be a Common Expense.

H. Project Rules and Regulations

Lessor may adopt from time to time such reasonable rules and regulations as the Project Rules governing the Lessee's use and occupancy of the Project as Lessor may determine is desirable for the management and efficient operation of the Project; provided, however, that no such rule or regulation shall diminish the rights and privileges of any Lessee under any Lease existing at the time such rule or regulation is adopted. Upon delivery by Lessor to a Lessee of such Project Rules and Regulations, such Lessee shall comply with the terms and provisions thereof.

ARTICLE VII

COVENANT FOR MAINTENANCE AND OTHER ASSESSMENTS

A. Creation of Lien and Personal Obligation of Assessments

Each Lessee by acceptance of its Lease, whether or not it shall be so expressed in any such Lease, is deemed to covenant and agree to pay and shall pay without offset to Lessor its Regular Assessments and Special Assessments (the "**Assessments**"), which shall be fixed, established and collected from time to time as provided in this Declaration. No Lessee may exempt itself from or terminate its obligation to pay Assessments by any waiver or relinquishment of its rights to use or enjoy the Common Areas or by abandonment of its Lot or any portion thereof.

Except as expressly otherwise provided, Regular Assessments and Special Assessments shall be borne proportionately by each Lessee to the extent of its Allocable Share.

The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, shall be a continuing lien upon the leasehold estate of the Lessee of the Lot against which each such Assessment is made and levied. Each such Assessment, together with such interest, late charges, costs and attorneys' fees, shall also be the personal obligation of the Lessee or Lessees, as the case may be, jointly and severally, of such Lot at the time when the Assessment becomes due and such personal obligation to pay the Assessment shall not be terminated by a conveyance or any transfer of an Lessee's leasehold estate in such Lot. The personal obligation shall not pass to the successors in title of a Lessee unless expressly assumed by such successors.

B. Purpose of Assessments

The Assessments levied by Lessor shall be used for the benefit of the management of the Common Areas, enhancing and protecting the value, desirability and attractiveness of the Project and the quality of environment within the Project through the maintenance and repair of the Common Areas, the improvement, maintenance, repair, reconstruction, administration and operation of the Common Areas, administering and enforcing covenants, conditions and restrictions, collecting and disbursing funds pursuant to this Declaration, defending claims and lawsuits with respect to the Common Areas, or in furtherance of any other duty or power of Lessor.

C. Regular Assessments

On or about sixty (60) days prior to the beginning of each fiscal year as determined by Lessor, Lessor shall prepare and distribute to all Lessees a pro forma budget for such fiscal year, which budget shall estimate the total Common Expenses to be incurred for such year and each Lessee's Allocable Share of such Common Expenses. Based upon such budget, including a reasonable allowance for contingencies and reserves, Lessor shall at that time determine the amount of the regular assessment (the "**Regular Assessment**") to be paid by each Lessee based on such Lessee's Allocable Share. Each Lessee, commencing with the commencement of such Lessee's Lease, shall thereafter pay to Lessor its Regular Assessment on or before thirty (30) days after the commencement of the fiscal year (or on or before thirty (30) days after the first day of each month or each quarter during such fiscal year as may be allowed or required by Lessor). In the event Lessor shall at any time determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, Lessor shall then determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Lessee, and the date or dates when due. If no budget is delivered to the Lessees prior to the beginning of any fiscal year, each Lessee shall pay the Regular Assessment paid by such Lessee for the preceding fiscal year unless and until a supplemental estimate of Common Expenses is delivered to the Lessees (provided, however, in such event prior to the commencement of the applicable fiscal year, Lessor shall deliver to the Lessees a notice that the Regular Assessments from the preceding fiscal year shall continue to apply). The failure of Lessor to timely prepare a budget for any fiscal year shall not constitute a waiver by Lessor of its rights hereunder or relieve Lessees of their obligations to pay Regular Assessments as provided herein.

D. Special Assessments

In addition to Regular Assessments, special assessments ("**Special Assessments**") may be levied by Lessor at any time pursuant to this Section VII.D. Each Lessee shall pay to Lessor the amount of any Special Assessment levied against it within thirty (30) days after notice of such Special Assessment is given by Lessor.

- (1) Special Assessments may be levied against any Lessee for the purpose of defraying, in whole or in part:
 - (a) Costs incurred in bringing such Lessee and such Lessee's Lot into compliance with the provisions of this Declaration, applicable Law or the Project Rules, or in connection with any remediation or cleanup of Hazardous Materials pursuant to Section IX.C(1);
 - (b) Any extraordinary or disproportionate cost or expense incurred by Lessor in the maintenance or repair by Lessor of the Common Areas as a result of the use of the applicable Lot by, or acts or omissions of, such Lessee (including, without limitation, any Hazardous Materials remediation or clean-up pursuant to Section IX.C(1));

- (c) Except to the extent provided to the contrary in the Lease with such Lessee, the costs of bringing utilities or infrastructure to such Lessee's Lot, to the extent incurred by Lessor;
 - (d) Any other charge designated as a Special Assessment that may be levied against such Lessee pursuant to this Declaration or the applicable Lease, or to recover costs, expenses and damages incurred as a result of the violation by the applicable Lessee of the Project Rules; and
 - (e) Attorneys' fees, interest and any other charges relating thereto that may be levied against such Lessee as provided in this Declaration.
- (2) Special Assessments may be levied against all Lessees in accordance with their respective Allocable Shares for the purpose of defraying, in whole or in part:
- (a) Any extraordinary or disproportionate cost or expense incurred by Lessor in the maintenance or repair by Lessor of the Common Areas to the extent not a result of the use of any Lot by, or acts or omissions of, a particular Lessee (including, without limitation, any Hazardous Materials remediation or clean-up pursuant to Section IX.C(2) or IX.C(3));
 - (b) Except to the extent provided to the contrary in any applicable Lease (and then only with respect to the Lessee thereunder), the costs of bringing utilities or infrastructure (other than the Initial Common Infrastructure) to the Common Areas, to the extent incurred by Lessor, provided that no such Special Assessment shall be levied in connection with additional utilities or infrastructure (i.e., those not a part of the Initial Common Infrastructure) without the prior approval of both Declarant and Lessees representing an aggregate Voting Share of at least fifty-one percent (51%);
 - (c) Except to the extent covered by reserves established from Regular Assessments, the cost of any construction, reconstruction, repair or replacement of any capital improvement, including fixtures and personal property related thereto, located within any portion of the Common Areas or, to the extent benefiting the Common Areas or the entirety of the Project, located within any Lot not yet subject to a Lease, provided that (except as set forth in any Lease) no such Special Assessment shall be levied in connection with any original construction of the Initial Common Infrastructure or any additional capital improvements (i.e., those not a part of the Initial Common Infrastructure) or the reconstruction (as opposed to the repair or replacement upon obsolescence) of any capital improvement included in the Initial Common Infrastructure, except to the extent that such capital improvements are being paid for out of insurance proceeds, in each case without the prior approval of both Declarant and Lessees representing an aggregate Voting Share of at least fifty-one percent (51%);

- (d) Any other charge designated as a Special Assessment that may be levied against all Lessees pursuant to this Declaration; and
- (e) Attorneys' fees, interest and any other charges relating thereto that may be levied against all Lessees as provided in this Declaration.

In the event Lessor undertakes to provide other or additional materials or services that benefit individual Lots and that may be accepted at the election of individual Lessees, such Lessees in accepting such materials or services agree that the costs thereof shall be a Special Assessment against only such benefited Lots.

E. Year-End Statements

Lessor shall give to each Lessee following the end of each fiscal year a statement (the “**Expense Statement**”) that shall state the Common Expenses incurred for such preceding fiscal year and indicate such Lessee’s Allocable Share of such Common Expenses for such fiscal year. Lessor shall use its commercially reasonable efforts to deliver such Expense Statement to each Lessee on or before the date that is ninety (90) calendar days following the end of the fiscal year to which such Expense Statement relates. Upon receipt of the Expense Statement for each fiscal year, each Lessee shall pay to Lessor, within forty-five (45) calendar days after its receipt of the Expense Statement, an amount, if a positive number, equal to (x) the full amount of such Lessee’s Allocable Share of Common Expenses due for such fiscal year as shown on the Expense Statement, *minus* (y) the amounts, if any, paid by such Lessee during such fiscal year as such Lessee’s estimated Allocable Share of Common Expenses provided pursuant to Section VII.C. If the amount of any Lessee’s Allocable Share of Common Expenses paid during the preceding fiscal year as estimated Common Expenses exceeds such Lessee’s actual Allocable Share of Common Expenses shown on the Expense Statement, the excess amount shall be credited against the estimated amount of Common Expenses to be incurred in the succeeding fiscal year (or returned to the applicable Lessee if no succeeding fiscal years remain under the term of such Lessee’s Lease). Common Expenses for the succeeding year and the estimated budget for the succeeding fiscal year shall be adjusted accordingly.

F. Books and Records

Lessor shall, in accordance with good bookkeeping practices and generally accepted accounting principles to the extent applicable, maintain a complete record of each and every item of Common Expenses set forth in an Expense Statement. To the extent practicable, all such records shall be maintained in one central location at or near the Project. Such books and records with respect to any fiscal year shall be maintained for a period of two (2) years after the last day of such fiscal year. Subject to reasonable terms and conditions imposed by Lessor, and upon reasonable prior written notice, each Lessee shall have the right, at such Lessee’s sole cost and expense and at such location as Lessor may reasonably determine, to audit, using independent certified public accountants (which may not be engaged on a contingency basis), the books and records of Lessor relative to the computation of Common Expenses and the Assessments levied against such Lessee; provided that, in no event shall any Lessee have the right to perform more than one (1) audit in any twelve (12) month period. If any Common Expenses are found to be overstated or understated, then the appropriate adjustments and payments shall be made.

G. Non-Payment

Any Assessment provided for in this Declaration that is not paid within three (3) days after the date due shall be delinquent. To any such delinquent Assessment shall be added the reasonable costs of collection (including, without limitation, reasonable attorneys' fees), plus a late charge of ten percent (10%) of the Assessment or Ten Thousand Dollars (\$10,000), whichever is lesser, plus the Assessment shall bear interest at the rate of ten percent (10%) per annum, but in any event not higher than the maximum rate permitted by Law, commencing thirty (30) days after the date it became delinquent. Lessor may, at its option, and without waiving the right to judicially foreclose its lien against the leasehold estate in the Lot in delinquency, pursue any available remedies, including, without limitation, bringing an action at law against any Lessee personally obligated to pay the same, or upon compliance with any applicable notice provisions, to foreclose the lien against the Lot as provided in this Declaration. If any action is commenced, the costs of such action, including attorneys' fees, shall be added to the amount of the delinquent Assessment in addition to the reasonable costs of collection, the late charge, and interest at the rate specified herein. Each Lessee vests in Lessor or its assigns the right and power to bring all actions at law or lien foreclosure against such Lessee or other Lessees for the collection of delinquent Assessments.

H. Certificate of Payment

Lessor shall, upon request, furnish to any Lessee liable for any Assessments or its mortgagee, a written certificate setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. Such certificates, absent manifest error, shall be conclusive evidence as against Lessor of the payment of any Assessment therein stated to have been paid.

ARTICLE VIII

ENFORCEMENT

A. Default and Remedies

In the event of any breach, default, noncompliance, violation or failure to perform or satisfy any of the covenants, conditions and restrictions contained herein (each a "**breach**"), which has not been cured within thirty (30) days after written notice from Lessor to do so (or if such cure will reasonably take longer than thirty (30) days to cure, then if such cure is not commenced within such thirty (30) day period and thereafter diligently pursued to completion), Lessor, in its sole discretion, may enforce any one or more of the following remedies or any other rights or remedies to which Lessor may be entitled by law or equity, whether or not set forth herein. To the maximum extent permitted by Law, all remedies provided herein or by law or equity shall be cumulative and not mutually exclusive.

- (1) Damages.** Lessor may bring a suit for damages for any compensable breach of any of the covenants, conditions and restrictions contained herein, or for declaratory relief to determine the enforceability of any of these covenants, conditions and restrictions.

- (2) **Equity.** It is recognized that a breach by a Lessee of one or more of the covenants, conditions and restrictions contained herein may cause Lessor or the other Lessees to suffer material injury or damage not compensable in money and that Lessor shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with these covenants, conditions and restrictions or for an injunction to enjoin the continuance of any such breach thereof.
- (3) **Abatement and Lien Rights.** Any such breach of these covenants, conditions and restrictions or any provision hereof is hereby declared to be a nuisance, and Lessor shall be entitled to enter the Lot or portion of the Project as to which the breach exists in accordance with the terms and provisions of this Declaration and install, repair or maintain any Improvement, thing, or condition that may exist in breach of any of these covenants, conditions and restrictions, or Lessor may prosecute any remedy allowed by law or equity for the abatement of such nuisance against any Person acting or failing to act in breach of these covenants, conditions and restrictions, all at the sole cost and expense of the Lessee or any Person having possession under the Lessee. Any costs or expenses reasonably paid or incurred by Lessor in abating such nuisance or prosecuting any such remedy (including all reasonable attorneys' fees and costs of collection), together with interest thereon at the rate of ten percent (10%) per annum from the date of expenditure, but in any event not higher than the maximum rate permitted by Law, shall be a lien and charge against the leasehold estate of the Lessee of the Lot as to which the breach exists, shall be a continuing lien thereon until paid, and shall also be the personal obligation of that Person who was the Lessee when such charges became due. In addition to any other rights or remedies hereunder, Lessor may, upon compliance applicable provisions of this Declaration, proceed to foreclose the lien against the leasehold estate in the Lot. If the breaches recited in such lien claim are timely cured and any recited amounts timely paid as provided above, Lessor shall forthwith record an appropriate release of such lien at Lessee's sole expense.

B. Notice of Lien

No action shall be brought to foreclose an Assessment or other lien or to proceed under the power of sale herein provided until thirty (30) days after the date a copy of a notice of claim of lien (which may, but need not, recite the nature of the charge against the Lot, the legal description of the Lot, the record or reputed Lessee of the Lot, and the amount of the claim) is deposited in the United States mail, certified or registered, postage prepaid, to the Lessee of said Lot, and the original thereof is recorded in the office of the Los Angeles County Recorder. Upon the timely curing of any default or the full payment of any amount for which a Notice of Lien has been filed by Lessor, Lessor shall record an appropriate release of lien in the office of the Los Angeles County Recorder, but only upon the payment by the defaulting or nonpaying Lessee of a reasonable fee, to be determined by Lessor, to cover the cost of preparing and recording such release.

C. Foreclosure Sale

Any Assessment or other lien may be foreclosed by sale by Lessor, its attorney or any other Person authorized by Lessor, after failure of the Lessee to make the payments specified in the notice of claim of lien within said thirty (30) day period, pursuant to Sections 2924, 2924b, 2924c, 2924f, 2924g and 2924h of the California Civil Code, as said statutes may from time to time be amended, or other statutes applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted by Law. Lessor is hereby appointed the trustee for purposes of exercising the power of sale herein granted, with full power of substitution. Lessee, through its duly authorized agents, shall have the power to bid on the leasehold estate in the Lot at the sale, using as a credit bid the amounts secured by such lien plus trustee's fees and expenses, or funds borrowed for such purpose, and to acquire and hold, lease, mortgage and convey the same.

D. Waiver

No waiver by Lessor of a breach of this Declaration, or any of these covenants, conditions and restrictions herein, and no delay or failure to enforce this Declaration or any of these covenants, conditions and restrictions shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other of these covenants, conditions and restrictions. No waiver by Lessor of any breach hereunder shall be implied from any omission by Lessor to take any action on account of such breach if such breach exists or is repeated, and no express waiver shall affect a breach other than as specified in said waiver. The consent or approval by Lessor to or of any act by a Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary the Lessor's consent or approval to or of any subsequent similar acts by Lessee.

E. Costs of Enforcement

If any legal or equitable action or proceeding is instituted to enforce any provision of this Declaration or these covenants, conditions and restrictions, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs and reasonable attorneys' fees.

F. Mortgagee Rights

No amendment, breach or violation of this Declaration or these covenants, conditions and restrictions shall defeat or render invalid the lien of any mortgage, deed of trust or similar instrument (each a "**Mortgage**") securing a mortgage loan made in good faith and for value with respect to the development or permanent financing or refinancing of any leasehold estate in any Lot or portion thereof or any Improvement thereon; provided that, all of these covenants, conditions and restrictions shall be binding upon and effective against any subsequent owner of the leasehold estate in the Lot or any portion thereof. Any mortgagee or beneficiary (each a "**Mortgagee**") under a Mortgage described in the preceding sentence shall, upon filing a written request with Lessor, be entitled to receive written notification from Lessor of (1) any condemnation or casualty loss of which Lessor is aware and that affects either a material portion of the Project or the Lots subject to the leasehold estate securing the respective Mortgage, or

(2) any default or breach in the performance of the obligations imposed by this Declaration by the Lessee whose leasehold estate in the Lot is encumbered by such Mortgagee's Mortgage, which default has not been cured within sixty (60) days of a request therefor by Lessor. Notwithstanding anything to the contrary stated in the preceding sentence, Lessor shall only be obligated to provide such notices to Mortgagees who have delivered a written request therefor to Lessor specifying the Lot or Lots to which such request relates. All Mortgagees, insurers and guarantors of Mortgagees, upon written request to Lessor, shall have the right to examine during normal business hours current copies of Lessor's books, records and financial statements as concern Common Expenses and Assessments. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Areas and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas, and Mortgagees making such payments shall be owed immediate reimbursement therefor from Lessor.

ARTICLE IX

HAZARDOUS MATERIALS

A. Duties of Lessees, Declarant and Lessor

Except to the extent expressly provided to the contrary in any Lease (and then only with respect to Lessor or the applicable Lessee), (i) Declarant, Lessor and Lessees shall not release, generate, use, store, dump, transport, handle or dispose of any Hazardous Materials within the Project or otherwise permit the presence of any Hazardous Materials on, under, or about the Common Areas or their respective Lots, as the case may be, or transport any Hazardous Materials to or from the Project except in accordance with all applicable Laws, (ii) no Lessee shall install, operate or maintain any above, below or at grade tank, sump, pit, pond, lagoon or other storage or treatment vessel or device on or about the Project without the prior written consent Lessor and all applicable University Entities, which may be granted, conditioned or withheld in their respective sole and absolute discretion, (iii) each Lessee shall be solely responsible for all notices, operations, use, storage, investigation, enforcement, cleanup, remediation and indemnity with respect to Hazardous Materials in, on or about such Lessee's Lot; and (iv) Lessor shall be responsible for all such activities with respect to the Common Areas, but only to the extent of amounts collected by Lessor under Special Assessments that Lessor may have levied and collected pursuant to Section VII.D.

Except to the extent expressly provided to the contrary in any Lease (and then only with respect to Lessor or the applicable Lessee), each Lessee with respect to its Lot, and Lessor with respect to the Common Areas, shall immediately notify the other Lessees or Lessor by providing a copy of the following with respect to such Lessee's Lot or the Common Areas, as the case may be: (1) any notices of violation or potential or alleged violation of any Law which the Lessee shall have received from any governmental agency concerning the use, storage, release or disposal of Hazardous Materials; (2) any and all inquiry, investigation, enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened relating to such Lots; (3) all claims made or threatened by any third party relating to any Hazardous Materials; and (4) the

release of Hazardous Materials on or about the Project, which such Lessee or Lessor knows of or reasonably believes may have occurred.

No Lessee or Declarant or Lessor shall be liable in damages or otherwise by reason of its receipt of information of any kind submitted pursuant to this Section IX.A relating to Hazardous Materials, and no duty of any kind shall be implied or imputed as a result of its receipt of such information.

B. Certain Permitted Uses

Notwithstanding the foregoing, any Lessee, Declarant or Lessor may use products containing Hazardous Materials and equipment fueled by or containing Hazardous Materials in, on or about its Lot or the Common Areas, as the case may be, to the extent such products or equipment are normally incident to normal operations of the business or activities conducted thereon and the same (including the use, storage and disposal thereof) comply with the all applicable Laws.

C. Cleanup of Common Areas

- (1) Lessor's cost of cleanup or removal of Hazardous Materials found on or in the Common Areas attributable to any particular Lessee's use of Hazardous Materials or violations or abuse of the rights, duties and obligations of this Article IX shall be levied by Lessor against such Lessee and Lessee's Lot as a Special Assessment in accordance with the terms of Section VII.D.
- (2) Lessor's costs of cleanup or removal of Hazardous Materials found on or in any part of the Common Areas not attributable to any particular Lessee's use of Hazardous Materials or violations or abuse of the rights, duties and obligations of this Article IX, not attributable to the acts or omissions of Lessor and that have not migrated to the Project from any other property, shall be levied by Lessor against all Lessees and Lessees' Lots as a Special Assessment in proportion to each such Lessee's Allocable Share (in accordance with the terms of Section VII.D).
- (3) Lessor's costs of cleanup or removal of Hazardous Materials found on or in any part of the Common Areas to the extent such Hazardous Materials have migrated to the Project from any other property shall be levied by Lessor against all Lessees and Lessees' Lots as a Special Assessment in proportion to each such Lessee's Allocable Share (in accordance with the terms of Section VII.D), except to the extent set forth to the contrary in any particular Lessee's Lease.

ARTICLE X

TERM, AMENDMENT AND RIGHT TO ENFORCE

A. Term

The term of this Declaration and the easements, covenants, conditions and restrictions set forth herein shall run with and bind the Lots and Project and shall inure to the benefit of the Lots and

be enforceable for a term commencing upon the date hereof and terminating upon the earlier of ninety-nine (99) years thereafter or the termination of the last Lease then in effect for the Project. In the event that any Lease remains in effect at a time when this Declaration would otherwise terminate in accordance with its terms, Declarant may record an instrument extending the term of this Declaration by such period as Declarant may reasonably deem appropriate.

B. Amendment and Modification

This Declaration may be amended, modified or revised from time to time by Declarant to effect a Minor Amendment without the necessity of first obtaining the approval, joinder, or consent of any other Person, including but not limited to any Lessee or any Persons who have acquired any possessory or security interest in any Lot through any Lessee. Provided that Declarant and Lessees representing an aggregate Voting Share of at least 67% so agree, this Declaration may be amended, modified or revised from time to time to effect any amendment, modification or revision that is not a Minor Amendment. Within ten (10) days of presentation by Lessor, each Lessee will sign and deliver to Lessor an acknowledgment of any such amendment, modification or revision.

C. Enforceability; Benefits of Declarant

The right to enforce the terms and conditions of this Declaration against Lessees and all other applicable Persons other than Declarant is vested solely in Lessor and Declarant, jointly and severally, and no other Person shall have the right to enforce the same without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Declarant may, but shall have no liability to, avail itself of, and exercise, any right, benefit or privilege conferred upon Lessor pursuant to this Declaration. The right to enforce the terms and conditions of this Declaration against Declarant and Lessor is vested solely in the Lessees, jointly and severally, and no other Person shall have the right to enforce the same without the prior written consent of all Lessees, which consent shall not be unreasonably withheld.

D. Annexation; Release

Provided that the benefits to and obligations of any Lessee would not be materially and adversely affected thereby, Declarant may determine that portions of the Project should be released from, or other real property with a reasonable relationship to the Project should be annexed into, the Project and thus become subject to this Declaration. Declarant may effect any such release or annexation by recording an amendment to this Declaration pursuant to Section X.B above after any required vote of the Lessees as provided therein (if applicable).

ARTICLE XI

LESSOR'S APPROVAL; THIRD PARTY APPROVALS

Unless otherwise expressly stated to the contrary, any approval or consent required of Lessor or Declarant under this Declaration may be given, withheld or conditioned in Lessor's or Declarant's, as the case may be, reasonable discretion.

By accepting its respective Lease, each Lessee acknowledges that, without limitation of anything to the contrary expressly set forth in such Lease, Lessor shall only be responsible for the acts expressly required of it under this Declaration and, furthermore, that Lessor has no control over or ability to influence the decision of any third party. Lessor shall not be in default or breach of any obligation imposed on it under this Declaration to the extent that its performance is dependent upon further consent or approval of any third party, provided that Lessor has made a good faith attempt to comply with or perform such obligation. For purposes of this paragraph, “third party” shall not include any University Entity.

ARTICLE XII

MISCELLANEOUS

A. Constructive Notice and Acceptance

To the maximum extent permitted by Law, every Lessee who now or hereafter leases or acquires any right, title or interest in or to any portion of a Lot is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in said Lot (or portion thereof).

B. Estoppel Certificates

Upon a sale or financing of a Lessee’s interest in a Lot, and otherwise no more often than once a year, each Lessee and its Mortgagee or prospective Mortgagee shall, upon reasonable request to Lessee, be entitled to receive a statement from Lessor specifying, to the knowledge of the certifying party, that (1) to Lessor’s knowledge, this Declaration is in full force and effect, (2) this Declaration has not been amended or modified, either orally or in writing, or if so amended, identifying the amendments, and (3) to the knowledge of Lessor, there is no default by any Lessee or Lessor under the Declaration or, if any Lessee or Lessor is in default, then specifying the nature and amount (if applicable) of any and all defaults. Lessor shall execute and return such certificate within twenty (20) days following its receipt of any such request. For such a statement, Lessor shall be entitled to charge a reasonable fee based upon its actual administrative expenses in rendering the same.

C. Mutuality; Reciprocity; Runs with Land

All restrictions, conditions, covenants and agreements contained in this Declaration shall operate as covenants running with the land for the benefit of all other Lots and the Common Areas.

D. Declarant’s and Lessor’s Rights under Other Recorded Documents

Nothing herein contained shall prejudice or diminish in any way Declarant’s or Lessor’s rights under any other documents of record from time to time affecting all or any portion of the Project.

E. Captions; Severability; Entire Agreement; Governing Law

The paragraph and section headings or captions used herein are for convenience only and are not a part of this instrument and do not in any way limit, define or amplify the scope or intent of the terms and provisions hereof. If any provision of this Declaration as applied to Declarant or any Lessee or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by Law) any other provision of this instrument, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the instrument as a whole. References in this Declaration to Sections and Articles, unless otherwise indicated, are to Sections and Articles of this Declaration. All Exhibits and other addenda attached to this Declaration are incorporated herein and made a part hereof. This Declaration comprises the complete and integrated understanding and declaration of the Declarant with respect to the subject hereof, and supersedes any prior oral, written or other agreement or statement. This Declaration shall be governed by the internal laws of the State of California without regard to the conflict of laws principles of California or any other State.

F. Attorneys Fees and Costs

In the event any action or suit is brought by Lessor or any Lessee against any other Lessee or Lessor arising out of this Declaration, the prevailing party or parties shall be entitled to recover from the non-prevailing party or parties all reasonable costs and expenses of the action, including reasonable attorneys' fees and costs. As used in this Declaration, the term "attorneys' fees and costs" shall mean the fees, costs and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other Persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding, and shall include, specifically, all fees, costs and expenses of expert witnesses. The term "prevailing party" shall include a prevailing party as defined in California Code of Civil Procedure Section 998, or any successor statute thereto.

G. Notices

Any notice, consent, communication or reply (each a "notice") in this instrument provided or permitted to be given, made or accepted by any party must be in writing and shall, unless otherwise in this instrument expressly provided, be given or be served by depositing the same in the United States mail, postage paid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering or causing to be delivered the same in person to such party. Notice shall be effective, unless otherwise stated in this Declaration, upon delivery or receipt. For purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Lessor or Declarant: As set forth in each Lease

If to a Lessee: As set forth in the applicable Lease.

The parties shall have the right from time to time at any time to change their respective addresses, by providing written notice to the other party, although notice may always be given to each Lessee at its respective Lot.

H. No Rights in Public

Nothing herein contained shall be deemed to be a gift or dedication of any Lot or the Common Areas, or any portion thereof, to the general public for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Lessees that this Declaration be strictly limited to and for the purposes herein expressed for the maintenance, repair, reconstruction and operation of the Common Areas on private property solely for the benefit of the Lessees.

**[signatures on following page –
remainder of this page intentionally left blank]**

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

**THE CALIFORNIA STATE POLYTECHNIC
UNIVERSITY, POMONA**

By: _____
Name: _____
Title: _____

For purposes only of evidencing its approval of the form and substance of this Declaration and the assumption of any obligations delegated to it hereunder:

CAL POLY POMONA FOUNDATION, INC.

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA

)

) ss.

COUNTY OF LOS ANGELES

)

On _____ before me, _____,
Notary Public, personally appeared _____, personally known
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

Witness my hand and official seal.

Notary Public

STATE OF CALIFORNIA

)

) ss.

COUNTY OF LOS ANGELES

)

On _____ before me, _____,
Notary Public, personally appeared _____, personally known
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

Witness my hand and official seal.

Notary Public

EXHIBIT A-1

Depiction of Project

[see attached]

EXHIBIT A-2

Legal Description of Project

[see attached]

EXHIBIT B

Initial Allocable Shares of Lots

Lot No.	Approximate Net Acres	Allocable Shares	Lessee	Building Area Square Feet
1	15.0	29.5%	American Red Cross	230,000
2	4.3	8.5%	ARC Option Parcel	60,000
3	5.4	10.6%	Available	
4	5.4	10.6%	Available	
5	5.6	11.0%	Available	
6	5.5	10.8%	Available	
7	5.4	10.6%	Available	
8	4.2	8.3%	Available	
Sub-Total	50.8	100.00%		960,000
9	3.9	Not a Part	NASA/JPL Complex	52,000
	<u>10.1</u>		Common Areas	
Total Gross	64.8			

EXHIBIT C

Description of Initial Common Infrastructure

[see attached]

EXHIBIT D

Legal Description of Lots

[see attached]

**DECLARATION OF
COVENANTS, CONDITIONS
AND
RESTRICTIONS
FOR**

INNOVATION VILLAGE RESEARCH PARK

Dated: April 28, 2003

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EXHIBIT A-1 Depiction of Project

EXHIBIT A-2 - Legal Description of Project

EXHIBIT B - Initial Allocable Shares of Lots

EXHIBIT C - Description of Initial Common Infrastructure

EXHIBIT D - Legal Description of Lots