

STAFF REPORT

City of Lancaster, California

Date: September 17, 2007

To: Chairman Mann and Members of the Planning Commission

From: Brian S. Ludicke, Planning Director

Subject: **Development Agreement No. 07-01**
City of Lancaster and Kaiser Foundation Hospitals

Recommendation:

Approve Planning Commission Resolution No. 07-41 recommending to the City Council approval of Development Agreement No. 07-01.

Background:

The City Council approved the Amargosa Creek Specific Plan on August 14, 2007. One of the project stakeholders, Kaiser Foundation Hospitals, is proposing the construction of a hospital and related medical facilities on 44 acres of the overall site over a period of approximately 25 years. Both the City of Lancaster and Kaiser believe it is in their mutual interest to enter into a development agreement for the development of this proposed facility.

Development agreements are permitted under Section 65865 of the California Government Code. A development agreement essentially grants to the applicant a vested right to proceed with a proposed project for a set period of time. Development agreements are often entered into when a project will take a significant amount of time to finish or there are public improvement issues that need to be addressed outside of the normal development review and approval mechanisms. Various conditions and terms related to the development, including phasing, schedule, and improvements can be included within the agreement. The agreement must be consistent with the City's general plan and any applicable specific plan, which in this case is the Amargosa Creek Specific Plan. Section 65867.5 of the California Government Code requires that the Planning Commission review any proposed development agreement through a public hearing.

Discussion:

The proposed development agreement is attached as Exhibit "A" of Planning Commission Resolution No. 07-41. The basis for the agreement is that the hospital and related medical facilities proposed by Kaiser will provide a substantial long-term benefit for the City and its residents. In exchange, the City agrees to grant vested rights to the project for a set period of time, provide improvement of the Amargosa Creek channel, and provide limitations on the imposition of new impact fees. Should Kaiser not build the hospital facility in a timely manner, the City would be entitled to reimbursement for certain of the channel improvement costs. The agreement also contains other provisions related to the general obligations of both the City and Kaiser, as well as providing for the annual review of the agreement in accordance with State law.

The key elements of the agreement, and a reference to the relevant section, are as follows:

- The overall term of the agreement is 25 years from the Effective Date (Section 2.2).
- Kaiser retains a vested right to proceed with the project as currently approved for the term of the agreement (Section 6.1).
- The City is responsible, at its own expense, for the culverting and covering of the Amargosa Creek channel through the Kaiser site (Section 4.4). This cost is subject to reimbursement under the following circumstances (Section 4.5.a-d):
 - Kaiser is obligated to commence construction of the “Hospital Support Building” by December 31, 2015. If Kaiser fails to commence construction by the required date, they must reimburse the City for 50% of the construction costs of the Amargosa channel improvements.
 - Kaiser is further obligated to begin construction of the Hospital by December 31, 2018. If Kaiser fails to commence construction by the required date, they must reimburse the City for an additional 20% of the construction costs of the Amargosa channel improvements. If Kaiser fails to commence construction of the Hospital by December 31, 2020, they must reimburse the City for the balance of the construction costs of the channel improvements.
 - Should Kaiser enter into an agreement to sell the site, they must reimburse the City for the full cost of the Amargosa channel improvements. In the event a portion of the site is sold, a pro-rata share of the channel improvement cost must be reimbursed.
- Kaiser is responsible to pay all impact fees in effect at the time the agreement is approved, subject to an annual CPI adjustment, and must pay any processing fees at the rate in effect at the time they are sought (Section 3.2).
- Kaiser is responsible for paying their fair share of infrastructure obligations or mitigation measures identified within the approved mitigation monitoring plan. (Section 3.4)
- The City agrees to provide timely processing of development applications, and Kaiser agrees to submit all necessary information in a timely manner in conjunction with such applications (Section 5 generally).

Staff believes that the proposed agreement is consistent with the City’s General Plan because it would facilitate the development of medical facilities in accordance with both Objective 5.2 and Policy 5.2.1. The proposed agreement would also be consistent with the adopted Amargosa Creek Specific Plan because the plan establishes the Kaiser portion of the site as a medical district and allows for the development of medical offices, a hospital, and support facilities. The

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development agreement is structured such that the major City cost and obligation, which is the Amargosa Creek channel improvements, is subject to various levels of reimbursement should the medical facility not be built in a timely manner. Therefore, staff recommends that the Planning Commission recommend to the City Council approval of Development Agreement No. 07-01.

BSL/jr

RESOLUTION NO. 07-41

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LANCASTER, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF DEVELOPMENT AGREEMENT NO. 07-01 BETWEEN THE CITY OF LANCASTER AND KAISER FOUNDATION HOSPITALS

WHEREAS, pursuant to Section 65864 et. seq. of the Government Code of the State of California the City of Lancaster and Kaiser Foundation Hospitals are proposing to enter into a development agreement as contained in Exhibit “A” of this resolution; and

WHEREAS, notice of intention to consider the development agreement for the subject property was given as required in Section 65867 of the Government Code of the State of California; and

WHEREAS, a public hearing was held on September 17, 2007; and

WHEREAS, this Commission hereby finds, pursuant to Section 15162 of the State CEQA Guidelines, that the final environmental impact report certified for the Amargosa Creek Specific Plan (SCH 2007021012) on August 14, 2007 adequately addresses the potential impacts of proposed Development Agreement No. 07-01, and no further environmental review is required; and

WHEREAS, this Commission based on the evidence in the record, hereby adopts the following findings in support of approval of Development Agreement No. 07-01:

1. The proposed development agreement is consistent with the adopted General Plan, because it will facilitate implementation of the following objective and policy of the General Plan:

“Ensure the provision of quality medical facilities and services to meet the needs of area residents.” (Objective 5.2)

“Facilitate the expansion and extension of quality medical and emergency medical facilities to meet the needs of Lancaster residents and businesses.” (Policy 5.2.1)
2. The proposed development agreement is consistent with the adopted Amargosa Creek Specific Plan, because it will facilitate development of a hospital and related medical facilities as outlined and permitted by the adopted specific plan.
3. The potential environmental effects of the development agreement are adequately identified in the certified final environmental impact report for the Amargosa Creek Specific Plan, as noted in this resolution.

NOW, THEREFORE, BE IT RESOLVED:

This Commission hereby recommends to the City Council approval of the proposed development agreement attached hereto as Exhibit "A".

PASSED, APPROVED and ADOPTED this 17th day of September, 2007, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

KENNETH G. MANN, Chairman
Lancaster Planning Commission

ATTEST:

BRIAN S. LUDICKE, Planning Director
City of Lancaster

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Friday, September 07, 2007

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

(Space Above This Line Reserved For Recorder's Use)

EXHIBIT "A"

**DEVELOPMENT AGREEMENT
BY AND BETWEEN**

**CITY OF LANCASTER
AND
KAISER FOUNDATION HOSPITALS**

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Tuesday, September 11, 2007

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of _____, __ 2007 by and between Kaiser Foundation Hospitals, a California nonprofit public benefit corporation (“Kaiser”), and the City of Lancaster, a municipal corporation (“City”), pursuant to California Government Code § 65864, *et seq.*

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted California Government Code § 65864, *et seq.* (the “Development Agreement Statute”), which authorizes City to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property.

B. This Development Agreement has been processed, considered and executed in accordance with the procedures and requirements as set forth in the Development Agreement Statute.

C. In order to guide the planning and development of an area that the City has determined is a critical part of the City’s future growth and development, the City prepared the Amargosa Creek Specific Plan (the “Specific Plan”) for an approximately 152-acre site along 10th Street West between Avenue L and Avenue K-8 in the City of Lancaster, as more particularly described in Exhibit A-1 attached hereto (the “Specific Plan Area”).

D. Kaiser has a legal and/or equitable interest in certain real property located in a portion of the Specific Plan Area, consisting of approximately 44 acres, as more particularly described in Exhibit A-2 attached hereto (the “Project Site”).

E. Consistent with the Specific Plan, Kaiser intends to develop the Project Site as a medical office campus that will be built out in multiple phases over a nearly 25 year period (the “Project”). Phase 1 of the Project is anticipated to include a Hospital Support Building that will contain specialty medical offices for up to 56 physicians, an ambulatory surgery center, and administrative support offices. The Hospital Support Building is expected to be between 125,000 and 195,000 square feet in size and up to four stories in height. A Central Utility Plant will also be constructed during Phase 1 to support the entire Project. Occupancy of the Phase 1 structures is expected to occur between 2011 and 2015. Phase 2 of the Project will add a Hospital containing approximately 100 to 150 beds within an approximately 200,000 to 300,000 square foot structure at up to five stories in height. Occupancy of the Hospital is expected to occur between 2014 and 2018, depending on growth in the Antelope Valley service area. Phase 3 of the Project will be constructed as population growth generates additional bed and medical provider office demand, potentially resulting in a 50 bed Hospital Addition in an approximately 100,000 square foot structure and a 61,200 square foot Medical

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Office Building. Occupancy of the Phase 3 structures is expected to occur after completion of Phase 2, with a 2020 to 2030 horizon.

F. Consistent with the Specific Plan, and in order to maximize visibility and access to the Project, the Project Site is located within the southeast quadrant of the Specific Plan Area along Avenue L, offering direct links to Highway 14 and Sierra Highway. As currently envisioned, the Project's main medical buildings are expected to be oriented south toward Avenue L to establish a highly visible arrival sequence, with a dedicated vehicular entry and parking located off the major arterial.

G. City has taken several actions to review and plan for the future development of the Project (the "Project Approvals"). These consist of the following:

1. Environmental Impact Report. The environmental impacts of the Project, including the Project Approvals and the Subsequent Approvals, and numerous alternatives to the Project and its location, have been properly reviewed and assessed by City pursuant to CEQA, as defined below. On August 14, 2007, pursuant to CEQA and in accordance with the recommendation of the Planning Commission for the City of Lancaster (the "Planning Commission"), the City Council certified a final environmental impact report covering the Project (the "EIR"). As required by CEQA, the City adopted written findings and a mitigation monitoring program (the Mitigation Monitoring Program") prior to approving the Project Approvals.

2. Specific Plan, Rezoning, and General Plan Amendments. Following City Planning Commission review and recommendation, certification of the EIR at a duly noticed public hearing on August 14, 2007 the City Council adopted City Resolution No. 07-158, adopting the Specific Plan and amending the General Plan land use designations and Ordinance No. 885 amending the zoning classifications for the Specific Plan Area and the Project Site.

H. City has determined that the Project presents certain public benefits and opportunities which are advanced by City and Kaiser entering into this Agreement. This Agreement will, among other things, (1) reduce uncertainties in planning and provide for the orderly development of the Project; (2) mitigate many significant environmental impacts associated with the Project; (3) provide public services, improvement, and infrastructure; (4) strengthen the City's economic base with a variety of high quality long term jobs, in addition to shorter term construction jobs; (5) provide a consolidated and centralized medical center location for Kaiser members in the City of Lancaster and the surrounding community to receive medical care; (6) offer state-of-the-art medical care in facilities to be constructed and designed to optimize the quality of patient care; and (7) otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

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I. In exchange for the benefits to City described in the preceding Recital, together with the other public benefits that will result from the development of the Project, Kaiser will receive by this Agreement assurance that it may proceed with the Project in accordance with the “Applicable Law” (defined below) and assurances that City will culvert over Amargosa Creek prior to commencement of Phase 1 of the Kaiser Project, at the City’s sole cost, and therefore desires to enter into this Agreement.

J. The City Council, after conducting a duly noticed public hearing, has found that this Agreement is consistent with the General Plan and with the Specific Plan and has conducted all necessary proceedings in accordance with the City’s rules and regulations for the approval of this Agreement.

K. On [date], following a duly noticed public hearing, the Planning Commission adopted Resolution No. [____], recommending that the City Council approve this Agreement. The City Council at a duly noticed public hearing adopted Ordinance No. [____], approving and authorizing the execution of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, covenants and provisions set forth herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

DEFINITIONS

“Administrative Project Amendment” shall have that meaning set forth in Section 7.1(a) of this Agreement.

“Administrative Agreement Amendment” shall have that meaning set forth in Section 7.2(a) of this Agreement.

“Agreement” shall mean this Agreement as initially approved or as hereafter amended.

“Applicable Law” shall have that meaning set forth in Section 6.3 of this Agreement.

“Assessed Property” shall have that meaning set forth in Section 5.6 of this Agreement.

“Buildout” shall have that meaning set forth in Section 4.3 of this Agreement.

“CEQA” shall be the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.*; California Code of Regulations Title 14, Section 15000, *et seq.* (the “CEQA Guidelines”); and City’s local guidelines promulgated thereunder.

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“Changes in the Law” shall have that meaning set forth in Section 6.9 of this Agreement.

“Channel Improvements” shall have the meaning set forth in Section 4.4 of this Agreement.

“City” shall mean the City of Lancaster, a municipal corporation formed and existing under the laws of the State of California.

“Commencement of Construction” means the issuance of the required permits and taking of continued action in connection therewith.

“Default Notice” shall have that meaning set forth in Section 10.1 of this Agreement.

“Deficiencies” shall have that meaning set forth in Section 9.2(a) of this Agreement.

“Development Agreement Statute” shall have that meaning set forth in Recital A of this Agreement.

“Drainage Maintenance District” means the Lancaster Drainage Assessment District.

“Effective Date” shall have that meaning set forth in Section 2.1 of this Agreement.

“Future Expansion” shall have that meaning set forth in Section ____ of this Agreement, providing for the phased development of the Project over the Term.

“Impact Fees” means impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on and in connection with new development by the City pursuant to rules, regulations, ordinances and policies of the City as more particularly described on Exhibit B hereto. Impact Fees do not include (i) Processing Fees and Charges, or (ii) other City-wide fees or charges of general applicability, provided that such City-wide fees or charges are not imposed on impacts of new development. Impact Fees shall meet the legal requirements for a nexus set forth in Government Code Section 66001, *et. seq.*

“Judgment” shall have that meaning set forth in Section 9.2(a) of this Agreement.

“Landscaping District” means the Lancaster Landscape Maintenance District.

“Lighting District” means the Lancaster Lighting Maintenance District

“Mitigation Monitoring Program” shall have that meaning set forth in Recital G.1 of this Agreement.

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“Mortgagee” shall be a party extending financing secured against the Property to Kaiser, its successors and assigns, or any tenant or affiliate of Kaiser.

“Non-Assuming Transferee” shall have that meaning set forth in Section 8.3 of this Agreement.

“Notice of Compliance” shall have that meaning set forth in Section 8.4 of this Agreement.

“Periodic Review” shall have that meaning set forth in Section 10.3(a) of this Agreement.

“Processing Fees and Charges” means customary administrative fees and charges imposed by the City for all new development pursuant to a validly adopted ordinance for charges of general applicability, including, but not limited to, fees for land use applications, Project permits, building applications, building permits, grading permits, encroachment permits, tract or parcel maps, lot line adjustments, street vacations, certificates of occupancy and other similar permits as more particularly described on Exhibit B hereto. Processing Fees and Charges are not fees or charges imposed on impacts of new development in violation of the express limitations set forth in this Agreement. Processing Fees and Charges shall not include Impact Fees.

“Project” shall have that meaning set forth in Recital E of this Agreement.

“Project Approvals” shall have that meaning set forth in Recital G of this Agreement.

“Project Site” shall have that meaning set forth in Recital D of this Agreement.

“Reserved Powers” means the rights and authority excepted from this Agreement’s restrictions on the City’s police powers which are reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date that may be in conflict with the Applicable Laws, which either (1) prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety; (2) are Uniform Codes; (3) are necessary to comply with state and federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; (4) are agreed to or consented to by Developer; (5) involve the formation of assessment districts, Mello-Roos Community Facilities Districts, special districts, maintenance districts or other similar districts formed in accordance with applicable laws provided, however, that Developer shall retain all its rights with respect to such districts pursuant to all applicable laws; or (6) are Processing Fees and Charges or City-wide fees or charges of general applicability provided that such City-wide fees or charges are not fees or charges imposed on impacts of new development in violation of the express limitations set forth in this Agreement.

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“Subsequent Approvals” shall mean those certain other land use approvals, entitlements, and permits other than the Project Approvals that are necessary or desirable for the Project. In particular, the parties contemplate that Kaiser will seek approvals for final development plans, vesting maps, and amendments to this Agreement. The Subsequent Approvals may also include, without limitation, the following: design review approvals, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, preliminary and final development plans, rezonings, development agreements, permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing.

“Term” shall have that meaning set forth in Section 2.2 of this Agreement.

“Transfer Agreement” shall have that meaning set forth in Section 8.2(a) of this Agreement.

ARTICLE II

EFFECTIVE DATE AND TERM

Section 2.1. Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the “Effective Date”).

Section 2.2. Term. The term of this Agreement (the “Term”) shall commence upon the Effective Date and continue for a period of twenty five (25) years.

ARTICLE III

OBLIGATIONS OF KAISER

Section 3.1. Obligations of Kaiser Generally. The parties acknowledge and agree that the City’s agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Kaiser’s agreement to perform and abide by its long term covenants and obligations, as set forth herein. The parties acknowledge that many of Kaiser’s long term obligations set forth in this Agreement are in addition to Kaiser’s agreement to perform all the mitigation measures identified in the Mitigation Monitoring Program.

Section 3.2. Fees Paid by Kaiser. As a material consideration for the long term assurances and vested rights provided by this Agreement, Kaiser shall pay certain fees and exactions to City, all as described below.

(a) Processing Fees and Charges. Kaiser shall pay to City Processing Fees and Charges at the rate in effect at the time they are sought.

(b) Impact Fees. Subject to the provisions of Section 3.2(c), Kaiser shall pay all Impact Fees in force as of the Effective Date.

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(c) Adjustment of Impact Fees. The City reserves the right to amend the Impact Fees applicable to the Project to account for inflation, by an amount not to exceed the CPI index for the City of Lancaster. Such adjustment shall be made annually as of July 1, but shall not exceed the Impact Fees then in effect.

Section 3.3. Taxes to be Paid by Kaiser.

(a) Real Property Taxes. It is anticipated that Kaiser shall pay real property taxes on certain of its non-exempt operations, as determined by the Los Angeles County Assessor.

(b) Sales Taxes. It is anticipated that Kaiser shall pay sales tax on applicable retail sales.

Section 3.4. Infrastructure Obligations. Kaiser agrees to pay its fair share of any infrastructure obligations or mitigation measures that are set forth in any Mitigation Monitoring and Reporting Plan duly adopted in connection with the EIR for the Specific Plan or any subsequent environmental review in connection with a subsequent Kaiser application.

ARTICLE IV

OBLIGATIONS OF CITY

Section 4.1. Obligations of City Generally. The parties acknowledge and agree that Kaiser's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Kaiser's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.

Section 4.2. Protection of Vested Rights. To the maximum extent permitted by law, City shall take any and all actions as may be necessary or appropriate to ensure that the vested rights as provided in Article VI of this Agreement can be enjoyed by Kaiser. City shall cooperate with Kaiser and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City shall not enforce any law that shall violate the express provisions or intent of the Project Approvals or Subsequent Approvals or the vested rights created by this Agreement.

Section 4.3. Availability of Public Services. To the maximum extent permitted by law and consistent with its authority, City shall assist Kaiser in reserving in accordance with the procedure adopted by Los Angeles County Sanitation District and Los Angeles County Water Works District No. 40, respectively such capacity for sewer and water services as may be necessary to serve the Project. The City will support Kaiser's request for an average gallons per day reservation of water capacity of 110,728 average gallons per day, based on the maximum buildout of 656,200 square feet identified in this Agreement. This average number will be prorated by phase and adjusted for hospital and non-hospital based uses. For purposes of this Agreement,

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“Buildout” means development of the Project Site to the full extent permitted by the Specific Plan.

Section 4.4. Channel Improvements. The City agrees to cause the drainage channel that crosses the Project Site to be culverted and covered at grade consistent with the Master Plan of Drainage and in the manner described in Exhibit C attached hereto, so that the Project Site can be improved by Kaiser with the Project (the “Channel Improvements”). The Channel Improvements will be designed and constructed using commonly accepted engineering practices and in a manner sufficient to allow the construction of the Project on the Project Site, with surface parking and landscaping over the Channel Improvements. The Parties anticipate that the Channel Improvements will cost approximately Five Million One Hundred Eighteen Thousand Dollars (\$5,118,000); provided, however, that the City will be obligated to cover all costs and expenses associated with the Channel Improvements regardless of total cost or expense. The parties acknowledge that the Channel Improvements are subject to approval of the California Department of Fish and Game and City agrees to use its best efforts to obtain approval for the Channel Improvements. In the event Kaiser is prevented from completing the development of the Project Site as a result of City’s inability to complete the Channel Improvements, Kaiser may proceed with the remedies set forth in Section 10.1.

Section 4.5. Repayment.

(a) Hospital Support Building. In the event Kaiser does not commence construction of the Hospital Support Building by December 31, 2015, Kaiser shall reimburse City for fifty percent (50%) of the construction costs of the Channel Improvements.

(b) Hospital. In the event Kaiser does not commence construction of the Hospital by December 31, 2018, Kaiser shall reimburse City for an additional 20 percent (20%) of the construction costs of the Channel Improvements. If Kaiser does not commence construction of the Hospital by December 31, 2020, Kaiser shall reimburse City for the balance of the construction costs of the Channel Improvements.

(c) Sale of the Project Site. In the event Kaiser enters into an agreement for the sale of the Project Site, the full Cost of the Channel Improvements shall be due and payable to the City. To the extent that a portion of the Project Site is sold, the repayment obligation shall be prorated, based on the ratio of the square footage of the land sold to the total square footage of the Project Site. The prorata portion Cost of the Channel Improvements attributable to the portion of the Project Site being sold shall be paid and the balance of the repayment obligation for the retained land shall continue in accordance with the time frames set forth herein.

(d) Costs Determined. The costs subject to Kaiser’s reimbursement obligation (the “Cost of the Channel Improvements”) shall include all of City’s out-of-pocket costs associated with the construction of the Channel Improvements, increased by

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the interest rate of seven percent (7%) on the first anniversary of the Effective Date and every anniversary thereafter.

Section 4.6. Kaiser's Right to Rebuild. City agrees that Kaiser may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, or should the buildings located within the Project become functionally outdated, within Kaiser's sole discretion, due to changes in technology. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

ARTICLE V

COOPERATION - IMPLEMENTATION

Section 5.1. Processing Application for Subsequent Approvals. By approving the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law and are not inconsistent with the Project Approvals as set forth above.

Section 5.2. Timely Submittals By Kaiser. Kaiser acknowledges that City cannot expedite processing Subsequent Approvals until Kaiser submits complete applications on a timely basis. Kaiser shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Kaiser's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary required materials as set forth in the Applicable Law. It is the express intent of Kaiser and City to cooperate and diligently work to obtain any and all Subsequent Approvals.

Section 5.3. Timely Processing By City. Upon submission by Kaiser of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, (i) providing at Kaiser's expense, and subject to Kaiser's request and prior approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. City shall ensure that adequate staff is available, and shall authorize overtime staff assistance as may be necessary to timely process such Subsequent Approval application.

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Section 5.4. Review of Subsequent Approvals. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Kaiser as an amendment to that Project Approval pursuant to Section 7.1). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with the Specific Plan, this Agreement or Applicable Law, or is necessary to make this Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City must specify in writing the reasons for such denial and may suggest a modification which would be approved. Any such specified modifications must be consistent with the Specific Plan, this Agreement, Applicable Law and the Project Approval, and City shall approve the application if it is subsequently resubmitted for City review and addresses the reason for the denial in a manner that is consistent with this Agreement, Applicable Law and the Project Approvals.

Section 5.5. Other Government Permits. At Kaiser's sole discretion and in accordance with Kaiser's construction schedule, Kaiser shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Kaiser in its efforts to obtain such permits and approvals and shall, from time to time at the request of Kaiser, use its best efforts to enter into binding agreements with any such entity as may be necessary to ensure the timely availability of such permits and approvals; provided, that, except with respect to the Channel Improvements, nothing herein shall require to City to expend any funds (other than for staff work) in connection with such agreements.

Section 5.6. Assessment Districts or Other Funding Mechanisms.

(a) City is unaware of any pending efforts to initiate, or consider applications for new or increased assessments covering the Project Site, or any portion thereof.

(b) City understands that long term assurances by City concerning fees, taxes and assessments were a material consideration for Kaiser agreeing to process the siting of the Project in its present location. City shall retain the ability to initiate or process applications for the formation of new assessment districts covering all or any portion of the Project site. Notwithstanding the foregoing, Kaiser retains all its rights to oppose the formation or proposed assessment of any new assessment district or increased assessment. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the fees or assessments to be paid by Kaiser under the Project Approvals or this Agreement, such fees or assessments to be paid by Kaiser shall be subject to reduction/credit in an amount equal to Kaiser's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Kaiser's new assessment in

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an amount equal to such fees or assessments to be paid by Kaiser under the Project Approvals or this Agreement.

(c) At the request of Kaiser, City shall cooperate in the formation of assessment districts, community facilities districts, tax-exempt financing mechanisms, or other funding mechanisms related to traffic, sewer, water or other infrastructure improvements (including, without limitation, design, acquisition and construction costs) within the Project Site. City shall diligently and expeditiously process applications by Kaiser necessary to establish funding mechanisms so long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City, and which will result in no commitment of City funds. City shall diligently seek to sell any bonds to be issued and secured by such assessments upon the best terms reasonably available in the marketplace. Kaiser may initiate improvement and assessment proceedings utilizing assessment mechanisms authorized under the law of the State of California where the property subject to assessment (the "Assessed Property") provides primary security for payment of the assessments. Kaiser may initiate such assessment proceedings with respect to a portion of the Assessed Property to provide financing for design or construction of improvements for such portion. City shall allocate shortfalls or cost overruns in the same manner as the special taxes or assessments for construction of improvements (as opposed to assessments for maintenance) are allocated in the community facilities district or other financing mechanism so that each lot and/or parcel within the benefited area shall bear its appropriate share of the burden thereof as determined by City and construction or acquisition of needed improvements shall not be prevented or delayed.

ARTICLE VI

STANDARDS, LAWS AND PROCEDURES GOVERNING THE PROJECT

Section 6.1. Vested Right to Develop. Kaiser shall have a vested right to develop the Project on the Project Site in accordance with the terms and conditions of this Agreement. Nothing in this section shall be deemed to eliminate or diminish the requirement of Kaiser to obtain any required Subsequent Approvals.

Section 6.2. Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals. Permitted uses shall include, without limitation, the Hospital Support Building, Central Utility Plant, Hospital, Hospital Addition, Medical Office Building, parking facilities any related buildings or facilities associated with a medical campus, and any other use permitted by the Specific Plan.

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Section 6.3. Applicable Laws. The rules, regulations, official policies, standards and specifications applicable to the Project (the "Applicable Laws") shall be those set forth in this Agreement and the Project Approvals, and, with respect to matters not addressed by this Agreement or the Project Approvals, those rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing of construction, densities, maximum floor area and coverage ratios established by the Specific Plan, design, heights, fees, exactions, and taxes in force and effect on the Effective Date of this Agreement subject to any adjustments as provided in Section 3.2(c). Notwithstanding the forgoing, Kaiser, in its sole discretion, may elect to proceed pursuant to those rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) in effect at the time of application for a Subsequent Approval.

Section 6.4. Changes in Applicable Laws.

(a) Non-Application of Changes in Applicable Laws. Any change in, or addition to, the Applicable Laws, including, without limitation, any change in any applicable general or specific plan, zoning ordinance or building regulation adopted or becoming effective after the Effective Date, including, without limitation, any such change by means of ordinance, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council or Planning Commission or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict with the Applicable Laws or this Agreement, shall not be applied to the Project unless such changes represent an exercise of the City's Reserved Powers or are otherwise expressly allowed by this Agreement or consented to in writing by Developer.

(b) Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, construction of the Project shall comply with changes occurring from time to time in the Uniform Codes pursuant to the Reserved Powers.

(c) Changes Mandated by Federal or State Law. This Agreement shall not preclude the application to the Project of changes in, or additions to, the Applicable Laws. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended if necessary to comply with such state or federal laws or regulations.

(d) Special Taxes and Assessments. Except with regard to the Drainage Maintenance District, Landscaping District and Lighting District as provided for in Section 3.2, Developer shall have the right, to the extent permitted by law, to protest, oppose and vote against any and all special taxes, assessments, levies, charges and/or fees imposed with respect to any assessment districts, Mello-Roos Community Facilities Districts, maintenance districts or other similar districts.

Section 6.5. No Conflicting Enactments. Except with respect to fee adjustments as provided in Section 3.2(c) and changes in Applicable Laws as provided in Section 6.4, the City shall not impose on the Project (whether by action of the City

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Council or by initiative, referendum or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a “City Law”) that is in conflict with Applicable Law or this Agreement or that reduces the development rights or assurances provided by this Agreement. Without limiting the generality of the foregoing, any City Law shall be deemed to conflict with Applicable Law or this Agreement or reduce the development rights provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

(a) Change any land use designation or permitted use of the Project Site;

(b) Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project;

(c) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals or the Subsequent Approvals (as and when they are issued);

(d) Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner inconsistent with this Agreement;

(e) Apply to the Project any City Law otherwise allowed by this Agreement that is not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites;

(f) Result in Kaiser having to substantially delay construction of the Project or require the issuance of additional permits or approvals by the City other than those required by Applicable Law;

(g) Substantially increase the cost of constructing or developing the Project or any portion thereof;

(h) Establish, enact, increase, or impose against the Project or Project Site any fees, taxes (including without limitation general, special and excise taxes), assessments, liens or other monetary obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Agreement or other connection fees imposed by third party utilities;

(i) Impose against the Project any condition, dedication or other exaction not specifically authorized by Applicable Law; or

(j) Limit the processing or procuring of applications and approvals of Subsequent Approvals.

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Section 6.6. Initiatives and Referenda.

(a) If any City Law is enacted or imposed by initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with Applicable Law or this Agreement or reduce the development rights provided by this Agreement, such Law shall not apply to the Project.

(b) Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted within the City, or portions of the City, shall apply to the Project.

(c) To the maximum extent permitted by law, City shall prevent any City Law from invalidating or prevailing over all or any part of this Agreement, and City shall cooperate with Kaiser and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect.

(d) City shall not support, adopt or enact any City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement, the Project Approvals or the Subsequent Approvals.

(e) Kaiser reserves the right to challenge in court any City Law that would conflict with Applicable Law or this Agreement or reduce the development rights provided by this Agreement.

Section 6.7. Environmental Mitigation. The parties understand that the EIR was intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to the EIR, City agrees to use the EIR in connection with the processing of any Subsequent Approval to the maximum extent allowed by law and not to impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the Mitigation Monitoring Program or specifically required by Applicable law. In addition, to the extent consistent with CEQA's policies and requirements applicable to either Master EIR's or tiered EIR's, the City agrees to use the EIR in connection with the processing of approvals related to Future Expansion to the maximum extent allowed by law.

Section 6.8. Life of Subdivision Maps, Development Approvals, and Permits. The term of any subdivision map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the longer of the duration of this Agreement (including any extensions) or the term otherwise applicable to such Project Approval or Subsequent Approval if this Agreement is no longer in effect. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which a development moratorium (including, but not limited to, a water or sewer

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moratorium or water and sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project or a lawsuit involving any such development approvals or permits is pending.

Section 6.9. State and Federal Law. As provided in California Government Code § 65869.5, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and City and Kaiser shall take such action as may be required pursuant to this Agreement including, without limitation, Article V (Cooperation-Implementation) and Section 10.5 (Enforced Delays; Extension of Time of Performance). Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Kaiser any fee specifically mandated and required by state or federal laws and regulations.

Section 6.10. Timing of Project Construction and Completion.

(a) Project Phasing. The Project is expected to be built in multiple phases in response to the health care delivery requirements of Kaiser over the Term of the Agreement. The parties acknowledge that Kaiser cannot predict the timing, rate, order or actual number of Phases with certainty. The timing, order and rate of development shall be in Kaiser's sole discretion, subject only to the requirements set forth in subsection (b) below. The preliminary phasing plan is as follows:

(i) Phase 1. Phase 1 of the Project is anticipated to include the Hospital Support Building that will contain specialty medical offices for up to 56 physicians, an ambulatory surgery center, and administrative offices. The Hospital Support Building is expected to be between 125,000 and 195,000 square feet and up to four stories in height. A Central Utility Plant will also be constructed during Phase 1 to support the entire Project. Occupancy of the Phase 1 structures is expected between 2011 and 2015.

(ii) Phase 2. Phase 2 of the Project will add the Hospital containing approximately 100 to 150 beds within a 200,000 to 300,000 square foot structure, up to five stories in height. Occupancy of the Hospital is expected between 2014 and 2018.

(iii) Phase 3. Phase 3 of the Project will be constructed if population growth generates sufficient demand, potentially resulting in a 50 bed Hospital Addition in an approximately 100,000 square foot structure and a 61,200 square foot Medical Office Building. Occupancy of the Phase 3 structures is expected after completion of Phase 2, with a 2020 to 2030 horizon.

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(b) Notwithstanding any provision of this Agreement, City and Kaiser expressly agree that there is no requirement that Kaiser initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Kaiser cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Kaiser, such as changes in health care delivery requirements, member needs, market orientation and demand, interest rates, competition and other similar factors.

(c) In light of the foregoing and except as set forth in subsection (b) below, the parties agree that Kaiser shall be able to develop in accordance with Kaiser's own time schedule as such schedule may exist from time to time, and Kaiser shall determine which part of the Project Site to develop first, and at Kaiser's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984) that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Kaiser shall have the right to develop the Project in such order and at such rate and at such times as Kaiser deems appropriate within the exercise of its subjective business judgment.

(d) Nothing in this Agreement shall exempt Kaiser from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.

Section 6.11. Exempting Fees Imposed by Outside Agencies. The City agrees to exclude Kaiser from any and all collection agreements regarding fees, including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or the Project Site after the Effective Date through the Term of this Agreement. This section shall not prohibit the City from imposing on Kaiser any fee or obligation that is imposed by a regional agency in accordance with state or federal obligations and implemented by the City in cooperation with such regional agency.

Section 6.12. Fee Reductions or Credits. The parties intend that the fees described in Sections 3.2 will be in lieu of any exactions, taxes or assessments generally intended to address similar uses or purposes, and that Kaiser shall not be required to pay two times for any such exaction, fee or assessment. Accordingly, the fees described in Section 3.2 shall be subject to reductions/credits in an amount equal to Kaiser's actual cost of complying with any such lawfully imposed exaction, tax, or assessment generally intended to address similar uses or purposes, whether imposed on the Project, the Project Site, the Project Approvals or the Subsequent Approvals. Notwithstanding the foregoing, no such reduction/credit shall be provided as a result of any assessment that arises from an assessment district requested by Kaiser under Section 5.6(c).

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ARTICLE VII

AMENDMENT

Section 7.1. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:

(a) Administrative Project Amendments. Upon the written request of Kaiser for an amendment or modification to a Project Approval or Subsequent Approval, the Specific Plan Review Committee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with the Specific Plan, this Agreement and Applicable Law. If the Specific Plan Review Committee finds that the proposed amendment or modification is minor, consistent with the Specific Plan, this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an "Administrative Project Amendment" and the Specific Plan Review Committee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.

(b) Non-Administrative Project Amendments. Any request of Kaiser for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

Section 7.2. Amendment of This Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:

(a) Administrative Agreement Amendments. Any amendment to this Agreement which does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Kaiser, shall not, except to the extent otherwise required by law, require notice or public hearing before the parties

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may execute an amendment hereto. Such amendment may be approved by City resolution.

(b) Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, or a Subsequent Approval shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement.

ARTICLE VIII

ASSIGNMENT, TRANSFER AND NOTICE

Section 8.1. Assignment of Interests, Rights and Obligations. Kaiser may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.

Section 8.2. Transfer Agreements.

(a) In connection with the transfer or assignment by Kaiser of all or any portion of the Project (other than a transfer or assignment by Kaiser to an affiliated party, or a Mortgagee or as provided in Section 8.3), Kaiser and the transferee shall enter into a written agreement (a "Transfer Agreement") regarding the respective interests, rights and obligations of Kaiser and the transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement may (i) release Kaiser from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations, (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address any other matter deemed by Kaiser to be necessary or appropriate in connection with the transfer or assignment.

(b) Kaiser shall seek City's prior written consent to any Transfer Agreement, which consent shall not be unreasonably withheld or delayed. Failure by City to respond within forty-five (45) days to any request made by Kaiser for such consent shall be deemed to be City's approval of the Transfer Agreement in question. City may refuse to give its consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable opinion be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the Planning Director, and is appealable by Kaiser to the City Council.

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(c) Any Transfer Agreement shall be binding on Kaiser, City and the transferee. Upon recordation of any Transfer Agreement in the Official Records of Los Angeles County, Kaiser shall automatically be released from those obligations assumed by the transferee therein.

(d) Kaiser shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Kaiser's obligations under this Agreement shall be attributed to Kaiser, nor may Kaiser's rights hereunder be canceled or diminished in any way by any breach or default by any such person.

Section 8.3. Nonassuming Transferees. Subject to the repayment obligation set forth in Section 4.5(c) and except as otherwise required by Kaiser in Kaiser's sole discretion, the burdens, obligations and duties of Kaiser under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with, any property that has been established as one or more separate legal parcels. The transferee in such a transaction and its successors ("Non-Assuming Transferees") shall be deemed to have no obligations under this Agreement, but shall continue to be subject to the provisions of the Specific Plan and in particular to the provisions of Section ____ thereof. Nothing in this section shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.

Section 8.4. Notice of Compliance Generally. Within thirty (30) days following any written request which Kaiser may make from time to time, City shall execute and deliver to Kaiser (or to any party requested by Kaiser) a written "Notice of Compliance," in recordable form, duly executed and acknowledged by City, that certifies:

(a) This Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications;

(b) There are no current uncured defaults under this Agreement or specifying the dates and nature of any such default;

(c) Any other information reasonably requested by Kaiser. The failure to deliver such a statement within such time shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Kaiser and that there are no uncured defaults in the performance of the Kaiser, except as may be represented by the Kaiser. Kaiser shall have the right at Kaiser's sole discretion, to record the Notice of Compliance.

ARTICLE IX

COOPERATION IN THE EVENT OF LEGAL CHALLENGE

Section 9.1. Cooperation.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of the Agreement or any Project Approval or Subsequent Approval, the parties shall cooperate in defending such action or proceeding. The parties shall use best efforts to select mutually agreeable legal counsel to defend such action, and Kaiser shall pay compensation for such legal counsel; provided, however, that such compensation shall include only compensation paid to counsel not otherwise employed as City staff and shall exclude, without limitation, City Attorney time and overhead costs and other City staff overhead costs and normal day-to-day business expenses incurred by City. Kaiser's obligation to pay for legal counsel shall not extend to fees incurred on appeal unless otherwise authorized by Kaiser. In the event City and Kaiser are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel at its own expense.

(b) The parties agree that this Section 9.1 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this section, which shall survive such invalidation, nullification or setting aside.

Section 9.2. Cure; Reapproval.

(a) If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.1, all or any portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a "Judgment") in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter "Deficiencies"), the parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies related to, as follows, unless the Parties mutually agree in writing to act otherwise:

(i) If any Judgment requires reconsideration or consideration by City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement, Project Approval, or Subsequent Approval, then the Parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement. City shall then readopt or reenact this Agreement, Project Approval, Subsequent Approval, or any portion thereof, to which the Deficiencies related.

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(ii) Acting in a manner consistent with the intent of this Agreement includes, but is not limited to, recognizing that the Parties intend that Kaiser may develop the Hospital Support Building, Central Utility Plant, Hospital, Hospital Addition, Medical Office Building, parking facilities any related buildings or facilities associated with a medical campus, and any other use permitted by the Specific Plan, and adopting such ordinances, resolutions, and other enactments as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgment.

(b) The parties agree that this Section 9.2 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this section, which shall survive such invalidation, nullification or setting aside.

ARTICLE X

DEFAULT; REMEDIES; TERMINATION

Section 10.1. Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (unless such period is extended by mutual written consent), shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence ("Default Notice") shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Upon the occurrence of a default under this Agreement, the non-defaulting party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing party shall take no further action.

Section 10.2. Termination. If City elects to consider terminating this Agreement due to a material default of Kaiser, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. Kaiser shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Kaiser by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter; provided, however, that if Kaiser files an action to challenge City's termination of this Agreement within such sixty-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City's termination of this

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Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

Section 10.3. Periodic Review.

(a) Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Kaiser with the terms of this Agreement. This review (the "Periodic Review") shall be conducted by the Planning Director or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1.

(b) Notice. At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Section 12.9 of this Agreement, City shall deposit in the mail to Kaiser a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Kaiser's performance hereunder. Kaiser shall be permitted an opportunity to respond to City's evaluation of Kaiser's performance, either orally at a public hearing or in a written statement, at Kaiser's election. Such response shall be made to the Planning Director.

(c) Good Faith Compliance. During the Periodic Review, the Planning Director shall review Kaiser's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the Planning Director shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Kaiser has complied in good faith with the terms and conditions of this Agreement. The decision of the Planning Director shall be appealable to the City Council. If the Planning Director finds and determines that Kaiser has not complied with such terms and conditions, the Planning Director may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code Sections 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by Kaiser and City.

(d) Failure to Properly Conduct Periodic Review. If City fails, during any calendar year, to either (i) conduct the Periodic Review or (ii) notify Kaiser in writing of City's determination, pursuant to a Periodic Review, as to Kaiser's compliance with the terms of this Agreement and such failure remains uncured as of December 31 of any year during the term of this Agreement, such failure shall be conclusively deemed an approval by City of Kaiser's compliance with the terms of this Agreement.

(e) Written Notice of Compliance. With respect to any year for which Kaiser has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following request by Kaiser, provide Kaiser with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Kaiser shall have the right, in Kaiser's sole discretion, to record such notice of compliance.

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Section 10.4. Default by City or Kaiser. In the event City or Kaiser defaults under the terms of this Agreement, City or Kaiser shall have all rights and remedies provided herein or under law.

Section 10.5. Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting state or federal laws or regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement or any of the Project Approvals or Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project pursuant to this Agreement, or Kaiser's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project, shall be deemed to create an excusable delay as to Kaiser. Upon the request of either party hereto, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be memorialized in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon.

Section 10.6. Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.

Section 10.7. California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 10.8. Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Kaiser shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 10.8 shall in any way be interpreted as requiring that Kaiser and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Kaiser unless expressly agreed to by the parties to such meetings.

Section 10.9. Attorneys' Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any other costs incurred in that proceeding in addition to any other relief to which it is entitled.

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Section 10.10. Hold Harmless. Kaiser shall hold City and its elected and appointed officers, agents, employees, and representatives harmless from claims, costs, and liabilities for any personal injury, death, or property damage which is a result of the construction of the Project, or of operations performed under this Agreement by Kaiser or by Kaiser's contractors, subcontractors, agents or employees, whether such operations were performed by Kaiser or any of Kaiser's contractors, subcontractors, agents or employees. Nothing in this section shall be construed to mean that Kaiser shall hold City harmless from any claims of personal injury, death or property damage arising from, or alleged to arise from, any act, or failure to act, on the part of City, its elected and appointed representatives, officers, agents and employees.

ARTICLE XI

NO AGENCY, JOINT VENTURE OR PARTNERSHIP

It is specifically understood and agreed to by and between the parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Kaiser shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Kaiser under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Kaiser hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Kaiser and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Kaiser.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

Section 12.2. Enforceability. City and Kaiser agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code Section 65866.

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Section 12.3. Findings. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.

Section 12.4. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Kaiser may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

Section 12.5. Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 12.6. Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Kaiser, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 12.7. Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

Section 12.8. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.

DRAFT

Tuesday, September 11, 2007

Section 12.9. Notices. Any notice or communication required hereunder between City or Kaiser must be in writing, and may be given either personally, by telefacsimile (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to: City of Lancaster
44933 N. Fern Avenue
Lancaster, CA 93534
Attention: City Manager

With Copies to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Attention: David R. McEwen, Esq.
Office: (949) 725-4162
e-mail: dmcewen@sycr.com

If to Kaiser, to: Kaiser Foundation Hospitals
Corporate Real Estate Department
393 E. Walnut Street
Pasadena, CA 91188
Attention: Doug Wolfley, CCIM
Corporate Real Estate Manager
Office: (626) 381-3243
e-mail: doug.c.wolfley@kp.org

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With Copies to: Kaiser Foundation Hospitals
1800 Harrison Street, 19th Floor
Oakland, CA 94612
Attention: Indrajit Obeysekere, Counsel
Office: (510) 625-6405
e-mail: i.obeysekere@kp.org

Section 12.10. Entire Agreement, Counterparts And Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of [____] pages and [____] exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and the Kaiser. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Section 12.11. Recordation Of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of Los Angeles.

DRAFT

Tuesday, September 11, 2007

IN WITNESS WHEREOF, this Agreement has been entered into by and between Kaiser and City as of the day and year first above written.

CITY: CITY OF LANCASTER
a California Municipal Corporation

ATTEST:

By: _____

Name: Robert LaSala

Title: City Manager

City Clerk

APPROVED AS TO FORM:

By: Stradling Yocca Carlson & Rauth

Name: David R. McEwen

Title: City Attorney

KAISER: KAISER FOUNDATION HOSPITALS,
a California not-for-profit public benefit
corporation

By: _____

Name: _____

Title: _____

EXHIBIT A-1
SPECIFIC PLAN AREA
[TO COME]

EXHIBIT A-2

PROJECT SITE

EXHIBIT B

IMPACT FEES AND PROCESSING FEES AND CHARGES

City Impact Fees: Circulation (Traffic Impact)
 Traffic (Traffic Signals)
 Storm Drainage (Drainage Facilities)
 Recycled Water
 General Government (Administrative Offices
 and Corporate Yard)

Other Governmental
Agency Fees: Fire Protection Fee
 School Fees
 L.A. County Waterworks Fees
 AVEK Fees
 L.A. County Sanitation Fees

Processing Fees and Charges:
 Grading Plan Check
 Permit Fees for any non-OSHDP regulated buildings
 Development Review by the Amargosa Specific Plan
 Review Agency
 Landscape Plan Check Fee
 Planning Sign Review Fee
 Biological Mitigation Fee

EXHIBIT C

CHANNEL IMPROVEMENTS