



PLACER, County Recorder  
JIM MCCAULEY

**DOC- 2004-0089092**

Thursday, JUL 08, 2004 09:23:56

NOC \$0.0011

Ttl Pd \$0.00

Nbr-0001110386

sci/SL/1-38

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**DEVELOPMENT AGREEMENT**  
**BY AND BETWEEN THE CITY OF ROSEVILLE**  
**AND KAISER FOUNDATION HOSPITALS**

*CF: Hospitals 0703-02  
Kaiser Permanente*

**FILED**  
AUG 13 2004  
CITY OF ROSEVILLE  
BY *[Signature]*

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**DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF ROSEVILLE  
AND KAISER FOUNDATION HOSPITALS  
RELATIVE TO KAISER ROSEVILLE MEDICAL CENTER**

This Development Agreement is entered into this 5th day of June, 2004 ("Effective Date"), by and between the CITY OF ROSEVILLE, a municipal corporation, hereinafter "**City**," and KAISER FOUNDATION HOSPITALS, a California non-profit benefit corporation, hereinafter "**Landowner**," pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of California.

**RECITALS**

1. Authorization. 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 adopted Section 65864, et seq., of the Government Code (the "**Development Agreement Statute**"), which authorizes the City of Roseville and an applicant for a development project to enter into a development agreement, establishing certain development rights in the property which is the subject of the development project application.

2. Property. The subject of this Agreement is the development of that certain real property, consisting of approximately 52 acres of land located in the City of Roseville, as described in Exhibit "A-1" and shown on Exhibit "A-2" (hereinafter the "**Property**"), attached hereto and incorporated herein by this reference.

3. Landowner. Kaiser Foundation Hospitals is a community-based health care provider that has served the City and the surrounding community for over ten years. Kaiser Foundation Hospitals owns and operates the Kaiser Roseville Medical Center on the Property, which currently includes a 270,250-gross square foot hospital and a 108,000-gross square foot medical office building. The Medical Center operates with approximately 78 medical providers and 820 full-time employees. Landowner and City intend that this Agreement shall be binding on all persons or entities holding legal or equitable interest in the Property.

4. Environmental Documentation.

- a. Environmental Impact Report. On March 11, 1987, the City Council certified an Environmental Impact Report for the Northeast Roseville Specific Plan area (State Clearinghouse Number 86042805) ("**NERSP EIR**"). The NERSP EIR evaluated the potential environmental effects of future residential, commercial, business park and professional office, and research and development land uses in the approximately 1628-acre NERSP area. The NERSP EIR determined that the development of the area, including the Property, would result in significant and unavoidable adverse impacts on land use (conversion of a large open space area to an urbanized area); air quality (including an increased difficulty in attaining air quality standards); biological resources (elimination of vernal pools and associated habitat); visual resources and viewsheds; growth inducement; and

traffic (cumulative traffic impacts). A statement of overriding considerations was adopted.

- b. The City Council certified a Supplemental EIR ("SEIR") (State Clearinghouse Number 86042805) for the Kaiser Medical Center development on the Property. The SEIR concluded that the project would result in significant and unavoidable air quality impacts. A statement of overriding considerations was adopted.
- c. On April 21, 2004, pursuant to CEQA and in accordance with the City's rules and policies and the recommendation of the Planning Commission for the City of Roseville (the "**Planning Commission**"), the City Council certified a final environmental impact report for an amendment to the NERSP, a Major Project Permit, and this Agreement (the "**Project EIR**"). As required by CEQA, the City adopted written findings ("**Project EIR Findings**") and a mitigation monitoring program (the "**Mitigation Monitoring Program**") prior to approving the an amendment to the NERSP, a Major Project Permit, and this Agreement (the "**Project Approvals**"). Mitigation measures were included in the Project EIR and are incorporated to the extent feasible in the terms and conditions of this Agreement as reflected in the Project EIR Findings.

5. Entitlements. The City Council has previously approved the following land use entitlements for the Property, which entitlements are the subject of this Agreement:

- a. The Roseville General Plan, as it is in effect as of the effective date of this Agreement;
- b. Northeast Roseville Specific Plan. On April 8, 1987, the City Council adopted Resolution No. 87-52, approving the Northeast Roseville Specific Plan ("**NERSP**").
- c. On November 12, 1992, the City Planning Commission approved a use permit for the construction of a 156-bed hospital and a 108,000-square foot medical office building on the Property ("**1992 Use Permit**");
- d. Following City Planning Commission review and recommendation, at a duly noticed public hearing, the City Council on September 2, 1992, adopted Ordinance No. 2639, rezoning the Property from Business Professional to Planned Development for Medical Campus (the "**PD 470 Rezoning**").

In addition, the City Council has approved, or will approve concurrent with the approval of this Agreement, the following land use entitlements for the Property, which entitlements are also the subject of this Agreement:

- e. An amendment to the Northeast Roseville Specific Plan, as adopted by Resolution No. 04-145 changing the Specific Plan land use designation of the Property from Business Professional to Medical Campus;
- f. Major Project Permit[s], Stage 1 and Stage 2, as approved by the Planning Commission on April 21, 2004;

- g. This Development Agreement, as adopted by Ordinance No. 4074 (the "Adopting Ordinance");
- h. The findings for a helistop made in accordance with California Public Utilities Code Section 21661.5, as adopted by the City Council by Resolution No. 04-146 on April 21, 2004 (the "Helistop Findings");
- i. The Project EIR Findings and Mitigation Monitoring Program.

The approvals described above in this Recital are referred to herein as the "Entitlements."

6. Subsequent Approvals. Landowner and City anticipate that subsequent approvals will be required or desired for the development of the Property in accordance with the Entitlements (such development is referred to herein as the "Project"), and that the City will issue such permits and approvals if in accordance with this Agreement and the Entitlements. Such approvals may include the following:

- a. Improvement agreements;
- b. Major project permits (Stage 2 and Stage 3), design review approvals, use permits, grading permits, building permits, sewer and water connection permits;
- c. Tentative Maps and Lot line adjustments;
- d. Certificates of occupancy.

The subsequent approvals described above in this Recital are referred to herein as the "Subsequent Approvals."

7. Purpose. Development of the Property in accordance with the Entitlements and this Agreement will provide orderly growth and development of the area in accordance with the policies set forth in the City of Roseville General Plan. For purposes of the vesting protection granted by this Agreement, except as otherwise provided herein, the rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications applicable to the development of the Property shall be as set forth in the Entitlements as of the date hereof.

8. Substantial Costs to Landowner. Landowner has incurred and will incur substantial costs in order to comply with conditions of approval of the Entitlements and to assure development of the Property in accordance with the Entitlements and the terms of this Agreement.

9. Need for Services and Facilities. Development of the Property will result in a need for municipal services and facilities, which services and facilities will be provided by City to such development subject to the performance of Landowner's obligations hereunder.

10. Contribution to Costs of Facilities and Services. Landowner agrees to contribute to the costs of such public facilities and services as required herein to mitigate impacts on the

community of the development of the Property, and City agrees to provide such public facilities and services to assure that Landowner may proceed with and complete development of the Property in accordance with the terms of this Agreement. City and Landowner recognize and agree that but for Landowner's contributions to mitigate the impacts arising as a result of development of the entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement and that, but for City's covenant to provide the facilities and services necessary for development of the Property, Landowner would not and could not commit to provide the mitigation as provided by this Agreement. City's vesting of the right to develop the Property as provided herein is in reliance upon and in consideration of Landowner's agreement to make contributions toward the cost of public improvements as herein provided to mitigate the impacts of development of the Property as such development occurs.

11. Hearing. On March 11, 2004, the City Planning Commission, designated by Roseville Ordinance No. 3014 as the planning agency for purposes of development agreement review pursuant to Government Code Section 65867, in a duly noticed and conducted public hearing, considered this Agreement and recommended that the City Council approve this Agreement.

12. Development Agreement Ordinance. City and Landowner have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Ordinance of the City of Roseville, Article V, Chapter 19.84 of Ordinance No. 3014 of the Roseville Municipal Code.

13. Consistency with General Plan and NERSP. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City finds and declares that this Agreement is consistent with the General Plan of the City of Roseville and the NERSP.

14. Prior Development Agreement. Landowner's predecessor-in-interest, Johnson Ranch Investors and Johnson Ranch Developers and the City have previously entered into the following agreement related to the development of the portion of the Property within the City (the "**Prior Development Agreement**"):

- a. Development Agreement, adopted May 6, 1987 by City Council Ordinance 2038 and recorded July 9, 1987 in Book 3221, at Page 151.
- b. Amendment to Development Agreement adopted October 21, 1992 by City Council Ordinance 2653 and recorded in the Official Records of the County of Placer on December 2, 1992.

The parties intend hereby that, upon recordation of this Agreement, this Agreement and the Entitlements vested hereby and the obligations of Landowner hereunder shall be deemed to satisfy the outstanding terms and conditions of the Prior Development Agreement and that this Agreement and the Entitlements shall be deemed to supersede and replace the Prior Development Agreement. As a result thereof, the Prior Development Agreement shall be of no further force or effect.

## I. AGREEMENT

### SECTION 1: GENERAL PROVISIONS

1.1 Incorporation of Recitals. The Preamble, the Recitals and all defined terms set forth in both are hereby incorporated into this Agreement as if set forth herein in full.

1.2 Property Description and Binding Covenants. The Property is that property described in Exhibits "A-1" and "A-2." It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors in interest to and assigns of the parties hereto. Accordingly, all references herein to "Landowner" shall mean and refer to KAISER FOUNDATION HOSPITALS, and each and every subsequent purchaser or transferee of the Property or any portion thereof from Landowner.

1.3 Term.

1.3.1 Commencement; Recordation; Expiration. The term of this Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement and shall extend for a period of twenty (20) years after the date of recordation of this Agreement, unless said term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, said termination of the Agreement shall not affect any right or duty emanating from City entitlements on the Property approved concurrently with or subsequent to the approval of this Agreement.

1.3.2 Termination Upon Landowner Request. This Agreement may be terminated, at the election of the then property owner, with respect to any legally subdivided parcel within the Property (other than parcels designated for public use), when receiving a certificate of occupancy or final inspection, whichever is applicable, for a building within such parcel, by giving written notice to City of its election to terminate the Agreement for such parcel provided that all improvements which are required to serve the parcel, as determined by the City, have been accepted by the City. City shall cause any written notice of termination approved pursuant to this Paragraph 1.3.2 to be recorded against the applicable parcel, at Landowner's expense, with the County Recorder.

1.4 Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of City and Landowner (and/or any successor owner of any portion of the Property, to the extent subject to or affected by the proposed amendment), in accordance with the provisions of the Development Agreement Ordinance. If the proposed amendment affects less than the entire Property, then such amendment need only be approved by the owner(s) in fee of the portion(s) of the Property that is subject to or affected by such amendment. The parties acknowledge that under the City Zoning Code and applicable rules, regulations and policies of the City, the Planning Director has the discretion to approve minor modifications to approved land use entitlements without the requirement for a public hearing or approval by the City Council. Accordingly, the approval of any minor modifications to the Entitlements consistent with this Agreement shall not constitute nor require an amendment to this Agreement to be

effective. If Landowner proposes an amendment to the Entitlements, and the Planning Director, Planning Commission or City Council, as applicable, approves the proposed amendment to the Entitlements on terms acceptable to Landowner, this Agreement is automatically amended to incorporate the approved amendment to the Entitlements upon written request of Landowner and the written determination of Planning Director that the amendment is otherwise consistent with the terms of this Agreement.

1.5 Recordation. The City shall cause this Agreement, any amendment hereto and any termination thereof, to be recorded, at Landowner's expense, with the County Recorder within ten (10) days of the Agreement, amendment or termination becoming effective, as applicable. Any amendment to the Agreement that affects less than all the Property shall describe the portion thereof that is subject to the Amendment.

## **SECTION 2: DEVELOPMENT OF THE PROPERTY**

2.1 Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, and location of public improvements, and other terms and conditions of development applicable to the Property shall be those set forth in the Entitlements and this Agreement.

2.2 Vested Entitlements. Subject to the provisions and conditions of this Agreement, City agrees that City is granting, and grants herewith, a fully vested entitlement and right to develop the Property in accordance with the terms and conditions of this Agreement and the Entitlements. City acknowledges that the Entitlements include the following land uses and approximate acreages for the Property:

Medical Campus	52 acres,
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Such uses shall be developed in accordance with the Entitlements, as such Entitlements provide on the Effective Date of this Agreement. Landowner's vested right to proceed with the development of the Property shall be subject to subsequent approvals, provided that any conditions, terms, restrictions and requirements for such subsequent approvals shall not prevent development of the Property for the use, or reduce the density and intensity of development, or limit the rate or timing of development set forth in this Agreement, so long as Landowner is not in default under this Agreement.

2.3 Rules, Regulations and Official Policies.

2.4 Inconsistency. To the extent any future rules, ordinances, regulations or policies applicable to development of the Property are inconsistent with the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation and dedication of land under the Entitlements as provided in this Agreement, the terms of the Entitlements and this Agreement shall prevail, unless the parties mutually agree to alter this Agreement. To the extent any future rules, ordinances, fees, regulations or policies applicable to development of the Property are not inconsistent with the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation or dedication of land under the Entitlements or under any other terms

Agreement, in effect as of the Effective Date of this Agreement.

## 2.5 City Fees, Taxes and Assessments.

2.5.1 Processing Fees and Charges. Landowner shall pay those processing, inspection and plan check fees and charges required by City under then current regulations for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Landowner hereunder.

2.5.2 Exclusion of Facilities Subject to OSHPD Review. Landowner shall not be required to pay processing, inspection and plan check fees and charges with respect to any portion of the Hospital or other facilities subject to the State of California Office of Statewide Health Planning and Development ("OSHPD") review. Notwithstanding the foregoing, Landowner shall pay any connection or impact fees applicable to those portions of the Hospital or other facilities subject to OSHPD review and any plan check fees for site improvements, subject to City jurisdiction, necessary for such facilities.

2.5.3 Public Financing Limited to Specific Funding Mechanisms and Fees. This Agreement includes specific construction and funding obligations on the Property. However, except as expressly provided herein, Landowner's sole and only obligation with respect to the participation of the Property in any funding mechanisms to support the construction of any public facilities and improvements or the provision of public services in relation to development of the Property shall be to pay City fees related to the construction and provision of such public facilities authorized by ordinance to be collected by City as of the Effective Date of this Agreement, as such fees may be adjusted from time to time in accordance with applicable law, or such other fees as may be duly adopted in the future by City from time to time in accordance with applicable law; provided, however, Landowner's obligation to pay future City fees is limited to those fees which uniformly apply to and are being collected from all properties within the City of Roseville which are zoned consistent with Landowner's zoning as set forth in the Entitlements, or which uniformly apply to all properties which are similarly situated, whether by geographic location, drainage sheds or other distinguishing circumstances.

## 2.6 Timing of Project Construction and Completion.

2.6.1 Project Phasing. The Project is expected to be built in phases in response to the health care delivery requirements of Landowner. The Parties acknowledge that Landowner cannot predict the timing, rate, order or actual number of phases with certainty. The timing or demand rate of development shall be in Landowner's sole discretion.

2.6.2 Landowner Discretion. City shall allow Landowner to develop the Property as contemplated in the Entitlements in accordance with Landowner's own time schedule as such schedule may exist from time to time, and City shall allow Landowner to determine which part of the Property to develop first, and at Landowner's chosen schedule. City shall not require Landowner to begin or complete any phase of the Project within any time period, except as required in the Entitlements. City and Landowner note that 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, and City and Landowner choose to avoid that result by acknowledging that Landowner shall have the right to develop the Project in such order and at such rate and at such times as Landowner deems appropriate within the exercise of its subjective business judgment.

### **SECTION 3: DEVELOPER OBLIGATIONS**

3.1 Development, Connection and Mitigation Fees. Except as otherwise provided herein, any and all required payments of development, connection or mitigation fees by Landowner shall be made at the time and in the amount specified by then applicable City ordinances, either in effect as of the date of this Agreement subject to adjustment, or as may subsequently be adopted, in accordance with the provisions of Paragraph 2.5.2 above. Wherever this Agreement obligates "Landowner" to design, construct or install any improvements, the cost thereof may be provided by Landowner or by a public financing mechanism, subject to and in accordance with the provisions thereof.

3.2 School Fee Agreements. Landowner shall pay the school impact fees to the Roseville City School District and the Roseville Joint Union High School District in accordance with and pursuant to California Government Code Sections 53080 and 65995.1 for non-residential development. City agrees that so long as Landowner pays such statutory fees to the school districts, City shall not refrain from approving any subdivision maps or other such entitlements for the Property or from issuing any building permits for development thereof consistent with the Entitlements on the basis of adverse impacts of such development on school facilities. Landowner agrees that a failure to pay such fees shall also constitute a default under this Agreement with the City.

3.3 Electric. Landowner shall provide electric utility improvements as provided in this Subsection 3.3.

3.3.1 Public Utilities Within Rights-Of-Way. Except as otherwise provided in the Entitlements or this Agreement, all public utilities shall be located within the rights-of-way or within public utility easements granted by Landowner to City for such purposes. Nothing in this Agreement shall be construed to limit or restrict the right of the City to require the dedication of an easement for utility purposes related to development of any parcel when such requirement would be otherwise consistent with the reasonable exercise of the police powers of the City and is reasonably related to a requirement to serve the parcel or parcels adjacent to the easement.

3.3.2 On-Site Electric Utility Improvements. Concurrently with the construction of site improvements, Landowner agrees to construct, or finance the construction of, on-site and off-site electric distribution facilities required to provide electric service to the Property as directed by the Electric Utility Director, as shown on Exhibits "B-1", attached hereto, and the plans for the Major Project Permit. The parties agree that Exhibit "B-1" is conceptual and preliminary in nature and that Landowner will construct or finance construction of electric distribution facilities in accordance with final on-site electric distribution designs for the Property as directed by the Electric Utility Director in accordance with applicable City of Roseville Electric Utility Department Specifications for such construction. Final on-site electric utility improvements, including street lights, will be designed upon receipt of approved and adopted improvement plans.

3.3.3 Off-Site Electric Utility Improvements. Concurrently with Landowner's construction of the site improvements, Landowner agrees to construct, or finance construction of, as directed by the Electric Utility Director, off-site electric distribution facilities for the Property. The electrical facilities to be installed for the development of the Property are shown on Exhibit "B-1" attached hereto. Construction by Landowner shall be pursuant to the final off-site electric design in accordance with the City of Roseville Electric Department specifications. Final off-site improvements will be designed by the City, subject to payment for such design by Landowner. Landowner shall pay for all costs of such improvements, as and when required pursuant to the City's standard commercial construction procedures.

3.4 Drainage Improvements. Landowner shall provide drainage improvements as provided in this Subsection 3.4.

3.4.1 Master Drainage Plan. Prior to approval of any improvement plans for subdivision improvements for the Property, Landowner shall prepare a Master Drainage Impact Study for its on-site drainage facilities to the satisfaction of the City Engineer. The Master Drainage Impact Study shall identify the size, location and timing of all major drainage facilities proposed for the Property relative to drainage impacts and shall be accompanied by all supporting technical information and calculations. Landowner shall pay any applicable fees per the City's Drainage Retention Fee Ordinance.

3.4.2 Payment of Fees for Cirby Creek Flood Mitigation Program. Impact 4.6-3 in the Project EIR finds that implementation of the Project will result in a long-term increase in the volume of stormwater draining to Cirby Creek and associated increase in flood potential at Huntington Creek. Mitigation Measure 4.6-3 requires the payment of appropriate drainage fees to contribute toward improvement of the Huntington Drive culvert. City and Landowner have agreed that prior to issuance of the first building permit, Landowner shall pay a fee of twenty-thousand seven hundred thirty dollars (\$20,730) (the "**Drainage Fee**") to be used by City for the improvement of the Huntington Drive culvert. Payment of the Drainage Fee shall constitute sole obligation with respect to Mitigation Measure 4.6-3. The Drainage Fee shall be paid by Landowner within one year of the Effective Date of this Agreement.

3.5 Water System Improvements. Landowner shall provide improvements to the potable water system as provided in this Subsection 3.5.

3.5.1 Water Study. Prior to approval of any improvement plans for any improvements for the Property, Landowner shall prepare a water study for its on-site water facilities, to the satisfaction of the Environmental Utilities Director. The general design of the water system is in the plans for the Major Project Permit, provided the water study shall identify the size and locations of the water lines required to serve the Property relative to water demands and shall be accompanied by all supporting technical information and calculations.

3.5.2 Financing of Water Supply. Landowner shall have no obligation to install or pay for the installation of any off-site water storage, treatment or transmission facilities, except through the payment of water connection fees levied and collected by the City at the time of development pursuant to then existing City ordinances and this Agreement.

3.5.3 Adequacy of Fire Flows. An on-site fire pump shall be constructed and

maintained to meet the City's standards for adequate fire flows, including without limitation, City standards for reliability of the maintenance of such fire flows.

3.5.4 Improvement Standards. All improvements to be constructed by Landowner shall be designed and constructed pursuant to the City's then current Improvement Standards. Said improvements shall be subject to City plan review, construction inspection and final approval. Landowner shall pay current plan check and inspection costs as incurred by City for review and inspection of such improvements.

3.5.5 On-site Water Lines. All improvements to be constructed by Landowner shall be designed and constructed pursuant to the City's then current Improvement Standards. Said improvements shall be subject to City plan review, construction inspection and final approval. Landowner shall pay current plan check and inspection costs as incurred by City for review and inspection of such improvements.

3.5.6 Public Utility Easements. Where the water improvements to be constructed by Landowner are not located within road rights-of-way, as and when Landowner installs such water improvements, Landowner shall grant and City shall accept a non-exclusive public utility easement for the ownership and maintenance of such lines, together with access thereto for maintenance purposes only. Easement widths shall be granted in accordance with the City's then current Improvement Standards.

3.5.7 Water Softeners. No additional water softeners shall be used within the Property except for those approved by the Environmental Utilities Director. Property CC&Rs, if recorded, shall include this prohibition.

3.5.8 No Recycled or Reclaimed Waterline Improvements. City acknowledges that Landowner shall have no obligation to install or finance the installation of any recycled or reclaimed waterlines in connection with the development of the Property, except through its payment of water connection fees collected by the City at the time of building permit issuance.

3.6 Sewer Improvements. Landowner shall provide on-site improvements to the sewer system as described in this Subsection 3.6.

3.6.1 Master Wastewater Plan. Prior to approval of any improvement plans for any improvements for the Property, Landowner shall prepare a wastewater study for its on-site wastewater facilities, to the satisfaction of the Environmental Utilities Director. The wastewater study shall identify the size and locations of the wastewater lines required to serve the Property relative to wastewater demands and shall be accompanied by all supporting technical information and calculations.

3.6.2 Financing of Wastewater Improvements. Except as may be identified by the wastewater study, Landowner shall have no obligation to install or pay for the installation of any off-site wastewater treatment or transmission facilities, except through the payment of connection fees levied and collected by the City at the time of development pursuant to then existing City ordinances.

3.6.3 Improvement Standards. All sanitary sewer improvements shall be designed and constructed pursuant to City's then current Improvement Standards and shall be subject to

City plan review, construction inspection and final approval. Landowner shall pay then current plan check and inspection costs as incurred by City for review and inspection of such improvements. All sewer system improvements shall minimize the generation of hydrogen sulfide, and include protection from hydrogen sulfide corrosion.

3.6.4 Wastewater Lines. All improvements to be constructed by Landowner shall be designed and constructed pursuant to the City's then current Improvement Standards. Said improvements shall be subject to City plan review, construction inspection and final approval. Landowner shall pay current plan check and inspection costs as incurred by City for review and inspection of such improvements.

3.6.5 Access to Manholes. All manholes shall be located so that they are accessible by City sewer maintenance vehicles, unless otherwise approved by the Environmental Utilities Director.

3.6.6 Public Utility Easements. Where the wastewater improvements to be constructed by Landowner are not located within road rights-of-way, as and when Landowner installs such wastewater improvements, Landowner shall grant and City shall accept a non-exclusive public utility easement for the ownership and maintenance of such lines, together with access thereto for maintenance purposes only. Easement widths shall be granted in accordance with the City's then current Improvement Standards.

3.7 Road Improvements. Landowner, at its expense, shall provide the following road improvements in the manner and at the time as provided in this Subsection 3.7.

3.7.1 Landowner Obligations. The Landowner shall be obligated for frontage improvements as required by the Project EIR and the conditions of approval of the Major Project Permit for each phase of the Project. Said frontage improvements shall include the dedication of all right-of-way as necessary for the improvements. The landowner acknowledges that turning restrictions will be required at the Rocky Ridge Driveway, which may restrict access to and from the site. The cost of these improvements and dedications shall be borne solely by the landowner. As to any road improvements to be constructed by Landowner hereunder, Landowner shall have the responsibility of securing all state and federal permits necessary for such construction.

3.7.2 Road Improvement Standards. All improvements shall comply with the City's then current standards for public streets.

3.7.3 Traffic Mitigation Fee (TMF). For consideration of roadway improvements installed in association with the NERSP and the Prior Development Agreement, Landowner shall be entitled to credits against the City's Traffic Mitigation Fee (TMF) in an amount equal to 24% of the per unit credit granted to properties subject to the Prior Development Agreement. Landowner shall be also entitled to an offset against the City's Traffic Mitigation Fee (TMF) in an amount equal to 24% of the per unit offset granted to properties subject to the Prior Development Agreement.

3.7.4 Landscape Setbacks. Landowner shall maintain the minimum landscape setbacks as set forth in the Entitlements which are consistent with the Northeast Roseville Area Design Guidelines ("**Design Guidelines**") and the property zoning. Such setbacks shall be

measured generally from back of curb, except that any driveway tapers required by the City may encroach into the landscape setback, to the extent permitted by the Design Guidelines. Such landscape setbacks shall be limited to landscaping, streetlights, utilities, sidewalks and related uses. In connection therewith, Landowner shall grant to the City a public utility easement within landscape setbacks for the installation and maintenance of utility improvements, including traffic signals, and sidewalk. The landscaping improvements within such setback area shall be installed upon development of the parcel that includes such area and shall be maintained by the owner of such parcel.

3.7.5 No Traffic Signals. Landowner shall have no obligation to install or pay for the installation of any traffic signals within or adjacent to the Property, except through payment of the Traffic Mitigation Fee levied and collected by the City at the time of development pursuant to then existing City ordinances.

3.7.6 Light Rail Funding. Landowner consents to and agrees that the Property shall participate in its fair share of a city-wide funding mechanism for the extension and operation costs of light rail or capital corridor rail line into the City of Roseville.

3.7.7 Park and Ride Lot. Prior to the issuance of the first building permit, Landowner shall pay City a fee of sixty-seven thousand dollars (\$67,000) (the "**Park and Ride Fee**") to be used by City to construct fifty (50) Park and Ride lot spaces, including landscaping and irrigation, at the Maidu Park facility. The Park and Ride Fee shall be paid by Landowner within one year of the Effective Date of this Agreement.

3.7.8 Fee for Dial-a-ride Capital Costs (Buses). In order to assist in offsetting the additional demand created for dial-a-ride service generated by the Project, Landowner shall pay City a fee of fifteen thousand dollars (\$15,000) ( the "**Dial-a-Ride Capital Costs Fee**") to be used by City for the purchase of additional buses for dial-a-ride service. The Dial-a-Ride Services Fee shall be paid by Landowner within one year of the Effective Date of this Agreement.

3.7.9 Dial-a-Ride Services Fee. Impact 4.3-4 of the Project EIR finds that the Project would increase traffic volumes on City roadways and would result in increased demands for transit services. Mitigation Measure 4.3-2 identifies a fair share contribution for additional transit dial-a-ride services as one of the mitigation measures. Landowner and City agree that Landowner's fair share contribution for dial-a-ride transit services shall be three hundred sixty-two thousand five hundred twenty-eight dollars (\$362,528) (the "**Dial-a-Ride Services Fee**"). The Dial-a-Ride Services Fee shall be paid by Landowner within one year of the Effective Date of this Agreement.

3.7.10 Transportation Systems Management. Landowner and its successors shall comply with the City's Transportation Systems Management Ordinance.

3.7.11 Visitor Placement Services. The landowner shall establish and maintain a visitor placement services program for visiting staff members and family members of patients. At a minimum, the service should include a list of local lodging choices. Kaiser should consider, but is not required to provide placement services. Kaiser is encouraged to work with local lodging facilities to obtain corporate rates.

3.8 Miscellaneous Public Facilities and Services.

3.8.1 Fire Tax. During the term of this Agreement, Landowner or its successors shall continue to pay the Fire Service Construction Tax set forth at Chapter 4.46 of the Roseville Municipal Code.

3.8.2 County-Wide Facilities Fee. Landowner shall pay the county-wide facilities impact fee adopted by the City, in the amount then being assessed by the City. Such fee shall be paid upon the issuance of each building permit within the Property.

3.8.3 Traffic Signal Coordination Fee. Impact 4.3-8 of the Project EIR finds that the Project would increase traffic volumes on City roadways and would result in significant impacts to the level of service at six signalized intersections under cumulative plus Project conditions. Mitigation Measure 4.3-5 identifies traffic signal coordination along Douglas Boulevard as one of the mitigation measures. Landowner and City agree that Landowner's fair share contribution for traffic signal coordination shall be one million seven hundred fourteen thousand two hundred ninety-four dollars (\$1,714,294) (the "**Traffic Signal Coordination Fee**"). The Traffic Signal Coordination Fee shall be paid by Landowner within one year of the Effective Date of this Agreement.

3.8.4 Continued Participation in Services and Maintenance Districts. Landowner shall fulfill its obligations with respect to any service or maintenance district applicable to the Property.

3.8.5 On-site Placement of Radio/Data Transmission Equipment. In order to ensure that the structures contemplated by the Project do not interfere with the radio/data transmissions of the fire department, Landowner agrees to allow the placement, on the Property, of one antenna and associated equipment, consisting of two nineteen inch racks (the "**Equipment**"), at no rental cost to City. The placement of the Equipment shall be in a location mutually agreeable to Landowner and City and shall not occur prior to the execution of an agreement in a form mutually agreeable to both parties.

3.8.6 Air Quality Mitigation Fee. In lieu of implementing an on-site mitigation program, Landowner shall contribute fifty-six thousand dollars (\$56,000) to the City to off-set long term operational ozone precursor emissions (the "**Air Quality Fee**"). The City and Placer County Air Pollution Control District shall enter into an agreement for the collection and disbursement of the Air Quality Fee for off site air quality mitigation. The Air Quality Fee is to be used for projects, programs and services that result in reduced emission sources that directly benefit City residents. Such projects, programs and services may include, but are not limited to, replacing non-EPA certified wood stoves, transit vehicle conversions, and retrofitting vehicles with cleaner burning fuels. The Air Quality Fee shall be paid by Landowner within one year of the Effective Date of this Agreement.

3.9 Fee Reductions or Credits. The parties intend that the fees described in Subsections 3.1 through 3.9 are in lieu of any exactions, taxes or assessments generally intended to address similar uses or purposes, and that Landowner shall not be required to pay two times for any such exaction, fee or assessment. Accordingly, the fees described in Subsections 3.1 through 3.9 shall be subject to reductions/credits in an amount equal to Landowner's actual cost

of complying with any such lawfully imposed exaction, tax, or assessment intended to address similar uses or purposes, whether imposed on the Project, the Property, the Project Approvals or the Subsequent Approvals. Prior to payment of fees, the Landowner shall make a written request to City for any reduction/credit. Upon receipt of the written request, City and Landowner shall meet, in good faith, to determine the appropriate reduction/credit. The final determination of the amount of the reduction/credit shall be made by the City.

3.10 Liens, Encumbrances, Covenants, Conditions and Restrictions. Except as approved by the City or provided for by this Agreement, all property to be conveyed in fee to the City pursuant to this Agreement shall be free of any liens, financial encumbrances, special taxes, hazardous materials or assessments, provided the City's interest shall be subject to the application of the Project CC&Rs to the extent the conditions, covenants and restrictions thereof implement the provisions of the Community Design Guidelines, the Northeast Roseville Specific Plan or this Agreement with respect to such interest.

Landowner shall, for each such conveyance, provide to City at Landowner's expense a current preliminary title report. Any policy of title insurance required by City shall be at City's expense.

3.11 EIR Mitigation Measures. Notwithstanding any other provision in this Agreement to the contrary, as and when Landowner elects to develop the Property, Landowner shall be bound by, and shall perform, all mitigation measures contained in the Project EIR related to such development which are adopted by the City and are identified in the Mitigation Monitoring Program or the Project EIR as being a responsibility of Landowner.

3.12 Waiver. In consideration of the benefits received pursuant to this Agreement, Landowner, on behalf of itself and its heirs, successors in interests and assigns, waives any and all causes of action which it might have under the ordinances of the City of Roseville or the laws of the State of California or the United States with regard to any otherwise uncompensated or undercompensated conveyance or dedication of land or easements over the Property or improvements that are specifically provided for in this Agreement. This waiver shall not apply to any conveyances or dedications of land or easements that are not specifically contained in this Agreement and are subsequently desired by the City.

3.13 Public Financing of Improvements. Landowner does not currently intend to request the City to form a community facilities district or other such public financing mechanism for the purposes of financing any public improvements required to be financed by Landowner hereunder. However, upon the request of Landowner, City shall cooperate with Landowner to assist with the formation and funding of any such financing mechanism, subject to Landowner's satisfaction of the City's standard formation and underwriting requirements therefor.

3.14 Completion of Improvements. City generally requires that all improvements necessary to service new development be completed prior to issuance of building permits. However, the parties hereto acknowledge that all of the public improvements associated with the development of the Property (or as otherwise required herein) may not need to be completed to adequately service portions of the Property as such development occurs. Therefore, as and when portions of the Property are developed, all improvements required to service such portion of the Property in accordance with the terms of this Agreement and the Entitlements (e.g., pursuant to

specific tentative map conditions or other land use approvals) shall be completed prior to issuance of any building permits within such portion of the Property. Provided, however, the City Engineer may approve the issuance of building permits prior to completion of all of such public improvements if the improvements necessary to provide adequate service to the portion of the Property being developed are substantially complete to the satisfaction of the City Engineer.

Landowner further acknowledges that all utilities to be installed by Landowner pursuant to Subsections 3.4, 3.5 and 3.6 will be subject to the review and approval of the City Environmental Utilities Department. In connection therewith, Landowner shall be responsible for coordinating the alignment of all such planned and future utilities within the applicable rights-of-way to the satisfaction of the City Environmental Utilities Department.

3.15 Design of Improvements. Development of the Property shall comply with the applicable provisions of the Community Design Guidelines and the Northeast Roseville Specific Plan.

#### **SECTION 4: CITY OBLIGATIONS**

4.1 Processing Applications for Subsequent Approvals. By approving the Entitlements; City has determined that the Project is in the best interests of the public health, safety and general welfare. City acknowledges that the Entitlements allow a range of designs for development of the Property, not just a single design, and that Landowner may invoke this Agreement with respect to a request for Subsequent Approval of any design for development of the Property that is in accordance with the Entitlements. The Subsequent Approvals shall be issued by City so long as they comply with this Agreement and applicable law and are consistent with the Entitlements as set forth above.

4.2 City Cooperation. The City agrees to cooperate with Landowner in securing all permits which may be required by City. In the event State or Federal laws or regulations enacted after this Agreement has been executed, or action of any governmental jurisdiction, prevent, delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such State and Federal laws or regulations or the regulations of other governmental jurisdictions. Each party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

4.3 Availability of Public Services. To the maximum extent permitted by law and consistent with its authority, City shall assist Landowner in reserving such capacity for sewer and water services as may be necessary to serve the Project.

4.4 No Credits or Reimbursements. Landowner will not be financing construction of any creditable or reimbursable public improvements (except through its payment of fees) and, therefore City shall have no obligation to give any credits against fees or provide any reimbursements to Landowner in connection with Landowner's development of the Property, except as set forth in Section 3.9.

4.5 Applications for Permits and Entitlements.

4.5.1 Action by City. City agrees that it will accept, in good faith, for processing review and action, all applications for Subsequent Approvals, development permits or other entitlements for use of the Property in accordance with the Entitlements and this Agreement, and shall act upon such applications in a timely manner so as not to unduly delay or prevent development of the Project as set forth in the Entitlements.

4.5.2 Other Government Permits. At Landowner's sole discretion and in accordance with Landowner's construction schedule, Landowner 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 Property. City shall cooperate with Landowner in its efforts to obtain such permits and approvals and shall consider, from time to time at the request of Landowner, entering into binding agreements with any such entity as may be necessary to ensure the timely availability of such permits and approvals.

4.5.3 Maps and Permits. Provided that Landowner is not in default under this Agreement, City shall not refrain from approving final subdivision or parcel maps nor shall it cease to issue building permits, certificates of occupancy or final inspections for development of the Property that is consistent with the Entitlements. The acceptance, review and approval of any application for a final subdivision or parcel map or building permit may be conditioned upon the completion or provision of adequate security for the completion or funding of Landowner's share of improvements hereunder.

In accordance with Government Code §66452.6(a)(1), the term of any subdivision map or any other map, shall automatically be extended for the longer of the duration of this Agreement (including any extensions) or the term otherwise applicable to such map. The term of this Agreement and any subdivision map shall not include any period of time during which a development moratorium (including, but not limited to, a water or sewer moratorium or water and sewer moratorium) is pending.

4.5.4 Personnel. Nothing in this Agreement shall be construed to require City to hire or retain personnel for the purposes of evaluating, processing or reviewing applications for permits, maps or other entitlements or for the design, engineering or construction of public facilities in excess of those for which provision is made in the normal and customary budgeting process or fee schedules of City.

4.5.5 No Moratorium, Quotas, Restrictions or Other Growth Limitations. Subject to applicable law relating to the vesting provisions of development agreements, Landowner and City intend that, except as otherwise provided herein, this Agreement shall vest the Entitlements against subsequent initiatives, referenda, City resolutions, ordinances and initiatives ("City Law") that directly or indirectly limit the rate, timing or sequencing of development or prevent or conflict with the permitted uses, density and intensity of uses or the maximum building heights and sizes as set forth in the Entitlements. Landowner shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted on a uniformly applied, city-wide or area-wide basis and directly concerns a public health or safety issue, in which case City shall treat Landowner in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by said public health or safety issue. City shall use its best efforts and due diligence to obtain the permits, approvals and financing necessary for such facilities and

to design and complete the facilities on a timely basis.

By way of example only, an ordinance which precluded the issuance of a building permit because City had inadequate sewage transmission capacity to meet the demand therefor (either city-wide or in a designated sub-area of the City) would directly concern a public health issue under the terms of this paragraph and would support a denial of a building permit within the Property, so long as City were also denying city-wide or area-wide all other requests for building permits which require sewage transmission capacity and City was using its best efforts to resolve such capacity problem. However, an attempt to limit the issuance of building permits because of a general increase in traffic congestion levels in the City would not directly concern a public health or safety issue under the terms of this paragraph.

4.6 Protection of Agreement. 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 Landowner and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. 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.

4.7 Environmental Mitigation. The parties understand that the Project EIR was intended to be used in connection with each of the Entitlements needed for the Project. CEQA and the CEQA Guidelines, particularly Sections 15153, 15162, 15163, and 15164 of the CEQA Guidelines, allow the City to use the NERSP EIR and the Project EIR to satisfy the environmental review requirements of CEQA for subsequent projects. City shall use the NERSP EIR and the Project EIR, including the Project EIR Findings, in connection with the processing of any Subsequent Approvals to the full extent allowed by CEQA and the CEQA Guidelines.

## **SECTION 5: DEFAULT, REMEDIES, TERMINATION**

5.1 General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provisions of this Agreement shall constitute a default. In the event of alleged default or breach of any term or condition of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty- (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty-day period, the other party to this Agreement at its option may institute legal proceedings pursuant to this Agreement or give notice of intent to terminate the Agreement pursuant to California Government Code Section 65868 and regulations of City implementing said Government Code section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code Sections 65865, 65867 and 65868 and City regulations implementing such sections.

Following consideration of the evidence presented in said review before the City Council, either party alleging the default by the other party may give written notice of termination of this

Agreement to the other party.

Evidence of default may also arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code Section 65865.1. If either party determines that the other party is in default following the completion of the normally scheduled periodic review, said party may give written notice of default of this Agreement as set forth in this Section 5, specifying in said notice the alleged nature of the default, and potential actions to cure said default and shall specify a reasonable period of time in which such default is to be cured. If the alleged default is not cured within thirty (30) days or within such longer period specified in the notice, or if the defaulting party waives its right to cure such alleged default, the other party may terminate this Agreement.

No building permit shall be issued or building permit application accepted for any structure on the Property if the permit applicant owns and controls any property subject to this Agreement, and if such applicant or entity or person controlling such applicant is in default of the terms of this Agreement.

5.2 Annual Review. City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Landowner with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to Section 65865.1 of the Government Code and the monitoring of mitigation in accordance with Section 21081.6 of the Public Resources Code of the State of California. Notice of such annual review shall include the statement that any review of obligations of Landowner as set forth in this Agreement may result in termination of this Agreement. A finding by City of good faith compliance by Landowner with the terms of the Agreement shall be conclusive with respect to the performance of Landowner during the period preceding the review. Landowner shall be responsible for the cost reasonably and directly incurred by the City to conduct such annual review, the payment of which shall be due within thirty (30) days after conclusion of the review and receipt from the City of the bill for such costs.

Upon not less than thirty (30) days written notice by the Planning Director of City, Landowner shall provide such information as may be reasonably requested and deemed to be required by the Planning Director in order to ascertain compliance with this Agreement.

In the same manner prescribed in Section 10, the City shall deposit in the mail to Landowner a copy of all staff reports and related exhibits concerning contract performance and, to the extent practical, at least ten (10) calendar days prior to any such periodic review. Landowner shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the City Council or if the matter is referred to the Planning Commission before said Commission.

If City takes no action within thirty (30) days following the hearing required under Roseville Municipal Code Section 19.94.080, or any successor thereof or amendment thereto, Landowner shall be deemed to have complied in good faith with the provisions of the Agreement.

5.3 Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in

default where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

5.4 Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. The sole remedy of City for any default of this Agreement by Landowner shall be to terminate this Agreement and the vesting of the Entitlements hereunder and to cease approving requests for development of the Property. All legal actions shall be initiated in the Superior Court of the County of Placer, State of California, or in the Federal District Court in the Eastern District of California.

5.5 Effect of Termination. If this Agreement is terminated following any event of default of Landowner or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent Landowner from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

5.6 Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party for breach of this Agreement or to enforce any provisions herein, the prevailing party to such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

## **SECTION 6: HOLD HARMLESS AGREEMENT**

Landowner and its successors-in-interest and assigns, hereby agrees to, and shall defend and hold City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, or bodily injury including death, as well as from claims for property damage which may arise from the operations of Landowner, or of Landowner's contractors, subcontractors, agents, or employees under this Agreement, whether such operations be by Landowner, or by any of Landowner's contractors or subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Landowner or Landowner's contractors or subcontractors, unless such damage or claim arises from the negligence or willful misconduct of City. The foregoing indemnity obligation of Landowner shall not apply to any liability for damage or claims for damage with respect to any damage to or use of any public improvements after the completion and acceptance thereof by City. In addition to the foregoing indemnity obligation, Landowner agrees to and shall defend, indemnify and hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from any suits or actions at law or in equity arising out of the execution,

adoption or implementation of this Agreement, exclusive of any such actions brought by Landowner, its successors-in-interests or assigns. City acknowledges hereby that the foregoing liability of Landowner shall be limited to its interest in the Property and that neither Landowner nor any of its partners, officers, shareholders, employees or agents shall have any personal liability therefor.

## **SECTION 7: PROJECT AS A PRIVATE UNDERTAKING**

It is specifically understood and agreed by and between the parties hereto that the subject project is a private development. No partnership, joint venture or other association of any kind is formed by this Agreement.

## **SECTION 8: COOPERATION IN THE EVENT OF LEGAL CHALLENGE**

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action.

## **SECTION 9: GENERAL**

9.1 Enforceability. The City agrees that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement and the Adopting Ordinance, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in the general plan or any applicable zoning ordinance, subdivision ordinance or building regulation adopted by City, or by initiative, which changes, alters or amends the rules, regulations and policies applicable to the development of the Property at the time of approval of this Agreement, as provided by Government Code Section 65866.

9.2 City Finding. The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

9.3 Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Landowner and the City and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

9.4 Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a party hereto of an essential benefit of its bargain hereunder, then such party so deprived shall have the option to terminate this entire Agreement from and after such determination.

9.5 Construction. This Agreement shall be subject to and construed in accordance and harmony with the Roseville Municipal Code, as it may be amended, provided that such

amendments do not affect the rights granted to the parties by this Agreement.

9.6 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 this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

9.7 Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Landowner.

## **SECTION 10: NOTICES**

All notices required by this Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and delivered in person or sent by certified mail, postage prepaid.

Notice required to be given to the City shall be addressed as follows:

Planning Director  
City of Roseville  
311 Vernon Street  
Roseville, CA 95678

Notice required to be given to the Landowner shall be addressed as follows:

Kaiser Foundation Hospitals  
Legal Department  
1950 Franklin Street, 17th Floor  
Oakland, CA 94612-2998  
Attention: Indrajit Obeysekere

Either party may change the address stated herein by giving notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

## **II. ASSIGNMENT**

Landowner shall have the full right to assign this Agreement as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by Landowner and assumption by the assignee of such assignment in the form attached hereto as Exhibit "H" and the conveyance of Landowner's interest in the Property related thereto, Landowner shall be released from any further liability or obligation

hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Landowner," with all rights and obligations related thereto, with respect to such conveyed property.

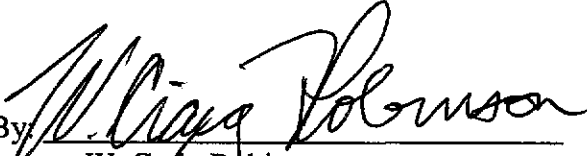
Landowner shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee. No breach or default hereunder by any person succeeding to any portion of Landowner's obligations under this Agreement shall be attributed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

### III. FORM OF AGREEMENT, EXHIBITS

This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement consists of 25 pages and four (4) exhibits, which constitute the entire understanding and agreement of the parties.

Approved this 5th day of May, 2004, by the City Council of the City of Roseville.


**CITY OF ROSEVILLE,  
a municipal corporation**

By:   
W. Craig Robinson  
City Manager

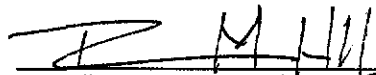
ATTEST:

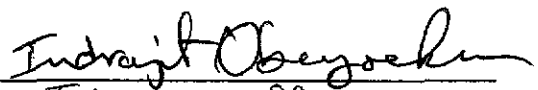
By:   
Sonia Orozco  
City Clerk

APPROVED AS TO FORM

By:   
Mark J. Doane  
City Attorney

**KAISER FOUNDATION HOSPITALS,  
A California non-profit benefit  
corporation**

By:   
Name: THOMAS M. HELLER  
Title: VICE PRESIDENT

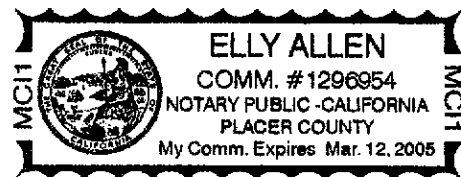
By:   
Name: INDRAJIT OBEYSEKERE  
Title: COUNSEL & ASST SECY.

STATE OF CALIFORNIA            )  
  ): ss.  
COUNTY OF PLACER            )

On this 9<sup>th</sup> day of June in the year of 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared W. Craig Robinson, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,

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



THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AS FOLLOWS:

Title or Type of Document: Development Agreement

Date of Document: June 5, 2004

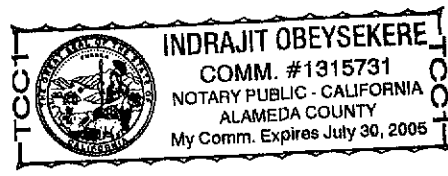
Acknowledgment – All Purpose

STATE OF CALIFORNIA )  
 )  
COUNTY OF ALAMEDA )

On May 10, 2004, before me, INDRAJIT OBEYSEKERE personally appeared THOMAS M HELLER 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.

IObeyseker  
Commission expires on: July 30, 2005

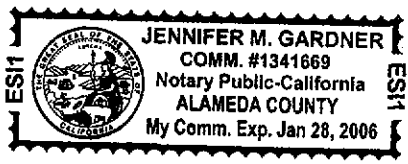


STATE OF CALIFORNIA )  
 )  
COUNTY OF ALAMEDA )

Indrajit On May 10, 2004, before me, Jennifer M. Gardner personally appeared Obeysekere, 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.

Jennifer M. Gardner  
Commission expires on: 1/28/06



## LIST OF EXHIBITS

- Exhibit A-- Property Description
  - A-1 -- Legal Description of the Property
  - A-2 -- Diagram of the Property
- Exhibit B-- Electric Distribution Facilities
  - B-1 -- Off-Site Electric Distribution Facilities
- Exhibit C -- Form of Assignment

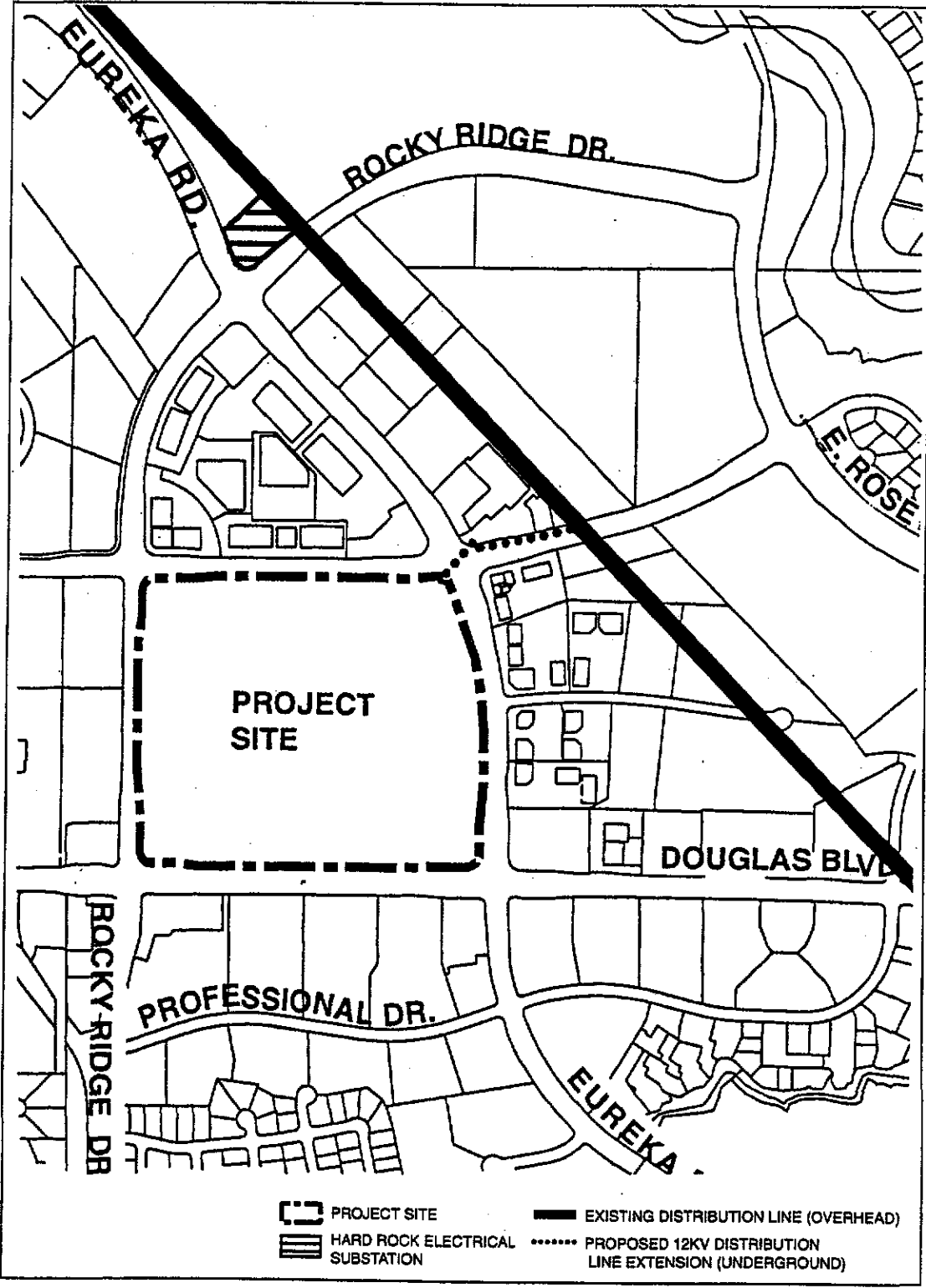
## DESCRIPTION

That certain property situated in the State of California, County of Placer, City of Roseville, described as follows:

Parcel 4 as shown and designated on that certain Parcel Map being a portion of Sections 5 and 6, Township 10 North, Range 7 East, MDM., and a portion of Section 31, Township 11 North, Range 7 East, MDM., and a portion of Section 36, Township 11 North, Range 6 East, MDM., filed for record December 29, 1986 in Book 22 of Parcel Maps, at page 158, records of Placer County, California.

EXCEPTING THEREFROM all oil, gas and other hydrocarbon substances, inert gases, minerals and metals, lying below a depth of 500 feet from the surface of said land and real property, whether now known to exist or hereafter discovered, including, but not limited to, the rights to explore for, develop, and remove such oil, gas and other hydrocarbon substances, inert gases, minerals and metals, without, however, any right to use the surface of said land and real property or any other portion thereof above a depth of 500 feet from the surface of such land and real property for any purpose whatsoever, as reserved by Johnson Ranch Investors, A California Limited Partnership; and Sacramento Savings and Loan Association, A California Corporation, in deed recorded October 30, 1987 in Book 3294, page 334, Placer County Records.





**EXHIBIT "C"**

WHEN RECORDED, RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Attn:** \_\_\_\_\_

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between KAISER FOUNDATION HOSPITALS, a California non-profit benefit corporation (hereinafter "**Developer**"), and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter "**Assignee**").

**RECITALS**

A. On \_\_\_\_\_, 2000, the City of Roseville and Developer entered into that certain agreement entitled "Development Agreement By and Between The City of Roseville and Kaiser Foundation Hospitals (hereinafter the "**Development Agreement**)". Pursuant to the Development Agreement, Developer agreed to develop certain property more particularly described in the Development Agreement (hereinafter, the "Subject Property"), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of Placer County on \_\_\_\_\_, 2004, as **Instrument No. 2000-**\_\_\_\_\_.

B. Developer intends to convey a portion of the Subject Property to Assignee, commonly referred to as Parcel \_\_\_\_\_, and more particularly identified and described in **Exhibit A**, attached hereto and incorporated herein by this reference (hereinafter the "**Assigned Parcel**").

C. Developer desires to assign and Assignee desires to assume all of Developer's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

**ASSIGNMENT AND ASSUMPTION**

NOW, THEREFORE, Developer and Assignee hereby agree as follows:

1. Developer hereby assigns, effective as of Developer's conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement with respect to the Assigned Parcel. Developer retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Developer.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations

of Developer under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Developer under the Development Agreement with respect to the Assigned Parcel, and to be subject to all the terms and conditions thereof with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Developer as the "Developer" under the Development Agreement with respect to the Assigned Parcel.

3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. The Notice Address described in Section 10 of the Development Agreement for the Developer with respect to the Assigned Parcel shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**IN WITNESS HEREOF**, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

**DEVELOPER:**

KAISER FOUNDATION HOSPITALS,  
A California non-profit benefit corporation

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

**ASSIGNEE:**

\_\_\_\_\_

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

ORDINANCE NO. 4074

ORDINANCE OF THE COUNCIL OF THE CITY OF ROSEVILLE  
ADOPTING A DEVELOPMENT AGREEMENT REGARDING KAISER ROSEVILLE  
MEDICAL CENTER (NERSP PARCEL 12),  
AND AUTHORIZING THE CITY MANAGER TO  
EXECUTE IT ON BEHALF OF THE CITY OF ROSEVILLE

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1. In accordance with Chapter 19.84 of Title 19 of the Roseville Municipal Code (the Zoning Ordinance) of the City of Roseville, the City Council has received the recommendation of the Planning Commission that the City of Roseville enter into a Development Agreement with Kaiser Foundation Hospitals with respect to the Kaiser Roseville Medical Center Expansion project.

SECTION 2. The Council of the City of Roseville has reviewed the findings of the Planning Commission recommending approval of the Development Agreement, and makes the following findings:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the City of Roseville General Plan;
2. The Development Agreement is consistent with the City of Roseville Zoning Ordinance and Zoning Map;
3. The Development Agreement is in conformance with the public health, safety and welfare;
4. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and
5. The Development Agreement will provide sufficient benefit to the City to justify entering into said Agreement.

SECTION 3. The Development Agreement by and between Kaiser Foundation Hospitals and the City of Roseville, a copy of which is on file in the City Clerk's Department and incorporated herein by reference, is hereby approved and the City Manager is authorized to execute it on behalf of the City of Roseville.

SECTION 4. The City Clerk is directed to record the executed Development Agreement within ten (10) days of the execution of the agreement by the City Manager with the County Recorder's office of the County of Placer.

**SECTION 5.** This ordinance shall be effective at the expiration of thirty (30) days from the date of its adoption.

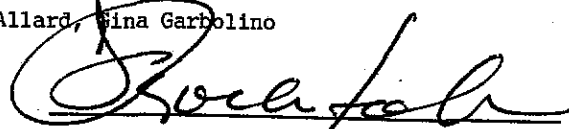
**SECTION 6.** The City Clerk is hereby directed to cause this ordinance to be published in full at least once within fourteen (14) days after it is adopted in a newspaper of general circulation in the City, or shall within fourteen (14) days after its adoption cause this ordinance to be posted in full in at least three public places in the City and enter in the Ordinance Book a certificate stating the time and place of said publication by posting.

PASSED AND ADOPTED by the Council of the City of Roseville this 5th day of May, 2004, by the following vote on roll call:

AYES COUNCILMEMBERS: Richard Roccucci, Jim Gray, Rocky Rockholm

NOES COUNCILMEMBERS: None

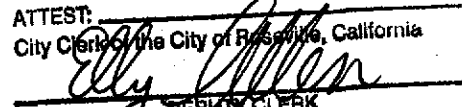
ABSENT COUNCILMEMBERS: John Allard, Gina Garbolino

  
MAYOR

ATTEST:

  
City Clerk

The foregoing instrument is a correct copy of the original on file in the City Clerks Department.

ATTEST:  
City Clerk of the City of Roseville, California  
  
DEPUTY CLERK