

## GUARANTY OF COMPLETION

THIS GUARANTY OF COMPLETION, dated as of \_\_\_\_\_, 2008, is made by KAISER FOUNDATION HOSPITALS, a California nonprofit public benefit corporation (“Kaiser”), and the credit group identified as Kaiser Foundation Health Plan, Inc., Kaiser Hospital Asset Management, Inc. and Kaiser Health Plan Asset Management, Inc. (collectively called “Credit Group”), in favor of the City of Oakland, a municipal corporation of the State of California (the “Beneficiary” or the “City”).

### RECITALS

- a. Kaiser is the owner of the property commonly known as the Kaiser Permanente Oakland Medical Center (the “Medical Center”). Kaiser has previously submitted an application to the City for the phased redevelopment of the Medical Center (the “Kaiser Medical Center Project”), and an Environmental Impact Report for the Kaiser Medical Center Project was certified by the City on June 7, 2006 (the “Kaiser EIR”). The City has imposed certain conditions of approval on the Kaiser Medical Center Project pursuant to the Kaiser EIR Mitigation Monitoring Plan and the project approvals issued in connection with the Kaiser Medical Center Project. This Guaranty is in connection with the satisfaction of Condition 14 imposed by the City.
- b. Execution of this Guaranty by Kaiser, Kaiser Foundation Health Plan, Inc., Kaiser Hospital Asset Management, Inc., and Kaiser Health Plan Asset Management, Inc., satisfies and discharges Condition # 14A, relating to the sufficiency of Kaiser’s financial resources and assurance of Kaiser’s faithful performance of its Obligations.

NOW, THEREFORE, in consideration of the premises and the covenants

contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Kaiser and the Credit Group agree as follows:

1. Defined Terms.

(a) Unless otherwise defined herein, capitalized terms used in this Guaranty shall have the following meanings:

**“Governmental Authority”** means any nation or government, any state, county, municipality or other political subdivision or branch thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any agency, board commission, court, department or officer thereof.

**“Guarantor”** means Kaiser, Kaiser Foundation Health Plan, Inc., Kaiser Hospital Asset Management, Inc., and Kaiser Health Plan Asset Management, Inc., individually. Each individual Guarantor shall be jointly and severally liable under this Guaranty.

**“Guaranty”** means this Guaranty, as the same may be amended, supplemented or otherwise modified from time to time.

**“Obligations”** means the Phase 3 Demolition & Landscaping Project which is defined as the demolition of the existing Kaiser Permanente hospital and podium and the demolition, site clearance and landscape beautification of the former hospital structure at the property bounded by McArthur Boulevard, Broadway, Piedmont and Howe Street, within five (5) years following the date of issuance by the California Department of Health of a license to operate the hospital at the Phase 2 site, commonly known as the MB Center site. Within thirty six (36) months after the date of issuance by the California Department of Health of a license to operate the hospital, Kaiser shall submit a detailed demolition plan, together with an engineer’s cost estimate and demolition schedule, all to be prepared by an appropriately licensed professional engineer.

Kaiser shall immediately notify Beneficiary, in writing, once its state license to operate the new hospital has been issued. Obligations also includes the obligations set forth in Section 2 hereof.

(b) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty, and section and paragraph references are to this Guaranty unless otherwise specified. The words “include” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms

2. Guaranty. Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the Beneficiary completion of the Phase 3 Demolition & Landscaping Project. Without limiting the generality of the foregoing, Guarantor guarantees that the Phase 3 Demolition & Landscaping Project shall be and remain free and clear of any and all mechanics’ and materialmen’s liens of persons or entities furnishing materials, labor or services. Guarantor agrees that Beneficiary shall be entitled to exercise against Guarantor all rights and remedies available to Beneficiary, provided, however, that notwithstanding anything to the contrary herein, Guarantor’s obligations hereunder shall automatically and completely terminate following the completion of the Phase 3 Demolition & Landscaping Project, as evidenced by Guarantor’s submission to Beneficiary of a written statement with supporting documentation verifying such completion; and Beneficiary’s approval of such statement and supporting documentation in its reasonable discretion, except to the extent of any claims made by Beneficiary against Guarantor under this Guaranty prior to such completion.

The Guarantor hereby acknowledges that if it fails to perform its Obligations promptly under this Guaranty, the Beneficiary has the option, without any obligation to do so, upon the

delivery of at least sixty (60) days prior written notice to Guarantor, to proceed to complete the Phase 3 Demolition & Landscaping Project, or cause the completion of the Phase 3 Demolition & Landscaping Project, without obtaining the Guarantor's consent and without affecting the liability of the Guarantor hereunder. The Guarantor acknowledges and agrees that it will be impossible to measure accurately the damages to the Beneficiary resulting from a breach of the covenants of the Guarantor set forth in paragraphs (a) and (b) of this Section; that such a breach will cause irreparable injury to the Beneficiary and that the Beneficiary has no adequate remedy at law in respect of such breach and, as a consequence, agrees that such covenant shall be specifically enforceable against the Guarantor, and the Guarantor hereby waives and agrees not to assert any defense based on the denial of any of the foregoing in an action for specific performance of such covenant.

The Guarantor further agrees to pay any and all expenses (including all reasonable fees and disbursements of counsel) which may be reasonably paid or incurred by the Beneficiary after the occurrence of a default by any Guarantor hereunder in enforcing, or obtaining advice of counsel in respect of, any rights with respect to, or collecting, any or all of the Obligations and/or enforcing any rights with respect to, or collecting against, the Guarantor under this Guaranty. This Guaranty shall remain in full force and effect until the Obligations have been indefeasibly satisfied and discharged in full.

No payment or payments made by any person, other than the contractor and any subcontractors on the Phase 3 Demolition & Landscaping Project or the Guarantor, or received or collected by the Beneficiary from any other person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the

liability of the Guarantor hereunder which shall, notwithstanding any such payment or payments, remain liable for the Obligations until the Obligations have been satisfied and discharged in full.

3. Amendments, etc. With Respect to the Obligations: Waiver of Rights. The Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against the Guarantor and without notice to or further assent by the Guarantor, any demand for payment of any of the Obligations may be rescinded and any of the Obligations continued, and the Obligations, or the liability of any other person or entity upon or for any part thereof, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released. Any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, without the necessity of any reservation of rights against the Guarantor and without notice to or further assent by the Guarantor, which will remain bound hereunder notwithstanding any modification or amendment. When making any demand hereunder against the Guarantor, the Beneficiary may, but shall be under no obligation to, make a similar demand on any other person or entity obligated with respect to the Obligations, and any failure by the Beneficiary to make any such demand or to collect any payments from such person or entity shall not relieve the Guarantor of its obligations or liabilities hereunder, and shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of the Beneficiary against the Guarantor. For the purposes hereof, “demand” shall include the commencement and continuance of any legal proceedings.

4. Guaranty Absolute and Unconditional.

(a) Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof or reliance by the Beneficiary upon this

Guaranty or acceptance of this Guaranty. The Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Guaranty and all dealings between the Guarantor and the Beneficiary likewise shall be conclusively presumed to have been had or consummated in reliance upon this Guaranty. The Guarantor hereby agrees that neither the Beneficiary' rights nor the Guarantor's obligations under this Guaranty shall be released, diminished, impaired, reduced or affected by any events, actions or circumstances other than the satisfaction and discharge in full of the Obligations. The Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Guarantor with respect to the Obligations, provided that Beneficiary shall notify Guarantor prior to the enforcement of this Guaranty in accordance with Paragraph 2 above. The Guarantor understands and agrees that this Guaranty shall be construed as a continuing, absolute and unconditional guarantee without regard to the following (i) any defense, set-off or counterclaim which may at any time be available to or be asserted by Guarantor against Beneficiary, (ii) failure of Beneficiary to enforce any provision hereof, or (iii) any other circumstance whatsoever (with or without notice to or knowledge of the Guarantor or any other person) which constitutes, or might be construed to constitute, an equitable or legal discharge of any person or entity for the Obligations, or of the Guarantor under this Guaranty, in bankruptcy or in any other instance. When pursuing their rights and remedies hereunder against the Guarantor, the Beneficiary may, but shall be under no obligation to, pursue such rights and remedies as it may have against any other person or entity, and any failure by the Beneficiary to pursue such other rights or remedies or to collect any payments from any such other person or entity shall not relieve the Guarantor of any liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Beneficiary

against the Guarantor.

(b) The Guarantor waives any and all other rights and defenses available to the Guarantor including (i) any defense based upon an election of remedies by the Beneficiary, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for an Obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise (the so-called "Gradsky" defense); (ii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal. Without limiting the generality of the foregoing or any other provision hereof, the Guarantor further expressly waives, to the extent permitted by law, any and all rights and defenses that may exist by reason of any anti-deficiency or other similar laws of California, and any and all rights that might otherwise be available to the Guarantor, including any rights of subrogation, reimbursement, indemnification and contribution under California Civil Code Sections 2787 to 2855 inclusive, 2899 and 3433, or under California Code of Civil Procedure 580a, 580b, 580d and 726 or any such sections. Finally, the Guarantor waives any benefit of any statute of limitations affecting the liability of the Guarantor hereunder or the enforcement hereof.

5. Reinstatement. notwithstanding any provision of this Guaranty to the contrary, this Guaranty shall continue to be effective, or be reinstated, as the case may be, if, at any time, payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Beneficiary upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Guarantor or any other person, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Guarantor or any

other person or any substantial part of their property, or otherwise, all as though such payments had not been made.

6. Payments. The Guarantor hereby agrees that payments hereunder in the event of a default by Guarantor will be paid to the Beneficiary without set-off or counterclaim in U.S. Dollars at the office of the Beneficiary.

7. Representations and Warranties. The Guarantor hereby represents and warrants to the Beneficiary that:

(a) it has full power to own its property, and to enter into and perform its obligations under this Guaranty;

(b) (i) the execution and delivery by the Guarantor of this Guaranty has been duly authorized by all necessary action on the part of the Guarantor or any other person or entity and (ii) neither the execution and delivery of this Guaranty nor compliance with the provisions hereof will conflict with or result in a breach of, or constitute a material default under, any of the provisions of any law, governmental rule, regulation, judgment, decree or order binding on the Guarantor, its properties or its organizational documents or any of the provisions of any indenture, mortgage, contract or other instrument to which the Guarantor is a party or by which the Guarantor or its properties is bound or result in the creation or imposition of any lien or encumbrance upon any of its properties or revenues pursuant to the terms of any such indenture, mortgage, contract or other instrument;

(c) this Guaranty has been duly authorized, executed and delivered on behalf of Guarantor and constitutes a legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms;

(d) no consent or authorization of, filing with, or other act by or in respect of,

any arbitrator or governmental authority and no consent of any other person (including any creditor of such Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty;

(e) the Guarantor is not in default under or with respect to any contractual obligation applicable to it which could have a material adverse effect upon the ability to perform its obligations under this Guaranty; the Guarantor is not a party to or bound by any contractual obligation or subject to any requirement of law which could have a material adverse effect upon its ability to perform its obligations under this Guaranty; and the Guarantor is not in default under any order, award or decree of any arbitrator or court or other governmental authority binding upon or affecting it or by which any of its property or assets may be bound or affected in any way which could materially adversely affect its ability to perform its obligations under this Guarantee, and no such order, award or decree could materially adversely affect the ability of the Guarantor to perform its obligations under this Guaranty;

(f) the Guarantor has filed or caused to be filed all tax returns which are required to be filed, and has paid all taxes shown to be due and payable on said returns or on any assessments made against the Guarantor or any of the Guarantor's property and all other taxes, fees or other charges imposed on the Guarantor or any of the Guarantor's property by any governmental authority (other than those the amount or validity of which is currently being contested in good faith by appropriate proceedings) in any way which could materially adversely affect the ability of the Guarantor to perform its obligations under this Guarantee; and no tax liens have been filed and no claims are being actively asserted with respect to any such taxes, fees or other charges; and

(g) there is no action, suit or proceeding of or before any arbitrator or

Governmental Authority pending or, to the best knowledge of the Guarantor, threatened, by or against or affecting the Guarantor or its property or assets (i) with respect to this Guarantee or any of the transactions contemplated by this Guaranty or (ii) which could be materially adverse to the business, operations, assets, property or financial or other condition of the Guarantor or which could materially adversely affect the ability of the Guarantor to perform its obligations under this Guaranty.

(h) Kaiser and the Credit Group have, at the date of execution of this Guaranty, a collective net worth in excess of \$2 billion. The term “net worth” shall have the meaning ascribed to it under commonly accepted accounting practices.

8. Covenants. The Guarantor hereby covenants and agrees with the Beneficiary to:

(a) at any time and from time to time, upon the written request of Beneficiary, and at the sole expense of the Guarantor, the Guarantor will promptly and fully execute and deliver such further instruments and documents and take such further actions as Beneficiary may reasonably request for the purpose of obtaining or preserving the full benefits of this Guaranty and of the rights and powers herein granted; and

(b) pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all the Guarantor’s indebtedness and other obligations of whatever nature, except, in the case of indebtedness other than indebtedness the maturity of which has been accelerated upon the occurrence of a default or event of default, when the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves acceptable to Beneficiary with respect thereto have been provided or a bond posted with respect thereto; and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of the Guarantor’s business and to

comply with all contractual obligations and requirements of law applicable to it, except where the failure to do so is not likely to have a material adverse effect on the Guarantor's ability to perform its obligations under this Guaranty.

9. Notices. All notices, requests and demands to or upon the Beneficiary or the Guarantor to be effective shall be in writing (or by confirmed fax or similar electronic transfer) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made (i) when delivered by hand or (ii) if given by mail, three days after being deposited in the mails by certified mail, return receipt requested, postage prepaid or (iii) if by telex, fax or similar electronic transfer, when sent and receipt has been confirmed, addressed as follows:

(a) if to the Beneficiary: (1) City of Oakland, Community and Economic Development Agency, Planning and Zoning Services Division, Attention: Director of Planning, 250 Frank Ogawa Plaza, Ste 3315, Oakland, CA 94612; and (2) Office of the City Attorney, Attention: Land Use Unit, One Frank Ogawa Plaza, 6<sup>th</sup> Floor, Oakland, CA 94612.

(b) if to Kaiser, Kaiser Foundation Hospitals, 1800 Harrison Street, 25<sup>th</sup> Fl., Oakland, CA 94612, attn: Indrajit Obeysekere, Counsel for NFS. The Beneficiary and the Guarantor may change their address and transmission numbers for notices by notice in the manner provided in this Section. **[EACH GUARANTOR SHOULD BE SPECIFICALLY NAMED SEPARATELY AND HAVE A NOTICE ADDRESS, WHICH CAN BE THE SAME]**

10. Counterparts. This Guarantee may be executed by counterpart, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

11. Severability. Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any

such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12. Integration. This Guaranty represents the entire agreement of the Guarantor with respect to the subject matter hereof and there are no promises or representations by the Guarantor or the Beneficiary relative to the subject matter hereof not reflected or referred to herein.

13. Amendments in Writing; No Waiver; Cumulative Remedies.

(a) None of the terms or provisions of this Guaranty may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Guarantor and the Beneficiary.

(b) The Beneficiary shall not by any act (except by a written instrument pursuant to paragraph 13(a) hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Beneficiary any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Beneficiary of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Beneficiary would otherwise have on any future occasion.

(c) The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law

14. Section Headings. The section headings used in this Guaranty are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

15. Submission to Jurisdiction; Waivers.

(a) The Guarantor hereby irrevocably and unconditionally:

(i) submits for itself and its property in any legal action or proceeding relating to this Guaranty to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of California, the courts of the United States of America for the Northern District of California, and appellate courts from any thereof;

(ii) consents that any such action or proceeding may be brought in such courts and waives any objection that the Guarantor may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(iii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Guarantor at its address referred to in Section 9 or at such other address of which the Beneficiary shall have been notified pursuant thereto; and

(iv) agrees that nothing herein shall affect the right to effect service or process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction.

(b) The Guarantor and the Beneficiary hereby unconditionally and irrevocably waive, to the maximum extent not prohibited by law, any right they may have to claim or recover

in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

16. Acknowledgments. The Guarantor hereby acknowledges that (i) it has been advised by skilled legal counsel in the negotiation, execution and delivery of this Guaranty; and (ii) that as part of Beneficiary's consideration for entering into this transaction, the Beneficiary has specifically bargained for the waiver and relinquishment by the Guarantor of all defenses to the enforceability of the Obligations that may arise hereafter

17. Waivers Of Jury Trial. The Guarantor and Beneficiary hereby irrevocably and unconditionally waive trial by jury in any legal action or proceeding relating to this Guaranty and for any counterclaim therein.

18. Successors and Assigns. This Guaranty shall be binding upon the successors and assigns of the Guarantor and shall inure to the benefit of the Beneficiary and their respective indorsees, transferees, successors and assigns. The Guarantor may not assign, transfer or delegate any of its rights or obligations under this Guaranty, but the Beneficiary may assign, transfer or delegate any of its rights or obligations under this Guaranty without the consent of the Guarantor.

19. Governing Law. This Guaranty shall be governed by, and construed and interpreted in accordance with, the laws of the state of California.

20. No Third Party Beneficiary. Except as expressly provided for herein, nothing in this Guaranty shall be deemed to create any right in any person not a party hereto, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third person.

21. Time of the Essence. Time shall be of the essence in this Guaranty with respect

to all the Obligations.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered as of the day and year first above written.

[NEED CORPORATE RESOLUTIONS FROM EACH GUARANTOR AUTHORIZING GUARANTY, OR EACH GUARANTOR MUST EXECUTE USING TWO SIGNATURES WITH TITLES PER CORPORATIONS CODE SECTION 313]

“KAISER”  
KAISER FOUNDATION HOSPITALS,  
a California non-profit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

The Credit Group:

**Kaiser Foundation Health Plan, Inc.,**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**Kaiser Hospital Asset Management, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**Kaiser Health Plan Asset Management, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Accepted and Agreed:

“CITY”

CITY OF OAKLAND, a municipal corporation  
of the State of California

By: \_\_\_\_\_

City Administrator

Approved as to Form:

By: \_\_\_\_\_

Mark Wald, Deputy City Attorney

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