

## FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "**Amendment**") is made and entered on \_\_\_\_\_, 2022 (the "**Effective Date**") into by and between the CITY OF MERCED, a California Charter Municipal Corporation ("**Seller**" and in its capacity as a municipality, the "**City**") and VALLEY CHILDREN'S HOSPITAL, a California non-profit public benefit corporation ("**Buyer**," and together with Seller, the "**Parties**," and each a "**Party**").

### RECITALS

A. Buyer and Seller are parties to that certain Purchase and Sale Agreement dated as of April 18, 2019 (the "**Original Agreement**"), as amended by that certain letter Amendment dated as of February 12, 2020 ("**First Amendment**"), as amended by that certain letter Amendment dated as of March 16, 2020 ("**Second Amendment**"), and as amended by the Third Amendment dated October 19, 2020 ("**Third Amendment**"). The Original Agreement, as amended by the First Amendment, Second Amendment, and Third Amendment is referred to herein as the "**Agreement**."

B. The Agreement is for the purchase and sale of certain real property set forth in the Agreement as 301 E. Yosemite Avenue, Merced, California (APN 231-040-021) and more particularly described therein on Exhibit A to the Agreement ("**Original Property**").

C. A portion of the Original Property was encumbered by a City owned right of way ("**ROW**") and certain corresponding maintenance and improvement obligations, to which the Buyer duly objected to during the Due Diligence Period. Seller agreed to cure the same, but such cure and removal from title required vacation by the City. Rather than extend the Closing Date to accommodate the City vacation process, the Parties agreed to transfer the portion of the Property not encumbered by the ROW to Buyer in a first Closing under the Agreement ("**First Closing**"). The portion of the Original Property transferred to Buyer under the First Closing is more particularly described on Exhibit A attached hereto and incorporated herein ("**Reduced Property**"). The Reduced Property was transferred to Buyer under that certain Grant Deed recorded on November 16, 2020 in the Official Records of Merced County as Document Number 2020-012266 ("**Reduced Property Grant Deed**").

D. The ROW consists of two parcels: (i) one 32-foot wide strip of land south of the ROW's centerline, containing approximately 19,627.87 square feet generally located approximately 322 feet north of Yosemite Avenue between Mansionette Drive and Sandpiper Avenue as more particularly described on Exhibit B attached hereto and incorporated herein ("**South ROW Parcel**"); and (ii) one 32-foot wide strip of land north of the ROW's centerline, containing approximately 19,617 square feet generally located approximately 354 feet north of Yosemite Avenue between Mansionette Drive and Sandpiper Avenue as more particularly described on Exhibit B attached hereto and incorporated herein ("**North ROW Parcel**").

E. The ROW was vacated by the City in two separate City actions, one for the North ROW Parcel on June 21, 2021 by that certain Resolution 2021-46 ("**North ROW Vacation**") and one for the South ROW Parcel on March 1, 2021 by that certain Resolution 2021-12 ("**South ROW Vacation**"). The result of the North ROW Vacation is that the North ROW Parcel reverted



back to the property owner(s) bordering the north half of the ROW. The result of the South ROW Vacation is that the South ROW Parcel reverted back to the City as it was removed from the Property's legal description and not conveyed under the Reduced Property Grant Deed through the First Closing.

F. Prior to the close of escrow under the First Closing, the Parties agreed to transfer the South ROW Parcel to Buyer after the City completed the ROW vacation ("**Second Closing**"). The Parties agreed that Buyer would pay the full Purchase Price for the Original Property at the First Closing rather than apportion and hold back the Purchase Price related to the South ROW Parcel prior to the First Closing. As such, the Seller has already been paid the consideration for the South ROW Parcel under the First Closing.

G. Shelly Cox, Executor of the Estate of Della Wathen, Probate Case CE PR 00885, Superior Court of California, County of Fresno, and Shelly Cox, Terry Lombardi and Cindy Wathen, Successor Co-Trustees of the Spalding G. Wathen Q-Tip Trust (collectively referred to as "**Wathen**") were the current owners of the North ROW Parcel. Wathen desired to transfer the North ROW Parcel to Seller for no cost and the Seller desires to transfer the North ROW Parcel to Buyer through the Second Closing at no cost. To that end, Wathen executed a Grant Deed transferring the North ROW Parcel to the City on or about December 29, 2021 and a Partial Termination of Agreement Creating a Lien Upon Real Property. On February 22, 2022, the City approved and accepted Wathen's transfer of the North ROW and the Partial Termination of Agreement Creating a Lien Upon Real Property.

H. The Parties desire to combine the North ROW Parcel, the South ROW Parcel and the Reduced Parcel into one legal lot in accordance with the Subdivision Map Act ("**SMA**"), California Government Code Section 66428, as more particularly defined on **Exhibit C** attached hereto and incorporated herein ("**Combined Parcel**").

I. The Parties also acknowledge that Buyer has not been able to complete the site plans for the Original Property due to the timing of the transfer of the South ROW Parcel. The Parties wish to modify the Covenant to Construct as set forth in the Reduced Property Grant Deed to have the Covenant to Construct twenty-four (24) month term for the Combined Parcel to commence upon the Second Closing.

J. As set forth in the Agreement, the City complied with the Surplus Land Act codified at California Government Code sections 54220 et seq ("**SLA**") and declared the Original Property as surplus on May 15, 2017, delivered written Notices of Sale or Lease of Surplus Property to local public entities and certain statutorily required private parties ("**Notified Entities**"), and afforded a 60-day period to the Notified Entities to submit their written intent to purchase or lease the Original Property from the City for a statutorily permitted purpose under the SLA. The 60-day period afforded by the SLA expired without any submissions of intent to purchase or lease from the Notified Entities or any other party. In addition, the South ROW Parcel and North ROW Parcel are "exempt surplus land" under California Government Code section 54221(f)(1)(E) for surplus land that is a former street, right of way, or easement, and is conveyed to an owner of an adjacent property. As such, the City does not need to perform any additional SLA compliance for the Second Closing.



K. The Parties now mutually desire to modify the terms of the Agreement to provide for terms of the transfer of the South ROW Parcel to Buyer, extend the Covenant to Construct, transfer the North ROW Parcel to Buyer, create the Combined Parcel and to amend the Reduced Property Grant Deed upon the terms and conditions provided herein.

## **AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Amendment and the Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. **Recitals; Defined Terms.** The foregoing recitals are true and correct and are incorporated herein by reference. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

2. **Transfer of North ROW Parcel and South ROW Parcel.** Seller agrees to transfer to Buyer at no additional cost the North ROW Parcel and South ROW Parcel, in an "As-Is, Where-Is" condition through the Second Closing pursuant to the terms of the Agreement. The Parties hereby amend Section 1 of the Original Agreement change the property defined as the "Subject Property" to include the North ROW Parcel and South ROW Parcel. All references to "Subject Property" or "Property" in the Agreement shall refer to the Combined Parcel for the purposes of this Amendment.

3. **Purchase Price.** The Parties hereby agree that the Purchase Price in Section 2 of the Original Agreement was paid in full under the First Closing and is not applicable to the North and South ROW Parcels, nor to be paid through the Second Closing.

4. **Escrow.** The Parties hereby amend Section 3(a) of the Original Agreement to change the Title Company and Escrow to Stewart Title Guaranty Company, 1777 Botelho Drive, Ste. 108, Walnut Creek, CA 94596, attention: Tina Davis as Escrow Agent and Nick Mercado as Title Officer. Escrow for the Second Closing shall be opened within five (5) days after the full execution of this Amendment ("**Second Escrow**"). The Parties hereby agree that, with respect to the Second Closing, all references to the "escrow" in the Agreement shall refer to the Second Escrow with respect to the North and South ROW Parcels. Buyer agrees to pay all escrow and title costs related to the Second Closing.

5. **Title Insurance.** The Parties agree that Buyer will be obtaining an amended Survey and a new title policy for the Combined Parcel under the terms of Sections 3 of the Original Agreement. The Parties hereby amend Section 3(d) of the Original Agreement to provide that the amount of title insurance for the Combined Parcel shall be Two Million One Hundred Thousand and No/100 Dollars (\$2,100,000.00) notwithstanding that a Title Policy for the Reduced Property was purchased upon the First Closing and the Purchase Price allocated to the South ROW Parcel has already been paid under the First Closing.

6. **Second Due Diligence Period.** The Parties agree that Buyer must conduct due diligence on the North and South ROW Parcels. The Parties hereby amend Sections 4(c), (e) and (g) of the Original Agreement to revise the 180 days listed therein for Buyer's activities for the



Original Property to one hundred and twenty (120) days for such activities to be conducted on the North and South ROW Parcels ("**Second Due Diligence Period**"). Within three (3) days of the Effective Date, Buyer shall submit an Application for Merger of the Combined Parcel ("**Application**") to the City. The City shall review the Application and inform Buyer within ten (10) days of the Effective Date if the Application is complete. The Parties also agree that Buyer shall prepare the legal description or parcel map for the Combined Parcel at Buyer's sole cost and expense and submit it to the City no later than the end of the Title Review Period (defined below). The City shall review the Application, the legal description or parcel map, and complete all the requirements necessary to create the Combined Parcel no later than the end of the Second Due Diligence Period (including, but not limited to all necessary City approvals, subject to the Buyer's surveyor resubmitting any correction necessary to properly describe the Combined Parcel). The City shall obtain Buyer's approval of the final legal description or parcel map for the Combined Parcel no later than five (5) days prior to the expiration of the Second Due Diligence Period or City approval of the Combined Parcel merger, whichever is earlier. Said merger of the North ROW Parcel, the South ROW Parcel and the Reduced Parcel into the Combined Parcel shall be deemed complete and shall record along with the Grant Deed at the Close of Escrow.

7. **Seller Materials.** The Parties acknowledge that Seller has provided all of the documents in Seller's possession for the Original Property under the First Closing. Seller represents and warrants to Buyer that there are no new or additional documents in Seller's possession with respect to the South ROW Parcel or the North ROW Parcel other than those provided previously to Buyer under the First Closing.

8. **Covenant to Construct.** The Parties hereby agree that Sections 5 and 10 of the Original Agreement, as amended by the Third Amendment, and the Reduced Property Grant Deed with respect to the term of the Covenant to Construct for the Reduced Property shall be revised through an Amended and Restated Grant Deed for the Combined Parcel to commence from the date of the Second Closing. The Parties hereby amend Section 10 of the Original Agreement, as amended by the Third Amendment, to change the date by which Buyer agrees to obtain all necessary building permits and commence construction of the Project as described in **Attachment "C"** to the Original Agreement from "within twenty four (24) months of the close of escrow" to "within twenty four (24) months of the close of the Second Escrow." The Parties also hereby amend Section 10 of the Original Agreement, as amended by the Third Amendment, to agree that the time period by which the failure of Buyer to commence construction of the Project gives Seller the right and option to repurchase the Subject Property shall be changed from "within said twenty (24) month period" to "within said twenty (24) month period after the close of the Second Escrow."

9. **Repurchase Rights and Deed Restrictions.** The Repurchase Rights (as defined by the Third Amendment) and obligations set forth in Sections 5 and 10 of the Original Agreement, together with the provisions set forth in Section 5 of the Third Amendment shall also apply to the North and South ROW Parcels. The Third Amendment modified Section 8 of the Original Agreement to add to the end of Section 8 the following sentence: "The Parties agree that the form of Grant Deed shall be in the form attached hereto as **Attachment D** and incorporated herein." The Parties hereby amend such modification and agree that Reduced Property Grant Deed shall be amended and restated to reflect the change in the Covenant to Construct, the transfer of the North and South ROW Parcels, and the merger of the Reduced Property, the North ROW Parcel and the South ROW Parcel into the Combined Parcel by the execution and recordation of that certain



Amended and Restated Grant Deed in the form attached hereto as **Exhibit D** and incorporated herein ("**Amended Deed**"). The Amended Deed shall be recorded at the Second Closing.

10. **Title Review.** The Parties hereby amend Section 6 of the Original Agreement to provide that: (i) Buyer has sixty (60) days from the opening of the Second Escrow ("**Title Review Period**") to review the preliminary title report for the Combined Parcel and provide Buyer's Title Objection Notice to the same ("**Buyer's Notice**"); (ii) Seller has ten (10) days from receipt of Buyer's Notice to provide written notice to Buyer which items Seller agrees to cure or remove ("**Seller's Notice**"); and (iii) if Seller refuses to cure all of the items in Buyer's Notice, Buyer has ten (10) days from receipt of Seller's Notice to terminate the Agreement, as amended by this Amendment, as to the North and South ROW Parcels and the Second Escrow.

11. **Second Closing Date.** The Parties hereby agree that the Second Closing or Close of Escrow shall be fifteen (15) business days after Buyer's waiver of the Second Due Diligence Period.

12. **No Broker's Commission.** It is understood and acknowledge that any real estate commission due under Section 21 of the Original Agreement was paid through the First Closing.

13. **Effect of Amendment.** Except as expressly modified by this Amendment, the Agreement shall continue in full force and effect according to its terms, and the Parties hereby ratify and affirm all their respective rights and obligations under the Agreement. In the event of any conflict between this Amendment and the Agreement, this Amendment shall govern.

14. **Entire Agreement; Amendment.** The Agreement contains all of the agreements of the Parties with respect to the matters contained herein and no prior or contemporaneous agreement or understanding, oral or written, pertaining to any such matters shall be effective for any purpose. No provision of the Agreement may be modified, waived, amended or added to except as set forth in Section 17 of the Original Agreement.

15. **Governing Law.** This Amendment and each and every related document are to be governed by, and construed in accordance with, the laws of the State of California.

16. **Execution in Counterparts.** This Amendment may be executed in multiple counterparts, including the transmission of counterparts by facsimile or electronic mail, each of which shall constitute an original, but all of which shall collectively constitute one agreement.

**[SIGNATURES ON FOLLOWING PAGE]**



IN WITNESS WHEREOF, the Parties have executed this Amendment as of the dates set forth below.

**"BUYER"**

Date: \_\_\_\_\_

**VALLEY CHILDREN'S HOSPITAL**  
a non-profit public benefit corporation

By: Valley Children's Healthcare,  
a California nonprofit public benefit  
corporation, its Member

Date: \_\_\_\_\_

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

**"SELLER"**

**CITY OF MERCED,**  
a California Charter Municipal Corporation

\_\_\_\_\_  
City Manager

ATTEST  
CITY CLERK

\_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

K. Flores 3/30/22  
City Attorney Date

ACCOUNT DATA:

\_\_\_\_\_  
Finance Officer



## **Exhibit A**

### **Reduced Property**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED MERCED, IN THE COUNTY OF MERCED, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A parcel of land situated in the South West Quarter (SW ¼) of Section 8, Township 7 South Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, said parcel of land being a portion of Remainder D, as Remainder D is delineated on that certain map entitled, "FINAL MAP OF MANSIONETTE ESTATES UNIT 2", recorded in Volume 55, of Official Plats, at Pages 12-14, Merced County Records, said parcel of land also being portion of that certain real property described in Grant Deed to the City of Merced, recorded on April 22, 2010 as Document Number 2010-015020, Merced County Records, said parcel of land being more particularly described as follows:

COMMENCING at the Northwest corner of said Remainder D, thence S00°42'36" W, for 283.54 feet along the West line of said Remainder D to TRUE POINT OF BEGINNING; thence N89° 56' 09" E, for 612.97 feet parallel with the North line of said Remainder D to the East line of said Remainder D; thence S00°42'17" W, for 352.11 feet along the said East line of Remainder D; thence along a curve concave to the Northwest through a central angle of 89°13'31", having a radius of 15.00 feet, and whose long chord bears S45°19'03"W, for 21.07 feet to the South line of said Remainder D; thence S89°55'48"W, for 583.00 feet along said South line of Remainder D; thence N44°40'48"W, for 21.36 feet along the Southwest line of said Remainder D; thence N00°42'36"E for 351.77 feet along the West line of Remainder D to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM the Road Dedication Grant Deed to the City of Merced, recorded on April 22, 2010 as Document Number 2010-015019, Merced County Records.

ALSO EXCEPTING THEREFROM the Road Dedication Grant Deed to the City of Merced, recorded on January 29, 2019 as Document Number 2019-002867, Merced County Records.

The above-described parcel of land is delineated on Exhibit B, attached hereto, and made a part thereof. The above-described parcel of land contains 4.54 Acres, more or less, and is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.

APN: 231-040-021



**Exhibit B**

**Remainder Property**



## South ROW Parcel

All that portion of Remainder D as shown on, "FINAL MAP FOR MANSIONETTE ESTATES UNIT 2", recorded in Volume 55, of Official Plats, at Pages 12, 13 and 14, Merced County Records, being more particularly described as follows:

**COMMENCING** at the northwest corner of said Remainder D;

Thence South 00°42'36" West, 283.54 feet along the west line of said Remainder D to **TRUE POINT OF BEGINNING**;

- (1) thence North 89°56'09" East, 612.97 feet parallel with the north line of said Remainder D to the east line of said Remainder D;
- (2) thence South 00°42'17" West, 33.14 feet along the said east line of Remainder D;
- (3) thence North 44°40'47" West, 1.60 feet;
- (4) thence South 89°56'09" West, 606.93 feet parallel with and 32.00 feet south of course (1);
- (5) thence South 45°19'22" West, 6.99 feet to the west line of Remainder D;
- (6) thence North 00°42'36" East, 36.91 feet to the **POINT OF BEGINNING**.

The above-described strip of land is delineated on Exhibit B, attached hereto, and made a part thereof and contains 19,627.87 Square feet.





# REDWING COURT

SANDPIPER AVENUE

S00°42'36"W 283.54'

PORTION OF  
REMAINDER D  
55 O.P. 12 M.C.R.

POINT OF COMMENCING  
N.W. CORNER OF REMAINDER D

CITY OF MERCED  
STORM DRAIN BASIN  
2017-028954, M.C.R.

ROAD DEDICATION TO  
CITY OF MERCED  
DEED 2010-015018, M.C.R.

TRUE POINT OF BEGINNING

N89°56'09"E 612.97'

N00°42'36"E 36.91'

19,627 Sq. Ft.

S00°42'17"W 33.14'

S89°56'09"W 606.93'

S45°19'22"W  
6.99'

ROAD ABANDONMENT  
PER  
DEED 2021-009866, M.C.R.

N44°40'47"W  
1.60'

MANSIONETTE DRIVE

VALLEY CHILDREN'S HOSPITAL  
GRANT DEED  
2020-042266, M.C.R.



SCALE: 1"=100'

YOSEMITE AVENUE



**City of Merced**  
"Gateway to Yosemite"

DEVELOPMENT SERVICES  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6846

EXHIBIT B

DR. BY: CARDOSO
DATE: 5/13/21
CH. BY:
DATE:
File No.
SCALE: 1"=100'



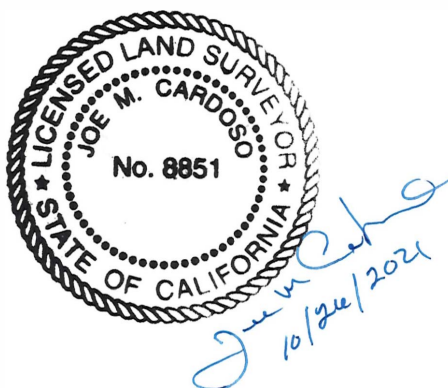
## North ROW Parcel

A strip of land situated in the South West One Quarter {SW 1/4} of Section 8, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, said strip of land being a portion of Remainder D, as said Remainder D is delineated on the certain map entitled, "Final Map for Mansionette Estates Unit 2", recorded in Volume 55 of Official Plats at Pages 12-14, Merced County Records, said strip of land being more particularly described as follows:

Commencing at the northwest corner of said Remainder D; thence  $S00^{\circ}42'36''W$ , along the west line of said Remainder D, a distance of 283.54 feet to the northwest corner of that certain real property described in Grant Deed to the City of Merced, recorded on April 22, 2010, as Document 2010-015020, Merced County Records and the **POINT OF BEGINNING** of the hereon described strip of land; thence  $N89^{\circ}56'09''E$ , along the north line of thereof, a distance of 612.97 feet to the East line of said Remainder D; thence  $N00^{\circ}42'17''E$ , along the east line of said Remainder D, a distance of 32.92 feet to the southeast corner of that certain real property described in Grant Deed to the City of Merced, recorded as Document Number 2017-028954, Merced County Records; thence  $S45^{\circ}19'13''W$ , along the southeasterly line thereof, a distance of 1.30 feet to the south line thereof; thence  $S89^{\circ}56'09''W$ , along the south line thereof and the prolongation thereof, a distance of 612.05 feet to the west line of said Remainder D, thence  $S00^{\circ}42'36''W$ , along said Remainder D, a distance of 32.01 feet to the **POINT OF BEGINNING**.

The above-described strip of land is delineated on Exhibit B, attached hereto, and made a part thereof.

The above-described strip of land contains 19,618 Sq. Ft., more or less, and is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.



# REDWING COURT

21

20

19

18

17

16

15

POINT OF COMMENCING  
N.W. CORNER OF REMAINDER D

PORTION OF  
REMAINDER D  
55 O.P. 12 M.C.R.

CITY OF MERCED  
STORM DRAIN BASIN  
2017-028954, M.C.R.

ROAD ABANDONMENT  
PER  
DEED 2021-027893, M.C.R.

S45°19'13"W  
1.30'

S89°56'09"W 612.05'

S00°42'36"W 32.01'

19,618 Sq. Ft.

N00°42'17"E 32.92'

N89°56'09"E 612.97'

CITY OF MERCED PER 2010-015020, M.C.R.

TRUE POINT OF BEGINNING



VALLEY CHILDREN'S HOSPITAL  
GRANT DEED  
2020-042266, M.C.R.



SCALE: 1"=100'

SANDPIPER AVENUE

MANSIONETTE DRIVE

YOSEMITE AVENUE



**City of Merced**  
"Gateway to Yosemite"

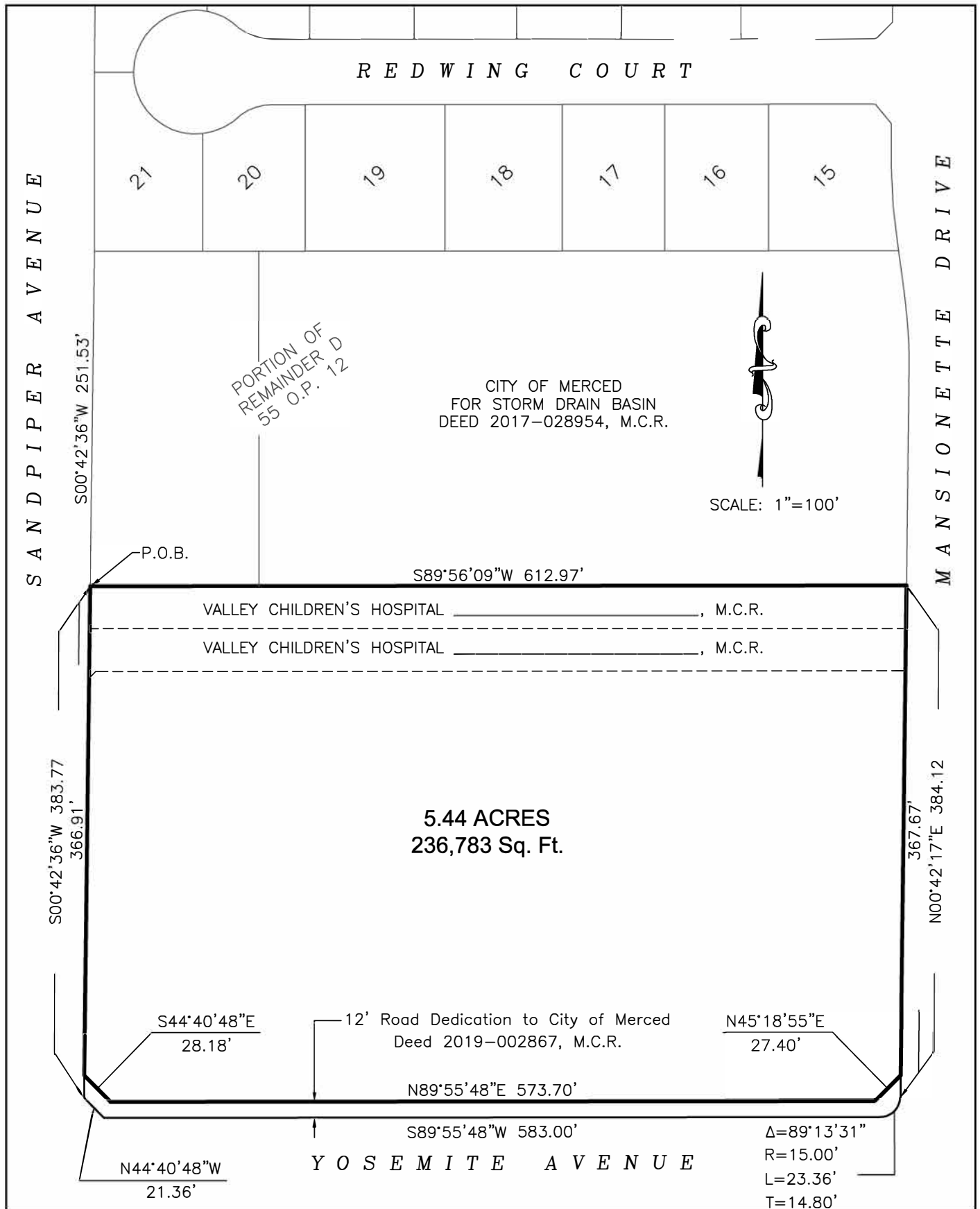
DEVELOPMENT SERVICES  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6846

EXHIBIT B

DR. BY: CARDOSO
DATE: 10/26/21
CH. BY:
DATE:
File No.
SCALE: 1"=100'



**Exhibit C**  
**[Combined Parcel]**



**City of Merced**  
"Gateway to Yosemite"  
DEVELOPMENT SERVICES  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6846

## EXHIBIT C

DR. BY: CARDOSO  
DATE: 1/14/22  
CH. BY:  
DATE:  
File No.  
SCALE: 1"=100'



**Exhibit D**

**Form of Amended Deed**

**RECORDING REQUESTED BY**

City of Merced  
City Clerk's Office  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340

**AND WHEN RECORDED MAIL TO:**

Valley Children's Hospital  
9300 Valley Children's Place  
Madera, California 93636  
Attn: William E. Chaltraw

**MAIL TAX STATEMENTS TO:**

(Same as above)

APN: 231-040-021, \_\_\_\_\_, \_\_\_\_\_

(Above Space for Recorder's Use Only)

**The undersigned declares exemption under the following:**

Pursuant to Revenue and Taxation Code section 11929 no transfer tax is due. Grantor is a governmental agency and Grantee is a nonprofit corporation.

The undersigned grantor(s) declare(s):  
Documentary Transfer Tax is \$ 0

- ☐ Computed on full value of property conveyed, or
- ☐ Computed on full value less value of liens and encumbrances remaining at time of sale.
- ☐ Unincorporated area / ☐ Grantor of Merced

**AMENDED AND RESTATED GRANT DEED**

The City of Merced, a California Charter Municipal Corporation ("**Grantor**") and Valley Children's Hospital, a California nonprofit public benefit corporation ("**Grantee**") entered into that certain Purchase and Sale Agreement dated as of April 18, 2019 (as amended and assigned, the "**Purchase Agreement**") pursuant to which certain covenants of Grantee survive closing.

Grantor and Grantee entered into that certain Grant Deed dated as of October 27, 2020 and recorded on November 16, 2020 as Instrument No. 2020042266 in the Official Records of the County of Merced ("**Original Grant Deed**") for the Property attached on Exhibit A thereto.

Grantor and Grantee desire to amend and restate the Original Grant Deed to amend the Property legal description and to change the commencement date for certain obligations as set forth herein. The Original Grant Deed is hereby terminated in its entirety and replaced by this Amended and Restated Grant Deed.



FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor does hereby grant to Grantee, the real property in the County of Merced, State of California, described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Property").

1. Covenant to Construct. A material consideration to Grantor's conveyance of the Property to Grantee is Grantee's development of the Property with a medical clinic ("**Project**"). Grantee expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that as to the Property, the Commencement of Construction on the Project ("**Covenant to Construct**") shall occur no later than twenty-four (24) months after the Effective Date, defined below ("**Pre-Construction Period**"). The term "**Commencement of Construction**" shall mean the date upon which the written Notice to Proceed has been issued for construction to the design builder for the Project. In the event that Commencement of Construction of the Project does not occur on or before the expiration of the Pre-Construction Period, the Grantor shall have, as its sole and exclusive remedy (in accordance with the terms and conditions set forth in the Purchase Agreement), the right and option to repurchase the Property as set forth herein ("**Repurchase Option**").

(a) Term of Covenant to Construct. The term of this Covenant to Construct shall commence on the recordation date of this Amended and Restated Grant Deed ("**Effective Date**") and shall expire upon: (i) the Commencement of Construction; (ii) if construction is not commenced on or before the Pre-Construction Period, and the Grantor elects to exercise the Repurchase Option, then upon the Grantor's exercise of the Repurchase Option; or (iii) if construction is not commenced on or before the Pre-Construction Period, then upon the expiration of the Option Period if the Repurchase Option is not exercised. Upon the expiration of the Repurchase Option under subsection (i) and (iii), Grantor shall deliver to Grantee for recordation within five (5) days after receipt of a written request therefor, the Notice of Satisfaction of Certain Obligations and Release and Quitclaim, in the form attached hereto as Exhibit "B" and incorporated herein, executed and in recordable form releasing Grantee from the Covenant to Construct and terminating the Covenant to Construct with respect to the Property and releasing and quitclaiming all rights, interest and title in the Repurchase Option.

(b) Exercise of Repurchase Option. In the event that Commencement of Construction fails to occur by the expiration of the Pre-Construction Period, Grantor shall have seven (7) days after the expiration of the Pre-Construction Period to exercise its Repurchase Option with respect to the Property ("**Option Period**") by delivering written notice of exercise to Grantee within such seven (7) day period ("**Notice of Exercise**"). If Grantor fails or elects not to exercise its Repurchase Option as to the Property on or before the expiration of the Option Period, then the Repurchase Option shall automatically expire and Grantor shall not be entitled to exercise its Repurchase Option as to the Property thereafter.

(c) Repurchase Price. The price ("**Repurchase Price**") at which Grantor shall be entitled to repurchase the Property shall be the Purchase Price as defined under the Purchase Agreement minus the Broker's commission paid under the Purchase Agreement. The Repurchase Price shall not include: (i) any interest on the Purchase Price paid by Grantee under the Purchase Agreement; (ii) any compensation for appreciation in the Property, reimbursement for any improvements installed by Grantee on the Property; (iii) any costs incurred by Grantee in the



development of the Property; or (iv) City, County or other taxes or assessments levied or assessed against the Property.

2. Covenant Not to Convey. The Grantor desires that Grantee shall not convey the Property prior to the completion of construction of the first main building of the Project without the Grantor's consent. For the purposes of this Covenant Not to Convey: (i) the defined term "**Completion of Construction**" shall mean the date upon which a Certificate of Occupancy has been issued for at least one main building in the Project; and (ii) the term "convey" or "conveyance" shall mean and refer to any conveyance, transfer or assignment of fee title to the Property, or any portion thereof, whether by agreement (such as a deed, contract of sale, or otherwise) or by operation of law; provided, however, that notwithstanding the foregoing, the term "convey" or "conveyance" shall not include or refer to any assignment or transfer by Grantee of any interest in the Property, or any portion thereof to any party with whom there is a common ownership interest with Grantee and/or any party with fifty percent (50%) or more control in or by Grantee or Valley Children's Medical Group and shall not preclude Grantee's right to encumber the Property, or any portion thereof, by loan(s) secured by deeds of trust ("**Permitted Transferee(s)**"). Grantee expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that during the Non-Conveyance Period (defined below), Grantee shall not convey all or any portion of the Property to any party without Grantor's prior written approval, which approval may be withheld in Grantor's sole and absolute discretion ("**Covenant Not to Convey**").

(a) Term of Covenant Not to Convey. The term of this Covenant Not to Convey ("**Non-Conveyance Period**") shall commence on the Effective Date and shall expire upon the Completion of Construction ("**Expiration Date**").

(b) Grantor Approval of Transfers. During the Non-Conveyance Period, if Grantee desires to convey the Property to any party other than a Permitted Transferee ("**Transferee**") prior to any proposed conveyance of the Property or any portion thereof, Grantee shall deliver to Grantor prior written notice ("**Notice of Intent to Convey**") setting forth: (a) the date that Grantee intends to convey the Property ("**Proposed Conveyance Date**"); (b) a legal description of the Property or portion thereof which Grantee proposes to convey (the "**Proposed Conveyance Property**"); and (c) the identity of the proposed Transferee. The Notice of Intent to Convey shall be delivered to Grantor at least thirty (30) days prior to the Proposed Conveyance Date. Grantor shall, within fifteen (15) days after receipt of Grantee's Notice of Intent to Convey, deliver to Grantee a notice of approval or disapproval of the proposed Transferee ("**Notice of Determination**"). If the Grantor disapproves of the proposed Transferee, Grantee shall have fifteen (15) days from the date of delivery of the Notice of Determination to terminate all contracts and/or agreements, if any, to convey the Property to the proposed Transferee and deliver to Grantor evidence of such termination ("**Notice of Termination of Negotiations**").

(c) Termination of Covenant Not to Convey. Upon the Completion of Construction, this Covenant Not to Convey shall automatically terminate and the Grantor shall deliver to Grantee within five (5) days thereafter, an executed Notice of Satisfaction of Certain Obligations and Release and Quitclaim in recordable form releasing Grantee from the Covenant to Not to Convey and terminating the Covenant Not to Convey with respect to the Property.



3. Non-Discrimination. Grantee shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Grantee covenants for itself and all persons claiming under or through it, and this Amended and Restated Grant Deed is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof.

All deeds or leases made or entered into by Grantee, its successors or assigns, as to any portion of the Property or the improvements constructed as part of the Project shall contain the following language:

(a) In Deeds, the following language shall appear:

“(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”



(b) In Leases, the following language shall appear:

“(1) The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

4. Force Majeure. Any deadline with respect to Grantee’s obligations with respect to the Covenants shall be extended for the period of time its performance is prevented or delayed by Force Majeure (“**Force Majeure Period**”). “**Force Majeure**” shall mean delay caused by (i) an earthquake, hurricane, tsunami, tornado, storm, flood or other similar natural catastrophe, other natural forces or acts of God; (ii) strikes, lock outs, labor unrest, work stoppage, boycott and other labor difficulties, or inability to obtain materials; (iii) any moratorium on the availability of utilities or permits for the Property or delays in obtaining any government approvals (or responses in connection with requesting approvals) required for the Development Project beyond normal time periods for obtaining such responses or approvals; (iv) public enemy, terrorism, war, riot, or other similar civil disturbance; (v) any litigation pertaining to the Property, including but not limited to appeals or litigation of any government denials or approvals, referenda or initiatives, or anything which legally prevents Grantee from obtaining all necessary discretionary and ministerial entitlements or other permits or approvals in a final, non-appealable form, including without limitation any mediation, arbitration, litigation or other administrative or judicial proceeding pending involving the entitlements or other Project permits or approvals; (vi) vandalism or property destruction to the Property or infrastructure serving the Property causing a delay to the development of the Property; or (vii) pandemic, quarantine, shelter in place orders or other similar executive orders, state directives or county requirements prohibiting or impeding entitlement, design or construction of the Project. Grantee shall give Grantor prompt written notice if it is delayed by an event of Force Majeure. In addition, to the extent that Grantee’s obligations cannot be effectuated because of a Force Majeure event during a Force Majeure Period, Grantee shall be excused from such obligation for that time period (i.e., a government taking shall be excused as a Force Majeure event during the Non-Conveyance Period, but Grantee’s sale of the Property during



the Non-Conveyance Period due to a pandemic would not be excused under the terms of this Section 4).

5. Encumbrances. Grantee shall have the right to encumber the Property, or any portion thereof, by loan(s) secured by deeds of trust for the construction of the Project. Grantor agrees that it shall execute an agreement subordinating Grantor's interest in this Deed to the lien of any such deed of trust for the construction of the Project; provided that, during the term of the Covenant to Construct and Covenant Not to Convey, the following conditions precedent shall be satisfied:

(i) Grantee is not in material default under the Covenant to Construct or Covenant Not to Convey; and

(ii) The deed of trust is in favor of an institutional lender or lenders, which, for purposes of this Agreement, shall mean a state or national bank, a state or federal savings and loan association, a life insurance company or mortgage correspondent thereof. "**Institutional lender**" shall also include any other lender approved by Grantor in writing, which approval will not be unreasonably withheld, delayed or conditioned.

The conditions precedent in Section 5(i) and (ii) only apply during the term of the Covenant to Construct and the Covenant Not to Convey and shall be terminated upon the recordation of Notice of Satisfaction of Certain Obligations and Release and Quitclaim for the Covenant Not to Convey.

6. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Amended and Restated Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument encumbering the Property for the construction of the Project; provided, however, that any successor of Grantee to the Property (other than the Grantor in the event Grantor acquires title to the Property, or any part thereof, pursuant to a foreclosure, deed in lieu of foreclosure, or trustee's sale under the deed of trust recorded for the benefit of Grantor) shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

7. Effect, Duration and Enforcement of Covenants.

(a) General Covenants. The covenants and agreements set forth in Section 3 are referred to herein as "**General Covenants**." It is intended and agreed that the General Covenants shall be covenants running with the land and that they shall be, in any event and without regard to technical classification or designation, legal or otherwise, to the fullest extent permitted by law and equity, (i) binding for the benefit and in favor of Grantor, as beneficiary; and (ii) binding against Grantee, its successors and assigns to or of the Property and any improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of the Property or the improvements thereon or any part thereof. It is further intended and agreed that the General Covenants shall remain in effect without limitation as to time; provided, however, that such General covenants shall be binding on Grantee itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for



such period as it shall have title to or an interest in or possession or occupancy of the Property or part thereof.

(b) Covenant to Construct and Covenant Not to Convey. It is intended and agreed that the Covenant to Construct and the Covenant Not to Convey set forth in this Amended and Restated Grant Deed shall be not be General Covenants and not subject to Section 7(a) above, but shall be covenants running with the land until terminated or expired as set forth herein. It is further intended and agreed that the Covenant to Construct and the Covenant Not to Convey shall remain in effect only during the time period specified herein; provided, however, that such Covenant to Construct and the Covenant Not to Convey shall be binding on Grantee itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to or an interest in or possession or occupancy of the Property or part thereof. The Covenant to Construct and the Covenant Not to Convey and the General Covenants shall be referred to herein as "Covenants."

(c) Enforcement. Grantor shall have the right, in the event of any and all of such Covenants (excluding the Covenant to Construct, which sole remedy is set forth in Section 1 above) of which it is stated to be the beneficiary, to institute an action for injunction and/or specific enforcement to cure an alleged breach or violation of such Covenants, subject to Section 7(d) below. Grantee shall not be liable to Grantor or any beneficiaries for any damages caused by any breach or violation of a Covenant by Grantee under any circumstances, including but not limited to expenditure of money to cure a breach or violation by Grantee, nor shall Grantor have the right to void or rescind the conveyance of the Property to Grantee pursuant to this Amended and Restated Grant Deed as a result of any breach or violation of a Covenant by Grantee under any circumstances except as otherwise provided herein.

(d) Grantee shall be entitled to written notice from Grantor and have the right to cure any alleged breach or violation of the Covenant Not to Convey and all or any of the General Covenants set forth in this Amended and Restated Grant Deed; provided that Grantee shall cure such breach or violation within thirty (30) days following the date of written notice from Grantor, or in the case of a breach or violation not reasonably susceptible of cure within thirty (30) days, Grantee shall commence to cure such breach or violation within such thirty (30) day period and thereafter diligently to prosecute such cure to completion within a reasonable time.

8. Amendments. Only the Grantor and its successors and assigns, and the Grantee and its successors and assigns in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Amended and Restated Grant Deed. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and shall not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property and the Project.

9. Grantee's Acknowledgment. By its execution of this Amended and Restated Grant Deed, Grantee has acknowledged and accepted the provisions hereof.

10. Counterparts. This Amended and Restated Grant Deed may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

11. Inconsistent Provisions. If any provision, term or conditions of the Amended and Restated Grant Deed are inconsistent with the provision, term or conditions of the Purchase Agreement, the provision, term or conditions of this Amended and Restated Grant Deed shall prevail.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Grant Deed as of \_\_\_\_\_, 2022.

**GRANTOR:**

GRANTOR OF MERCED,  
a California Charter Municipal Corporation

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

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

Title: \_\_\_\_\_

**ATTEST:**  
CITY CLERK

By: \_\_\_\_\_  
Assistant/Deputy Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Grantor Attorney

**GRANTEE:**

VALLEY CHILDREN'S HOSPITAL,  
a California Non Profit Public Benefit Corporation

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

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

Its: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss:  
County of \_\_\_\_\_)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature of Notary Public

083060\11858844v8



STATE OF CALIFORNIA )  
 ) ss:  
County of \_\_\_\_\_)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature of Notary Public

**EXHIBIT "A" TO AMENDED AND RESTATED GRANT DEED**

**LEGAL DESCRIPTION**



**EXHIBIT "B" TO AMENDED AND RESTATED GRANT DEED**

**FORM OF NOTICE OF SATISFACTION OF CERTAIN OBLIGATIONS AND  
RELEASE AND QUITCLAIM OF COVENANT**

**RECORDING REQUESTED BY:**

City of Merced  
City Clerk's Office  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340

**AND WHEN RECORDED MAIL TO:**

Valley Children's Hospital  
9300 Valley Children's Place  
Madera, California 93636  
Attn: William E. Chaltraw

**Exempt Recording Per  
Gov't Code Section 6103**

(Above for Recorder's Use Only)

**MERCED, CALIFORNIA**

**NOTICE OF SATISFACTION OF CERTAIN OBLIGATIONS AND  
RELEASE AND QUITCLAIM OF COVENANT**

THIS NOTICE OF SATISFACTION OF CERTAIN OBLIGATIONS AND RELEASE AND QUITCLAIM OF COVENANT (this "**Notice and Release**") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between City of Merced, a California Charter Municipal Corporation ("**Grantor**"), and Valley Children's Hospital, a California nonprofit public benefit corporation ("**Grantee**").

WHEREAS, Grantor and Grantee entered into that certain Purchase and Sale Agreement dated as of April 18, 2019 (as amended and assigned, the "**Purchase Agreement**") pursuant to which certain covenants of Grantee survive closing.

WHEREAS, Grantor conveyed the Property to Grantee pursuant to that certain Grand Deed dated as of \_\_\_\_\_, 2020 and recorded in the Official Records of Merced County on \_\_\_\_\_, 2020 as Document No. \_\_\_\_\_ against certain real property set forth on Exhibit A attached hereto and incorporated herein ("**Property**"), which Amended and Restated Grant Deed contained terms and conditions concerning Grantee's Covenant to Construct and Covenant Not to Convey.

Exhibit A to Amended and  
Restated Grant Deed (301 E.  
Yosemite Ave)



WHEREAS, the [**Covenant to Construct or Covenant Not to Convey**] has expired or terminated pursuant to the terms and conditions set forth in the Purchase Agreement and Amended and Restated Grant Deed; and,

WHEREAS, pursuant to [**Section 1 or 2**] of the Amended and Restated Grant Deed, promptly after the expiration or termination of the term of [**Covenant to Construct or Covenant Not to Convey**], the City shall record a Notice and Release upon written request therefore by the Grantee; and,

WHEREAS, The City has conclusively determined that the Developer has satisfactorily completed the [**Covenant to Construct or Covenant Not to Convey**] as required by the Purchase Agreement and Amended and Restated Grant Deed.

**NOW, THEREFORE:**

1. Satisfaction. As provided in the Purchase Agreement and Amended and Restated Grant Deed, the City does hereby certify that: (i) the [**Covenant to Construct or Covenant Not to Convey**] has [**been fully and satisfactorily performed and completed or has expired/terminated**], (ii) the Project is in full compliance with the Agreement Purchase Agreement and Amended and Restated Grant Deed as of the date of this Notice and Release; and (iii) [**Covenant to Construct or Covenant Not to Convey**] is hereby terminated.

2. Release. Grantor hereby remises, releases, and forever quitclaims all of the rights and obligations of the parties under [**Section 1 or 2**] of the Amended and Restated Grant Deed, including the conditions precedent in Section 5(i) and (ii), with respect to the [**Covenant to Construct or Covenant Not to Convey**].

3. Financing. This Notice of Satisfaction of Certain Obligations shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the work of rehabilitation, construction, and development of the improvements, or any part thereof.

4. Notice of Completion. This Notice of Satisfaction of Certain Obligations is not a Notice of Completion as referred to in Section 3093 of the California Civil Code.

5. Ratification. This Notice and Releases is intended only to terminate and release Grantor's rights under the [**Covenant to Construct or Covenant Not to Convey**]. Unless otherwise previously terminated by another recorded Notice of Satisfaction Of Certain Obligations And Release And Quitclaim Of Covenant, all other provisions of the Agreement [**including, but not limited to, Section 2 of the Amended and Restated Grant Deed,**] remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the City has executed this Notice and Release as of the date first above written.

**GRANTOR:**

GRANTOR OF MERCED,  
a California Charter Municipal Corporation

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

**ATTEST:**  
CITY CLERK/SECRETARY

By: \_\_\_\_\_  
Assistant/Deputy Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Grantor Attorney

**GRANTEE:**

VALLEY CHILDREN'S HOSPITAL,  
a California Non Profit Public Benefit  
Corporation

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

STATE OF CALIFORNIA )  
 ) ss:  
County of \_\_\_\_\_)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature of Notary Public

Exhibit A to Amended and  
Restated Grant Deed (301 E.  
Yosemite Ave)



