

JAMES L. MARKMAN
CITY ATTORNEY
CITY OF UPLAND

RICHARDS, WATSON & GERSHON
A Professional Corporation
GINETTA L. GIOVINCO (BAR NO. 227140)
ggiovinco@rwglaw.com
MARVIN E. BONILLA (BAR NO. 305888)
mbonilla@rwglaw.com
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Telephone: 213.626.8484
Facsimile: 213.626.0078

Attorneys for Plaintiff
CITY OF UPLAND

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 16 2018

BY Crystal K. Amico
CRYSTAL D'AMICO, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

CITY OF UPLAND,

Plaintiff,

v.

ALL PERSONS INTERESTED IN THE
MATTER OF THE VALIDITY AND THE
CONFIRMATION OF PROCEEDINGS
RELATED TO THE AGREEMENT FOR
PURCHASE AND SALE AND JOINT
ESCROW INSTRUCTIONS BETWEEN
THE CITY OF UPLAND AND SAN
ANTONIO REGIONAL HOSPITAL TO
SELL APPROXIMATELY 4.631 ACRES
OF REAL PROPERTY ADDRESSED AS
1299 SAN BERNARDINO ROAD (A
PORTION OF ASSESSOR'S PARCEL
NO. 1046-183-01),

Defendants.

Case No. **CIVDS 1812143**

**COMPLAINT FOR VALIDATION
(C.C.P. § 860, *et seq.*)**

[Entitled to priority under C.C.P. § 867]

[Exempt from filing fees pursuant to Govt. Code § 6103]

RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

Plaintiff, City of Upland (the “City”), brings this action against all interested persons pursuant to California Code of Civil Procedure section 860, *et seq.* and Government Code section 53511. The City alleges as follows:

NATURE OF THE ACTION

1. This is a validation action brought pursuant to Code of Civil Procedure section 860, *et seq.* (the “Validation Statute”) and Government Code section 53511 to obtain a judgment of this Court declaring the validity of an Agreement for Purchase and Sale and Joint Escrow Instructions (“Agreement”) entered into between the City and San Antonio Regional Hospital (“SARH”) for the sale by the City to SARH of approximately 4.63 acres of real property addressed as 1299 San Bernardino Road (a portion of Assessor’s Parcel No. 1046-183-01), with all net proceeds to be reinvested by the City to implement the City’s anticipated Memorial Park Master Plan, as described below.

PARTIES

2. The City is, and was at all times mentioned herein, a municipal corporation existing under the laws of the State of California. The City is a local public agency authorized to bring this action under the Validation Statute and Government Code section 53511.

3. The governing body of the City is the City Council of the City of Upland (the “City Council”), which has its principal office in San Bernardino County, California.

4. Defendants are all persons interested in the matter of the validity of the Agreement, and any other related contracts or agreements authorized or contemplated by the City Council in connection with the Agreement.

VENUE

5. Venue is proper in the Superior Court of California for the County of San Bernardino pursuant to Code of Civil Procedure section 860 as the City’s principal office is located within the County of San Bernardino.

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MEMORIAL PARK

6. In 1936, the City acquired certain real property within the City boundaries which came to be known as Memorial Park (“Park”). The Park is located generally south of E. Foothill Boulevard, north of San Bernardino Road, and east of Hospital Parkway.

7. The Park totals approximately 38.5 acres and was designed to include a baseball field, amphitheater, swimming pool, tennis courts, basketball courts, bowling green, picnic areas, and a botanical garden. The central axis of the Park was proposed to include an open space with two parallel trails lined with rows of oak trees. Ultimately, not all of the recommended improvements were constructed, including the swimming pool, botanical garden, and amphitheater.

8. The baseball field in the northeast portion of the Park and most of the central axis of the Park remains true to the 1930s design, with the addition of a community rose garden.

9. Over time, additional improvements were constructed. For example, a YMCA facility and an aquatic center were constructed in the northwest portion of the park, the City’s animal shelter was constructed on the east side of the Park (south of a second baseball field), and a childcare facility and skate park were constructed in the southeastern portion of the Park.

10. A third baseball field is located in the southwest corner of the Park.

11. Over time, the Park became an underused public space due to an increase in illegal activities such as drug use and the degradation of the quality of roads and public buildings on site.

12. Recently, strong partnerships with entities such as the YMCA, the Upland National League, and the Upland Unified School District have resulted in improvements at the Park.

SAN ANTONIO REGIONAL HOSPITAL

13. SARH is located immediately southwest of the Park. SARH is a 363-bed, regional acute care hospital. Over the past 11 years, SARH has grown considerably,

1 experiencing 20% employee growth in 2017 alone. Recently, SARH completed several
2 additional facilities on its campus, including a four-story patient tower and new emergency
3 room, and is constructing a 60,000 square foot medical office building to be occupied in
4 part by a cancer diagnostic and treatment center.

5 14. Due to the expansion of SARH facilities, the increase in employees, and the
6 increased provision of health care services to the community, SARH is in need of land for
7 parking and future expansion opportunities.

8 **THE PURCHASE AND SALE AGREEMENT**

9 15. In 2017, SARH approached the City to discuss the possibility of acquiring
10 approximately 4.63 acres of the Park, located in the southwest corner of the Park and
11 generally consisting of the third baseball field, bleachers, scoreboard, lights, parking, and a
12 snack bar/restrooms.

13 16. Following lengthy negotiations, the City and SARH reached an agreement as
14 to terms for the sale.

15 17. On March 26, 2018, at a duly noticed public meeting of the City Council, the
16 City Council approved the Agreement with SARH. A true and correct copy of the
17 Agreement is attached as Exhibit 1.

18 18. The Agreement provides that the City will sell and transfer to SARH
19 approximately 4.63 acres of land (the "Property") for \$4,200,000, which is \$60,000 above
20 the appraised fair market price.

21 19. The Agreement further provides that the City shall use the net proceeds from
22 the sale "solely for making public improvements to the City park adjacent to the Property
23 [the Park]."

24 20. These improvements, as contemplated by the staff level Memorial Park
25 Master Plan, may include: developing a new baseball field; adding a snack bar; adding
26 parking and lighting south of the proposed ball field; adding new sidewalks and walking
27 trails along the ball field; replacing existing irrigation systems with water efficient systems;
28 and planting new trees and landscaping.

21. In addition, the Agreement provides that, prior to closing, the City and SARH shall enter into a parking easement (a form of which is attached to the Agreement as an exhibit) whereby SARH agrees to design and construct within its plans for development of the Property, at its cost and expense, not less than the currently provided parking spaces for public use on the Property (to be used on a non-exclusive basis). The parking spaces will be dedicated as an easement for public use, in perpetuity while the Park remains as a public park, and will serve to benefit and facilitate use of the Park.

22. Upon SARH's acquisition of the Property and until new buildings or development are constructed on the Property, parking on the Property shall be provided in a surface parking lot that shall remain available to the public for daily park use at no charge.

23. Upon completion of the new buildings or development on the Property, there still shall exist free, public parking spaces for use by Park patrons.

24. Consequently, at all times the Property shall continue to be used to further Park purposes by providing parking spaces, at no cost to the public, for use by Park patrons.

VALIDATION PROCEEDING AUTHORIZED BY STATUTE

25. Government Code section 53511 provides that a local agency may bring an action to determine the validity of its bonds, warrants, contracts, obligations or evidence of indebtedness pursuant to the Validation Statute. A "local agency" is defined to include any city pursuant to Government Code section 53510. Thus, the City is authorized to bring an action under the Validation Statute.

26. Code of Civil Procedure section 860 provides that a public agency, such as the City, may bring an *in rem* action to determine the validity of any matter which under any other law is authorized to be determined pursuant to the Validation Statute. The Validation Statute provides that the action shall be brought in the Superior Court of the county in which the principal office of the agency is located.

27. The principal office of the City is located in San Bernardino County, California.

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28. This action is properly brought by the City as an *in rem* proceeding pursuant to Government Code section 53511 and Code of Civil Procedure section 860 for the judicial examination, approval, and confirmation of the Agreement, including the continued use of the Property for Park purposes based on the easement for public parking at no cost, and the use of the net sales proceeds solely for Park improvement purposes.

29. All such proceedings by and for the City and the provisions of the Agreement, and any other related contracts or agreements authorized or contemplated by the City Council, were, are, and will be in conformity with the applicable provisions of all laws and enactments at any time in force or controlling upon such proceedings, whether imposed by law, constitution, statute, or ordinance, whether federal or state, and were, are, and will be in full conformity with all applicable requirements of all regulatory bodies, agencies, or officials having or asserting authority over said proceedings or any part thereof.

SERVICE

30. The INLAND VALLEY DAILY BULLETIN is a newspaper of general circulation as designated by the Superior Court of the County of San Bernardino; is published in the County of San Bernardino, California; and will give notice to persons interested in the subject matter of this action. The Court should order publication of the summons in such newspaper pursuant to Code of Civil Procedure section 861 and Government Code section 6063.

31. Such service is the most reasonably practicable notice of the pendency of this action and is in accordance with the Validation Statute.

FIRST CAUSE OF ACTION

(Determination of Validity of Proceedings)

(By Plaintiff Against All Defendants)

32. The City re-alleges and incorporates by this reference the allegations of paragraphs 1 through 31 above as though fully set forth herein.

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1 33. Based upon the foregoing, the City is entitled to a judicial declaration
2 determining that:

- 3 a. this action is properly brought under Government Code section 53511
4 and the Validation Statute;
- 5 b. all proceedings by and for the City in connection with the Agreement,
6 and any other related contracts or agreements authorized or
7 contemplated by the City, were, are, and will be valid, legal, and
8 binding obligations of the City, and were, are, and will be in
9 conformity with the applicable provisions of all laws and enactments at
10 any time in force or controlling upon such proceedings, whether
11 imposed by law, constitution, statute, or ordinance, whether federal or
12 state;
- 13 c. the Agreement is in all respects lawful, valid, and subsisting and is not
14 subject to further legal challenge;
- 15 d. the Agreement is in furtherance of the continued use by the public of
16 the Property for park purposes and the Property is not being abandoned
17 for park purposes, as the Agreement provides for an easement in
18 perpetuity to allow for public parking at no cost, and as it requires the
19 use by the City of the net sales proceeds solely for Park improvement
20 purposes.
- 21 e. all conditions, things and acts required by law to exist, happen, or be
22 performed precedent to the City's decision to enter into the Agreement,
23 and the terms and conditions thereof, have existed, happened, and been
24 performed in the time, form, and manner required by law; and
- 25 f. the City has the authority under California law to enter into the
26 Agreement without need for further proceedings relating to the sale of
27 Park property.

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PRAYER FOR RELIEF

WHEREFORE, the City prays for judgment as follows:

1. That jurisdiction over all interested persons is validly had by the form of service set forth herein, and that such service constitutes the reasonably practicable notice of the pendency of this action in full compliance with the Validating Statute.

2. That this action is properly brought under the Validation Statute and Government Code section 53511 in the Superior Court for the County of San Bernardino.

3. That judgment, binding on all persons, be entered on the First Cause of Action determining that:

- a. all proceedings by and for the City in connection with the Agreement, and any other related contracts or agreements authorized or contemplated by the City, were, are, and will be valid, legal, and binding obligations of the City, and were, are, and will be in conformity with the applicable provisions of all laws and enactments at any time in force or controlling upon such proceedings, whether imposed by law, constitution, statute, or ordinance, whether federal or state;
- b. the Agreement is in all respects lawful, valid, and subsisting and is not subject to further legal challenge;
- c. the Agreement is in furtherance of the continued use by the public of the Property for park purposes and the Property is not being abandoned for park purposes, as the Agreement provides for an easement in perpetuity to allow for public parking at no cost, and as it requires the use by the City of the net sales proceeds solely for Park improvement purposes.
- d. all conditions, things and acts required by law to exist, happen, or be performed precedent to the City's decision to enter into the Agreement, and the terms and conditions thereof, have existed, happened, and been

1 performed in the time, form, and manner required by law; and
2 e. the City has the authority under California law to enter into the
3 Agreement without need for further proceedings relating to the sale of
4 Park property.

5 4. That this Court permanently enjoin and restrain all persons from the
6 institution of any action or proceeding challenging, *inter alia*, the validity of the Agreement
7 or the continued use of the Property for Park purposes as a result thereof, or any related
8 contracts and agreements, or any matters herein adjudicated or which at this time could
9 have been adjudicated against the City and/or against all other persons.

10 5. For the City's costs of suit herein.

11 6. For such other relief as the Court deems proper.

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14 Dated: May 16, 2018

RICHARDS, WATSON & GERSHON
A Professional Corporation
GINETTA L. GIOVINCO
MARVIN E. BONILLA

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17 By: 
18 GINETTA L. GIOVINCO
19 Attorneys for Plaintiff
20 CITY OF UPLAND

21 **[THIS COMPLAINT IS DEEMED VERIFIED BY OPERATION OF LAW**
22 **PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 446.]**
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EXHIBIT 1

**AGREEMENT FOR PURCHASE AND
SALE AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS is made and entered into as of the 26 day of March, 2018 (the "Contract Date"), by and between the CITY OF UPLAND, a California municipal corporation (hereinafter referred to as "Seller"), and SAN ANTONIO REGIONAL HOSPITAL, a California public benefit corporation, or its permitted assignee (hereinafter referred to as "Buyer").

WITNESSETH THAT:

WHEREAS, Buyer wishes to purchase, and Seller wishes to sell, the Property (as hereinafter defined), but only upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of \$75,000.00, the Earnest Money, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

Section 1. Definitions and Exhibits.

1.1 Definitions. For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the meaning ascribed to it as follows:

Agreement. This Agreement for Purchase and Sale.

Broker. None.

California Environmental Quality Act ("CEQA"). Section 21000 et seq. of the California Public Resources Code and the CEQA Guidelines, 14 California Code of Regulations Sections 15000 et seq.

Closing. The closing and consummation of the purchase and sale of the Property pursuant hereto.

Closing Date. Ninety (90) days after satisfaction of all closing conditions as set forth in Section 9 below, but no later than December 1, 2018, or such other date as agreed between the Seller and Buyer, provided all closing conditions have been met.

Closing Statement. As defined in Section 10.2.5.

Contract Date. The date upon which this Agreement shall be deemed effective, which shall be the date first above written.

Deed. The Grant Deed to be executed by Seller substantially in the form attached hereto as Exhibit B.

Earnest Money. \$75,000.00.



Easement. A public parking easement from Buyer to Seller in the form attached hereto as Exhibit "C".

Escrow Agent. Fidelity Title Insurance Company is acting as Escrow Agent pursuant to the terms and conditions of Section 3 hereof.

Foreseeable Project. Future development of the Property consistent with the OP Zoning designation. All future development of the Property shall be subject to the issuance of all governmental approvals and permits and compliance with CEQA.

Improvements. Any buildings, structures and improvements located upon the Land, including Seller's interest in all systems, facilities, fixtures, machinery, equipment and conduits on the Land, including to provide fire protection, security, heat, exhaust, ventilation, air conditioning, electrical power, light, plumbing, refrigeration, gas, sewer and water thereto (including all replacements or additions thereto between the date hereof and the Closing Date).

Inspection Date. All inspections and studies have been performed and completed prior to the Inspection Date which date shall be the 90th day following the Contract Date.

Inspection Period. Defined in Section 6.1 below.

Land. The land described on Exhibit "A" and by this reference made a part hereof and all privileges, rights, easements, hereditaments and appurtenances thereto belonging.

Lease. The cell site lease described in Section 2.

Permitted Title Exceptions. (i) The lien of unpaid taxes and assessments not yet due and payable; (ii) matters which would be disclosed by a current, accurate survey of the Property (provided, however, this shall not affect Buyer's rights pursuant to Section 5 of this Agreement); and (iii) those matters disclosed on the Preliminary Title Report or Survey to which Buyer does not object, or which objection(s) Buyer waives, pursuant to Section 5 of this Agreement.

Personal Property. None.

Property. All of Seller's right, title and interest in, to and under the following property: (i) the Land, as shown or described on Exhibit "A" attached hereto; (ii) the Improvements if any; (iii) the Lease; and (iv) all rights of way or use, trade names and marks, tenements, hereditaments, appurtenances and easements now or hereafter belonging or pertaining to any of the foregoing.

Purchase Price. \$4,200,000.

Survey. An ALTA/ACSM survey of the Land and Improvements revising the survey provided by Seller during the Inspection Period and obtained by Buyer at its cost and at its election.

Tenant. TMO CA/NV LLC, formerly known as Pacific Wireless, LLC.



Title Commitment. Commitment(s) issued by Title Insurer for an owner's policy of a title insurance (in the form most recently adopted by ALTA) in the amount of the Purchase Price, covering title to the Property, and showing Seller as owner of the Property.

Title Insurer. Fidelity National Title Insurance Company, Attention: Missy Barth, 555 S. Flower Street, Suite 4420, Los Angeles, California 90071, telephone (213) 700-2076.

Judicial Validation Action. An in rem suit filed and processing to finality pursuant to California Code of Civil Procedure Sections 860 et. seq. to establish the validity of the transfer of park property contemplated in this Agreement and, specifically, to validate the transfer of the Property without the necessity of conducting an election to approve the transaction.

Vendor or Vendors. None.

Zoning. Appropriate zoning designation for the Foreseeable Project.

1.2 Exhibits. Attached hereto and forming an integral part of this Agreement are the following exhibits, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto:

Exhibit "A" - Description of Land

Exhibit "B" - Form of Grant Deed

Exhibit "C" - Form of Public Parking Easement

Exhibit "D" - Non-Foreign Certificate

Section 2. Purchase and Sale.

Subject to and in accordance with the terms and provisions of this Agreement, Seller agrees to sell and Buyer agrees to purchase the Property. In connection therewith, Seller represents that it has no actual knowledge of any unrecorded agreements affecting the Property that purport and bind successor owners of the Property, except for that certain Lease dated in July, 2003 between City, as landlord, and Pacific Bell Wireless, LLC, as tenant, as amended by an "Amendment to Lease - Amendment No. 1" dated December 22, 2008 and a Second Amendment to Lease dated in November, 2008 ("Lease"), which lease shall be subject to Buyer's prior review and approval during the Inspection Period.

Section 3. Earnest Money.

3.1 Opening of Escrow/Earnest Money. Within two (2) business days following the end of the Inspection Period, Buyer and Seller shall open escrow with the Escrow Agent and deliver a copy of this executed Agreement and the Lease to Escrow Agent ("Lease"), and Buyer shall then promptly deposit with Escrow Agent the Earnest Money which, together with any interest or other income earned thereon, shall be held, invested and disbursed pursuant to the respective terms and provisions hereof.

3.2 INTENTIONALLY OMITTED.

3.3 Disbursement. Whenever the Earnest Money is by the terms hereof to be disbursed by Escrow Agent, Seller and Buyer agree promptly to execute and deliver such notice or notices as shall be necessary or, in the opinion of Escrow Agent, appropriate to authorize Escrow Agent to make such disbursement; provided, however, that the terms of this Agreement will supersede and control.

Section 4. Purchase Price; Commitment to Park.

4.1 Purchase Price to Be Used by Seller for Park. The Purchase Price, as adjusted by the prorations provided in Section 4.2 hereof, and as reduced by the Earnest Money, shall be paid by Buyer to Seller at the Closing through escrow in United States dollars, by Federal Reserve System wire transfer or other immediately available funds. Such net Purchase Price funds shall be used by Seller solely for making public improvements to the City park adjacent to the Property.

4.2 Prorations. Buyer and Seller will prorate all income and expenses, if any, relating to the Property based upon Buyer's and Seller's respective periods of ownership for the calendar year in which the Closing occurs with Buyer treated as the owner of the Property on the Closing Date, including, without limitation:

4.2.1 Real Estate Taxes and Assessments. Assessments, if any, will be prorated between Buyer and Seller as of the Closing Date. Seller is exempt from property taxes; consequently, Seller shall not be obligated to pay any property taxes and the purchase price shall not be decreased by the amount of any property taxes.

(i) Delinquent Assessments. Seller shall pay to the applicable tax authorities at or prior to the Closing all assessments with respect to the Property which are delinquent as of the Closing.

(ii) Prepaid Assessments. If any assessments paid by Seller with respect to the Property at or prior to the Closing, determined on a cash (rather than accrual) basis, relate to any time including or after the Closing, Buyer shall pay to Seller at the Closing the amount of such other assessments paid prorated for the number of days, from, including and after the Closing; provided, any such assessments are disclosed by Seller to Buyer prior to the Inspection Date.

4.2.2 Rents. Rents and other charges, rights and obligations under the Lease shall be prorated as of the Closing Date.

4.2.3 Utilities. Prior to the Closing, Seller will notify each of the utility companies which provide services to the Property of the scheduled transfer of the Property on the Closing, and shall make appropriate arrangements with the utility companies to bill Seller for services provided before the Closing, and to Buyer for services provided from and after the Closing. If such arrangements cannot, or are not, made as of the Closing, then Buyer shall make the appropriate arrangements promptly after the Closing, and promptly after such arrangements are made, Buyer shall pay to Seller an amount equal to the cost of the services that were billed to Seller for the period from and after Closing, and Seller shall pay the same to the appropriate utility company.



4.2.4 Closing Costs. Buyer shall pay the cost of any endorsements to the title insurance policy, the cost for extended coverage, the cost of any lender's policy of title insurance, one-half (1/2) of all escrow or closing agent charges by the Escrow Agent, all costs associated with any encumbrance Buyer places on the Property at Closing, all costs of Buyer's due diligence, the costs of the Survey if any, and any other costs which are customarily paid by buyers in the county where the Property is located. Seller shall pay for state and county transfer taxes, all costs for recording the Deed, including, if applicable, the Affordable Housing Fees imposed by the laws of the State of California and collected by the County Recorder's Office, one-half (1/2) of all escrow or closing agent charges, and the cost of an owner's policy of title insurance for the Property in the form most recently adopted by ALTA in the amount of the Purchase Price (excluding any endorsements thereto or for extended coverage). Each party shall pay its own attorneys. The obligations of the parties to pay applicable escrow or closing charges shall survive the termination of this Agreement.

Section 5. Title. Buyer will have until 5:00 p.m. (Pacific time) on the date that is twenty (20) business days after Seller causes the Title Commitment together with copies of or hyperlinks for all recorded documents to be delivered to Buyer (which will occur within the first month of the Inspection Period), to examine title to the Property, determine whether Buyer will be able to obtain any endorsements it desires, and give written notice to Seller of any objections to the title which Buyer may have. If Buyer fails to give any notice to Seller by such date, Buyer shall be deemed to have approved the title exceptions or defects. If Buyer does give Seller timely notice of objection to any title exceptions or defects and such objection is not reasonably cured or satisfied or undertaken to be reasonably cured or satisfied by Seller within fifteen (15) business days of receiving Buyer's objection, then Buyer may elect, by written notice to Seller within five (5) business days after Seller so responds to such objections, either to (a) terminate this Agreement, in which case the Earnest Money shall be returned to Buyer by Escrow Agent, and the parties shall have no further rights or obligations hereunder, except for those which expressly survive any such termination, or (b) waive its objections hereunder and proceed with the transaction pursuant to the remaining terms and conditions of this Agreement. If Buyer fails to so give Seller notice of its election, it shall be deemed to have elected the option contained in subpart (a) above. If Seller does so reasonably cure or satisfy, or undertake to reasonably cure or satisfy, such objection to the satisfaction of Buyer, then this Agreement shall continue in full force and effect. Buyer shall have the right at any time to waive any objections that it may have made and, thereby, to preserve this Agreement in full force and effect. Seller shall convey fee simple title to the Property to Buyer by the Deed, which will contain the description of the Property in the form originally conveyed to Seller, subject to the Permitted Title Exceptions. BUYER HAS BEEN ADVISED THAT THE SELLER IS EXEMPT FROM THE MAP ACT. SELLER MUST CREATE A SEPARATE LEGAL LOT FOR THE PROPERTY SOLD HEREUNDER REQUIRING THE SELLER TO FILE A COMPLIANCE CERTIFICATE TO ACCOMPLISH THAT FACT.



Section 6. Buyer's Inspection.

6.1 Physical Inspection. From and after the Contract Date, Buyer shall be entitled to ninety (90) day inspection period ("Inspection Period"). During the Inspection Period, Buyer shall have the right to inspect and investigate all aspects of the Property, including obtaining an updated ALTA Survey (if desired) the review and approval of all existing reports or results of investigations performed by or at the direction of Seller and in the possession of the Seller; title and survey review and approval (and Buyer shall have the right to object to title issues raised by the Survey during the Inspection Period); all other matters deemed necessary in good faith by Buyer in satisfaction of its due diligence efforts. In the event that Buyer determines, in its sole discretion, that the Property is not suitable for Buyer's intended use thereof, then Buyer may terminate this Agreement by delivery of written notice thereof to Seller on or before the expiration of the Inspection Period. Thereupon the Deposit shall be returned to Buyer and the parties shall have no further rights or obligations hereunder.

Section 7. Representations and Warranties.

7.1 Representations. As of the Contract Date, Seller hereby represents and warrants to Buyer that the following statements are true:

7.1.1 No Litigation. Seller has no knowledge of receipt of written notice of any actual or pending litigation or proceeding, including any action in condemnation and/or eminent domain, by any organization, person, individual or governmental agency against Seller with respect to the Property or against the Property.

7.1.2 There are no service or other Vendor contracts to which Buyer will be made subject following the Close of Escrow.

7.1.3 Hazardous Materials.

(a) In accordance with its obligations under California Health & Safety Code Section 25359.7, Seller hereby gives notice that it has no knowledge of the release of any Hazardous Materials in, or under or about the Property.

(b) Seller is not in possession any material reports, studies or written analysis that relate to the physical condition of the Property, including the existence of Hazardous Materials, or the development potential of the Property.

(c) To Seller's knowledge, all operations or activities upon, or use or occupancy of the Property, or any portion thereof, by Seller, is and has been in all material respects in compliance with all Governmental Regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether accidental or intentional) of Hazardous Materials, and Seller has not engaged in nor permitted any dumping, discharge, disposal, spillage or leakage (whether legal or illegal, accidental or intentional) of such Hazardous Materials, at, on, in or about the Property, or any portion thereof during the time in which Seller has owned the Property. Seller has received no notice of the existence of any proceeding or inquiry by any Authority with respect to the presence of Hazardous Materials on the Property or the migration thereof from or to other property and to Seller's knowledge, no such proceeding or inquiry is pending or threatened.



(d) As to any prior owner of the Property or any portion thereof, Seller has no knowledge as to the operations or activities upon, or use or occupancy of the Property, or any portion thereof, by any such prior owner of the Property, or any portion thereof, and Seller makes no affirmative representation in regard to the same as relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether accidental or intentional) of Hazardous Materials (whether legal or illegal, accidental or intentional) at, on, in or about the Property, or any portion thereof; provided Seller affirmatively represents having received no written notice of the existence of any proceeding or inquiry by any Authority with respect to the presence of Hazardous Materials on the Property or the migration thereof from or to other property as relates to any such prior owner.

(e) Neither Seller nor any of its affiliates, nor any of their respective partners, members, shareholders of other equity owners, and none of their respective employees, officers, directors, representatives, or agents is, nor will they become, a person or entity with whom the United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC"), Department of the Treasury or under any statute, executive order or other governmental action and Seller is not or will not engage in any dealings or transactions or be other associated with such persons or entities.

7.1.4 Non-Foreign Status. Seller is not a "foreign person" as that term is defined in the Internal Revenue Code of 1986, as amended and the Regulations promulgated pursuant thereto.

7.1.5 Authority of Signatories; No Breach of Other Agreements, etc. The execution, delivery of and performance under this Agreement subject to the Validation Action has been duly authorized by Seller. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Agreement do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangements, understanding, accord, document or instrument by which Seller is bound.

7.1.6 Compliance with Existing Laws. Seller has no knowledge of any written notice to Seller from any governmental authority or otherwise alleging any uncured existing violation of any applicable building, zoning, subdivision, health, safety or other governmental laws, statutes, ordinances, rules, codes, regulations or orders or any restrictive covenants or deed restrictions of record affecting the Property.

7.1.7 Assessments/Condemnation/Zoning. Seller has no knowledge of any written notice to Seller of any existing, pending, contemplated or threatened (i) special tax assessments pending against the Property that are not of record or disclosed in the Title Commitment, (ii) condemnation actions affecting the Property, or (iii) change in the current zoning classification of the Land or Improvements except as may be contemplated by Buyer.

7.2 Reaffirmation. Subject to the provisions of Section 11.2, at Closing Seller shall be deemed to have reaffirmed that the representations and warranties of Seller in this Section 7.

Section 8. Operations Pending Closing.

(a) Seller, at its expense, shall use reasonable efforts to maintain the Property until the Closing or until the termination of this Agreement, whichever is earlier,



substantially in its present condition, damage by fire or other casualty and condemnation excepted. After the Inspection Date, Seller will not, without Buyer's consent not unreasonably withheld, enter into any (i) contract for service to the Property unless it does not purport to bind Buyer or the Property, or (ii) any new lease or commission agreement or any modification, amendment, restatement, termination, or renewal of any Lease. Seller shall promptly deliver a copy of any item in (i) or (ii) of the preceding sentence entered into by Seller prior to the Inspection Date.

(b) The parties recognize that by authority of the Seller Buyer currently maintains a right to lease the subject property for parking purposes. In consideration of that right the Buyer currently pays to Seller the sum of \$10,000 per month. It is agreed by and between Seller and Buyer that from and after the Contract Date that said \$10,000 monthly payment will be suspended pending a closing of the within transaction after which the obligation shall cease entirely and the lease terminated. In the event a Closing hereunder does not take place, the Buyer agrees to pay to Seller all suspended payments to the date of such cancellation and the lease shall be re-instated as currently existing.

Section 9. Conditions to Closing.

9.1 Buyer's Conditions Precedent. Buyer's obligation to proceed to Closing under this Agreement is subject to the following conditions precedent:

(a) Seller shall have performed and satisfied each and all of Seller's obligations under this Agreement.

(b) Each and all of Seller's representations and warranties set forth in this Agreement shall be true and correct at the Contract Date and at the Closing Date in all material respects.

(c) Completion of the Judicial Validation Action by the City of Upland as set forth in Section 3.2 above.

(d) Seller shall have complied with CEQA with respect to the zoning change from current zoning to the OP Zone, and shall have filed/recorded a Notice of Determination in connection therewith.

(e) Change of the zoning for the Property to OP.

(f) Escrow Holder's commitment (as a title company) to issue the Title Policy to Buyer subject only to the Permitted Exceptions.

(g) Seller shall have prepared, executed and delivered to Escrow Holder for recording at the Close a "Certificate of Compliance" (duly acknowledged and in recordable form) evidencing the exemption from the Map Act (conveyance by a public entity) and confirming that the Property is a legal parcel.

In the event any of the foregoing conditions are not satisfied prior to or at the Closing, Buyer may terminate this Agreement by written notice to Seller and thereafter shall have no obligation to proceed with the Closing, the Earnest Money shall be returned and paid to Buyer, and neither party shall have any further obligation hereunder except those which expressly survive



the termination of this Agreement. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Buyer may have for Seller's default or breach of this Agreement.

Section 10. Closing.

10.1 Time and Place. Provided that all of the conditions set forth in this Agreement are theretofore fully satisfied or performed, the Closing shall be held through the Escrow Agent on the Closing Date or such other date that is mutually agreeable to Buyer and Seller in writing, unless the Closing Date is postponed pursuant to the express terms of this Agreement.

10.2 Seller Deliveries. Seller shall obtain and deliver to Buyer at the Closing the following documents (all of which shall be duly executed, and notarized as necessary):

10.2.1 The Deed, and a Certificate of Acceptance for the Easement.

10.2.2 A Non-Foreign Certificate, substantially in the form attached as Exhibit "D" hereto.

10.2.3 A Closing Statement in form and substance mutually satisfactory to Buyer and Seller (the "Closing Statement").

10.2.4 An affidavit of title or other affidavit customarily and reasonably required of sellers by the Title Insurer to remove the standard exceptions from an owner's title insurance policy which are capable of being removed by such an affidavit.

10.2.5 Such further instructions, documents and information, including, but not limited to a Form 1099-S, as Buyer or Title Insurer may reasonably request as necessary to consummate the purchase and sale contemplated by this Agreement.

10.2.6 The Service Contracts, if any.

10.2.7 Possession of the Property, subject to the Permitted Title Exceptions.

10.3 Buyer Deliveries. Buyer shall deliver to Seller at closing the following:

10.3.1 The Purchase Price in immediately available funds less the Earnest Money, subject to the prorations provided for in this Agreement.

10.3.2 Counterpart original of the Easement, duly executed by Buyer and acknowledged.

10.3.3 Counterpart original duly executed by Buyer of the Closing Statement.

10.3.4 Such other documents or instruments that are reasonably necessary to consummate the Closing.

Buyer and Seller stipulate and agree that the Certificate of Compliance is to be recorded immediately after the Grant Deed, and the Easement is to be recorded immediately after the Certificate of Compliance.



Section 11. Default and Remedies.

11.1 Default by Buyer. IN THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTION HEREIN CONTEMPLATED DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OF BUYER, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER. THEREFORE BUYER AND SELLER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND SHALL BE, AS SELLER'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY), AN AMOUNT EQUAL TO THE EARNEST MONEY AS REQUIRED OF BUYER BY THE TERMS HEREOF AS OF THE DATE OF OCCURRENCE OF SUCH DEFAULT. SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER, ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES BEING HEREIN EXPRESSLY WAIVED BY SELLER. THE EARNEST MONEY SHALL CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1677. UPON DEFAULT BY BUYER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER EXCEPT FOR THE RIGHT OF SELLER TO COLLECT SUCH LIQUIDATED DAMAGES FROM BUYER OR (IF APPLICABLE) ESCROW HOLDER, AND, IF LEGAL ACTION IS REQUIRED TO COLLECT SUCH LIQUIDATED DAMAGES, TO RECOVER ITS ATTORNEYS' FEES AND COSTS PURSUANT TO PARAGRAPH 17.10. NOTWITHSTANDING THE FOREGOING, AND NOTWITHSTANDING THE TERMINATION OF THE AGREEMENT, EACH PARTY WILL STILL BE ENTITLED TO ANY INDEMNIFICATION PROVIDED IN THIS AGREEMENT.

BUYER'S INITIALS 

SELLER'S INITIALS BRM

Buyer shall be entitled to at least ten (10) business days' written notice and opportunity to cure any alleged defaults under this Agreement.



11.2 Seller's Default. In the event of a default by Seller under the terms of this Agreement which is not cured by Seller as provided hereunder, (except as the result of Seller's negligence and/or willful misconduct in which case damages may be sought) Buyer's sole and exclusive remedies hereunder shall be to either terminate this Agreement whereupon Buyer will receive a refund of the Earnest Money from Escrow Agent, or to seek specific performance of Seller's obligations under this Agreement.

Section 12. Condemnation or Destruction.

12.1 Condemnation. If, prior to the Closing, all or any material part of the Property is subject to a bona fide threat of condemnation by a body having the power of eminent domain, or is taken by eminent domain or condemnation, or sale in lieu thereof, then Buyer, by written notice to Seller, to be received within thirty (30) calendar days of Buyer's receiving Seller's written notice of such threat, condemnation or taking, or by the Closing Date, whichever is earlier, may elect to terminate this Agreement.

12.2 Damage or Destruction. If, prior to the Closing, all or any material part (which is deemed to be a restoration cost of \$75,000.00 or more) of the Property is damaged or destroyed by any cause, Seller agrees to give Buyer written notice of such occurrence and the nature and extent of such damage and destruction, and Buyer, by written notice to Seller, to be received within thirty (30) calendar days of Buyer's receipt of Seller's written notice of such damage or destruction, or by the Closing Date, whichever is earlier, may elect to terminate this Agreement.

12.3 Termination. If this Agreement is terminated as a result of the provisions of either Section 12.1 or Section 12.2 hereof, Buyer shall be entitled to receive a refund of the Earnest Money from Escrow Agent, whereupon the parties shall have no further rights or obligations hereunder, except for those which expressly survive any such termination.

12.4 Awards and Proceeds. If Buyer does not elect to terminate this Agreement following any notice of a threat of taking or taking by condemnation or notice of damage or destruction to the Property, as provided above, this Agreement shall remain in full force and effect and the conveyance of the Property contemplated herein, less any interest taken by eminent domain or condemnation, or sale in lieu thereof, shall be effected with no further adjustments. At the Closing, Seller shall assign, transfer and set over to Buyer all of Seller's right, title and interest in and to any awards, payments or insurance proceeds (excluding any deductible which is the responsibility of Seller) available to Seller for the actual value of the property lost or destroyed that have been or may thereafter be made for any such taking, sale in lieu thereof or damage or destruction, to the extent such awards, payments or proceeds shall not have theretofore been used for restoration of the Property.

Section 13. Assignment by Buyer. Buyer may assign its rights under this Agreement to an affiliated entity upon five (5) days' prior written notice to Seller accompanied by a copy of an executed assignment and assumption agreement and reasonable evidence that the assignee is such an affiliate, but without Seller's prior written consent hereunder; provided, however, no such assignment shall relieve Buyer of its obligations hereunder.

Section 14. Buyer's Representation and Warranty. Buyer does hereby represent and warrant to Seller as of the Contract Date and the Closing that it is a validly formed public benefit corporation; that is in good standing in the state of its organization; that it is not subject to any



involuntary proceeding for the dissolution or liquidation thereof; that it has all requisite authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Buyer are duly authorized to so do.

Section 15. Brokers and Brokers' Commissions. None.

Section 16. Notices. Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by a nationally-recognized overnight express delivery service, or certified mail, return receipt requested, postage prepaid, to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

SELLER: City of Upland
460 N. Euclid Avenue
Upland, California 91786
Attn: City Manager

BUYER: San Antonio Regional Hospital
999 San Bernardino Road
Upland, CA 91786
Attn: Harris F. Koenig, President and CEO

WITH A COPY TO: Ervin Cohen & Jessup LLP
9401 Wilshire Boulevard
Suite 900
Beverly Hills, CA 90212
Attn: Alan M. Bergman, Esq.

Such notices shall be deemed received (a) on the date of delivery, if delivered by hand or overnight express delivery service; (b) on the date indicated on the return receipt if mailed.

Section 17. Miscellaneous.

17.1 Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.



17.2 No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

17.3 Entire Agreement. Except for the terms and conditions set forth in the Lease Agreement, this Agreement contains the entire agreement of the parties hereto with respect to the Property and any other prior understandings or agreements are merged herein and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein or incorporated herein by reference shall be of any force or effect.

17.4 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

17.5 Amendments. No amendment to this Agreement shall be binding on any of the parties hereto unless such amendment is in writing and is executed by the party against whom enforcement of such amendment is sought.

17.6 Date For Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

17.7 Counterparts. This Agreement may be executed in any number of counterparts (including via facsimile or telecopier transmission, either of which will be deemed an original signature or signatures), each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

17.8 Time of the Essence. Time shall be of the essence of this Agreement and each and every term and condition hereof.

17.9 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

17.10 Attorneys' Fees. In the event that either party shall bring an action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either party, the prevailing party shall be entitled to recover from the non-prevailing party, as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees and court costs as may be fixed by the court or jury.



17.11 Like-Kind Exchange. Each of the parties hereto agrees to cooperate with the other in effecting an I.R.C. § 1031 exchange, including Buyer's free assignment and transfer of this Agreement for such exchange purposes, and also executing and delivering any and all documents required by the exchange trustee or intermediary; provided, however, that the cooperating party shall have no obligation to execute any document, enter any transaction or arrangement or take or omit any other action, if such party determines in its sole discretion that the same would result in any liability, cost, expense, increased risk, delay or other detriment to the cooperating party.

17.12 City Manager Authority. The City Manager of Seller shall have the authority to give all consents and approvals on behalf of Seller hereunder provided they are in writing, and to enter into non-substantial amendments of this Agreement provided they are in writing.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized signatory, effective as of the day and year first above written.

"SELLER":

CITY OF UPLAND,
a California municipal corporation

By: Bill R. Manis
Print Name: Bill R. Manis
Title: City manager

"BUYER":

SAN ANTONIO REGIONAL HOSPITAL
a California public benefit corporation

By: Harris F. Koenig
Harris F. Koenig
President and CEO



EXHIBIT "A"

DESCRIPTION OF LAND

THOSE PORTIONS OF LOTS 549 AND 550 LYING NORTH OF THE NORTHWEST LINE OF SAN BERNARDINO ROAD, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP OF ONTARIO PER PLAT RECORDED IN BOOK 11 PAGE 6, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWEST LINE OF SAN BERNARDINO ROAD (77 FEET WIDE) AND THE EASTERLY LINE OF THAT CERTAIN 70 FOOT EASEMENT OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT PER BOOK 3280 PAGE 148 O.R., RECORDED NOVEMBER 19, 1953, RECORDS OF SAID COUNTY; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID EASEMENT, NORTH 26°27'19" WEST, 543.85 FEET TO THE SOUTH LINE OF ELEVENTH STREET (66 FEET WIDE) AS SHOWN ON THE SAID MAP OF ONTARIO; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID ELEVENTH STREET AND ITS EASTERLY PROLONGATION, SOUTH 89°57'42" EAST, 124.52 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 158.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 37°42'28" AN ARC LENGTH OF 103.98 FEET TO THE EASTERLY PROLONGATION OF THE CENTERLINE OF ELEVENTH STREET; THENCE ALONG SAID CENTERLINE SOUTH 89°57'42" EAST, 167.63 FEET; THENCE LEAVING SAID CENTERLINE, SOUTH 60°53'18" EAST, 12.55 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 13.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 53°15'37" AN ARC LENGTH OF 12.08 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 13.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 38°32'17" AN ARC LENGTH OF 8.74 FEET; THENCE SOUTH 46°09'57" EAST, 124.44 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 304.00 FEET; THENCE THROUGH A CENTRAL ANGLE OF 18°10'36" AN ARC LENGTH OF 96.44 FEET; THENCE SOUTH 27°59'21" EAST, 47.46 FEET; THENCE NORTH 62°00'39" EAST, 49.97 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 5.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC LENGTH OF 7.85 FEET; THENCE SOUTH 27°59'21" EAST, 26.51 FEET; THENCE NORTH 62°00'39" EAST, 102.06 FEET; THENCE SOUTH 27°59'21" EAST, 67.37 FEET TO A POINT ON THE NORTH LINE OF SAN BERNARDINO ROAD (77 FEET WIDE); THENCE ALONG SAID STREET SOUTH 62°00'39" WEST, 592.19 FEET TO THE POINT OF BEGINNING.

DESCRIBED AREA = 201,745 SQUARE FEET = 4.631 ACRES.



SKETCH TO ACCOMPANY LEGAL DESCRIPTION

EXHIBIT "A"

C/A 3' ESMT TO
SO. CAL. EDISON CO.
REC'D 01/14/53, O.R. 3087/388.

INDICATED PORTION OF ELEVENTH
STREET PER O.R. INST. NO.
19970391760 REC. 10-24-57

ELIXVENTH
STREET

$\Delta = 37^{\circ}42'28''$
 $R = 158.00'$
 $L = 103.98'$

$S 89^{\circ}57'42'' E$

$S 69^{\circ}57'42'' E$
 $R = 13.00'$
 $L = 12.08'$

$\Delta = 53^{\circ}15'37''$
 $R = 13.00'$
 $L = 12.08'$

$\Delta = 38^{\circ}32'17''$
 $R = 13.00'$
 $L = 8.74'$

C/A 5' ESMT TO SPRINT
PCS ASSETS, LLC REC'D
05/28/02 DOC. 2002-
0270752, O.R.

$\Delta = 90^{\circ}00'00''$
 $R = 5.00'$
 $L = 7.85'$

$\Delta = 18^{\circ}10'56''$
 $R = 20.40'$
 $L = 12.55'$

$S 48^{\circ}05'51'' E$

$\Delta = 47.46'$
 $S 27^{\circ}59'21'' E$

$\Delta = 49.37'$
 $S 27^{\circ}59'21'' E$

$\Delta = 28.51'$
 $S 27^{\circ}59'21'' E$

$\Delta = 102.06'$
 $N 62^{\circ}00'39'' E$

$S 592.19'$

MAP OF ONTARIO

M.B.

P.O.B.

$S 62^{\circ}00'39'' W$
 $L = 388.84'$

SAN BERNARDINO ROAD

THIRTEENTH AVE.

AREA = 201,745 SQUARE FEET
= 4.631 ACRES

1"=120'

LEGISLATED LAND SURVEY FOR
DONALD R. SMITH
L.S. 5343
EXP. 12-31-18
STATE OF CALIFORNIA

PFEILER & ASSOCIATES ENGINEERS, INC.
CIVIL ENGINEERING & LAND SURVEYING
22609 La Palma Avenue, Suite 202, Yorba Linda, CA 92887
Telephone (909) 993-5800 Fax (909) 993-5801

EXHIBIT "B"

FORM OF GRANT DEED

RECORDING REQUESTED BY:

ERVIN COHEN & JESSUP LLP

AND WHEN RECORDED MAIL THIS DEED
AND TAX STATEMENTS TO:

San Antonio Regional Hospital
999 San Bernardino Road
Upland, CA 91786
Attn: Harris F. Koenig

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED



APN: Portion of _____

The undersigned Grantor declares under penalty of perjury that the following is true and correct:

DOCUMENTARY TRANSFER TAX IS \$ _____

☐ unincorporated area ☐ City of Upland

GRANTOR: CITY OF UPLAND

hereby grants to

GRANTEE:

SAN ANTONIO REGIONAL HOSPITAL, a California public benefit corporation, the following real property in the City of Upland, County of San Bernardino, State of California:

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE, subject to all matters of record and all matters which would be revealed by an ALTA/ACSM survey, and all matters visible upon inspection.

Executed as of the ____ day of _____ 20____.

MAIL TAX STATEMENTS AS DIRECTED ABOVE



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who 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.

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

WITNESS my hand and official seal.

Signature



EXHIBIT "C"

FORM OF PUBLIC PARKING EASEMENT
TO BE GRANTED BY BUYER TO SELLER
AT CLOSING

(Attached)



PARKING EASEMENT AGREEMENT

This **PARKING EASEMENT AGREEMENT** ("Agreement") is made this _____ day of _____, 2018, between **SAN ANTONIO REGIONAL HOSPITAL**, a California public benefit corporation, ("**SARH**") and the **CITY OF UPLAND**, a California municipal corporation (the "**City**"). SARH and the City are collectively referred to as "**Parties**" or individually as a "**Party**".

RECITALS

A. SARH and the City have entered into an Agreement for Purchase and Sale and Joint Escrow Instructions dated _____, 2017 whereby SARH is purchasing from the City all of its right, title and interest in an approximate 5.5 acre parcel as more specifically described and set forth therein and shown on Exhibit A attached hereto and made a part hereof (the "**Property**").

B. As a condition of the foregoing sale, SARH is required to grant to the City in the form of a Public Parking Permanent Easement, the right of public parking for automobiles upon the Property in accordance with the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Grant of Easement.** Subject to the terms set forth in this Agreement, SARH agrees to design and construct within its plans for the development of the Property, at its cost and expense, not less than as currently provided, on a non-exclusive basis, parking spaces for public use upon the Property (the "**Public Spaces**"). The Public Spaces are hereby dedicated as an Easement for public use.

2. **Construction of Additional Spaces.** As part of its overall planned development for the Property, SARH shall design the Public Spaces, submit all necessary construction permit applications, construction bids and proceed to construct the Public Spaces at its sole cost and expense.

3. **Use of Property Prior to, During and Upon Completion of Project Construction.** Upon the acquisition of the Property by SARH and until new buildings or development is constructed on the Property by SARH, parking on the Property shall be provided in a surface parking lot on the Property for SARH use and shall remain available to the public for daily park use at no charge.



Upon completion of new buildings or the development on the Property for SARH's use, there shall be the same or greater number of Public Spaces made available to the public in a surface parking lot for daily park use at no charge.

If the construction of new buildings or development will temporarily disrupt the public parking SARH shall use reasonable efforts to diligently prosecute the new development to completion, subject to force majeure delays, to minimize the disruption.

If a multistory parking structure is part of any new development on the Property for SARH's use and the surface parking lot is removed, the Public Spaces made available to the public for daily park use, to the extent within the parking structure, shall be located on the first/ground floor.

If, at any time during the term of this Agreement, there is a conflict between SARH and the City in meeting the parking requirements for their respective uses, it is understood by the Parties that SARH shall retain the primary right to parking on the Property and its needs and requirements shall take priority over those of the City. However, in no event shall the parking available to the City for daily park use be less than 100 spaces. If such conflict shall arise SARH may, upon written notice to the City, initiate negotiation of a joint use agreement with the City to resolve this conflict in order to satisfy SARH's parking requirements. Should SARH and the City fail to resolve this conflict within 30 days of SARH's written notice, all claims and disputes arising under or relating to this Agreement shall be settled by binding arbitration in the State of California.

It is further understood and agreed that at all times during the existence of the within easement that SARH, at its sole cost and expense, shall maintain and keep in good order and repair all surface parking areas and, if applicable, the parking structure.

4. **Term.** The Easement shall remain on the Property in perpetuity provided the City's adjacent property remains as a public park. In the event of the cessation of such use or the sale of the City's adjacent park property for other than public park use, this Easement will terminate forthwith.

5. **Insurance.** Prior to the use by the public of the within easement the City shall obtain and maintain thereafter a policy of general liability insurance in an amount of no less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, with such policy of insurance naming SARH, its affiliates, successors and assigns as an additional insured.

6. **Indemnity Obligation.** Each Party shall indemnify (the "**Indemnifying Party**"), defend and hold harmless every other Party (the "**Indemnified Parties**") for, from and against any and all losses, costs and expenses (including reasonable attorneys' fees and costs) to the extent caused during the term of this Agreement, by the acts, errors or omissions of the Indemnifying Party or its partners, members, shareholders, managers, officers, directors, agents, employees, contractors, sub-contractors, representatives, or delegates as the same are due to the exercise of the Indemnifying Party's rights or failure to fulfill its obligations under this Agreement, except to the extent of any such loss, cost or expense caused by one of the Indemnified Party's own negligence



or misconduct. The indemnity obligations set forth in this Section 6 shall survive a termination of this Agreement.

7. **Attorneys' Fees.** If any of the Parties hereto shall initiate suit against any other Party as a result of any alleged breach or failure of the other to fulfill or perform any covenants or obligations to be performed by it under this Agreement, or for declaratory relief seeking any determination of such Parties' rights or obligations hereunder, then in such event, the prevailing Party in such action shall, in addition to any other relief granted or awarded by the Court, be entitled to judgment for reasonable attorneys' fees incurred by reason of such action and all costs of suit and (those incurred in preparation thereof, at both trial and appellate levels).

8. **Entire Agreement.** This Agreement, together with all Exhibits attached hereto, contains the entire agreement and understanding of SARH and the City and supersedes all prior agreements and understandings, as to the subject matter hereof. This Agreement shall not be modified, superseded or revoked, except by an agreement in writing duly executed and delivered by the Parties hereto (or their successors, as appropriate).

9. **Benefits and Burdens Running With the Land.** This Agreement shall run with and bind the title of the Property hereto and shall be binding upon and inure to the benefit of the successors and assigns of SARH as the owner of the Property from time to time. This Agreement shall be recorded in the official records of the Recorder for the County of San Bernardino, and all provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law.

10. **No Waiver.** The waiver by one Party of the performance or observance of any covenant or condition to be performed or observed by the other hereunder shall not invalidate this Agreement, nor constitute a waiver by such Party of any other covenant or condition to be performed or observed by another hereunder.

11. **Cooperation.** SARH and the City shall in good faith cooperate with each other in connection with their respective rights and obligations under this Agreement, including, but not limited to, performing any acts and executing any further documents and taking such further actions that may be reasonably necessary to effectuate the purposes of or rights conferred under this Agreement.

12. **Construction.** This Agreement shall be construed in accordance with the laws of the State of California

13. **Notices.** All notices and requests under this Agreement shall be in writing and shall be sent by personal delivery or facsimile (with hard copy to follow the next business day by overnight mail), by certified or registered mail, postage prepaid, return receipt requested, nationally recognized overnight mail carrier (e.g. FedEx, Airborne) or delivered in person to the following street addresses:



SARH: c/o Harris F. Koenig
President and CEO
San Antonio Regional Hospital
999 San Bernardino Road
Upland, CA 91786

With a copy to: Alan M. Bergman, Esq.
Ervin Cohen & Jessup LLP
9401 Wilshire Blvd., 9th Floor
Beverly Hills, California 90212
Facsimile: (310) 877-6844

City of Upland: City Manager
City of Upland
460 N. Euclid Avenue
Upland, CA 91786

With a copy to: James L. Markman, Esq.
Richards Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071
Facsimile: (213) 626-0078

All notices shall be effective upon the earlier of personal delivery or receipt of facsimile confirmation statement, if sent by facsimile (provided the hard copy notice is provided by an alternative method of delivery as required above), or receipt of confirmation of delivery or rejection, if delivered by a nationally recognized overnight mail carrier or seventy-two (72) hours after deposit in the United States mail. Either party may change its address or designate a new street address for notices under this Agreement by notice complying with the terms of this Section.

14. **Counterpart Execution.** This Agreement may be executed and acknowledged in counterpart originals and all such counterparts shall constitute one (1) agreement. Signature pages may be detached from the counterpart originals and attached to a single copy of this Agreement to physically form one (1) document.

15. **Severability.** If any provision of this Agreement or the application of this Agreement to any party to this Agreement or any other person is held to be invalid, void, or illegal, the remaining provisions shall nonetheless remain in full force and effect and shall not be affected by such invalidity or illegality.



IN WITNESS WHEREOF, SARH and the City have executed this Agreement as of the date first set forth above.

DATED: _____

San Antonio Regional Hospital

Harris F. Koenig, President and CEO

DATED: _____

City of Upland

By: _____
City Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On _____, before me, _____, a Notary Public, personally appeared _____, who 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.

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

WITNESS my hand and official seal.

Signature _____



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On _____, before me, _____, a Notary Public, personally appeared _____, who 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.

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

WITNESS my hand and official seal.

Signature _____



EXHIBIT A
DESCRIPTION OF THE PROPERTY

[TO BE ATTACHED]

A handwritten signature in blue ink, consisting of a stylized 'J' or 'I' followed by a cursive flourish.

EXHIBIT A
DESCRIPTION OF THE PROPERTY

[TO BE ATTACHED]



FORM OF FIRPTA AFFIDAVIT

To inform _____, (“**Transferee**”), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended (the “**Code**”), will not be required upon the transfer of certain real property to Transferee by _____ (“**Transferor**”), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. Transferor's U.S. employer identification number is _____; and
3. Transferor's address is _____.

Transferor understands that this Certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated as of: _____