

**CITY OF MONROE
RESOLUTION NO. 022/2018**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, APPROVING THE AMENDED AND RESTATED RESTRICTIVE COVENANT WITH PROVIDENCE HEALTH AND SERVICES-WASHINGTON FOR THE NORTH KELSEY SHORT PLAT; AND RATIFYING AND CONFIRMING ANY PREVIOUS CITY ACTION CONSISTENT WITH THIS APPROVAL

WHEREAS, on October 31, 2012, the City agreed, as part of a purchase and sale agreement, to restrict the permitted use of the city owned property commonly known as the "North Kelsey Short Plat" for the benefit of Providence Health and Services-Washington ("Providence"); and

WHEREAS, the original Restrictive Covenant filed, under Recording No. 201210311013, prohibited the use of parcels 280636-004-034-00 and 2701601-001-073-00 for "medical offices or any other medical uses" without the prior written consent of Providence; and

WHEREAS, the City further created Parcels 2 through 9 of North Kelsey Short Plat recorded under Snohomish County Recording No. 201210265003; and

WHEREAS, the City requested Providence amend the Restrictive Covenant to allow general dentistry, orthodontistry, periodontistry, alternative medicines such as acupuncture and other similar practices on Parcels 2 through 9 of the North Kelsey Short Plat; and

WHEREAS, the parties negotiated the following change to Section 1 Restrictive Covenant for City Property:

"The City Property is hereby and hereinafter subject to the terms, conditions, and provisions of this Covenant. Without the prior written consent of Providence or its successors and assigns, neither the City Property, nor any part of the City Property, shall be used for medical offices or any other medical uses except as expressly provided herein. Notwithstanding the above, nothing herein shall prohibit use of the City Property for uses (non-exclusive) such as a pharmacy; fitness center; cosmetology practice; retail sale of over-the-counter medical and health care supplies; and similar retail businesses; or for general dentistry; orthodontistry; periodontistry; endodontistry; prosthodontistry; yoga; exercise-related training; massage therapy; and acupuncture."; and

WHEREAS, the City Council held a public hearing on November 13, 2018, per RCW 35A.21.410 to allow individuals to provide testimony regarding the proposed action to remove, vacate, or extinguish a restrictive covenant from property owned by the code city.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Restrictive Covenant for City Property. Approve the Amended and Restated Restrictive Covenant with Providence Health and Services-Washington (Exhibit A) for Assessor's Tax Parcel ID Numbers 280636-004-035-00; 270601-001-150-00; 270601-001-151-00; 270601-001-152-00; 270601-001-153-00; 270601-001-154-00; 270601-001-155-00; 270601-001-156-00; and 270601-001-157-00, and to ratify and confirm any previous city action consistent with this approval.

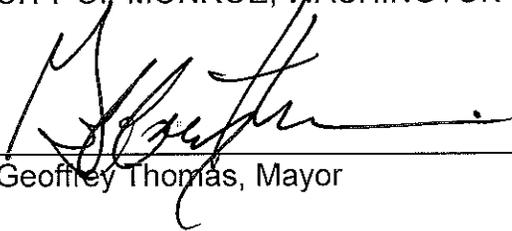
Section 2. Effective Date. This resolution shall take effect immediately upon passage.

Section 3. Ratification and Confirmation. Any prior actions taken consistent with this resolution are hereby ratified and confirmed.

ADOPTED by the City Council of the City of Monroe, at its regular meeting thereof, and APPROVED by the Mayor this 13th day of November, 2018.

Approved: November 13, 2018
Effective: November 13, 2018

CITY OF MONROE, WASHINGTON



Geoffrey Thomas, Mayor

(SEAL)

ATTEST:



Elizabeth M. Adkisson, MMC, City Clerk

When Recorded, Return to:

City of Monroe
Attention:
City Clerk
806 W Main Street
Monroe, WA 98272

AMENDED AND RESTATED RESTRICTIVE COVENANT

Reference to Related Documents:	201210311013
Grantor:	City of Monroe
Grantee:	Providence Health & Services-Washington
Legal Description (abbreviated):	North Kelsey Short Plat recorded under Snohomish County Recording No. 201210265003 Being a portion of the Southeast Quarter of Section 36, Township 28, Range 6 East, W.M. and the Northeast Quarter of Section 1, Township 27, Range 6 East, W.M.
Assessor's Tax Parcel ID #'s:	280636-004-035-00; 270601-001-150-00; 270601-001-151-00; 270601-001-152-00; 270601-001-153-00; 270601-001-154-00; 270601-001-155-00; 270601-001-156-00; and 270601-001-157-00 ; and

THIS AMENDED AND RESTATED RESTRICTIVE COVENANT (the "Covenant") is made this _____ day of July, 2018, by CITY OF MONROE, a Washington municipal corporation (the "City"), and approved by PROVIDENCE HEALTH AND SERVICES-WASHINGTON, a Washington nonprofit corporation ("Providence").

RECITALS

A. The City is the fee owner of that certain real property described in Exhibit A (the "City Property").

B. Providence is the owner of that certain real property described in Exhibit B (the "Providence Property"). The City is the former owner of the Providence Property.

C. In connection with and as a part of the consideration for Providence's purchase of the Providence Property from the City, the City agreed to restrict the permitted use of the City Property for the benefit of the Providence Property as further described below, by executing the original Covenant dated October 31, 2012 and filed under Recording No. 201210311013.

D. The City and Providence now mutually desire to amend and restate the Covenant in full as set forth herein.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City hereby amends and restates the Covenant in full and declares as follows:

1. Restrictive Covenant for City Property. The City Property is hereby and hereinafter subject to the terms, conditions, and provisions of this Covenant. Without the prior written consent of Providence or its successors and assigns, neither the City Property, nor any part of the City Property, shall be used for medical offices or any other medical uses except as expressly provided herein. Notwithstanding the above, nothing herein shall prohibit use of the City Property for uses (non exclusive) such as a pharmacy; fitness center; cosmetology practice; retail sale of over-the-counter medical and health care supplies; and similar retail businesses; or for general dentistry; orthodontistry; periodontistry; endodontistry; prosthodontistry; yoga; exercise-related training; massage therapy; and acupuncture.

2. Termination. The Covenant shall be enforceable by the owner of the Providence Property for so long as the Providence Property, or any portion thereof, is being used or leased for medical office or any other medical or healthcare related use. In recognition of the investment in the Property for medical or healthcare related use and to enable the owner of the Providence Property to find a replacement user, the Covenant shall continue to be enforceable by its terms for a period of three years after the cessation of any medical or healthcare related use at the Providence Property (such three-year period being referred to as the "Grace Period"). If, during the Grace Period, any portion of the Property is once again used or leased for medical office or any other medical or healthcare related use, the Exclusive Use Restriction shall remain enforceable and in full force and effect and the Grace Period shall begin again after cessation of the current medical or healthcare related use. If the Providence Property is no longer being used or leased for medical office or any other medical or healthcare related use for a continuous three year period, not including any periods of casualty, construction, reconstruction or remodeling, the Covenant shall terminate.

3. Attorneys' Fees. If a suit, action, arbitration or other proceeding of any nature is instituted in connection with any claim, controversy or dispute arising out of the Covenant or to interpret or enforce any rights, covenants, or obligations hereunder, the substantially prevailing party shall be entitled to recover attorney, paralegal, accountant and other expert fees and all other fees, cost and expenses incurred in connection

therewith, as determined by the mediator, arbitrator, or court, in addition to all other amounts provided by law.

4. Binding Effect. The Covenant shall run with the land including any future transfer, conveyance, division or partition of the City Property, and shall be binding on the owner of, and all parties having any right, title, or interest in, the City Property, their respective successors or assigns, and shall inure to the benefit of Providence and its successors and assigns, tenants and lessees.

5. Waiver. The failure of Providence at any time to require strict performance of any provision of the Covenant shall not in any way limit its right to enforce such provision at any time. Any waiver of any breach of the Covenant shall not be a waiver of any succeeding breach of the Covenant.

6. Modifications. The Covenant may only be amended, modified, or terminated (other than as provided in Section 2 above) by an agreement in writing, executed and acknowledged by Providence, its successor or assigns, the City, and the owner(s) of a majority of the square footage of the City Property.

7. Severability. Each provision of the Covenant shall be treated as a separate and independent clause. If any provision of the Covenant is unenforceable for any reason, such provision shall be deemed severed from the Covenant and shall not invalidate or impair the enforceability of any other provision contained herein.

8. Governing Law. The Covenant shall be construed and governed by the laws of the State of Washington.

9. Entire Agreement. This Amended and Restated Restrictive Covenant contains the entire declaration of the City with respect to the entire subject matter hereof, and there are no other representations, inducements, promises, or agreements, written or oral, express or implied. This Amended and Restated Restrictive Covenant supersedes any and all prior discussions, negotiations, commitments and understandings related to the subject matter hereof. There are no conditions to the effectiveness of this Amended and Restated Restrictive Covenant.

[Remainder of Page Intentionally Blank; Signature and Notary Acknowledgment Follow]

SIGNATURE PAGE (1) TO AMENDED AND RESTATED RESTRICTIVE COVENANT

IN WITNESS WHEREOF, the City and Providence have executed this Amended and Restated Restrictive Covenant as of the date first above written.

CITY OF MONROE, a Washington municipal corporation

By: _____
Geoffrey Thomas, Mayor

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the Mayor of the City of Monroe, a Washington municipal corporation, the entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Name: _____
NOTARY PUBLIC in and for the State of Washington
residing at: _____
My appointment expires: _____

SIGNATURE PAGE (2) TO AMENDED AND RESTATED RESTRICTIVE COVENANT

PROVIDENCE HEALTH AND SERVICES-
WASHINGTON, a Washington municipal
corporation

By: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of Providence Health and Services-Washington, a Washington nonprofit corporation, the entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Name: _____
NOTARY PUBLIC in and for the State of Washington
residing at: _____
My appointment expires: _____

EXHIBIT A

Legal Description of City Property

Parcels 2 through 9 of North Kelsey Short Plat recorded under Snohomish County Recording No. 201210265003.

Being a portion of the Southeast Quarter of Section 36, Township 28, Range 6 East, W.M. and the Northeast Quarter of Section 1, Township 27, Range 6 East, W.M.;

Situate in the County of Snohomish, State of Washington.

EXHIBIT B

Legal Description of Providence Property

Parcel 1 of North Kelsey Short Plat recorded under Snohomish County Recording No. 201210265003.

Being a portion of the Southeast Quarter of Section 36, Township 28, Range 6 East, W.M. and the Northeast Quarter of Section 1, Township 27, Range 6 East, W.M.;

Situate in the County of Snohomish, State of Washington.