



# Washington Township Hospital Development Corporation

2000 Mowry Avenue, Fremont, CA 94538-1716

## BOARD OF DIRECTORS' MEETING WASHINGTON TOWNSHIP HOSPITAL DEVELOPMENT CORPORATION

Friday, August 11, 2023 – 2:00 P.M.

2000 Mowry Avenue, Fremont, CA 94538

1<sup>st</sup> Floor, Executive Board Room and via Zoom

<https://us06web.zoom.us/j/82273048366?pwd=SjlZRmt3R1VldmVZNGZ2R0lsbUNrQT09>

Dial: + 1 877 336 1831 (US Toll Free)

Meeting ID: 681379

Passcode: 566276

### AGENDA

- |  | <b>PRESENTED BY:</b>   |
|--|--|
| <b>I. CALL TO ORDER</b>  | <i>Benn Sah, M.D.<br/>Board President</i>  |
| <b>II. ROLL CALL</b>   | <i>Diana Venegas<br/>Recording Secretary</i>   |
| <b>III. CONSIDERATION OF MINUTES OF<br/>April 28, 2023</b>                                       | <i>Motion Required</i>   |
| <b>IV. COMMUNICATIONS</b><br>A. Oral<br>B. Written   | <i>Benn Sah, M.D.<br/>Board President</i>  |
| <b>V. REPORTS</b><br><br>A. Chief Executive Officer Report<br><br>B. Financial Report            | <i>Kimberly Hartz<br/>Chief Executive Officer</i><br><br><i>Thomas McDonagh<br/>Vice President and<br/>Chief Financial Officer</i> |
| <b>VI. ADJOURN TO CLOSED SESSION</b><br><br>A. Consideration of Closed Minutes of April 28, 2023 | <i>Benn Sah, M.D.<br/>Board President</i><br><br><i>Motion Required</i>  |

B. Conference involving Trade Secrets pursuant to  
Health & Safety Code section 32106

- Strategic Planning

**VII. RECONVENE TO OPEN SESSION** *Benn Sah, M.D.*  
Report on *permissible actions* taken during Closed *Board President*  
Session

**VIII. ACTION ITEMS**

A. Review and Ratification of the Washington *Motion Required*  
Township Hospital Development Corporation Budget  
Estimate for Fiscal Year 2023/2024

B. Review and Ratification of the Washington *Motion Required*  
Township Medical Foundation Budget Estimate for  
Fiscal Year 2023/2024

C. Approval of Resolutions by Washington Township  
Development Corporation (DEVCO) DBA Washington  
Outpatient Rehabilitation Center (WORC) relating to:

1. Consideration of Resolution No. 56 *Motion Required*  
Professional Services Agreement with WORC Health

2. Consideration of Resolution No. 57 *Motion Required*  
Shareholder and Stock Transfer Restriction Agreement  
with WORC Health and Albert Brooks, M.D.

**IX. ADJOURNMENT** *Benn Sah, M.D.*  
*Board President*

**NEXT MEETING: MONDAY, OCTOBER 30, 2023 - 7:30 A.M. - 9:00 A.M.**

*In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact the Recording Secretary at (510) 818-7839. Notification two working days prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting.*

**Washington Township Hospital Development Corporation**

**April 28, 2023**

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The meeting of the Board of Directors of the Washington Township Hospital Development Corporation was held on April 28, 2023, via in-person and Zoom. Director Sah called the meeting to order at 7:34 a.m.

**CALL TO ORDER**

Directors present: Benn Sah, M.D., Russ Blowers, Pauline Weaver and Steven Chan, D.D.S

**ROLL CALL**

Directors absent: Sue Querner

Also present: Kimberly Hartz, Chief Executive Officer; Tina Nunez, Vice President, Ambulatory Care and Administrative Services; Tom McDonagh, Vice President and Chief Financial Officer; Walter Choto, Chief, Ambulatory Care Services; Paul Kozachenko, Attorney; and Diana Venegas, Recording Secretary

Guest: Kristin Ferguson, Chief of Compliance

A motion was made by Director Blowers, seconded by Director Chan, to approve the minutes of the meeting of January 30, 2023

**CONSIDERATION  
OF MINUTES OF  
January 30, 2023**

Roll call was taken:

- Benn Sah, M.D. – aye
- Russ Blowers – aye
- Pauline Weaver – aye
- Steven Chan, D.D.S. – aye
- Sue Querner (absent)

The motion passed.

Ms. Hartz noted that there were no written or oral public communications.

**COMMUNICATIONS**

Introduction to new Vice President and CFO

**CHIEF EXECUTIVE  
OFFICER REPORT**

Ms. Hartz introduced Tom McDonagh, who has assumed the role of Vice President and Chief Financial Officer after Chris Henry's retirement.

COVID Masking Policy Update

Beginning on April 20, 2023, universal masking will no longer be required for all employees, patients and visitors, except at the Radiation Oncology Center and Infusion Center (immunocompromised patients) where universal masking will continue to be required. However, in those areas where universal masking will be optional, WHHS will strongly recommend the continued use of masks. Masks will still be provided at all locations.

### COVID Pre-Procedure Testing Policy Update

Currently, pre-procedure testing is not required for patients of the Washington Outpatient Surgery Center, Peninsula Surgery Center and the Women's Center. In mid-May WHHS will lift the COVID mandate testing further and will consider removing testing completely in the near future.

### Visitors' Policy Update

As of April 20, 2023, WHHS will be opening the main lobby area of the Hospital for visitors. WHHS will continue to allow only two visitors at a time to patient rooms. In the future, WHHS will consider opening up the lobby areas to visitors in the Morris Hyman Pavilion.

### Trauma Center Update

- Recruiting

The search for a Trauma Medical Director (TMD) is well underway. This physician will be responsible for overseeing the development, coordination, implementation, and evaluation of all trauma center activities. WHHS hopes to have a TMD on board by this fall. WHHS is also recruiting a Trauma Program Director (TPD). This position is for a registered nurse who will work with the TMD, hospital administration, physicians, nurses, and ancillary staff to manage all aspects of trauma care. WHHS is scheduled to fill this position by late summer.

- Training

The Emergency Department has begun sending nurses to specific training courses, and a comprehensive education plan is being developed to ensure that all frontline staff are prepared and equipped to care for trauma patients. The Trauma Medical Staff Development Committee continues its work to ensure that the necessary physician components of a high-quality trauma service will be in place and operational in the coming year.

### Joint Commission

Ms. Hartz shared that WHHS is in the window for the Joint Commission unannounced survey.

### New Position: Chief of Diversity, Equity and Inclusion

Gisela Hernandez, Director of Community Relations for the past 11 years, has accepted the position as Chief of Diversity, Equity and Inclusion. In this role, Gisela will lead our DEI strategic development work to help us foster a stronger, more

inclusive culture where our team can reach their full potential, and all patients receive high-quality culturally competent care.

Mr. McDonagh reviewed the DEVCO Financial Report for February 2023.

Director Weaver made a motion to approve Resolution No. 52, relating to the Appointment of Thomas McDonagh, Chief Financial Officer, to the Peninsula Surgical Partnership, LLC (PSP) Board. Director Chan seconded the motion.

Roll call was taken:

- Benn Sah, M.D. – aye
- Steven Chan, D.D.S. – aye
- Russ Blowers – aye
- Pauline Weaver – aye
- Sue Querner (absent)

The motion carried.

Director Weaver made a motion to approve Resolution No. 53, relating to the Appointment of Thomas McDonagh, Chief Financial Officer, to the Washington Outpatient Surgery Center (WOSC) Board. Director Chan seconded the motion.

Roll call was taken:

- Benn Sah, M.D. – aye
- Steven Chan, D.D.S. – aye
- Russ Blowers – aye
- Pauline Weaver – aye
- Sue Querner (absent)

The motion carried.

Director Weaver made a motion to approve Resolution No. 54, relating to the Appointment of Thomas McDonagh, Chief Financial Officer, to the Washington Township Medical Foundation (WTMF) Board. Director Chan seconded the motion.

Roll call was taken:

- Benn Sah, M.D. – aye
- Steven Chan, D.D.S. – aye
- Russ Blowers – aye
- Pauline Weaver – aye
- Sue Querner (absent)

The motion carried.

***FINANCIAL REPORT***

***ACTION ITEM:  
Consideration of  
Resolution No. 52  
Appointment of Thomas  
McDonagh, Chief  
Financial Officer, to the  
Peninsula Surgical  
Partnership, LLC (PSP)  
Board***

***ACTION ITEM:  
Consideration of  
Resolution No. 53  
Appointment of Thomas  
McDonagh, Chief  
Financial Officer to the  
Washington Outpatient  
Surgery Center (WOSC)  
Board***

***ACTION ITEM:  
Consideration of  
Resolution No. 54  
Appointment of Thomas  
McDonagh, Chief  
Financial Officer to the  
Washington Township  
Medical Foundation  
(WTMF) Board***

Director Blowers made a motion to approve Resolution No. 55, relating to the removal of Chris Henry and the addition of Thomas McDonagh as an authorized signer. Director Weaver seconded the motion.

***ACTION ITEM:  
Consideration of  
Resolution No. 55  
Corporate Resolution  
Fremont Bank  
Signature Authority  
Change for the  
Washington Township  
Hospital Development  
Corporation***

Roll call was taken:

- Benn Sah, M.D. – aye
- Steven Chan, D.D.S. – aye
- Russ Blowers – aye
- Pauline Weaver - aye
- Sue Querner (absent)

The motion carried.

Paul Kozanchenko presented the End of Public Health Emergency and New Brown Act for Remote Attendees. Director Weaver made a motion to approve Board Policy 0001, relating to the Use of Teleconferencing during Board Meetings. Director Chan seconded the motion.

***ACTION ITEM:  
Consideration of Board  
Policy 0001  
Use of Teleconferencing  
during Board Meetings***

Roll call was taken:

- Benn Sah, M.D. – aye
- Steven Chan, D.D.S. – aye
- Russ Blowers – aye
- Pauline Weaver – aye
- Sue Querner (absent)

The motion carried.

Director Weaver made a motion to approve the Approval of Future Board Meetings Revert Back to Live Meetings. Director Chan seconded the motion.

***ACTION ITEM:  
Consideration of  
Approval of Future  
Board Meetings Revert  
Back to Live Meetings.***

Roll call was taken:

- Benn Sah, M.D. – aye
- Steven Chan, D.D.S. – aye
- Russ Blowers – aye
- Pauline Weaver – aye
- Sue Querner (absent)

The motion carried.

Director Sah adjourned the meeting to closed session at 8:37am.

***ADJOURN TO  
CLOSED SESSION***

Director Sah stated that the public has a right to know what, if any, reportable action takes place during closed session. The public was informed they could contact the Recording Secretary, later in the day, on April 28, 2023 to find out what reportable actions were taken. Director Sah indicated that the minutes of this meeting will

**Washington Township Hospital Development Corporation**

**April 28, 2023**

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reflect any reportable actions.

Director Sah reconvened to open session at 9:02 a.m. and reported that the Board approved the Closed Session Minutes of January 30, 2023 by a unanimous vote of all Directors present.

***RECONVENE TO  
OPEN SESSION***

- Benn Sah, M.D. – aye
- Russ Blowers – aye
- Pauline Weaver. – aye
- Steven Chan, D.D.S. – aye
- Sue Querner (absent)

There being no further business, Director Sah adjourned the meeting at 9:04 a.m.

***ADJOURNMENT***

The next regularly scheduled meeting is July 31, 2023, at 7:30 a.m.

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Benn Sah, M.D.  
President

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Steven Chan, D.D.S.  
Secretary

**Washington Township Hospital  
Development Corporation  
Summary Income Statement  
May 2023**

Current Month				Year - To - Date			
Actual	Budget	Favorable/(Unfavorable)		Actual	Budget	Favorable/(Unfavorable)	
		Variance	%			Variance	%
2,129	2,017	112	5.6%	20,661	21,299	(638)	(3.0%)
132	79	53	67.1%	2,802	1,329	1,473	110.8%
2,261	2,096	165	7.9%	23,463	22,628	835	3.7%
8,055,651	6,993,081	1,062,570	15.2%	69,924,030	69,061,430	862,600	1.2%
791,121	803,858	(12,737)	(1.6%)	11,750,132	9,153,227	2,596,905	28.4%
<b>8,846,772</b>	<b>7,796,939</b>	<b>1,049,833</b>	<b>13.5%</b>	<b>81,674,162</b>	<b>78,214,657</b>	<b>3,459,505</b>	<b>4.4%</b>
<b>4,803,528</b>	<b>4,000,317</b>	<b>(803,211)</b>	<b>(20.1%)</b>	<b>43,154,345</b>	<b>38,521,147</b>	<b>(4,633,198)</b>	<b>(12.0%)</b>
59.6%	57.2%	(2.4%)		61.7%	55.8%	(5.9%)	
<b>4,043,244</b>	<b>3,796,622</b>	<b>246,622</b>	<b>6.5%</b>	<b>38,519,817</b>	<b>39,693,510</b>	<b>(1,173,693)</b>	<b>(3.0%)</b>
1,044,620	1,052,300	7,680	0.7%	11,391,766	11,300,613	(91,153)	(0.8%)
300,555	303,831	3,276	1.1%	3,294,900	3,318,044	23,144	0.7%
704,966	860,739	155,773	18.1%	6,555,659	7,828,868	1,273,209	16.3%
110,666	92,224	(18,442)	(20.0%)	2,945,006	1,529,120	(1,415,886)	(92.6%)
269,473	379,000	109,527	28.9%	3,506,371	4,177,536	671,165	16.1%
144,497	93,632	(50,865)	(54.3%)	1,907,452	1,170,813	(736,639)	(62.9%)
24,129	26,468	2,339	8.8%	288,451	299,490	11,039	3.7%
529,751	502,232	(27,519)	(5.5%)	5,735,740	5,533,969	(201,771)	(3.6%)
202,372	192,951	(9,421)	(4.9%)	2,407,803	2,135,701	(272,102)	(12.7%)
<b>3,331,029</b>	<b>3,503,377</b>	<b>172,348</b>	<b>4.9%</b>	<b>38,033,148</b>	<b>37,294,154</b>	<b>(738,994)</b>	<b>(2.0%)</b>
<b>712,215</b>	<b>293,245</b>	<b>418,970</b>	<b>142.9%</b>	<b>486,669</b>	<b>2,399,356</b>	<b>(1,912,687)</b>	<b>(79.7%)</b>
<b>293,129</b>	<b>84,002</b>	<b>(209,127)</b>	<b>(249.0%)</b>	<b>678,902</b>	<b>1,855,831</b>	<b>1,176,929</b>	<b>63.4%</b>
<b>419,086</b>	<b>209,243</b>	<b>209,843</b>	<b>100.3%</b>	<b>(192,233)</b>	<b>543,525</b>	<b>(735,758)</b>	<b>(135.4%)</b>





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# Memorandum

**DATE:** August 11, 2023

**TO:** Board of Directors  
Washington Township Hospital Development Corporation

**FROM:** Kimberly Hartz  
Chief Executive Officer

**SUBJECT:** **Washington Township Hospital Development Corporation  
Budget Estimate FY24**

The Budget Estimate for Fiscal Year 2024 for the Washington Township Hospital Development Corporation (DEVCO) is being presented for the Board's review and ratification. The Budget Estimate for DEVCO was included in the District's consolidated Budget which was approved by the District Board of Directors on June 14, 2023.

Over the past year, DEVCO, like many other entities, experienced challenges in recruiting and retaining staff. To continue to remain competitive and to keep pace with the market, the FY24 budget has a total salary increase of 13.7%, which includes the impact of the projected increase in volume.

In February 2023, The Washington Radiation Oncology Center transitioned to a hospital outpatient department and is now part of the WHHS Joint Venture with UCSF. The strategic vision for this oncology partnership is to combine the strengths of these two organizations to be the leading cancer program in the region and to provide high-quality care to oncology patients closer to their home. In FY23, The Peninsula Surgery Center has executed all of their payor contracts, and we are anticipating significant growth in FY24. WOSC Napa budget will reflect closure as of 8/30/2023. Management is in discussions with a physician group in Napa to create a new joint venture. If these discussions come to fruition, a revised budget will be brought to the Board when the discussion with the physicians becomes solidified into a new agreement.

Our continued commitment to these programs through the Development Corporation provides an important mechanism in helping us to meet our goal of improving and maintaining the health status of the residents of the District.

This budget takes into account inflation, contracted changes, and operational changes. For the FY24, the Washington Township Hospital Development Corporation is budgeted as follows:

Visits are budgeted at **27,074**  
Total Operating Revenue is budgeted at **\$44,205,400**  
Total Expenses are budgeted at **\$42,167,860**  
Net income is budgeted at **\$790,225**  
Capital request is **\$415,559**

I am requesting that the Washington Township Hospital Development Corporation Board of Directors authorize the Chief Executive Officer to proceed with the adoption of the Washington Township Hospital Development Corporation FY24 Budget Estimate.

WASHINGTON TOWNSHIP HOSPITAL  
DEVELOPMENT CORPORATION  
BUDGET ESTIMATE  
FY 24

CONSOLIDATED INCOME STATEMENT - EXECUTIVE SUMMARY

	Budget Estimate FY 24	Projected FY 23	Change	Percent Change
<b>Total Visits</b>	27,074	23,399	3,675	15.7%
<b>Revenue</b>				
Gross Patient Revenue	89,466,061	68,271,749	21,194,312	31.0%
Contractual Allowances	(55,282,999)	(43,140,167)	(12,142,832)	-28.1%
<b>Total Operating Revenue</b>	<b>44,205,400</b>	<b>35,817,279</b>	<b>8,388,121</b>	<b>23.4%</b>
<b>Expenses</b>				
Salaries and Benefits	17,725,454	15,128,699	(2,596,755)	-17.2%
Supplies	9,113,379	7,071,666	(2,041,712)	-28.9%
Purchased Services	3,331,561	3,222,759	(108,802)	-3.4%
Building Lease	6,341,984	6,243,100	(98,885)	-1.6%
All Other Expenses	5,655,482	5,867,113	211,631	3.6%
<b>Total Expense</b>	<b>42,167,860</b>	<b>37,533,337</b>	<b>(4,634,523)</b>	<b>-12.3%</b>
<b>Income from Operations</b>	<b>2,037,540</b>	<b>(1,716,057)</b>	<b>3,753,597</b>	<b>218.7%</b>
Minority Interest	1,247,315	(271,285)	(1,518,600)	-559.8%
<b>Net Income</b>	<b>790,225</b>	<b>(1,444,773)</b>	<b>2,234,998</b>	<b>154.7%</b>

WASHINGTON TOWNSHIP HOSPITAL  
DEVELOPMENT CORPORATION  
BUDGET ESTIMATE  
FY 24

CAPITAL BUDGET

Washington Outpatient Surgery Center Capital Budget Request	Total Amount
IT Upgrade	64,000
TIVATO 700 Systems (Microscope)	136,679
gi4000ESU (Irrigator cautery)	61,429
Stryker System	5,952
1000 Scope Buddy	4,209
Skytron OR Table Accessories	6,230
Ora	37,485
FLEXCARTFLAT	99,575
<b>Total Capital Request</b>	<b>415,559</b>

Note: The Capital Request submitted previously to the Washington Township Health Care District Board of Directors and WOSC Board was \$412,074, and it did not include tax shipping and handling for Ora.

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# Memorandum

**DATE:** August 1, 2023

**TO:** Board of Directors  
Washington Township Hospital Development Corporation

**FROM:** Kimberly Hartz  
Chief Executive Officer

**SUBJECT: WTMF Budget Estimate FY 2023/24**

The Budget Estimate for FY 2023/24 for the Washington Township Medical Foundation (WTMF) is being presented for the Board's review and ratification. The Budget Estimate for WTMF was included in the District's Consolidated Budget which was approved by the District Board of Directors on June 14, 2023.

This past year, WTMF operated in a challenging environment. Efforts continue to recover from the effects of the pandemic with a focus in FY 2023/24 on four strategic priority pillars: strengthening our physician leadership infrastructure, building a service excellence culture, improving the patient experience and continuing to build our quality infrastructure and program. The Foundation remains relevant to our community by providing a wide array of specialties that allow our patients to receive medical treatment close to home. WTMF continues to grow through expanding the patient panels of existing providers as well as adding new providers in service areas that are needed to open up patient access.

The FY 2023/24 budget takes into account inflation, contracted changes, staffing changes, budgetary changes and market and strategic growth for WTMF. WTMF continues to face recruitment challenges. The largest increase in the budget is related to PSA costs, salaries, wages and benefits due to inflation and market based adjustments of \$9.6 million partially offset by an increase in total revenue of \$9.0 million. The budget also includes infrastructure expense related to the Quality Improvement Pool (QIP) Program which is an important Healthcare System quality initiative that is focused on improving the quality of care for WTMF patients.

For the FY 2023/24, Washington Township Medical Foundation budget estimate is as follows:

Visits are budgeted at 241,355  
Total Operating Revenue is budgeted at \$60,447,071  
Total Expenses are budgeted at \$90,334,495  
Net Loss is budgeted at (\$29,887,424)  
Total Capital Budget of \$243,913

This budget reflects a medical foundation that continues to grow and is committed to meeting the health care needs of the community through the provision of high quality, cost effective care locally.

Washington Township Medical Foundation is helping to better strengthen and position Washington Hospital Healthcare System and local physicians in this rapidly changing health care landscape at both the state and federal levels in an environment driven by great uncertainty. Washington Township Medical Foundation provides opportunities for care coordination and collaboration that is important to the current and future success of Washington Hospital Healthcare System. WTMF also creates a vehicle that allows us to continue to successfully recruit primary care and specialist physicians to our community and offers community physicians another option for practicing medicine so that the health care needs of the community can be met now and into the future.

Our continued commitment to Washington Township Medical Foundation provides an important strategic initiative in helping us meet our goal of providing local access to quality care along with improving and maintaining the health status of the residents of our District.

# WTMF FY 2024

## Consolidated Income Statement

	FY 2024 Budget	FY 2023 Projected	Change	% Change
Total Visits	241,355	220,915	20,440	9.3%
<b><u>OPERATING REVENUE</u></b>				
Gross Patient Revenue	\$ 85,077,193	\$ 75,909,461	\$ 9,167,732	12.1%
Contractual Adjustments	(42,467,878)	(40,120,503)	(2,347,375)	-5.9%
Net Patient Revenue	\$ 42,609,315	\$ 35,788,958	\$ 6,820,357	19.1%
Contractual Adjustments %	-49.9%	-52.9%	-2.9%	
Other Non-Patient Revenue**	17,837,756	15,683,284	2,154,472	13.7%
Total Operating Revenue	\$ 60,447,071	\$ 51,472,242	\$ 8,974,829	17.4%
<b><u>OPERATING EXPENSES</u></b>				
PSA Costs	\$ 54,081,999	\$ 47,218,613	\$ (6,863,386)	-14.5%
Salaries & Wages	16,687,115	14,842,358	(1,844,757)	-12.4%
Benefits	5,292,052	4,401,941	(890,111)	-20.2%
Professional & Purchased Services	3,582,972	3,237,995	(344,977)	-10.7%
Supplies	4,009,877	3,517,261	(492,616)	-14.0%
Occupancy Costs	3,758,936	3,504,577	(254,359)	-7.3%
Depreciation	356,029	235,381	(120,648)	-51.3%
Other Expense*	2,565,515	2,791,280	225,765	8.1%
Total Operating Expense	\$ 90,334,495	\$ 79,749,406	\$ (10,585,089)	-13.3%
<b>NET PROFIT / (LOSS)</b>	<b>\$ (29,887,424)</b>	<b>\$ (28,277,164)</b>	<b>\$ (1,610,260)</b>	<b>-5.7%</b>

\* Other Expense includes: Insurance, Marketing, Bank Charges, Interpreting, Record Storage, Equip Rent, Taxes & Licenses

\*\* Other Non Patient Revenue includes: Incentive Rev, Hospitalist Rev, Meaningful Use Rev, WTMG Management Fees, Lean Phys Champion, and PAMF Revenue

**WTMF FY 2024  
Capital Budget**

Site	Item Description	Cost
<b><u>Tenant Improvements</u></b>		
Orthopedics	Waiting Room/Lobby Carpet needs to be replaced	\$ 5,264
Patient Contact Center	Purchase additional cubicles for expansion	4,108
<b>Total Tenant Improvements</b>		<b>\$ 9,371</b>
<b><u>Equipment</u></b>		
ENT	GE Venue Fit R4 Ultrasound Machine and printer	\$ 37,311
Orthopedics	Replace current DR system with a new DR system for X-ray machine	36,069
ENT	Cabinetry Replacement	26,070
Urology	UroCuff Pro Systems	24,076
ENT	Two S 4000 Exam Chairs and one SMR Maxi Cabinet	24,015
Primary Care	Exam Tables for Suite 130	17,895
Womens Health	Ritter 225 exam tables	14,086
Vascular	Procedure Chair	13,238
Primary Care	Ritter 224 Exam Tables	11,477
Womens Health	MedGyn 106 high Definition digital video colposcope	9,999
Gastroenterology	Ritter 224 exam table	5,739
Primary Care	Philips Pagewriter TC30 Electrocardiograph	5,480
Primary Care	Philips Pagewriter TC30 Electrocardiograph	5,480
Pediatrics	Blood Lead Analyzer and Test Kit LeadCare II	3,605
<b>Total Equipment</b>		<b>\$ 234,541</b>
<b>Total Capital Budget</b>		<b>\$ 243,913</b>





Washington Hospital  
Healthcare System

S I N C E 1 9 4 8

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## Memorandum

**DATE:** August 11, 2023

**TO:** Board of Directors  
Washington Township Hospital Development Corporation

**FROM:** Kimberly Hartz, Chief Executive Officer

**SUBJECT:** Resolution No. 56 Professional Services Agreement with WORC Health

Washington Township Hospital Development Corporation, a California nonprofit public benefit corporation (“DEVCO”) dba Washington Outpatient Rehabilitation Center (“WORC”) currently provides comprehensive physical and occupational therapy and related rehabilitation services (“Services”) to patients of WORC (“WORC Patients”) served by Washington Hospital Healthcare System (the “District”) through: 1) its leasing arrangement with Judy Madrigal & Associates, Inc., a California Corporation (“JMA”) pursuant to which JMA provides professional physical therapists and occupational therapists to provide Services to WORC Patients; and 2) its contract with the District for the provision of certain management services required by WORC that relate to the Services provided to WORC patients.

WORC now desires to transfer the day-to-day operations of WORC, with respect to the provision of Services to WORC Patients, from WORC to WORC Health, which is a California professional medical corporation, thereby allowing WORC to enter into a professional services agreement with WORC Health pursuant to which WORC Health will provide professional physical and occupational therapy services and professional supervision relating to Services provided to WORC patients (the “Professional Services Agreement”).

It is requested that the DEVCO Board of Directors approve Board Resolution No. 56 authorizing DEVCO dba WORC to execute and enter into the Professional Services Agreement with WORC Health.

**RESOLUTION NO. 56  
RESOLUTION OF THE BOARD OF DIRECTORS OF  
WASHINGTON TOWNSHIP HOSPITAL DEVELOPMENT CORPORATION  
("DEVCO") DBA WASHINGTON OUTPATIENT REHABILITATION CENTER  
("WORC") AUTHORIZING DEVCO TO EXECUTE AND ENTER INTO A  
PROFESSIONAL SERVICES AGREEMENT WITH WORC HEALTH**

WHEREAS, Washington Township Hospital Development Corporation, a California nonprofit public benefit corporation ("DEVCO") dba Washington Outpatient Rehabilitation Center ("WORC") provides comprehensive physical and occupational therapy and related rehabilitation services ("Services") to WORC patients;

WHEREAS, DEVCO believes that it is in the best interest of WORC that WORC transfer the day-to-day operations of WORC, with respect to the provision of Services to WORC Patients, from WORC to WORC Health, which is a California professional medical corporation, thereby allowing WORC to enter into a professional services agreement with WORC Health pursuant to which WORC Health will provide professional physical and occupational therapy services and related professional supervision relating the Services provided to WORC patients (the "Professional Services Agreement").

WHEREAS, attached to this Resolution is the proposed Professional Services Agreement by and between DEVCO and the WORC Health (the "PSA")

NOW, THEREFORE, be it resolved that:

1. The Chief Executive Officer is hereby authorized to execute and enter into the PSA substantially in the form attached to this Resolution.
2. The Chief Executive Officer is hereby authorized to take any and all actions necessary to execute any and all instruments and do any and all things deemed by her to be necessary or desirable to carry out the intent and purposes of the foregoing Resolution.
3. This Resolution shall be filed in the minute book of the DEVCO and become a part of the records of DEVCO.

Passed and adopted by the Board of Directors of the Washington Township Hospital Development Corporation this eleventh (11<sup>th</sup>) day of August 2023 by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
RECUSAL: \_\_\_\_\_

\_\_\_\_\_  
Benn Sah, MD  
President, Board of Directors  
Washington Township Hospital  
Development Corporation

\_\_\_\_\_  
Steven Chan, DDS  
Secretary, Board of Directors  
Washington Township Hospital  
Development Corporation

**WORC HEALTH  
AT THE WASHINGTON OUTPATIENT  
REHABILITATION CENTER  
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (the “Clinic PSA” or “Agreement”) is made and entered into, and shall be deemed effective, as of September 1, 2023 (the “Effective Date”), by and between WASHINGTON TOWNSHIP HOSPITAL DEVELOPMENT CORPORATION, a California public benefit corporation and doing business as WORC (“DEVCO”), and WORC HEALTH, a California professional medical corporation (“WORC Health”). DEVCO and WORC Health are sometimes collectively referred to herein as the “Parties” and each individually as a “Party.”

**RECITALS**

WHEREAS, DEVCO is a public benefit corporation, exempt from taxation pursuant to Code Section 501(c)(3), affiliated with the Washington Hospital Healthcare System (sometimes referred to herein as the “District” or the “Hospital”) which transacts business for the benefit of the District through affiliated nonprofit corporations to deliver healthcare services through various nonprofit organizations, including the Washington Outpatient Rehabilitation Center (“WORC” or “Clinic”) and requires medical professional, related ancillary services and non-clinical administrative services.

WHEREAS, the Clinic is operated by DEVCO to serve patients outpatient physical therapy and outpatient occupational therapy needs. The Clinic is exempt from clinic licensure pursuant to California Health & Safety Code Section 1206(d) or Section 1206(l).

WHEREAS, DEVCO desires to retain WORC Health to provide certain professional services related to the operation of Clinic through leasing physical therapists, occupational therapists, physical therapy assistants and occupational therapy assistants who are duly licensed and/or certified, as applicable, to provide professional medical services in the State of California, described herein as (collectively, “Therapists”).

WHEREAS, WORC Health is a California professional corporation that employs or contracts with health professionals and desires to provide to DEVCO certain services as specifically described herein (“Services”).

WHEREAS, WORC Health also employs or contracts with physicians, including without limitation Albert Brooks, M.D., who is duly licensed and authorized to practice medicine in the State of California, to serve as the agent on its behalf in the provision of specialized professional medical services in the provision of physical and occupational therapy (“Associate(s)").

WHEREAS, WORC Health has appointed Albert Brooks, M.D. to serve as the Medical Director of the Clinic (“Medical Director”) and may change the Medical Director from time to time after first consulting with DEVCO prior to each change.

WHEREAS, as of the Effective Date hereof, Medical Director is the sole shareholder of WORC Health and shall be responsible for carrying out WORC Health's Administrative Responsibilities as described in Section 5.3 hereto.

NOW, THEREFORE, in consideration of the mutual agreements set forth below, the Parties agree as follows:

## **ARTICLE I SERVICES AND HOURS**

**1.1** Clinic Commencement Date. The Parties hereto hereby acknowledge and agree that the Clinic shall commence operations and be available for patient care as soon as reasonably possible following the Effective Date hereof (the "Clinic Commencement Date").

**1.2** Services. During the term of this Agreement, commencing as of the Clinic Commencement Date, WORC Health shall provide, exclusively through the personal services of Albert Brooks, M.D. and other Associates approved in advance by DEVCO, such professional medical services in and for the Clinic to patients of WORC Health as set forth in Exhibit 1.2 (Exhibit 1.2 is attached hereto and incorporated herein by this reference) and as may be assigned to WORC Health by DEVCO, and mutually approved by the Parties hereto, during scheduled working hours (as defined in Section 1.3 below).

**1.3** Hours. WORC Health shall provide professional medical services hereunder on such days and hours as set forth in Exhibit 1.3 (Exhibit 1.3 is attached hereto and incorporated herein by this reference).

## **ARTICLE II INDEPENDENT CONTRACTOR STATUS**

**2.1** Independent Contractors. In the performance of professional medical services under this Clinic PSA, WORC Health (and Associate as its agents) are at all times each acting and performing as an independent contractor with, and not an employee, joint venturer, partner, or lessee of, DEVCO or the Center. Except as otherwise set forth in this Clinic PSA, DEVCO shall neither have nor exercise any control or direction over the methods by which WORC Health or any Associate shall perform such professional medical services hereunder. The sole interest of DEVCO is to assure that such professional medical services are performed in a competent, appropriate and satisfactory manner. In furtherance of the independent status of the Parties hereunder, neither WORC Health nor any Associate shall be deemed to be agents of DEVCO or the Center in the performance of this Agreement. In this regard, while performing professional medical services hereunder, neither WORC Health nor any Associate shall hold themselves out as officers, agents or employees of DEVCO or WORC Health, and each of them shall take all reasonable steps to disavow such status or relationship, as appropriate.

**2.2** No Claims or Withholdings. Neither WORC Health nor any Associate shall have any claim under this Clinic PSA against DEVCO or the Clinic for Workers' Compensation, vacation pay, sick leave, retirement benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits, or any other employee benefits, all of which shall be the sole responsibility of WORC Health or such Associate, as appropriate. DEVCO shall not withhold or

pay on behalf of WORC Health or any Associate pursuant to this Clinic PSA any sums for income tax, unemployment insurance, Social Security or any other similar sums. Rather, all such withholdings or payments shall be the sole responsibility of WORC Health or such Associate, as appropriate. WORC Health shall be solely responsible for all compensation owed to its employees and contractors.

### **ARTICLE III BILLING AND COLLECTION**

#### **3.1 Billing and Collection for Hospital Services.**

(a) DEVCO shall be solely entitled and responsible for the billing and collection of all fees and charges (collectively, "Clinic Revenue") relating to any and all Clinic services provided to Clinic patients, including without limitation any and all Clinic facility, technical and other institutional services provided by or on behalf of DEVCO and WORC Health, but specifically excluding (except as otherwise provided hereinbelow) any and all professional medical services provided by WORC Health through Associate hereunder, (collectively, "Clinic Services"); and WORC Health hereby agrees, with respect to any and all such Clinic Services, that (i) neither WORC Health nor any Associate shall bill, collect, file claims for payment with, or otherwise seek payment from any WORC Health patients, third-party payors or any other persons or entities and (ii) any and all rights of WORC Health and Associate to bill, collect or otherwise seek payment with respect to such Clinic Services are hereby assigned by WORC Health and Associate to DEVCO in accordance with applicable state and federal laws and the assignment provisions set forth in Section 3.2 below.

(b) DEVCO shall also be solely entitled and responsible for establishing and modifying from time-to-time any schedule of fees and charges for any and all Clinic Services provided in the Clinic or elsewhere. It is hereby expressly understood by the Parties hereto that the extent to which DEVCO will endeavor to collect any such fees and charges, including without limitation the methods of collecting, writing off or settling disputes with respect thereto, shall at all times hereunder be the sole responsibility of DEVCO. With regard to any and all Services provided in the Clinic or elsewhere at the Clinic, WORC Health shall keep and furnish to DEVCO, on a timely basis or as otherwise reasonably requested by DEVCO, all documents, opinions, diagnoses, recommendations, and other evidence and records necessary for the purpose of supporting any and all fees charged and/or billed for any and all Clinic Services provided to WORC Health patients who are treated, seen or otherwise under the care of WORC Health or any Associate in the Clinic.

(c) Without limiting in any way the enforceability or effect of the remaining provisions set forth in this Article III, the Parties also acknowledge and agree that nothing contained in this Clinic PSA shall be interpreted or deemed to grant DEVCO any rights or interest of any kind to or in any fees, charges, collections or other revenues to which WORC Health may be entitled in the conduct of their business affairs unrelated to the performance of this Agreement (collectively, "WORC Health Unrelated Revenue"), and DEVCO shall ensure that any WORC Health Unrelated Revenue mistakenly or improperly delivered to or received by DEVCO or WORC Health shall be turned over immediately to WORC Health or other authorized third Parties as may be requested by WORC Health or otherwise required by law.

### **3.2** Assignment of Fees for Clinic Services.

**(a)** The Parties hereby acknowledge and agree that all Clinic Revenue, including without limitation any and all accounts receivable with respect to such Clinic Revenue and any other rights to or interests in such Clinic Revenue, shall be and remain at all times hereunder the sole property of DEVCO. Accordingly, to the extent allowable by applicable state and federal law, WORC Health and Associate hereby assign and shall immediately turn over and transfer directly to DEVCO all fees and other payments that are collected and received by or on behalf of WORC Health or Associate (including without limitation any and all rights to such fees and payments and the collection thereof) with regard to the provision of any and all Clinic Services. WORC Health and Associate shall prepare and execute all documents on a timely basis and otherwise fully cooperate with DEVCO and any third-party payors as reasonably required to implement and give full effect to the assignment provisions set forth in this Section 3.2(a).

### **3.3** Billing and Collection for Professional Medical Services.

**(a)** Services provided by WORC Health and Associate hereunder shall constitute professional medical services to the extent that such services:

- (i) Are personally furnished for an individual patient by a licensed therapist;
- (ii) Ordinarily require performance by a licensed therapist ; and
- (iii) Contribute directly to the diagnosis or treatment of an individual patient.

**(b)** Except for and subject to those provisions to the contrary contained in Section 3.2 above and Sections 3.4 and 3.5 below, WORC Health shall be responsible for, and solely entitled to, billing and collection of the fees for all professional medical services, as assigned to WORC Health by DEVCO from time-to-time in accordance with Exhibits 1.2 and 1.3 attached hereto, that are provided by WORC Health through Associate pursuant to this Clinic PSA.

**(c)** WORC Health hereby acknowledges and agrees that the fees to be charged by WORC Health for any and all professional medical services rendered by WORC Health through Associate hereunder at the Clinic (“WORC Health’s Fees”) shall be in accordance with the usual and customary fees charged for similar services in the immediate service area surrounding the Clinic. In this regard, WORC Health shall deliver to DEVCO, by no later than the Effective Date hereof, an initial schedule of WORC Health’s Fees (the “Fee Schedule”). Thereafter, WORC Health shall consult with DEVCO at least thirty (30) days prior to any changes in or additions to such Fee Schedule and shall furnish DEVCO with a revised Fee Schedule reflecting any modifications to WORC Health’s Fees at least ten (10) days prior to the effective date of such modifications.

**(d)** DEVCO shall provide WORC Health, upon reasonable request, with information in its possession which is reasonable and necessary for WORC Health to bill Clinic patients and associated third-party payors for professional medical services provided by WORC

Health through Associate hereunder and which may be transmitted or otherwise conveyed by DEVCO to WORC Health without any additional cost to DEVCO.

**3.4** Other Contractual Arrangements. WORC Health hereby understands and agrees that DEVCO may enter into contracts and may request that WORC Health and Associate enter into the same or related contracts (collectively, “Contracts”) from time-to-time with various third-party payors (whether private, government funded or otherwise) to provide health care services to certain Clinic patients at payment rates that may vary from DEVCO’s and/or WORC Health’s usual and customary fees and charges for similar services to other Clinic patients or other non-Clinic patients treated by WORC Health through Associate. With respect to any of the above contractual arrangements, DEVCO shall discuss such arrangements with WORC Health from time-to-time and whenever reasonably requested by DEVCO or WORC Health, and WORC Health and Associate shall cooperate with DEVCO during the contract negotiations process in good faith, as and whenever reasonably requested by DEVCO, and shall execute any and all Contracts in a timely manner, as and whenever DEVCO and WORC Health reach mutual agreement for WORC Health and/or Associate to do so. In this regard, in furtherance of developing and operating the Clinic as one of DEVCO’s specialized outpatient rehabilitation centers for the benefit of those communities and residents served by WORC Health, the Parties hereto shall use their best efforts to cause WORC Health and Associate to execute any and all such Contracts reasonably requested by DEVCO such that one (1) or more Associate are continually providing health care services thereunder.

**3.5** Unbilled Services. Neither WORC Health nor any Associate shall bill or cause to be billed fees for charity or other free services with regard to any patients, as may be mutually agreed upon by DEVCO and WORC Health from time-to-time.

**3.6** No Compensation. The Parties hereto acknowledge and agree that DEVCO shall not pay any compensation of any kind to WORC Health or Associate or otherwise reimburse or be responsible to WORC Health or Associate for any costs or expenses incurred in connection with their provision of professional medical services pursuant to this Agreement.

#### **ARTICLE IV TERM AND TERMINATION**

**4.1** Term. The initial term of the Agreement shall commence on and as of the Clinic Commencement Date hereof and shall expire at 11:59 pm on September 1, 2023, unless earlier terminated as particularly described hereinbelow. Subject to earlier termination hereunder, this Agreement may be renewed or the term hereof may be extended by the Parties hereto upon written terms and conditions mutually approved by the Parties; provided, however, neither party is obligated hereunder to renew this Agreement.

**4.2** Termination For Cause.

(a) Notwithstanding any other provision in this Agreement to the contrary, and in addition to any relief or remedy otherwise available to DEVCO hereunder or at law or in equity, DEVCO shall have the right to terminate this Agreement for “cause”. For purposes of this Section

4.2, “cause” shall include without limitation the following circumstances, each of which shall be deemed a material breach of this Agreement by WORC Health:

(i) WORC Health or any Associate is excluded, suspended, terminated, or otherwise determined to be ineligible from participation in any federal or state funded health care program (each, a “Government Program Exclusion”); without prejudice to any termination rights of DEVCO under this Section 4.2. In the event of any Government Program Exclusion with regard to WORC Health or any Associate, DEVCO may, in its sole and absolute discretion, immediately suspend WORC Health and/or such Associate from providing any professional medical services hereunder until such breach is cured in accordance with Section 4.2(b) below; or

(ii) WORC Health or any Associate engages in conduct which is reasonably determined by DEVCO to be contrary to DEVCO’s or the Clinic’s then-existing Rules, if any, as defined in Section 5.3 below; or

(iii) WORC Health or any Associate is convicted of any crime punishable as a felony or any other crime involving moral turpitude or immoral conduct; without prejudice to any termination rights of DEVCO under this Section 4.2. In the event that WORC Health or any Associate is convicted of any felony or any other crime involving moral turpitude or immoral conduct, DEVCO may, in its sole and absolute discretion, immediately suspend WORC Health or such Associate from providing any professional medical services hereunder until such breach is cured in accordance with Section 4.2(b) below; or

(iv) Associate's active medical staff membership and/or privileges to perform professional medical services at WORC Health are terminated, suspended, reduced, or restricted following final administrative adjudication; or

(v) WORC Health or Associate is in material breach of any covenant, condition or other term of this Agreement.

(b) In the event that DEVCO elects to terminate this Agreement for cause pursuant to this Section 4.2, DEVCO shall provide WORC Health with advance notice of such termination, which termination shall be effective thirty (30) days following the giving of such notice, except as otherwise provided hereinbelow. In the event that WORC Health cures, to DEVCO’s reasonable satisfaction, the circumstances that gave rise to the termination for cause within thirty (30) days following the giving of notice of such termination (or, if WORC Health commences to cure such circumstances but such cure cannot be fully completed within such thirty (30) day period despite diligent pursuit of such cure, WORC Health shall be entitled to an additional thirty (30) days in which to complete such cure so long as WORC Health continues to diligently pursue such cure), then DEVCO shall not terminate this Agreement for cause hereunder in the absence of any further or continuing material breach of this Agreement by WORC Health. Notwithstanding the foregoing, this Agreement shall automatically terminate as of the end of the applicable cure period if a cure is not accomplished within such cure period.

**4.3 Termination by WORC Health.** Notwithstanding any other provision in this Agreement to the contrary, and in addition to any relief or remedy otherwise available to WORC Health hereunder or at law or in equity, WORC Health may terminate this Agreement by providing



DEVCO with at least forty-five (45) days' prior notice in the event that DEVCO commits a material breach of any provision of this Agreement. Said notice must specify the nature of such material breach, the effective date of termination, and that DEVCO shall have forty-five (45) days after the receipt of such notice to rectify said material breach. In the event that DEVCO fails to cure the material breach within said forty-five (45) day period, this Agreement shall automatically terminate upon the effective date set forth in the notice of termination.

**4.4** Upon Cessation of Operations. In the event that DEVCO permanently ceases to conduct the Clinic's clinical operations for any reason ("Business Cessation"), this Agreement shall terminate automatically and immediately upon such Business Cessation.

**4.5** Termination Without Cause. Either party hereto may terminate this Agreement at any time, without cause, by giving the other party not less than ninety (90) days' prior notice of such termination, provided that no such termination without cause shall be effective prior to September 1, 2024

**4.6** Termination by Mutual Consent. Notwithstanding anything to the contrary contained in this Article IV, this Agreement may be terminated at any time by mutual consent of the Parties hereto.

**4.7** Effect of Termination. Upon the expiration or other termination of this Agreement, neither party hereto shall have any further obligation hereunder except for (a) obligations arising prior to the date of expiration or termination, and (b) obligations, promises or covenants contained herein which expressly extend beyond the term of this Agreement.

## **ARTICLE V ADDITIONAL OBLIGATIONS**

**5.1** Compliance with Law and Professional Standards. DEVCO and WORC Health (and Associate) shall comply with all applicable federal, state or municipal statutes, ordinances and regulations, all applicable rules and regulations of the Medical Board of California, the applicable standards and recommendations of the Joint Commission, and all other applicable professional standards governing or otherwise concerning any and all of their respective business operations and their respective performance under this Clinic PSA.

**5.2** Continuing Education. WORC Health and Associate shall each maintain their respective professional competence and skills commensurate with the medical standards of the community, and as otherwise required by law, by (among other actions) attending and participating in approved continuing education courses as may be required to maintain applicable licensure, authorization and specialty certification.

**5.3** Compliance with DEVCO/Clinic Rules. WORC Health and Associate shall be bound by all of the provisions of DEVCO's corporate, Clinic and Clinic medical staff bylaws, rules, regulations, code of conduct, policies and procedures, all as may be amended from time-to-time by DEVCO and/or the Clinic or its medical staff, that are reasonably applicable to WORC Health's obligations and performance hereunder (collectively, "Rules"); provided, such Rules or any amendments thereto shall not be applicable to WORC Health or Associate, and WORC Health

and Associate shall not be bound thereby, unless and until WORC Health has been furnished with a written copy of such Rules or any such amendments thereto.

(a) The attending Therapist in the Clinic shall render medical services, particularly physical therapy and occupational therapy services, within the applicable professional standards in the community to patients arriving at the Clinic.

(b) In the event the Therapist on duty determines that specialist services, consultant services, or follow-up care is necessary and the patient does not wish to be referred to his therapist, the Therapist on duty shall refer the patient to the staff therapist within the DEVCO to the extent that such specialty services can be provided by the DEVCO, or if no appropriate Therapist is available, make arrangements to transfer or otherwise refer the patient to another appropriate institution, as clinically necessary. DEVCO assumes the responsibility to post at all times in the Clinic a current listing of the available specialty Therapist back-up within DEVCO, including all available specialties.

**5.4** Standards of Care. WORC Health shall ensure that each Therapist shall at all times maintain compliance with the qualifications and notification requirements set forth in Exhibit 1.2 attached hereto. Failure to comply with any of the qualifications or notice obligations of this Agreement shall be grounds for immediate termination of this Agreement by DEVCO.

**5.5** Coverage. WORC Health shall schedule a sufficient number of qualified Therapists to be available to provide all clinical services required for patient care in and operation of the Clinic as agreed to by the Parties as determined by the WROC Health Medical Director and the Director of Outpatient Rehabilitation Services of the Hospital who shall meet as needed to review the patient volume in the Clinic and other relevant factors. WORC Health shall ensure that Therapists who provide Services at the Clinic perform medical services and conduct themselves at the Clinic in accordance with the requirements and recommendations of all applicable law, regulatory agencies, and the policies and procedures of DEVCO.

**5.6** Complaints. WORC Health and DEVCO shall cooperate in good faith to investigate any and all complaints made by DEVCO concerning any Therapist provided by WORC Health and to resolve the complaint in a reasonable time with appropriate action. DEVCO may ask WORC Health to remove any Therapist from providing Services hereunder at any time, upon its reasonable discretion and consistent with all applicable employment law.

**5.7** Compliance with Third-Party Payors. WORC Health and Associate shall cooperate with DEVCO by complying with all requirements imposed upon DEVCO, the Clinic and/or WORC Health and Associate by any third-party payors, including without limitation providing necessary and appropriate professional medical services, participating in credentialing, quality improvement and utilization management programs of DEVCO, the Clinic, its medical staff and such payors, and on a timely basis providing all necessary information and executing all documents as and when requested or required by , WORC Health and/or any such payors.

**5.8** Discrimination. Neither WORC Health nor any Associate shall differentiate or discriminate in the provision of professional medical services to WORC Health patients due to race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age.

**5.9** Notice of Non-Compliance. WORC Health shall notify DEVCO immediately, in writing, should WORC Health or any Associate be in violation of any provision set forth in Section 7.1 below.

**5.10** Compliance with California and Federal Statutes. WORC Health and Associate shall cooperate with DEVCO so that DEVCO may meet any requirements imposed on DEVCO or the Clinic by state and federal law and all regulations issued pursuant thereto.

**5.11** Liability Insurance. Each party hereto shall provide, at such party's sole cost and expense, throughout the entire term of this Clinic PSA and for a period of not less than five (5) years following the expiration or earlier termination of this Agreement (the "Required Policy Period"), a policy or policies (collectively, the "Policy") of professional liability and comprehensive general liability insurance, on a claims-made basis, with a licensed insurance company admitted to do business in the State of California, with coverage limits of at least One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate, covering such party and its employees and agents in connection with the conduct of such party in the performance of this Agreement (including without limitation their acts and omissions as well as any loss, liability or damage alleged to have been committed by each of them). In addition, in the event that either party's Policy is terminated or cancelled prior to the conclusion of the Required Policy Period, such party shall purchase, at such party's sole cost and expense, a "tail" policy to remain in full force and effect, following the termination or cancellation date of the foregoing Policy, through the conclusion of the Required Policy Period. Said "tail" policy shall have the same policy coverage and limits as the foregoing Policy. Each party shall furnish the other party, as of the Effective Date hereof and on an annual basis thereafter, with appropriate certificates of insurance confirming such party's Policy coverage and "tail" coverage, if applicable, and, in the case of such "tail" coverage, not later than thirty (30) days following the effective date of termination or cancellation of such Policy. Each party's obligations pursuant to this Section 5.11, including without limitation the purchase of "tail" coverage, shall survive the expiration or other termination of this Agreement.

**5.12** Insurance for Administrative Duties. DEVCO at its sole cost and expense shall procure and maintain liability coverage from a carrier of its choice in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate covering solely the medical administrative services provided by Medical Director pursuant to this Agreement. On WORC Health request, DEVCO shall provide WORC Health with a copy of the policy and certificates of insurance evidencing the coverage, and a copy of any endorsements or modifications. DEVCO agrees to give WORC Health not less than sixty (60) days' written notice of its intent to cancel such insurance and agrees to promptly notify WORC Health in writing of any other cancellation, reduction, or material change in the amount or scope of any coverage under the policy.

**5.13** Indemnification. Notwithstanding and in addition to the provision of insurance coverage required under Section 5.11 above, each party hereto (the "Indemnifying Party") shall

indemnify, defend and hold harmless the other party and such other party's shareholders, directors, trustees, officers, employees and other agents (collectively, the "Indemnified Parties") from and against any and all liability, loss, claim, injury, cost, expense, demand, damage or award whatsoever (including without limitation reasonable attorney's fees and court costs) that is incurred by the Indemnified Parties, or any of them, as a result of a lawsuit, action or other claim brought or alleged by any third party regarding any fraud, malpractice, negligence, gross negligence, recklessness, intentional misconduct, or statutory, regulatory or contractual violation committed or alleged to have been committed by the Indemnifying Party or any of its employees or agents in the performance or nonperformance of any act, covenant or other obligation undertaken or assumed by such Indemnifying Party pursuant to this Agreement. The Parties hereto acknowledge and agree that the foregoing indemnification obligations shall survive the expiration or other termination of this Agreement.

**5.14 Space and Equipment.** Commencing as of the Clinic Commencement Date, DEVCO shall furnish the physical space and equipment reasonably required for the proper operation and conduct of the Clinic and for WORC Health and Associate to carry out their professional medical services obligations hereunder. WORC Health and Associate shall use and occupy the premises of the Clinic pursuant to this Clinic PSA solely for the purpose of performing professional medical services hereunder. Nothing contained in this Agreement shall be construed by the Parties hereto to constitute a lease of such premises to WORC Health and or any Associate; and no part of said premises shall be used at any time by WORC Health and or any Associate hereunder as an office for the general or private practice of medicine.

**5.15 In-Service and Supplies.** DEVCO shall furnish the Clinic with ordinary janitor, photocopying, telecommunication, secretarial, transcription, computer system, internet access and other administrative support, water, heat, electricity for light and power, and other in-services and supplies, all as reasonably required for the proper operation and conduct of the Clinic and for WORC Health and Associate to carry out their professional medical services obligations hereunder.

**5.16 Staffing.** DEVCO shall employ and/or otherwise engage all non-physician and non-therapist staff necessary for the management, administrative, facility and clinical elements of patient care services that are reasonably required for the proper operation and conduct of the Clinic; provided, DEVCO shall provide at all times maintain the non-therapist staffing positions at the Clinic as set forth in Exhibit 5.16 (Exhibit 5.16 is attached hereto and incorporated herein by this reference). The selection, scheduling, staffing, and retention of such personnel shall be made by DEVCO, in its sole and absolute discretion, following discussion with the DEVCO's medical co-directors.

**5.17 Location and Occupancy.** The Clinic shall be located in the building located at 39141 Civic Center Drive, Suite 120, Fremont, CA 94538 (the "Clinic Space"). DEVCO shall make the Clinic Space available and ready for occupancy and use by the Clinic Commencement Date.

**5.18 Utilization and Quality Data.** DEVCO shall provide WORC Health each month with patient-specific data in an electronic format which WORC Health shall use to monitor

operations, utilization, coding and billing compliance, customer service, government performance programs, and quality performance of the DEVCO.

#### **5.19 Reimbursable Services.**

(a) WORC Health shall reimburse DEVCO for actual direct and indirect costs incurred by DEVCO and the Clinic in providing certain clerical, billing and other support staff to WORC Health and Associate (collectively, "Reimbursable Services") in connection with the operation of the Clinic. Reimbursable Services shall be limited to any services rendered by the Clinic's clerical, billing and other support staff for or on behalf of WORC Health and Associate that (i) are unrelated to the provision of facility, technical or other institutional services rendered to a patient of the Clinic or DEVCO and provide a benefit to WORC Health and/or Associate, and/or (b) otherwise relate to financial, clerical and administrative services that are reasonably requested by WORC Health and/or Associate to fulfill certain business and other requirements of WORC Health or Associate' professional medical practices that are unrelated to the activities of DEVCO. Reimbursable Services to be provided by DEVCO as of the Effective Date hereof shall consist of those certain items identified in Exhibit 5.19 (Exhibit 5.19 is attached hereto and incorporated herein by this reference).

(b) The Parties shall act in good faith to establish methodologies and procedures to record and allocate the amount of time of Clinic staff and any Clinic Space related to the activities of WORC Health and Associate that are properly allocable to Reimbursable Services. WORC Health shall assist DEVCO in the implementation of procedures that will facilitate the generation of Clinic staff time records in such form as may reasonably be required by DEVCO in order to monitor the scope and extent of Reimbursable Services to be provided to WORC Health and Associate. The Parties further agree that such Reimbursable Services set forth in Exhibit 5.19 may be modified from time-to-time to reflect (i) different levels of Reimbursable Services that may be requested by WORC Health and Associate and agreed to by DEVCO or (ii) any changes in the reimbursement rates that may be required to assure that such rates are consistent with fair market value.

(c) Notwithstanding anything in this Agreement to the contrary, WORC Health and Associate shall be responsible for the payment of any and all expenses associated with the administration and operation of their professional medical practices, including without limitation compensation, malpractice insurance, billing staff, secretarial support, private office space, professional associations and educational costs.

### **ARTICLE VI MEDICAL RECORDS**

To the extent required by DEVCO, the Clinic or its medical staff, WORC Health and Associate shall provide such information with respect to each Clinic patient, to be included in such form on the Clinic's standard medical record, as may be reasonably requested by the Clinic or its medical staff, or as otherwise required by law. Notwithstanding the foregoing, DEVCO shall have custody of, and shall be the sole owner of, the Clinic's medical records; provided, however,

DEVCO agrees that should WORC Health require access to the Clinic's medical records by reason of a third-party lawsuit, claim or investigation either during or subsequent to the expiration or other termination of this Agreement, upon receipt of a written request from WORC Health, DEVCO shall allow WORC Health access to the Clinic's medical records on a limited basis and only as reasonably required with regard to the pending lawsuit, claim or investigation, but only to the extent permitted by applicable law. Upon the expiration or other termination of this Agreement, WORC Health and each Associate shall promptly return to DEVCO all of the Clinic's medical records within WORC Health's or such Associate's possession or under WORC Health's or such Associate's control.

## **ARTICLE VII ADDITIONAL REPRESENTATIONS**

### **7.1 Additional Representations by WORC Health.**

(a) WORC Health hereby represents and warrants that WORC Health this currently, and for the duration of the term hereof shall remain at all times, a California professional medical corporation in good standing under the laws of the State of California.

(b) WORC Health hereby represents and warrants that WORC Health and Associate are each currently, and for the duration of the term hereof shall remain at all times, duly licensed and/or authorized to practice medicine in the State of California, duly qualified to render specialized professional medical services in the diagnosis and treatment of joint disease, injuries and disorders, and in good standing with the Medical Board of California.

(c) WORC Health hereby represents and warrants that the Associate are each licensed in California by the Physical Therapy Board of California.

(d) WORC Health hereby represents and warrants that neither WORC Health nor any Associate is in any way breaching any other agreement, whether written or oral, by WORC Health entering into or performing under this Agreement.

(e) WORC Health hereby represents and warrants that each Associate shall become (where applicable), and for the duration of the term of this Agreement shall remain, a member in good standing of the medical staff at the Clinic.

### **7.2 Additional Representations by DEVCO.**

(a) DEVCO hereby represents and warrants that the Clinic shall be (i) licensed as a supplemental outpatient service on the Clinic's consolidated acute care license and, therefore, (ii) exempt from clinic licensure requirements pursuant to Section 1206(d) of the California Health and Safety Code.

(b) DEVCO hereby represents and warrants that, as an outpatient service of WORC Health, the Clinic shall (i) be subject to the management and administration of WORC Health and (ii) otherwise meet the requirements for maintenance of applicable accreditations.

**ARTICLE VIII  
CLINIC NAMES AND MARKS**

Neither WORC Health nor any Associate shall not use the name, logos, symbols, service marks or trademarks of DEVCO and the Clinic (collectively, the “Names and Marks”) without the prior written consent of DEVCO. In this regard, the Parties hereto mutually acknowledge and agree that all right, title and interest in and to any such Names and Marks, including without limitation those used in connection with DEVCO and the Clinic, shall be the exclusive property of DEVCO. Notwithstanding anything in this Agreement to the contrary, neither WORC Health nor any Associate shall have any claim whatsoever regarding the use or ownership of any such Names and Marks.

**ARTICLE IX  
EXCLUSIVITY; RESTRICTIONS**

**9.1** Intent. The Parties hereto acknowledge and agree that, in furtherance of DEVCO’s primary objective (as stated in the recitals above), DEVCO must assure appropriate and continuous medical administrative leadership in the development and operation of DEVCO as well as ongoing access to specialized professional medical services as may be required by patients in the Clinic; and, in so doing, DEVCO must be assured that WORC Health and Associate will maintain their active and unwavering commitment to achieving such stated primary objective in their performance of this Agreement. Therefore, during the term of this Agreement, WORC Health and Associate shall be bound by and shall fully comply with the following restrictions as set forth in Section 9.2 below.

**9.2** Restrictions.

(a) Except as otherwise provided herein, during the term of this Agreement, neither WORC Health nor any Associate shall, without the prior written consent of DEVCO, either directly or indirectly, including without limitation by or through any “Affiliate” (as defined hereinbelow) of WORC Health or any Associate, invest in, provide loans or other funds to, contract or affiliate with, provide professional medical or other health care services or medical administrative or consulting services for or on behalf of, or otherwise participate in the ownership, management, operation, or control of, any “entity” (as defined hereinbelow) that is or will be engaged in any “health care business” (defined for purposes of this Agreement as any business directly or indirectly related to the development of, management of, provision of facilities and/or administrative services with regard to, delivery or provision of, or payment for health care services) which is or will be in competition with any health care business conducted by DEVCO or any Affiliate of DEVCO that is a part of or otherwise associated with DEVCO at the Clinic or that otherwise provides health care services to Clinic patients. Each party hereto specifically acknowledges and agrees that the foregoing restrictions are a condition precedent to DEVCO’s entering into this Agreement, that such restrictions are reasonable and necessary to protect the legitimate business interests of DEVCO and the Clinic, and that such Parties would not have entered into this Agreement in the absence of such restrictions. The Parties further acknowledge that any violation of this Section 9.2 would result in irreparable injury to DEVCO and the Clinic and that the remedy at law for monetary compensation resulting from any breach of this Section 9.2(a) would be inadequate. Accordingly, in the event of any such breach by WORC Health or any such Associate, and in addition to any other relief available to them, DEVCO and the Clinic shall

be entitled to temporary injunctive relief against WORC Health or any such Associate, or any of their respective Affiliates, as applicable, before arbitration or trial from any court of competent jurisdiction as a matter of course, upon the posting of not more than nominal bond, and to permanent injunctive relief without the necessity of proving actual damages. In the event that the provisions contained in this Section 9.2 shall ever be deemed to exceed the time or geographic limits or any other limitation permitted by applicable law, then such provisions shall be deemed reformed to the maximum extent permitted by applicable law.

(b) For purposes of this Agreement, the term “Affiliate” shall mean, with reference to a specified entity: (i) any entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the specified entity, whether through voting stock ownership, partnership or membership interest, contract or otherwise; or (ii) any entity owning or controlling ten percent (10%) or more of the outstanding voting securities or beneficial interest in such specified entity; or (iii) any entity that is an officer, partner, director, trustee or member of the immediate family of, or serves in a similar capacity with respect to, the specified entity; or (iv) any entity for or of which the specified entity is an officer, partner, director or trustee or serves in a similar capacity. The term “controlling”, including the terms “controlled by” and “under common control with”, as used in this Section 9.2(b), shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity. For purposes of this Agreement, the term “entity” shall mean any individual, sole proprietorship, partnership, limited partnership, limited liability company or partnership, joint venture, trust, unincorporated organization, association, corporation, institution, government agency or other entity. Nothing contained in the foregoing provisions of this Section 9.2 above shall be construed to prohibit or restrict WORC Health or any Associate from owning stock traded publicly over-the-counter or on a recognized national stock exchange.

(c) Nothing contained in the foregoing provisions of this Section 9.2 above shall be construed to control, prohibit or restrict the methods by which WORC Health or Associate shall perform professional medical services in accordance with or otherwise contemplated under this Agreement.

(d) Nothing contained in the foregoing provisions of this Section 9.2 above shall be construed to prohibit or otherwise restrict WORC Health or Associate from referring, admitting or treating patients to or at any hospital inpatient or outpatient facility.

(e) Nothing contained in the foregoing provisions of this Section 9.2 above shall be construed to prohibit or otherwise restrict WORC Health from conducting a private medical practice in medical office space located at 39141 Civic Center Drive, Suite 120, Fremont, CA 94538, so long as the conduct of such private medical practice does not materially restrict or conflict with WORC Health’s or any Associate’s ability to fully comply with any and all of their respective professional medical services obligations provided in this Agreement.

## ARTICLE X NON-SOLICITATION

**10.1** Non-Solicitation of Clinic’s Patients. During the term of this Clinic PSA, neither WORC Health nor any Associate shall, directly or indirectly, knowingly engage in the practice of



solicitation of any Clinic patients or any DEVCO of any WORC Health patients without DEVCO's prior written consent, which consent may be withheld in DEVCO's sole and absolute discretion. As used herein, "solicitation" shall mean any action by WORC Health or any Associate which DEVCO may reasonably interpret to be designed to persuade any Clinic patients or an DEVCO to discontinue his, her or its relationship with WORC Health or to disenroll from a third-party payor contracting with DEVCO or the Clinic.

**10.2 Injunctive Relief.** DEVCO and WORC Health each specifically acknowledge and agree that the restrictions set forth in this Article X are reasonable and necessary to protect DEVCO's and the Clinic's legitimate business interests. The Parties hereto acknowledge that any violation of this Article X by WORC Health or any Associate would result in irreparable injury to DEVCO or the Clinic and that the remedy at law for monetary compensation resulting from any breach of this Article X would be inadequate. Accordingly, in the event of any such breach by WORC Health or any Associate, and in addition to any other relief available to it, DEVCO and the Clinic shall be entitled to: (a) temporary injunctive relief before arbitration or trial from any court of competent jurisdiction as a matter of course, upon the posting of not more than nominal bond; (b) permanent injunctive relief without the necessity of proving actual damages; (c) an equitable accounting of all earnings, profits and other benefits arising from such breach; and (d) payment by WORC Health of the reasonable fees and expenses, including without limitation reasonable attorneys' fees, incurred by DEVCO or the Clinic in enforcing the restrictions contained in this Article X. In the event that the provisions contained in this Article X shall ever be deemed to exceed any limitation permitted by applicable law, then such provisions shall be deemed reformed to the maximum extent permitted by applicable law.

## **ARTICLE XI CONFIDENTIALITY**

**11.1 Proprietary Information.** The Parties hereto recognize that, due to the nature and scope of professional medical services contemplated by this Agreement, WORC Health and any Associate will have access to and knowledge of information of a confidential and proprietary nature owned by DEVCO, including without limitation any and all form documents, any and all computer programs devised by or licensed to DEVCO, any and all copyrights, inventions and other intellectual property related to its services which include, but are not limited to, financial data and statements, internal memoranda, reports, information systems, protocols, diagnostic algorithms, operational systems for triaging patients, forms, service trade names and marks, and other materials or records of a proprietary nature (collectively, "Proprietary Information"). Consequently, WORC Health acknowledges and agrees that DEVCO has a proprietary interest in all such Proprietary Information and that all such Proprietary Information constitutes confidential and proprietary information and the trade secret property of DEVCO. WORC Health hereby expressly and knowingly waives any and all right, title and interest in and to such trade secrets and proprietary and confidential information included in DEVCO's Proprietary Information.

**11.2 Nondisclosure.** During the term of the Implementing Agreements, neither WORC Health nor any Associate shall use or otherwise disclose to anyone, other than authorized persons or entities engaged or employed by WORC Health with an appropriate need to know, any Proprietary Information obtained from or otherwise owned by DEVCO, without DEVCO's prior written consent, which consent shall not be unreasonably withheld, or except as otherwise required

by law. After the expiration or other termination of this Agreement, neither WORC Health nor any Associate shall use or otherwise disclose to anyone any Proprietary Information obtained from or otherwise owned by DEVCO, without DEVCO's prior written consent, which consent shall not be unreasonably withheld, or except as otherwise required by law. The Parties hereto acknowledge and agree that the foregoing covenant is perpetual and shall survive the expiration or other termination of this Agreement. For purposes of this Article XI, Proprietary Information shall not include information which is now, or becomes, generally available to the public other than by any disclosure made in violation of this Article XI.

**11.3 Patient Records.** Notwithstanding and in addition to the requirements set forth in Sections 11.1 and 11.2 above, WORC Health and Associate shall maintain and safeguard the confidentiality of all patient records, charts and other related patient information, generated in connection with the operation of the WORC Health, DEVCO and the Clinic and the provision of medical and other health care services to patients at WORC Health, in accordance with all applicable federal and state statutes and related governmental regulations and with all other legal or contractual requirements imposed on DEVCO or WORC Health and Associate in connection therewith. In this regard, without limiting in any way the generality or scope of the foregoing, WORC Health and Associate shall comply with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA regulations at 45 C.F.R. Parts 160-164, as may be amended, and the Health Information Technology for Economic and Clinical Health Act, Title XXIII of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") and applicable regulations promulgated under the HITECH Act, as well as recently enacted California legislation commonly known as AB211 and SB541. The foregoing obligations and requirements concerning patient confidentiality shall survive the expiration or other termination of this Agreement.

**11.4 Injunctive Relief.** DEVCO and WORC Health specifically acknowledge and agree that the restrictions set forth in this Article XI are reasonable and necessary to protect DEVCO's and the Clinic's legitimate business interests. The Parties hereto acknowledge that any violation of this Article XI would result in irreparable injury to DEVCO and the Clinic, and that the remedy at law for monetary compensation resulting from any breach of this Article XI would be inadequate. Accordingly, in the event of any such breach by WORC Health or any Associate, and in addition to any other relief available to them, DEVCO and the Clinic shall be entitled to temporary injunctive relief before arbitration or trial from any court of competent jurisdiction as a matter of course, upon the posting of not more than nominal bond, and to permanent injunctive relief without the necessity of proving actual damages. DEVCO and WORC Health also acknowledge and agree that DEVCO shall be entitled to an equitable accounting of all earnings, profits and other benefits arising from such breach and further agree to pay the reasonable fees and expenses, including without limitation attorneys' fees, incurred by DEVCO and WORC Health in enforcing the restrictions contained in this Article XI. In the event that the provisions contained in this Article XI shall ever be deemed to exceed any limitation permitted by applicable law, then such provisions shall be deemed reformed to the maximum extent permitted by applicable law.

**ARTICLE XII  
ACCESS TO BOOKS AND RECORDS**

**12.1** Cooperation. WORC Health shall cooperate fully with DEVCO, by maintaining and making available all necessary books, documents and records, in order to assure that DEVCO will be able to meet all requirements for participation in and payment associated with public or private third-party payment programs (e.g., the Medicare Program), including without limitation matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended.

**12.2** Compliance. For the purpose of implementing Section 1861(v)(1)(I) of the Social Security Act, and any written regulations promulgated thereunder, WORC Health shall comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this Agreement:

(a) Until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, WORC Health shall make available to the Secretary of HHS or the Comptroller General of the United States, or their duly authorized representatives, upon written request of any of them, this Agreement, and all books, documents and records that are necessary to certify the nature and extent of the cost of such services; and

(b) If WORC Health carries out any of the duties of this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request, to the Secretary of HHS or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

**12.3** Notification. If WORC Health is requested to disclose books, documents or records pursuant to this Article XII, WORC Health shall, unless otherwise constrained by law or applicable regulation of any governmental authority, notify DEVCO of the nature and scope of such request and shall make available, upon the written request of DEVCO, all such books, documents or records during the regular business hours of WORC Health.

**ARTICLE XIII  
COMPLIANCE WITH LAWS**

**13.1** Compliance. Without limiting in any way the scope or generality of Section 5.1 above, each party hereto shall comply with all applicable statutes, regulations of all governmental authorities and standards of all accrediting agencies having jurisdiction over DEVCO, the Clinic, WORC Health, and/or this Agreement, including without limitation all professional licensure, reimbursement, anti-kickback, and anti-referral statutes, regulations and standards.

**13.2** No Discrimination. WORC Health shall ensure that each of its Therapists providing services under this Agreement complies with Section 504 of the Rehabilitation Act of 1973, and all other applicable statutes or regulations, as amended, and that such Therapists and other clinicians do not refuse to provide emergency care and services to any patients on the basis of race,

creed, ethnicity, religion, national origin, ancestry, citizenship, marital status, age, sex, sexual orientation, pre-existing medical condition, physical or mental handicap, financial status, insurance status, economic status, or ability to pay for medical services, except to the extent that a circumstance such as age, sex, pre-existing medical condition, or physical or mental handicap is medically significant to the provisions of appropriate medical care to the patient. Each Party shall adhere to shall also comply with the Age Discrimination Act of 1975 and the Americans with Disabilities Act, as amended, and all regulations issued pursuant thereto applicable to services performed under this Agreement.

#### **ARTICLE XIV ANTI-REFERRAL LAWS**

**14.1** No Consideration for Referrals. DEVCO and WORC Health hereby acknowledge and agree that: (a) nothing in this Agreement or in any other written or oral agreement between DEVCO and WORC Health, nor any consideration offered or paid in connection with any such agreement(s), contemplates or requires the admission or referral of any patient to the Clinic; (b) any such agreements are not intended to influence WORC Health's or any Associate's judgment in choosing the medical facility appropriate for the proper care and treatment of WORC Health's or any such Associate's patients; and (c) the overall value of the facilities and services exchanged by and between DEVCO and WORC Health pursuant to this Agreement are substantially equivalent.

**14.2** Specific Laws. Each party acknowledges, and is hereby bound by, the obligation of such party to comply with applicable federal and state laws governing referral of patients, as may be in effect or amended from time-to-time, including without limitation:

(a) Payments for referral or to induce the referral of patients (California Business and Professions Code Section 650; California Labor Code Section 3215; and the Medicare/Medicaid Fraud and Abuse Law, Section 1128B of the Social Security Act and the regulations promulgated thereunder); and

(b) The referral of patients by a physician for certain designated health services to any entity with which the physician (or his/her immediate family) has a financial relationship (California Labor Code Sections 139.3 and 139.31, applicable to referrals for workers' compensation services; California Business and Professions Code Sections 650.01 and 650.02, applicable to all other patient referrals within the State of California; and Section 1877 of the Social Security Act, applicable to referrals of Medicare and Medicaid patients, and the regulations promulgated thereunder).

#### **ARTICLE XV ASSIGNMENT AND DELEGATION**

Neither this Agreement nor any right or duty under this Agreement may be assigned or delegated by WORC Health without the prior written consent of DEVCO in its sole and absolute discretion. In addition, any change in ownership (through one or more transactions) of fifty percent (50%) or more in the outstanding voting, equity or beneficial interest in WORC Health, without

DEVCO's prior written consent, shall be deemed an assignment prohibited under this Article XV. Any attempted or purported assignment by WORC Health in violation of this provision shall be void and without force or effect. DEVCO, in the exercise of its sole and absolute discretion, shall have the right at any time, without the consent of WORC Health, to assign, delegate or in any manner transfer all or any portion of its interests, obligations or duties under this Agreement to any person, WORC Health or entity affiliated with DEVCO or to any successor-in-interest which acquires substantially all of DEVCO or the Clinic's assets.

**ARTICLE XVI  
BINDING ON SUCCESSOR-IN-INTEREST**

The provisions of this Agreement and obligations and interests arising under this Agreement shall extend to and be binding upon and inure to the benefit of the lawful assigns and successors of each party hereto.

**ARTICLE XVII  
THIRD PARTY BENEFICIARY**

None of the provisions contained in this Agreement is intended by the Parties hereto, nor shall any be deemed, to confer any benefit on any person or entity not a party to this Agreement.

**ARTICLE XVIII  
NOTICES**

All notices, requests, demands, consents and approvals required or permitted under this Agreement to be served on or given to either party hereto by the other party shall be in writing, and shall be served or given, and shall be deemed served or given, upon receipt if delivered by messenger or overnight carrier or in person, or three (3) days after mailing if sent by certified or registered mail, return receipt requested, postage prepaid, addressed to the Parties as follows:

DEVCO:	WASHINGTON TOWNSHIP HOSPITAL DEVELOPMENT CORPORATION 2000 Mowry Avenue Fremont, CA 94538 Attn: Chief Executive Officer
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With a courtesy copy to:	Lenard Pick, Esq. Rosenberg and Pick 9454 Wilshire Blvd., Suite 800 Beverly Hills, CA 90212
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WORC HEALTH:	WORC HEALTH 39141 Civic Center Drive, Suite 120 Fremont, CA 94538 Attn: Albert Brooks, M.D.
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Either party may change its address indicated above by notifying the other party in writing of such change of address in the manner specified in this Article XVIII.

**ARTICLE XIX  
GENDER AND PRONOUNS**

Whenever appropriate from the context of this Agreement, the use of any gender shall include any and all other genders, and the single number shall include the plural, and the plural number shall include the singular.

**ARTICLE XX  
SEVERABILITY**

If any term or provision of this Agreement is held to be invalid, void or illegal by a court of competent jurisdiction, the validity and enforceability of the remaining terms and provisions of this Agreement shall not be affected thereby, and such remaining terms and provisions shall continue to be in full force and effect.

**ARTICLE XXI  
GOVERNING LAW**

The existence, validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

**ARTICLE XXII  
ENTIRE AGREEMENT; AMENDMENT**

The making, execution and delivery of this Agreement by the Parties hereto has not been induced by any representations, statements, warranties or agreements other than those expressed in this Agreement. This Agreement, together with any attachments or exhibits to this Agreement, embodies the entire understanding of the Parties regarding the subject matter of this Agreement, and there are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter of this Agreement. This Agreement shall supersede and terminate any previous oral or written agreements between the Parties hereto with respect to the subject matter of this Agreement, and any such prior agreements are null and void. This Agreement may be amended or modified only by an instrument in writing signed by both Parties hereto.

**ARTICLE XXIII  
WAIVER OF PROVISIONS**

Any waiver of any covenants, conditions or other terms of this Agreement must be in writing and signed by both of the Parties hereto. A waiver of any of the covenants, conditions or other terms of this Agreement shall not be construed as a waiver of any other covenants, conditions or other terms of this Agreement, nor shall such waiver constitute a continuing waiver.

**ARTICLE XXIV  
CAPTIONS AND HEADINGS**

The captions and headings throughout this Agreement are for convenience of reference only and shall have no bearing whatsoever on the interpretation of this Agreement.

**ARTICLE XXV  
DISPUTE RESOLUTION**

**25.1** Arbitration. Except as otherwise provided in this Agreement, any controversy, dispute or claim arising out of, in connection with, or otherwise related to the interpretation, performance or breach of this Agreement shall be resolved by final and binding arbitration (the "Arbitration"). The Arbitration shall be initiated and administered by and in accordance with the then existing Rules of Practice and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") or, if JAMS is not located or actively conducting arbitrations in the counties of Alameda or Santa Clara, with the Commercial Rules of the American Arbitration Association. The Arbitration shall be held in the counties of Alameda or Santa Clara, unless the Parties mutually agree to have such proceeding in some other locale; the exact time and location shall be decided by the arbitrator(s) selected in accordance with the then existing Rules of Practice and Procedures of JAMS. The arbitrator(s) shall apply California substantive law, or federal substantive law where state law is preempted. Civil discovery for use in such Arbitration shall be conducted in accordance with the provisions of California law that would apply if the matter were being litigated in a Superior Court in the State of California. The arbitrator(s) selected shall have the power to enforce the rights, remedies, duties, liabilities and obligations of discovery by the imposition of the same terms, conditions and penalties as can be imposed in like circumstances in a civil action by a court of competent jurisdiction of the State of California. The provisions of California law governing discovery in a civil action filed in Superior Court of the State of California (including without limitation depositions) are incorporated herein by reference and made applicable to the Implementing Agreements. The arbitrator(s) shall have the power to grant all legal and equitable remedies provided by California law and award compensatory damages provided by California law, except that punitive damages shall not be awarded. The arbitrator(s) shall prepare in writing and provide to the Parties an award including factual findings and the legal reasons on which the award is based. The arbitrator(s) shall not have the power to commit errors of law or legal reasoning. Any judicial review of the arbitrator(s) decision shall be governed by California Code of Civil Procedure, Sections 1285 et seq., except that the Parties expressly grant the Superior Court the authority to correct errors of law and modify the arbitrator(s)' ruling to avoid errors of law. The prevailing party in any Arbitration hereunder shall be awarded reasonable attorneys' fees, expert and nonexpert witness costs and expenses incurred directly or indirectly with said Arbitration, including without limitation the fees and expenses of the arbitrator(s) and any other expenses of the Arbitration.

**25.2** Equitable Relief. The foregoing provisions of this Article XXV shall not be interpreted in any manner whatsoever to restrict the right of either party to this Agreement to pursue equitable relief from a court of competent jurisdiction at any time or to terminate this Agreement in accordance with the terms hereof. In the event that any party hereto wishes to obtain injunctive relief or a temporary restraining order from a court of competent jurisdiction, the decision of such court with respect to the requested injunctive relief or temporary restraining order

shall be subject to appeal only as allowed under California law. Such court shall not, however, have the authority to review or grant any request or demand for damages.

**ARTICLE XXVI  
ATTORNEYS' FEES**

Notwithstanding and in addition to the provisions in Article XXV above, if legal action is required by any party hereto to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to reimbursement for reasonable costs and attorneys' fees incurred in connection therewith.

**ARTICLE XXVII  
FORCE MAJEURE**

Neither party hereto shall be liable nor deemed to be in default for any delay, interruption or failure in performance under this Agreement that results, directly or indirectly, from Acts of God, acts of civil or military authority, war, terrorism, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, riots, civil disturbances, strike or other work interruptions by such party's employees, significant changes in payor reimbursement rates resulting in severe economic distress, or any similar or dissimilar cause beyond the reasonable control of such party. However, the Parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances. In the event that Clinic services and programs have been entirely or substantially destroyed, closed or terminated as a result of any of the above, this Agreement may be terminated by either party hereto upon giving not less than ten (10) days prior written notice to the other party.

IN WITNESS WHEREOF, the Parties hereto, for themselves or by their authorized officers, as applicable, have caused this Agreement to be executed effective as of the Effective Date set forth hereinabove.

**WORC Health**

By: \_\_\_\_\_  
Albert Brooks, M.D.



**EXHIBIT 1.2**  
**SERVICES TO BE PERFORMED**

During the term of this Agreement, commencing as of the Clinic Commencement Date, WORC Health shall provide or be available on-site to provide, only through Medical Director and other Associates approved in advance by DEVCO, such necessary and appropriate professional medical services to Clinic patients in the Clinic, as may be reasonably assigned to WORC Health and Associate by DEVCO, and mutually approved by the Parties hereto, from time-to-time (the "Assigned Services"), during those days and hours set forth in Exhibit 1.3 attached to this Agreement.

**EXHIBIT 1.3**  
**DAYS AND HOURS OF SERVICES**

The days and hours of Services are Monday through Friday form 7:00 AM to 6:00 PM.

**EXHIBIT 5.16  
CLINIC STAFFING**

Clinic staffing shall be determined by the WORC Health Medical Director and the Director of Outpatient Rehabilitation Services of the Hospital who shall meet as needed to review the patient volume in the Clinic and other relevant factors.

The following staff positions shall be provided:

Clinic Director  
Physical Therapists  
Occupational Therapist  
Physical Therapist Assistants  
Front Desk Staff  
Clinic Aide

**EXHIBIT 5.19**  
**REIMBURSABLE SERVICES**

The following reimbursable services are:

Salaries  
Benefits  
Supplies  
Other Professional Fees Physician Fees  
Purchased Labor Purchased Benefits  
Purchased Services Legal and Audit  
Depreciation and Amort Utilities  
Vehicle Lease  
Vehicle Expenses  
Bad Debt Expense Interest Expense Goodwill  
Amortization Building Lease Malpractice  
Insurance Taxes, Fees, and Licenses Other  
Expenses



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## Memorandum

**DATE:** August 11, 2023  
**TO:** Board of Directors  
Washington Township Hospital Development Corporation  
**FROM:** Kimberly Hartz, Chief Executive Officer  
**SUBJECT: Resolution No. 57 Shareholder and Stock Transfer Restriction  
Agreement with WORC Health and Albert Brooks, M.D.**

Washington Township Hospital Development Corporation, a California nonprofit public benefit corporation (“DEVCO”) dba Washington Outpatient Rehabilitation Center (“WORC”) currently provides comprehensive physical and occupational therapy and related rehabilitation services (“Services”) to patients of WORC (“WORC Patients”) served by Washington Hospital Healthcare System (the “District”) through: 1) its leasing arrangement with Judy Madrigal & Associates, Inc., a California Corporation (“JMA”) pursuant to which JMA provides professional physical therapists and occupational therapists to provide Services to WORC Patients; and 2) its contract with the District for the provision of certain management services required by WORC that relate to the Services provided to WORC patients.

WORC now desires to transfer the day-to-day operations of WORC, with respect to the provision of Services to WORC Patients, from WORC to WORC Health thereby allowing WORC to enter into a professional services agreement with WORC Health.

WORC Health is a California professional medical corporation. The sole shareholder and sole director of WORC Health is Albert Brooks, M.D.

In the interest of formally defining their respective rights and obligations as to the shares of common stock or any other shares of, or other forms of equity or debt security in WORC Health, (collectively, “Corporate Stock”) and to restrict the transfer of shares of the Corporate Stock, DEVCO, WORC Health and the sole shareholder of WORC Health, Albert Brooks, M.D., desire to enter into a Shareholder and Stock Transfer Restriction Agreement.

It is requested that the DEVCO Board of Directors approve Board Resolution No. 57 authorizing DEVCO dba WORC to execute and enter into the Shareholder and Stock Transfer Restriction Agreement with WORC Health and Albert Brooks, M.D.

Washington Township Health Care District, 2000 Mowry Avenue, Fremont CA (510) 797-1111  
Kimberly Hartz, Chief Executive Officer

**RESOLUTION NO. 57**  
**RESOLUTION OF THE BOARD OF DIRECTORS OF**  
**WASHINGTON TOWNSHIP HOSPITAL DEVELOPMENT CORPORATION**  
**(“DEVCO”) DBA WASHINGTON OUTPATIENT REHABILITATION CENTER**  
**(“WORC”) AUTHORIZING DEVCO TO EXECUTE AND ENTER INTO A**  
**SHAREHOLDER AND STOCK TRANSFER RESTRICTION AGREEMENT**  
**WITH WORC HEALTH AND ALBERT BROOKS, M.D.**

WHEREAS, Washington Township Hospital Development Corporation, a California nonprofit public benefit corporation (“DEVCO”) dba Washington Outpatient Rehabilitation Center (“WORC”) provides comprehensive physical and occupational therapy and related rehabilitation services (“Services”) to WORC patients;

WHEREAS, DEVCO believes that it is in the best interest of WORC that WORC transfer the day-to-day operations of WORC with respect to the provision of Services to WORC Patients from WORC to WORC Health, thereby allowing WORC to enter into a professional services agreement with WORC Health pursuant to which WORC Health will provide professional physical and occupational therapy services and related professional supervision relating the Services provided to WORC patients (the “Professional Services Agreement”);

WHEREAS, WORC Health is a California professional medical corporation.

WHEREAS, the sole shareholder and sole director of WORC Health is Albert Brooks, M.D.;

WHEREAS, WORC Health also employs or contracts with physical therapists and occupational therapists, including without limitation Albert Brooks, M.D., who is duly licensed and authorized to practice medicine in the State of California, to serve as the agent on its behalf in the provision of specialized professional medical services in the provision of physical and occupational therapy (“Associate”).

WHEREAS, WORC Health has appointed Albert Brooks, M.D. to serve as the Medical Director of the Clinic (“Medical Director”) and may change the Medical Director from time to time after first consulting with DEVCO prior to each change;

WHEREAS, in the interest of formally defining their respective rights and obligations as to the shares of common stock or any other shares of, or other forms of equity or debt security in WORC Health, (collectively, “Corporate Stock”) and to restrict the transfer of shares of the Corporate Stock, DEVCO, WORC Health and the sole shareholder, Albert Brooks, M.D., desire to enter into a Shareholder and Stock Transfer Restriction Agreement;

WHEREAS, DEVCO believes that it is in the best interest of WORC that the parties enter into a Shareholder and Stock Transfer Restriction Agreement; and

WHEREAS, attached to this Resolution is the proposed Shareholder and Stock Transfer Restriction Agreement by and among DEVCO and WORC Health.

NOW, THEREFORE, be it resolved that:

1. The Chief Executive Officer is hereby authorized to execute and enter into the Shareholder and Stock Transfer Restriction Agreement substantially in the form attached to this Resolution.
2. The Chief Executive Officer is hereby authorized to take any and all actions necessary to execute any and all instruments and do any and all things deemed by her to be necessary or desirable to carry out the intent and purposes of the foregoing Resolution.
3. This Resolution shall be filed in the minute book of the DEVCO and become a part of the records of DEVCO.

Passed and adopted by the Board of Directors of the Washington Township Hospital Development Corporation this eleventh (11<sup>th</sup>) day of August 2023 by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

RECUSAL: \_\_\_\_\_

\_\_\_\_\_  
Benn Sah, MD  
President, Board of Directors  
Washington Township Hospital  
Development Corporation

\_\_\_\_\_  
Steven Chan, DDS  
Secretary, Board of Directors  
Washington Township Hospital  
Development Corporation

## SHAREHOLDER AND STOCK TRANSFER RESTRICTION AGREEMENT

THIS SHAREHOLDER AND STOCK TRANSFER RESTRICTION AGREEMENT (the “**Agreement**”) is made, entered into and effective on and as of August 11, 2023 (the “**Effective Date**”) by and among WORC Health (the “**Corporation**”), a California professional medical corporation, Washington Township Hospital Development Corporation (“**DEVCO**”), a California nonprofit public benefit corporation, dba “**WORC**” and that person or entity (the “**Shareholder**”) whose identity and interest in the shares of the Corporation are set forth and described on Exhibit “A”, which is attached hereto and incorporated herein by this reference, with reference to the following:

### RECITALS

A. The Corporation is a professional medical corporation that is composed of a physician who is licensed to practice medicine in the State of California and who is employed by or contract directly with the Corporation to provide professional medical services and other professional services on behalf of the Corporation (“**Physicians**”).

B. The Shareholder is either a “**Licensed Person**” or a “**Corporate Shareholder**,” as such terms are defined in Section 10 of this Agreement.

C. WORC is a nonprofit public benefit corporation that is part of a regional health care delivery system of which Washington Hospital Healthcare System (the “**District**”), is the parent corporation, which system comprises a wide range of inpatient and outpatient health care facilities, providers and services, including but not limited to acute care hospitals, outpatient medical clinics, and other outpatient medical clinics.

D. As an affiliate of the District, WORC engages in long-term joint initiatives with the District to maintain, expand, and enhance outpatient health care access to communities served by the District, including, without limitation, the provision of physical therapy services (“**Physical Therapy Services**”).

F. The parties desire to formally define their rights and obligations as to the shares of Common Stock or any other shares of, or other forms of equity or debt security in, the Corporation (collectively, “**Corporate Stock**”) and to restrict the “**Transfer**” (as defined in Section 1 below) of shares of Corporate Stock.

G. The parties further desire to define additional rights and obligations with respect to any Transfers or attempted Transfers of any shares of Corporate Stock by the Corporation, the Shareholder and/or any other shareholder of the Corporation to or from any third parties.

**NOW, THEREFORE** in consideration of the foregoing Recitals and the mutual agreements, covenants, conditions and other terms contained herein, and for other valuable



consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Restrictions on Corporate Stock. Except as otherwise provided in this Agreement, neither the Corporation nor the Shareholder shall create, issue, sell, purchase, reacquire, assign, exchange, gift, pledge, hypothecate, reclassify, encumber, or otherwise dispose of or transfer (individually or collectively, “**Transfer**”, including any derivation thereof as a noun, verb or adjective), whether voluntarily, involuntarily, by operation of law or otherwise, or whether for value or no value, any shares of Corporate Stock (including without limitation any shares of Corporate Stock which the Shareholder now owns or may hereafter acquire) or any right or interest therein, at any time or in any manner whatsoever, without the prior written consent of WORC, which consent may be given, withheld or conditioned in WORC’s sole discretion.

2. Automatic Transfer of Corporate Stock upon Certain Events.

(a) By the execution of this Agreement, the Shareholder hereby agrees that all of the shares of Corporate Stock held by the Shareholder shall be transferred to WORC’s “**Designated Transferee**” (as defined in Section 2(e) below), without notice and without further action by the Shareholder, upon the occurrence of any of the following events (each, a “**Transfer Event**”):

(i) the death of the Shareholder or, if the Shareholder is a Corporate Shareholder, the death of such Corporate Shareholder’s sole shareholder;

(ii) the determination by a court of competent jurisdiction that the Shareholder or, if applicable, the Shareholder’s sole shareholder, is incompetent;

(iii) the Shareholder or, if applicable, the Shareholder’s sole shareholder, becoming permanently disabled, which shall be defined as the Shareholder’s or the Shareholder’s sole shareholder’s inability to perform his or her duties as a board director and/or an officer of the Corporation, despite reasonable accommodations as required by law, for a period of one hundred eighty (180) consecutive days or one hundred eighty (180) non-consecutive days in any three hundred sixty-five (365) day period;

(iv) the Shareholder, or, if applicable, the Shareholder’s sole shareholder, becoming disqualified under California law to be a shareholder of either the Corporation or the Shareholder;

(v) in the event any shares of Corporate Stock held by the Shareholder are attempted to be Transferred voluntarily, involuntarily, by operation of law or otherwise to any person or entity other than the Designated Transferee;

(vi) the Shareholder or, if applicable, the Shareholder’s sole shareholder, becoming disqualified from participation in the Medicare program or any other federally or state funded health care programs;

(vii) the conviction of the Shareholder or, if applicable, the Shareholder's sole shareholder, of any crime involving moral turpitude or of any violation of any laws concerning the practice of medicine;

(viii) the receipt by WORC of written notice from the Shareholder that the Shareholder desires to exercise his/her/its option to sell all of the Shareholder's shares of Corporate Stock pursuant to Section 4 below;

(ix) WORC's provision of written notice to the Shareholder of WORC's exercise of its option pursuant to Section 5 below;

(x) the Shareholder becoming a "**Disqualified Shareholder**" (as defined in Section 10 below);

(xi) the filing of any petition for or other document causing or intended to cause a judicial, administrative, voluntary or involuntary dissolution of the Corporation, the filing by or against the Corporation of a petition for voluntary or involuntary bankruptcy, or any assignment for the benefit of the Corporation's creditors; or

(xii) WORC's provision of written notice to the Corporation or the Shareholder of the material breach by the Corporation or the Shareholder of this Agreement or any provision herein.

The Shareholder shall promptly give WORC and the Corporation written notice of the occurrence of any Transfer Event; provided, however, such written notice shall be given by the Shareholder's legal representative in the event of the death or incapacity of the Shareholder or, if applicable, the Shareholder's sole shareholder, that precludes such person from providing such notice; further provided, the occurrence of any Transfer Event shall not be deemed to be delayed, voided, suspended, tolled or subject to or otherwise conditioned upon the giving of or failure to give such written notice by the Shareholder or his/her/its legal representative (as appropriate) or the timing thereof.

(b) Upon the occurrence of a Transfer Event, all of the shares of Corporate Stock held by the Shareholder, including without limitation all right, title and interest (including any purported community property interest of the Shareholder's spouse, if applicable) in and to such shares of Corporate Stock, shall be Transferred to the Designated Transferee, without notice and without further action by the Shareholder, in the manner set forth in subsection (d) below. Such Transfer shall thereafter be reflected on the books of the Corporation in the manner set forth in Section 3 below.

(c) The purchase price for all of the shares of Corporate Stock transferred to the Designated Transferee pursuant to this Section 2 shall be Five Hundred Dollars (\$500.00).

(d) Payment of the purchase price for the Transferred shares of Corporate Stock shall be made to the Shareholder by the Designated Transferee within five (5) business days after receipt by WORC of a new stock certificate evidencing the registration of the Transferred shares of Corporate Stock in the name of the Designated Transferee on the books of the Corporation in the manner set forth in Section 3 below. Notwithstanding anything in this Agreement to the contrary, upon the occurrence of a Transfer Event, such shares of Corporate Stock shall be deemed to be Transferred to the Designated Transferee effective upon the date of such Transfer Event, irrespective of the date of payment for such shares of Corporate Stock or the date upon which WORC receives a new stock certificate in the name of the Designated Transferee.

(e) For purposes of this Agreement, the “**Designated Transferee**” shall mean any individual or entity that is appointed from time to time to be the Designated Transferee by the President or Chief Executive Officer or Board of Directors of WORC, in his or her or its sole discretion, which individual or entity shall be qualified to be a shareholder of the Corporation as required under California law and the Corporation’s Articles of Incorporation and Bylaws and as otherwise required under this Agreement.

### 3. Documents Evidencing Transfer of Corporate Stock.

(a) WORC hereby acknowledges receipt of stock certificate No. 1 (the “Certificate”) of the Corporation evidencing one hundred (100) shares of Common Stock (which the Shareholder hereby acknowledges and agrees represents all of the shares of Corporate Stock held by the Shareholder as of the Effective Date hereof), duly endorsed by the Shareholder for Transfer in blank, which has been deposited by the Shareholder with WORC upon the Shareholder’s execution of this Agreement. WORC agrees to hold such Certificate for the benefit of the Designated Transferee. Upon the occurrence of a Transfer Event, WORC shall complete the Transfer section of the Certificate by inserting the name of the Designated Transferee as the transferee thereof and shall thereupon deliver the Certificate to the Secretary of the Corporation. Upon receipt of the Certificate, the Secretary of the Corporation shall immediately (i) cancel the Certificate, (ii) register the shares represented thereby in the name of the Designated Transferee on the books of the Corporation, and (iii) issue a new certificate in the name of the Designated Transferee, which shall be deposited with WORC to be held for the benefit of any future Designated Transferee in the manner set forth hereinabove.

(b) Notwithstanding anything in this Agreement to the contrary, WORC’s obligation to release the Certificate to the Secretary of the Corporation following the Transfer of title in the shares of Corporate Stock due to the occurrence of a Transfer Event, as provided in Section 2 above, in order to register the shares in the name of the Designated Transferee on the books of the Corporation shall be contingent on WORC’s prior or concurrent receipt of:

- (i) a stock transfer power for the shares of Corporate Stock evidenced by the Certificate, which has been endorsed by the Designated Transferee in blank;
- (ii) a copy of any stock purchase agreement which has been executed by the Designated Transferee; and

(iii) a copy of a discrete Shareholder and Stock Transfer Restriction Agreement, substantially in the form of this Agreement, duly executed by the Corporation, WORC and the Designated Transferee, as modified to substitute the Designated Transferee for the Shareholder and to incorporate other related substitutions applicable to the Designated Transferee.

4. The Shareholder's Option. For valuable consideration, the receipt of which the Corporation and WORC hereby acknowledge, the Shareholder shall have the irrevocable option, notwithstanding anything herein to the contrary, to sell all of the shares of Corporate Stock held by the Shareholder to the Designated Transferee in the manner set forth in this Section 4. The Shareholder shall exercise such option by providing written notice thereof to WORC and the Corporation (the "**Shareholder Option Notice**"). The Designated Transferee shall complete the purchase of the Shareholder's shares of Corporate Stock within ninety (90) days following WORC's receipt of the Shareholder Option Notice. The Transfer of all right, title and interest in and to such shares of Corporate Stock pursuant to this Section 4 shall be a Transfer Event in accordance with Section 2(a)(viii) above, and shall be deemed to occur immediately upon the giving of such Shareholder Option Notice, without any further action by the Shareholder, in the manner provided in Section 2 above. Such Transfer shall be evidenced, in part, by a stock purchase agreement in a form acceptable to WORC, duly executed by the parties thereto, subject at all times to the terms of this Agreement. The purchase price for the shares of Corporate Stock to be sold pursuant to this Section 4 shall be Five Hundred Dollars (\$500.00). The Transfer of such shares of Corporate Stock shall be reflected on the books of the Corporation and otherwise documented in the manner provided in Section 3 above.

5. WORC's Option. For valuable consideration, the receipt of which the Shareholder and the Corporation hereby acknowledge, the Shareholder hereby irrevocably grants to WORC the option to cause the Shareholder to sell all of the shares of Corporate Stock held by the Shareholder to the Designated Transferee. WORC shall exercise such option by providing written notice thereof to the Shareholder and to the Corporation (the "**WORC Option Notice**"). The giving of the WORC Option Notice hereunder shall be a Transfer Event as provided in Section 2(a)(ix) above, and the Transfer of all right, title and interest in and to such shares of Corporate Stock shall be deemed to occur immediately upon the giving of such WORC Option Notice, without any further action by the Shareholder, in the manner provided in Section 2 above. The purchase price for all of the shares of Corporate Stock to be sold pursuant to this Section 5 shall be Five Hundred Dollars (\$500.00). Such Transfer shall be evidenced, in part, by a stock purchase agreement in a form acceptable to WORC, duly executed by the parties thereto, subject at all times to the terms of this Agreement. The Transfer of such shares of Corporate Stock shall be reflected on the books of the Corporation and otherwise documented in the manner provided in Section 3 above.

#### 6. Following Transfer Events.

(a) Upon the occurrence of a Transfer Event, the Shareholder shall no longer be eligible to be a shareholder of the Corporation, and such Shareholder or, if applicable, such Shareholder's sole shareholder, shall immediately be deemed to have resigned all positions held with the Corporation, including as a board director and/or officer of the Corporation.

(b) Upon and after the occurrence of a Transfer Event, the Shareholder (including the estate of the deceased Shareholder, if applicable) shall neither have nor exercise any right or privilege as a shareholder of the Corporation, including without limitation any right to vote as a shareholder or to receive any unallocated or undistributed dividend or other distribution.

7. Restrictions on Certificates. Prior to the execution of this Agreement, the Shareholder shall surrender the certificate(s) representing all of the shares of Corporate Stock held by the Shareholder to the Corporation for the purpose of placing notice thereon (or on any replacement certificate) of the restrictions on Transfer specified in this Agreement. In the event that the Shareholder holds more than one such certificate, all such certificates shall be cancelled, and a single new certificate shall be issued in the Shareholder's name (the "**Certificate**" as described in Section 3(a) above). After such notice of Transfer restrictions has been placed on the Certificate, it shall be deposited with WORC by the Shareholder, endorsed by the Shareholder in blank, upon the execution of this Agreement pursuant to Section 3(a) above.

8. Certificate Legends. In addition to any other legends required by law or otherwise, the Corporation shall endorse upon each certificate evidencing any shares of Corporate Stock, now owned or hereafter acquired by the Shareholder, a legend in substantially the following form, which contains the notice of Transfer restrictions described more particularly in Section 7 above:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933 (THE “ACT”) OR QUALIFIED UNDER THE CALIFORNIA CORPORATE SECURITIES LAW OF 1968 OR ANY OTHER STATE SECURITIES LAW (THE “LAW”), AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF REGISTRATION UNDER THE ACT AND QUALIFICATION UNDER THE LAW UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE ISSUER HEREOF, SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED.

FOR A PERIOD OF NINE (9) MONTHS FROM THE DATE OF THIS CERTIFICATE, NO SALE OR OTHER TRANSFER OF ANY SHARES EVIDENCED BY THIS CERTIFICATE SHALL BE MADE TO PERSONS WHO ARE NOT RESIDENTS OF THE STATE OF CALIFORNIA.

THE COMMON STOCK OF THIS CORPORATION MAY BE OWNED ONLY BY ‘LICENSED PERSONS’, AS DEFINED IN SECTIONS 13401(d) AND 13401.5 OF THE CALIFORNIA CORPORATIONS CODE, OR BY CALIFORNIA PROFESSIONAL MEDICAL CORPORATIONS EACH OF WHICH IS OWNED BY A SINGLE STOCKHOLDER WHO IS A LICENSED PERSON, AND NO SUCH LICENSED PERSON

SHALL BE A 'DISQUALIFIED PERSON', AS DEFINED IN SECTION 13401(e) OF THE CALIFORNIA CORPORATIONS CODE.

THE SALE, RESALE, REACQUISITION, ASSIGNMENT, HYPOTHECATION, OR OTHER TRANSFER OR DISPOSITION OF ANY SHARES REPRESENTED BY THIS CERTIFICATE, OR ANY RIGHT OR INTEREST THEREIN, IS SUBJECT TO CERTAIN RESTRICTIONS CONTAINED IN THE BYLAWS OF THIS CORPORATION AND IN A SHAREHOLDER AND STOCK TRANSFER RESTRICTION AGREEMENT ON FILE WITH THE SECRETARY OF THE CORPORATION.

A STATEMENT OF THE RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS GRANTED TO OR IMPOSED UPON THE SHARES OF COMMON STOCK REPRESENTED BY THIS CERTIFICATE AND THE HOLDER THEREOF SHALL BE PROVIDED TO THE HOLDER OF SUCH SHARES WITHOUT CHARGE AND UPON REQUEST TO THE SECRETARY OF THE CORPORATION."

9. Additional Shareholders. The Corporation hereby represents, warrants and agrees that each additional holder of any shares of the Corporate Stock or any rights to acquire any shares of Corporate Stock, including without limitation any holder of any warrant, option or other security convertible into or exchangeable for any shares of Corporate Stock (each, an "Other Shareholder"), shall execute, and with respect to each such Other Shareholder, the Corporation shall execute, a discrete Shareholder and Stock Transfer Restriction Agreement, substantially in the form of this Agreement, as modified to substitute such Other Shareholder for the Shareholder and to incorporate other related substitutions applicable to such Other Shareholder. The Corporation shall not issue any shares of Corporate Stock or any rights to acquire any shares of Corporate Stock to any such holder or Other Shareholder, and shall not consent to any Transfer of any Corporate Stock or any right or interest therein, without compliance with the foregoing sentence.

10. Qualification Requirements of the Shareholder for Share Ownership. In addition to any shareholder qualification requirements specified in the Corporation's Articles of Incorporation and/or Bylaws, the Shareholder (or if the Shareholder is a Corporate Shareholder, its sole shareholder) shall further satisfy and maintain all of the following qualifications throughout the period in which such Shareholder (or Corporate Shareholder) owns shares of the Corporation's Corporate Stock:

(a) Shares of the Corporation's Corporate Stock may be owned only by (i) "licensed persons", as such term is described in Part 4 of Division 3 of Title 1 of the California Corporations Code (the "Code"), who qualify as shareholders of California professional medical corporations, as described in Article 18 of Chapter 5 of Division 2 of the California Business and Professions Code, and in Article 13 of Chapter 1 of Division 13 of Title 16 of the California Code

of Regulations (“**Licensed Persons**”), or (ii) California professional medical corporations (“Corporate Shareholders”) which are each owned by a single shareholder who is a Licensed Person; and

(b) The Shareholder (or in the case of a Corporate Shareholder, such Corporate Shareholder and/or its sole shareholder) shall also have the following additional qualifications throughout the period in which such Shareholder (or Corporate Shareholder) owns shares of Corporate Stock:

(i) Be a Licensed Person who is not a disqualified person. A “**disqualified person**”, as defined in Section 13401(e) of the Code, is any Licensed Person who, for any reason, becomes legally disqualified (temporarily or permanently) to render the professional services which the Corporation is rendering;

(ii) Execute and maintain in effect a written Shareholder and Stock Transfer Restriction Agreement by and among said Shareholder, the Corporation and WORC (or an affiliate thereof);

(iii) Abide by all applicable provisions of the Articles of Incorporation, the Bylaws, the rules, regulations and policies, and any other governing documents of the Corporation; and

(iv) Be and remain a member in good standing of the medical staff of Washington Hospital;

In the event that the Shareholder (or if the Shareholder is a Corporate Shareholder, in the event the Shareholder and/or its sole shareholder) fails to satisfy and maintain any or all of the shareholder qualification requirements applicable to such Shareholder (or Corporate Shareholder) as listed hereinabove or otherwise specified in the Corporation’s Articles of Incorporation and/or Bylaws, such Shareholder (or Corporate Shareholder) shall thereupon become a “**Disqualified Shareholder.**”

11. Jeopardy. In the event that the performance by any party hereto of any covenant, condition or other term of this Agreement is determined to be in violation of any statute, ordinance or governmental regulations, or is otherwise deemed illegal or unethical by any recognized regulatory, licensing or accreditation authority or medical board having jurisdiction thereover (collectively, the “**Jeopardy Events**”), then the parties shall use their best efforts to meet forthwith and attempt to negotiate an amendment to this Agreement to remove or negate the effect of the Jeopardy Event(s) while preserving, to the extent possible, the essential business purpose of this Agreement. In the event that the parties are unable to negotiate such an amendment within thirty (30) days following written notice by any party of the Jeopardy Event(s), then the issue shall be submitted to mediation and, if necessary, arbitration in accordance with Section 25 below.

12. Relationship of the Parties. None of the provisions of this Agreement is intended to create, and none shall be deemed or construed to create, any relationship between parties other than that of independent entities contracting with each other hereunder solely for the purpose of

effecting the provisions of this Agreement. None of the parties hereto nor any of their respective employees shall be construed by operation of this Agreement to be the partner, joint venturer, agent, employer or representative of the other.

13. Cooperation. Each of the parties hereto agrees to cooperate with the others to carry out the purposes and intent of this Agreement, including without limitation the execution and delivery to the appropriate party of any further agreements and other documents and the taking of any actions as may reasonably be required to effectuate the terms hereof.

14. No Third-Party Beneficiaries. Except as expressly provided in this Agreement, nothing herein is intended to confer any rights or remedies on any person other than the parties hereto and their respective successors and assigns (as permitted hereunder), and no other person is intended to be nor shall be a third-party beneficiary of this Agreement. Except as expressly provided in this Agreement, nothing herein is intended to relieve or discharge the obligation or liability of any third persons to any party hereto, and nothing herein shall give any third person any right of subrogation or action over or against any party hereto.

15. Entire Agreement. This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, supersedes all other and prior agreements on the same subject, whether written or oral, and contains all of the covenants and agreements between the parties with respect to the subject matter hereof. Each party hereto acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by the other party(ies), or by anyone acting on behalf of any party, that are not embodied herein.

16. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs (as applicable), legal representatives, and other permitted successors and assigns. No party may assign this Agreement or the rights, interests or obligations hereunder; provided, however, WORC may (a) assign any or all of its rights and interests hereunder to one or more of its affiliates or (b) designate one or more of its affiliates to perform its obligations hereunder (in any or all of which cases WORC shall remain liable and responsible for the performance of all of its obligations hereunder). Any assignment or delegation in contravention of this Section 16 shall be null and void and without force or effect.

17. Counterparts. This Agreement and any amendments thereto may be executed in counterparts, each of which shall constitute an original document, but all of which shall constitute one and the same instrument.

18. Headings. The section headings used herein are for convenience only and are not to be construed to be part of this Agreement or to be used in determining or construing the intent or context of this Agreement.

19. Notices. All notices, requests, demands or consents hereunder shall be in writing and shall be deemed given and received when delivered, if delivered in person, or four (4) days after being mailed by certified or registered mail, postage prepaid, return receipt requested, or one (1) day after being sent by overnight courier such as Federal Express, to and by the parties at the



following addresses, or at such other addresses as the parties may designate by written notice in the manner set forth herein:

If to the Corporation: Tina Nunez, VP, Ambulatory and Administrative Services

If to the Shareholder: Albert Brooks, M.D.

If to WORC: 39141 Civic Center Drive, Suite 120  
Fremont, CA 94538-5818 Attention:  
Walter Choto, Chief, Ambulatory Care Services

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its choice of law rules.

21. Amendment. This Agreement may be amended at any time by agreement of the parties, provided that any amendment shall be in writing and executed by all parties hereto.

22. Severability. In the event that any provision of this Agreement is declared null and void by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall continue in full force and effect.

23. Time of Essence. Time is expressly made of the essence with regard to this Agreement and each and every provision hereof of which time of performance is a factor.

24. Waivers. No waiver by any party hereto, whether express or implied, of its rights under any provision of this Agreement shall constitute a waiver of such party's rights under such provision at any other time or a waiver of such party's rights under any other provision of this Agreement. No failure by any party to take any action in response to any breach or default by another party shall constitute a waiver of the former party's right to enforce any provision of this Agreement or to take action in response to such breach or default or any subsequent breach or default by the other party. Notwithstanding the foregoing provisions of this Section 24, any waiver hereunder must be in writing and signed by the waiving party in order to be effective.

25. Dispute Resolution. In the event that any disagreement, dispute or claim arises among the parties hereto with respect to the enforcement or interpretation of this Agreement or any specific terms and provisions hereof or with respect to whether an alleged breach or default hereof has or has not occurred (collectively, a "**Dispute**"), such Dispute shall be settled in accordance with the following procedures:

(a) Meet and Confer. In the event of a Dispute among the parties hereto, a party may give written notice to all other parties setting forth the nature of such Dispute (the "**Dispute Notice**"). The parties shall meet and confer to discuss the Dispute in good faith within ten (10) days following the other parties' receipt of the Dispute Notice in an attempt to resolve the Dispute.

Representatives of each party shall meet at such date(s) and time(s) as are mutual convenient to the representatives of each participant.

(b) Mediation. If the parties are unable to resolve the Dispute within thirty (30) days following the date of receipt of the Dispute Notice by the other parties (the “**Meet and Confer Period**”), then the parties shall attempt in good faith to settle the Dispute through nonbinding mediation with JAMS, Inc. (“**JAMS**”) or, if JAMS is not in existence or otherwise unable to conduct the mediation in Alameda County, California, under the then current Commercial Rules of the American Arbitration Association. The parties shall cooperate with JAMS and with each other in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties to the Dispute shall share the expenses of the mediator and the other costs of mediation on a pro rata basis.

(c) Arbitration. Any Dispute which cannot be resolved by the parties within sixty (60) days following the end of the Meet and Confer Period shall be resolved by final and binding arbitration (the “**Arbitration**”). The Arbitration shall be initiated and administered by and in accordance with the then current Comprehensive Arbitration Rules and Procedures of JAMS (the “**Rules**”), or if JAMS is not in existence or otherwise unable to conduct the Arbitration in Alameda County, with the then current Commercial Rules of the American Arbitration Association. The Arbitration shall be held in Alameda County, California, unless the parties mutually agree to have such proceeding in some other locale; the exact time and location shall be decided by the arbitrator(s) selected in accordance with the then current Rules of JAMS. The arbitrator(s) shall apply California substantive law or federal substantive law where state law is preempted. Civil discovery for use in such Arbitration shall be conducted in accordance with the provisions of California law that would apply if the matter were being litigated in Superior Court of the State of California. The arbitrator(s) selected shall have the power to enforce the rights, remedies, duties, liabilities and obligations of discovery by the imposition of the same terms, conditions and penalties as can be imposed in like circumstances in a civil action by a court of competent jurisdiction of the State of California. The provisions of California law governing discovery in a civil action filed in Superior Court of the State of California (including without limitation depositions) are incorporated herein by reference and made applicable to this Agreement. The arbitrator(s) shall have the power to grant all legal and equitable remedies provided by California law and award compensatory damages provided by California law, except that punitive damages shall not be awarded. The arbitrator(s) shall prepare in writing and provide to the parties an award including factual findings and the legal reasons on which the award is based. The arbitrator(s) shall not have the power to commit errors of law or legal reasoning. Any judicial review of the arbitrator(s) decision shall be governed by California Code of Civil Procedure, Sections 1285 et seq., except that the parties expressly grant the Superior Court the authority to correct errors of law, and modify the arbitrator(s)’ ruling to avoid errors of law. The prevailing party in any Arbitration hereunder shall be awarded reasonable attorneys’ fees, expert and nonexpert witness costs and any other expenses incurred directly or indirectly with said Arbitration, including without limitation the fees and expenses of the arbitrator(s).

(d) Equitable Relief and Termination. Notwithstanding the foregoing provisions of this Section 25, in the event that any party hereto wishes to obtain injunctive relief, a temporary restraining order or any other form of equitable relief, such party may initiate an action

for such relief in a court of general jurisdiction in the State of California. The decision of the court with respect to the requested injunctive relief, temporary restraining order or other form of equitable relief shall be subject to appeal only as allowed under California law. Such courts shall not, however, have the authority to review or grant any request or demand for damages. Nothing in this Section 25 shall be interpreted to limit any party's right to terminate this Agreement as otherwise set forth herein.

26. Attorneys' Fees. Notwithstanding and in addition to the provisions of Section 25 above, should any party institute any action or proceeding (excluding mediation) to enforce this Agreement or any provision hereof, the prevailing party or parties in any such action or proceeding shall be entitled to receive from the other party or parties all costs and expenses, including without limitation reasonable attorneys fees, incurred by the prevailing party or parties in connection with such action or proceeding.

27. Consent of Spouse. The Shareholder who is a natural person agrees to obtain the signature of his or her spouse on a copy of the Consent of Spouse form attached hereto as Exhibit "B" and incorporated herein by this reference.

28. No Consideration for Referrals. The parties hereto acknowledge and agree that: (a) nothing in this Agreement or in any other written or oral agreement between or among the parties hereto, including without limitation the Professional Services Agreement between the Corporation and WORC, nor any consideration offered or paid in connection with any such agreement, contemplates or requires the admission or referral of any patient to or from the District or any other health care facility operated by or otherwise affiliated with the District or WORC ; and (b) no such agreements are intended to influence the Shareholder's (including, if applicable, the Shareholder's employed physicians) or the Corporation's judgment in choosing the health care facility or services appropriate for the proper care and treatment of each such person's or entity's patients.

29. Specific Laws. Each party hereto acknowledges, and is hereby bound by, the obligation of such party to comply with applicable federal and state laws governing referral of patients, as may be in effect or amended from time-to-time, including without limitation:

(a) Payments for referral or to induce the referral of patients (California Business and Professions Code Section 650; California Labor Code Section 3215; and the Medicare/Medicaid Fraud and Abuse Law, Section 1128B of the Social Security Act and the regulations promulgated thereunder); and

(b) The referral of patients by a physician for certain designated health services to any entity with which the physician (or his/her immediate family) has a financial relationship (California Labor Code Sections 139.3 and 139.31, applicable to referrals for workers' compensation services; California Business and Professions Code Sections 650.01 and 650.02, applicable to all other patient referrals within the State of California; and Section 1877 of the Social Security Act, applicable to referrals of Medicare and Medicaid patients, and the regulations promulgated thereunder).

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective as of the Effective Date hereof.

THE CORPORATION

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

THE SHAREHOLDER

By: \_\_\_\_\_  
Albert L. Brooks, M.D.

WORC

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

**EXHIBIT "A"**

**SHAREHOLDER SHARES**

The person or entity named hereon is a Shareholder (or Corporate Shareholder) of the Corporation and the Shareholder's ownership of outstanding shares of Corporate Stock is as follows:

The Shareholder

Number of Shares of Common Stock

Albert L. Brooks, M.D.

One Hundred (100)

**EXHIBIT "B"**

**CONSENT OF SPOUSE**

I certify that I am the spouse of the Shareholder who signed the attached Shareholder and Stock Transfer Restriction Agreement; that I have read and understand the provisions thereof; that I acknowledge that I cannot by law own any interest, whether legal or beneficial, in any shares of Common Stock or any other shares of WORC Health, a California professional medical corporation; and that I agree to be bound by and to accept the provisions, and to comply with all of the terms and conditions, of the attached Shareholder and Stock Transfer Restriction Agreement.

Executed on this \_\_\_\_\_ ( ) day of August, 2023, at  
\_\_\_\_\_.

By Spouse of the Shareholder:

\_\_\_\_\_