



# Washington Township Health Care District

2000 Mowry Avenue, Fremont, California 94538-1716 | 510.797.1111

Kimberly Hartz, Chief Executive Officer

## Board of Directors

Jacob Eapen, MD  
William F. Nicholson, MD  
Bernard Stewart, DDS  
Michael J. Wallace  
Jeannie Yee

## BOARD OF DIRECTORS' MEETING

Monday, May 17, 2021– 6:00 P.M.

Meeting Conducted by Zoom

<https://us02web.zoom.us/j/87593250595?pwd=MS84UFhRYmwyNU1peXNBTEQ0d1pYdz09>

Password: 552056

## AGENDA

### PRESENTED BY:

**I. CALL TO ORDER & PLEDGE OF ALLEGIANCE**

William Nicholson, M.D.  
Board President

**II. ROLL CALL**

Dee Antonio  
District Clerk

**III. COMMUNICATIONS**

A. Oral

*This opportunity is provided for persons in the audience to make a brief statement, not to exceed three (3) minutes on issues or concerns not covered by the agenda. "Request to Speak" cards should be filled out in advance and presented to the District Clerk. For the record, please state your name.*

B. Written

**IV. ACTION**

- A. Consideration of Resolution No.1227: Resolution of the Board of Directors of Washington Township Health Care District authorizing Washington Township Health Care District to enter into a Loan and Line of Credit in the principal amount of \$20,000.000; approving the forms of Business Loan Agreement, Promissory Note, Governmental Certificate, and related documents required to secure the Loan and Line of Credit; and authorizing the Chief Executive Officer, the Executive Vice President and Chief Operating Officer, and the Chief Financial Officer of the District to execute the Business Loan Agreement, Promissory Note, Governmental Certificate, and other related documents required to secure the Loan and Line of Credit *Motion Required*

**V. ANNOUNCEMENTS**

**VI. CLOSED SESSION**

*In accordance with Section 32106 and 32155 of the California Health & Safety Code and Chapter 9 of Part 1 of Division 2 of Title 5 of the California Government Code, portions of this meeting may be held in closed session.*

Kimberly Hartz  
Chief Executive Officer

- A. Conference involving trade secrets pursuant to Health & Safety Code section 32106: Strategic Map Update
- B. Report of Medical Staff and Quality Assurance Committee pursuant to Health & Safety Code section 32155
- C. Conference with Legal Counsel-Anticipated Litigation pursuant to Government Code section 54956.9(d)(2)
  - One Claim
- D. Discussion of Security of Public Facilities pursuant to Government Code section 54957
  - Consultation with John Lee, Chief Information Officer
- E. Conference with Labor Negotiators
  - Designated Representative: Kimberly Hartz, Chief Executive Officer
- F. Conference involving trade secrets pursuant to Health & Safety Code section 32106: New Services

**VII. OPEN SESSION**

Report on Permissible Actions Taken During Closed Session

William Nicholson, M.D.  
Board President

**VIII. ADJOURNMENT**

William Nicholson, M.D.  
Board President

*In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact the District Clerk at (510) 818-6500. Notification two working days prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting.*

**RESOLUTION NO. 1227**

**RESOLUTION OF THE BOARD OF DIRECTORS OF WASHINGTON TOWNSHIP HEALTH CARE DISTRICT AUTHORIZING WASHINGTON TOWNSHIP HEALTH CARE DISTRICT (“DISTRICT”) TO ENTER INTO A LOAN AND LINE OF CREDIT IN THE PRINCIPAL AMOUNT OF \$20,000,000; APPROVING THE FORMS OF BUSINESS LOAN AGREEMENT, PROMISSORY NOTE, GOVERNMENTAL CERTIFICATE, AND RELATED DOCUMENTS REQUIRED TO SECURE THE LOAN AND LINE OF CREDIT; AND AUTHORIZING THE CHIEF EXECUTIVE OFFICER, THE EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, AND THE CHIEF FINANCIAL OFFICER OF THE DISTRICT TO EXECUTE THE BUSINESS LOAN AGREEMENT, PROMISSORY NOTE, GOVERNMENTAL CERTIFICATE, AND OTHER RELATED DOCUMENTS REQUIRED TO SECURE THE LOAN AND LINE OF CREDIT**

WHEREAS, the Washington Township Health Care District is a local health care district (“District”) that owns and operates a general acute care hospital and provides essential healthcare services to the population residing within the District’s political boundaries, including the cities of Fremont, Newark, Union City, parts of South Hayward and Sunol;

WHEREAS, the District has been severely impacted financially due to the COVID-19 Pandemic which resulted in a decrease in revenue due to the reduction in elective procedures and an increase in expenses due to unprecedented labor, equipment and supply costs; and

WHEREAS, the District continues to pursue governmental programs to secure additional grants and other financial assistance to mitigate the impacts of the COVID-19 Pandemic, but obtaining such grants and other financial assistance is uncertain; and

WHEREAS, the District believes that securing a loan and line of credit from Fremont Bank (the “Bank”) in the principal amount of \$20,000,000 (“Line of Credit”) is prudent given the uncertainty of the continued impacts of the COVID-19 Pandemic; and

WHEREAS, attached to this resolution are forms of Business Loan Agreement, Promissory Note, Governmental Certificate, and related documents which are required to be executed in order to secure the Line of Credit.

NOW THEREFORE, be it resolved that:

1. In accordance with District Law, Policies and Procedures, the District is hereby authorized to enter into the Line of Credit, and the forms of the Business Loan Agreement, Promissory Note, Governmental Certificate, and related documents (the "Bank Documents"), all in substantially the form attached to this resolution, are hereby approved.

2. Kimberly Hartz, the Chief Executive Officer, Edward Fayen, the Executive Vice President and Chief Operating Officer and Chris Henry, the Chief Financial Officer ("Authorized Officers") are hereby authorized, on behalf of the District, to execute the Bank Documents required in connection with securing the Line of Credit; in the event that the Bank approves an extension of the term of the Line of Credit, the Authorized Officers, or any of them, are hereby authorized, on behalf of the District, to execute amendments to or restatements of any or all of the Bank Documents as may be in the best interests of the District; provided, however, that any amendment that increases the principal amount of the Line of Credit shall first be approved by the District Board of Directors.

3. The Authorized Officers are hereby authorized to take any and all actions necessary to execute any and all instruments and do any and all things deemed by him or her to be necessary, or desirable, to carry out the intent and purposes of the foregoing resolution.

4. The First Vice President is authorized to sign this Resolution in place of the Secretary due to the recusal of the Secretary from the discussion and vote concerning this Resolution.

Passed and adopted by the Board of Directors of the Washington Township Health Care District this 17<sup>th</sup> day of May 2021, by the following vote:

AYES:

NOES:

RECUSAL:

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WILLIAM NICHOLSON, MD  
President, Board of Directors  
Washington Township Health Care District

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JEANNIE YEE  
First Vice President, Board of Directors  
Washington Township Health Care District



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# Memorandum

**DATE:** May 5, 2021

**TO:** Board of Directors

**FROM:** Chris Henry, Vice President and CFO

**SUBJECT:** Emergency Line of Credit

We have learned many things during the COVID-19 pandemic, both clinically and financially. One of the things we've learned is that access to external sources of cash may be unreliable during a crisis.

With the COVID-19 related county-wide shutdown implemented on March 17, 2020, we realized that the pandemic we were facing was likely going to be long and serious. We immediately began to look for access to emergency sources of cash in the event that we needed some sort of support through short-term borrowing. We quickly discovered that given the situation, banks and other sources of cash had tightened down on lending and were hesitant or unwilling to enter into new agreements with anyone but their existing customers. Those few who would entertain a potential arrangement required that we move our entire banking relationship to their institution as a condition of the transaction, which was unacceptable to us.

We also learned that access to governmental relief funds during a national emergency was unreliable. We are extremely grateful for the \$31 million in Cares Act funding we received to help mitigate the financial burden that COVID-19 created during the period from March 2020 through June 2020. However, the most intense period of COVID activity at Washington Hospital and its related entities occurred subsequent to June, and the financial pressures have been significant. There remains about \$20 billion in CARES Act hospital relief funding that has not been distributed and an additional \$3.0 billion was approved in the Heroes Act. However, the distribution process has been caught up in politics and there is no additional relief in sight. While additional funds may still be recovered from FEMA, we will not be able to apply for those funds until the national emergency is ended, and the process may take a year or more before we secure funding. At most, FEMA will provide up to 75% of qualified losses after taking into consideration all other sources of funding.

We have been fortunate in this disaster in that we have been able to maintain adequate cash to continue operations during this extremely challenging time. Not all hospitals have been so lucky, and many are on the brink of financial collapse. As you have seen in Washington Hospital's financial presentations, our

days cash on hand have been reduced significantly this year, and if this disaster had persisted for an even more extended period we would have likely continued to draw down those days of cash in order to take care of the residents of our community.

Given all of the lessons learned during this experience, we feel it is prudent to make arrangements to provide access to emergency backstop funds in the event that another pandemic or other disaster of a different nature occurs over an extended period of time. To that end, we have been in discussions with Fremont Bank to secure a \$20.0 million line of credit. We have had a long-term relationship with Fremont Bank and they are willing to work with us to arrange the credit line.

This credit line would provide Washington Hospital with access to cash in the form of short-term loans in times of emergency. The loans would be payable over 12 months at a rate of Prime plus 1%. Certain financial restrictions and reporting requirements would apply. There would be no fees connected to the credit line other than principle and interest payments on outstanding balances as well as a small loan origination fee. I have attached the term sheet for your review.

The District retained independent legal counsel, Holland and Knight, to review the transaction. Holland and Knight has advised us that the District may enter into this transaction provided certain procedural steps are taken. We have also asked our bond counsel, Mary Norvell, to assist us with the transaction. She has concluded that the transaction will not run afoul of our bond covenants or related regulations. She will be available during the Board meeting to answer any questions.

We will be asking for your consideration of approval to move forward with securing this line of credit at the meeting of the Board of Directors scheduled on May 12, 2021. We have no immediate need for draws on the line of credit at this time. We will bring forward a policy regarding draws on the line of credit for your consideration in the near future.

# GOVERNMENTAL CERTIFICATE

<b>Principal</b>	<b>Loan Date</b>	<b>Maturity</b>	<b>Loan No</b>	<b>Call / Coll</b>	<b>Account</b>	<b>Officer</b>	<b>Initials</b>
\$20,000,000.00	05-03-2021	06-03-2022	3269115			KF	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

<b>Entity:</b> WASHINGTON TOWNSHIP HEALTH CARE DISTRICT 2000 Mowry Avenue Fremont, CA 94538	<b>Lender:</b> Fremont Bank Commercial Loan Operations 2580 Shea Center Drive Livermore, CA 94551-0752 (800) 359-2265
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**WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:**

**THE ENTITY'S EXISTENCE.** The complete and correct name of the governmental entity is WASHINGTON TOWNSHIP HEALTH CARE DISTRICT ("Entity"). The Entity is a governmental entity which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws and regulations of the State of California. The Entity has the full power and authority to own its properties and to transact the business and activities in which it is presently engaged or presently proposes to engage. The Entity maintains an office at 2000 Mowry Avenue, Fremont, CA 94538. The Entity shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of the Entity and any other governmental or quasi-governmental authority or court applicable to the Entity and the Entity's business activities.

**CERTIFICATES ADOPTED.** At a meeting of the governing body of the Entity, duly called and held on **May 12, 2021**, at which a quorum was present electronically and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Certificate were adopted.

**OFFICIALS.** The following named persons are Officials of WASHINGTON TOWNSHIP HEALTH CARE DISTRICT:

<u>NAMES</u>	<u>TITLES</u>	<u>AUTHORIZED</u>	<u>ACTUAL SIGNATURES</u>
Kimberly Hartz	Chief Executive Officer	Y	X _____
Edward Fayen	EVP/COO	Y	X _____
Christopher Henry	VP/CFO	Y	X _____

**ACTIONS AUTHORIZED.** Any one (1) of the authorized persons listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Entity. Specifically, but without limitation, any one (1) of such authorized persons is authorized, empowered, and directed to do the following for and on behalf of the Entity:

**Borrow Money.** To borrow, as a cosigner or otherwise, from time to time from Lender, on such terms as may be agreed upon between the Entity and Lender, such sum or sums of money as in their judgment should be borrowed, without limitation.

**Execute Notes.** To execute and deliver to Lender the promissory note or notes, or other evidence of the Entity's credit accommodations, on Lender's forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the Entity's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the related Promissory Notes, or any other evidence of credit accommodations.

**Negotiate Items.** To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Entity or in which the Entity may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the Entity's account with Lender, or to cause such other disposition of the proceeds derived therefrom as they may deem advisable.

**Further Acts.** In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements, **including agreements requiring disputes with Lender to be submitted to binding arbitration for final resolution and waiving the right to a trial by jury**, as the Officials may in their discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Certificate. The following person or persons are authorized to request advances and authorize payments under the line of credit until Lender receives from the Entity, at Lender's address shown above, written notice of revocation of such authority: **Kimberly Hartz, Chief Executive Officer of WASHINGTON TOWNSHIP HEALTH CARE DISTRICT; Edward Fayen, EVP/COO of WASHINGTON TOWNSHIP HEALTH CARE DISTRICT; and Christopher Henry, VP/CFO of WASHINGTON TOWNSHIP HEALTH CARE DISTRICT.**

**ASSUMED BUSINESS NAMES.** The Entity has filed or recorded all documents or filings required by law relating to all assumed business names used by the Entity. Excluding the name of the Entity, the following is a complete list of all assumed business names under which the Entity does business: **None.**

**NOTICES TO LENDER.** The Entity will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in the Entity's name; (B) change in the Entity's assumed business name(s); (C) change in the structure of the Entity; (D) change in the authorized signer(s); (E) change in the Entity's principal office address; (F) change in the Entity's principal residence; or (G) change in any other aspect of the Entity that directly or indirectly relates to any agreements between the Entity and Lender.

**CERTIFICATION CONCERNING OFFICIALS AND CERTIFICATES.** The Officials named above is duly elected, appointed, or employed by or for the Entity, as the case may be, and occupy the positions set opposite their respective names. This Certificate now stands of record on the books of the Entity,

is in full force and effect, and has not been modified or revoked in any manner whatsoever.

**CONTINUING VALIDITY.** Any and all acts authorized pursuant to this Certificate and performed prior to the passage of this Certificate are hereby ratified and approved. This Certificate shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of the Entity's agreements or commitments in effect at the time notice is given.

**IN TESTIMONY WHEREOF, we have hereunto set our hand and attest that the signatures set opposite the names listed above is their genuine signatures.**

**We each have read all the provisions of this Certificate, and we each personally and on behalf of the Entity certify that all statements and representations made in this Certificate are true and correct. This Governmental Certificate is dated May 3, 2021.**

**CERTIFIED TO AND ATTESTED BY:**

X \_\_\_\_\_  
Kimberly Hartz, Chief Executive Officer of  
WASHINGTON TOWNSHIP HEALTH CARE DISTRICT

X \_\_\_\_\_  
Edward Fayen, EVP/COO of WASHINGTON  
TOWNSHIP HEALTH CARE DISTRICT

X \_\_\_\_\_  
Christopher Henry, VP/CFO of WASHINGTON  
TOWNSHIP HEALTH CARE DISTRICT

NOTE: If the Officials signing this Certificate is designated by the foregoing document as one of the officials authorized to act on the Entity's behalf, it is advisable to have this Certificate signed by at least one non-authorized official of the Entity.



**BUSINESS LOAN AGREEMENT**

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$20,000,000.00	05-03-2021	06-03-2022	3269115				KF

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

<b>Borrower:</b>	<b>WASHINGTON TOWNSHIP HEALTH CARE DISTRICT</b> 2000 Mowry Avenue Fremont, CA 94538	<b>Lender:</b>	<b>Fremont Bank</b> Commercial Loan Operations 2580 Shea Center Drive Livermore, CA 94551-0752 (800) 359-2265
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**THIS BUSINESS LOAN AGREEMENT** dated May 3, 2021, is made and executed between WASHINGTON TOWNSHIP HEALTH CARE DISTRICT ("Borrower") and Fremont Bank ("Lender") on the following terms and conditions. Borrower has received prior commercial loans from Lender or has applied to Lender for a commercial loan or loans or other financial accommodations, including those which may be described on any exhibit or schedule attached to this Agreement. Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; (B) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (C) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

**TERM.** This Agreement shall be effective as of May 3, 2021, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until such time as the parties may agree in writing to terminate this Agreement.

**LINE OF CREDIT.** The Indebtedness is a revolving line of credit. Advances under the Indebtedness, as well as directions for payment from Borrower's accounts, may be requested orally by Borrower. All requests shall be confirmed by Borrower in writing on the day of the request. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person as described in the "Advance Authority" section below or (B) credited to any of Borrower's accounts with Lender.

**ADVANCE AUTHORITY.** The following person or persons are authorized to request advances and authorize payments under the line of credit until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of such authority: **Kimberly Hartz, Chief Executive Officer of WASHINGTON TOWNSHIP HEALTH CARE DISTRICT; Edward Fayen, EVP/COO of WASHINGTON TOWNSHIP HEALTH CARE DISTRICT; and Christopher Henry, VP/CFO of WASHINGTON TOWNSHIP HEALTH CARE DISTRICT.**

**CONDITIONS PRECEDENT TO EACH ADVANCE.** Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

**Loan Documents.** Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) evidence of insurance as required below; (3) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

**Borrower's Authorization.** Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel may require.

**Payment of Fees and Expenses.** Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

**Representations and Warranties.** The representations and warranties set forth in this Agreement, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

**No Event of Default.** There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

**REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any Indebtedness exists:

**Organization.** Borrower is a governmental entity which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of California. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 2000 Mowry Avenue, Fremont, CA 94538. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

**Assumed Business Names.** Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business:  
**None.**

**Authorization.** Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

**Financial Information.** Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

**Legal Effect.** This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

**Properties.** Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years.

**Litigation and Claims.** No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

**Taxes.** To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

**Binding Effect.** This Agreement, the Note, and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

**AFFIRMATIVE COVENANTS.** Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect and while there is an outstanding balance under the Loan, Borrower will:

**Notices of Claims and Litigation.** Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

**Financial Records.** Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

**Financial Statements.** Furnish Lender with the following:

**Additional Requirements.**

**Annual Statements.** As soon as available, but in no event later than one-hundred fifty (150) days after the end of each fiscal year, Borrower's balance sheet and income statement for the year ended, audited by a certified public accountant satisfactory to Lender.

**Interim Statements.** Provided Borrower has an outstanding loan balance under the line of credit, Borrower shall provide Lender, as soon as available, but in no event later than seventy-five (75) days after the end of each quarter, **Washington Hospital Healthcare System ("Hospital")** and Borrower's consolidated balance sheet and profit and loss statement for the period ended, prepared by Borrower.

**Interim Statements.** As soon as available, but in no event later than seventy-five (75) days after the end of each quarter, Hospital's balance sheet and profit and loss statement for the period ended, prepared by Hospital.

**Annual Budget.** As soon as available, but in no event later than one-hundred fifty (150) days after the end of each fiscal year, Borrower's annual budget for the year ended, prepared by Borrower.

**Cash and Equivalents.** Borrower shall maintain Cash and Cash Equivalents in an amount equal to Ten Million and no/100 Dollars (\$10,000,000.00) over the outstanding principal balance at the time of advance request (as verified with Hospital provided balance sheet); failure to meet this condition shall result in an increase to the minimum Interest Rate by one-half of one-percent (0.50%).

**Accounts Receivable Aging Reports.** As soon as available, but in no event later than seventy-five (75) days after the end of each quarter, Hospital's accounts receivable aging reports, to include net amount owed, prepared by Hospital.

The Annual Statements shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

**Additional Information.** Furnish such additional information and statements, as Lender may request from time to time.

**Financial Covenants and Ratios.** Comply with the following covenants and ratios:

**Minimum Income and Cash flow Requirements.** Other Cash Flow requirements are as follows:

**Debt Service Coverage Ratio.** Maintain a Debt Service Coverage Ratio in excess of 1.100 to 1.000. The term "Debt Service Coverage Ratio" means the sum of earnings before interest, taxes, depreciation and amortization divided by the sum of the current portion of long-term debt plus current maturities of capital leases, plus Interest Expense. This coverage ratio will be evaluated quarterly.

**Additional Requirements.**

**Out of Debt Provision.** Borrower agrees to maintain a consecutive thirty (30) day out of debt period annually.

**Borrowing Base.** Amounts owed under the line of credit shall be limited to forty percent (40%) of accounts receivable based on the quarter-end accounts receivable aging reports.

**Litigation.** Borrower shall provide Lender written notice of any pending or threatened litigation against Borrower in excess of \$1,000,000.00.

Except as provided above, all computations made to determine compliance with the requirements contained in this paragraph shall be made in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

**Insurance.** Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender.

**Insurance Reports.** Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy.

**Other Agreements.** Comply with all terms and conditions of all other material agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

**Loan Proceeds.** Use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

**Taxes, Charges and Liens.** Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits. Provided however, Borrower will not be required to pay and discharge any such assessment, tax, charge, levy, lien or claim so long as (1) the legality of the same shall be contested in good faith by appropriate proceedings, and (2) Borrower shall have established on Borrower's books adequate reserves with respect to such contested assessment, tax, charge, levy, lien, or claim in accordance with GAAP.

**Performance.** Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately of any default in connection with this Business Loan Agreement and related Promissory Note.

**Operations.** Maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel; provide written notice to Lender of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

**Environmental Studies.** Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be required by any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

**Compliance with Governmental Requirements.** Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Environmental Compliance and Reports.** Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

**RECOVERY OF ADDITIONAL COSTS.** If the imposition of or any change in any law, rule, regulation, guideline, or GAAP, or the interpretation or application of any thereof by any court, administrative or governmental authority, or standard-setting organization (including any request or policy not having the force of law) shall impose, modify or make applicable any taxes (except federal, state or local income or franchise taxes imposed on Lender), reserve requirements, capital adequacy requirements or other obligations which would (A) increase the cost to Lender for extending or maintaining the credit facilities to which this Agreement relates, (B) reduce the amounts payable to Lender under this Agreement or the Related Documents, or (C) reduce the rate of return on Lender's capital as a consequence of Lender's obligations with respect to the Loan to which this Agreement relates, then Borrower agrees to pay Lender such additional amounts as will compensate Lender therefor, within five (5) days after Lender's written demand for such payment, which demand shall be accompanied by an explanation of such imposition or charge and a calculation in reasonable detail of the additional amounts payable by Borrower, which explanation and calculations shall be conclusive in the absence of manifest error.

**LENDER'S EXPENDITURES.** If Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity.

**NEGATIVE COVENANTS.** Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

**Indebtedness and Liens.** (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber any of Borrower's assets (except as allowed as Permitted Liens), or (3) sell with recourse any of Borrower's accounts, except to Lender.

**Continuity of Operations.** (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge or restructure as a legal entity (whether by division or otherwise), consolidate with or acquire any other entity, change its name, convert to another type of entity or redomesticate, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) make any distribution with respect to any capital account, whether by reduction of capital or otherwise.

**Agreements.** Enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection herewith.

**CESSATION OF ADVANCES.** If Lender has made any commitment to make any Loan to Borrower, under this Agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower has with Lender; (B) Borrower becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition; or (D) Lender in good faith deems itself insecure, even though no Event of Default shall have occurred.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, and subordinate to the Bond Agreements, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account); provided, however, that Lender agrees that it will not exercise its right of setoff during the calendar months immediately preceding each of Borrower's Interest Payments Dates established under its Bond Agreements, to wit, during the calendar months of June and December of each year during the term hereof. This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

**DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Borrower fails to make any payment when due under the Loan.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by Borrower.

**Defective Documentation.** This Agreement or any of the Related Documents ceases to be in full force and effect at any time and for any reason.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If any default, other than a default on Indebtedness, is curable and if Borrower has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower after Lender sends written notice to Borrower demanding cure of such default: (1) cure the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**EFFECT OF AN EVENT OF DEFAULT.** If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will terminate (including any obligation to make further Loan Advances or disbursements), and, at Lender's option, all Indebtedness immediately will become due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the "Insolvency" subsection above, such acceleration shall be automatic and not optional. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower shall not affect Lender's right to declare a default and to exercise its rights and remedies.

**COMPLIANCE WITH EXECUTIVE ORDER AND USA PATRIOT ACT.** Neither Borrower, nor to Borrower's knowledge, any of Borrower's officers, directors, shareholders, partners, members or associates, and no other direct or indirect holder of any equity interest in Borrower is an entity or person: (i) that is listed in the Annex to, or is otherwise subject to the provisions of United States Presidential Executive Order 13224 issued on September 24, 2001 ("Executive Order"); (ii) whose name appears on the U.S. Department of the Treasury, Office of Foreign Assets Control's ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, [www.treas.gov/ofac/](http://www.treas.gov/ofac/)); (iii) who commits, threatens to commit or supports "terrorism", as that term is defined in the Executive Order; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i) through (iv) above are herein referred to as a "Prohibited Person"). Borrower covenants and agrees to use commercially reasonable efforts to ensure that neither Borrower nor any of its officers, directors, shareholders, partners, members or associates, and no other direct or indirect holder of any equity interest in Borrower will: (a) conduct any business, or engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person; or (b) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. On request by Lender from time to time, Borrower further covenants and agrees promptly to deliver to Lender any such certification or other evidence as may be requested by Lender in its sole and absolute discretion, confirming that, to Borrower's knowledge, no violation of this Section shall have occurred.

**ACKNOWLEDGMENT OF EVENT OF DEFAULT PROVISIONS.** Borrower hereby acknowledges and agrees that Borrower has read and understood all

terms and conditions as contained in the Loan Documents, including, but not limited to, the Promissory Note, the Business Loan Agreement and all Related Documents. Borrower further acknowledges that all conditions, including the Affirmative Covenants detailing the Financial Statements requirements and the Financial Covenants and Ratios requirements, will be met during the term of the Loan. In the event these requirements are not met, the loan shall be considered in default, and Lender may, at its option, implement any and all rights and remedies available to it under the Loan Documents, including, but not limited to, increasing the interest rate on the Loan to the Default Rate as stated in the Promissory Note.

**COUNTERPARTS AND ELECTRONIC SIGNATURES.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The words "execution," "signed," "signature," and words of similar import herein shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity and enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 USC § 7001 et seq.), the California Uniform Electronic Transactions Act (Civil Code §§ 1633.1 – 1633.17), or any other similar state laws based on the Uniform Electronic Transactions Act.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Arbitration.** Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Agreement or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Borrower and Lender agree that in the event of an action for judicial foreclosure pursuant to California Code of Civil Procedure Section 726, or any similar provision in any other state, the commencement of such an action will not constitute a waiver of the right to arbitrate and the court shall refer to arbitration as much of such action, including counterclaims, as lawfully may be referred to arbitration. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Agreement shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

**Attorneys' Fees; Expenses.** Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of California.

**Choice of Venue.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Alameda County, State of California.

**No Waiver by Lender.** Except as otherwise provided in this Agreement or the Related Documents, Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, shall constitute a waiver of any of Lender's rights or of any of Borrower's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Notices.** Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** All covenants and agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's or Lender's successors and assigns and shall inure to the benefit of Borrower or Lender and its successors and assigns. Borrower

shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

**Survival of Representations and Warranties.** Borrower understands and agrees that in extending Loan Advances, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the extension of Loan Advances and delivery to Lender of the Related Documents, shall be continuing in nature, shall be deemed made and redated by Borrower at the time each Loan Advance is made, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**Waiver of Jury Trial.** To the extent permitted by applicable law, all parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement:

**Advance.** The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Agreement.

**Agreement.** The word "Agreement" means this Business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan Agreement from time to time.

**Borrower.** The word "Borrower" means WASHINGTON TOWNSHIP HEALTH CARE DISTRICT signing the Note and all their successors and assigns.

**Collateral.** Unsecured

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., Chapters 6.5 through 7.7 of Division 20 of the California Health and Safety Code, Section 25100, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**GAAP.** The term "GAAP" means generally accepted accounting principles.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

**Lender.** The word "Lender" means Fremont Bank, its successors and assigns.

**Loan.** The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

**Note.** The word "Note" means the Promissory Note dated May 3, 2021 and executed by WASHINGTON TOWNSHIP HEALTH CARE DISTRICT in the principal amount of \$20,000,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the Note or the Business Loan Agreement.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, solely executed in connection with the Loan.

**BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS BUSINESS LOAN AGREEMENT IS DATED MAY 3, 2021.**

**BORROWER:**

**WASHINGTON TOWNSHIP HEALTH CARE DISTRICT**

By: \_\_\_\_\_  
Kimberly Hartz, Chief Executive Officer of  
WASHINGTON TOWNSHIP HEALTH CARE  
DISTRICT

By: \_\_\_\_\_  
Edward Fayen, EVP/COO of WASHINGTON  
TOWNSHIP HEALTH CARE DISTRICT

By: \_\_\_\_\_  
Christopher Henry, VP/CFO of WASHINGTON  
TOWNSHIP HEALTH CARE DISTRICT

**LENDER:**

**FREMONT BANK**

**By: \_\_\_\_\_**  
**Authorized Officer, Commercial Docs & Funding**  
**Manager**

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## PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$20,000,000.00	05-03-2021	06-03-2022	3269115			KF	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

Any item above containing "\*\*\*\*\*" has been omitted due to text length limitations.

<b>Borrower:</b>	WASHINGTON TOWNSHIP HEALTH CARE DISTRICT 2000 Mowry Avenue Fremont, CA 94538	<b>Lender:</b>	Fremont Bank Commercial Loan Operations 2580 Shea Center Drive Livermore, CA 94551-0752 (800) 359-2265
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**Principal Amount: \$20,000,000.00      Initial Rate: 4.250%      Date of Note: May 3, 2021**

**PROMISE TO PAY.** WASHINGTON TOWNSHIP HEALTH CARE DISTRICT ("Borrower") promises to pay to Fremont Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Twenty Million & 00/100 Dollars (\$20,000,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

**PAYMENT.** Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on June 3, 2022. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning June 3, 2021, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any late charges; then to any unpaid collection costs; and then to any escrow or reserve account payments as required under any mortgage, deed of trust, or other security instrument or security agreement securing this Note. Any accrued interest not paid when due is added to principal and thereafter will accrue interest as principal. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing. All payments must be made in U.S. dollars and must be received by Lender consistent with any written payment instructions provided by Lender. If a payment is made consistent with Lender's payment instructions but received after 5:00 p.m. Pacific Time, Lender will credit Borrower's payment on the next business day.

**VARIABLE INTEREST RATE.** The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the Prime Rate as published in the Wall Street Journal (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than once each day. Borrower understands that Lender may make loans based on other rates as well. **The Index currently is 3.250% per annum.** Interest on the unpaid principal balance of this Note will be calculated as described in the "INTEREST CALCULATION METHOD" paragraph using a rate of 1.000 percentage point over the Index (the "Margin"), adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 4.250%. If Lender determines, in its sole discretion, that the Index has become unavailable or unreliable, either temporarily, indefinitely, or permanently, during the term of this Note, Lender may amend this Note by designating a substantially similar substitute index. Lender may also amend and adjust the Margin to accompany the substitute index. The change to the Margin may be a positive or negative value, or zero. In making these amendments, Lender may take into consideration any then-prevailing market convention for selecting a substitute index and margin for the specific Index that is unavailable or unreliable. Such an amendment to the terms of this Note will become effective and bind Borrower 10 business days after Lender gives written notice to Borrower without any action or consent of the Borrower. **NOTICE:** Under no circumstances will the interest rate on this Note be less than 4.250% per annum or more than the maximum rate allowed by applicable law.

**INTEREST CALCULATION METHOD.** Interest on this Note is computed on a 365/365 basis; that is, by applying the ratio of the interest rate over the number of days in a year (365 for all years, including leap years), multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

**PREPAYMENT.** Borrower agrees that all Loan fees and other prepaid finance charges are earned fully as of the date of the Loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed hereunder earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. **All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Fremont Bank, Commercial Loan Operations, 2580 Shea Center Drive, Livermore, CA 94551-0752.**

**LATE CHARGE.** If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$10.00, whichever is greater.

**INTEREST AFTER DEFAULT.** Upon default, at Lender's option, and if permitted by applicable law, Lender may add any unpaid accrued interest to principal and such sum will bear interest therefrom until paid at the rate provided in this Note (including any increased rate). Upon default, the interest rate on this Note shall, if permitted under applicable law, immediately increase by adding an additional 5.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default, until the default is cured.



**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Cure Provisions.** If any default, other than a default in payment, is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. Borrower also will pay any court costs, in addition to all other sums provided by law.

**JURY WAIVER.** To the extent permitted by applicable law, Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

**GOVERNING LAW.** This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of California.

**CHOICE OF VENUE.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Alameda County, State of California.

**DISHONORED ITEM FEE.** Borrower will pay a fee to Lender of \$25.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, and subordinate to the Bond Agreements, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account); provided, however, that Lender agrees that it will not exercise its right of setoff during the calendar months immediately preceding each of Borrower's Interest Payment Dates established under its Bond Agreements, to wit, during the calendar months of June and December of each year during the term hereof. This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

**COLLATERAL.** Unsecured. Borrower and Lender acknowledges this Note is Unsecured, however remains subject to that certain Subordination Agreement dated October 21, 2015 by and between Borrower and Lender.

**LINE OF CREDIT.** This Note evidences a revolving line of credit. Advances under this Note may be requested orally by Borrower or as provided in this paragraph. All oral requests shall be confirmed in writing on the day of the request. All communications, instructions, or directions by telephone or otherwise to Lender are to be directed to Lender's office shown above. The following person or persons are authorized to request advances and authorize payments under the line of credit until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of such authority: **Kimberly Hartz, Chief Executive Officer of WASHINGTON TOWNSHIP HEALTH CARE DISTRICT; Edward Fayen, EVP/COO of WASHINGTON TOWNSHIP HEALTH CARE DISTRICT; and Christopher Henry, VP/CFO of WASHINGTON TOWNSHIP HEALTH CARE DISTRICT.** Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

**ARBITRATION.** Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Note or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral securing this Note, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral securing this Note, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Borrower and Lender agree that in the event of an action for judicial foreclosure pursuant to California Code of Civil Procedure Section 726, or any similar provision in any other state, the commencement of such an action will not constitute a waiver of the right to arbitrate and the court shall refer to arbitration as much of such action, including counterclaims, as lawfully may be referred to arbitration. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Note shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

**ACKNOWLEDGMENT OF EVENT OF DEFAULT PROVISIONS.** Borrower hereby acknowledges and agrees that Borrower has read and understood all terms and conditions as contained in the Loan Documents, including, but not limited to, this Promissory Note, the Business Loan Agreement and all Related Documents. Borrower further acknowledges that all conditions, including the Affirmative Covenants detailing the Financial Statements requirements and the Financial Covenants and Ratios requirements, will be met during the term of the Loan. In the event these requirements are not met, the loan shall be considered in default, and Lender may, at its option, implement any and all rights and remedies available to it under the Loan Documents, including, but not limited to, increasing the interest rate on the Loan to the Default Rate as stated in the Promissory Note.

**OUT OF DEBT PROVISION.** Borrower agrees to maintain a consecutive thirty (30) day out of debt period annually.

**COUNTERPARTS AND ELECTRONIC SIGNATURES.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The words "execution," "signed," "signature," and words of similar import herein shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity and enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 USC § 7001 et seq.), the California Uniform Electronic Transactions Act (Civil Code §§ 1633.1 – 1633.17), or any other similar state laws based on the Uniform Electronic Transactions Act.

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

**NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES.** Borrower may notify Lender if Lender reports any inaccurate information about Borrower's account(s) to a consumer reporting agency. Borrower's written notice describing the specific inaccuracy(ies) should be sent to Lender at the following address: Fremont Bank Commercial Loan Operations 2580 Shea Center Drive Livermore, CA 94551.

**GENERAL PROVISIONS.** If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower to the extent allowed by law, waives any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this Note and take any other action deemed necessary by Lender without the consent of or notice to anyone. Borrower agrees that Lender may modify this Note without the consent of or notice to anyone other than the Borrower.

**PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THIS NOTE.**

**BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

**BORROWER:**

**WASHINGTON TOWNSHIP HEALTH CARE DISTRICT**

**By: \_\_\_\_\_  
Kimberly Hartz, Chief Executive Officer of  
WASHINGTON TOWNSHIP HEALTH CARE  
DISTRICT**

**By: \_\_\_\_\_  
Edward Fayen, EVP/COO of WASHINGTON  
TOWNSHIP HEALTH CARE DISTRICT**

**By: \_\_\_\_\_  
Christopher Henry, VP/CFO of WASHINGTON  
TOWNSHIP HEALTH CARE DISTRICT**