



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

Wednesday, October 27, 2021– 6:00 P.M.
Meeting Conducted by Teleconference
Dial In: 510-818-5900 Access Code: 6736

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 <i>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.</i> | |
| B. Written | |
| IV. ACTION | <i>Motions Required</i> |
| A. Resolution No. 1231: Resolution of the Board of Directors of Washington Township Health Care District to Authorize the Chief Executive Officer to Enter Into an Amended and Restated Tenancy in Common Agreement with the University of California, San Francisco | |
| B. Resolution No. 1232: Resolution of the Board of Directors of Washington Township Health Care District to Approve and Authorize the Washington Hospital Bridge Project | |
| V. ANNOUNCEMENTS | |
| VI. CLOSED SESSION | Kimberly Hartz Chief Executive Officer |

Board Meeting Agenda
October 27, 2021

- A. Report of Medical Staff and Quality Assurance
Committee pursuant to Health & Safety Code section
32155
 - Medical Staff Credentials Report
- B. Conference involving trade secrets pursuant to Health
& Safety Code section 32106
- C. Conference with Legal Counsel – Anticipated
Litigation pursuant to Government Code section
54956.9(d)(2)

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. 1231

**RESOLUTION OF THE BOARD OF DIRECTORS OF WASHINGTON
TOWNSHIP HEALTH CARE DISTRICT TO AUTHORIZE THE CHIEF
EXECUTIVE OFFICER TO ENTER INTO AN AMENDED AND RESTATED
TENANCY IN COMMON AGREEMENT WITH THE UNIVERSITY OF
CALIFORNIA, SAN FRANCISCO**

WHEREAS, Washington Township Health Care District is a local health care district (“District”) which 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, in connection with its affiliation with the University of California, San Francisco (“UCSF”), on March 18, 2020, the District purchased a 51% undivided interest and UCSF purchased a 49% undivided interest in real property located at 45388 Warm Springs Boulevard in the Warm Springs area of Fremont, California (the “Warm Springs Property”) with the goal of opening an outpatient care center (“Outpatient Center”) to expand the services offered by both the District and UCSF;

WHEREAS, the District and UCSF entered into a Tenancy in Common Agreement concurrently with the purchase of the Warm Springs Property, which governed the parties’ joint ownership and operation of the Warm Springs Property;

WHEREAS, on September 27, 2021, the Board approved Resolution No. 1230 authorizing the Chief Executive Officer to enter into a revised joint venture agreement with the UCSF concerning the development of the Warm Springs Property through the use of a limited liability company (the “JV LLC”) formed for this purpose;

WHEREAS, the District and UCSF have determined that it is in their best interests to enter into an Amended and Restated Tenancy in Common Agreement, which will replace the existing Tenancy in Common Agreement, to ensure the consistency between the various provisions of the revised joint venture agreement and the Tenancy in Common Agreement;

NOW, THEREFORE, be it resolved that:

1. The Board of Directors authorizes the Chief Executive Officer to execute the Amended and Restated Tenancy in Common Agreement in substantially the form attached hereto as Exhibit A.
2. The Chief Executive Officer is authorized to accept, on behalf of the District, non-material modifications to the Amended and Restated Tenancy in Common Agreement that in her judgment are consistent with the intent and purpose of the foregoing recitals and that are in the

best interests of the District, and take any and all other actions that are necessary or proper to fulfill the District's obligations under the Tenancy in Common Agreement.

3. The Chief Executive Officer is hereby authorized to enter into any agreement or contract document necessary to carry out the intent of this Resolution and to take any and all further actions, which in the determination of the Chief Executive Officer, are necessary and proper to effectuate the intent of this Resolution.

Passed and adopted by the Board of Directors of the Washington Township Health Care District this 27th day of October, 2021 by the following vote:

AYES:

NOES:

ABSENT:

William F. Nicholson, MD
President, Board of Directors
Washington Township Health Care District

Michael J. Wallace
Secretary, Board of Directors
Washington Township Health Care District

**EXHIBIT A
AMENDED AND RESTATED TENANCY IN COMMON AGREEMENT**

See attached.

AMENDED AND RESTATED TENANCY IN COMMON AGREEMENT

THIS AMENDED AND RESTATED TENANCY IN COMMON AGREEMENT (the “**Agreement**”) is dated October 18, 2021 (the “**Effective Date**”), by and between **Washington Township Health Care District**, a local Health Care District organized under the laws of the State of California, doing business as Washington Hospital Healthcare System (“**Washington**”) and **The Regents of the University of California**, on behalf of its San Francisco campus (“**UCSF**”), each as a tenant-in-common of that certain commercial real property, together with all improvements thereon and appurtenances thereto (the “**Property**”) located at 45388 Warm Springs Boulevard in Fremont, California, as more particularly described on **Exhibit A** attached hereto, and amends and restates that certain Tenancy in Common Agreement dated March 19, 2020, as amended (the “**Original TICA**”). Washington and UCSF are sometimes referred to herein, individually, as a “**Tenant-in-Common**” and, collectively, as the “**Tenants-in-Common**”.

RECITALS

WHEREAS, the Tenants-in-Common have an existing affiliation established pursuant to the terms of that certain Collaboration Agreement dated June 28, 2013, as amended by that certain First Amendment to Collaboration Agreement dated June 30, 2018 (collectively, the “**Collaboration Agreement**”) and desire to expand their relationship and jointly own, operate and manage the Property for clinical and other medical services benefiting Southern Alameda County.

WHEREAS, the Tenants-in-Common desire to have and to own, hold, operate, develop, maintain and dispose of the Property, as tenants-in-common, pursuant to and in accordance with the terms of this Agreement.

WHEREAS, Washington and UCSF have entered into that certain Limited Liability Company Agreement dated October 18, 2021 (the “**LLC Agreement**”) establishing a California limited liability company joint venture named Warm Springs Health Center Partnership, LLC (“**WSHCP**”) that will provide certain services to the Tenants-in-Common and act as agent for the Tenants-in-Common regarding the management and development of the Property as set forth in the LLC Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend and restate the Original TICA as of the Effective Date hereof as follows:

TERMS OF AGREEMENT

1. **Tenancy-in-Common Ownership of Property**. The Tenants-in-Common acknowledge and agree that their relationship in and to the Property is one of tenants-in-common and is subject to the terms of this Agreement. The parties shall hold legal title to any and all interests in the Property as tenants-

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in-common, with each of the Tenants-in-Common respective interests listed in the Purchase Price Calculation table attached as **Exhibit C** and as follows (each, such party's "**Undivided Interest**"):

| | |
|------------|-----|
| Washington | 51% |
| UCSF | 49% |

2. **No Partnership, Joint Venture or Agency.** Notwithstanding anything to the contrary contained in this Agreement, the Tenants-in-Common sole purpose in entering into this Agreement is to provide for the co-ownership of the Property. Except as specifically set forth in the Collaboration Agreement, the Tenants do not intend to create any partnership, joint venture or agency relationship between them with respect to their ownership of the Property, and none of them intends to assume any of the liabilities or obligations of the other whether or not arising from or in connection with the Property, and this Agreement shall not be construed as creating any such partnership, joint venture or agency relationship between the Tenants-in-Common, nor shall this Agreement be construed as rendering any of them liable for the debts or obligations of any other, whether or not arising from or in connection with the Property. The Tenants-in-Common will not hold themselves out as partners, shareholders or members of a business entity with regard to the co-ownership of the Property. Any obligations or liabilities not authorized by this Agreement and incurred by any Tenant-in-Common but not the other Tenant-in-Common shall be several obligations and liabilities of the Tenant-in-Common incurring the same, and any non-incurring Tenant's-in-Common interest in the Property shall not be subjected to or affected by such several obligations and liabilities.

3. **Term.** The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall continue until the earliest to occur of the following:

- a. A mutual agreement by the Tenants-in-Common to terminate this Agreement;
- b. The LLC Agreement terminates; or
- c. The Property is no longer held as a tenancy-in-common and there is only one undivided owner of the Property.

4. **Management.**

a. **Major Decisions.** Except as otherwise provided in this Agreement, the approval from Tenants-in-Common holding 100% of the Undivided Interests shall be required for the management, disposition and any Major Decisions pertaining to the Property ("**Unanimous Tenant-in-Common Approval**"). The following shall constitute "**Major Decisions**": (i) approval of the operating budgets or strategic plans for the Property or any material modification thereto, (ii) any decision to finance, refinance, lien or encumber the Property and the execution of any guaranties by the Tenants-in-Common, (iii) approval and execution of all Leases or a material modification, amendment or termination of a Lease, or

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incurring any material expenses or obligations in connection with such Leases (iv) consenting to a transfer or sale of any portion of the Property, (v) the hiring of any brokers or manager, or the negotiation of any management contract (or any extension or renewal of such contract), (vi) the decision to amend this Agreement, (vii) the removal, addition or substitution of a Tenant-in-Common, (viii) any extension of the Term of this Agreement, (ix) any capital calls, (x) approval of unbudgeted capital or operating expenses outside the course of day-to-day operations in excess of the lesser of twenty percent (20%) of the current year's budget cumulative per year or Two Hundred Fifty Thousand Dollars (\$250,000.00), (xi) approval of (A) all non-budgeted contracts, leases (whether operating or capital), or other agreements or transactions in which an amount in excess of the lesser of twenty percent (20%) of the current year's budget or Two Hundred Fifty Thousand Dollars (\$250,000.00) will be expended in any calendar year, or any material modification thereof, (B) any material contract with a term that (1) exceeds two (2) years (including renewal periods) and that is not terminable by the Tenants-in-Common without cause upon one hundred eighty (180) days' or fewer prior notice or (2) includes any exclusivity or other restrictive covenants on the operation or activities of the Property or any Tenant-in-Common, (xii) approval of any development agreement or other agreement, arrangement or business dealing of any type related to the development or construction of the Property, any modifications or amendments to any such agreement, arrangement, business dealing, and the approval of any development or construction budgets related to the development or construction of the Property or any modifications or amendments thereto, including, without limitation, the approval of any change orders or other deviations from the approved development or construction budgets that exceed the lesser of twenty percent (20%) of the current year's budget or Two Hundred Fifty Thousand Dollars (\$250,000.00) (even if such change orders or deviations are within the contingency budget for the project), (xiii) approval of any related party contracts, (xiv) the submission of any zoning, building or entitlement permit or license applications, (xv) approval for any material tax matters, and (xvi) expenditure of funds related to third party lease expenses.

b. Reduction in UCSF Undivided Interest. Notwithstanding the foregoing to the contrary, in the event UCSF's Undivided Interest in the Property becomes less than thirty-five percent (35%), then the term "**Major Decisions**" shall only include the following decisions or actions: (i) any decision to finance, refinance, lien or encumber the Property and the execution of any guaranties by the Tenants-in-Common; (ii) approval and execution of all Leases or a material modification, amendment or termination of a Lease, or incurring any material expenses or obligations in connection with such Leases, (iii) consenting to a transfer or sale of any portion of the Property, (iv) the decision to amend this Agreement; (v) the removal, addition or substitution of a Tenant-in-Common; (vi) any extension of the Term of this Agreement; and (vii) any capital calls.

c. Authorization and Execution of Documents. Notwithstanding any other provisions of this Agreement, no Tenant-in-Common shall have the right or power to make any commitment or engage in any undertaking on behalf of the Tenants-in-Common in respect of a Major Decision unless or until the Unanimous Tenant-in-Common Approval has been obtained. Major Decisions may be introduced for consideration by any Tenant-in-Common. Any request for the Tenant's-in-Common approval of any Major Decision shall be made in writing with reasonable specificity as to the terms of such Major Decision

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and shall be accompanied by any documentation relating to the Major Decision. Any Major Decision that has not been approved in writing by the requisite Unanimous Tenant-in-Common Approval within twenty (20) days after the Tenant's-in-Common receipt of such request shall be deemed disapproved. Any and all documents executed or entered into in connection with or related to a Major Decision must be agreed to and authorized by the Unanimous Tenant-in-Common Approval.

d. Operations. Except as set forth in the LLC Agreement, the day-to-day operations of the Property will be managed by the Tenants-in-Common acting through member representatives serving on a joint committee to be established by the parties consisting of five members, with three members selected by Washington and two members selected by UCSF (the "**Committee**"). Except for Major Decisions requiring Unanimous Tenant-in-Common Approval, the decision by a majority of members of the Committee shall be the decision of the Tenants-in-Common.

e. Books and Records. Except as set forth in the LLC Agreement, proper and complete books of account for the Property shall be kept by or under the supervision of Washington initially at the address listed in Section 13, or at such other place as the Tenants-in-Common may subsequently agree. Such books and records shall be open to inspection by any of the Tenants-in-Common or their accredited representatives at any reasonable time during business hours and shall show the separate interests of the Tenants-in-Common with respect to the Property.

f. Approved Budget. The Tenants-in-Common have approved the initial budget attached hereto as **Exhibit D** and incorporated herein by this reference ("**Budget**").

5. **Income and Expenses**.

a. Each Tenant-in-Common shall be entitled to receive its proportionate share of the total gross revenues and proceeds derived from the Property, including, without limitation, from the sale or disposition of, or any loan or other financing secured by the Property (or any portion thereof). Subject to obtaining Unanimous Tenant-in-Common Approval to the extent any such approval is required for the incurrence of any such costs, expenses, expenditures and taxes, each Tenant-in-Common shall be liable for its proportionate share of the total costs, expenses, expenditures, taxes and liabilities associated with the Property and/or the sale, disposition or financing thereof. All revenues generated by the Property shall be deposited into and held in joint accounts owned in proportion to each party's Undivided Interest which, subject to the parties' respective financial controls, may be registered in the name of an agent.

b. Operating Account. The Tenants-in-Common have each deposited the amounts shown for the line item for Initial Deposits shown in the Budget into an operating account jointly established by the parties for the Property (the "**Operating Account**") with Fremont Bank. The Chief Executive Officer, Chief Operating Officer and Chief Financial Officer, of Washington shall be authorized to sign checks from the Operating Account. All funds shall be disbursed from the Operating Account according to the approved Budget, or as authorized by the Committee and require dual signatures and otherwise conform to the internal financial controls or policies of the Tenants-in-Common. Notwithstanding the forgoing

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authorization, Washington shall provide the members of the Committee and the Tenants-in-Common with five (5) business days' advance written notice (“**Disbursement Notice Period**”) of the intention to incur any obligation or make any disbursement in excess of Ten Thousand Dollars (\$10,000). If the Committee fails to act within the Disbursement Notice Period, then the proposed disbursement shall be deemed to have been approved by the Committee.

c. Reporting. WSHCP or Washington, as the case may be, shall supply the Tenants-in-Common with reasonable and customary periodic financial and operating reports on a monthly and annual basis. The form and content of such reports shall be reasonably acceptable to the Tenants-in-Common and comply with Generally Accepted Accounting Principles.

6. **Insurance**.

a. Washington Insurance. Washington warrants that it participates in the Program BETA Joint Powers Agreement, BETA Healthcare Group Risk Management Authority, through which it obtains comprehensive liability coverage and it shall obtain, keep in force and maintain insurance as follows:

i. General Liability Insurance (contractual liability included) with a limit of five million dollars (\$5,000,000) per occurrence. If such insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall have a retroactive date prior to or coinciding with the Effective Date.

ii. Workers' Compensation Insurance in a form and amount covering Washington's full liability as required by the Workers' Compensation Insurance and Safety Act of the State of California as amended from time to time.

iii. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of the parties against other insurable risks relating to performance.

The coverage referred to in Section 7(a)(i) above shall include UCSF as an additional insured. Such provision, however, shall only apply in proportion to and to the extent of the negligent acts or omissions of Washington, its officers, agents, and/or employees. Washington, upon request, shall furnish UCSF with Certificates of Insurance evidencing compliance with all requirements.

b. UCSF Insurance. UCSF warrants that it maintains a program of self-insurance that covers its activities related to the Property as follows:

i. General Liability Insurance in the amount of (1) five million dollars (\$5,000,000) per occurrence; (2) one million dollars (\$1,000,000) Personal and Advertising Injury; and (3) five million dollars (\$5,000,000) General Aggregate.

ii. Workers' Compensation Liability Insurance in amounts required by the State of California.

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iii. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of the parties against other insurable risks relating to performance.

The coverage referred to in Section 7(b)(i) above shall include Washington as an additional insured. Such provision, however, shall only apply in proportion to and to the extent of the negligent acts or omissions of UCSF, its officers, agents, and/or employees. UCSF, upon request, shall furnish Washington with Certificates of Insurance evidencing compliance with all requirements.

c. Property Insurance.

i. The Tenants-in-Common shall provide a program of property, fire and extended coverage self-insurance, or otherwise procure property and casualty insurance covering the Property for the full replacement value of the Property and all improvements thereon (excluding land and the footings, foundations and installations below the basement level) and the costs of demolition and debris removal. The program, policy or policies required hereunder shall include coverage sufficient to reimburse each Tenant-in-Common for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Property, name as insureds all of the Tenants-in-Common as their Undivided Interests may appear and funded from the line item for "Insurance - General" included in the Budget.

ii. If the Tenants-in-Common have not procured property insurance as of the Effective Date, Washington shall be responsible for procuring the property insurance required by this subsection c.

7. **Sale of Undivided Interest in the Property; Right of First Offer.**

a. With respect to a sale, transfer, assignment, or otherwise disposition of, whether by merger, consolidation, sale or other disposition, (any of which, a "Transfer") of all or any portion of a Tenant-in-Common's Undivided Interest in the Property, subject to any restrictions or limitations hereunder, including Sections 4(a) and 7(b), a Tenant-in-Common (the "Transferring Tenant-in-Common" and any intended buyer, transferee, assignee or, otherwise, recipient of such Undivided Interest, the "Transferee") may Transfer all or any portion of its Undivided Interest (the portion of such Undivided Interest to be Transferred, the "Transferred Interest") in the Property, so long as the Transferee shall specifically assume and agree to carry out, in writing by executing a counterpart to this Agreement, all of the duties, liabilities, responsibilities and obligations of the Transferring Tenant-in-Common under this Agreement, and the Transferring Tenant-in-Common and Transferee further agree that such Transfer shall be subject to all of the provisions of this Agreement; provided, however, that nothing herein shall relieve any Tenant-in-Common from any of its obligations and liabilities that any of them may have hereunder on or prior to the closing of such Transfer. Upon the closing of any such Transfer, this Agreement shall be modified to make the Transferee a party to this Agreement as a Tenant-in-Common and the Transferee shall execute a counterpart of this Agreement such that this Agreement shall be binding on such Transferee and the Transferred Interest.

b. Notwithstanding anything to the contrary in Section 7(a) above, in the event that either Tenant-in-Common desires to sell all or any portion of its Undivided Interest in the Property (other than

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a Permitted Transferee as defined in Section 7(c)), such Tenant-in-Common (the “**Offeror Tenant-in-Common**”) shall give the other Tenant-in-Common (the “**Offeree Tenant-in-Common**”) the right and option to purchase the Property (the “**ROFO**”) by delivering thirty (30) days written notice (the “**ROFO Notice**”) to the Offeree Tenant-in-Common which shall state (i) the Offeror Tenant-in-Common’s desire to sell the Property, (ii) the identity of the proposed Transferee, and (iii) the purchase price. The Offeree Tenant-in-Common shall have the right (but not the obligation) to purchase the Offered Interest for a price (the “**ROFO Price**”), determined on the basis of the Offeror Tenant-in-Common’s proportionate share of the Fair Market Value of the Property (subject to adjustment on a pro-rata basis in the event that the Offered Interest is less than all of the Offeror Tenant-in-Common’s Undivided Interest in the Property), by delivering to the Offeror Tenant-in-Common, within twenty (20) Business Days following the Offeror Tenant-in-Common’s delivery of the ROFO Notice to the Offeree Tenant-in-Common (“**ROFO Response Period**”), a written notice (the “**ROFO Response Notice**”) that unambiguously sets forth the Offeree Tenant-in-Common’s desire to so purchase the Offered Interest for the ROFO Price subject to the terms and conditions set forth in this Section 7(b). The Offeree Tenant-in-Common’s failure to so timely deliver a properly prepared and unambiguous ROFO Response Notice shall be deemed for all purposes of this Agreement as an expression by the Offeree Tenant-in-Common of rejection, waiver and termination of such ROFO right by the Offeree Tenant-in-Common with respect to the proposed sale of the Property or any subsequent sale of the Offeror’s Undivided Interest in the Property.

i. If, pursuant to and in accordance with the provisions of Section 7(b), the Offeree Tenant-in-Common shall have timely delivered a properly-prepared ROFO Response Notice such that the Offeree Tenant-in-Common shall have committed itself to purchase the Offered Interest, then:

ii. The closing of such purchase (the “**ROFO Closing**”) shall occur no later than the last to occur of (1) thirty (30) days following the end of the ROFO Response Period and (2) thirty (30) days following the date that the ROFO Price is finally determined.

iii. The total purchase price for the Property shall be the ROFO Price and the Property shall be sold and assigned by the Offeror Tenant-in-Common to the Offeree Tenant-in-Common free and clear of any and all liens, pledges, security interests, leases and sub-leases, and other encumbrances encumbering the Property, and otherwise on the terms set forth herein.

c. With respect to the Transfer of a membership interest in any Tenant-in-Common, a “**Permitted Transferee**” shall mean and include an entity that is owned or controlled by, is under common control with or owns and/or controls such Tenant-in-Common or the direct or indirect owners(s) of such Tenant-in-Common. Except for a Transfer to a Permitted Transferee, in no event shall a Tenant-in-Common have the right to Transfer, gift, bequeath, whether or not by operation of law, all or any part of its membership interests in such Tenant-in-Common without the prior written consent of the other Tenant-in-Common.

d. Notwithstanding the foregoing provisions of Section 7, (i) no Tenant-in-Common may voluntarily Transfer, or enter into an agreement to transfer, except to a Permitted Transferee, any interest

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in the Property; and (ii) no Tenant-in-Common may pledge, exchange, mortgage or encumber their interest in the Property.

8. **Internal Revenue Code Compliance.** Washington issued bonds on July 2, 2019, the interest on which is excluded from gross income for Federal tax purposes and a portion of the proceeds of which will be used to pay all or a portion of the costs of Washington's Undivided Interest in the Property (the "**Washington Bonds**"). In any context hereunder pursuant to which UCSF purchases Washington's Undivided Interest in the Property prior to the scheduled final maturity of the Washington Bonds or Washington purchases UCSF's Undivided Interest in the Property to the extent acquired with tax-exempt bonds, each Tenant-in-Common agrees that it will provide such representations and covenants regarding ongoing Internal Revenue Code compliance applicable to tax-exempt bonds with respect to the portion of the Property acquired with such bonds, including the Washington Bonds, as is reasonably required by the selling Tenant-in-Common and its counsel.

9. **Waiver of Right of Partition.** Each of the Tenants-in-Common irrevocably waives and relinquishes any and all rights that they may have to maintain any action for partition with respect to its Undivided Interest in the Property, or to compel any sale thereof under any applicable laws now existing or subsequently enacted.

10. **Default; Remedies.**

a. **Default.** A Tenant-in-Common will be in "**Default**" under this Agreement if it:

i. Commits a material breach of the LLC Agreement causing the LLC Agreement to terminate or all of its equity interests in WSHCP to be purchased by the other Tenant-in-Common, or the LLC Agreement terminates pursuant to the terms thereof; or

ii. Fails to perform any of its obligations or covenants under this Agreement and such failure continues for a period of thirty (30) days after notice of such failure by the other Tenant-in-Common; provided, however, that if such failure cannot reasonably be cured within said time period, no Default shall have occurred if said Tenant-in-Common commences curing such failure within said time period and thereafter proceeds diligently to complete such cure; or

iii. Institutes proceedings to be adjudicated a voluntary bankrupt, or consents to the filing of a bankruptcy proceeding against it or files a petition or answer of consent seeking reorganization under the Bankruptcy Code of the United States (11 U.S.C. §101 et seq.) or any similar applicable federal or state law and such decree shall have continued undischarged or unstayed for a period of ninety (90) days; or

iv. Shall have entered against it a decree or order of a court having jurisdiction adjudging it a bankrupt or insolvent or approving a petition seeking reorganization under the Bankruptcy Code of the United States or any similar applicable federal or state law and such decree shall have continued undischarged or unstayed for a period of ninety (90) days; or

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v. Shall have entered against it a decree or order of a court having jurisdiction for the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency or of all or substantially all of its property, or for the winding up or liquidation of its affairs, and such decree or order shall have remained in force, undischarged or unstayed for a period of ninety (90) days; or

vi. Shall make an assignment for the benefit of creditors, shall admit in writing its inability to pay its debts general and concurrently as they become due, or shall consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of it or of all or substantially all of its property.

b. Remedies.

i. In the event of a Default hereunder, the non-defaulting Tenant-in-Common may, at its option, engage in reasonable self-help and recover the costs thereof from the defaulting Tenant-in-Common, sue for actual damages incurred or seek to enforce specific performance of the defaulting Tenant-in-Common's obligations hereunder, with the prevailing party after final adjudication (for which no further appeal may be taken or has lapsed) being entitled to reimbursement from the other party of its reasonable attorneys' fees and other costs incurred in connection therewith.

ii. In the event of a Default, the defaulting Tenant-in-Common shall no longer have any right to participate in the management of the Property, provided that such limitation shall not apply to the defaulting Tenant's-in-Common right to approve or disapprove Major Decisions.

iii. In the event of a Default, the non-defaulting Tenant-in-Common shall have the right to acquire all of the defaulting Tenant's-in-Common Undivided Interest in a manner and for an amount as set forth in Section 9 with regard to a voluntary sale of an Undivided Interest.

iv. The remedies in this section are cumulative and not in lieu of any other remedies or rights provided in this Agreement.

11. **Mutual Indemnification.** Each Tenant-in-Common shall indemnify, defend and hold harmless the other Tenant-in-Common, its officers, agents, and employees from and against any claims, damages, costs, expenses, or liabilities (collectively "**Claims**"), including reasonable attorney's fees and costs arising out of or in any way connected to this Agreement, including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of the Tenant-in-Common, its officers, partners, agents, or employees. The indemnity set forth herein shall survive the expiration or termination of this Agreement and the sale of the Property.

12. **Attorneys' Fees.** If either party brings an action or proceeding against the other to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to any other award, an amount equal to reasonable attorneys' fees and costs to be fixed by the court. The term "prevailing party" shall mean the party who

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substantially obtains or defeats the relief sought, whether by judgment, settlement or abandonment by the other party.

13. **Notices.** All notices under this Agreement must be in writing and shall be deemed to have been duly given if delivered (a) personally (with a receipt therefore) or (b) mailed by certified United States mail (return receipt requested and postage prepaid), (c) a nationally recognized overnight delivery service (with a receipt therefore, charges prepaid) or (d) electronic mail in PDF format or its equivalent, addressed to the Tenant-in-Common to be notified at the address set forth below. Such notice shall be deemed to have been received upon receipt or rejection thereof provided that such receipt or rejection occurs on or before 6:00 p.m. local time on a business day.

If to UCSF:

Office of Real Estate
University of California San Francisco
654 Minnesota Street
San Francisco, CA
Attention: Assistant Vice Chancellor
E-mail: bruce.lanyon@ucsf.edu
Telephone: (415) 476-8858

With courtesy notices to:

The Regents of the University of California
1111 Franklin Street, 6th Floor
Oakland, CA 94607
Attention: Associate Director – Real Estate and Capital Programs

If to Washington:

Washington Township Health Care District
2000 Mowry Avenue
Fremont, CA 94538
Attention: Chief Executive Officer

With a copy to: Gonsalves & Kozachenko
2201 Walnut Avenue, Suite 220
Fremont, CA 94538
Attention: Paul Kozachenko, Esq.

14. **Miscellaneous.**

a. **Government Health Care Program.** Neither Tenant-in-Common nor any of their Affiliates (nor any of their respective managers, directors, officers, or employees) or material third party vendors or independent contractors who furnish services or supplies that may be reimbursed in whole or in part under any Government Health Care Program is excluded, suspended or debarred from participation (or is otherwise ineligible to participate) in any Government Health Care Program, and no such Person has been convicted of or charged with any violation of any Laws related to any Government Health Care Program which conviction or charge is reasonably likely to serve as the basis for any exclusion, suspension, or debarment or ineligibility under Section 42 U.S.C. § 1320a–7, or any analogous exclusionary Law of the State of California.

b. **Compliance with Laws.** The Tenants-in-Common acknowledge that the Property’s operations are subject to various state and federal laws regulating permissible relationships between the Tenants-in-Common and other entities, including without limitation 42 U.S.C. 1320a-7b(b) (the “**Fraud and Abuse Statute**”), U.S.C. 1395nn (the “**Stark Act**”), and similar California laws. It is the intent of the parties that they operate in a manner consistent and in compliance with the foregoing statutes. Accordingly, each Tenant-in-Common represents and warrants that (i) such Tenant-in-Common has not entered into this Agreement, and has not provided remuneration or been provided remuneration with the intent to induce the referral of Medicare or Medicaid items or services to any other Person, including a Tenant-in-Common, (ii) no Person has requested information from the Tenant-in-Common regarding the Tenant-in-Common’s ability to refer Medicare and Medicaid items or services, and (iii) the Tenant-in-Common has not been encouraged to invest or not invest based on his or her ability to direct referrals to the other Tenant-in-Commons. The Tenants-in-Common also acknowledge that the Stark Act may restrict them (as presently formed) from providing Designated Health Services (as defined by the Stark Act) to patients referred by Tenants-in-Common.

c. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto.

d. **Time of the Essence.** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement.

e. **Entire Agreement.** This Agreement, as supplemented by the Collaboration Agreement, contains the entire agreement between the parties hereto with respect to the parties’ relationship as tenants-in-common with respect to the Property and supersedes all prior agreements between the parties with respect thereto. The parties acknowledge and agree that with respect to any substantive matter addressed in the Collaboration Agreement for which this Agreement is silent, the terms and conditions of the Collaboration Agreement will control. Any waiver, modification, consent or acquiescence with respect

Execution Version

to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

f. Further Assurances. The parties agree to execute such other instruments and do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

g. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but, if any provision of this Agreement shall be invalid or prohibited thereunder, such invalidity or prohibition shall be construed as if such invalid or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement.

h. Construction. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement.

i. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

j. Successors and Assigns; Run with the Land. Subject to the terms of this Agreement, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors, and assigns. All limitations, restrictions, easements, covenants, servitudes and conditions set forth herein shall run with the Property.

k. Memorandum of Agreement. The parties hereto hereby agree to duly execute a memorandum of this Agreement, in the form attached hereto as **Exhibit B**, to be filed of record in the Alameda County Recorder's Office promptly following the execution and delivery hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement evidenced by the signatures herein below or on one or more counterparts of this Agreement, which, taken together, constitute one agreement, and shall be effective as of the Effective Date.

[SIGNATURES ON THE FOLLOWING PAGE]

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
on behalf of its San Francisco campus

By: _____

Name: _____

Its: _____

UC Legal – Approved as to Form:

By: _____

WASHINGTON TOWNSHIP HEALTH CARE DISTRICT,
a Health Care District organized under the laws of the State of
California, doing business as Washington Hospital Healthcare
System

By: _____

Name: _____

Its: _____

EXHIBIT A
DESCRIPTION OF PROPERTY

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

PARCEL 1:

Being all of Parcels 1 and 2, Parcel Map 6827, filed June 6, 1995, Map_Book_218,_Pages_43_and_44, Official Records of Alameda County, further described as follows:

Beginning at the Northwest corner of said Parcel 1, Parcel Map 6827, said corner being a point on the Easterly right of way line of Warm Springs Boulevard, as said corner and right of way are shown on said Parcel Map 6827.

Thence from said Northwest corner, along the Northerly line of said Parcel 1, North 76° 12' 38" East, 455.00 feet to the Northeast corner thereof;

Thence leaving said Northerly line, along the Easterly line of said Parcel 1 and the Easterly line of said Parcel 2, South 13° 47' 22" East, 551 17 feet to the Southeast corner of said Parcel 2, said Southeast corner being a point on the Northerly right of way line of Reliance Way, as said corner and said right of way are shown on said Parcel Map 6827,

Thence leaving said Easterly line, along said Northerly right of way line, Southwesterly along the arc of a 886 00 foot radius non-tangent curve to the left, the center of which curve bears, South 14° 51' 27" East, through a central angle of 9° 25' 55", an arc distance of 146 88 feet,

Thence South 72° 03' 46" West, 80 50 feet,

Thence South 65° 38' 38" West, 70.00 feet,

Thence leaving said Northerly right of way lines Southwesterly, Westerly and Northwesterly along the arc of 50 00 foot radius, tangent curve to the right, through a central angle of 90° 00' 00" an arc distance of 78.54 feet to a point on the aforementioned Easterly right of way of Warm Springs Boulevard,

Thence along said Easterly right of way, North 24° 21' 22" West, 554.11 feet to the point of beginning.

The bases of bearings of North 85° 04' 32", West taken on the Monument line of Reliance Way as shown on that certain Map of Tract 5313 filed for record in Book_156_of_Maps,_at_Page_78-87, Official Records of Alameda County was taken as the basis for all bearings described herein pursuant to Declaration of Merger recorded July 20, 2001, as Instrument_No._2001259081,_of_Official_Records_

APN: **519-1687-061-01**

EXHIBIT B

MEMORANDUM OF TENANCY-IN-COMMON AGREEMENT

Recording Requested By And
When Recorded Return To:

MEMORANDUM OF TENANCY-IN-COMMON AGREEMENT

This Memorandum of Tenancy-in-Common Agreement ("**Memorandum**") is made and entered into as of October 18, 2021, by and between **Washington Township Health Care District**, a local Health Care District organized under the laws of the State of California, doing business as Washington Hospital Healthcare System and **The Regents of the University of California**, each as a tenant-in-common of that certain commercial real property, together with all improvements thereon and appurtenances thereto (the "**Property**") located at 45388 Warm Springs Boulevard in Fremont, California, as more particularly described on **Exhibit A** attached hereto. The parties are sometimes referred to herein, individually, as a "**Tenant-in-Common**" and, collectively, as the "**Tenants-in-Common**".

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Tenants-in-Common hereby declare and agree as follows;

1. The Tenants-in Common have entered into that certain unrecorded Amended and Restated Tenancy-in-Common Agreement dated October 18, 2021 (the "**Agreement**"), for the purpose of providing for, among other things, the ownership, management, and operation of the Property.
2. The Agreement provides and, notice is hereby given of (i) Section 7(b) wherein the parties agree to a right of first refusal and options to purchase the other Tenant-in-Common's Undivided Interest in the Property on the terms and provisions set forth therein, and (ii) Section 9 wherein the parties waive their right to any action for partition.
3. This Memorandum is prepared for the purpose of recording, and in no way modifies the express and particular provisions of the Agreement.

Execution Version

The parties have entered into this Memorandum as of the date written below their respective signatures.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: _____

Name: _____

Its: _____

Date: _____

WASHINGTON TOWNSHIP HEALTH CARE DISTRICT,
a Health Care District organized under the laws of the State of
California, doing business as Washington Hospital Healthcare
System

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT A
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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FREMONT, IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

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Thence South 65° 38' 38" West, 70.00 feet,

Thence leaving said Northerly right of way lines Southwesterly, Westerly and Northwesterly along the arc of 50 00 foot radius, tangent curve to the right, through a central angle of 90° 00' 00" an arc distance of 78.54 feet to a point on the aforementioned Easterly right of way of Warm Springs Boulevard,

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APN: **519-1687-061-01**

EXHIBIT C

PURCHASE PRICE CALCULATIONS

| | | | | | | |
|---------------------------------|-------------------------|-------------------|-----|--|---------------------------|-----------------|
| | | | | | Washington Credits | |
| | Washington Percentage | | 51% | | | |
| | UCSF Percentage | | 49% | | First Extension | \$ 50,000.00 |
| | | | | | Second Extension | \$ 50,000.00 |
| | | | | | Third Extension | \$ 80,000.00 |
| Purchase Price: | \$ 22,000,000.00 | | | | Fourth Extension | \$ 100,000.00 |
| | | | | | Security Deposit | \$ 500,000.00 |
| | | | | | Third Deposit | \$ 255,000.00 |
| No Credits | | | | | <u>Total Credits</u> | \$ 1,035,000.00 |
| | Washington | \$ 11,220,000.00 | | | | |
| | UCSF | \$ 10,780,000.00 | | | UCSF Credits | |
| | | | | | | |
| Credits | | | | | Fifth Extension | \$ 100,000.00 |
| | Washington | \$ (1,035,000.00) | | | Third Deposit | \$ 245,000.00 |
| | UCSF | \$ (345,000.00) | | | | |
| | | | | | <u>Total Credits</u> | \$ 345,000.00 |
| | | | | | | |
| Adjusted Purchase Price | | | | | | |
| | Washington | \$ 10,185,000.00 | | | | |
| | UCSF | \$ 10,435,000.00 | | | | |
| | | | | | | |
| | | | | | | |
| Cost to Close (excluding | \$ 20,620,000.00 | | | | | |

EXHIBIT D
APPROVED BUDGET
(SUMMARY)

WHHS/UCSF Warm Springs TICA Budget

CONFIDENTIAL DRAFT

Note: TICA Budget will be replaced and superseded by budget associated with eventual JV Agreement between WHHS and UCSF

1. Conditional Use Permit

| | |
|----------------------------|------------------|
| <i>Architect</i> | \$50,000 |
| <i>Landscape Architect</i> | \$10,000 |
| <i>Civil Engineer</i> | \$10,000 |
| <i>City Fees</i> | \$25,000 |
| <i>RESSINC</i> | \$20,000 |
| Total | \$115,000 |

2. Building Operations \$528,000

3. 3rd Party Lease Expenses - South Building \$694,948

4. Asset Mngt Fee \$36,960

5. Misc. \$125,092

Total: **\$1,500,000**

Initial Deposits

| | |
|-------------------|-----------|
| <u>WHHS (51%)</u> | \$765,000 |
| <u>UCSF (49%)</u> | \$735,000 |

Note: Does not included architect fees associated with beginning full TI design with architect and WHHS/UCSF for eventual build-out