

**Palomar Pomerado Health Foundation
Management Services Agreement & Line of Credit**

TO: Board of Directors

FROM: Board Finance Committee
Tuesday, October 25, 2005

MEETING DATE: Monday, November 14, 2005

FROM: Bob Hemker, CFO

Background: Management is negotiating a Management Services Agreement with the Palomar Pomerado Health Foundation (“the Foundation”), whereby the District will contractually provide employees and other services to the Foundation. In conjunction therewith, a Line of Credit will be extended to the Foundation, in the requested form and documentation as per the attached.

Budget Impact: N/A

Staff Recommendation: Approval of the Management Services Agreement with—and the included Line of Credit to—Palomar Pomerado Health Foundation, as requested.

Committee Questions:

COMMITTEE RECOMMENDATION: The Finance Committee recommends approval of the Management Services Agreement with—and the included Line of Credit to—Palomar Pomerado Health Foundation.

Motion: X

Individual Action:

Information:

Required Time:

MANAGEMENT SERVICES AGREEMENT

by and between

PALOMAR POMERADO HEALTH (“PPH”)

and

PALOMAR POMERADO HEALTH FOUNDATION (“Foundation”)

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MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT (this "Agreement") is dated as of September 1, 2005, (the "Effective Date") by and between PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California ("PPH"), and PALOMAR POMERADO HEALTH FOUNDATION, a California nonprofit public benefit corporation ("Foundation"). PPH and Foundation are each sometimes referred to in this Agreement as a "Party" or, collectively, as the "Parties."

RECITALS

- A. PPH, a local health care district organized under the California Local Hospital District Law (California Health and Safety Code § 32000 et seq.) (the "Law"), owns and operates healthcare facilities for the benefit of the communities within its boundaries.
- B. Foundation, a nonprofit philanthropic organization organized and operated to support PPH and its programs, is committed to its mission which is the enhancement of individual and community health through the philanthropic support of PPH.
- C. In connection with its operations, PPH regularly employs and/or contracts with management, clerical, office and administrative and paraprofessional personnel experienced in the healthcare field. PPH has extensive experience in individual and community health issues and understands Foundation and its operations. As a result, Foundation has determined that PPH is the best alternative in attaining its operational and organizational goals.
- D. The Parties believe that it is in the best interests of the public served by PPH to facilitate the proper operation of Foundation so that it may carry out its mission.
- E. The Parties further believe that the efficient and effective operation of Foundation, and the funds it raises for PPH and its collaborative agencies, will be well served by the provision of certain personnel and other operational items, services and funds to Foundation.
- F. Foundation desires to obtain from PPH certain personnel and other operational items, services and funds, and PPH has agreed to provide such personnel and other operational items, services and funds to Foundation to further the public purposes for which PPH and the Foundation operate, in accordance with the California Constitution and according to the terms and conditions set forth herein.
- G. The Parties hereby reference the following additional agreements to which they are both parties:
- (i) License Agreement dated September 1, 2005, and attached hereto as Exhibit 1.4;
 - (ii) Security Agreement dated September 1, 2005, and attached hereto as Exhibit 4.1(b); and

- (iii) Business Associate Agreement dated September 1, 2005, and attached hereto as Exhibit 8.2.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I.
PPH'S OBLIGATIONS

1.1 Administrative and Management Services. PPH shall, during the term of this Agreement, provide the administrative and management services set forth in Exhibit 1.1 (the "Management Services"), upon the terms and subject to the conditions set forth in this Agreement.

1.2 Marketing and Public Relations Services. Subject to Foundation's prior approval as to both content and cost, PPH shall perform marketing and public relations services on behalf of Foundation, including, without limitation, the employment of marketing and public relations personnel to develop marketing and fundraising programs related to Foundation (the "Marketing Services"). Fundraising services will be performed in accordance with the terms set forth in the Business Associate Agreement, attached hereto as Exhibit 8.2. The Management Services and the Marketing Services are referred to in this Agreement, collectively, as the "Services."

1.3 Attorney-in-Fact. Foundation appoints PPH as Foundation's lawful attorney-in-fact for the purposes set forth in the power of attorney attached as Exhibit 1.3 and executed by Foundation.

1.4 Grant of License for Use of Office Space. PPH authorizes and grants a license to Foundation to enter upon and occupy certain office property in which to operate (the "Office Space"), subject to the terms and conditions set forth in the License Agreement entered into between PPH and Foundation, attached hereto as Exhibit 1.4 (the "License").

1.5 Utilities. PPH shall provide electricity, gas, telephone, water, heat and air conditioning to the Office Space as reasonably required.

1.6 Supplies. PPH shall arrange for supplies necessary for properly and efficient operation of Foundation.

1.7 Furniture, Fixtures and Equipment. PPH shall provide to Foundation the furniture, fixtures, and equipment described in Exhibit 1.7 (the "FF&E"). Foundation's use of the FF&E shall be subject to the following conditions:

(a) **Legal Title.** Legal title to all FF&E shall be in PPH's name, and shall remain in PPH's name upon any termination or expiration of this Agreement. Without PPH's prior written consent, Foundation shall not cause or agree to any lien, security interest, claim or encumbrance of any kind being placed on, incurred on, levied against, or recorded on the FF&E.

At the request of PPH, Foundation shall execute any UCC-1 Financing Statements or similar documents evidencing PPH's ownership of the FF&E.

(b) Use of FF&E. Foundation shall not remove the FF&E from the Office Space or relocate the FF&E to another place without PPH's prior written consent.

(c) Repairs. PPH shall maintain the FF&E in good working order, including arranging for all necessary repairs, maintenance, and/or replacement, as necessary and in PPH's sole discretion, of the FF&E. Foundation shall use its best efforts to prevent damage, excessive wear, and breakdown of the FF&E. Foundation shall promptly advise PPH in writing of any needed repairs or maintenance of the FF&E.]

1.8 Information System. PPH shall develop, supply and continuously maintain in good operating condition a computerized information system that performs the functions set forth in Exhibit 1.8.

1.9 Ownership of Records. All financial records, personnel files, written procedures and other such items relating to the business and activities of Foundation shall be the property of Foundation, shall be available for inspection by Foundation and by any member of the Foundation's Board of Directors. Upon termination of this Agreement, PPH shall, at Foundation's request, transmit all Foundation records to Foundation or any other party designated by Foundation. PPH shall have a right to copy all records prior to transmittal, at its expense and to retain such records, subject to applicable law. PPH and Foundation shall comply with all applicable laws concerning the confidentiality of all Foundation records. PPH and its employees shall keep confidential all statistical, financial, and personnel data relating to the business of Foundation, except for any data that becomes publicly available, or any data to which the public has the legal right of access, or that may be rightfully obtained from third parties.

1.10 Property Taxes. PPH shall be responsible for the payment of all property taxes, if any, that may be levied in regard to all real and personal property owned or leased by PPH in connection with this Agreement.

1.11 PPH Authority and Duties. PPH shall have the exclusive authority to perform all of its duties set forth in this Agreement. PPH agrees to devote such time, effort, skill and expertise to the affairs of Foundation as is necessary to fulfill its obligations under this Agreement. PPH may subcontract with other persons or entities for any of the Services that PPH is required to perform under this Agreement.

ARTICLE II. **COMPENSATION**

2.1 Compensation to PPH. The compensation provisions for the services provided by PPH under this Agreement are set forth in Exhibit 2.1 attached hereto and incorporated herein.

2.2 Additional Compensation. PPH and Foundation may, from time to time, agree that PPH shall provide to Foundation additional office space, furniture, fixtures, equipment, or

other items or services not described in this Agreement (“Additional Support”). Any agreement to provide Additional Support to Foundation shall be in writing and shall be in the form of an amendment to this Agreement signed by the Parties. If PPH provides Additional Support to Foundation, Foundation shall pay for such Additional Support when invoiced or PPH shall extend further credit to Foundation for such amounts, which shall set forth in any such amendment.

2.3 Payment of Amounts Due Upon Termination or Expiration of Agreement.

Upon any termination or expiration of this Agreement, Foundation shall pay to PPH all amounts earned prior to the effective date of termination or expiration, or otherwise due under this Agreement.

ARTICLE III.
LINE OF CREDIT

3.1 Line of Credit. PPH shall make available to Foundation, and Foundation agrees to accept from PPH, a line of credit, the aggregate amount of which shall not exceed **Three Million Dollars (\$3,000,000)** or a greater amount solely in PPH’s discretion (“Line of Credit”), subject to the terms set forth in this Article III. The Line of Credit shall expire June 30, 2010 (the “Credit Line Expiration Date”). This expiration date does not affect Foundation’s repayment obligation.

3.2 Advances. PPH shall advance to Foundation amounts requested pursuant to Section 3.4 of this Article (each, an “Advance”, and collectively, the “Advances”), from time to time prior to, but not including, the Credit Line Expiration Date. The aggregate amount of all outstanding Advances shall not exceed the Line of Credit. Notwithstanding the foregoing, both PPH’s Chief Executive Officer and Chief Financial Officer and Foundation’s Chair and Treasurer shall approve in writing Advance requests exceeding One Hundred Thousand Dollars (\$100,000).

3.3 Use of Advances. Foundation shall use the Advances for the following purposes only:

- (a) For amounts approved by PPH in the capital and operating budgets of Foundation;
- (b) For subsequent repayment to PPH for insurance expense coverage;
- (c) For subsequent repayment to PPH in any given month when Foundation does not have sufficient funds to cover Foundation Expenses in accordance with the provisions of Exhibit 2.1; and
- (d) For normal and routine expenses incurred in the consummation of gift transactions approved by the Joint Gift Acceptance Committee.
- (f) Any individual expenses exceeding One Hundred Thousand Dollars (\$100,000) must be approved by the CEO of PPH.

3.4 Request and Delivery of Advances. When Foundation desires to obtain an Advance, it shall deliver to PPH a notice in the form attached hereto as Exhibit 3.4 (the "Notice of Borrowing") at least three (3) Business Days prior to the date on which the Advance is to be paid (the "Proposed Funding Date"). The Notice of Borrowing shall specify the Proposed Funding Date (which shall be a Business Day), the amount of the requested Advance, and certify as to the satisfaction of each of the conditions set forth in Exhibit 3.4. "Business Day" shall mean any day which is not a Saturday, Sunday or a generally observed holiday for banks in the State of California.

3.5 Contingencies to PPH's Payment of Advances. PPH's obligation to make any Advances to Foundation under this Agreement shall be contingent upon the following:

(a) Documentation. Foundation's submission to PPH, in form and substance satisfactory to PPH, this Agreement, the Note (as defined in Section 4.1(a)), the Security Agreement (as defined in Section 4.1(b)), and such other documents and instruments as PPH may reasonably request, all duly executed by Foundation.

(b) Notice of Borrowing. Foundation's submission to PPH of a Notice of Borrowing in which Foundation certifies that as of the date of the Notice of Borrowing:

- (i) all of Foundation's representations and warranties contained in this Agreement shall be true, correct and complete in all material respects to the same extent as though made on and as of that date;
- (ii) no Event of Default (as defined in Exhibit 4.1(b)) shall have occurred and shall continue, or shall result from, making the Advance;
- (iii) no law or regulation shall prohibit, and no order, judgment or decree of any court, arbitrator or governmental authority shall purport to enjoin or restrain PPH from making the Advance; and
- (iv) no change having a Material Adverse Effect on Foundation, either individually or in the aggregate, shall have occurred since the Execution Date. "Material Adverse Effect" shall mean a material adverse effect upon Foundation's purpose, function, operation or status or upon PPH's security interest in the Collateral (as defined in Exhibit 4.1(b) attached hereto) or the priority thereof.

(c) Perfection. The Account described in Exhibit 4.1(b) of this Agreement shall have been established in a manner satisfactory to PPH, in its sole discretion, and PPH shall be satisfied that all steps shall have been taken necessary to create and perfect in favor of PPH a first priority security interest in the Account and all other Collateral described in such Exhibit 4.1(b).

3.6 Promissory Note. Foundation shall repay the Advances and accrued interest pursuant to the terms and conditions of the Note (as defined below). Foundation authorizes PPH

to record on the schedule annexed to the Note, the date and amount of each Advance made by PPH, the Interest Rate (as such term is defined in the Note) when each Advance is made, and each payment or prepayment of the Advances, and agrees that all such notations shall constitute *prima facie* evidence of the matters noted. Foundation further authorizes PPH to attach to and make a part of the Note continuations of the schedule as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Foundation's obligations to repay the Advances or Foundation's obligations under this Agreement, the Note, or any other document, contract or instrument delivered to PPH in connection with this Agreement (collectively, the "Line of Credit Documents").

ARTICLE IV.
PROMISSORY NOTE; SECURITY AGREEMENT; GUARANTEE

4.1 Foundation's Deliverables. Concurrently with the execution of this Agreement, Foundation shall execute and deliver to PPH:

- (a) the secured promissory note in the form attached as Exhibit 4.1(a) (the "Note"); and
- (b) the security agreement in the form attached as Exhibit 4.1(b) (the "Security Agreement").

4.2 Further Cooperation. PPH and Foundation shall perform, or ensure the performance of, all actions and execute, or ensure the execution of, all documents necessary to perfect the security interests granted in the Security Agreement, as reasonably requested by PPH from time to time.

ARTICLE V.
INSURANCE

5.1 Director/Officer Liability Insurance. PPH shall purchase on behalf of Foundation and continuously maintain director/officer liability insurance coverage, issued by an insurance company licensed or otherwise qualified to issue liability insurance policies or coverage in the State of California, and acceptable to Foundation's Board, in an amount of at least ten million dollars (\$10,000,000) or, from time to time, such other amount that is consistent with that obtained by PPH for its own coverage. As of the Effective Date, Parties acknowledge the BETA Healthcare Group Policy, issued to PPH in the amount of ten million dollars (\$10,000,000), that meets the terms of this Section 5.1.

5.2 Certificate of Insurance. On or before the Effective Date, PPH shall provide Foundation with a copy of the certificate evidencing liability insurance coverage, and shall provide Foundation with proof of continued liability insurance coverage on an annual basis (or as periodically requested by Foundation's Board). PPH shall provide Foundation with no less than thirty (30) days prior written notice of cancellation or any material change in such liability insurance coverage.

ARTICLE VI.
TERM AND TERMINATION

6.1 Term. This Agreement shall become effective on September 1, 2005 (the "Effective Date"), and shall continue until June 30, 2010 (the "Expiration Date"), subject to the termination provisions of this Agreement. All reference to "fiscal year" as used in this Agreement shall refer to the twelve months ending on June 30 of each year, except for the first year of the Term for which the fiscal year shall be the ten months ending on June 30, 2006.

6.2 Termination by PPH. PPH shall have the right to terminate this Agreement upon the occurrence of any one or more of the following events:

- (a) Breach of this Agreement by Foundation where the breach is not cured within thirty (30) calendar days after PPH gives written notice of the breach to Foundation;
- (b) Breach by Foundation of the requirements under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (as set forth in Exhibit 8.2);
- (c) Foundation is rendered unable to comply with the terms of this Agreement for any reason; or
- (d) Upon ninety (90) calendar days written notice without cause to Foundation in all other cases.

6.3 Termination by Foundation. Foundation shall have the right to terminate this Agreement according to the following terms and conditions:

- (a) Breach of this Agreement by PPH where the breach is not cured within thirty (30) calendar days after Foundation gives written notice of the breach to PPH or if the breach is not curable, then thirty (30) calendar days after Foundation gives written notice of the breach to PPH;
- (b) Foundation is rendered legally unable to comply with the terms of this Agreement for any reason, in which case termination shall be coterminous with the date of such legal inability; or
- (c) Upon ninety (90) calendar days written notice without cause to PPH in all other cases.

6.4 Termination or Modification in the Event of Government Action. If the Parties receive notice of any Government Action (defined below), the Parties shall attempt to amend this Agreement in order to comply with the Government Action. If the Parties, acting in good faith, are unable to agree to the amendments necessary to comply with the Government Action, or, alternatively, if either Party determines in good faith that compliance with the Government Action is impossible or infeasible, this Agreement shall be terminated ten days after one party gives notice to the other of such fact. For the purposes of this Section, "Government Action" shall mean any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any notice

of a decision, interpretation, finding, or action by any governmental or private agency, court or other third-party which, in the opinion of counsel to PPH, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would:

- (a) revoke or jeopardize the status of any health facility license granted to PPH or any Affiliate (defined below) of PPH;
- (b) prevent Foundation from being able to access and use the facilities of PPH or any Affiliate of PPH; or
- (c) subject PPH, any Affiliate of PPH, Foundation, or any of their respective employees or agents, to civil or criminal prosecution (including any excise tax penalty under Internal Revenue Code Section 4958) on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement.
- (d) For the purposes of this Section, "Affiliate" shall mean any entity which, directly or indirectly, controls, is controlled by or is under common control with PPH.

6.5 Rights upon Termination. Upon any termination or expiration of this Agreement, all rights and obligations of the Parties shall cease except those rights and obligations that have accrued or expressly survive such termination or expiration. Notwithstanding the above, upon termination of this Agreement by PPH and Foundation pursuant to Sections 6.2 and 6.3, respectively, of this Agreement, the outstanding principal amount of the Advances and all accrued but unpaid interest shall automatically become due and payable.

6.6 Return of Property. Upon any termination or expiration of this Agreement, Foundation shall immediately return and surrender to PPH all Office Space, FF&E and any other property of PPH, in good condition, normal wear and tear excepted, free and clear of any lien, security interest, claim or encumbrance of any kind, unless previously agreed to in writing by PPH.

6.7 No Personal Liability of Foundation Directors or Officers. PPH agrees that except in the case of criminal or grossly negligent conduct committed by the officers or directors of Foundation, PPH shall not seek to impose personal liability upon any officer or director of Foundation arising from or relating to: (a) any act, action, or inaction of any such officer or director, (b) any Advances as set forth above, (c) the Note, or (d) any indemnification of PPH given under this Agreement or in any documentation relating to this Agreement.

ARTICLE VII.
TRADE SECRETS, TRADENAMES AND SERVICE MARKS

7.1 Trade Secrets. During the term of this Agreement, Foundation will have access to and become acquainted with confidential information and trade secrets of PPH, including information and data relating to contracts and accounts, clients, billing practices and procedures, business techniques and methods, strategic plans, operations and related data (collectively, "Trade Secrets"). All Trade Secrets are the property of PPH and used in the course of PPH's

business, and shall be proprietary information protected under the Uniform Trade Secrets Act. Foundation shall not disclose to any person or entity, directly or indirectly, either during the term of this Agreement or at any time thereafter, any Trade Secrets, or use any Trade Secrets other than in the course of meeting Foundation's obligations under this Agreement. For purposes of this Agreement, any information which is or becomes part of the public domain, other than as a result of an improper disclosure by Foundation, is excluded from the definition of "Trade Secret."

7.2 Tradenames and Service Marks. PPH may adopt one or more tradenames or service marks. Foundation authorizes PPH to associate such tradenames or service marks with Foundation's name on any correspondence or other public or private communication or advertisement. During the term of this Agreement, Foundation shall not, absent PPH's prior written consent, use such tradenames or service marks. Foundation further agrees that upon any termination or expiration of this Agreement, Foundation shall not use such tradenames or service marks or contest PPH's sole and exclusive ownership and right to the use of such tradenames or service marks.

7.3 Injunctive Relief. Foundation acknowledges that any violation of the provisions of this Article will cause PPH irreparable injury. Accordingly, PPH may enforce such provisions by seeking injunctive or other equitable relief in addition to any other remedies available at law. If a court of competent jurisdiction declares any of the provision of this Article to be too broad to be specifically enforced, such provisions shall be enforced to the maximum extent permitted by law.

ARTICLE VIII. **GENERAL PROVISIONS**

8.1 Independent Contractor. PPH is and shall at all times be an independent contractor with respect to Foundation in meeting PPH's responsibilities under this Agreement. Nothing in this Agreement is intended nor shall be construed to create a partnership, employer-employee or joint venture relationship between PPH and Foundation.

8.2 Compliance with HIPAA. PPH and Foundation shall comply with the HIPAA requirements as defined and set forth in Exhibit 8.2. The HIPAA requirements shall survive the expiration or termination of this Agreement for any reason.

8.3 Amendment. This Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated, signed by the Parties and attached to this Agreement.

8.4 Dispute Resolution. In the event of any disagreement, dispute or claim (collectively, a "Dispute") arises between the Parties hereto with respect to whether an alleged breach hereof has or has not occurred, or with respect to any other matter related to or arising out of this Agreement, or the relationship or transactions contemplated hereby, the Dispute shall be resolved in accordance with the following procedures:

(a) **Meet and Confer.** In the event of a Dispute, either Party may give written notice to the other Party setting forth the nature of the Dispute (the "**Dispute Notice**"). The Parties shall meet and confer to discuss in good faith and attempt to resolve the Dispute within fifteen (15) days of the Party receiving the Dispute Notice. The representatives of the Parties shall meet at such date(s) and time(s) as are mutually convenient to the representatives of each Party within the 15-day period.

(b) **Arbitration.** Except as set forth below, any Dispute that cannot be resolved by the Parties under Section 8.4(a) within the 30-day meet-and-confer period, shall be submitted to final binding arbitration, as follows:

- (i) ***Designation of an Arbitrator.*** A single disinterested third party shall be selected by mutual agreement of the Parties. If the Parties are unable to mutually select an arbitrator within (15) days after each party notifies the other of its desire to arbitrate the Dispute, then the arbitrator shall be selected, and the arbitration shall be conducted, in accordance with JAMS's then-current Comprehensive Arbitration Rules and Procedures or Streamlined Rules of Practice and Procedure, as appropriate, depending on the amount in dispute.
- (ii) ***Venue.*** The arbitration shall be conducted in the County of San Diego, California, unless the Parties mutually determine that another venue would be more convenient.
- (iii) ***Arbitrator's Expenses and Fees.*** JAMS' administrative fees and the expenses and fees of the arbitrator shall be divided among the Parties equally. Each Party shall pay its own counsel fees, witness fees, and other expenses incurred.

8.5 Assignment. Except for assignment by PPH to an entity owned, controlled by, or under common control with PPH, neither Party may assign any interest or obligation under this Agreement without the other Party's prior written consent. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

8.6 Attorneys' Fees. If either Party brings an action for any relief or collection against the other Party, declaratory or otherwise, arising out of the arrangement described in this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' fees and costs actually incurred in bringing such action, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For the purpose of this Section, attorneys' fees shall include fees incurred in connection with discovery, post judgment motions, contempt proceedings, garnishment and levy.

8.7 Authorized Persons. Whenever any consent, approval or determination of a Party is required pursuant to this Agreement, the consent, approval or determination shall be rendered on behalf of the Party by the person or persons duly authorized to do so, which the other Party shall be justified in assuming means any officer of the Party rendering such consent, approval or determination, or the Party's board of directors.

8.8 Choice of Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California, except choice of law rules that would require the application of the laws of any other jurisdiction.

8.9 Compliance with Laws. Foundation shall comply with applicable laws, ordinances, codes and regulations of federal, state and local governments, including laws that require Foundation to disclose any economic interest or relationship with PPH.

8.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8.11 Entire Agreement. This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings, discussions or past practices between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

8.12 Exhibits. The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated into this Agreement wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

8.13 Force Majeure. Except with respect to obligations imposed with regard to payments to be paid by Foundation under this Agreement, neither Party is liable for nonperformance or defective or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), action of any governmental authority, riots, revolutions, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of utilities, or strikes (or similar nonperformance or defective performance or late performance of employees, suppliers or subcontractors).

8.14 Further Assurances; Good Faith. Each Party shall, at the reasonable request of the other Party, execute and deliver to the other party all further instruments, assignments, assurances and other documents, and take any actions as the other Party reasonably requests in connection with the carrying out of this Agreement. In performing its obligations under this Agreement, each Party shall act in good faith.

8.15 Indemnification. To the extent that such acts or omissions are not covered by insurance, each Party shall indemnify, hold harmless and defend the other Party and its officers,

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agents or employees, against any loss or liability arising out of or resulting in any way from the acts or omissions of such Party or its own officers, employees or agents, except that any such obligation to indemnify and hold harmless shall be reduced by any amount of such loss or liability arising from the contributory acts or omissions of the indemnified Party and its owners, employees or agents. This obligation shall not be qualified or eliminated by an allegation or finding that the other Party or any of its personnel is responsible for a passively negligent act or omission. This section shall survive the termination of this Agreement.

8.16 Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

8.17 Interruption of Services. Notwithstanding any provision in this Agreement to the contrary, PPH shall not be liable to Foundation in damages or otherwise for any failure, interruption or curtailment of any building service or utility (including without limitation heating, plumbing, electrical systems, security systems, communication systems, and fire protection and detection systems), or of the use of the FF&E, or the Office Space. PPH shall not be liable to Foundation for any injury or damage to Foundation or from damage to the goods, wares, merchandise or other property of Foundation's invitees or any other person in or about the Office Space, or for injury to the person of Foundation's employees (collectively, "Damages"), whether such Damages are caused by or result from fire, steam, electricity, gas, water or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, electrical systems, wires, appliances, plumbing, heating, air conditioning, lighting fixtures, security systems, communication systems, or fire protection and detection systems, or from any other cause relating to the condition of the Office Space or the FF&E, whether such Damages result from conditions arising in, on or upon the Office Space or in, on or upon other portions of the building of which the Office Space is a part or from other sources or places (including without limitation windstorm, hurricane or rainstorm), and regardless of whether the cause of such Damages or the means of repairing such Damages is inaccessible to Foundation. PPH shall not be liable for any Damages arising from (i) any act or neglect of any other tenant of the building (if any) in which the Office Space is located.

8.18 Periodic Review. This Agreement contemplates a close operating relationship between PPH and Foundation that will exist over a long period of time. The Board of Foundation is expected to be comprised of volunteers and donors; the board of PPH is comprised of elected officials. Accordingly, in approving this Agreement and directing its officers to enter into this Agreement on its behalf, PPH agrees that it will at six month intervals appoint a committee of not less than two individuals from among the elected members of its board of directors (i.e., the ad hoc committee would be exclusively comprised of individuals elected by the public to the board of PPH), which ad hoc committee shall on a semi-annual basis meet with a like number of members selected by the Chairman of the Board of Foundation. At each such semi-annual meeting, the participants shall mutually review the performance of both Parties to this Agreement, identifying deficiencies in the performance of either or both Parties to this Agreement, developing (as necessary) a plan for addressing any such deficiencies, discussing potential modifications to the terms and conditions of this Agreement and the responsibilities of the Parties as set forth herein, reviewing the outstanding principal amount of Advances, including all accrued but unpaid interest thereon, made pursuant to this Agreement and

addressing repayment of such amounts, and at the appropriate time addressing a plan for Foundation to attain self-sufficiency.

8.19 Notices. All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express, DHL). Notice is deemed given when sent, if sent as specified in this Section, or otherwise deemed given when received. In each case, notice shall be delivered or sent to:

If to PPH, addressed to:

Palomar Pomerado Health

Attention: _____

If to Foundation, addressed to:

Palomar Pomerado Health Foundation

Attention: _____

Either Party may provide for a different address by notifying the other Party of such change as provided for in this Section.

8.20 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability of the remainder of this Agreement unless the purpose of this Agreement is thereby destroyed.

8.21 No Third-Party Beneficiary Rights. The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties, including but not limited to the Personnel.

8.22 Waiver. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be in writing to be effective, and shall apply solely to the specific instance expressly stated.

8.23 Meaning of Certain Words. Wherever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns shall include the plural and vice versa.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The Parties have executed this Agreement on the date written below (the "Execution Date").

PALOMAR POMERADO HEALTH,
a California local health care district

Date: September 1, 2005

DRAFT-DO NOT SIGN _____
By: _____
Its: _____

PALOMAR POMERADO HEALTH FOUNDATION,
a California nonprofit public benefit corporation

Date: September 1, 2005

DRAFT-DO NOT SIGN _____
By: _____
Its: _____

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EXHIBIT 1.1

ADMINISTRATIVE AND MANAGEMENT SERVICES

1. **Financial Management Services.** PPH shall provide financial management services necessary and appropriate for the operation of Foundation, including accounting, bookkeeping, operating and capital budgeting, tax matters, payroll, pledge receivables and accounts payable processing, and electronic data processing. In providing financial management services, PPH shall create and implement, following Foundation Board's approval, appropriate segregation of duty policies and procedures. All business records, papers and documents shall remain the sole property of Foundation, shall be available for inspection by Foundation at all reasonable times, and shall be deliverable to Foundation upon any termination of this Agreement. PPH shall be entitled to copy and retain a complete copy of all such documents upon any termination or expiration of this Agreement.
2. **Compliance Program.** PPH shall develop a compliance program for Foundation, which shall be implemented following the approval, not unreasonably withheld, of Foundation's Board. The compliance shall include, but not be limited to, (i) establishing, implementing, consolidating and maintaining internal controls; (ii) monitoring controls to consider whether they are operating as intended; and (iii) ensuring that controls are modified as appropriate for changes in conditions. The compliance program shall encompass the establishment of an Audit Committee in accordance with the Nonprofit Integrity Act of 2004.
3. **Documentation.** PPH shall work with Foundation's Auditor in providing the following: (i) copies of articles and bylaws; (ii) books of account, minutes of proceedings and membership lists; (iii) waivers of notice, consents to holding and approvals of board meetings; (iv) consents to board action without meeting; (v) tax records (*e.g.*, Foundation tax returns); and (vi) general information.
4. **Preparation of Financial Statements.** PPH shall provide Foundation financial statements in a form that is acceptable and approved by Foundation's Board. Financial statements shall be presented to Foundation on a monthly basis, even during months of Board's inactivity. Annual financial statements prepared by an Audit Committee shall be subject to the approval, not unreasonably withheld, of Foundation's Board prior to finalization. All financial reports and filings shall comply with the regulations set forth in the Nonprofit Integrity Act of 2004.
5. **Operating and Capital Budgets.** A proposed operating and capital budget shall be developed prior to the close of the fiscal year and submitted to PPH on no later than 30 days before the close of such fiscal year. The operating and capital budgets shall be adopted following the Parties' approval. PPH shall have the right to review Foundation's operating and capital budget on a quarterly basis and in the event of an unexpected material change from the approved budgets. PPH may approve or modify the proposed capital and operating budget in whole or in part. In events where Foundation wishes to borrow additional funds exceeding those approved by PPH in the capital and operating

budgets, Foundation shall submit a written request to PPH, which PPH may approve or disprove, but nothing shall require PPH to do so.

6. **Grants.** Decisions with respect to grants will be made by Foundation's Joint Gift Acceptance Committee in collaboration with Palomar Pomerado North County Health Development, Inc., taking into account such input as is offered by PPH. The Joint Gift Acceptance Committee will consist of Foundation representatives and two individuals designated by PPH who are not PPH board members.
7. **Significant Receipts.** PPH shall provide Foundation's Board with a summary review of significant receipts received by Foundation on a monthly basis and upon specific request, shall promptly provide to Foundation Board of Directors, and to any requesting member of Foundation's Board of Directors, all requested financial information relating to Foundation.
8. **Investment Services.** PPH and Foundation shall mutually select and PPH shall retain and/or hire an investment manager or managers to review and prepare a summary of the Foundation's assets held for the production of income or for investment. The summary shall be presented and reviewed by Foundation's Board on a periodic basis.
9. **Planned Giving.** PPH shall designate an individual, subject to the approval of Foundation's Board, to oversee the planned giving function.
10. **Restricted Gift Accounting.** PPH shall provide to Foundation sufficient documentation as to the proper application of all disbursements made to PPH by Foundation so as to enable Foundation and the members of Foundation's Board to fully comply with all requirements of law relating to accounting for gifts or contributions as to which the donor thereof has attached a restriction.
11. **Right to Approve Executive Director.** Except as otherwise agreed between Foundation and PPH, Foundation shall provide input and shall advise PPH with respect to the selection, performance and annual evaluation of the Executive Director of Foundation, who shall be employed by PPH and whose services shall be provided to Foundation pursuant to this Agreement. PPH shall continue to provide an Executive Director acceptable to Foundation. Should the Executive Director change, any new Executive Director proposed by PPH shall be approved by the majority vote of Foundation Board of Directors.
12. **Personnel.** PPH shall provide the services of such full-time, part-time and/or contract employees to Foundation as PPH deems necessary for the operation of Foundation in accordance with this Agreement. Such employees are referred to in this Agreement as "Personnel." PPH shall be responsible for the day-to-day management of Personnel.
 - a. **Selection, Hiring, Supervision, and Termination.** Except as otherwise agreed between PPH and Foundation (i) PPH shall be exclusively responsible for the selection, hiring, supervision and discipline and, if necessary, termination of all Personnel providing services for the benefit of Foundation; (ii) the Executive

Director of Foundation shall review the performance of the Personnel on an annual basis and provide such performance evaluation to PPH for its use; and (iii) the Board of Directors of Foundation shall review the performance of the Executive Director on an annual basis and provide such performance evaluation to PPH for its use.

- b. **Compensation and Employee Benefits.** Except as otherwise agreed between PPH and Foundation, PPH shall have full and sole legal control over and responsibility for payments to all Personnel, including salaries, deferred compensation, fringe benefits, bonuses, health insurance, long-term disability and group life insurance, workers' compensation insurance, unemployment insurance, retirement benefits and any other benefits that Personnel may receive. PPH shall be responsible for all employee record keeping, payroll accounting (including social security and other payroll tax reporting), income tax withholding, social security and other payroll taxes, forms processing, payroll and Internal Revenue Service filings and records storage and retrieval on behalf of all Personnel.
 - c. **Direction and Control.** All Personnel shall be subject to the direction and control of PPH, and, at the discretion of PPH, shall be subject to PPH's standard personnel policies and procedures. Except as otherwise agreed between PPH and Foundation, PPH shall have full and sole control over and responsibility for the method, manner, means, time, and place of performance of the work of all Personnel, including compliance with all applicable wage and hour obligations, compliance with all applicable occupational safety and health laws, obligations under the Immigration Reform and Control Act of 1986, and any other applicable employment law requirements.
 - d. **Volunteers.** Volunteers performing services for Foundation shall be subject to PPH's approval, supervision, direction, control, and, if applicable, recordkeeping and workers' compensation coverage, in the same manner as Personnel. For purposes of this Section 12(d), a "volunteer" is a person qualifying under the definition set forth in Labor Code section 3352(i).
13. **Workers' Compensation Coverage.** The Parties agree that, for purposes of the exclusive remedy provisions of applicable California workers' compensation law, Foundation shall be the "special employer" of the Personnel, and PPH shall be the "general employer" of the Personnel. Both Foundation and PPH shall be subject to the exclusive remedy provisions of California Labor Code section 3602 with respect to the Personnel.
14. **Legal Counsel/Consultants.** PPH shall retain on behalf of Foundation legal counsel or consultants for certain legal and operational need, as necessary, and such legal counsel may be that routinely used by PPH; provided however, that when the need for legal counsel to Foundation may relate to a situation in which the issues for which counsel or the consultants are being sought are those that affect the relationship between PPH and Foundation, then in all of such instances Foundation shall select its own counsel and/or

consultants and the costs of the same shall *not* be a proper expense of Foundation pursuant to Section 3.3 of this Agreement.

15. **Meetings.** PPH shall meet with Foundation periodically to discuss PPH's performance in the selection and retention of Personnel and services under this Agreement.
16. **Day-to-Day Services.** PPH shall furnish or obtain all telephones, paging devices, office services (including secretarial, transcription, reception, scheduling, duplication and facsimile services), janitorial services, maintenance services, security services, and any other services of a similar nature reasonably necessary in connection with the day-to-day operations of Foundation.

EXHIBIT 1.3

POWER OF ATTORNEY

Effective as of September 1, 2005, PALOMAR POMERADO HEALTH FOUNDATION, a California nonprofit public benefit corporation ("Foundation") appoints PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California ("PPH"), as Foundation's attorney in fact to perform the following acts in Foundation's name and place:

(a) Collections. To collect all donations and grants from whatever source;

(b) Banking Powers. To deposit all donations and grants directly into a bank account held in Foundation's name at a banking institution mutually selected by PPH and Foundation. PPH (and any subcontractor designated by PPH) shall have the right to make withdrawals from such account to pay all costs and expenses incurred in the operation of Foundation, including payment of the Foundation Expenses as set forth in Exhibit 2.1 of the Management Services Agreement (the "Agreement"), and to fulfill all other terms of such Agreement. By this Power of Attorney, Foundation also grants PPH full authority to perform any act necessary and appropriate to the exercise of the foregoing purposes and to accomplish those purposes set forth in the Agreement between Foundation and PPH dated as of the date of this Power of Attorney, and ratifies every act that PPH may lawfully perform by virtue of this Power of Attorney; and

(c) Gifts. To file all documents and take all actions necessary to effectuate the receipt of gifts approved by the Joint Gift Acceptance Committee as such Committee is identified in the Agreement.

This Power of Attorney shall be effective as of the Effective Date of the Agreement and shall terminate upon the expiration or termination of the Agreement.

By this Power of Attorney, Foundation grants PPH the authority to determine, in PPH's sole discretion, the time, manner and purpose for which any power conferred upon PPH in this Power of Attorney shall be exercised, as well as the conditions, provisions and covenants of any instruments which may be executed by PPH pursuant to this Power of Attorney.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DRAFT-DO NOT SIGN
For discussion purposes only.

PALOMAR POMERADO HEALTH FOUNDATION,
a California nonprofit public benefit corporation

Date: September 1, 2005

By: _____
Its: _____

[EXHIBIT 1.4]

OFFICE SPACE LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License") is effective as of September 1, 2005 (the "Effective Date") by and between PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California ("Licensor"), and PALOMAR POMERADO HEALTH FOUNDATION, a California nonprofit public benefit corporation ("Licensee"). Licensor and Licensee are sometimes referred to in this License as a "Party" or, collectively, as the "Parties."

RECITALS

A. Licensee is a nonprofit philanthropic organization in San Diego, California ("Foundation") and operates to support PPH and its programs. Licensee's mission is the enhancement of individual and community health through the philanthropic support of Licensor.

B. Licensor provides certain management services to Licensee pursuant to that certain Management Services Agreement (the "Agreement"), effective as of September 1, 2005.

C. Pursuant to Section 1.4 of the Agreement, Licensor must provide Licensee with sufficient office space to enable Licensee to operate the Foundation.

D. Licensor desires to provide Licensee with a license to occupy and operate the Foundation in the office space identified in this License.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1.1 **License.** Licensor grants to Licensee a license to enter and occupy the property as described in the Attachment hereto (the "Premises") for commercial use by Licensee while Licensee is operating the Foundation (the "License"). The License grants Licensee only the use of the Premises and does not extend to or include any surrounding or contiguous area.

1.2 **License Only; Relationship of Parties.** The provisions of this License shall be deemed to create a mere license only, personal to Licensee, revocable by Licensor in its sole discretion, and shall not be construed to be an agreement, sublease, assignment or any other conveyance of any interest in or to the Premises or to anything contained therein or thereon. Nothing herein shall create, nor be deemed to create, an agency or partnership relationship between the Parties, and neither Party shall have the right to bind the other without its consent with respect to obligations to third parties. Licensor shall not be liable in any way to any person, firm or corporation as a result of any act or omission by Licensee, any entity associated with it, or any of their respective officers, directors, employees, representatives or other agents, or otherwise resulting from, arising out of or related in any way to the License or any use of the Premises by Licensee.

1.3 Permitted Uses. Licensee shall use the Premises solely to carry out its mission, and for no other purpose. Licensee shall not: (a) use or permit the use of the Premises or any part thereof in any way which would violate the terms of this License or any applicable law, rules or regulations, or for any unlawful purposes or in any unlawful manner; or (b) suffer or permit the Premises or any part thereof to be used in any manner, or anything to be done or anything to be brought into or kept on the Premises that, in the reasonable judgment of Licensor, impairs or tends to impair or interfere with the character of Licensor or the appearance of the Premises.

1.4 Maintenance Costs. Licensor, subject to the provisions of the Facility Lease Agreement, shall be solely responsible for maintenance costs associated with the operation and maintenance of the office space during the term of this Agreement, unless otherwise agreed to in writing by the Parties.

1.5 Compliance. Licensor shall be solely responsible for identifying compliance of the Premises with all applicable laws, including without limitation all fire codes and Americans With Disability Act rulings and regulations.

1.6 Conduct of Business; Control of Premises. Use and operation of the Premises shall at all time be under the direction and control of Licensee. Licensee shall not permit any person upon the Premises, except under the direction and control of Licensee, and in case of any injury to or death of any person, or damage to any property, by any person permitted or allowed on the Premises by Licensee, it shall be conclusively presumed for this purpose that the person permitted or allowed on the Premises by Licensee and causing the same is under the control and direction of Licensee.

1.7 Alterations and Modifications. Licensee shall not make, without prior written consent of Licensor, any alterations or structural or other modifications to the Premises or affix any permanent modifications on any of the surfaces thereof (such as wallpaper, flooring, etc.).

1.8 Initial Condition of Premises. It is understood that Licensor makes no representations or warranties whatsoever in connection with the License, including without limitation any warranties regarding the condition of the Premises or their suitability for the use described herein or for any other use. Licensee acknowledges and represents to Licensor that Licensee hereby accepts the Premises in its existing condition and state of repair (i.e., in "as is" and "where is" condition).

1.9 Condition of Premises upon Completion. Before the expiration or earlier termination of this License, Licensee shall, at its sole cost and expense, remove any and all improvements placed on the Premises by Licensee or otherwise pursuant to this License, clean the Premises and remove all materials and rubbish, and leave the Premises in as good condition as existed upon the Execution Date, reasonable wear and tear excepted.

1.10 Damages. Licensee shall pay to Licensor, on demand, the costs of any repairs required to be made to the Premises as a result of Licensee's (or its guests, invitees or any other persons admitted to the Premises by Licensee) use of the Premises.

1.11 Hold Harmless; Indemnity. Licensee shall indemnify, protect, defend (with counsel acceptable to Licensor) and hold harmless Licensor and its employees, contractors, and agents from all liability, judgments, costs, damages, claims or demands, including reasonable attorneys' fees, asserted by third parties and arising out of the use of the Premises by Licensee, invitee or employee of Licensee, out of the conduct of Licensees' operations, out of anything done by Licensee, or permitted by Licensee, to be done in or about the Premises, or out of any accident, injury, death, or damage to any person or property occurring in, on or about the Premises. Licensor need not first have paid any such expense in order to be so indemnified. Licensor agrees to notify Licensee promptly following Licensor's learning of any such claims, provided that Licensor's failure to provide such notice shall not diminish Licensee's obligations hereunder. Without limiting Licensor's rights under the foregoing, Licensor agrees that except in the case of criminal or grossly negligent conduct committed by the officers or directors of Licensee, Licensor shall not seek to impose personal liability upon any officer or director of Licensee relating to the indemnification set forth herein.

1.12 Termination. Either Party shall have the right to terminate the License, with or without cause, upon ninety (90) days written notice to the other Party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The Parties executed this License on the date set forth below.

LICENSOR

PALOMAR POMERADO HEALTH,
a California nonprofit health care district

Date: September 1, 2005

By: _____
Its: _____

LICENSEE

PALOMAR POMERADO HEALTH FOUNDATION,
a California nonprofit public benefit corporation

Date: September 1, 2005

By: _____
Its: _____

ATTACHMENT TO EXHIBIT 1.4
DESCRIPTION OF OFFICE SPACE

ADDRESS/DESCRIPTION	SQUARE FOOTAGE
[960 Canterbury, San Diego, CA]	[]

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EXHIBIT 1.7

DESCRIPTION OF FF&E

Type	Description	Quantity
Leasehold Improvements		
Furniture		
Computer and Peripheral Hardware		
Computer Software		
	[]	
	[]	

EXHIBIT 1.8

INFORMATION SYSTEM FUNCTIONS

Operating System

Phone System

Internet Broadband Connection

Power and Server Back-up (as deemed necessary)

All necessary application software

All necessary hardware—including, but not limited to
servers, PC's printers, fax(es), and photocopiers

Other comparable equipment as requested by Foundation's Board and approved
by PPH from time-to-time

EXHIBIT 2.1

COMPENSATION

1. **Foundation Expenses.** For purposes of this Exhibit, "Foundation Expenses" means all expenses or costs incurred by PPH, for which PPH is financially liable. Foundation Expenses shall include, but are not limited, to all of the following:
 - (1) the direct costs plus applicable benefits of Personnel, commonly referred to as salary, wages, and benefits, that provide services at or in connection with the functions of Foundation, such as management, accounting, fundraising, etc., provided that such services are provided and/or coordinated by PPH. Where an employee does not spend all of his or her time working on behalf of Foundation or Foundation activities, but also spends time working on PPH activities, PPH shall allocate that persons time between PPH and Foundation, and the costs associated with the allocation of that person's time to Foundation shall be a Foundation Expense;
 - (2) direct and allocated out-of-pocket expense of using, purchasing or otherwise procuring the Office Space and the FF&E, including depreciation and taxes;
 - (3) direct and allocated cost of capital (such as actual interest on indebtedness incurred on behalf of Foundation) to finance or refinance obligations of Foundation, purchase equipment, or finance fundraising activities of Foundation;
 - (4) direct and allocated information technology;
 - (5) direct and allocated taxes;
 - (6) direct and allocated marketing and advertising expenses;
 - (7) direct and allocated insurance;
 - (8) direct supplies
 - (9) direct purchase services, including professional fees and consulting; and
 - (10) other costs that are the responsibility of Foundation under this Agreement.
2. **General Allocation.** Where costs cannot be directly identified as being attributable to Foundation, PPH shall allocate those costs in a manner which is reasonable.
3. **Priority of Payments.** Each month, any payments made by Foundation to PPH shall be first applied to current Foundation Expenses and then to any outstanding obligation of Foundation to PPH.

EXHIBIT 3.4

NOTICE OF BORROWING

[LETTERHEAD OF PALOMAR POMERADO HEALTH FOUNDATION]

[Address of Foundation]

_____, 20__

Re: Notice of Borrowing

To Whom It May Concern:

Please take notice that Palomar Pomerado Health Foundation, a California nonprofit public benefit corporation ("Foundation"), desires to borrow an Advance of _____ Dollars (\$_____) from Palomar Pomerado Health, a local health care district organized under the laws of the State of California ("PPH"), on _____, 20__ (the "Funding Date"). Advance requests exceeding One Hundred Thousand Dollars (\$100,000) must be accompanied by signatures from **both (a) PPH's Chief Executive Officer or Chief Financial Officer, and (b) Foundation's Chair or Treasurer.**

Foundation hereby certifies that as of the date of this Notice:

(a) all of Foundation's representations and warranties contained in the Management Services Agreement (the "Agreement") and all exhibits to the Agreement shall be true, correct and complete in all material respects to the same extent as though made on and as of that date;

(b) no Event of Default (as defined in Exhibit 4.1(b) of the Agreement) shall have occurred and shall continue, or shall result from, making the Advance;

(c) no law or regulation of general application shall prohibit, nor any order, judgment or decree of any court, arbitrator or governmental authority specifically naming Foundation and known to Foundation, shall purport to enjoin or restrain PPH from making the Advance; and

(d) no change having a Material Adverse Effect on Foundation (as such term is defined in the Agreement), either individually or in the aggregate, shall have occurred since the Execution Date.

Sincerely,

Name: _____
Title: _____

As Approved By

PALOMAR POMERADO HEALTH,
a California nonprofit health care district

Date: _____

By: _____
Its: Chief Executive Officer

PALOMAR POMERADO HEALTH,
a California nonprofit health care district

Date: _____

By: _____
Its: Chief Financial Officer

PALOMAR POMERADO HEALTH FOUNDATION,
a California nonprofit public benefit corporation

Date: _____

By: _____
Its: Chair

PALOMAR POMERADO HEALTH FOUNDATION,
a California nonprofit public benefit corporation

Date: _____

By: _____
Its: Treasurer

EXHIBIT 4.1(a)

PROMISSORY NOTE

[Place of Execution]

Not to Exceed \$3,000,000

FOR VALUE RECEIVED, Palomar Pomerado Health Foundation, a California nonprofit public benefit corporation ("Foundation"), promises to pay to the order of Palomar Pomerado Health, a local health care district organized under the laws of the State of California ("PPH"), the principal sum equal to the outstanding amount of Advances paid to Foundation pursuant to the Management Services Agreement by and between Foundation and PPH dated as of September 1, 2005 (the "Management Services Agreement"). Unless otherwise defined in this Promissory Note (the "Note"), each capitalized term shall have the meaning given in the Management Services Agreement. The outstanding principal amount of the Advances provided to Foundation pursuant to the Management Services Agreement (the "Principal") shall not exceed **Three Million Dollars (\$3,000,000)**.

1. Advances of Principal; Interest.

(a) Foundation hereby promises to pay to the order of PPH, at such place as PPH may from time to time designate in writing, in lawful money of the United States of America, the Principal and accrued interest thereon.

(b) Interest shall accrue on the Advances at a rate equal to two and one-half percent (2.5%) above the one (1) year LIBOR (the "Interest Rate"), computed annually on the basis of a 360-day year, and the number of days elapsed from the date each Advance is deposited into Foundation's Account until the outstanding Advances are repaid. Accrued interest shall be paid monthly in arrears on the first Business Day of each month. The interest rate shall be adjusted quarterly to reflect changes in the prime rate. The first (1st) Advance shall fix the prime rate for that calendar quarter. Any subsequent Advance in that quarter shall be assigned the same prime rate. Notwithstanding any other provision of this Agreement, the Interest Rate shall not exceed the maximum rate permitted by applicable law (the "Permitted Rate"). If any payments in the nature of interest exceed the Permitted Rate, as finally determined by a court of competent jurisdiction, any such amount in excess shall be considered payment of Principal and the Principal outstanding shall be reduced accordingly.

2. Repayment.

(a) Notwithstanding any other provisions of this Note, Principal, accrued interest, and other applicable fees, costs and charges ("Costs"), if any, owing on this Note shall be payable as follows:

(b) Repayment. Principal and accrued interest thereon shall be payable in sixty (60) equal monthly installments sufficient to fully amortize the unpaid balance of this Note. Principal and accrued interest thereon shall be payable on the first (1st) Business Day of each successive calendar month beginning on the Credit Line Expiration Date and continuing until

the earlier of (i) the date on which the Principal and all accrued interest thereon, and all Costs, if any, are paid in full, or (ii) the Maturity Date (as defined below). In all events, and subject to the remaining provisions of this Section 2, the entire then-outstanding balance of Principal and all accrued, unpaid interest thereon, and all Costs, if any, shall be due and payable by Foundation to PPH no later than the Maturity Date, the "Maturity Date" shall mean the date that is sixty (60) months from the Credit Line Expiration Date

(c) Application of Payments. Unless otherwise agreed in writing in advance by PPH, each payment or forgiveness with respect to this Note shall be credited as follows: first, against Foundation Expenses; second, against accrued and unpaid interest then due and owing; and third, against the Principal outstanding.

(d) Prepayment. Foundation shall have the right to prepay the Principal outstanding in whole or in part without penalty. Any partial prepayment shall be applied against the Principal outstanding and shall not postpone the due date or alter the amount of any subsequent monthly installment. Any amounts prepaid prior to the Credit Line Expiration Date may be reborrowed.

3. Events of Default. The termination for any reason of the Management Services Agreement, the failure to make the full amount of any payment when due under this Note, or the occurrence of any Event of Default under the Management Services Agreement, shall each constitute an event of default ("Event of Default") under this Note.

4. Acceleration. If either an Event of Default (as defined in both Section 3 of this Note and Exhibit 4.1(b) of the Management Services Agreement) occurs, or if this Agreement is terminated by either PPH or Foundation pursuant to Sections 6.2 and 6.3, respectively, of the Management Services Agreement, PPH may, at its option, declare the entire Principal outstanding, together with accrued interest and all other Foundation Expenses immediately due and payable to PPH; and PPH shall have all rights, powers and remedies available under the Line of Credit Documents, or accorded by law to a beneficiary or a secured party, including the right to resort to any or all of the Collateral or any other security for any of the obligations of Foundation. PPH may exercise its rights and remedies with respect to the Collateral without resorting or regard to other security or sources for payment. All rights, powers and remedies of PPH in connection with each of the Line of Credit Documents may be exercised at any time by PPH, and from time to time after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

5. Termination. Upon the occurrence of an Event of Default or upon termination of the Management Services Agreement by PPH or Foundation pursuant to Sections 6.2 and 6.3, respectively, of the Management Services Agreement, the outstanding principal amount of the Advances, all accrued but unpaid interest and all other obligations of Foundation under this Note shall automatically become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Management Services Agreement.

6. Costs of Collection. If PPH exercises its acceleration rights pursuant to this Note, in addition to the Principal outstanding and accrued interest thereon, PPH shall be entitled to collect all

costs of collection, including reasonable attorneys' fees incurred in connection with the protection or realization of collateral and PPH's reasonable collection efforts, whether or not suit on this Note or any foreclosure proceeding is filed. Any and all such costs and expenses shall be payable on demand and secured by the Security Agreement.

7. Continuing Liability. Following the occurrence of an Event of Default, Foundation's liability under this Note shall not be affected by PPH's pursuit or non-pursuit of any one or more of its rights, powers or remedies (including, without limitation, its option to accelerate the payment of this Note), regardless of the order in which or the extent to which PPH may pursue any of such rights, powers or remedies, it being understood that the liability of Foundation shall cease only upon satisfaction in full of all of Foundation's obligations arising under this Note and the Management Services Agreement.

8. No Waiver. No failure on the part of PPH to exercise any right or remedy under this Note, whether before or after a default, shall constitute a waiver of such right or remedy, and no waiver of any past default shall constitute waiver of any future default. No acceptance of a past due installment or other indulgence granted for time to time shall constitute a waiver of the right to insist upon prompt payment, be deemed to be a novation of this Note or as a reinstatement of the debt evidenced by this Note, or be construed to preclude the exercise of any right which PPH may have under law, by agreement or otherwise. PPH and each endorser or guarantor hereby expressly waive the benefit of any statute or rule of law or equity which would produce a result contrary to or in conflict with the foregoing. Foundation and endorsers of this Note consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand under this Note.

9. Waiver of Notice. Foundation and each endorser or guarantor of this Note hereby (i) waives presentment, demand, protest and notice of presentment, notice of protest and notice of dishonor of this debt and any other notice respecting this Note, and (ii) agrees that PPH, at any time without notice to such party or such party's consent, may grant extensions of time, without limit as to the number or the aggregate period of such extensions, for the payment of any Principal of or interest accrued thereon.

10. Choice of Law. This Note shall be construed in accordance with and governed by the laws of the State of California, without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any jurisdiction other than the State. Foundation and each endorser or guarantor hereby submit to jurisdiction in said State for the enforcement of Foundation's obligations under this Note and all other Line of Credit Documents, and waive any and all rights under the laws of any other state to object to jurisdiction within such State.

11. Amendments. This Note may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated, signed by the Parties and attached to this Note.

12. Assignment. Foundation shall not assign, sell, transfer or delegate any of the Foundation's rights or duties under this Note without the prior written consent of PPH. PPH may assign its rights and delegate its duties under this Note upon written notice to Foundation.

13. Notices. Any notice required or permitted to be given in this Note shall be given in accordance with the notices provision of the Management Services Agreement.

14. Security. This Note is secured by a first priority security interest granted by Foundation to PPH in the Collateral described in that certain Security Agreement of even date herewith (the "Security Agreement") by and between Foundation and PPH. All of the provisions contained in the Security Agreement are hereby made a part of this Note to the same extent and with the same effect as if they were fully set forth in this Note.

15. Severability. If any provision of this Note, in whole or in part, or the application of any provision, in whole or in part, is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, such provision or part of such provision shall be severed from this Note, and such severance shall have not effect upon the enforceability, performance or obligations of the remainder of this Note, including the remainder of such provision not determined to be illegal, invalid or unenforceable.

16. Successors and Assigns. The provisions of this Note shall inure to the benefit of and shall be binding upon the heirs, assigns, successors and representatives of Foundation and PPH, respectively. The term "Foundation" shall mean Foundation and each heir, successor, assign, and representative of Foundation as obligor of this Note; provided however, that PPH agrees that except in the case of criminal or grossly negligent conduct committed by the officers or directors of Foundation, PPH shall not seek to impose personal liability upon any officer or director of Foundation relating to the repayment of this Note. The term "PPH" shall mean PPH and each successor, assign, and representative of PPH as payee or holder of this Note.

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Foundation has executed and delivered this Note as of the date and at the place first above written.

PALOMAR POMERADO HEALTH FOUNDATION,
a California nonprofit public benefit corporation

By: _____
Its: _____

EXHIBIT 4.1(b)

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Security Agreement"), executed and delivered as of September 1, 2005, by PALOMAR POMERADO HEALTH FOUNDATION, a California nonprofit public benefit corporation ("Debtor"), for the benefit of PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California ("Secured Party").

RECITALS

A. Concurrently with the execution of this Security Agreement, Debtor and Secured Party are executing that certain Management Services Agreement (the "Agreement"), executed as of the date of this Security Agreement.

B. Debtor and Secured Party desire to enter into this Security Agreement to grant a security interest to Secured Party in the Collateral, as hereinafter defined, to secure the performance of the obligations and duties of Debtor under the Agreement and the Promissory Note ("Note") executed by Debtor in favor of Secured Party pursuant to such Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I.

COLLATERAL AND SECURITY INTEREST

1.1 Collateral and Grant of Security Interest. Debtor hereby grants to Secured Party a security interest of first priority in the Collateral, as described in Attachment A, to secure the payment and performance of all indebtedness, liabilities and obligations of Debtor to Secured Party under the Agreement and repayment of the principal amount of the Advances (as defined in Section 3.2 of the Agreement) and accrued interest thereon pursuant to the Note. The security interest created by this Security Agreement shall attach immediately on execution of this Security Agreement by Debtor.

1.2 Perfection and Priority. Debtor shall take all action necessary to perfect the security interest granted to Secured Party in Section 1.1 of this Security Agreement. Secured Party's security interest in the Collateral is, and will continue to be, a first priority security interest which is free and clear of all liens, claims, security interest and encumbrances, except with respect to any liens, claims, security interest and encumbrances granted by statute or pursuant to any other agreement executed by and between Secured Party and Debtor. Secured Party shall have no duty to collect or protect the Collateral, nor to preserve rights against prior parties or any other rights pertaining to the Collateral except as may arise under other agreements between the parties. Secured Party shall perfect its security interest in the Account (as defined in Section 1.5 herein) by sending to the appropriate financial institution a letter in the form of

Attachment B. Secured Party is granted a Power of Attorney in the Agreement to perform certain acts relating to the financial assets of Debtor, and such Power of Attorney is intended by the parties hereto to reduce to possession Secured Party's security interest in such assets of Debtor as are covered by such Power of Attorney.

1.3 Further Assurances. Debtor shall, from time to time, at Debtor's expense, execute and file any financing or continuation statements, or amendments thereto, and other instruments, endorsements or notices, and take other actions, reasonably necessary or as Secured Party reasonably requests, in order to perfect and preserve the assignments and security interests granted or purported to be granted by this Security Agreement. Debtor authorizes Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without Debtor's signature where permitted by law. Copies of any such statement or amendment shall promptly be delivered to Debtor. Debtor shall notify Secured Party of any change in Debtor's name, identity or corporate structure at least fifteen (15) days prior to any such change.

1.4 Principal Place of Business. Debtor's principal place of operation, where Debtor shall keep records regarding the Collateral, is located at [960 Canterbury, San Diego, CA]. Debtor shall not relocate Debtor's principal place of operation without providing at least sixty (60)-days prior written notice to Secured Party.

1.5 Business Deposit Account. Debtor, either itself or by a fiscal agency established in the Agreement, shall establish and maintain business deposit accounts ("Accounts") with _____, or such other financial institution as is mutually selected and approved in writing by Debtor and Secured Party (the "Depository Bank"). Debtor or its fiscal agent as established in the Agreement shall promptly deposit all donations and grants received by Debtor into the Account. If any Event of Default occurs, Secured Party may, by written notice to the Depository Bank, terminate Debtor's right to make any withdrawal from the Account and exercise any other right under this Agreement, at law, equity or otherwise applicable to the proceeds of the Account.

ARTICLE II. **REPRESENTATIONS AND WARRANTIES**

Debtor makes the following representations and warranties to Secured Party, which shall be true and correct on and as of the date of this Agreement:

2.1 Authorization and Validity. This Security Agreement, and any other document, contract or instrument delivered to Secured Party in connection with this Security Agreement have **each** been duly authorized by Debtor, and are legal, valid and binding agreements and obligations of Debtor, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

2.2 Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local

governmental authority on the part of Debtor is required in connection with the consummation of the transactions contemplated by this Security Agreement.

2.3 No Violation. The execution, delivery and performance by Debtor of this Security Agreement, and any other document, contract or instrument delivered to Secured Party in connection with this Security Agreement, do not violate any provision of any law or regulation or result in a breach of or constitute a default under any contract, obligation, indenture or other instrument to which Debtor is a party or by which Debtor may be bound, except for any such breach or default which has been duly waived or consented to by all necessary parties.

2.4 No Events of Default. Debtor is not in default under any debt or obligation of Debtor and no event has occurred which would become an event of default under any such debt or obligation with or without the giving of notice, the lapse of time, or both.

2.5 Collateral. Except as may arise by reason of the language of its articles of incorporation or by reason of donor restrictions, both of such exceptions to the extent either exists under California law relating to charitable trusts, Debtor owns the property granted by it as Collateral to Secured Party free and clear of any and all liens, claims, charges, pledges, security interests, deeds of trust, mortgages and other encumbrances in favor of third parties, or any other arrangements having the practical effect of the foregoing, or preferential arrangements of any other kind.

2.6 No Litigation. There is no action, proceeding or investigation pending or threatened, or any basis therefor known to Debtor, that questions the validity of this Security Agreement or the right of Debtor to enter into this Security Agreement, or that would have, either individually or in the aggregate, a Material Adverse Effect. "Material Adverse Effect" shall mean a material adverse effect upon Debtor's purpose, function, operation or status or upon Secured Party's security interest in the Collateral. There is no judgment, decree or order of any court in effect against Debtor and Debtor is not in default with respect to any order of any governmental authority to which Debtor is a party or by which Debtor is bound.

2.7 Existence and Authority. Debtor is a public benefit corporation duly organized and validly existing in good standing under the laws of the State of California. Debtor has the power and authority, rights and franchises to own its properties and to carry on its operations as now conducted. Debtor has the power and authority to make and carry out this Security Agreement.

ARTICLE III.
COVENANTS OF DEBTOR

Debtor covenants that so long as any indebtedness, liabilities and obligations (whether direct or contingent, liquidated or unliquidated) of Debtor to Secured Party under the Agreement (including payment of Foundation Expenses or repayment of the principal amount of the Advances and accrued interest thereon) remain outstanding, and until payment and performance in full of all obligations of Debtor under this Security Agreement:

3.1 Compliance with Laws. Debtor shall comply with the requirements of all laws, rules, regulations and orders of any governmental authority applicable to Debtor or its operation.

3.2 Performance and Compliance with Other Agreements. Debtor shall perform and comply in all material respects with each of the provisions of each material indenture, contract and other agreement by which Debtor or any of its properties is bound.

3.3 Taxes and Other Liabilities. Debtor shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real or personal and including federal and state income taxes, which in the aggregate the nonpayment of which would have a Material Adverse Effect, except such as Debtor may in good faith contest or as to which a bona fide dispute may arise, so long as provision is made to the satisfaction of Secured Party for eventual payment thereof if it is found that payment is an obligation of Debtor.

3.4 Notices to Secured Party. Within ten (10) days after Debtor has actual knowledge of the occurrence of each such event or matter, Debtor shall give written notice to Secured Party of: (i) the occurrence of any Event of Default (defined below), or any condition, event or act which would become an Event of Default with or without the giving of notice; or (ii) the commencement, or threatened commencement (of which Debtor has received written notice) of any litigation, arbitration or other proceeding against Debtor involving a reasonably potential liability.

3.5 Records and Reports. Debtor shall maintain books and records pertaining to the Collateral in such detail, form and scope as is consistent with good business practice, ensure that such books and records reflect Secured Party's interest in the Collateral, and permit Secured Party or its agents to enter upon the premises of Debtor at any time and from time to time, during normal business hours and upon reasonable notice under the circumstances, and at any time at all on and after the occurrence of an Event of Default, for the purposes of inspecting and verifying the Collateral, and inspecting and/or copying (at Debtor's expense) any and all records pertaining to the Collateral.

3.6 Change in Collateral. Debtor shall not transfer or otherwise dispose of or encumber all or any part of the Collateral, without Secured Party's prior written consent; provided, however, that in the absence of an Event of Default under this Agreement Debtor shall be entitled to utilize the Collateral in the ordinary course of business for the payment of the debts and obligations of Debtor in accordance with the terms set forth in the Agreement and any agreements, documents and exhibits incorporated in or ancillary to the Agreement. Debtor shall give Secured Party thirty (30) days' prior written notice of any proposed change in the location of any Collateral or in the location of Debtor's place of operation, advise Secured Party promptly, in sufficient detail, of any change relating to the type, quantity or quality of the Collateral, or any event which could have an adverse effect on the value of the Collateral or on the security interests granted to Secured Party in the Collateral, and defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest in the Collateral.

3.7 Guaranties. Debtor shall not agree to any guarantee or liability or become liable in any way as surety, endorser (other than as endorser of negotiable instruments for deposit or

collection in the ordinary course of business), accommodation endorser or otherwise for, nor pledge or hypothecate any assets of Debtor as security for, any liabilities or obligations of any other person or entity, without Secured Party's prior written consent.

3.8 Change in Purpose and Operation. Debtor shall not make any substantial change in the present character of Debtor's purpose and operation, without Secured Party's prior written consent.

ARTICLE IV.
EVENTS OF DEFAULT

4.1 Events of Default. The occurrence of any of the following shall constitute an "Event of Default" under this Agreement:

(a) Failure, breach or default in the performance of the obligations and duties of Debtor under the Agreement including the payment of Foundation Expenses or repayment of the Advances as provided in Section 3.6 of the Agreement;

(b) Debtor fails to perform or satisfy when due any obligation, agreement, covenant or condition contained in this Security Agreement, and with respect to any such default which by its nature can be cured, such default continues for a period of thirty (30) days from its occurrence;

(c) Any representation or warranty made by Debtor in connection with this Security Agreement or the Agreement proves to be false, incorrect or incomplete in any material respect when furnished or made;

(d) Any levy upon, seizure or attachment of any of the Collateral, or any other event or circumstance pursuant to which Secured Party ceases to have a valid and perfected first priority security interest in the Collateral;

(e) Debtor admits in writing its inability to pay its debts as they mature, or commences any voluntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or other similar law of any jurisdiction;

(f) Any application or proceeding described in (d) above is filed or commenced against Debtor, and Debtor indicates its approval, consent or acquiescence thereto, or an order is entered adjudicating Debtor bankrupt or insolvent and such order remains in effect for thirty (30) days;

(g) Debtor transfers all or substantially all of its properties to, or merges with or into, any other entity; or

(i) Any change having a Material Adverse Effect on Debtor, or any other event or condition which Secured Party reasonably and in good faith believes impairs, or is substantially likely to impair either: (i) the prospect of payment or performance by Debtor of its obligations under this Security Agreement or the Agreement; or (ii) the rights and remedies of Secured Party under this Security Agreement or the Agreement.

4.2 Remedies. If an Event of Default occurs, Secured Party shall have all rights, powers and remedies available under this Security Agreement or the Agreement, or accorded by law to a beneficiary or a secured party, including the right to resort to any or all of the Collateral or any other security for any of the obligations of Debtor. Secured Party may exercise its rights and remedies with respect to the Collateral without resorting or regard to other security or sources for payment. All rights, powers and remedies of Secured Party in connection with this Security Agreement or the Agreement may be exercised at any time by Secured Party, and from time to time after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

4.3 Action on Collateral. If any Event of Default occurs and continues, Secured Party may exercise with respect to the Collateral: (a) all the rights and remedies of a secured party on default under the Uniform Commercial Code of the State of California (the "Code") (whether or not the Code applies to the affected Collateral); (b) all of the rights and remedies provided for in this Security Agreement or the Agreement; and (c) such other rights and remedies as may be provided by law or otherwise.

4.4 Waiver. Debtor waives (to the extent permitted by applicable law): (a) notice of the acceptance of this Security Agreement and all other notices, demands or protests to which Debtor might otherwise be entitled by law in respect to this Security Agreement, all other Line of Credit Documents or the Collateral; and (b) all rights of redemption, stay and/or appraisal which Debtor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

ARTICLE V. **GENERAL PROVISIONS**

5.1 Amendment. This Security Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated, signed by the Parties and attached to this Security Agreement.

5.2 Dispute Resolution. In the event of any controversy or dispute related to or arising out of this Security Agreement, the Parties agree to meet and confer in good faith to attempt to resolve the controversy or dispute without an adversary proceeding. If the controversy or dispute is not resolved to the mutual satisfaction of the Parties within five (5) business days of notice of the controversy or dispute, the Parties agree to waive their rights, if any, to a jury trial, and to submit the controversy or dispute to a retired judge or justice pursuant to Section 638 *et seq.* of the California Code of Civil Procedure, or any successor provision, for resolution in accordance with Chapter 6 (References and Trials by Referees), of Title 8 of Part 2 of the California Code of Civil Procedure, or any successor chapter. The Parties agree that the only proper venue for the submission of claims is the County of San Diego, California, and that the hearing before the referee shall be concluded within nine (9) months of the filing and service of the complaint. The Parties reserve the right to contest the referee's decision and to appeal from any award or order of any court.

5.3 Assignment. This Security Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the

Parties; provided, however, that Debtor may not assign or transfer its interest or obligations under this Security Agreement without the prior written consent of Secured Party. Secured Party reserves the right to sell, assign, transfer, negotiate or grant participation in all or any part of, or any interest in, Secured Party's rights and benefits under this Security Agreement, the Note and any other Line of Credit Document.

5.4 Attorneys' Fees, Costs and Expenses. Debtor shall hold Secured Party harmless from, and pay to Secured Party immediately upon demand, the full amount of all costs and expenses, including reasonable attorneys' fees, incurred by Secured Party in connection with: (i) Secured Party's administration of this Security Agreement or the Agreement (including any costs or other expenses incurred in establishing or maintaining the Collateral); (ii) the enforcement of Secured Party's rights and/or the collection of any amounts which become due to Secured Party under the Agreement (including in connection with any bankruptcy, reorganization, or similar circumstance or proceeding); and (iii) the prosecution or defense of any claim, or action in any way arising out of or related to this Security Agreement, the Agreement or the transactions contemplated thereby, including without limitation any action for declaratory relief. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For the purpose of this Agreement, "attorneys' fees" shall include fees incurred in connection with post judgment motions, contempt proceedings, garnishment, levy, and debtor and third-party examinations, discovery and bankruptcy litigation.

5.5 Choice of Law. This Security Agreement shall be construed in accordance with and governed by the laws of the State of California, except choice of law rules that would require the application of the laws of any other jurisdiction.

5.6 Compliance with Laws. Debtor shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments, including without limitation laws that require Debtor to disclose any economic interest or relationship with Secured Party.

5.7 Confidentiality. Neither Party shall disclose this Security Agreement or any of its terms to any person or entity, other than its attorneys and accountants, without the prior written consent of the other Party, unless and only to the extent such disclosure is required by law.

5.8 Counterparts. This Security Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

5.9 Entire Agreement. This Security Agreement (including all agreements incorporated herein by referenced or mentioned herein) together with the Agreement constitutes the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Security Agreement.

5.10 Exhibits. The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Security Agreement and are incorporated into this Security Agreement wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

5.11 Force Majeure. Neither Party is liable for nonperformance or defective or late performance of any of its obligations under this Security Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), action of any governmental authority, riots, revolutions, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, or strikes (or similar nonperformance or defective performance or late performance of employees, suppliers or subcontractors).

5.12 Headings. The headings in this Security Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Security Agreement.

5.13 Notices. All notices or communications required or permitted under this Security Agreement shall be given in writing and delivered personally, sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express). In each case, notice shall be delivered or sent to the address set forth for Debtor or Secured Party, as applicable, in the Agreement. Notice is deemed given when sent, if sent as specified in this paragraph, or otherwise deemed given when received.

5.14 Severability. If any provision of this Security Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Security Agreement, and such severance shall have no effect upon the enforceability of the remainder of this Security Agreement, unless the purposes of this Security Agreement is thereby destroyed.

5.15 No Third-Party Beneficiary Rights. The Parties do not intend to confer and this Security Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.

5.16 Termination. This Security Agreement and the security interest in Collateral created hereby shall terminate after payment and performance in full of all obligations arising under the Agreement. Upon such termination, the Collateral shall be released from the security interest hereby created, and Secured Party will execute and deliver to Debtor such documents as Debtor shall reasonably request to evidence such release.

5.17 Waiver. No delay, failure or discontinuance of Secured Party in exercising any right, power or remedy under this Security Agreement or the Agreement shall constitute a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by Secured Party of any breach of or default under this Security Agreement or the

DRAFT-DO NOT SIGN
For discussion purposes only.

Agreement must be in writing and shall be effective only to the extent expressly set forth in such writing.

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Secured Party and Debtor have executed this Security Agreement on the date first above written.

SECURED PARTY

PALOMAR POMERADO HEALTH,
a local California health care district

By: _____
Its: _____

DEBTOR

PALOMAR POMERADO HEALTH FOUNDATION, a
California nonprofit public benefit corporation

By: _____
Its: _____

ATTACHMENT A TO EXHIBIT 4.1(b)

DESCRIPTION OF COLLATERAL

Except to the extent the granting of a security interest is limited by application of law with respect to payments from governmental entities, all present and future right, title and interest of Debtor in and to: (a) donations and grants from all sources; (b) furniture, fixtures and equipment; (c) all monies from time to time on deposit in Debtor's business bank accounts as established in accordance with this Agreement; (d) documents; (e) insurance proceeds; (l) all books and records in respect to the foregoing; and (m) to proceeds of all the foregoing, whether now existing or hereafter acquired or arising (collectively, the "Collateral").

ATTACHMENT B TO EXHIBIT 4.1(b)
[LETTERHEAD OF PALOMAR POMERADO HEALTH]

[Address of Bank]

_____, 20__

Re: Notice of Security Interest in Account

Ladies and Gentlemen:

Please take notice that PALOMAR POMERADO HEALTH, a local health care district organized under the laws of the State of California ("PPH"), holds a security interest in a business deposit account, number _____ at _____, maintained for PALOMAR POMERADO HEALTH FOUNDATION, a California nonprofit public benefit corporation ("Foundation").

The security interest is held pursuant to that certain Security Agreement by and between PPH and Foundation, dated as of September 1, 2005, a copy of which is enclosed.

Sincerely,

Name: _____
Title: _____

EXHIBIT 8.2

**OBLIGATIONS UNDER THE HEALTH INSURANCE PORTABILITY AND
ACCOUNTABILITY ACT OF 1996 ("HIPAA")**

PPH and Foundation shall execute a Business Associate Agreement which shall set forth the terms and conditions under which Protected Health Information ("PHI") that is created or received by Foundation from or on behalf of PPH will be used, disclosed and otherwise handled by Foundation, consistent with the following:

1. **Use of Protected Health Information.** Foundation shall use PHI only as expressly permitted by the Business Associate Agreement and for the purpose of performing its obligations under this Agreement or as otherwise required by law. Foundation shall not use PHI in any manner that would constitute a violation of HIPAA if done by PPH.
2. **Permitted Disclosures.** Foundation shall disclose PHI, only as expressly permitted or by the Business Associate Agreement and for the purpose of performing its obligations under this Agreement or as otherwise required by law. Foundation shall not disclose PHI in any manner that would constitute a violation of the HIPAA if done by PPH.
3. **Appropriate Safeguards.** Foundation shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI other than as permitted or required by the Business Associate Agreement.
4. **Reporting of Improper Use or Disclosure.** Foundation shall notify PPH in writing of any use or disclosure of PHI that is not permitted or required by the Business Associate Agreement within two (2) days of becoming aware of such use or disclosure.
5. **Agents and Subcontractors.** Foundation shall require all of its subcontractors and agents that receive, use, or have access to PHI to agree to adhere to the same restrictions and conditions that apply to Foundation under the Business Associate Agreement
6. **Access to Records.** Foundation shall make their respective internal practices, books and records relating to the use and disclosure of PHI available to PPH for purposes of determining Foundation's compliance with the Business Associate Agreement or to the Secretary of the U.S. Department of Health and Human Services for purposes of determining PPH's compliance with the Privacy Rule.
7. **Access, Amendment and Accounting.** Foundation shall comply with requests by PPH regarding individuals' rights of access, amendment and to receive an accounting of the uses and disclosures of their PHI in accordance with processes and time frames which shall be set forth in the Business Associate Agreement.

8. **Security Rule Compliance.** Foundation shall (a) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI, (b) ensure that any agent or subcontractor to whom it provides any electronic PHI agrees in writing to implement similar safeguards as those required of the Business Associate Agreement, and (c) report to PPH, in writing, any security incident of which it becomes aware within two (2) days of becoming aware of such security incident.

9. **Term of Obligations.** Foundation's obligations shall commence as of the compliance date of the effective date of this Agreement, and shall terminate when the Business Associate Agreement is terminated and all of the PHI is destroyed or returned to PPH.

10. **Effect of Termination.** Upon expiration or termination of this Agreement or the Business Associate Agreement for any reason, Foundation shall return or destroy all PHI that Foundation still maintains in any form and shall retain no copies of such PHI. If return or destruction is not feasible, as determined by PPH, Foundation shall continue to extend the protections discussed above to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.

11. **Amendment.** The parties agree to take such action as is necessary to amend the Business Associate Agreement from time to time in order for PPH to comply with the requirements of HIPAA, and other applicable laws relating to the security or confidentiality of PHI.

12. **Interpretation of Obligations.** The obligations as set forth above shall be interpreted as broadly as necessary to allow PPH to implement and comply with its obligations under HIPAA . The parties acknowledge and agree that any ambiguity in the obligations set forth in the Business Associate Agreement shall be resolved in favor of a meaning that permits PPH to comply with its obligations under HIPAA .

13. **Definitions.**
 - a. **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended from time to time, under HIPAA.

 - b. **"Security Rule"** shall mean the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C, as amended from time to time, under HIPAA.

 - c. **"HIPAA"** shall mean 42 U.S.C. 1320d-1 *et seq.*, the Privacy Rule, the Security Rule, and the Standards for Electronic Transactions, 45 C.F.R. Part 160 and Part 162, all as amended from time to time.

 - d. All other capitalized terms used, but not otherwise defined, in the Business Associate Agreement shall have the meaning set forth in the Privacy Rule and/or Security Rule as applicable.

