

# ADDENDUM B



**PHYSICIAN RECRUITMENT AGREEMENT**

**by and between**

**PALOMAR POMERADO HEALTH (“Hospital”)**

**and**

**Serge Charles Kaska, M.D. (“Physician”)**

**and**

**SERGE KASKA, M.D., INC. (“Corporation”)**

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## PHYSICIAN RECRUITMENT AGREEMENT

THIS PHYSICIAN RECRUITMENT AGREEMENT (this “**Agreement**”) is entered into and effective as of \_\_\_\_\_ (the “**Execution Date**”), by and between Palomar Pomerado Health, a California district hospital (“**Hospital**”), Serge Charles Kaska, M.D., an individual (“**Physician**”), and SERGE KASKA, M.D., INC., a California corporation (“**Corporation**”). Hospital, Corporation, and Physician are sometimes referred to in this Agreement, individually, as a “**Party**” or, collectively, as the “**Parties.**”

### RECITALS

- A. Hospital owns and operates acute care hospital facilities located in Inland North San Diego County, which serves the communities of Escondido, San Marcos, Valley Center, Pala, Pauma Valley, Ramona, Julian, Poway, Rancho Bernardo and Rancho Peñasquitos.
- B. Physician is duly licensed to practice medicine in the State of California (the “**State**”) and is board eligible for the practice of medicine in the specialty of Orthopedics (the “**Specialty**”).
- C. Physician is the sole shareholder of the Corporation and intends to establish and operate his professional medical practice through and in the name of the Corporation.
- D. At the time of the recruitment discussions, Physician was a resident in fellowship training.
- E. Hospital has determined that there is a community need for the services of Physician based upon the fact that:
1. The population-to-physician ratio in the community is deficient in the Specialty.
  2. There is demand in the community for medical services in the Specialty and a documented lack of availability of or long waiting periods for medical services in the Specialty.
  3. Physicians are reluctant to relocate to the community due to the high cost of living, relatively high housing costs, and traditionally low level of reimbursement for medical services.
  4. The number of physicians in the Specialty will be reduced due to the retirement or departure of physicians presently in the community within the next three-to-five year period.
  5. There is a documented lack of physicians serving indigent or Medicaid patients in the community.
  6. Physician will establish a medical practice that provides one or more professional medical services not currently available in the community.

7. The addition of Physician to the medical staff of Hospital will allow Hospital to offer a new program of Limb Lengthening.

F. Physician has expressed to Hospital that he or she will not relocate to the Service Area without the financial assistance provided by Hospital pursuant to this Agreement.

## AGREEMENT

### THE PARTIES AGREE AS FOLLOWS:

#### ARTICLE I. PHYSICIAN'S OBLIGATIONS

**1.1 Provision of Professional Services.** Physician shall commence providing professional services in the Service Area no later than December 1, 2006 (the "**Start Date**"), or a later date as agreed by the Parties, and shall, through the Corporation, thereafter operate, a private practice of medicine in the Specialty (the "**Practice**") at one or more offices (the "**Offices**") located within the geographic area identified by the U.S. Postal Service Zip Codes listed in **Exhibit 1.1** (the "**Service Area**"). The Offices are hereby approved by Hospital, and the Corporation shall not relocate the Offices without the prior written consent of Hospital.

**1.2 Full-Time Commitment.** Physician shall, from and after the Start Date, personally devote Physician's full-time professional efforts to the Practice. Physician shall devote an average of at least forty (40) hours per week to the Practice. However, Physician may participate in other professional, civil, governmental organization and activities that do not materially affect his ability to carry out his duties hereunder.

**1.3 Participation in Governmental Programs.** Physician shall, from and after the Start Date, and to the extent it shall not interfere with Physician's and/or Corporation's ability to successfully operate the Practice, be a participating provider in the Federal health care programs, as defined at 42 U.S.C. Section 1320(a)-7b(f) ("**Federal Health Care Programs**"), which programs include, but are not limited to, Medicare and Medicaid; accept and perform professional services for Federal Health Care Program patients at a level that is commensurate with the community need in the Service Area as is reasonably determined by Hospital; and participate in any Medicare and/or Medicaid managed care efforts and programs of Hospital, as reasonably requested by Hospital from time to time.

**1.4 Uncompensated Care.** Physician shall, from and after the Start Date, and to the extent it shall not interfere with Physician's and/or Corporation's ability to successfully operate the Practice, provide uncompensated care as reasonably requested by Hospital from time to time. Hospital and Physician shall cooperate in designating the recipients of uncompensated care.

**1.5 Medical Staff Membership.** Physician shall, from and after the Start Date, be a member in good standing in the "active staff" category of Hospital's medical staff (the "**Medical Staff**"), and maintain all clinical privileges necessary to practice medicine in the Specialty at Hospital; provided, however, that if Physician, as of the Start Date, is not a member in good standing in the "active staff" category of the Medical Staff, or has not obtained all clinical privileges necessary to practice medicine in the Specialty at Hospital, Physician shall have a reasonable amount of time to obtain such membership and/or clinical privileges, provided that

Physician diligently pursues such membership and/or clinical privileges in accordance with the normal procedures set forth in the bylaws, rules, regulations, guidelines and policies of Hospital and Medical Staff (collectively, the “**Hospital Rules**”). Physician shall, from and after the Start Date, actively participate in the Medical Staff department or section encompassing the Specialty and on all Medical Staff committees to which Physician may be appointed by the Medical Staff from time to time. Physician may obtain and maintain medical staff membership and clinical privileges at any other hospital or health care facility.

**1.6 Professional Qualifications.** Physician shall, from and after the Start Date, be duly licensed to practice medicine in the State, and shall be board eligible in the Specialty.

**1.7 Professional Standards.** Physician shall, from and after the Start Date, comply with all Hospital Rules, and participate in continuing education as necessary to maintain licensure, professional competence and skills commensurate with the standards of the medical community and as otherwise required by the medical profession.

**1.8 Participation on Emergency Department Call Panels.** Physician shall, from and after the Start Date, participate on any on-call panels of physicians practicing in the Specialty maintained by Hospital’s emergency department, in a manner consistent with the coverage schedule and call requirements established by Hospital and the Medical Staff for such services. Hospital has contracted out control of the emergency department on-call coverage schedules to a third party, however Hospital will use reasonable efforts to encourage the third party to include Physician on the on-call panels of physicians practicing in the Specialty.

**1.9 Administrative Obligations.** Physician shall, from and after the Start Date, perform, or ensure the performance of, the following administrative duties:

(a) Establish and maintain an accurate bookkeeping system for all Practice Expenses and Practice Receipts

(b) Allow Hospital, upon at least forty-eight (48) hour advance notice, to inspect or audit, during regular business hours, such books and records for purposes of monitoring compliance with the terms and conditions of this Agreement.

(c) Provide and arrange for the billing and collection services in a commercially reasonable manner with respect to the professional medical and other health care services provided by Physician, and ensure such services are performed in a manner consistent with legal and contractual requirements.

(d) Take all necessary and reasonable steps to ensure that bills and claims are submitted to patients and payors not more than sixty (60) days after Physician’s and/or Corporation’s provision of services for a patient; bills and claims are collected in a timely and commercially reasonable manner; reasonable and affirmative collection actions are, at the Corporation’s sole discretion, taken with respect to bills and claims which are outstanding for more than ninety (90) days; and all collections from patients and payors are immediately recorded so the Parties may calculate the amount of any Income Guarantee Advances due to Physician.

(e) Provide the following information to Hospital, as soon as reasonably possible, but not more than thirty (30) days following the last day of each month of the Assistance Period, as an attachment to each Physician Financial Report:

- (i) an accounting of the Practice Expenses incurred by the Corporation during the month;
- (ii) an accounts receivable report detailing the Corporation's outstanding accounts receivable attributable to the professional services provided by Physician and/or Corporation during the month and an aging report on all of the Corporation's outstanding accounts receivable (including, without limitation, any reserves for contractual allowances and bad debts);
- (iii) a collections report detailing the Practice Receipts for the month and
- (iv) such additional information regarding the financial condition of the Practice or the collateral under the Physician Security Agreement (as defined below) as Hospital may reasonably request from time to time.

**1.10 Representation and Warranty Regarding Documents and Information.**

Physician represents and warrants to Hospital that the Physician Financial Reports and any other statements or reports (financial or otherwise) delivered to Hospital by or on behalf of Physician and/or Corporation pursuant to this Agreement: (a) are and will, to the best of Physician's knowledge, be consistent with the books and records of Corporation; (b) are and will, to the best of Physician's knowledge, be true, accurate and complete in all material respects; and (c) do not and will not, to the best of Physician's knowledge, contain any untrue information or statement of fact.

**1.11 Compliance with HIPAA.** Physician shall comply with the HIPAA Obligations as defined and set forth in **Exhibit 1.11**. To the extent applicable, HIPAA Obligations shall survive the expiration or termination for any reason of this Agreement.

**1.12 Participation in Managed Care.** Physician and/or Corporation shall, from and after the Start Date, and to the extent it shall not interfere with Physician's and/or Corporation's ability to successfully operate the Practice, participate in a reasonable number of managed care programs, and shall accept and perform professional services for managed care patients, as reasonably requested by Hospital from time to time. Physician shall join and maintain a provider agreement with such independent physician associations or other organizations as reasonably requested by Hospital from time to time to the extent it shall not interfere with Physician's and/or Corporation's ability to successfully operate the Practice.

**1.13 Community Benefit Activities.** Physician shall, from and after the Start Date, and to the extent it shall not interfere with Physician's and/or Corporation's ability to successfully operate the Practice, participate in health fairs and other community health activities sponsored by Hospital in the Service Area, as reasonably requested by Hospital from time to time.



**1.14 Notification of Certain Events.** Physician shall notify Hospital in writing within forty-eight (48) hours after becoming aware of the occurrence of any of the following events:

- (a) Physician becomes the subject of, or materially involved in, any investigation, proceeding, hearing or other disciplinary action by any federal, state or local governmental agency or program, including the Federal Health Care Programs;
- (b) Physician's medical staff membership or any clinical privilege at any health care facility (including Hospital) is denied, suspended, terminated, restricted, revoked or voluntarily relinquished for any reason, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;
- (c) Physician becomes the subject of any suit, action or other legal proceeding arising out of Physician's professional services;
- (d) Physician becomes the subject of any disciplinary proceeding or action by any hospital, any state's medical board or any similar agency responsible for professional licensing, or professional standards or behavior;
- (e) Physician is charged with a felony or with a misdemeanor involving fraud, dishonesty, or moral turpitude;
- (f) Physician violates, or causes any other person or entity to violate, the Code of Conduct (as defined in Section 5.3);
- (g) any act of nature or any other event occurs which substantially interrupts all or a portion of the Practice or which has a material adverse effect on Physician's ability to perform Physician's obligations under this Agreement;
- (h) any material adverse change in the condition of the Practice;
- (i) Physician changes Physician's Specialty or the location of the Offices;
- (j) Physician's license to practice medicine in the State or any other jurisdiction, or Physician's Drug Enforcement Agency ("DEA") registration, is denied, suspended, terminated, restricted, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto; or
- (k) the occurrence of any Event of Default (as defined in Section 6.2).

## **ARTICLE II.**

### **RECRUITMENT INCENTIVES**

**2.1 Recruitment Incentives.** Hospital shall make available to Physician and/or the Corporation a loan consisting of the advances described in this Article II (the "**Recruitment Loan**"). Physician and/or the Corporation shall repay the Recruitment Loan pursuant to the terms and conditions of the Recruitment Note (as defined in Section 3.1(a)); provided, however, that amounts due to Hospital under the Recruitment Note shall be forgiven, in whole or in part, as applicable, if certain conditions, outlined below and set forth in the Recruitment Note, are

satisfied by Physician and/or the Corporation. Notwithstanding any other provision of this Agreement, the aggregate amount of the Recruitment Loan shall not exceed [REDACTED].

## 2.2 Income Guarantee Advances.

(a) **Guaranteed Monthly Income.** Hospital shall advance to the Corporation for payment to the Physician such amounts, calculated in accordance with Section 2.2(c), as may be necessary for Physician to receive a minimum monthly income, before income and employment taxes, of [REDACTED] per month (the “**Guaranteed Monthly Income**”) for Twelve (12) successive months (the “**Assistance Period**”), commencing on the Start Date.

(b) **Physician Financial Report.** Within ten (10) days after the last day of each month during the Assistance Period and each of the three (3) months after the Assistance Period, , Physician and/or the Corporation shall submit to Hospital an accurate and complete report of Practice Receipts and Practice Expenses (each as defined in Section 2.2(c)) on the form attached as **Exhibit 2.2(b)** (the “**Physician Financial Report**”). Physician and/or the Corporation shall acknowledge its approval and certify the accuracy of the contents of each Physician Financial Report by signing the Physician Financial Report prior to submission to Hospital.

(c) **Timing and Calculation of Advances.** Not more than thirty (30) days following receipt of the Physician Financial Report for each month during the Assistance Period, Hospital shall advance to the Corporation an amount equal to: (i) the Guaranteed Monthly Income, plus (ii) the costs and expenses actually and reasonably incurred by Physician and/or the Corporation and directly attributable to the operation of the Practice and/or the provision of professional medical services by Physician during such month (“**Practice Expenses**”) (subject to the limits specified in the Physician Financial Report, a copy of which attached hereto as Exhibit 2.2(b)) minus (iii) the amount collected, on a cash basis, in such month that are attributable to services furnished by Physician in connection with the Practice after the Start Date, including, without limitation, amounts received with respect to professional medical services, medical director services, on-call coverage services or administrative services provided or to be provided by Physician (“**Practice Receipts**”). The sums advanced to Physician pursuant to this Section shall be referred to as the “**Income Guarantee Advances.**”

(d) **Prorated Advances.** If the Start Date is other than the first (1<sup>st</sup>) day of a month, or if the last date of the Assistance Period is other than the last day of a month, the amounts of Guaranteed Monthly Income, Practice Receipts, and Practice Expenses shall be prorated based upon the actual number of days in the Assistance Period elapsed during such month and the aggregate number of days in that month.

(e) **Excess Receipts.** If Practice Receipts exceed the sum of Guaranteed Monthly Income and Practice Expenses in the corresponding month during the Assistance Period, the Corporation and/or Physician shall remit to Hospital such excess (the “**Excess Receipts**”), but only up to the amount of the then-outstanding principal balance of the Income Guarantee Advances. The Corporation and/or Physician shall remit such Excess Receipts to Hospital on the same day that the Physician Financial Report is submitted to Hospital. All Excess Receipts shall be applied by Hospital against the then-outstanding balance of the

Recruitment Loan, in accordance with the terms of the Recruitment Note (as defined in Section 3.1(a)).

(f) **Aggregate Amount.** Notwithstanding any other provision of this Agreement, the aggregate amount of the Income Guarantee Advances shall not exceed [REDACTED].

(g) **Recruitment Note.** Subject to paragraph 2.2(j), the Corporation and/or Physician shall repay the Income Guarantee Advances pursuant to the terms and conditions of the Recruitment Note (as defined in Section 3.1(a)).

(h) **Contingencies to Payment of Income Guarantee Advances.** Notwithstanding any other provision of this Agreement, Hospital's obligation to advance any Income Guarantee Advances to Physician and/or the Corporation pursuant to this Section 2.2 shall be contingent upon the Corporation's and/or Physician's compliance with the material terms and conditions of this Agreement, the Recruitment Note (as defined in Section 3.1(a)) and the Physician Security Agreement (as defined in Section 3.1(b)), including, without limitation, the timely submission to Hospital of accurate and complete monthly Physician Financial Reports in accordance with Section 2.2(b).

(i) **Waiver of Income Guarantee Advances Amounts.** The Corporation and/or Physician, in the Corporation's and/or Physician's sole discretion, may waive the right to receive Income Guarantee Advances amounts with respect to any month during the Assistance Period by giving written notice to Hospital at the time the Physician Financial Report is submitted for such month to Hospital.

(j) **Forgiveness.** If Physician and/or the Corporation have continuously complied with all terms and conditions of this Recruitment Agreement the Recruitment Note and the Security Agreement, no Event of Default (as defined in Section 3 of the Secured Promissory Note) has occurred, and the Physician continues to operate a private practice of medicine in the Specialty at one or more offices located within the Service Area (i) Hospital shall forgive, on the last day of each month during the Repayment Period, an amount equal to the monthly amount (including Principal and accrued interest) otherwise due to Hospital for such month pursuant to Section 2(a) of the Recruitment Note; and (ii) Hospital shall forgive, on the last day of the Repayment Period, all Costs, if any, owing by Physician and/or the Corporation. In the event of a Termination of the Recruitment Agreement pursuant to Section 6.3 or 6.4 hereof, Hospital shall forgive amounts due hereunder in accordance with the foregoing, subject only to the following: (i) Physician and/or Corporation shall continue throughout the Repayment Period to comply with the terms and conditions of Sections 1.1 and 1.2 of this Recruitment Agreement only; and (ii) any subsequent noncompliance with such Sections by Physician and/or Corporation during the Repayment Period, shall result in Hospital's forgiveness of accrued interest only in accordance with the foregoing schedule, with Principal repayable by Physician and/or the Corporation in accordance with Section 2 of the Recruitment Note.

### **2.3 Moving Expense Reimbursement.**

(a) **Moving Expense Reimbursement.** Hospital shall, within Thirty (30) days after submission by Physician and/or Corporation to Hospital of receipts in accordance with Section 2.3(d), pay to Physician and/or Corporation an amount necessary to reimburse Physician

for the Moving Expenses (as defined in Section 2.3(b)) actually and reasonably incurred by Physician in connection with Physician's relocation to the Service Area; provided, however, that such amount shall not exceed [REDACTED]. The amount advanced to Physician pursuant to this Section shall be referred to as the "**Moving Expense Reimbursement.**"

(b) **Moving Expenses.** For the purposes of this Agreement, "**Moving Expenses**" shall mean and be limited to the actual and reasonable cost of: (i) one or more moving vans for personal and practice-related possessions; (ii) packing of personal and practice-related possessions (including packing materials); (iii) loading and unloading of personal and practice-related possessions; and (iv) relocation travel expenses for airfare, or mileage and lodging if traveling by automobile, for Physician and Physician's immediate family.

(c) **Contingencies to Reimbursement of Moving Expenses.** Hospital's obligation to pay the Moving Expense Reimbursement to Physician shall be contingent upon Physician's and/or the Corporation's submission, within sixty (60) days after the Start Date, of accurate receipts to Hospital evidencing the Moving Expenses in form and substance acceptable to Hospital, and Physician's compliance with the terms of this Agreement, the Recruitment Note (as defined in Section 3.1(a)) and the Physician Security Agreement (as defined in Section 3.1(b)). If Physician and/or the Corporation do not submit receipts to Hospital within sixty (60) days after the Start Date, Hospital shall not be obligated to pay any further amounts under the Moving Expense Reimbursement, and Physician shall immediately return to Hospital any amounts previously advanced to Physician under the Moving Expense Reimbursement.

(d) **Recruitment Note.** Physician shall repay the Moving Expense Reimbursement pursuant to the terms and conditions of the Recruitment Note (as defined in Section 3.1(a)).

#### 2.4 **Assistance Advance.**

(a) **Assistance Advance.** Hospital shall, on or before November 1, 2006, advance to Physician an amount equal to [REDACTED]. The amounts advanced to Physician pursuant to this Section shall be referred to as the "**Assistance Advance.**"

(b) **Use of Funds.** Physician shall use the Assistance Advance for the following purposes only: start up expenses, including consulting, legal, accounting minor medical and office equipment, including software (less than \$6,000 each), furnishings, office lease deposits, tenant improvement expenses, utility deposits, marketing, and initial medical and office supplies inventory (the "**Permitted Purposes**").

(c) **Contingencies to Payment of Assistance Advance.** Hospital's obligation to advance the Assistance Advance to Physician shall be contingent upon Physician's submission, within one (1) year after the Start Date, of documentation of the use of such funds for the Permitted Purposes above to Hospital in form and substance acceptable to Hospital.. If Physician does not submit such documentation to Hospital within one (1) year after the Start Date, Hospital shall not be obligated to advance any further amounts to Physician under the Assistance Advance and Physician shall immediately remit to Hospital any amounts previously advanced to Physician under the Assistance Advance.

(d) **Recruitment Note.** Physician shall repay the Assistance Advance pursuant to the terms and conditions of the Recruitment Note (as defined in Section 3.1(a)).

**2.5 Final Statement.** Within thirty (30) days after submission of the last Physician Financial Report, Hospital shall prepare and deliver to Physician and/or the Corporation a written statement of all amounts advanced by Hospital to Physician and/or the Corporation pursuant to this Agreement and all Excess Receipts paid by Physician to Hospital pursuant to this Agreement (the “**Final Statement**”). Physician and/or the Corporation must provide written notification to Hospital of any objections to the amounts reported by Hospital within ninety (90) days of receipt by Physician and/or the Corporation of the Final Statement. If Physician and/or the Corporation do not provide a written notice of objection within ninety (90) days of the Physician and/or Corporation’s receipt of the Final Statement, the amount reported by Hospital on the Final Statement shall be the total principal balance owed by Physician and/or the Corporation to Hospital under the Recruitment Note. If Physician and/or the Corporation do object, the Parties may either agree to binding arbitration or either Party may file a legal action to determine the amount of the total principal balance owed by Physician and/or the Corporation to Hospital under the Recruitment Note.

**2.6 No Transfer of Recruitment Benefits.** Physician shall not transfer or assign to any other physician or physician practice (including any medical group) any amounts advanced or loaned to Physician by Hospital pursuant to this Agreement, except as required by applicable law or with the written consent of Hospital, which consent may be given, withheld or conditioned by Hospital as determined by Hospital to be necessary or appropriate to ensure compliance with applicable law.

**2.7 Signing Bonus.** Hospital, shall, within twenty (20) days after the Execution Date, provide to Physician an amount equal to [REDACTED] as a signing bonus..

**ARTICLE III.**  
**PROMISSORY NOTE; SECURITY AGREEMENT**

**3.1 Physician’s Deliverables.** Concurrently with the execution of this Agreement, Physician and the Corporation shall execute and deliver to Hospital:

- (a) the secured promissory note in the form attached as **Exhibit 3.1(a)** (the “**Recruitment Note**”);
- (b) the security agreement in the form attached as **Exhibit 3.1(b)** (the “**Physician Security Agreement**”); and
- (c) a completed IRS Form W-9 identifying Physician’s taxpayer identification number.

**3.2 Corporation’s Deliverables.** Concurrently with the execution of this Agreement, Corporation shall execute and deliver to Hospital a Guarantee and Security Agreement in the form attached as **Exhibit 3.2** (the “**Corporation Guarantee**”).

**3.3 Further Cooperation.** Physician and the Corporation shall perform all actions and execute all documents necessary to perfect the security interest granted in the Physician Security Agreement, as reasonably requested by Hospital from time to time.

**ARTICLE IV.**  
**INSURANCE AND INDEMNITY**

**4.1 Malpractice Liability Insurance.** During the term of this Agreement, Physician and/or the Corporation shall obtain and continuously maintain professional malpractice liability insurance coverage, issued by an insurance company licensed or otherwise qualified to issue professional liability insurance policies or coverage in the State, and acceptable to Hospital, in the amount of at least One Million Dollars (\$1,000,000) per occurrence or claim and Three Million Dollars (\$3,000,000) in the annual aggregate for the acts and omissions of Physician. Such coverage shall provide for a date of placement preceding or coinciding with the Start Date of this Agreement.

**4.2 Certificate of Insurance.** On or before the Start Date, Physician and/or the Corporation shall provide to Hospital an original certificate evidencing professional malpractice liability insurance coverage, and shall provide to Hospital proof of continued professional malpractice liability insurance coverage on an annual basis (or as periodically requested by Hospital). During the term of this Agreement, Physician and/or the Corporation shall provide to Hospital at least thirty (30) days' prior written notice of cancellation or any material change in such professional malpractice liability insurance coverage.

**4.3 Tail Coverage.** If Physician's professional malpractice liability insurance is provided on a claims made basis, upon the expiration or termination of this Agreement for any reason, Physician shall continuously maintain such insurance or purchase from an insurance company licensed or otherwise qualified to issue professional liability insurance policies or coverage in the State, and acceptable to Hospital, extended reporting period (*i.e.*, "tail") coverage for the longest extended reporting period then available to ensure that insurance coverage in the amount set forth in Section 4.1 of this Agreement is maintained for claims which arise from professional services provided by Physician during the term of this Agreement.

**4.4 Indemnification.**

(a) **Indemnification by Physician.** Physician and/or the Corporation shall indemnify and hold harmless Hospital from and against: (i) any and all liability arising out of Physician's failure to comply with the terms of this Agreement, and any injury, loss, claims, or damages arising from the negligent operations, acts, or omissions of Physician or Physician's employees or agents relating to or arising out of their professional services or this Agreement; and (ii) any and all costs and expenses, including reasonable legal expenses, incurred by or on behalf of Hospital in connection with the defense of such claims.

(b) **Indemnification by Hospital.** Hospital shall indemnify and hold harmless Physician and/or the Corporation from and against: (i) any and all liability arising out of Hospital's failure to comply with the terms of this Agreement, and any injury, loss, claims, or damages arising from the negligent operations, acts, or omissions of Hospital or its employees or agents relating to or arising out of this Agreement; and (ii) any and all costs and expenses,

including reasonable legal expenses, incurred by or on behalf of Physician in connection with the defense of such claims.

#### **4.5 Cooperation between the Parties.**

(a) The Parties recognize that, during the term of this Agreement and for a period thereafter, certain risk management issues, legal issues, claims or actions may arise that involve or could potentially involve the Parties and their respective employees and agents. The Parties further recognize the importance of cooperating with each other in good faith when such issues, claims or actions arise, to the extent such cooperation does not violate any applicable laws, cause the breach of any duties created by any policies of insurance or programs of self-insurance, or otherwise compromise the confidentiality of communications or information regarding the issues, claims or actions. As such, the Parties hereby agree to cooperate in good faith, using their best efforts, to address such risk management and claims handling issues in a manner that strongly encourages full cooperation between the Parties.

(b) The Parties further agree that if a controversy, dispute, claim, action or lawsuit (each, an “**Action**”) arises with a third party wherein both of the Parties are included as defendants, each such Party shall promptly disclose to the other Party in writing the existence and continuing status of the Action and any negotiations relating thereto. Each such Party shall make every reasonable attempt to include the other such Party in any settlement offer or negotiations. In the event the other such Party is not included in the settlement, the settling Party shall, unless prohibited by the settlement agreement, immediately disclose to the other such Party in writing the acceptance of any settlement and terms relating thereto.

**4.6 Survival of Insurance and Indemnity Obligations.** The provisions of this Article IV shall expressly survive the expiration or earlier termination of this Agreement.

### **ARTICLE V. RELATIONSHIP BETWEEN THE PARTIES**

**5.1 Independent Contractor.** Physician is and shall at all times be an independent contractor with respect to Hospital in meeting Physician’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 Hospital and Physician.

**5.2 No Tax/No Benefit Contributions.** Hospital shall not be liable under this Agreement for withholding or compensating, paying or providing for taxes (including, but not limited to, federal and state income and employment taxes), or providing employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to, or on behalf of, Physician or any other person employed or retained by Physician. If Hospital is required to compensate, pay or provide for taxes, or provide employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to, or on behalf of, Physician or any person employed, retained by or associated with Physician, Physician shall reimburse Hospital the amount of any such expenditure within ten (10) days after being notified of such expenditure. This provision does not, however, restrict the Physician and/or the Corporation from being reimbursed by the Hospital for such taxes and/or other benefit costs as per the Physician Financial Report provided

to Hospital by Physician and/or Corporation, a copy of which is attached hereto as Exhibit 2.2(b).

**5.3 Code of Conduct.** Physician hereby acknowledges receipt of Hospital's Code of Conduct, attached to this Agreement as **Exhibit 5.3** (the "**Code of Conduct**"), and agrees that he or she has been given ample opportunity to read, review and understand the Code of Conduct. Physician shall not act in any manner which conflicts with or violates the Code of Conduct, and shall not intentionally cause another person to act in any manner which conflicts with or violates the Code of Conduct. Physician shall comply with the Code of Conduct as it relates to Physician's business relationships with Hospital, any Affiliate (as defined in Section 6.4(d)), or Hospital's or any Affiliate's employees, agents, servants, officers, directors, contractors and suppliers of any kind.

**5.4 Referrals.** Nothing in this Agreement or in any other written or oral agreement between Hospital and Physician and/or the Corporation, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patients or business to Hospital or any Affiliate (as defined in Section 6.4(d)) by Physician and/or the Corporation. This Agreement is not intended to influence Physician's judgment in choosing the hospital or other health care facility or provider deemed by Physician to be best qualified to deliver goods or services to any particular patient. The rights of Physician under this Agreement shall not be dependent in any way on the referral of patients or business to Hospital or any Affiliate by Physician. Notwithstanding the foregoing, Physician shall not refer any Hospital patient to any provider of health care services that Physician knows is excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program.

**5.5 Practice of Medicine; Limitation on Control.** Hospital is neither authorized nor qualified to engage in any activity which may be construed or deemed to constitute the practice of medicine. Hospital shall neither have nor exercise any control or direction over the professional medical judgment of Physician, or the methods by which Physician performs professional medical services; provided, however, that Physician shall be subject to and shall at all times comply with the Hospital Rules, and the terms and conditions of this Agreement.

## **ARTICLE VI.**

### **TERM AND TERMINATION**

**6.1 Term.** This Agreement shall have a term commencing on the Start Date and continuing until all sums owing on the Recruitment Note are either forgiven or paid in full in accordance with the terms of this Agreement and the Recruitment Note.

**6.2 Termination by Hospital.** Hospital shall have the right to terminate this Agreement immediately upon the occurrence of any one or more of the following events (each an "**Event of Default**"):

(a) breach of this Agreement by Physician or Corporation where the breach is not cured within thirty (30) days after Hospital gives written notice of the breach to Physician unless such failure to cure is the result of a condition that may and ultimately does constitute a Permanent Disability;



(b) any representation or warranty made by Physician or Corporation in or pursuant to this Agreement or the Physician Security Agreement shall prove to be untrue or incorrect in any respect when made or deemed made;

(c) Physician's voluntary retirement from the practice of medicine;

(d) Physician's medical staff membership, or any clinical privilege at any health care facility (including Hospital) is denied, suspended, terminated, restricted, revoked or relinquished for any reason, other than by Physician's voluntary resignation or termination, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(e) Physician's license to practice medicine in the State, or any other jurisdiction, is denied, suspended, terminated, restricted, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(f) Physician fails to maintain current and valid DEA registration;

(g) Physician is indicted for or convicted of a felony or a misdemeanor involving fraud, dishonesty, or moral turpitude;

(h) Physician's performance of this Agreement, in the sole determination of Hospital, jeopardizes the mental or physical health or well-being of any patient of Hospital;

(i) Physician is debarred, suspended, or excluded from participating in any Federal Health Care Program;

(j) Physician acts, or Physician intentionally causes another person to act, in a manner which conflicts with or violates the Code of Conduct or Hospital Rules;

(k) Material breach by Physician of any HIPAA Obligation;

(l) Physician or Corporation makes an assignment for the benefit of creditors, admits in writing Physician's or Corporation's inability, as applicable, to pay Physician's or Corporation's debts, as applicable, as they mature, applies to any court for the appointment of a trustee or receiver of any of the Collateral (as defined in Section 1 of the Corporation Security Agreement) or any substantial part of Physician's or Corporation's properties, or commences any voluntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or other similar law of any jurisdiction; any application or any proceedings described in Section 6.2(1) is filed or commenced against Physician or Corporation, and Physician or Corporation, as applicable, indicates Physician's or Corporation's approval, consent or acquiescence thereto, as applicable, or an order is entered adjudicating Physician or Corporation bankrupt or insolvent and such order remains in effect for thirty (30) days; Physician or Corporation breaches, defaults or fails to fully perform or observe, when and as required, any material covenant, condition or agreement set forth within the Recruitment Note, this Recruitment Agreement, and/or the Physician Security Agreement, subject to any applicable cure periods expressly provided for in such agreements, promissory notes, instruments or documents;

(m) any execution, levy or attachment is placed on any assets of Physician or Corporation; Physician or Corporation transfers all or substantially all of Physician's or Corporation's assets,.

**6.3 Termination by Physician.** Physician shall have the right to terminate this Agreement upon the breach of this Agreement by Hospital where the breach is not cured within thirty (30) days after Physician gives written notice of the breach to Hospital.

**6.4 Termination or Modification in the Event of Government Action.**

(a) In the event of any Government Action, the Parties shall, within ten (10) days after one Party gives written notification of the Government Action to the other Party, meet and confer to negotiate in good faith to attempt to amend this Agreement in order to comply with the Government Action.

(b) If the Parties, after good faith negotiations that shall not exceed thirty (30) days, are unable to make the amendments necessary to comply with the Government Action, or, alternatively, if Hospital determines in good faith that compliance with the Government Action is impossible or infeasible, Hospital may terminate this Agreement effective ten (10) days after the date that Hospital gives a written notice of termination under this Section to the other Party.

(c) 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, finding, interpretation or action by any governmental or private agency, court or other third party which, in the reasonable opinion of counsel to Hospital, as a result or consequence, in whole or in part, of the arrangement between the Parties set forth in this Agreement, the Recruitment Note or the Physician Security Agreement, if or when implemented, could reasonably be expected to result in or present a material risk of any one or more of the following:

- (i) revocation or threat of revocation of the status of any health facility license granted to Hospital or any Affiliate (as defined in Section 6.4(d));
- (ii) revocation or threat of revocation of the federal, state or local tax-exempt status of Hospital or any Affiliate, or their respective tax-exempt financial obligations;
- (iii) constitute a violation of 42 U.S.C. Section 1395nn (commonly referred to as the Stark law) or any state law governing patient referrals if Physician referred patients to Hospital or any Affiliate;
- (iv) prohibit Hospital or any Affiliate from submitting claims or materially reducing the reimbursement received by Hospital or any Affiliate for services provided to patients referred by Physician; or
- (v) subject Hospital, Physician, the Corporation, any Affiliate, or any of their respective employees or agents, to civil or criminal prosecution or the imposition of any sanction (including any excise

benefit 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 Agreement, “**Affiliate**” shall mean any entity which, directly or indirectly, controls, is controlled by or is under common control with Hospital.

#### **6.5 Automatic Termination upon Death or Permanent Disability.**

(a) This Agreement shall automatically terminate upon the death or the inability of Physician to practice medicine in the Specialty for the foreseeable future (as evidenced by the opinion of an independent physician acceptable to Hospital and Physician) after such disability has existed for a continuous period exceeding one (1) year due to Physician’s physical or mental condition but excluding any such condition resulting, in whole or in part, from substance abuse, alcohol abuse, or criminal or fraudulent conduct by Physician (“**Permanent Disability**”).

(b) Notwithstanding any other provision of this Agreement, Hospital shall forgive the entire then-outstanding balance of principal and all accrued unpaid interest owing on the Recruitment Note, together with all other applicable fees, costs and charges, if any, in the event of Physician’s death or Permanent Disability. If Physician’s disability is determined not to be a Permanent Disability in the opinion of an independent physician acceptable to Hospital and Physician, all rights and duties under this Agreement and the Recruitment Note shall be suspended and no interest on any principal then owing shall accrue until such short-term disability is deemed to no longer exist as determined by an independent physician acceptable to Hospital. Upon the termination of Physician’s short-term disability, the rights and duties of this Agreement and the Recruitment Note shall recommence as if it was the day upon which Physician left the Practice due to the disability.

#### **6.6 Qualifying Leave of Absence.**

(a) If any Qualifying Leave of Absence (as defined below) occurs during the Assistance Period, Physician’s obligations under the Recruitment Note and Sections 1.1 and 1.2 of this Agreement, and Hospital’s obligations under Article II of this Agreement, shall be suspended, and such Qualifying Leave of Absence shall not constitute an Event of Default under this Agreement, the Recruitment Note, or the Physician Security Agreement. In such event, Physician’s obligations under the Recruitment Note and Sections 1.1 and 1.2 of this Agreement, and Hospital’s obligations under Article II of this Agreement, shall recommence as of the end of such Qualifying Leave of Absence, and the Assistance Period shall be extended for a period equal to the length of such Qualifying Leave of Absence. No interest shall accrue on any principal due Hospital during the Qualifying Leave of Absence.

(b) If a Qualifying Leave of Absence (as defined below) occurs after the end of the Assistance Period, Physician’s obligations under Sections 1.1 and 1.2 of this Agreement shall be suspended, any repayment and/or forgiveness under the Recruitment Note shall be suspended, and such Qualifying Leave of Absence shall not constitute an Event of Default under this Agreement, the Recruitment Note, or the Physician Security Agreement. In such event, Physician’s obligations under Sections 1.1 and 1.2 of this Agreement shall recommence as of the end of such Qualifying Leave of Absence, and the Repayment Period under the Recruitment

Note shall be extended for a period equal to the length of such Qualifying Leave of Absence. No interest shall accrue on any principal due Hospital during the Qualifying Leave of Absence.

(c) Physician shall provide to Hospital at least thirty (30) days' advance notice of any Qualifying Leave of Absence is to begin if the need for the Qualifying Leave of Absence is foreseeable, otherwise, as soon as practicable.

(d) Physician acknowledges and agrees that any leave of absence that does not constitute a Qualifying Leave of Absence, and any Qualifying Leave of Absence that exceeds a period of three (3) months, shall, unless the Physician's medical condition may ultimately constitute a Permanent Disability, constitute an Event of Default for purposes of this Agreement.

(e) For purposes of this Agreement, "**Qualifying Leave of Absence**" shall mean a leave of absence for a period not to exceed three (3) months that is taken by Physician for one of the following reasons: (i) to take medical leave for Physician's own Serious Health Condition; (ii) to care for an immediate family member (child, parent or spouse) with a Serious Health Condition; (c) for the birth and care of a newborn child of Physician; or (d) for placement with Physician of a son or daughter for adoption or foster care. For purposes of this Agreement, "**Serious Health Condition**" shall have the same meaning as set forth in the federal Family and Medical Leave Act, 29 U.S.C. Section 2601 *et seq.*

#### **6.7 Rights upon Expiration or Termination.**

(a) **Generally.** Upon any termination or expiration of this Agreement, all rights and obligations of the Parties shall cease except those rights and obligations that expressly survive such termination or expiration.

(b) **Immediate Repayment of Outstanding Indebtedness.** Upon the termination of this Agreement for any reason, except termination of this Agreement pursuant to Sections 6.3, 6.4 or 6.5, Hospital may, at its option, declare any outstanding indebtedness evidenced by the Recruitment Note to be immediately due and payable to Hospital.

### **ARTICLE VII.** **GENERAL PROVISIONS**

**7.1 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 explicitly indicate that such writing modifies or amends this Agreement.

**7.2 Assignment.** Except for assignment by Hospital to an entity owned, controlled by, or under common control with Hospital, neither Party may assign any right, interest, duty, 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 heirs, successors, assigns and representatives.

**7.3 Attorneys' Fees.** If either Party brings an action or proceeding, arising out of or relating to this Agreement, the Recruitment Note, or the Physician Security Agreement, the non-prevailing Party shall pay to the prevailing Party reasonable attorneys' fees and costs incurred in

bringing such action, including, without limitation, fees incurred in post judgment motions, contempt proceedings, garnishment, levy, debtor and third party examinations, discovery, bankruptcy litigation, arbitration, trial, and any appeal or review, 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 shall contain a provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. The prevailing Party shall be the Party who is identified in any judgment or order entered as the Party entitled to recover its costs of suit, whether or not the action or proceeding proceeds to final judgment or award.

**7.4 Choice of Law.** This Agreement shall be construed in accordance with and governed by the laws of the State, 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.

**7.5 Compliance with Laws.** Physician shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments, and any Government Action, including, without limitation, policies, standards, requirements, guidelines, and recommendations of the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO"), all as in effect and amended from time to time.

**7.6 Compliance with Medicare Rules.** To the extent required by law or regulation, Physician shall make available, or shall cause to be made available upon written request from Hospital, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement and Physician's books, documents and records pertaining to this Agreement. Physician shall preserve or cause to be preserved such books, documents and records for a period of ten (10) years after the end of the term of this Agreement. If Physician is requested to disclose books, documents or records pursuant to this Section for any purpose, Physician shall notify Hospital of the nature and scope of such request, and Physician shall make available to Hospital, upon written request of Hospital, all such books, documents or records. This Section shall survive the expiration or termination for any reason of this Agreement.

**7.7 Confidentiality.** Neither Party shall disclose any of the provisions of this Agreement to any person or entity, other than their respective attorneys or accountants, without the prior written consent of the other Party, unless and only to the extent such disclosure is required by law, subpoena or legal process. Hospital or Physician or the Corporation may disclose the provisions of this Agreement to any person or entity without the prior written consent of the other Party to the extent such disclosure is requested or required by (a) the Party's respective contracts existing as of the date of this Agreement; or (b) fiscal intermediaries, public agencies or commissions with governmental powers and duties related to disclosure of information which have the right to compel disclosure of such information. Hospital may also disclose the provisions of this Agreement to any person or entity without the prior written consent of Physician to the extent such disclosure is requested or required by (a) Hospital's representatives or others in connection with any tax-exempt bond or other financing transactions of Hospital or any Affiliates; or (b) Hospital's corporate integrity program.

**7.8 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.

**7.9 Dispute Resolution.** All disputes, controversies, claims, questions, or disagreements arising out of or relating to this Agreement, shall be litigated in any state or federal court having appropriate jurisdiction and located within the State, County of San Diego. The Parties, by the execution of this Agreement, expressly consent to the jurisdiction of any such court, to venue therein and to the service of process in any such action or proceedings, as required by applicable law.

**7.10 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 or discussions between the Parties with respect to such subject matter. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

**7.11 Exhibits and Attachments.** The attached exhibits and attachments, together with all documents incorporated by reference in the exhibits and attachments, form an integral part of this Agreement and are incorporated by reference into this Agreement.

**7.12 Force Majeure.** Neither Party shall be liable for nonperformance or defective performance or late performance of any of his, her or 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), terrorism, 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).

**7.13 Governing Documents.** In the event of any inconsistency or conflict between the terms and conditions set forth in this Agreement and the terms and conditions set forth in the exhibits or attachments to this Agreement, this Agreement shall govern.

**7.14 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.

**7.15 Income Tax Ramifications.** The Parties acknowledge that Physician may incur federal and state income tax liabilities from certain of the transactions contemplated by this Agreement, and that Hospital is or may be required to report items of income to Physician under relevant income tax laws and regulations. The Parties acknowledge and agree that Hospital has not made any representation to Physician with respect to the tax implications of the transactions contemplated by this Agreement, and that statements made by Hospital or its agents, employees, representatives or attorneys shall not be relied upon by Physician, and shall not be interpreted or construed as tax advice to Physician.

**7.16 Litigation Consultation.** Physician shall not accept consulting assignments or otherwise contract, agree, or enter into any arrangement to provide expert testimony or evaluation on behalf of a plaintiff in connection with any claim against Hospital or any Affiliate named, or expected to be named, as a defendant. Physician shall not accept similar consulting assignments if (a) the defendant(s) or anticipated defendant(s) include a member of the medical staff of Hospital or any Affiliate, and (b) the matter relates to events that occurred at Hospital or any Affiliate; provided, however, the provisions of this Section shall not apply to situations in which Physician served as a treating physician.

**7.17 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. Unless otherwise specified, “days” shall be considered “calendar days” and “months” shall be considered “calendar months” in this Agreement and its exhibits and attachments.

**7.18 No Conflicting Obligations.** Physician represents and warrants that, to the best of his knowledge, the execution and delivery of this Agreement and the performance of Physician’s obligations under this Agreement do not and will not: (a) present a conflict of interest or materially interfere with the performance of Physician’s duties under any other agreement or arrangement; or (b) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice and/or lapse of time, would constitute a default) under, terminate, accelerate the performance required by, or result in a right of termination or acceleration under any of the terms, conditions or provisions of any other agreement, indebtedness, note, bond, indenture, security or pledge agreement, license, franchise, permit, or other instrument or obligation. Physician shall immediately inform Hospital of any other agreements that may present a conflict of interest or materially interfere with performance of Physician’s duties under this Agreement.

**7.19 No Limitations or Restrictions on Physician’s Practice.** If, at any time during the term of this Agreement, Physician joins or associates with a medical group or other physician practice (“**Group**”), whether as an employee, independent contractor or owner, Physician shall not agree to any contractual provision that allows Group to impose or enforce, or attempt to impose or enforce, any limitations or restrictions on Physician’s practice of medicine, other than limitations or restrictions directly related to quality of care. Without limiting the generality of the foregoing, during the term of this Agreement, Group shall not be able to impose or enforce, or attempt to impose or enforce, any restrictions or limitations on Physician’s ability to compete with Group or any other limitations or restrictions that impair or impede, or could reasonably be expected to impair or impede, Physician’s ability to establish and operate a medical practice separate and apart from Group.

**7.20 Non-Discrimination.** Physician shall not differentiate or discriminate in the provision of medical services on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, medical condition, medical history, genetics, evidence of insurability, or claims history, in violation of any applicable state, federal or local law or regulation, or Hospital Rules, including, without limitation, the Age Discrimination Act of 1975, the Americans with Disabilities Act and all regulations issued pursuant thereto and as may be amended from time to time. Physician and Hospital shall be in full compliance with Section 504

of the Rehabilitation Act of 1973, Titles VI and VII of the 1964 Civil Rights Act, and all regulations issued pursuant thereto and as may be amended from time to time.

**7.21 No Other Relocation Assistance Being Received.** Physician represents and warrants that Physician is not bound by any agreement with any other person or entity pursuant to which Physician receives or will receive financial assistance or compensation during the Assistance Period, except as previously disclosed in writing to Hospital.

**7.22 No Third Party Beneficiary Rights.** This Agreement shall not confer or be construed to confer any rights or benefits to any person or entity other than the Parties.

**7.23 Notices.** All notices or communications required or permitted under this Agreement shall be given in writing and shall be delivered to the Party to whom notice is to be given either: (a) by personal delivery (in which case such notice shall be deemed given on the date of delivery); (b) by next business day courier service (*e.g.*, Federal Express, UPS or other similar service) (in which case such notice shall be deemed given on the business day following date of deposit with the courier service); or (c) by United States mail, first class, postage prepaid, registered or certified, return receipt requested (in which case such notice shall be deemed given on the third (3<sup>rd</sup>) day following the date of deposit with the United States Postal Service). In each case, notice shall be delivered or sent to the address indicated on the signature page, or such other address as provided by a Party, from time to time, pursuant to this Section. In addition, a copy of any notice to Physician and/or Corporation shall be sent to Seyamack Kouretchian, Coast Law Group, LLP, 169 Saxony Road, Suite 204, Encinitas, California 92024

**7.24 Participation in Governmental Programs.** Physician represents that Physician is not, and never has been, debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program.

**7.25 Representations.** Each Party represents with respect to itself that: (a) no representation or promise not expressly contained in this Agreement has been made by the other Party or by the other Party's agents, employees, representatives or attorneys; (b) this Agreement is not being entered into on the basis of, or in reliance on, any promise or representation, expressed or implied, other than such as are set forth expressly in this Agreement; and (c) such Party has been represented by legal counsel of such Party's own choice or has elected not to be represented by legal counsel in this matter.

**7.26 Severability.** Subject to Section 6.4, if any provision of this Agreement, 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 and such provision can be severed without substantially changing the bargain reached by the Parties, such provision or part of such provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Agreement, including the remainder of such provision not determined to be illegal, invalid or unenforceable. If Section 6.4 is applicable, this Section shall not be enforced.

**7.27 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, and shall apply solely to the specific instance expressly stated.



*[signature page follows]*

The Parties have executed this Agreement on the Execution Date.

**HOSPITAL**

Palomar Pomerado Health \_\_\_\_\_,  
a California district hospital

\_\_\_\_\_  
By: Michael H. Covert, F.A.C.H.E.  
Its: President/CEO

Hospital's address:

15255 Innovation Drive  
San Diego, CA 92128  
\_\_\_\_\_

**PHYSICIAN**

Serge Charles Kaska, M.D., an individual

\_\_\_\_\_  
Serge Charles Kaska, M.D.

Physician's principal place of business:

991 Via Bolzano  
Goleta, CA 93117

**CORPORATION**

SERGE KASKA, M.D., INC.  
a California Corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
Its.: \_\_\_\_\_



Exhibit 1.1

**SERVICE AREA**

92025 Escondido  
92026 Escondido  
92027 Escondido  
92029 Escondido  
92036 Cuyamaca/Julian  
92059 Pala  
92060 Palomar Mountain  
92061 Pauma Valley  
92064 Poway  
92065 Ramona  
92069 San Marcos  
92070 Santa Ysabel  
92082 Valley Center  
92127 Rancho Bernardo  
92128 Rancho Bernardo  
92129 Rancho Peñasquitos

Exhibit 1.11**OBLIGATIONS UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (“HIPAA”)****1. Definitions.**

- a. **“Designated Record Set”** shall have the meaning given to such term under the Privacy Rule (as defined below).
- b. **“HIPAA Obligations”** means the obligations of Physician as set forth in this Exhibit.
- c. **“Privacy Rule”** means the HIPAA Regulation that is codified at 45 CFR Parts 160 and 164, or applicable successor provisions, as may be amended from time to time.
- d. **“Protected Health Information”** means any information, whether oral or recorded in any form or medium that: (i) relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, or is defined as such under the Privacy Rule.
- e. **“Protected Information”** means Protected Health Information provided by Hospital to Physician or created or received by Physician on Hospital’s behalf.
- f. **“Required by Law”** shall have the meaning given to such term under the Privacy Rule.

2. **Use of Protected Information.** Physician shall not use Protected Information except as permitted by and for the purpose of performing Physician’s obligations under this Agreement. Physician shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by Hospital.

3. **Permitted Disclosures.** Physician shall not disclose Protected Information, except as expressly permitted or required by this Agreement or as Required by Law. Further, Physician shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by Hospital.

4. **Appropriate Safeguards.** Physician shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Agreement.

5. **Reporting of Improper Use or Disclosure.** Physician shall notify Hospital in writing of any use or disclosure of Protected Information other than as provided for by this Agreement and this Exhibit within two (2) days of becoming aware of such use or disclosure.
6. **Physician's Employees and Agents.** Physician shall ensure that any employees and agents of Physician, including subcontractors, to whom Physician provides Protected Information, agree in writing to the same restrictions and conditions that apply to Physician with respect to such Protected Information.
7. **Access to Protected Information.** Physician shall make Protected Information maintained by Physician or Physician's employees, agents or subcontractors available to Hospital for inspection and copying within ten (10) days of a request by Hospital for any purpose.
8. **Amendment of Protected Health Information.** Within ten (10) days of receipt from Hospital of a request for an amendment of Protected Information or a record maintained by Physician or Physician's employees, agents or subcontractors, Physician shall make such Protected Information available to Hospital for amendment and incorporate any such amendment in such record.
9. **Accounting Rights.** Within ten (10) days of notice by Hospital of a request for an accounting of disclosures of Protected Information, Physician and Physician's employees, agents or subcontractors shall provide to Hospital an accounting of disclosures sufficient to enable Hospital to fulfill its obligations under the Privacy Rule. As set forth and as limited by the Privacy Rule, Physician need not provide an accounting to Hospital of disclosures: (i) to carry out treatment, payment or health care operations; (ii) to individuals of Protected Information about them; (iii) to persons involved in the individual's care; (iv) for national security or intelligence purposes; or (v) to correctional institutions or law enforcement officials. Physician agrees to maintain information on disclosures by Physician and Physician's employees, agents or subcontractors for at least six (6) years following the disclosure, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (A) the date of disclosure; (B) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (C) a brief description of Protected Information disclosed; and (D) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or copy of the individual's authorization, or a copy of the written request for disclosure.
10. **Access to Records.** Physician shall make Physician's internal practices, books and records relating to the use and disclosure of Protected Information available to Hospital for purposes of determining Physician's compliance with this Agreement or, at the request of Hospital, to the Secretary of the U.S. Department of Health and Human Services, for purposes of determining Hospital's compliance with the Privacy Rule.
11. **Retention of Protected Information.** Except as provided in Sections 12 and 13 of this Exhibit, Physician and Physician's employees, agents or subcontractors shall retain all

Protected Information throughout the term of this Agreement and shall continue to maintain the information required under Section 9 of this Exhibit for a period of six (6) years after expiration or termination of this Agreement.

12. **Term of Obligations.** Physician's HIPAA Obligations shall commence as of the compliance date of the Privacy Rule, and shall terminate when all of the Protected Information is destroyed or returned to Hospital, or, if it is infeasible to return or destroy Protected Information, protections are extended to such information, in accordance with Section 13 of this Exhibit.
13. **Effect of Termination.** Upon expiration or termination of this Agreement for any reason, Physician shall return or destroy all Protected Information that Physician or Physician's employees, agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Hospital, Physician shall continue to extend the protections of this Exhibit to such information, and limit further use of such Protected Health Information to those purposes that make the return or destruction of such Protected Health Information infeasible.
14. **Amendment.** The Parties agree to take such action as is necessary to amend HIPAA Obligations from time to time in order for Hospital to comply with the requirements of the Privacy Rule, HIPAA and other applicable laws relating to the security or confidentiality of Protected Health Information.
15. **Interpretation of Obligations.** The HIPAA Obligations shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The Parties acknowledge and agree that any ambiguity in the HIPAA Obligations shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

**Exhibit 2.2(b)**

**PHYSICIAN FINANCIAL REPORT FORM**

**Month:** \_\_\_\_\_, 20\_\_

Physician and/or the Corporation represent and warrant to Hospital that this Physician Financial Report (a) is consistent with the books and records of Physician and/or the Corporation; (b) is true, accurate and complete in all respects; (c) does not contain any untrue information or statement of fact; and (d) does not omit to state any information or fact reasonably necessary to make the information or facts contained herein not misleading.

\_\_\_\_\_  
Signature of Physician and/or the Corporation

Patient Volume (Visits this month) \_\_\_\_\_

**PRACTICE RECEIPTS**

\_\_\_\_\_

**PRACTICE EXPENSES**

Maximum Allowable  
Expenses

Actual Expenses  
Incurred

Rent (Office)	_____	_____
Phone & Answering Service	_____	_____
Utilities	_____	_____
Malpractice Insurance	_____	_____
Insurance (Office)	_____	_____
Salaries	_____	_____
Fringe Benefits & Payroll Taxes	_____	_____
Medical Supplies	_____	_____
Office Supplies	_____	_____
Licenses	_____	_____
Professional Supplies and Services (including but not limited to legal and accounting services)	_____	_____
Transcription Expenses	_____	_____
Leased Equipment and Equipment Fees	_____	_____
Maintenance (Equipment)	_____	_____
Billing Expenses	_____	_____
Dues, Subscriptions, CME	_____	_____
Marketing/Advertising	_____	_____
Bank Charges	_____	_____
Misc. Start-Up Expenses (first 3 months only)	_____	_____

2.2(b)-1

Physician Financial Report



**TOTAL PRACTICE EXPENSES**

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██████████	

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For purposes of calculating the Practice Expenses, Physician and/or the Corporation shall apply only those expenses identified above and the total amount of each such expense in any given month shall not exceed the Maximum Allowable Expense for that month,, except as otherwise agreed to in writing by Hospital. Physician and/or the Corporation may only include as Practice Expenses those expenses that are actually paid by Physician during the month and only to the extent reasonable and customary to conduct the Practice. Payroll tax obligations of Physician shall not be treated as a Practice Expense.

**NET PAYMENT CALCULATION**

***FOR ACCOUNTING USE ONLY***

<b>Guaranteed Monthly Income</b>	_____
<i>Add:</i> <b>Practice Expenses</b>	_____
<i>Less:</i> <b>Practice Receipts</b>	_____
<i>Equals:</i> <b>Income Guarantee Advance (Excess Receipts)</b>	_____
<b>Total Income Guarantee Advances To Date</b>	_____

Exhibit 3.1(a)

**SECURED PROMISSORY NOTE**

Not to Exceed \$ [REDACTED] \_\_\_\_\_, 20\_\_

**FOR VALUE RECEIVED**, and subject to paragraph 2(c) below, the undersigned borrower Serge Charles Kaska, M.D. (“**Physician**”) promises to pay to the order of Palomar Pomerado Health, a California district hospital (“**Hospital**”), as noteholder, the principal sum equal to the aggregate amount of advances paid to Physician pursuant to the Physician Recruitment Agreement by and between Physician, SERGE KASKA, M.D., INC., a California Corporation, and Hospital, dated as of even date herewith (the “**Recruitment Agreement**”). Unless otherwise defined in this Secured Promissory Note (the “**Recruitment Note**”), each capitalized term shall have the meaning given in the Recruitment Agreement. The aggregate principal amount of the loans provided to Physician pursuant to the Recruitment Agreement (the “**Principal**”) shall not exceed [REDACTED].

**1. Advances of Principal; Interest.**

(a) Subject to paragraph 2(c) below, Physician hereby promises to pay to the order of Hospital, at such place as Hospital may from time to time designate in writing, in lawful money of the United States of America, the Principal and accrued interest thereon.

(b) Except as otherwise limited by the terms of the Recruitment Agreement or this Recruitment Note, Interest shall accrue on the Principal outstanding at a rate equal to the Prime Rate (as defined below), adjusted annually on each anniversary date of this Recruitment Note, plus two percent (2 %), computed on the basis of a 365/366-day year and the number of days elapsed, commencing as of the first date that Principal is advanced to Physician under this Recruitment Note and continuing thereafter until the Principal is either repaid or forgiven in full; provided, however, that interest shall never accrue at an annual rate greater than the maximum rate permitted to be charged under applicable law on commercial loans between unrelated persons. “**Prime Rate**” shall mean the annual interest rate published from time to time by the Wall Street Journal as the prime or base rate of interest on corporate loans. Physician acknowledges that the Prime Rate is \_\_\_ percent (\_\_\_%) as of the date of this Recruitment Note.

**2. Repayment and Forgiveness.** Notwithstanding any other provisions of this Recruitment Note, Principal, accrued interest, and other applicable fees, costs and charges (“**Costs**”), if any, owing on this Recruitment Note shall be payable or forgiven as follows:

(a) **Repayment.** Subject to paragraph 2(c) below, Principal and accrued interest thereon shall be payable in twenty four (24) equal monthly installments. Principal and accrued interest thereon shall be payable on the first (1<sup>st</sup>) day of each month during the Repayment Period (as defined below).

(b) **Repayment Period.** “**Repayment Period**” shall mean the period beginning on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) calendar month immediately following the end of the Assistance Period and continuing until the earlier of (i) the date on which the Principal and all accrued interest thereon, and all Costs, if any, are either paid or forgiven 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 Physician to Hospital no later than the Maturity Date. The “**Maturity Date**” shall mean the date that is twenty-four (24) months from the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) calendar month immediately following the end of the Assistance Period.

(c) **Forgiveness.** If Physician has continuously complied, and/or timely cured any temporary breaches, throughout the term of the Recruitment Agreement with all terms and conditions of the Recruitment Agreement, this Recruitment Note and the Physician Security Agreement, and no Event of Default (as defined in Section 3 below) has occurred (i) Hospital shall forgive, on the last day of each month during the Repayment Period, an amount equal to the monthly amount (including Principal and accrued interest) otherwise due to Hospital for such month pursuant to Section 2(a) of this Recruitment Note; and (ii) Hospital shall forgive, on the last day of the Repayment Period, all Costs, if any, owing by Physician. Any and all debt that is forgiven may not later be declared due and/or owing by Hospital as long as Physician has been in compliance with all material terms of this Agreement during the relevant time periods.

(d) **Repayment with Excess Receipts.** If Practice Receipts exceed the sum of Guaranteed Monthly Income and Practice Expenses in any month during the Assistance Period, Physician shall pay to Hospital such excess (the “**Excess Receipts**”) within ten (10) days after the end of such month. All payments of Excess Receipts made pursuant to this Section 2(d) shall be applied as follows: first, to Costs, if any; second, to due and unpaid interest; and third, to the outstanding Principal in inverse order of maturity..

(e) **Forgiveness upon Death or Permanent Disability.** Notwithstanding any other provision of this Recruitment Note to the contrary, Hospital shall forgive the entire then-outstanding balance of Principal and all accrued, unpaid interest owing on the Recruitment Note, together with all other Costs, if any, in the event of Physician’s death or Permanent Disability.

(f) **Prepayment.** Physician 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 of any subsequent monthly installment.

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

**3. Events of Default.** The termination for any reason of the Recruitment Agreement, other than any automatic termination upon the death or Permanent Disability of Physician and/or termination pursuant to Section 6.3 or 6.4 of the Recruitment Agreement, or the

occurrence of any Event of Default under the Recruitment Agreement shall constitute an event of default (“**Event of Default**”) under this Recruitment Note.

**4. Acceleration.** Upon the expiration or termination of the Recruitment Agreement for any reason, except termination pursuant to Sections 6.3, 6.4 or 6.5 of the Recruitment Agreement, Hospital may, at its option, declare the entire Principal outstanding, together with interest accrued thereon and all other Costs, if any, immediately due and payable to Hospital and Hospital may proceed to exercise any rights or remedies that it may have under this Recruitment Note, at law, equity or otherwise. In the event of such acceleration, Physician may discharge Physician’s obligations to Hospital by paying the entire Principal then outstanding, plus accrued interest and any other Costs, if any, as set forth in this Recruitment Note.

**5. Termination by Practitioner or in the Event of Government Action.** If the Recruitment Agreement is terminated by Practitioner pursuant to Section 6.3 of the Recruitment Agreement or as a result of Government Action pursuant to Section 6.4 of the Recruitment Agreement, the entire outstanding balance of Principal and accrued interest together with the Costs owing on this Recruitment Note as of the effective date of such termination shall be payable/forgiven in accordance with Section 2.2(j) of the Agreement; provided, however, if such repayment/forgiveness terms violate any federal, state or local law, rule, regulation, or Government Action, Borrowers shall pay to Hospital, on the effective date of the termination of the Recruitment Agreement, the Principal and accrued interest together with the Costs owing on this Recruitment Note as of the effective date of such termination. Borrowers shall not have any right to offset the amount owing to Hospital under this Section upon termination by any amounts that then or thereafter may be owing by Hospital to Borrowers whether as a result of the termination or otherwise.

**6. Costs of Collection.** If Hospital exercises its acceleration rights pursuant to this Recruitment Note, in addition to the Principal outstanding and accrued interest thereon, Hospital shall be entitled to collect all costs of collection, including reasonable attorneys’ fees incurred in connection with the protection or realization of collateral and Hospital’s reasonable collection efforts whether or not suit on this Recruitment Note or any foreclosure proceeding is filed. Any and all such costs and expenses shall be payable on demand and secured by the Physician Security Agreement.

**7. Continuing Liability.** Following the occurrence of an Event of Default, Physician’s liability under this Recruitment Note shall not be affected by Hospital’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 Recruitment Note), regardless of the order in which or the extent to which Hospital may pursue any of such rights, powers or remedies, it being understood that the liability of Physician shall cease only upon satisfaction in full of all of Physician’s obligations arising under this Recruitment Note and the Recruitment Agreement.

**8. No Waiver.** No failure on the part of Hospital to exercise any right or remedy under this Recruitment 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 from time to time shall constitute a waiver of the right to insist upon prompt payment, be deemed to be a novation of this

Recruitment Note or as a reinstatement of the debt evidenced by this Recruitment Note, or be construed to preclude the exercise of any right which Hospital may have under law, by agreement or otherwise. Physician 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.

**9. Waiver of Notice.** Physician and each endorser or guarantor of this Recruitment 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 Recruitment Note, and (ii) agrees that Hospital, 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. Amendments.** This Recruitment 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 Recruitment Note.

**11. Assignment.** Physician shall not assign, sell, transfer or delegate any of Physician's rights or duties under this Recruitment Note without the prior written consent of Hospital, which shall not be unreasonably withheld or delayed. Hospital may assign its rights and delegate its duties under this Recruitment Note upon written notice to Physician.

**12. Business Purposes.** Physician represents and warrants that the loan evidenced by this Recruitment Note is being made for business purposes.

**13. Choice of Law.** This Recruitment Note shall be construed in accordance with and governed by the laws of the State, 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. Physician and each endorser or guarantor hereby submit to jurisdiction in said State for the enforcement of Physician's obligations under this Recruitment Note and under the Physician Security Agreement (as defined in Section 17 below), and waive any and all rights under the laws of any other state to object to jurisdiction within such State.

**14. Interest Limitations.** Notwithstanding anything to the contrary contained in this Recruitment Note, the total liability for payments in the nature of interest shall not exceed the limits imposed by applicable interest rate laws. If any payments in the nature of interest are held to be in excess of the limits imposed by applicable interest rate laws, any such amount held to be in excess shall be considered payment of Principal and the Principal outstanding shall be reduced accordingly.

**15. Notices.** Any notice required or permitted to be given in this Recruitment Note shall be given in accordance with the notices provision of the Recruitment Agreement.

**16. Referrals.** Hospital and Physician acknowledge that the amounts loaned to Physician and Physician's rights and duties under this Recruitment Note in no way require, and in no way are contingent upon the admission, recommendation, referral or any other arrangement for the provision of any item or service offered by Hospital or any Affiliate, to any patients of Physician, Physician's practice, or any of Physician's contractors, partners, employees or agents.

17. **Security.** This Recruitment Note is secured by a first priority security interest granted by Physician to Hospital in the collateral described in that certain Physician Security Agreement of even date herewith (the “**Physician Security Agreement**”) by and between Physician and Hospital. All of the provisions contained in the Physician Security Agreement are hereby made a part of this Recruitment Note to the same extent and with the same effect as if they were fully set forth in this Recruitment Note.

18. **Severability.** If any provision of this Recruitment 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 Recruitment Note, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Recruitment Note, including the remainder of such provision not determined to be illegal, invalid or unenforceable.

19. **Successors and Assigns.** The provisions of this Recruitment Note shall inure to the benefit of and shall be binding upon the heirs, assigns, successors and representatives of Physician and Hospital, respectively. The term “**Physician**” shall mean Physician and each heir, successor, assign, and representative of Physician as obligor of this Recruitment Note. The term “**Hospital**” shall mean Hospital and each successor, assign, and representative of Hospital as payee or holder of this Recruitment Note.

20. **Time of the Essence.** Time is of the essence in the performance of Physician’s obligations under this Recruitment Note.

This Recruitment Note is executed on the date first above written, at \_\_\_\_\_,  
\_\_\_\_\_.

**PHYSICIAN**

\_\_\_\_\_  
Serge Charles Kaska, M.D., an individual

**Exhibit 3.1(b)****PHYSICIAN SECURITY AGREEMENT**

THIS PHYSICIAN SECURITY AGREEMENT (this “**Physician Security Agreement**”) is made and entered into as of \_\_\_\_\_, 20\_\_ (the “**Execution Date**”), by and between Serge Charles Kaska, M.D., an individual, as the debtor (“**Physician**”), and Palomar Pomerado Health, a California district hospital (“**Hospital**”), as the secured party.

**RECITALS**

A. Physician is obligated to Hospital under that certain Physician Recruitment Agreement by and between Hospital, KASKA CORP., a California Corporation and Physician, dated as of even date herewith (the “**Recruitment Agreement**”), and that certain Secured Promissory Note, dated as of even date herewith, executed and delivered by Physician to Hospital (the “**Recruitment Note**”). Unless otherwise defined in this Physician Security Agreement, each capitalized term shall have the meaning given in the Recruitment Agreement.

B. Hospital and Physician wish to enter into this Physician Security Agreement to secure the payment and performance of all indebtedness, liabilities and obligations of Physician due or to become due to Hospital under the Recruitment Note and set forth under the Recruitment Agreement (collectively, the “**Obligations**”).

**AGREEMENT**

Physician and Hospital agree as follows:

**1. Grant of Security Interest.** Physician hereby grants to Hospital a security interest in the collateral, as described and defined in **Attachment A** to this Physician Security Agreement (the “**Collateral**”), to secure the payment and performance of all of the Obligations due or to become due, and all modifications, renewals, extensions, rearrangements, substitutions and replacements of such Obligations.

**2. Release of Collateral.** The Collateral shall be released and relieved of the security interest granted herein, and Physician shall be entitled to unencumbered title thereto and possession thereof, upon full and complete payment, performance, satisfaction, forgiveness or observance of all Obligations in accordance with the terms of this Physician Security Agreement, the Recruitment Note and the Recruitment Agreement. Upon the release of the Collateral, Hospital shall execute and deliver, at Physician’s sole cost and without recourse against Hospital, any necessary instruments of title, release, reassignment and delivery as Physician may reasonably request.



3. **Events of Default.** The termination for any reason of the Recruitment Agreement, other than any automatic termination upon the death or Permanent Disability of Physician or termination pursuant to Section 6.3 or 6.4 thereof, or the occurrence of any Event of Default under the Recruitment Agreement shall constitute an event of default (“**Event of Default**”) under this Physician Security Agreement and shall provide Hospital with the rights and remedies described below.

4. **Rights and Remedies upon Default.** Upon the occurrence and during the continuation of any of the above Events of Default, Hospital may accelerate all of the Obligations and shall have, in addition to all other rights and remedies provided herein or by applicable law, all of the rights and remedies of a secured party under the California Commercial Code (the “**Code**”).

5. **Indemnity and Expenses.** Physician agrees to indemnify Hospital from and against any and all claims, losses and liabilities arising out of or relating to this Physician Security Agreement (including enforcement of this Physician Security Agreement or any actions taken by Hospital pursuant to this Physician Security Agreement), except claims, losses or liabilities resulting from Hospital’s own gross negligence or willful misconduct . Physician will on demand pay to Hospital the amount of any and all reasonable costs and expenses, including the reasonable fees and disbursements of its legal counsel and of any experts or agents, which Hospital may incur in connection with: (i) the exercise or enforcement by Hospital of any of its rights or remedies under this Physician Security Agreement, or (ii) any failure by Physician to perform any of the Obligations.

6. **Physician Remains Liable.** Notwithstanding any other provision of this Physician Security Agreement, (i) Physician shall remain liable under the contracts and agreements included in the Collateral to perform all of Physician’s duties and obligations thereunder to the same extent as if this Physician Security Agreement had not been executed, (ii) the exercise by Hospital of any of its rights under this Physician Security Agreement shall not release Physician from any of Physician’s duties or obligations under the contracts and agreements included in the Collateral, and (iii) Hospital shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Physician Security Agreement, nor shall Hospital be obligated to perform any of the obligations or duties of Physician or to take any action to collect or enforce any claim for payment.

7. **Waivers; Cumulative Remedies.** Physician waives notice of the acceptance of this Physician Security Agreement and all other notices, demands or protests to which Physician might otherwise be entitled by law in respect to this Physician Security Agreement, the Obligations or the Collateral, and which may be lawfully waived. Hospital shall have no duty as to the collection or protection of the Collateral or any income, or as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining to the Collateral beyond reasonable care in the custody or preservation thereof. Hospital may exercise its rights and remedies with respect to the Collateral without resorting or regard to other security or sources for payment. All rights and remedies of Hospital shall be cumulative and may be exercised singularly or concurrently.

**8. Authorization to File Financings Statement.** Physician authorizes Hospital to prepare and file all financing statements (Form UCC-1), continuation statements (Form UCC-3), or other written statements or notices required in order to perfect, secure or maintain as perfected Hospital's security interest in the Collateral, without the signature of Physician where permitted by law. Copies of all financing statements, continuation statements or other written statements or notices shall be promptly delivered to Physician.

**9. Further Assurances.** Each Party shall perform any further acts and execute any further documents, including, without limitation, financing or continuation statements, or amendments thereto, an account control agreement substantially in the form attached hereto as **Attachment B**, and such other instruments, endorsements or notices as may be reasonably necessary or otherwise reasonably requested to perfect, secure or maintain as perfected Hospital's security interest in the Collateral or to carry out the provisions of this Physician Security Agreement.

**10. Amendments.** This Physician Security Agreement may be modified or amended, waived, discharged or terminated only by an instrument in writing signed by the Party against which enforcement of the amendment, waiver, discharge or termination is sought.

**11. Assignment.** If at any time or times by sale, assignment, negotiation, pledge or otherwise, Hospital transfers any of the Obligations, such transfer shall carry with it Hospital's rights and remedies under this Physician Security Agreement with respect to the transferred Obligations, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Hospital retains any other Obligations, Hospital shall continue to have those rights and remedies.

**12. Costs and Fees.** Physician agrees to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by Hospital in the enforcement of this Physician Security Agreement, the Obligations, or in any action or proceeding arising out of, or relating to, this Physician Security Agreement.

**13. Counterparts.** This Physician 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.

**14. Definitions and Incorporation by Reference.** All terms used but not expressly defined in this Physician Security Agreement will have the same meaning as set forth in the Code. All terms, provisions and definitions of any loan agreements, guarantees or other credit arrangements between Physician and Hospital are incorporated in this Physician Security Agreement by reference as though set forth in full.

**15. Dispute Resolution.** All disputes, controversies, claims, questions, or disagreements arising out of or relating to this Physician Security Agreement, shall be litigated in any state or federal court having appropriate jurisdiction and located within the State, County of

San Diego. The Parties, by the execution of this Physician Security Agreement, expressly consent to the jurisdiction of any such court, to venue therein and to the service of process in any such action or proceedings, as required by applicable law.

**16. Choice of Law.** This Physician Security Agreement shall be construed in accordance with and governed by the laws of the State, 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.

**17. Notices.** Any notice required or permitted to be given in this Physician Security Agreement shall be in writing and shall be given in accordance with the notices provision of the Recruitment Agreement.

**18. Severability.** If any provision, or the application of any provision, of this Physician Security Agreement is determined to be illegal, invalid or unenforceable, that provision shall be severed from this Physician Security Agreement and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Physician Security Agreement.

**19. Successors and Assigns.** This Physician Security Agreement shall be binding upon Physician's heirs, successors, assigns, and representatives and shall inure to the benefit of and be enforceable by Hospital and its successors, assigns, and representatives.

*[signature page follows]*

Physician and Hospital have executed this Physician Security Agreement on the Execution Date.

**PHYSICIAN**

Serge Charles Kaska, M.D, an individual

\_\_\_\_\_  
Serge Charles Kaska, M.D.

Physician's principal place of business:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**HOSPITAL**

Palomar Pomerado Health \_\_\_\_\_,  
a California district hospital

\_\_\_\_\_  
By: Michael H. Covert, F.A.C.H.E.  
Its: President/CEO \_\_\_\_\_

Hospital's address:

15255 Innovation Drive \_\_\_\_\_  
San Diego, CA 92128 \_\_\_\_\_  
\_\_\_\_\_

Attachment A

**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 Serge Charles Kaska, M.D., an individual (“**Debtor**”), in and to the following property, whether now owned or later acquired or created: (a) payments and rights to payment from all sources, for goods sold or leased or for services furnished, including, without limitation, all those which are not evidenced by instruments or chattel paper, and whether or not they have been earned by performance (“**Accounts Receivable**”); (b) furniture, fixtures and equipment; (c) rights under contracts with managed care entities; (d) proceeds of letters of credit of which Debtor is named beneficiary; (e) general intangibles; (f) contract rights; (g) chattel paper; (h) instruments; (i) documents; (j) insurance proceeds; (k) all books and records in respect to the foregoing; (l) proceeds of all the foregoing; and (m) all monies from time to time on deposit in Debtor’s business bank account no. \_\_\_\_\_ with \_\_\_\_\_ (collectively, the “**Collateral**”), each to the extent used in Debtor’s medical practice or arising out of or related to the provision of professional medical and other health care services performed by Debtor.

Attachment B**ACCOUNT CONTROL AGREEMENT**

This Control Agreement (this “**Agreement**”), is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and among Palomar Pomerado Health, a California district hospital (“**Secured Party**”), Serge Charles Kaska, M.D, an individual (“**Debtor**”), and [*Name of Bank*] (“**Bank**”). Secured Party, Debtor and Bank are sometimes referred to in this Agreement, individually, as a “**Party**” or, collectively, as the “**Parties.**”

**RECITAL**

Pursuant to that certain Physician Security Agreement of even date herewith, by and between Secured Party and Debtor, Debtor has granted Secured Party a security interest in a deposit account maintained by Bank for Debtor. The Parties are entering into this Agreement to perfect Secured Party’s security interest in that account.

**AGREEMENT**

**Section 1. The Account.** Bank maintains a deposit account for Debtor, currently numbered \_\_\_\_\_ and titled \_\_\_\_\_ (as such account may be renumbered or retitled, the “**Account**”). All Parties agree that the Account is a “deposit account” within the meaning of Division 9 of the Uniform Commercial Code of the State of California (the “**UCC**”).

**Section 2. Control.** Bank will comply with instructions originated by Secured Party directing disposition of the funds in the Account without further consent by Debtor. Bank may also comply with instructions directing the disposition of funds in the Account originated by Debtor or its authorized representatives until such time as Secured Party delivers a written notice to Bank that Secured Party is thereby exercising exclusive control over the Account. Such notice is referred to herein as the “**Notice of Exclusive Control.**” Upon receiving a Notice of Exclusive Control, Bank will cease complying with instructions concerning the Account or funds on deposit therein originated by Debtor or its representatives. Bank has not and will not agree with any third party to comply with instructions or other directions concerning the Account or the disposition of funds in the Account originated by such third party without the prior written consent of Secured Party and Debtor.

**Section 3. Subordination of Bank’s Security Interest.** Bank hereby subordinates all security interests, encumbrances, claims and rights of setoff it may have, now or in the future, against the Account or any funds in the Account other than in connection with the payment of Bank’s customary fees and charges pursuant to its agreement with Debtor and for the reversal of provisional credits.

**Section 4. Statements, Confirmations and Notices of Adverse Claims.** Bank will send copies of all statements concerning the Account to each of Debtor and Secured Party at the address set forth on the signature page of this Agreement. Upon receipt of written notice of any lien, encumbrance or adverse claim against the Account or any funds credited thereto, Bank will make reasonable efforts promptly to notify Secured Party and Debtor thereof.

**Section 5. Bank's Responsibility.** Except for acting on Debtor's instructions in violation of Section 2 above, Bank shall have no responsibility or liability to Secured Party for complying with instructions concerning the Account from Debtor or Debtor's authorized representatives which are received by Bank before Bank receives a Notice of Exclusive Control and has had reasonable opportunity to act on it. Bank shall have no responsibility or liability to Debtor for complying with a Notice of Exclusive Control or complying with instructions concerning the Account originated by Secured Party, and shall have no responsibility to investigate the appropriateness of any such instruction or Notice of Exclusive Control, even if Debtor notifies Bank that Secured Party is not legally entitled to originate any such instruction or Notice of Exclusive Control.

**Section 6. Indemnity.** Debtor and Secured Party hereby agree to indemnify and hold harmless Bank, its directors, officers, agents and employees against any and all claims, causes of action, liabilities, lawsuits, demands and damages, including, without limitation, any and all court costs and reasonable attorneys' fees, in any way related to or arising out of or in connection with this Agreement or any action taken or not taken pursuant hereto, except to the extent caused by Bank's gross negligence or willful misconduct or Bank's breach of any of the provisions hereof.

**Section 7. Customer Agreement.** In the event of a conflict between this Agreement and any other agreement between Bank and Debtor relating to the Account, the terms of this Agreement will prevail; provided, however, that this Agreement shall not alter or affect any mandatory arbitration provision currently in effect between Bank and Debtor pursuant to a separate agreement.

**Section 8. Termination.** Unless earlier terminated by Bank pursuant to this Section, this Agreement shall continue in effect until Secured Party has notified Bank in writing that this Agreement, or its security interest in the Account, is terminated. Upon receipt of such notice the obligations of Bank hereunder with respect to the operation and maintenance of the Account after the receipt of such notice shall terminate, Secured Party shall have no further right to originate instructions concerning the Account and any previous Notice of Exclusive Control delivered by Secured Party shall be deemed to be of no further force and effect. Bank reserves the right, unilaterally, to terminate this Agreement, such termination to be effective thirty (30) days after written notice thereof is given to Debtor and Secured Party.

**Section 9. Complete Agreement; Amendments.** This Agreement and the instructions and notices required or permitted to be executed and delivered hereunder set forth the entire agreement of the Parties with respect to the subject matter hereof, and, subject to Section 7 above supersede any prior agreement and contemporaneous oral agreements of the Parties concerning its subject matter. No amendment, modification or (except as otherwise specified in Section 8 above) termination of this Agreement, nor any assignment of any rights hereunder (except to the extent contemplated under Section 12 below), shall be binding on any Party hereto unless it is in writing and is signed by each of the Parties hereto, and any attempt to so amend, modify, terminate or assign except pursuant to such a writing shall be null and void. No waiver of any rights hereunder shall be binding on any Party hereto unless such waiver is in writing and signed by the Party against whom enforcement is sought.

**Section 10. Governing Law.** This Agreement shall be governed by and construed in accordance with the law of the State of California. The Parties agree that California is the “bank’s jurisdiction” for purposes of the UCC.

**Section 11. Severability.** To the extent a provision of this Agreement is unenforceable, this Agreement will be construed as if the unenforceable provision were omitted.

**Section 12. Successors and Assigns.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors or heirs and personal representatives. This Agreement may be assigned by Secured Party to any successor of Secured Party under its Security Agreement with Debtor, provided that written notice thereof is given by Secured Party to Bank.

**Section 13. Notices.** Except as otherwise expressly provided herein, any notice, order, instruction, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error-free receipt is received or upon receipt of notice sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the Party at the address set below such Party’s name on the signature page of this Agreement. Any Party may change its address for notices in the manner set forth above.

**Section 14. Jury Waiver.** DEBTOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS, REMEDIES, OBLIGATIONS, OR DUTIES HEREUNDER, OR THE PERFORMANCE OR ENFORCEMENT HEREOF OR THEREOF.

**Section 15. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any Party hereto may execute this Agreement by signing and delivering one or more counterparts.

*[signature page follows]*



The Parties have executed this Agreement on the date first written above.

**SECURED PARTY**

Palomar Pomerado Health,  
a California district hospital

By: Michael H. Covert, F.A.C.H.E.  
Its: President/CEO

Secured Party's address:

15255 Innovation Drive  
San Diego, CA 92128

**DEBTOR**

Serge Charles Kaska, M.D.,  
an individual

\_\_\_\_\_  
Serge Charles Kaska, M.D.

Debtor's address:

\_\_\_\_\_  
\_\_\_\_\_

**BANK**

\_\_\_\_\_,  
a [state] [type of entity]

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

Bank's address:

\_\_\_\_\_  
\_\_\_\_\_

Exhibit 3.2**CORPORATION GUARANTEE AND SECURITY AGREEMENT**

THIS CORPORATION GUARANTEE AND SECURITY AGREEMENT (this “**Corporation Guarantee**”) is effective as of \_\_\_\_\_, 2006 (“**Effective Date**”), by SERGE KASKA, M.D., INC., a California Corporation (“**Corporation**”), in favor of PALOMAR POMERADO HEALTH, a California district hospital (“**Hospital**”).

RECITALS

A. Serge Charles Kaska, M.D., an individual (“**Physician**”), is obligated to Hospital under that certain Physician Recruitment Agreement by and among Hospital, Physician and Corporation, of even date herewith (the “**Recruitment Agreement**”), and the Secured Promissory Note by and between Hospital and Physician, of even date herewith (the “**Recruitment Note**”). Unless otherwise defined in this Corporation Guarantee, each capitalized term shall have the meaning given in the Recruitment Agreement.

B. Corporation now desires to enter into this Corporation Guarantee to secure the payment and performance of all indebtedness, liabilities and obligations of Physician to Hospital due or to become due under the Recruitment Note (collectively, the “**Obligations**”).

AGREEMENT

Corporation hereby consents and agrees as follows:

**1. Guarantee.** Corporation absolutely, unconditionally, and irrevocably promises to pay and perform all of the Obligations due or to become due, and all modifications and renewals, extensions and rearrangements, substitutions, and replacements of such Obligations; provided, however, that Corporation’s payments under this Corporation Guarantee shall not exceed the value of Corporation’s Accounts Receivable. For purposes of this Corporation Guarantee, “**Corporation’s Accounts Receivable**” shall mean an amount equal to the sum of notes and accounts receivable attributable to professional services furnished by Corporation and/or Physician on or before the Default Date, and adjusted to reflect historical collection experience. “**Default Date,**” as the term is used in this Corporation Guarantee, shall mean the date Physician fails to pay or perform when due any of the Obligations.

**2. Expiration of Corporation Guarantee .** Corporation’s guarantee of the Obligations shall expire when the entire Principal amount of the Obligations outstanding, all accrued and unpaid interest thereon, and all other applicable fees, costs and charges, if any, have been satisfied in full or forgiven.

**3. Grant of Security Interest.** Corporation hereby grants to Hospital a security interest in the collateral, as defined and described in Attachment A to this Corporation Guarantee (“**Collateral**”), to secure the Obligations. Notwithstanding any other provision of this Corporation Guarantee, (i) Corporation shall remain liable under the contracts and agreements included in the Collateral to perform all of its duties and obligations thereunder to

the same extent as if this Corporation Guarantee had not been executed, (ii) the exercise by Hospital of any of its rights under this Corporation Guarantee shall not release Corporation from any of its duties or obligations under the contracts and agreements included in the Collateral, and (iii) Hospital shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Corporation Guarantee, nor shall Hospital be obligated to perform any of the obligations or duties of Corporation or to take any action to collect or enforce any claim for payment.

**4. Release of Collateral.** The Collateral shall be released and relieved of the security interest granted herein, and Corporation shall be entitled to unencumbered title thereto and possession thereof, upon full and complete payment, performance, satisfaction, forgiveness or observance of all Obligations in accordance with the terms of this Corporation Guarantee, the Recruitment Note and the Recruitment Agreement. Upon the release of the Collateral, Hospital shall execute and deliver, at Corporation's sole cost and without recourse against Hospital, any necessary instruments of title, release, reassignment and delivery as Corporation may reasonably request.

**5. Rights and Remedies upon Default.** In the event Corporation fails to satisfy its obligations under this Corporation Guarantee within ten (10) business days of written demand from Hospital, Hospital may accelerate all of the Obligations and shall have, in addition to all other rights and remedies provided herein or by applicable law, all of the rights and remedies of a secured party under the California Commercial Code (the "**Code**").

**6. Independent Obligations.**

(a) This Corporation Guarantee is a primary obligation of Corporation and is an absolute, unconditional, continuing and irrevocable guarantee of payment and not of collectibility or performance and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part Physician's liabilities and obligations to Hospital. From and after the Default Date, Corporation shall pay to Hospital such Obligations in immediately available funds. Each occurrence when Physician fails to pay or perform when due any of the Obligations shall give rise to a separate cause of action, and separate suits may be brought under this Corporation Guarantee as each cause of action arises.

(b) Hospital may, at any time and from time to time (whether or not after revocation or termination of this Corporation Guarantee) without the consent of or notice to Corporation, except such notice as may be required by the Recruitment Agreement or applicable law which cannot be waived, without incurring responsibility to Corporation, without impairing or releasing the obligations of Corporation under this Corporation Guarantee, upon or without any terms or conditions and in whole or in part:

- (i) change the manner, place and terms of payment or performance or change or extend the time of payment or performance of, renew, or alter any Obligation, or any obligations and liabilities (including any of those under this Corporation Guarantee) incurred directly or indirectly or in any manner modify, amend or supplement the terms of the Recruitment Agreement, or any documents,

instruments or agreements executed in connection with the Recruitment Agreement or pertaining to the Obligations and this Corporation Guarantee shall apply to the Obligations, as changed, extended, renewed, modified, amended, supplemented or altered in any manner if agreed to mutually by Physician and Hospital;

- (ii) exercise or refrain from exercising any rights against Physician or others (including Corporation) or otherwise act or refrain from acting;
- (iii) add, release, or substitute one or more guarantors from its obligations without affecting or impairing the Obligations of Corporation under this Corporation Guarantee;
- (iv) settle, compromise, release, collect or otherwise liquidate the Obligations or any part thereof and/or any other obligations and liabilities incurred directly or indirectly, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to Hospital or others;
- (v) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property securing the Obligations or any other liabilities or obligations incurred directly or indirectly and/or any offset there against;
- (vi) apply any sums to any obligations and liabilities of Physician to Hospital under the Recruitment Agreement in the manner provided in the Recruitment Agreement, regardless of what obligations and liabilities remain unpaid;
- (vii) consent to or waive any breach of, or any act, omission or default under, the Recruitment Agreement;
- (viii) amend, modify or supplement the Recruitment Agreement or any of such other instruments or agreements if agreed to mutually by Physician and Hospital; and/or
- (ix) act or fail to act in any manner which may deprive Corporation of its right to subrogation against Physician to recover full indemnity for any payments made pursuant to this Corporation Guarantee or of its right of contribution against any other party.

(c) From and after the Effective Date of this Corporation Guarantee, Corporation shall, to the extent it is responsible, take all necessary and reasonable steps to ensure that Corporation's accounts receivable are promptly collected from Corporation's and/or Physician's patients and any payors responsible for such patients, and all such collections are immediately recorded in order to calculate the amount of any loan payments due under the Income Guarantee Advances.

7. **Waivers.** Corporation hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including, without limitation:

(a) any right to require Hospital to proceed against Physician or any other person or to proceed against or exhaust any security held by Physician at any time or to pursue any other remedy in Hospital's power before proceeding against Corporation;

(b) any defense that may arise by reason of the lack of power or authority, insolvency or bankruptcy, or termination of Physician or any other person or the failure of Hospital to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Physician or any other person;

(c) any demands for performance, presentments, protests, notices of non-performance, notices of acceptance of this Corporation Guarantee, notices of default, notices of dishonor or nonpayment and all other notices of any kind, including, without limitation, notices of the existence, creation or incurrence of any new or additional indebtedness or obligation or of any action or non-action on the part of Physician, Hospital, any endorser or creditor of Corporation or Physician or on the part of any other person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Hospital as collateral or in connection with any Obligations;

(d) any defense based upon an election of remedies by Hospital;

(e) any defense based on any offset against any amounts which may be owed by any person to Corporation for any reason whatsoever;

(f) any defense based on any act, failure to act, delay or omission whatsoever on the part of Physician or Physician's failure to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by Physician under the Recruitment Agreement;

(g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the Principal provided, that, upon payment in full of the Obligations, this Corporation Guarantee shall no longer be of any force or effect;

(i) any duty on the part of Hospital to disclose to Corporation any facts Hospital may now or hereafter know about Physician, regardless of whether Hospital has reason to believe that any such facts materially increase the risk beyond that which Corporation intends to assume, or has reason to believe that such facts are unknown to Corporation, or has a reasonable opportunity to communicate such facts to Corporation, since Corporation acknowledges that Corporation is fully responsible for being and keeping informed of the financial condition of Physician and of all circumstances bearing on the risk of non-payment of any obligations and liabilities guaranteed by this Corporation Guarantee;

(j) any defense arising because of Hospital's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code; and

(k) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

**8. Continuing Guarantee.** This Corporation Guarantee shall remain in full force notwithstanding the appointment of a receiver to take possession of all or substantially all of Corporation's assets, or an assignment by Corporation for the benefit of creditors, or any action taken or suffered by Corporation under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief act or statute, whether now existing or later amended or enacted, or the disaffirmance of the Recruitment Agreement in any action or otherwise.

**9. Indemnity and Expenses.** Corporation agrees to indemnify Hospital from and against any and all claims, losses and liabilities arising out of or relating to the Corporation Guarantee (including enforcement of this Corporation Guarantee or any actions taken by Hospital pursuant to this Corporation Guarantee), except claims, losses or liabilities resulting from Hospital's own negligence or willful misconduct. Corporation will on demand pay to Hospital the amount of any and all reasonable costs and expenses, including the reasonable fees and disbursements of its legal counsel and of any experts or agents, which Hospital may incur in connection with the exercise or enforcement of this Corporation Guarantee, the Obligations, or in any action or proceeding arising out of, or relating to, this Corporation Guarantee.

**10. Authorization to File Financings Statement.** Corporation authorizes Hospital to prepare and file all financing statements (Form UCC-1), continuation statements (Form UCC-3), or other written statements or notices required in order to perfect, secure or maintain as perfected Hospital's security interest in the Collateral, without the signature of Corporation where permitted by law. Copies of all financing statements, continuation statements or other written statements or notices shall be promptly delivered to Corporation.

**11. Further Assurances.** Each Party shall perform any further acts and execute any further documents, including, without limitation, financing or continuation statements, or amendments thereto, and such other instruments, endorsements or notices as may be reasonably necessary or otherwise reasonably requested to perfect, secure or maintain as perfected Hospital's security interest in the Collateral or to carry out the provisions of this Corporation Guarantee.

**12. Amendments.** The terms and provisions of this Corporation Guarantee may not be waived, altered, modified, or amended except in a writing signed by Hospital and Corporation.

**13. Assignment.** If at any time or times by sale, assignment, negotiation, pledge or otherwise, Hospital transfers any of the Obligations, such transfer shall carry with it Hospital's rights and remedies under this Corporation Guarantee with respect to the transferred Obligations, and the transferee shall become vested with such rights and remedies whether or not they are

specifically referred to in the transfer. If and to the extent Hospital retains any other Obligations, Hospital shall continue to have those rights and remedies.

**14. Counterparts.** This Corporation Guarantee may be executed in any number of counterparts, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

**15. Definitions and Incorporation by Reference.** All terms used but not expressly defined in this Corporation Guarantee will have the same meaning as set forth in the Code. All terms, provisions and definitions of any loan agreements, guarantees or other credit arrangements between Corporation and Hospital or Physician and Hospital are incorporated in this Corporation Guarantee by reference as though set forth in full.

**16. Dispute Resolution.** All disputes, controversies, claims, questions, or disagreements arising out of or relating to this Corporation Guarantee, shall be litigated in any state or federal court having appropriate jurisdiction and located within the State, County of San Diego, California. Corporation, by the execution of this Corporation Guarantee, expressly consents to the jurisdiction of any such court, to venue therein and to the service of process in any such action or proceedings, as required by applicable law.

**17. Choice of Law.** This Corporation Guarantee shall be construed in accordance with and governed by the laws of the State, 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.

**18. Joint and Several Obligations.** If this Corporation Guarantee is signed, or if the obligations of Physician are otherwise guaranteed, by more than one party, their obligations shall be joint and several, and the release or limitation of liability of any one or more of the guarantors shall not release or limit the liability of any other guarantors.

**19. Representations.** Corporation represents and warrants that it is informed of the financial condition of Physician and all other circumstances which a diligent inquiry would reveal and which would bear upon the risk of non-payment or nonperformance of the Obligations. Corporation further agrees that it shall assume full responsibility for keeping itself informed with respect to Physician's financial condition and any other circumstances which might bear upon the risk of non-payment or non-performance of the Obligations.

**20. Review by Corporation's Legal Counsel.** CORPORATION ACKNOWLEDGES THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO CONSULT AN ATTORNEY. CORPORATION WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS CORPORATION GUARANTEE WITH ITS LEGAL COUNSEL OR VOLUNTARILY DECIDED NOT TO CONSULT WITH AN ATTORNEY REGARDING ITS RIGHTS UNDER THIS CORPORATION GUARANTEE AND THAT IT KNOWINGLY AND VOLUNTARILY CONSENTS TO THE TERMS, CONDITIONS AND WAIVERS OF THIS CORPORATION GUARANTEE.

**21. Severability.** If any provision, or the application of any provision, of this Corporation Guarantee is determined to be illegal, invalid or unenforceable, that provision shall

be severed from this Corporation Guarantee and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Corporation Guarantee.

22. **Subrogation.** Until the Obligations have been paid in full or forgiven: (a) Corporation shall not have any right of subrogation and waives all rights to enforce any remedy which Hospital may now have or hereafter have against Physician, and waives the benefit of, and all rights to participate in, any security now or hereafter held by Hospital from Physician; and (b) Corporation waives any claim, right or remedy which Corporation may now have or hereafter acquire against Physician that arises under this Corporation Guarantee and/or from Corporation's performance under this Corporation Guarantee, including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of Hospital against Physician, or any security which Hospital may now have or hereafter acquire, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

23. **Successors and Assigns.** This Corporation Guarantee shall be binding upon Corporation and Corporation's successors, assigns, and representatives and shall inure to the benefit of Hospital and Hospital's successors, assigns, and representatives.

Corporation has executed and delivered this Corporation Guarantee on \_\_\_\_\_,  
20\_\_.

**CORPORATION**

\_\_\_\_\_

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

Its: \_\_\_\_\_



Attachment A

**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 KASKA CORP., a California Corporation (“**Debtor**”), in and to the following property, whether now owned or later acquired or created: Corporation’s Accounts Receivable comprising the payments and rights to payment from all sources, for services furnished by Corporation and/or Physician, including, without limitation, all those which are not evidenced by instruments or chattel paper, and whether or not they have been earned by performance (the “**Collateral**”).

**Exhibit 5.3**  
**Code of Conduct**

1. I will perform my duties faithfully and to the best of my ability, and in the interest of PPH as it relates to services provided under this agreement.
2. I will not lie, cheat, steal, or violate any law in connection with my practice at any PPH facility.
3. I will not pay or arrange for PPH to pay any person or entity for the referral of patients to PPH, nor will I accept any payment or arrange for PPH to accept any payment for referrals from PPH.
4. I will not participate in any false billing of patients, government entities or any other party, nor will I participate in the preparation of any false cost reports, or other type of report submitted to the government.
5. I will not engage in any conduct or practice that conflicts with interest of PPH, as it relates to services provided under this agreement.
6. I will not use PPH's confidential or proprietary information gathered during my association with PPH for my own personal benefit.
7. I will not obtain any improper personal benefits by virtue of my practice at PPH facilities.
8. I will notify the compliance officer of PPH immediately upon the receipt (at work or home) of an inquiry, subpoena (other than for routine licensing or tax matters) or other agency or government request for information regarding PPH.
9. I will not destroy or alter information or documents in anticipation of or in response to, a request for documents by any applicable government agency or from a court of competent jurisdiction.
10. I will not engage in any business practice intended to unlawfully obtain favorable treatment or business from any government entity, physician, patient, vendor or any other party in a position to provide such treatment or business.
11. I will not accept any gift of more than nominal value, and hospitality or entertainment that because of its source or value might influence my independent judgment in transactions involving PPH.
12. I will not provide any gifts to any government or public agency representative as it relates to services provided under this agreement.
13. I will disclose any financial interest, ownership interest compensation arrangement or contractual relationship that I or a member of my immediate family has with a PPH vendor or competitor.
14. I will not disclose confidential medical information pertaining to PPH patients without the express written consent of the patient in accordance with HIP AA, other applicable law and PPH applicable policies or procedures.
15. I will promptly report all violations or suspected violations of this code by myself to the compliance officer of PPH.
16. I will not conspire with a competitor of PPH to illegally fix prices, labor cost, allocate markets, or

engage in group boycotts.