COUNTY OF LOS ANGELES

MARVIN J. SOUTHARD, D.S.W.
Director

SUSAN KERR
Chief Deputy Director

RODERICK SHANER, M.D.
Medical Director

550 SOUTH VERMONT AVENUE, LOS ANGELES, CALIFORNIA 90020

BOARD OF SUPERVISORS
GLORIA MOLINA
YVONNE B. BURKE
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

DEPARTMENT OF MENTAL HEALTH

http://dmh.lacounty.info

Reply To: (213) 738-4601
Fax: (213) 386-1297

October 6, 2005

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

22 OCT 18 2005

Violet Varona-Lukens
VIOLET VARONA-LUKENS
EXECUTIVE OFFICER

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

APPROVAL OF THE TERMINATION OF THE DEPARTMENT OF MENTAL HEALTH'S LEGAL ENTITY AGREEMENT WITH PASADENA CHILDREN'S TRAINING SOCIETY AND THE EFFECTUATION OF A MUTUALLY AGREED UPON MERGER BETWEEN PASADENA CHILDREN'S TRAINING SOCIETY AND HATHAWAY CHILDREN AND FAMILY SERVICES (SUPERVISORIAL DISTRICTS 1, 3, AND 5) (3 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the Director of Mental Health or his designee to effectuate a mutually agreed upon termination of the Department of Mental Health's (DMH) Legal Entity Agreement (LE Agreement) No. DMH-02347 with Pasadena Children's Training Society (The Sycamores), and effective upon the merger (the currently anticipated merger effective date is November 1, 2005), to implement a mutually agreed upon merger by and between The Sycamores and Hathaway Children and Family Services (Hathaway).

2. Approve and instruct the Director of Mental Health or his designee to prepare, sign, and execute an Amendment, substantially similar to Attachment I, to DMH's LE Agreement No. DMH-02314 with Hathaway whose name will be changed to Hathaway-Sycamores Child and Family Services (Hathaway-Sycamores). Effective upon the merger, but no sooner than November 1, 2005, this Amendment action will effectuate and implement the merger of Hathaway and The Sycamores, as requested by these entities in the Merger Agreement (see Attachment II) between Hathaway and The Sycamores, whereby The Sycamores will cease to exist as a separate entity and will be merged within Hathaway-Sycamores. The quantity and quality of services previously provided separately by The Sycamores will not be diminished, and Hathaway-Sycamores will assume

all past, present, and future financial responsibilities and obligations of The Sycamores. The Maximum Contract Amount (MCA) of Hathaway-Sycamores for Fiscal Year (FY) 2005-2006 will be revised from $11,241,097 to $19,521,162, to include an eight (8) months' pro-ration of The Sycamores' FY 2005-2006 MCA of $12,420,196, totaling $8,280,065.

3. Delegate authority to the Director of Mental Health or his designee to prepare, sign, and execute future amendments to the Agreement with Hathaway-Sycamores and establish as a new MCA the aggregate of all amendments provided that: 1) the County's total payments to the Contractor under the Agreement for each fiscal year shall not exceed an increase of 20 percent from the applicable MCA; 2) any such increase shall be used to provide additional services or to reflect program and/or policy changes; 3) the Board of Supervisors has appropriated sufficient funds for all changes; 4) approval of County Counsel and the Chief Administrative Officer or their designee is obtained prior to any such amendment; 5) the parties may, by written Amendment, mutually agree to reduce programs or services without reference to the 20 percent limitation; and 6) the Director of Mental Health shall notify the Board of Supervisors of Agreement changes in writing within 30 days after execution of each Amendment.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS

The purpose of the recommended actions is to accomplish the termination of The Sycamores' DMH LE Agreement No. DMH-02347 and upon the effective date of the merger, effectuate and implement the merger of Hathaway and The Sycamores into Hathaway's DMH LE Agreement No. DMH-02314, as requested by these entities, whereby The Sycamores will cease to exist as a separate entity and will be merged within the new entity, Hathaway-Sycamores. It is understood that the merger, as set forth herein, will not diminish the quantity and quality of services previously provided separately by The Sycamores, and that Hathaway-Sycamores will be fiscally responsible for all of The Sycamores' obligations, past, present, and future. In particular, and without in any way limiting the scope of the financial obligations assumed, Hathaway-Sycamores understands and agrees: (1) that it will be entirely responsible for any and all audit exceptions applied at any time against the previous entity, The Sycamores, through any of its agreements with County or any department thereof, whether assessed by Federal, State, or County audit(s); and (2) that these audit exceptions may arise and become payable before and after the effective date of the

merger and the cessation of existence of The Sycamores. The parties agree that all applicable review and dispute resolution procedures under the contract at issue shall apply.

Implementation of Strategic Plan Goals

The recommended Board actions are consistent with the principles of the County's Programmatic Goals No. 1, "Service Excellence" and No. 6, "Community Services" within the Strategic Plan. Board approval of these actions will allow for continuity of services currently provided by The Sycamores' Agreement.

FISCAL IMPACT/FINANCING

There is no increase in net County cost.

The merger will not change the allocated monies in the FY 2005-2006 Adopted Budget since Hathaway-Sycamores will assume The Sycamores' current contract with DMH, which for FY 2005-2006 will be pro-rated for eight (8) months of service.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Hathaway, through its current contract with DMH, provides mental health care for children, adolescents, and families in Supervisorial Districts 1, 3, and 5. Hathaway has provided mental health treatment services to the San Fernando Valley community since 1907. Services are delivered in and around the communities of Highland Park, Pacoima, and Lake View Terrace, respectively. Additionally, Hathaway operates a 98-bed Residential Care Level -12 (RCL-12) residential treatment program in Sylmar where mental health care is provided as an adjunct to the milieu. The agency's primary administrative site is located at 8955 Gold Creek Road, Sylmar, CA 91342. The program accepts referrals from DMH, Department of Children and Family Services (DCFS), Department of Public Social Services (DPSS), Probation Department, school districts, and other family service agencies.

The treatment components offered by Hathaway under the DMH contract include:

- outpatient services
- day rehabilitation
- therapeutic behavioral services (TBS)
- targeted case management
- medication support
- family preservation
- school-based services

The Sycamores, through its current contract with DMH, provides mental health care for children, adolescents, families, and adults in Supervisorial District 5. The agency has served the greater Pasadena area since 1902. Services are delivered in Altadena, Pasadena, and South Pasadena. Additionally, The Sycamores operates an 80-bed RCL-12/14 residential treatment program in Altadena. The agency's primary administrative site is located at 210 S. DeLacey Avenue, Suite 110, Pasadena, CA 91105. The program accepts referrals from the DMH, DCFS, DPSS, Probation Department, school districts, Wraparound, and other family service agencies.

The treatment components offered by The Sycamores under the DMH contract include:

- outpatient services
- TBS
- targeted case management
- medication support
- school-based services

The proposed merger of Hathaway and The Sycamores into Hathaway-Sycamores will result in administrative and service delivery efficiencies that will benefit the communities and clients currently being served by each agency as separate legal entities. Hathaway-Sycamores will be administratively headquartered at the site of The Sycamores current headquarters located at 210 S. DeLacey Avenue, Pasadena, CA 91105. The current Hathaway's headquarters at 8955 Gold Creek Road, Sylmar, CA 91342 will cease operations as an administrative headquarters but will continue solely as a residential and mental health services delivery site. The consolidation of administrative functions will include streamlining of tasks and elimination of redundant administrative positions that result from this proposed merger. This streamlining of administrative overhead and elimination of redundancy will result in a shift of available resources to increase service delivery capacity without additional net County cost. The merged agency expects to create service delivery capacity to provide mental health care to approximately 2,300 unduplicated clients annually. This represents an approximate 15 percent increase over FY 2003-2004, the last full fiscal year for which data is available.

Under the proposed merger, Hathaway-Sycamores will continue to deliver the same array of services at the Medi-Cal certified sites currently used by Hathaway and The Sycamores. The quantity and quality of services previously provided separately by The Sycamores will not be diminished. This will minimize any unintended consequences related to continuity of care for clients and service delivery staff.

The Amendment under the Contractor's new name, Hathaway-Sycamores, will be effective upon the merger, but no sooner than November 1, 2005 (the currently anticipated merger effective date), until June 30, 2006, and will be renewed for FYs 2006-2007, 2007-2008, and 2008-2009 in the contract renewal cycle. It is anticipated that the aforementioned administrative efficiencies and consolidation will be fully implemented in the renewal contract.

The Amendment has been approved as to form by County Counsel. In addition, the proposed actions have been approved by the Chief Administrative Office and County Counsel.

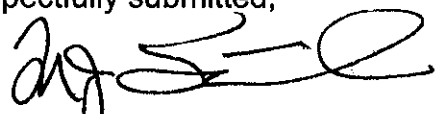
IMPACT ON CURRENT SERVICES

Under the merger of Hathaway and The Sycamores, Board approval of these actions will allow for a smooth transition in service provision, with The Sycamores' clients being able to continue to receive services at the same locations and from their same clinicians. It is anticipated that service levels and quality will be maintained so that there will be no negative impact on current services.

CONCLUSION

The Department of Mental Health will need one (1) copy of the adopted Board's action. It is requested that the Executive Officer of the Board notifies the Department of Mental Health's Contracts Development and Administration Division at (213) 738-4684 when this document is available.

Respectfully submitted,



Marvin J. Southard, D.S.W.
Director of Mental Health

MJS:RK:RK:aw

Attachments (2)

c: Chief Administrative Office
County Counsel
Chairperson, Mental Health Commission

Aw:Hathaway 10-06-05 BL

Attachment I

CONTRACT NO. DMH-02314

AMENDMENT NO. 2

THIS AMENDMENT is made and entered into this ___ day of _____, 2005 by and between the COUNTY OF LOS ANGELES (hereafter "County") and **Hathaway Children and Family Services** (hereafter "Contractor").

WHEREAS, County and Contractor have entered into a written Agreement, dated June 21, 2005, identified as County Agreement No. DMH-02314 (hereafter "Agreement"); and

WHEREAS, for Fiscal Year 2005-2006, County and Contractor intend to amend Agreement only as described hereunder; and

WHEREAS, effective upon the merger but no sooner than November 1, 2005 (the currently anticipated merger effective date), Pasadena Children's Training Society (The Sycamores) shall merge with Contractor under Contractor's new name, **Hathaway-Sycamores Child and Family Services**; and

WHEREAS, for Fiscal Year 2005-2006, County and Contractor intend to amend the Agreement to change the address of the Hathaway-Sycamores Child and Family Services administrative headquarters to **210 South DeLacey Avenue, Suite 110, Pasadena, CA 91105**; and

WHEREAS, for Fiscal Year 20025-2006, County and Contractor intend to amend the Agreement to add the following services: Case Management Support (Mode 60, SFC 60-69) at the provisional Cost Reimbursement rate of $76.00 to Provider Number TBA; and

WHEREAS, for Fiscal Year 2005 2006, County and Contractor intend to amend Agreement to add Mental Health Services (Mode 15, SFC 03, 04, 10, 12, 33, 34, 41, 42, 52, 54, 58, 61, 62 and 77 respectively) to the new service site located at **2933 N. El Nido Drive, Altadena, CA 91001, under a new Provider Number TBA**; and

WHEREAS, for Fiscal Year 2005 2006, County and Contractor intend to amend Agreement to add Mental Health Services (Mode 15, SFC 03, 04, 10, 12, 33, 34, 41, 42, 52, 58, 61, 62 and 77 respectively) to the new service site located at **851 N. Oakland Avenue, Pasadena, CA 91103, under a new Provider Number TBA**; and

WHEREAS, for Fiscal Year 2005 2006, County and Contractor intend to amend Agreement to add Mental Health Services (Mode 15, SFC 04, 10, 34, 42, 52, 58, 62 and 77 respectively) to the new service site located at **808 N. Los Robles, Pasadena, CA 91104, under a new Provider Number TBA**; and

WHEREAS, for Fiscal Year 2005 2006, County and Contractor intend to amend Agreement to add Mental Health Services (Mode 15, SFC 03, 04, 10, 12, 33, 34, 41, 42, 52, 54, 58, 61, 62 and 77 respectively), Outreach Services (Mode 45, SFC 10, 16, 20, 29, and 60 respectively), and Support Services (Mode 60, SFC 60) to the new service site located at **625 Fair Oaks Avenue, Suite 300, South Pasadena, CA 91103, under a new Provider Number TBA**; and

WHEREAS, for Fiscal Year 2005 2006, County and Contractor intend to amend Agreement to add Mental Health Services (Mode 15, SFC 03, 04, 10, 12, 33, 34, 41, 42, 52, 54, 61, 62 and 77 respectively) to the new service site located at **12510 Van Nuys Blvd., Pacoima, CA 91331, under a new Provider Number TBA**; and

WHEREAS, for Fiscal Year 2005-2006, County and Contractor intend to amend the Agreement to change the method of reimbursement from Negotiated Rate to Cost Reimbursement; and

WHEREAS, for Fiscal Year 2005-2006, County and Contractor intend to amend the Agreement to change the Cost Reimbursement provisional rates as follows: Mode 10, SFC 95-99 from **$89.63** to **$105.80**; Mode 15, SFC 01-09 from **$1.39** to **$1.38**; Mode 15, SFC 10-19 and 30-59 from **$1.85** to **$2.12**; Mode 15, SFC 58 from **$1.85** to **$2.12**; Mode 15, SFC 60-69 from **$3.32** to **$4.02**; Mode 15, SFC 70-79 from **$2.65** to **$3.01**; and

WHEREAS, for Fiscal Year 2005-2006, County and Contractor intend to amend Agreement to add the service delivery sites from The Sycamores' Service Delivery Site Exhibit to the Hathaway-Sycamores Child and Family Services' Service Delivery Sites; and

WHEREAS, for Fiscal Year 2005-2006, the Maximum Contract Amount (MCA) will be revised to $_____, which includes an eight (8) months pro-ration of The Sycamores' Fiscal Year 2005-2006 MCA that totals $_____; and

WHEREAS, for Fiscal Year 2005-2006, County and Contractor intend to amend Agreement to add additional contract language in reference to Paragraph 27, (DELEGATION AND ASSIGNMENT); and

WHEREAS, effective no sooner than November 1, 2005 (the currently anticipated merger effective date), the purpose of this Amendment shall be interpreted according to the following statement of purpose: It is intended to effectuate and implement the merger of Hathaway Children and Family Services and The Sycamores, as requested by these entities, whereby The Sycamores will cease to exist as a separate entity and will be merged within the new entity, Hathaway-Sycamores Child and Family Services. County consents to the merger with the understanding, as set forth herein, that the quantity and quality of services previously provided separately by The Sycamores will not be diminished and that the new entity will be fiscally responsible for all of The Sycamores' obligations, past, present, and future. In particular, and without in any way limiting the scope of the financial obligations assumed, Hathaway-Sycamores Child and Family Services understands and agrees: (1) that it will be entirely responsible for any and all audit exceptions applied at any time against the previous entity, The Sycamores, through any of its agreements with County or any department thereof, whether assessed by Federal, State, or County audit(s); and (2) that these audit exceptions may arise and become payable before and after the effective date of the merger and the cessation of existence of The Sycamores. The parties agree that all applicable review and dispute resolution procedures under the contract at issue shall apply.

NOW, THEREFORE, County and Contractor agree that Agreement shall be amended only as follows:

1. Paragraph 4 (FINANCIAL PROVISIONS), Subparagraph B (Reimbursement For Initial Period) shall be deleted in its entirety and the following substituted therefor:

"B. Reimbursement For Initial Period: The Maximum Contract Amount for the Initial Period of this Agreement as described in Paragraph 1 (TERM) shall not exceed _____ DOLLARS ($_____) and shall consist of County, State, and/or Federal funds as shown on the Financial Summary. This Maximum Contract Amount includes Cash Flow Advance which is repayable through cash and/or appropriate SFC units and/or actual and allowable costs as authorized by other provisions of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall County pay Contractor more than this Maximum Contract Amount for Contractor's performance hereunder during the Initial Period. Furthermore, Contractor shall inform County when up to 75 percent (75%) of the Maximum Contract Amount has been incurred. Contractor shall send such notice to those persons and addresses which are set forth in Paragraph 60 (NOTICES)."

2. Paragraph 4 (FINANCIAL PROVISIONS), Subparagraph K (Cash Flow Advance In Expectation Of Services/Activities To Be Rendered), Subsection (2) shall be deleted its entirety and the following substituted therefor:

"K. Cash Flow Advance In Expectation of Services/Activities To Be Rendered:

(2) A Contractor providing EPSDT Short-Doyle Medi-Cal services as part of this Agreement, may for two (2) additional consecutive months, or portion thereof, that this Agreement is in effect, request, separately for each month, in writing from County a monthly County General Fund Cash Flow Advance for any FFP and/or EPSDT-SGF funds designated for clients less

than 21 years of age which may be part of the Maximum Contract Amount for such fiscal year as shown on the Financial Summary Page. Contractor shall specify in their request the amount of the monthly Cash Flow Advance not to exceed $_____ per month for each of the two (2) additional consecutive months and the total Cash Flow Advance for the two (2) additional consecutive months shall not exceed $_____."

3. The following subparagraph shall be added to Paragraph 27, (DELEGATION AND ASSIGNMENT):

"27. Consistent with the "Agreement of Merger" between Contractor and The Sycamores, Contractor shall assume all past, present and future financial responsibilities and obligations of The Sycamores due to County arising under The Sycamores' Legal Entity Agreement No. **DMH-02347** and any prior Legal Entity Agreements, including those arising as a consequence of Cost Report Settlements, audit exceptions and other debts, in the same manner as if Contractor (Hathaway-Sycamores) had itself incurred them; and all rights of County on such aforementioned obligations and liabilities arising under such Legal Entity Agreements shall be preserved unimpaired."

4. Financial Summary – 1 for Fiscal Year 2005-2006 shall be deleted in its entirety and replaced with Financial Summary -2 for Fiscal Year 2005-2006, attached hereto and incorporated herein by reference. All references in Agreement to Financial Summary – 1 for Fiscal Year 2005-2006 shall be deemed amended to state "Financial Summary - 2 for Fiscal Year 2005-2006."

5. Service Delivery Site Exhibit shall be deleted in its entirety and replaced with Service Delivery Site Exhibit- 1, attached hereto and incorporated herein by listing reference.

6. Contractor shall provide services in accordance with the Contractor's Fiscal Year 2005-2006 Negotiation Package for this Agreement and any addenda thereto approved in writing by Director.

7. Except as provided in this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Amendment to be subscribed by County's Director of Mental Health or his designee, and Contractor has caused this Amendment to be subscribed in its behalf by its duly authorized officer, the day, month, and year first above written.

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL

By _____
Deputy County Counsel

COUNTY OF LOS ANGELES

By _____
MARVIN J. SOUTHARD, D.S.W.
Director of Mental Health

Hathaway-Sycamores Child and Family Services

By _____

Name _____

Title _____
(AFFIX CORPORATE SEAL HERE)

APPROVED AS TO CONTRACT ADMINISTRATION:

DEPARTMENT OF MENTAL HEALTH

By _____
Chief, Contracts Development
and Administration Division

aw: Hathaway Amend 2

AGREEMENT AND PLAN OF MERGER

This **AGREEMENT AND PLAN OF MERGER** (this "Agreement") is made as of August 5, 2005, by and between **Hathaway Children and Family Services**, a California nonprofit public benefit corporation ("Hathaway"), and **The Pasadena Children's Training Society, doing business as The Sycamores**, a California nonprofit public benefit corporation ("The Sycamores").

RECITALS

WHEREAS, Hathaway and The Sycamores have determined that a merger between their two organizations would result in a stronger organization that would better serve abused, mentally ill and troubled children and their families through innovative programs and services;

WHEREAS, the respective Boards of Trustees of Hathaway and Board of Directors of The Sycamores have each determined that the merger of The Sycamores with and into Hathaway is in their respective best interests and have each approved the Merger (as defined below) and this Agreement;

WHEREAS, it is agreed that the assets, properties, rights, privileges, and interests of The Sycamores shall be transferred to the Surviving Corporation (as defined below) in the Merger on or before the Effective Date (as defined below) pursuant to the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, The Sycamores and Hathaway agree as follows:

1. DEFINITIONS

1.1 **Definitions.** As used herein, the following terms have the respective meanings set forth below or in the section of the Agreement following such term:

"Agreement" has the meaning set forth in the Preamble.

"Assumed Employees" has the meaning set forth in Section 4.4(a).

"Closing" has the meaning set forth in Section 2.2(b).

"Closing Date" has the meaning set forth in Section 2.2(b).

"Code" has the meaning set forth in Section 3.5(c).

"Company Employee Benefit Plan" has the meaning set forth in Section 3.17(a).

"Contract" means any written or oral agreement, arrangement, bond, binding understanding, commitment, contract, grant, franchise, indemnity, indenture, mortgage, deed of trust, instrument, insurance policy, lease, license, permit, note, option, purchase order, subcontract, sublicense, undertaking or warranty of any nature, including all amendments,

modifications, assignments or instruments of any kind or character related thereto, but shall not include any Employee Benefit Plan.

"Disclosure Schedules" has the meaning set forth in Section 3.

"Effective Date" has the meaning set forth in Section 2.3.

"Employee" shall mean any current or former employee, consultant, independent contractor or director of either Hathaway or The Sycamores (excluding consultants and independent contractors that are not individuals).

"Employee Benefit Plan" has the meaning set forth in Section 3.17(a).

"Encumbrance" has the meaning set forth in Section 3.3(d).

"Environmental Claim" means any notice of violation, claim, action, suit, proceeding, demand, abatement order or other similar order or directive (conditional or otherwise), by any Governmental Authority, arising pursuant to or in connection with any actual or alleged violation of any Environmental Law.

"Environmental Condition" means, with respect to a Party, the presence of any Hazardous Materials in, on, under or about such Party's Real Property, or any other location related to such Party's Real Property or the operation of such Party's business of (i) which, if the presence of such Hazardous Material was known, would be reportable under any Environmental Law, or which could reasonably be anticipated to require investigation or remediation pursuant to any Environmental Law or (ii) which could reasonably be anticipated to result in injury to human health or the environment.

"Environmental Laws" means all federal, state, local and foreign Legal Requirements relating to pollution of the environment (including ambient air, surface water, ground water, land surface or subsurface strata) or the protection of human health and worker safety, including, without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Materials, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

"ERISA" means the Employee Retirement Security Act of 1974, as amended.

"ERISA Affiliate" means, with respect to any Person, (a) any corporation which is a member of a controlled group of corporations, within the meaning of Section 414(b) of the Code, of which that Person is a member, (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control, within the meaning of Section 414(c) of the Code, of which that Person is a member, and (c) any member of an affiliated service group, within the meaning of Section 414(m) and (o) of the Code, of which that person or any Person described in clause (a) or (b) above is a member.

"Form 990" has the meaning set forth in Section 3.5(c).

"GAAP" means generally accepted accounting principles in the United States.

"Governmental Authority" means any of the following: (a) any nation or any state, commonwealth, territory, or possession of any nation and any political subdivision thereof (including, without limitation, counties, cities, and other municipalities) and (b) any agency, authority, body, or instrumentality of any of the foregoing, including, without limitation, any court, tribunal, department, bureau, commission, or board.

"Hathaway" has the meaning set forth in the Preamble.

"Hazardous Materials" means chemicals, pollutants, contaminants, wastes, toxic substances, radioactive and biological materials, asbestos-containing materials, hazardous substances, petroleum and petroleum products or any fraction thereof, excluding, however, Hazardous Materials contained in products typically used for office and janitorial purposes properly and safely maintained in accordance with Environmental Laws.

"Indemnified Officer or Director" has the meaning set forth in Section 7.2.

"Intellectual Property" means United States and foreign rights in all (a) copyrights and copyrightable works and neighboring rights; (b) trademarks, service marks, trade dress, trade names, corporate names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing), URLs and Internet domain names, together with all goodwill associated with each of the foregoing; (c) letters patent, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice), including, but not limited to, any disclosures, reissues, continuations, continuations-in-part, divisions, revisions, extensions or reexaminations thereof; (d) registrations, applications and renewals of any of the foregoing; (e) trade secrets; (f) know-how; (g) the likeness, name, signature, voice or other personal characteristics of any Person; and (h) other intellectual property or industrial property rights throughout the universe and arising or recognized under the laws of any nation or other jurisdiction or by virtue of any international or bilateral conventions or treaties.

"IRS" has the meaning set forth in Section 3.5(c).

"Knowledge" means the actual knowledge after an inquiry reasonable under the circumstances of, (a) with respect to Hathaway, William Hiatt, Charles Lorello and Lyn Munro, or (b) with respect to The Sycamores, William Martone, Kathleen Clayton and Debra Manners.

"Legal Requirement" means any statute, ordinance, code, law, rule, regulation, order, writ, injunction, decree or other requirement, standard, or procedure enacted, adopted, or applied by any Governmental Authority, including judicial decisions applying common law or interpreting any other Legal Requirement.

"Material Adverse Effect" means, with respect to a Party, any change or effect that is, or would be reasonably expected to be, individually or in the aggregate, materially adverse to such Party's condition (financial or otherwise), liabilities, assets, properties, business, operations, or prospects, or upon its ability to consummate the Merger or perform its obligations hereunder, each in accordance with this Agreement

"Material Contract" means, with respect to a Party, any Contract to which such Party is a party or by which it is bound: (a) with an unexpired term of more than six (6) months and that

may involve amounts in excess of $25,000 in any year, upon which it is substantially dependent, or that involves payments (or a series of payments) to or by it of $10,000 or more individually or $50,000 or more in the aggregate, in cash, property or services, including but not limited to donation agreements and purchase orders, or which is otherwise material to it; (b) that is outside of its ordinary course of business or is with a Governmental Authority; (c) that limits or restricts its ability to compete or otherwise conduct its business in any manner or place, or that contains any exclusivity provision; (d) that grants a power of attorney, agency or similar authority to another Person; (e) that relates to indebtedness for money borrowed, provides for an extension of credit, provides for indemnification or any guaranty; (f) that relates to the disposition or acquisition by it of a material amount of assets or properties (including, without limitation, Intellectual Property); (g) that is a lease on real or material personal property, a use or occupancy agreement or a license of material Intellectual Property; or (h) that settled any dispute, claim, proceeding, investigation, litigation or arbitration by or against any Person.

"Merger" has the meaning set forth in Section 2.1.

"Most Recent Fiscal Year" means: (a) with respect to Hathaway, December 31, 2004; and (b) with respect to The Sycamores, June 30, 2004.

"Nonprofit Corporation Law" means the California Corporations Code Section 5002 et seq.

"Party" means each of Hathaway and The Sycamores.

"Permit" means, with respect to a Party, any authorization, license, permit, certificate, approval or clearance with any Governmental Authority required by applicable Legal Requirement for the operation of such Party's business.

"Person" means an individual, sole proprietorship, partnership, corporation, limited liability company, trust, joint venture, unincorporated organization, firm or other enterprise or entity or a Governmental Authority.

"Prior Fiscal Year" means: (a) with respect to Hathaway, December 31, 2003; and (b) with respect to The Sycamores, June 30, 2003.

"Real Property" means, with respect to a Party, such Party's owned or leased real property and any improvements thereon.

"Relative" means a Person's parents, current spouse, parents-in-law, children, siblings and grandchildren, whether in any case by birth, adoption or by marriage.

"Short-Form Merger Agreement" has the meaning set forth in Section 2.2(b)(ii).

"Surviving Corporation" means from and after the Effective Date, Hathaway as the surviving corporation in the Merger.

"Surviving Corporation Employee Benefit Plans" has the meaning set forth in Section 4.4(e).

"The Sycamores" has the meaning set forth in the Preamble.

2. MERGER TERMS AND CONDITIONS

2.1 **Merger; Surviving Corporation**. On the Effective Date, The Sycamores will be merged with and into Hathaway, with Hathaway continuing as the Surviving Corporation (the "Merger"). The Merger shall occur pursuant to the provisions of, and with the effect provided pursuant to, the Nonprofit Corporation Law.

2.2 **Effect of Merger; Closing.**

(a) In accordance with Section 6020 of the Nonprofit Corporation Law, on the Effective Date, the separate corporate existence of The Sycamores shall cease, and the Merger will have all of the effects provided by applicable law. The corporate identity, existence, purposes, powers, rights, obligations, privileges, immunities, assets, properties, franchises and interests of The Sycamores, including without limitation all obligations with respect to the employees of The Sycamores, shall be merged with and vested in the Surviving Corporation and, except as otherwise expressly provided by this Agreement, the corporate identity, existence, purposes, powers, rights, obligations, privileges, immunities, assets, properties, franchises and interests of the Surviving Corporation shall continue unaffected and unimpaired by the Merger.

(b) The closing of the Merger (the "Closing") will take place at a date, time and location to be specified by the Parties, which date will be no later than the fifth business day after the satisfaction or waiver of the conditions set forth in Section 5, or at such other date, time and location as the parties hereto agree (the "Closing Date"). To effect the Merger:

(i) as of the date of this Agreement, and in any event no later than thirty (30) days prior to the Closing Date, The Sycamores shall file with the Franchise Tax Board of the State of California a request for tax clearance on Form 3555(a), and on or prior to the Closing Date such certificate of satisfaction of the Franchise Tax Board shall be filed with the Secretary of State of California;

(ii) on the Closing Date, officers of each of Hathaway and The Sycamores will execute and deliver a Certificate of Approval of Agreement and Plan of Merger substantially in the form attached hereto as Exhibit A and a short-form agreement of merger substantially in the form attached hereto as Exhibit B (the "Short-Form Merger Agreement"); and

(iii) as soon as practicable on or after the Closing Date, the Surviving Corporation shall file or cause to be filed with the Secretary of State of the State of California (A) an executed copy of this Agreement or the Short-Form Merger Agreement and (B) Certificates of Approval of Agreement and Plan of Merger executed by the officers of each of Hathaway and The Sycamores.

2.3 **Effective Date**. The Merger shall be effective upon the filing of a fully executed copy of this Agreement or the Short-Form Merger Agreement with the Secretary of State of California by the Surviving Corporation pursuant to Section 6014 of the Nonprofit Corporation Law (the "Effective Date").

2.4 **Articles of Incorporation**. The Articles of Incorporation of Hathaway as in effect immediately prior to the Effective Date shall remain the Articles of Incorporation of the Surviving Corporation on and after the Effective Date, except that such Articles of Incorporation shall be amended and restated in their entirety to read substantially as set forth on Exhibit C hereto.

2.5 **Bylaws**. The Bylaws of Hathaway as in effect immediately prior to the Effective Date shall remain the Bylaws of the Surviving Corporation on and after the Effective Date, except that such Bylaws shall be amended and restated in their entirety to read substantially as set forth on Exhibit D hereto.

2.6 **Directors**. The trustees of Hathaway and the directors of The Sycamores immediately prior to the Effective Date shall be the directors of the Surviving Corporation from and after the Effective Date until changed in accordance with applicable law and the Surviving Corporation's Articles of Incorporation and Bylaws. Such initial directors are set forth on Schedule 2.6 to this Agreement, subject to any resignations of the trustees of Hathaway or the directors of The Sycamores between the date hereof and the Effective Date.

2.7 **Officers**. The initial officers of the Surviving Corporation shall be as set forth on Schedule 2.7 to this Agreement.

2.8 **Investment Policy**. The investment policy of Sycamores as in effect immediately prior to the Effective Date shall be the investment policy of the Surviving Corporation from and after the Effective Date until changed in accordance with the Surviving Corporation's Articles of Incorporation and Bylaws.

2.9 **Further Actions**. From and after the Effective Date, the officers and directors of the Surviving Corporation and the officers and directors or trustees, respectively, of each of Hathaway and The Sycamores immediately prior to the Effective Date shall take all action as shall be required in connection with the Merger, including, without limitation, the execution and delivery of any deeds, conveyances, assignments, instruments, and documents of every nature which are necessary or desirable to carry out the provisions of this Agreement.

2.10 **Program Administration and Operation**. From the date hereof until the Effective Date, the program administrators of Hathaway and The Sycamores shall be as set forth on Schedule 2.10(a). From and after the Effective Date, the initial program administrators of the Surviving Corporation shall be as set forth on Schedule 2.10(b) of this Agreement.

3. REPRESENTATIONS AND WARRANTIES

Subject to the exceptions and qualifications set forth in such Party's disclosure schedule (with respect to such Party, such Party's "Disclosure Schedules") attached hereto, each Party represents to the other Party as follows:

3.1 **Organization**. It is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, and has all necessary corporate powers to own and use its properties and to operate its business as now owned, used, and operated by it. It has no subsidiaries or any equity or ownership interest, whether direct or

indirect, in any Person. Its Articles of Incorporation irrevocably dedicates its assets and properties to a charitable purpose as required by Section 6010 of the Nonprofit Corporation Law.

3.2 **Authority**. It has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the Merger. The execution and delivery of this Agreement by it, the performance of its obligations hereunder, and the consummation of the Merger, have been duly and validly authorized by all necessary corporate action on the part of it. It has duly executed and delivered this Agreement, and this Agreement is a legal, valid, and binding obligation of it, enforceable against it in accordance with its terms, assuming the due authorization, execution and delivery of the other Party and except as such enforceability may be limited by principles of public policy, and subject to (a) the effect of any applicable Legal Requirement of general application relating to bankruptcy, reorganization, insolvency, moratorium or similar Legal Requirements affecting creditors' rights and relief of debtors generally and (b) the effect of rules of law and general principles of equity, including rules of law and general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law). It has no outstanding stock, shareholders, or "members" within the meaning of Section 5056 of the Nonprofit Corporation Law.

3.3 **No Violation**. Its execution and delivery of this Agreement, its performance of its obligations hereunder, and the consummation of the Merger contemplated hereby, do not and will not result in or constitute any of the following:

(a) a default or an event that, with notice or lapse of time or both, would contravene or constitute a violation of its Articles of Incorporation or Bylaws;

(b) a material violation of any Legal Requirement applicable to it;

(c) an event that, with notice or lapse of time or both, would (i) contravene or constitute a default under, or breach or violation of, any Contract or Employee Benefit Plan to which it is a party or by which either it or any of its assets or properties are bound, or (ii) permit any Person to (A) terminate, suspend, or modify any Contract to which it is a party or by which either it or any of its assets or properties are bound, or (B) accelerate the maturity of any indebtedness or other obligation or result in the payment of any penalty or fine; or

(d) the creation or imposition of any mortgage, lien, pledge, charge, claim, easement, right, interest or other encumbrance (collectively "Encumbrance") on any of its assets or properties;

which, in the case of clauses (c) and (d), would reasonably be expected to have a Material Adverse Effect on it.

3.4 **Material Contracts**. Its Material Contracts are listed in Section 3.4 of its Disclosure Schedules. All of its Material Contracts are valid and in full force, and neither it nor, to its Knowledge, any other party to any of such Material Contracts is, or with notice or lapse of time or both would be, in default, violation or breach of its obligations thereunder. It has no Contracts with (i) any of its officers, directors, trustees or employees; (ii) any Relative of any of its officers, directors, trustees or employees; or (iii) any Person controlled by or for the benefit of

such officers, directors, trustees or employees or their Relatives. None of its Contracts restricts or limits in any way the use of funds.

3.5 **Consents.** It is not and shall not be required to obtain any approval, permit, order, authorization, or consent from, or make any filing with, any Person in connection with the execution and delivery of this Agreement, performance of its obligations hereunder or consummation of the Merger, except for:

(a) such filings with the Attorney General of the State of California as required by Sections 6010(a) and (b) of the Nonprofit Corporation Law;

(b) such clearance from the Franchise Tax Board as required by Section 6014 of the Nonprofit Corporation Law;

(c) any filing with the Internal Revenue Service ("IRS") as required by the United States Internal Revenue Code of 1986, as amended (the "Code"), including filing its final IRS Return of Organization Exempt from Income Tax, Form 990 disclosing this Agreement ("Form 990"), on or before the 15th day of the fifth month following the Effective Date.

3.6 **Financial Statements.** Its balance sheet as of its Most Recent Fiscal Year, together with the related statement of income for the year ending on its Most Recent Fiscal Year, and its audited balance sheet as of its Prior Fiscal Year, together with the related audited statement of income for the year ended its Prior Fiscal Year, each audited by its independent certified public accountants, are prepared in accordance with GAAP and fairly represent the financial position and results of operations of it as of and for the dates and periods shown thereon. It has no debt, liability, or obligation of any nature, whether accrued, absolute, contingent or otherwise, and whether due or to become due, that is not reflected or reserved against it in its balance sheet as of its Most Recent Fiscal Year, except for:

(a) liabilities incurred since its Most Recent Fiscal Year in the ordinary course of business consistent with prior practice;

(b) future performance obligations associated with its Material Contracts; and

(c) liabilities (other than those described in clauses (a) and (b) of this Section 3.6) that do not exceed $50,000 individually or in the aggregate.

Without limiting the foregoing, since its Most Recent Fiscal Year, it has not incurred any additional indebtedness for borrowed money.

3.7 **Absence of Certain Changes.** Since its Most Recent Fiscal Year, there has not been any:

(a) transaction by it except in the ordinary course of business consistent with past practice;

(b) any material destruction, damage to, or loss of any of its material assets or properties (whether or not covered by insurance);

(c) increase in the salary, benefits under any Employee Benefit Plan, or other compensation payable or to become payable by it to any of its officers, directors or employees, or the declaration, payment, commitment or obligation of any kind for the payment by it of a bonus or other additional salary or compensation to any such person, except, in each case, for salary, benefit and/or compensation increases (i) in the ordinary course of business consistent with past practice, (ii) pursuant to Legal Requirements or an Employee Benefit Plan disclosed on Section 3.17(a) of its Disclosure Schedules, or (iii) as set forth on Section 3.7(c) of its Disclosure Schedules;

(d) change in its accounting methods or practices;

(e) amendment or termination of any of its Material Contracts (other than expiration pursuant to the terms thereof);

(f) loan by it to any Person, or guaranty by it of any loan;

(g) Encumbrance of any of its assets or properties;

(h) waiver or release of any of its material rights or claims;

(i) loss of its tax-exempt status or challenge of its tax exempt status, failure to pay withholding taxes for its employees, loss of any material license, or any adverse notice or information concerning its material funding sources;

(j) event or condition of any character that has or would reasonably be expected to have a Material Adverse Effect on it; or

(k) agreement by it to do any of the things described in the preceding clauses (a) through (j).

3.8 **Taxes.**

(a) Within the time and in the manner prescribed by law, with respect to years ended on or after December 31, 2000, it has filed all federal, state, and local tax returns required by law and has paid all taxes, assessments, and penalties, if any, due and payable. The provisions for taxes reflected in its audited balance sheet as of its Most Recent Fiscal Year are adequate for any and all federal, state, county, and local taxes for the period ending on the date of that balance sheet and for all prior periods, whether or not disputed. There are no present disputes as to taxes of any nature payable by it.

(b) It is exempt from federal income tax as an organization qualifying under Section 501(c)(3) of the Code that is not treated as a private foundation under Section 509(a)(2) of the Code, and has taken all necessary steps to maintain such status. Since its Most Recent Fiscal Year, it has not engaged in any activity that would cause it to incur any unrelated business taxable income within the meaning of the Code.

3.9 **Intellectual Property**. It owns or holds adequate licenses and other rights to use all Intellectual Property used in its business as now conducted and its use of such Intellectual

Property does not infringe upon the rights of any Person. Its books and records contain a complete and accurate description of all such Intellectual Property owned or used by it. The Intellectual Property reflected in those books and records constitutes all such Intellectual Property necessary for its business as now conducted. All Intellectual Property owned by it as used in the business is valid, subsisting and free and clear of all Encumbrances (including source code escrow arrangements), adverse claims, conditions or other restrictions or any requirements of any past or present royalty payments. All Intellectual Property developed by it was developed and created solely and exclusively by its employees in their capacities as its employees without the assistance of any third party or entity or were created by third parties, who in each case assigned ownership of their rights and, where appropriate, waived moral rights, to it in valid and enforceable work for hire, confidentiality and invention assignment agreements or acknowledgments. It has not granted any options, licenses, assignments, Encumbrances or agreements of any kind relating to (i) ownership of rights in Intellectual Property owned by it or (ii) the marketing, distribution or other exploitation of Intellectual Property owned by it. It is not bound by or a party to any options, licenses or agreements of any kind relating to the Intellectual Property of any other Person. Its business as currently conducted does not violate or infringe the Intellectual Property of any other Person. It has not entered into any agreement to indemnify any other Person against any charge of infringement of any third-party Intellectual Property.

3.10 **Books and Records**. All of its books, records, documents, Contracts and accounts accurately present and reflect all of its material transactions. Its books and records contain a complete and accurate description of all tangible personal property owned or used by, or in the possession of, it in connection with its business. The tangible personal property reflected in those books and records constitutes all such tangible personal property necessary for its business as now conducted. Its minute books that have been made available to the other Party accurately reflect all actions taken and proceedings conducted to date by its board of trustees or board of directors, respectively, and any of its committees, and such minute books contain true, correct, and complete copies of its charter documents and all related amendments.

3.11 **Insurance**. It has maintained at all times during the past three years and currently maintains commercially reasonable insurance protection, including, without limitation, directors' and officers' insurance, against all claims, liabilities and risks normally insured against by companies in similar lines of business (covering its assets, properties, business, operations, and employees). Section 3.11 of its Disclosure Schedules lists its insurance policies and all claims under any insurance policies made within the last three years. All of the insurance policies listed on Section 3.11 of its Disclosure Schedules are in full force and effect. It is not in default under any policy listed on Section 3.11 of its Disclosure Schedule. It has timely filed claims with its insurers with respect to all material matters and occurrences for which it has coverage.

3.12 **Compliance with Law; Permits.**

(a) It is not in material violation of any Legal Requirement applicable to it.

(b) It has not received any written notice from any Governmental Authority to the effect that it is not in compliance with any Legal Requirement. It has made available to the other Party copies of all communications and notices sent to or received from any Governmental Authority since January 1, 2003.

(c) Section 3.12(c) of its Disclosure Schedule sets forth a list of all Permits held by it. It has all material Permits required to permit it to operate its business. All of the Permits held by or issued to it are in full force and effect, and it is in material compliance with each such Permit.

3.13 **Litigation**. There is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or, to its Knowledge, threatened against or affecting it, its condition (financial or otherwise), assets, properties, business, operations or prospects. It is not subject to any order, writ, injunction, or decree of any federal, state, local, or foreign court, department, agency, or instrumentality. It is not presently engaged in any legal action to recover monies due or damages sustained by it.

3.14 **Real Property**. All of its Real Property is set forth on Section 3.14 of its Disclosure Schedules. It has good title to all its assets and properties, free and clear of restrictions or conditions to transfer or assignment, and free and clear of Encumbrances, covenants, conditions, or restrictions other than those Encumbrances, covenants, conditions, or restrictions that could not reasonably be expected to, in the aggregate, be material to its condition (financial or otherwise), liabilities, assets, properties, business, operations or prospects. No officers, directors or employees of it, or Relative of any of such officer, director or employee, has any direct or indirect interest in any of the real or personal property owned, leased or licensed to it.

3.15 **Environmental Laws**. Its business is being conducted in compliance with all current applicable Environmental Laws, except for violations of Environmental Laws that would not reasonably be expected to have a Material Adverse Effect on it. To its Knowledge, there are no (i) Environmental Conditions or (ii) other occurrences at its Real Property, or any other location related to the operation of its business, which could reasonably be expected to form the basis of an Environmental Claim, or cause an injury to human health or the environment that would reasonably be expected to have a Material Adverse Effect on it. There is no pending or, to its Knowledge, threatened investigation, inquiry or other proceeding against it by any Governmental Authority with respect to its Real Property or its business and relating to any actual or alleged Environmental Condition or failure to comply with any applicable Environmental Law that would reasonably be expected to have a Material Adverse Effect on it.

3.16 **Employees**. Section 3.16 of its Disclosure Schedules contains a complete and accurate list of the following information for each of its current employees, including each employee on leave of absence or layoff status: employer; name; job title; current compensation paid or payable and any change in compensation since December 31, 2004; accrued vacation and other paid time off; and service credited for purposes of vesting and eligibility to participate under any Employee Benefit Plan. To its Knowledge, none of its current Employees is a party to, or is otherwise bound by, any agreement between such Employee and any other Person that has or could in any way adversely affect (i) the performance of such Employee's duties to it, or (ii) the ability of it to conduct its business. To its Knowledge, none of its officers or other key employees intends to terminate his employment.

3.17 **Employee Benefit Plans.**

(a) ***Employee Benefit Plans.*** Section 3.17(a) of its Disclosure Schedules sets forth a list of all cash, equity, incentive and/or deferred compensation, employment or consultant, severance pay, termination, pension, profit-sharing, retirement, insurance, welfare benefit (including any post-termination and post-retirement welfare benefits) or other material fringe benefit plans, arrangements, practices or policies, including without limitation any "employee benefit plans," as defined in Section 3(3) of ERISA but excluding any independent contractor agreement entered into with an entity (the "Employee Benefit Plans"), under which it or any ERISA Affiliate has or may have any liability, whether fixed or contingent (with respect to each Party, respectively, the "Company Employee Benefit Plans").

(b) ***Disclosure.*** It has made available to the other party (i) correct and complete copies of all documents embodying each Company Employee Benefit Plan including all amendments thereto and all related trust documents, (ii) the three most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Company Employee Benefit Plan, (iii) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA with respect to each Company Employee Benefit Plan, (iv) all material written agreements and contracts relating to each Company Employee Benefit Plan, including administrative service agreements and group insurance contracts, (v) all communications material to any of its Employees relating to any Company Employee Benefit Plan and any proposed Company Employee Benefit Plan, if any, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting schedules or other events which would result in any material liability to it, (vi) all material correspondence, if any, to or from any governmental agency relating to any Company Employee Benefit Plan, and (viii) the most recent IRS determination letter issued with respect to each Company Employee Benefit Plan to the extent applicable.

(c) ***Certain Plans.*** It has never maintained, established, sponsored, participated in, or contributed to, and it has no liability, whether contingent or fixed, under any (i) "multiemployer plan," as defined in Section 3(37) of ERISA, (ii) funded welfare benefit plan, as defined in Section 419 of the Code, (iii) multiple employer plan or other plan described in Section 413 of the Code, or (iv) "defined benefit plan," as defined in Section 3(35) of ERISA.

(d) ***Company Employee Benefit Plan Operation.*** Each of its Company Employee Benefit Plans has, at all times, in form, operation and administration, been maintained in all material respects in accordance with its terms, and, where applicable, the requirements of the Code, ERISA and all other applicable laws. It has timely made all contributions and other payments required by and due under the terms of each of its Company Employee Benefit Plans or applicable law.

(e) ***Qualified Plans.*** Each Company Employee Benefit Plan which is intended to be "qualified" within the meaning of Section 401(a) or Section 403 of the Code has been determined by the IRS to be so qualified and, to its Knowledge, nothing has occurred which reasonably could be expected to adversely affect such qualified status. To its Knowledge, no "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 and

407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Company Employee Benefit Plan.

(f) ***Proceedings***. With respect to each Company Employee Benefit Plan: (i) no filing, application, audit, inquiry, proceeding or other matter is pending with the IRS, the Pension Benefit Guaranty Corporation, the United States Department of Labor or any other governmental body, (ii) there is no action, suit or claim pending (nor, to its Knowledge, any basis for such a claim), other than routine claims for benefits, and (iii) there are no outstanding liabilities for taxes, penalties or fees, other than any such taxes or fees arising in the ordinary course of business.

(g) ***Post-Termination Benefits***. No Company Employee Benefit Plan provides post-termination or retiree life insurance, health or other employee welfare benefits to any person for any reason, except as may be required by COBRA or other applicable law, and it has never represented, promised or contracted (whether in oral or written form) to any of its Employees or any other Person that such individual(s) or other Person(s) would be provided with post-termination or retiree life insurance, health or other employee welfare benefits, except to the extent required by applicable law.

(h) ***Effects of Transaction***. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, whether considered alone or together with (i) any Company Employee Benefit Plan or other agreement or arrangement, or (ii) any termination of employment or service in connection with any of the foregoing, could reasonably be expected to (A) result in any payment (including severance, golden parachute, retention payment, bonus or otherwise), becoming due to any Employee, or in the funding of any such payment, (B) result in any forgiveness of indebtedness, (C) materially increase any benefits otherwise payable by it, (D) result in the acceleration of the time of payment or vesting of any such benefits, except as required under Section 411(d)(3) of the Code, or (E) give rise to the payment of any amount that would be characterized as a "parachute payment" within the meaning of Section 280G(b)(2) of the Code. There is no agreement, plan, arrangement or other contract by which it is bound to compensate any Employee for excise taxes paid pursuant to Section 4999 of the Code.

(i) ***Labor***. No work stoppage, slowdown, lockout or labor strike against it is pending, or to its Knowledge threatened nor has there been any such occurrence for the past three years. It has no Knowledge of any activities or proceedings of any labor union to organize any of its Employees. There are no material actions, suits, claims, labor disputes or grievances pending or, to its Knowledge, threatened relating to any labor matters involving any Employee, including charges of unfair labor practices. It is not presently, nor has it been during the past three years, a party to, or bound by, any collective bargaining agreement or union contract with respect to Employees and no collective bargaining agreement is being negotiated by it with respect to any Employees.

4. OBLIGATIONS OF THE PARTIES

4.1 **Obligations**. Each Party covenants that:

(a) From the date of this Agreement until the Effective Date, the other Party and their counsel, accountants, and other representatives shall have reasonable access during normal business hours to all of its assets, properties, books, accounts, records, employees, Contracts, donors, documents and other information of or relating to it. It shall furnish or cause to be furnished to the other Party and their representatives all information concerning its condition (financial or otherwise), liabilities, assets, properties, business, operations and prospects that the other Party may reasonably request.

(b) From the date of this Agreement until the Effective Date, it will carry on its business and activities diligently and in substantially the same manner as they previously have been carried out. Except as specifically permitted in writing by the other Party, permitted or required by this Agreement or required by any Legal Requirement, it shall (i) operate its business in the ordinary course consistent with past practices; (ii) maintain and keep all of its business books, records, accounts, files, records, contracts and other documents and information in the ordinary course of business consistent with past practices; (iii) (A) not hire any new or additional officers, and (B) not hire any new employees or change the terms of employment for any current officers, directors or employees so as to materially increase any such person's compensation or benefits, in each case, other than in the ordinary course of business and consistent with past practice; (iv) not change, amend or otherwise modify any Employee Benefit Plan except as may be required by law; (v) not incur any material liability; and (vi) not take or omit to take any action that would cause it to be in breach of any of its representations or warranties in this Agreement.

(c) From the date of this Agreement until the Effective Date, it will use its reasonable best efforts to preserve its business organization, insurance coverage, its Material Contracts and its present relationships with Employees, suppliers, customers, contributors, donors, clients, and others having business relationships with it.

(d) From the date of this Agreement until the Effective Date, it will use commercially reasonable efforts to obtain (i) the approval, authorization, or consent of all Persons from whom such approval, authorization, or consent is required to consummate the Merger contemplated by this Agreement or otherwise pertaining to the matters covered by it and (ii) the consent of all material contributors to the change in beneficiary of any funds held in trust.

(e) Between the date of this Agreement and the Closing Date, it shall promptly notify the other Party in writing if it becomes aware of (i) any fact or condition that causes or constitutes a breach of any of its representations and warranties made as of the date of this Agreement or (ii) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or its discovery of, such fact or condition. Should any such fact or condition require any change to its Disclosure Schedules, it shall promptly deliver to the other Party a supplement to its Disclosure Schedules specifying such change. Such

notification or delivery shall not affect any rights of the other Party under this Agreement. During the same period, it also shall promptly notify the other Party of the occurrence of any breach of any covenant of it in this Section 4.1 or of the occurrence of any event that may make the satisfaction of the conditions in Section 5 impossible or unlikely.

(f) From and after the date of this Agreement until the Effective Date, it will use its best efforts to maintain its status of being exempt from federal income tax as an organization qualifying under Section 501(c)(3) of the Code.

(g) As soon as practicable after the date hereof and prior to the Effective Date, representatives from each of the Hathaways and The Sycamores shall review the Employee Benefit Plans of each of Hathaway and The Sycamores and agree what the Employee Benefit Plans of the Surviving Corporation shall be.

4.2 **The Sycamores's Obligations.** As soon as practicable and in no event later than the Effective Date, The Sycamores shall obtain a tax clearance certificate from the Franchise Tax Board of California certifying that all taxes imposed have been paid or secured, as required by Section 6014 of the Nonprofit Corporation Law.

4.3 **Cooperation.**

(a) From the date of this Agreement until the Effective Date, each Party shall:

(i) continue joint planning efforts for implementation of the Merger, including but not limited to joint decision making as to any material leases, contracts, purchases or agreements; and

(ii) jointly develop a press release to publicly announce the consummation of the Merger and other communications to vendors, users of their products and services, employees and donors.

(b) As soon as practicable after the execution of this Agreement, the Parties shall file written notice of the Merger with the Attorney General of California in compliance with Sections 6010(a) and (b) of the Nonprofit Corporation Law.

4.4 **Post-Merger Obligations.** Hathaway covenants that:

(a) Upon consummation of the transactions contemplated by this Agreement and without further action, all employees of The Sycamores on the Effective Date shall become employees of the Surviving Corporation (the "Assumed Employees").

(b) Nothing contained in this Agreement shall confer upon any Assumed Employee any right to continued employment with the Surviving Corporation or its affiliates beyond the Effective Date, nor shall anything herein interfere with the right of the Surviving Corporation to terminate the employment of any of the Assumed Employees at any time, with or without cause, or restrict the Surviving Corporation in the exercise of its independent business judgment in modifying any of the terms or conditions of the employment of any Assumed Employees.

(c) No provision of this Agreement shall create any third party beneficiary rights in any Assumed Employee, any beneficiary or dependents thereof or any other Person with respect to compensation, terms or conditions of employment or benefits that may be provided to any Assumed Employee by the Surviving Corporation or under any Employee Benefit Plan which the Surviving Corporation may maintain.

(d) As soon as reasonably practicable after the Effective Date, the Surviving Corporation will provide each Assumed Employee copies of its employment policies, employee handbook and other similar materials that will be applicable to them after the Effective Date to the same extent such materials were provided to Hathaway' employees prior to the Merger.

(e) From and after the Effective Date and until the Surviving Corporation implements a unified benefit plan platform applicable to all employees of the Surviving Corporation, each Assumed Employee shall be entitled to participate in Employee Benefit Plans maintained or sponsored by the Surviving Corporation (the "Surviving Corporation Employee Benefit Plans"), on terms and conditions that are substantially similar to those provided to the Assumed Employees prior to the Effective Date. If the Surviving Corporation's group medical plans contain any "pre-existing condition" exclusions or limitations or "actively at work" requirements which would otherwise cause any of the Assumed Employees or their dependents to be excluded from such plans for any period after the Effective Date, each such provision shall be waived, to the fullest legally permissible extent, for Assumed Employees and their dependents. In addition, in determining any deductible requirements and maximum out-of-pocket limitations applicable to Assumed Employees, the Surviving Corporation shall give effect to claims incurred, amounts paid by, and amounts reimbursed to, the Assumed Employees under comparable Employee Benefit Plans maintained by The Sycamores for the benefit of their employees immediately prior to the Effective Date. Nothing in this Agreement shall be construed so as to require the Surviving Corporation to maintain any Surviving Corporation Benefit Plans for any period whatsoever.

(f) The Assumed Employees shall, to the extent permitted by law and applicable qualification requirements, receive credit for all purposes, including eligibility to participate and vesting, under the Surviving Corporation Employee Benefit Plans for years of service credited to them under any corresponding Employee Benefit Plans maintained by The Sycamores prior to the Effective Date, except to the extent that such credit would result in duplication of benefits (as determined by the Surviving Corporation).

(g) On and after the Effective Date, for each Assumed Employee, the Surviving Corporation shall recognize earned but unused vacation and other paid time off to the same extent and in the same manner as such vacation and other paid time off was recognized under applicable employment policies as in effect on the Effective Date.

(h) As soon as reasonably practicable after the Effective Date and in no event later than the 15th day of the fifth month following the Effective Date, the Surviving Corporation shall submit a certified copy of this Agreement and its then current Articles of Incorporation and Bylaws with its 2004 Form 990 to the IRS, and shall cooperate with the IRS to fulfill any further requirements that may be imposed by such agency in connection with or as a result of the Merger.

(i) No Surviving Corporation Employee Benefit Plan shall discriminate or draw any distinction for purposes of coverage or benefits between the Assumed Employees and individuals who were Hathaway employees prior to the Effective Date.

5. CONDITIONS PRECEDENT TO MERGER

5.1 **Conditions Precedent to Hathaway's Obligations.** The obligations of Hathaway to effect the Merger are subject to satisfaction of the following conditions on or prior to the Effective Date, any one or more of which conditions may be waived, in writing, by Hathaway in its sole and absolute discretion, unless otherwise required pursuant to any Legal Requirement:

(a) Except as otherwise permitted by this Agreement, all representations and warranties of The Sycamores in this Agreement or in any written statement that shall be delivered by or on behalf of The Sycamores to Hathaway under this Agreement shall be true, complete, and correct in all material respects (except where qualified by materiality, in which case such representations and warranties shall be true, complete and correct in all respects) at and as of the Effective Date as though made at that time (except to the extent that such representations and warranties speak as of an earlier date, in which case such representations and warranties shall be made as of such earlier date), and The Sycamores shall have delivered to Hathaway an officer's certificate to that effect.

(b) The Sycamores shall have performed, satisfied, and complied in all material respects with all covenants, agreements, and conditions required by this Agreement to be performed, satisfied, or complied with by The Sycamores at or before the Effective Date, and The Sycamores shall have delivered to Hathaway an officer's certificate to that effect.

(c) From the date of this Agreement until the Effective Date, there shall not have been any Material Adverse Effect on The Sycamores.

(d) No action, suit, investigation or proceeding before any Governmental Authority pertaining to this Agreement or to the consummation of the Merger shall have been instituted or threatened at or before the Effective Date.

(e) All material agreements and consents of any Persons necessary to consummate the Merger contemplated by this Agreement or otherwise pertaining to the matters covered herein, shall have been obtained.

(f) The twenty (20) day waiting period following notice of the Merger to the Attorney General of California under Section 6010(b) of the Nonprofit Corporation Law shall have expired.

(g) The Sycamores shall have obtained, and delivered to Hathaway, a tax clearance certificate from the Franchise Tax Board of California certifying that all taxes imposed have been paid or secured, as required by Section 6014 of the Nonprofit Corporation Law.

5.2 **Conditions Precedent to The Sycamores's Obligations.** The obligations of The Sycamores to effect the Merger are subject to satisfaction of the following conditions on or prior

to the Effective Date, any one or more of which conditions may be waived, in writing, by The Sycamores in its sole and absolute discretion, unless otherwise required pursuant to any Legal Requirement:

(a) Except as otherwise permitted by this Agreement, all representations and warranties of Hathaway in this Agreement or in any written statement that shall be delivered by or on behalf of Hathaway to The Sycamores under this Agreement shall be true, complete and correct in all material respects (except where qualified by materiality, in which case such representations and warranties shall be true, complete and correct in all respects) at and as of the Effective Date as though made at that time (except to the extent that such representations and warranties speak as of an earlier date, in which case such representations and warranties shall be made as of such earlier date), and Hathaway shall have delivered to The Sycamores an officer's certificate to that effect.

(b) Hathaway shall have performed, satisfied, and complied in all material respects with all covenants, agreements, and conditions required by this Agreement to be performed, satisfied, or complied with by Hathaway at or before the Effective Date, and Hathaway shall have delivered to The Sycamores an officer's certificate to that effect.

(c) From the date of this Agreement until the Effective Date, there shall not have been any Material Adverse Effect on Hathaway.

(d) No action, suit, investigation or proceeding before any Governmental Authority pertaining to this Agreement or to the consummation of the Merger shall have been instituted or threatened at or before the Effective Date.

(e) All material agreements and consents of any Persons necessary to consummate the Merger contemplated by this Agreement or otherwise pertaining to the matters covered herein, shall have been obtained.

(f) The twenty (20) day waiting period following notice of the Merger to the Attorney General of California under Section 6010(b) of the Nonprofit Corporation Law shall have expired.

6. TERMINATION AND ABANDONMENT OF MERGER.

6.1 **Termination and Abandonment**. This Agreement and the Merger may be terminated and abandoned at any time before the Effective Date:

(a) by the mutual written consent of The Sycamores and Hathaway;

(b) by either The Sycamores or Hathaway upon written notice to the other if there has been a material misrepresentation or other material breach by the other in its representations, warranties or covenants set forth herein; provided, however, that if such misrepresentation or breach is susceptible to cure, the breaching party will have ten (10) business days in which to cure such breach after receiving notice from the other Party of its intention to terminate this Agreement due to such breach if not so cured;

(c) by either Party upon written notice to the other if a Governmental Authority has issued an order, decree or ruling or taken any other action, in any case having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger, which order, decree, ruling or other action is final and nonappealable; or

(d) by either Party upon written notice to the other if any event occurs or condition exists that would render impossible the satisfaction of one or more conditions to the obligations of such Party to consummate the transactions contemplated by this Agreement as set forth in Sections 5.1 or 5.2, as applicable (other than through the failure of the Party providing notice to comply with its obligations under this Agreement), and the condition is not waived by the beneficiary thereof.

6.2 **Effectiveness**. Any termination of this Agreement under Section 6.1 will be effective immediately upon the delivery of written notice of the terminating Party to the other Party hereto (or such later time as may be specified in such notice or as may be required by Section 6.1). Upon the termination of this Agreement as provided in Section 6.1, this Agreement will be of no further force or effect, except as set forth in this Section 6.2, Section 8.1 and Section 8.6, each of which will survive the termination of this Agreement.

7. INDEMNITY

7.1 **Termination of Representations and Warranties**. All representations and warranties of the Parties contained in Section 3 of this Agreement, or in any instrument, certificate, opinion, or other writing provided for herein, shall terminate on the Effective Date.

7.2 **Indemnification of Directors and Officers Following Closing**. The Surviving Corporation shall for a period of five years after the Effective Date, (i) cause the directors and officers of The Sycamores (each, an "Indemnified Officer or Director") to be afforded the same benefits provided to directors and officers of the Surviving Corporation immediately following the Effective Date pursuant to the provisions regarding indemnification of current or former officers and directors contained in the Articles of Incorporation and Bylaws of the Surviving Corporation existing immediately following the Effective Date and (ii) cause to be maintained in effect the policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by The Sycamores immediately prior to the Effective Time with respect to claims arising from facts or events that occurred on or before the Effective Date; provided, however, that the Surviving Corporation may substitute therefor the policies of directors' and officers' liability insurance and fiduciary liability insurance provided by the Surviving Corporation to its directors and officers, which policies shall insure the Indemnified Officers and Directors against claims arising from facts or events that occurred on or before the Effective Date while such Indemnified Officers and Directors were acting in their capacities as directors or officers of The Sycamores. This covenant is intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Officers or Directors and their respective heirs and legal representatives.

8. MISCELLANEOUS

8.1 **Expenses.** Each Party hereto agrees to pay its expenses incurred in conjunction with this Agreement, including, but not limited to, legal, accounting and out-of-pocket expenses.

8.2 **Entire Agreement; Amendment**. This Agreement, together with the Exhibits attached hereto, The Sycamore's Disclosure Schedules and the Hathaway's Disclosure Schedules, contains the entire understanding of the Parties hereto with respect to the transactions contemplated hereby and shall not be amended or terminated except by written instrument duly executed by each of the Parties hereto. Except for the Confidentiality Agreement, dated as of November 3, 2004, by and between The Sycamores and Hathaway, any and all previous agreements or understandings between the Parties regarding the subject matter hereof are superseded in their entirety by this Agreement. Except as set forth in Section 7.2, this Agreement is not intended to, and shall not, confer upon any Person not a party hereto (or its assigns or successors permitted by Section 8.3) any rights or remedies hereunder.

8.3 **Assignment**. No Party shall assign its respective rights or delegate its respective obligations hereunder to any Person without the prior written consent of the other Party hereto. All terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by each of the Parties and their respective successors and permitted assigns.

8.4 **Notices**. All notices, requests, demands, waivers, consents, approvals, or other communications which are required or permitted hereunder shall be in writing and sent by hand delivery, by registered or certified mail, postage pre-paid, and return receipt requested, by overnight courier service or by facsimile, as follows:

If to The Sycamores:

William P. Martone
210 South DeLacey Street, Suite 110
Pasadena, CA 91105-2006
Facsimile: (626) 395-7270

with a copy to:

Ann Lawrence, Esq.
Latham & Watkins LLP
633 West Fifth Street, Suite 4000
Los Angeles, CA 90071
Facsimile: (213) 891-8763

If to Hathaway:

Lyn Munro
Hathaway Children and Family Services
P.O. Box 923670
Sylmar, CA 91392-3670
Facsimile: (818) 899-4387

with a copy to:

Sharon A. Madere, Esq.
Latham & Watkins LLP
633 West Fifth Street, Suite 4000
Los Angeles, CA 90071
Facsimile: (213) 891-8763

Any Party may change the address or facsimile number to which notices are to be sent by giving notice thereof in the manner set forth herein.

8.5 **Captions**. The article and section captions used herein are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

8.6 **Governing Law**. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, without regard to conflicts of law principles.

8.7 **Incorporation by Reference**. All exhibits and schedules to this Agreement and all instruments and documents required or requested by this Agreement are incorporated herein by reference.

8.8 **Counterparts**. This Agreement may be executed in one or more counterparts (including by facsimile), each of which will be deemed an original but all of which together constitute one and the same instrument.

8.9 **Severability**. Any term or provision of this Agreement which is invalid or unenforceable will be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining rights of the party intended to be benefited by such provision or any other provisions of this Agreement.

8.10 **Further Assurances**. Each Party agrees to cooperate fully with the other Party and to execute such further instruments, documents and agreements and to give such further written assurances as may be reasonably requested by the other Party to evidence and reflect the transactions described herein and contemplated hereby and to carry into effect the intents and purposes of this Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement and Plan of Merger as of the day and year first above written.

HATHAWAY CHILDREN AND FAMILY SERVICES

By: _____
Name: Robert M Pfrogner
Title: Chairman of the Board

By: _____
Name:
Title:

THE PASADENA CHILDREN'S TRAINING SOCIETY, D/B/A THE SYCAMORES

By: _____
Name: Michael J. Madden
Title: Chairman of the Board

By: _____
Name:
Title: