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Merger Agreement

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An Agreement between Crisis Pregnancy Centers of Santa Clara County and Pregnancy Choices Clinic

This Comprehensive Merger Agreement ("Agreement") is made by and between Crisis Pregnancy Centers of Santa Clara County ("CPCSCC"), a California nonprofit public benefit corporation and an association exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (the "Code"); and Pregnancy Choices Clinic ("PCC"), a California nonprofit public benefit corporation and an association exempt from federal income taxation pursuant to Section 501(c)(3) of the Code; (CPCSCC and PCC, collectively, "the Parties" and individually "a Party"). The Parties agree:

1. Assumptions and Summary. CPCSCC and PCC mutually share these assumptions:

- a. The Parties share a common goal to serve women by providing pregnancy medical clinic services and other resources;
- b. A combined organization can more effectively reach the communities that the Parties currently exist to serve; and
- c. Cost savings, sharing of best practices, and other synergies between the Parties will expand the ability of both Parties to serve the communities that the Parties currently operate in.

Based upon these assumptions, the Parties are agreeing, subject to the conditions and qualifications of this Agreement that:

- CPCSCC and PCC will merge ("the Merger");
- The present CPCSCC will serve as the surviving nonprofit corporation for statutory compliance purposes ("the Merged Association");
- The Merger will be effective as prescribed by law, at the earliest date allowed by the Secretary of State ("Merger Date");
- The legal name of the Merged Association will be "Crisis Pregnancy Centers of Santa Clara County"; and

- The Merged Association will be governed by a mutually agreed selection from the volunteer leaderships of the two associations and will perpetuate, to the extent practicable, the policies and programs of both associations.

2. Schedule. This Agreement is effective upon its execution by both Parties. CPCSCC and PCC will merge as of the closing, finalization, or completion of the transactions described in this Agreement, subject to necessary approvals by the CPCSCC and PCC Boards of Directors, and subject to submission of statutory merger filings acceptable to the State of California.

3. Resulting Structure. Effective upon the merger date there will be only one nonprofit corporation, the Merged Association, where previously there were two, CPCSCC and PCC. The name of the Merged Association will be Crisis Pregnancy Centers of Santa Clara County.

4. Representations and Warranties. CPCSCC and PCC, except as specifically noted, each represents and warrants to the other Party with respect to the representing and warranting Party's organization as follows:

a. that CPCSCC is incorporated as a nonprofit public benefit corporation in the State of California, is current in all reporting obligations to the State of California, and is in good standing in its state of incorporation; that PCC is incorporated as a nonprofit public benefit corporation in California, is current in all reporting obligations to California, and is in good standing in its state of incorporation;

b. that the Party has received a determination from the Internal Revenue Service ("IRS") of federal income tax exempt status; is current in all obligations to file reports or returns; has no pending IRS inquiry about, or challenge to, its exemption status or its reports or returns due to IRS; and has no reason to believe there is any valid basis for such a challenge;

c. that the Party has full unconditional and unqualified authority to enter into and sign this Agreement, subject to any legally required Board of Directors or membership voting as specific conditions to the effectiveness of the Merger;

d. that the Party has provided accurate and complete information requested in the course of due diligence legal and financial inquiries including, but not limited to, reports on

assets and liabilities and on operating revenues and expenditures; tax and tax exemption filings; governing documents including articles of incorporation, bylaws, policies and procedures including human resources policies; license contracts, leases, insurance policies, employee benefit plan documents, and other material contracts; lawsuits, complaints, claims, or other private or governmental legal challenges to policies or programs;

e. that there has been no material change to any of the documents or information provided on behalf of the Party in the course of due diligence legal and financial inquiries since the documents and information were provided;

f. that there have been no other material changes to the financial or legal condition of the Party since the due diligence documents and information were provided;

g. that there are currently no known private claims or lawsuits, including employee claims, claims by members, claims by vendors or service providers, or claims by others, pending or threatened against the Party except as fully disclosed in response to the due diligence legal and financial inquiries;

h. that there are currently no known governmental claims, inquiries, or lawsuits pending or threatened against the Party, including but not limited to the Government of the State of California, except as fully disclosed in response to the due diligence legal and financial inquiries;

i. that the Party has free and clear ownership of all intellectual property in its possession or that it is using including but not limited to trademarks, patents, and copyrights;

j. that there has been no undisclosed inurement to individuals as defined by pertinent Code provisions and IRS regulations;

k. that there have been no undisclosed violations of the Employee Retirement Income and Security Act and pertinent IRS or U.S. Department of Labor regulations;

l. that there have been no undisclosed payments by the Party to employees, independent contractors, consultants, directors, officers, or other volunteers or agents except in the normal course of business pursuant to existing compensation arrangements,

employment contracts, or other contracts or policies disclosed in the course of due diligence legal and financial inquiries;

m. that there is no undisclosed material conflict of interest on the part of any employee, independent contractor, consultant, director, officer, or other volunteer or agent of the Party; and

n. that there are no obligations to employees, independent contractors, consultants, directors, officers, or other volunteers or agents for future payments by, or benefits from, the Party other than as disclosed on behalf of the Party in the course of due diligence legal and financial inquiries.

5. Conduct between Agreement and Merger Date. Neither of the Parties will make any material change in its articles of incorporation, bylaws, policies and programs, operations or activities that might affect the Merger described in this Agreement between execution of this Agreement and the Merger Date without prior written notice to, and the written agreement of, the other Party.

6. Transaction. As of the Merger Date, CPCSCC and PCC will effect a formal statutory merger of the two entities by filing for merger under State of California law to become the Merged Association, subject to necessary approvals by the CPCSCC and PCC Boards of Directors.

7. Mission, Bylaws, Governance, Name, Management, and Operations.

a. Mission. The primary mission of the Merged Association will be to assist women in confronting and dealing with the physical, emotional, economic, social, and spiritual problems associated with crisis and unwanted pregnancy and to develop and administer programs designed to assist pregnant women who desire to carry their unborn children to term.

b. Bylaws. The Bylaws of the Merged Association are attached to this Agreement as Attachment 1 and will be subject to amendment as provided in those Bylaws.

c. Governance. The governance of the Merged Association will be as provided in Attachment 2 to this Agreement.

d. **Management and Operations.** The management and operations of the Merged Association will be as provided in Attachment 3 to this Agreement.

8. **Attachments.** The Attachments to this Agreement are integral to its terms and conditions, and each Attachment is made a part of this Agreement. If any provision or feature of any document related to the merger of CPCSCC and PCC is inconsistent with, in conflict with, or different from a term or condition of this Agreement or its Attachments, the term or condition of this Agreement and its Attachments will prevail.

9. **Separation.** The Board of Directors of the Merged Association will have authority to effect its corporate dissolution at any time consistent with applicable California law.

10. **Term and Termination; Effect of Non-Approval of Merger.** The term of this Agreement commences upon its execution by both Parties and continues unless and until terminated or modified. This Agreement may be terminated or modified by written agreement of the Parties at any time prior to the Merger Date. This Agreement may be terminated by written notice of termination from one Party to the other Party at any time prior to the Merger Date. It is recognized, understood, and agreed by the Parties that the effectiveness and enforceability of this Agreement, and the rights and obligations of the Parties under this Agreement, are specifically contingent upon, and subject to: (a) the approval of the Merger by the CPCSCC and PCC Boards of Directors without any qualification that would materially alter the terms of this Agreement; and (b) successful merger filing in the State of California. If this Agreement is terminated, if the merger is not approved, or if the state filing is unsuccessful: (i) this Agreement will be null and void; (ii) neither Party will assert any claim or cause of action against the other Party on any basis whatsoever related in any way to this Agreement or the acts and discussions that resulted in this Agreement; (iii) all documents and information provided on behalf of a Party in connection with legal and financial due diligence, whether or not the documents or information are marked as "confidential," will be relinquished and returned to the Party on whose behalf the documents and information were provided with no copies, summaries, analyses, or excerpts maintained and will be accompanied by a written certification signed by the highest officer of the relinquishing Party attesting that this provision has been fully complied with; (iv) all information received by a Party in connection with legal and financial due diligence inquiries which might reasonably be expected to be considered

confidential by the Party on whose behalf the information was provided will be maintained as confidential using the same kinds and levels of procedures and controls that the Party receiving the confidential information uses to protect the confidentiality of its own equivalent information; and (v) notwithstanding any prior understandings or agreements to the contrary, each Party will be responsible for its own expenses incurred in connection with this Agreement or the acts and discussions that resulted in this Agreement. Each Party will use its best efforts to avoid any statements by officers, directors, employees, agents, or others that might reasonably be expected to be attributed to the Party, where those statements disparage another Party or its representatives. The undertakings in this provision on termination, non-approval, or unsuccessful filings will survive the termination of this Agreement.

11. Closing and Merger Date. The closing, finalization, or completion of the CPCSCC/PCC Merger described in this Agreement will occur as of the Merger Date unless the Parties mutually agree in writing to another date.

12. Public Announcements. Each Party will consult with and obtain the approval of the other Party before issuing any press release or other public announcement with respect to this Agreement and the Merger transactions provided for in this Agreement.

13. Notices. CPCSCC and PCC will provide all necessary or appropriate notices to landlords, insurers, other parties to contracts, or government officials regarding the Merger provided for in this Agreement.

14. Other.

a. Modifications. This Agreement reflects the entire understandings, commitments, rights, and obligations of the Parties with respect to the subject matter of the Agreement; it may not be modified orally, but only by a written amendment signed by all Parties.

b. Governing Law. This Agreement is to be interpreted under the laws of California.

c. Counterparts. This Agreement may be signed in counterparts.

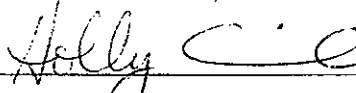
d. Severability. If any provision of this Agreement is invalid, illegal, or incapable of being enforced, all other provisions of this Agreement will nevertheless remain in full force and effect.

e. Arbitration. Any dispute arising under, or related in any way to, this Agreement which cannot be resolved between the Parties will be subject to binding arbitration in which RealOptions and PCC will each appoint one nominator and the nominators will select the arbitrator, who will be instructed to resolve the dispute in the fastest, most efficient, most confidential way possible, with no discovery or the most minimal discovery, with the arbitrator establishing all procedures and assessing costs, including potentially attorneys' fees for the nonprevailing Party, and with the arbitrator's award to be final and not subject to appeal to any body.

Crisis Pregnancy Centers of Santa Clara County

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

Peter Finter, Chairman of the Board

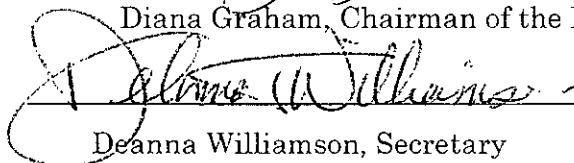


Holly Carmichael, Secretary

Pregnancy Choices Clinic

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

Diana Graham, Chairman of the Board



Deanna Williamson, Secretary

## Attachment 1

### Bylaws

CRISIS PREGNANCY CENTERS OF SANTA CLARA COUNTY, Inc.

dba REALOPTIONS

#### ARTICLE I – OFFICES

Section 1. Principal Office. The principal office of the Corporation for its transaction of business is located at 3315 Almaden Expwy. Ste. 25, City of San Jose, County of Santa Clara, State of California.

Section 2. Change of Address. The Board of Directors is hereby granted full power of authority to change the principal office of the Corporation to another in Santa Clara County. Any such change shall be noted by the Secretary in these Bylaws, but shall not be considered an amendment of these Bylaws.

#### ARTICLE II – MEMBERS

Section 1. Membership. There are no members of this Corporation.

#### ARTICLE III – BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the Corporation shall be managed under the direction of its Board of Directors consisting initially of those individuals named in the Articles of Incorporation. In addition to the powers expressly conferred upon them by these Bylaws, the Board of Directors may exercise all the powers of the Corporation. From time to time, the Board of Directors may delegate to officers of the Corporation such powers and duties as it may see fit in addition to those specifically provided by these Bylaws.

Section 2. Number and Tenure. The Board of Directors shall be elected by the Directors holding office from time to time. Each Director shall hold office for an initial term of three years. There are no term limits for Directors. However, a Director must be re-elected every three years by two thirds of the Directors that are present. The number of Directors may, by vote of a majority of the entire Board, be increased, however the number of Directors may not be decreased to less than five (5) or increased to more than fifteen (15).

Section 3. Regular Meetings. A regular annual meeting of the Board of Directors shall be held in the 4<sup>th</sup> Quarter of each year, on a day, and at a time and place to be determined by the Chairman of the Board of Directors. Other regular meetings shall be held on such dates and at such times as may be designated from time to time by the Chairman of the Board of Directors. The Board of Directors shall keep minutes of its meetings and a full account of its transactions.



Section 4. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman or by any two Directors.

Section 5. Place of Meetings. The Board of Directors may hold its regular and special meetings at such place within or without the State of California as it may from time to time determine. In the absence of such determination, regular and special meetings of the Board of Directors shall be held at the principal business office of the Corporation.

Section 6. Notice. Notice of the place, day and hour of every regular and special meeting shall be given to each Director by any reasonable method (including email, voicemail, etc.) within 24 hours prior unless shorter notice is necessary.

Section 7. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at every meeting; but if at any meeting there be less than a quorum present, a majority of those present may adjourn the meeting from time to time, but not for a period in excess of 30 days, without notice other than by announcement at the meeting, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called. Except otherwise provided in the Charter of these Bylaws, the action of a majority of the Directors present at a meeting at which a quorum is present shall be the action of the Board of Directors.

Section 8. Vacancies. Any vacancies in the Board of Directors created by death, resignation, or removal of a Director shall be filled by a majority vote of the remaining Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of the predecessor in office.

Section 9. Removal.

A). At any meeting of the Directors called for the purpose that any Director may, by vote of two-thirds of the other Directors, be removed from office with or without cause, and another may be elected in the place of the person so removed to serve the remainder of the term.

B). Absence from three (3) meetings in a year may be deemed due cause for the removal of a Director.

Section 10. Compensation. Directors shall receive no compensation for their services as such but may, by resolution of the Board of Directors be allowed reimbursement for their expenses actually and reasonably incurred on behalf of the Corporation.

#### ARTICLE IV – OFFICERS

Section 1. In General. The members of the Board of Directors shall elect from their number the following officers: Chairman, Vice – Chairman, Secretary, Treasurer, and Prayer Chairman. All such

officers shall be officers of the Corporation and shall hold office for a term of one (1) year. The new officers for the upcoming fiscal year will be elected at the last meeting of the fiscal year.

Section 2. Duty of Officers.

A). CHAIRMAN: The Chairman of the Board of Directors shall supervise all activities of the Corporation, execute all instruments on its behalf when specifically authorized by the Board of Directors, preside at all meetings of the Board of Directors, call such meetings, and perform such other duties usually inherent to such office.

B). VICE – CHAIRMAN: The Vice – Chairman of the Board of Directors shall act for the Chairman in his/her absence and perform such other acts as the Chairman may elect.

C). SECRETARY: The Secretary of the Board of Directors shall keep all records of the Board of Directors and of the Corporation, and perform such other acts as the Chairman may direct.

D). TREASURER: The Treasurer shall be responsible to oversee the financial affairs of the Corporation.

E). PRAYER CHAIRMAN: The Prayer Chairman shall be responsible for overseeing the Prayer Vine and to pray for the needs, events and ministries of the CPC.

Section 3. Resignation and Removal. Any Officer may resign at any time on written notice to the Corporation without prejudice to the rights, if any, of the Corporation under any contract of which the officer is a party. Officers may be removed with or without cause at any meeting of the Board of Directors by affirmative vote of the majority of all Directors.

Section 4. Vacancies. The Board of Directors at any regular or special meeting shall have the power to fill a vacancy occurring in any officer ship.

ARTICLE V – EXECUTIVE DIRECTOR & CHIEF EXECUTIVE OFFICER (CEO)

Section 1. Duties of the Executive Director & CEO. The Executive Director & CEO shall be a full time employee of the Corporation, and shall be charged with the responsibility of overseeing the day-to-day operation of the business of the Corporation. The Executive Director & CEO shall be a member of the Board of Directors for the duration of their employment.

Section 2. Compensation. The Executive Director & CEO shall receive compensation as set by the Board of Directors from time to time.

ARTICLE VI - MISCELLANEOUS PROVISIONS

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any

contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, Etc. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 3. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks or other depositories as the Board of Directors may select.

Section 4. Loans. No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by the Board of Directors. Such authority may be general or confined to specific issues.

Section 5. Gifts. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Corporation.

Section 6. Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless some other fiscal year is specified by resolution of the Board of Directors.

Section 7. Authority of Officers, Employees, and Agents. No officers, employee, or agent of the Corporation shall have the power to bind the Corporation by contract or otherwise unless authorized by the Board of Directors.

#### ARTICLE VII – AMENDMENT OF BYLAWS

These Bylaws can be amended at any regular meeting of the Board of Directors by two-thirds vote, provided that the amendment has been submitted in writing at the previous regular meeting.

**BY LAWS AMENDMENT LOG**

- **Revised March 3, 2010.**
  - Article V, Changed title of Executive Director to Executive Director and Chief Executive Officer (CEO).
  - Changed Board status of Executive Director and CEO from shall not be a member of the Board of Director to shall be a member of the Board of Directors.
  - Added page numbers to this document.
  - Added BY LAWS AMEMDMENT LOG page.
  - This revision was approved by the Board of Directors March 10, 2010.
  
- **Revised April 4, 2011.**
  - Article III, Section 2, revised as follows: “Each Director shall hold office for an initial term of three years. There are no term limits for Directors. However, A Director must be re-elected every three years by two thirds of the Directors that are present.”
  - This revision was approved by the Board of Directors April 13, 2011.

## Attachment 2

### Governance

#### Board of Directors Composition

The members of the Board are as follows:

Chairman

Vice – Chairman

Secretary

Treasurer, and

Prayer Chairman.

All such officers shall be officers of the Corporation and shall hold office for a term of one (1) year.

Up to 10 additional directors, with a maximum number of 15 total directors, may serve as provided in the Bylaws.

## Attachment 3

### Management and Operations

Locations: Both RealOptions and PCC lease office space. The merged association will continue to operate in the locations currently occupied by RealOptions and PCC.

General Staffing: The Merged Association will sustain or expand upon the level of services provided by both at the time of the Merger. The two staffs are largely complementary and where overlap exists, skills can be redeployed to fulfill existing needs of the Merged Association. RealOptions and PCC staff compensation and benefits are compatible.

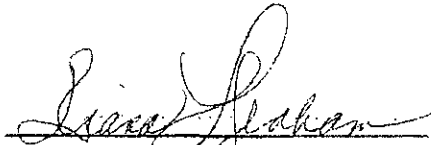
**Officers' Certificate / Nonprofit Certificate of Approval  
of Merger Agreement**

Pursuant to California Corporations Code section 6014, Diana Graham and Deanna Williamson certify that:

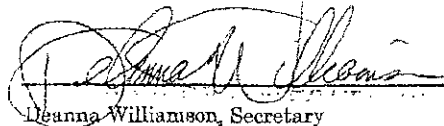
1. They are the president and the secretary, respectively, of Pregnancy Choices Clinic, a California Nonprofit Public Benefit corporation.
2. The principal terms of the ~~Agreement of Merger~~ <sup>Merger</sup> in the form attached were duly approved by the board of directors.
3. The corporation has no members, therefore no member vote is required.
4. No other approvals are required.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: October 26, 2015



Diana Graham, Chairman of the  
Board/President



Deanna Williamson, Secretary

**Officers' Certificate / Nonprofit Certificate of Approval  
of Merger Agreement**

Pursuant to California Corporations Code section 6014, Peter Finter and Holly Carmichael certify that:

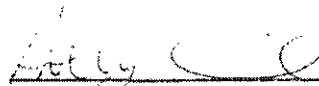
1. They are the president and the secretary, respectively, of Crisis Pregnancy Centers of Santa Clara County, a California Nonprofit Public Benefit corporation.
2. The principal terms of the <sup>HC Merger</sup> ~~Agreement of Merger~~ in the form attached were duly approved by the board of directors <sup>HC RFK</sup>.
3. The corporation has no members, therefore no member vote is required.
4. No other approvals are required.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: October 26, 2015

  
\_\_\_\_\_

Peter Finter, Chairman of the  
Board/President

  
\_\_\_\_\_

Holly Carmichael, Secretary