

# ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (the "**Asset Purchase Agreement**") is entered into on \_\_\_\_ day of \_\_\_\_\_, 2016, (the "**Signature Date**") by and between **RAMON F. ORTIZ, D.M.D., M.S., P.A.** (the "**Seller**") a Florida professional corporation, and its sole member, **RAMON F. ORTIZ, D.M.D., M.S.** ("**Dr. Ortiz**"), as applicable herein, and **SMILE DESIGN PALM HARBOR, LLC**, a Florida limited liability company (hereinafter referred to as "**Practice Purchaser**"), and **SD PALM HARBOR RE, LLC**, a Florida limited liability company (hereinafter referred to as "**Real Property Purchaser**" and together with the Practice Purchaser, collectively, the "**Purchasers**").

## WITNESSETH:

**WHEREAS**, Seller operates a dental practice (the "**Practice**") in currently owned office space located at 301 Woodlands Parkway, Suite #6, Oldsmar, Florida 34677 (which, for purposes of this Asset Purchase Agreement, shall hereinafter be referred to as the "**Real Property**");

**WHEREAS**, on October 25, 2015 (the "**Petition Date**"), Seller commenced a voluntary case for reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Middle District of Florida, Tampa Division (the "**Bankruptcy Court**"), which was assigned Case No. 8:15-bk-10434-CPM (the "**Bankruptcy Case**");

**WHEREAS**, Seller desires to sell and/or assign to Practice Purchaser all of Seller's right, title and interest in and to the Practice Assets (as specifically described in Section 1 below), and to sell and/or assign to Real Property Purchaser the Real Property (as specifically described in Section 2 below), as such assets are associated with or employed in the operations of the Practice and owned or leased by Seller, and Practice Purchaser and Real Property Purchaser each agree to assume certain of the obligations of Seller on the terms and conditions set forth in this Agreement and in accordance with Sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code or pursuant to an order confirming a chapter 11 plan under Section 1129 of the Bankruptcy Code (the "**Transaction**");

**WHEREAS**, Seller has filed a motion seeking the Bankruptcy Court's approval (the "**Motion**") for entry of an Order: (i) authorizing the sale of assets free and clear of liens, claims and encumbrances pursuant 11 U.S.C. §363, pursuant to which Practice Purchaser would purchase the Practice Assets and Real Property Purchaser would purchase the Real Property, subject to higher and better offers; (ii) approving bidding and sale procedures in connection with the above-described sales (the "**Bidding Procedures**"); (iii) approving the form and manner of notices of the bidding and sale procedures; (iv) scheduling an auction (the "**Auction**") to be held in the event additional qualified bids for the Practice Assets and Real Property are received; (v) approving the allocation of the proceeds of the above-described sale; and (vi) granting related relief;

**WHEREAS**, on \_\_\_\_\_, Seller filed a chapter 11 plan (the "**Plan**"), is seeking approval of the Plan under Section 1129 of the Bankruptcy Code, and intends that the Transaction, as contemplated by the Motion, will take place under the Plan;

**WHEREAS**, on \_\_\_\_\_, 2016, the Court entered an order approving the Bidding Procedures (the "**Bidding Procedures Order**"); and

**WHEREAS**, the Bankruptcy Court's final approval (the "**Sale Order**") is required to consummate the Transaction; and

**WHEREAS**, in connection with the Bankruptcy Case, and subject to the terms and conditions contained herein, following the entry of the Sale Order finding the Practice Purchaser and the Real Property Purchaser, as the winning bidders and subject to the terms and conditions thereof, Seller shall sell, transfer and assign the Practice Assets to Practice Purchaser, and Practice Purchaser shall purchase and acquire from Seller, pursuant to Sections 105, 363 and 365 and/or Section 1129 of the Bankruptcy Code, the Practice Assets, and assume from Seller the Assumed Liabilities (as defined herein), and Seller shall sell, transfer and assign the Practice Assets to Practice Purchaser, and Real Property Purchaser shall purchase and acquire from Seller, pursuant to

Sections 105, 363 and 365 of the Bankruptcy Code, the Real Property, all as more specifically provided herein and in the Sale Order.

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are hereby deemed to be incorporated into this Asset Purchase Agreement as an integral part hereof, and the parties' respective promises, and in reliance upon the representations, warranties, conditions and covenants contained herein and intending to be legally bound hereby, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **SALE OF PRACTICE ASSETS:** Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and on the terms and subject to the conditions set forth in this Agreement and the Sale Order, Seller shall sell, transfer, convey, assign and deliver to Practice Purchaser, and Practice Purchaser shall purchase, acquire and accept from the Seller, effective as of 12:01 a.m. on the Closing Date (as defined herein), free and clear of all liens and encumbrances, and Practice Purchaser agrees to purchase, accept, assume and receive all of Seller's right, title and interest in and to all of the assets identified on the attached Schedule "1-A" that are owned and/or used by Seller (to the extent of Seller's interest, whether corporate or individual) in the operation of the Practice (collectively, the "**Practice Assets**"), other than the hereinafter described "**Excluded Assets**" and those specifically identified on the attached Schedule "1-B"), all to be purchased in "As Is", "Where Is" condition, with no representations or warranties of any kind except as set forth herein, including without limitation the following:

**EQUIPMENT:** Except for the hereinafter described Excluded Assets (if any), all clinical, lab and office equipment (including, but not limited to, x-ray machines, examination chairs and side tables, lights, desktop computers, lap top or notebook computers, printers, facsimile machines, scanners, copiers and the like) located on the Real Property on the Closing Date (together with any and all warranties, to the extent assignable, and all services records, as may be applicable), including but not limited to those listed on the attached Schedule "1-A" (the "**Equipment**"). All Equipment shall be in good, working condition on the Closing Date, and Practice Purchaser shall hold back the sum of \$25,000 at the Closing (the "**Equipment Holdback**"), such sum to be held for ninety (90) days after the Date of Closing to cover the costs of any repairs to such Equipment to return the Equipment to good, working condition or, if not reparable, then to cover the cost of replacement. Any portion of the Equipment Holdback that has not been used for repairs or replacement as of the lapse of the ninety-day period shall be paid over by wire transfer to Seller's Counsel upon such lapse.

**OFFICE FURNITURE AND FIXTURES:** Except for the hereinafter described Excluded Assets (if any), all office furniture, furnishings and trade fixtures located on the Real Property on the Signature Date, including but not limited to those listed on the attached Schedule "1-A".

**OFFICE AND CLINICAL SUPPLIES:** All clinical supplies and instruments, all paper goods and the office supplies located on the Real Property on the Closing Date. At Closing, Seller agrees to have the usual and customary inventory of supplies that has been historically maintained by the Seller, which shall be determined by mutual agreement.

**MISCELLANEOUS ASSETS:** Subject to any applicable rules and regulations relating to transferability and to the extent of Seller's interest therein, (i) all hard-copy and electronic clinical and financial records related to all active patients of the Practice (as evidenced by the patient records located on the Real Property at the time of the Closing, including payment histories and ledgers, hereinafter referred to as the "**Patient Records**"), (ii) all work-in-progress (including all work partially completed by Seller as of the Date of Closing), (iii) all Practice-related telephone numbers, facsimile numbers, white page listings, internet advertisements, yellow page ads (and Practice Purchaser shall assume any post-sale expenses relating to any such existing white and/or yellow page listings and ads used for marketing the Practice), (iv) all computer software licenses, to the extent assignable (and Practice Purchaser shall assume any post-sale expenses relating to any such software license), (v) any fictitious name (or any derivative thereof) used in the operation of the Practice (if applicable and whether used as a d/b/a or corporate designation), (vi) any Practice-related websites and email addresses in use by the Practice (whether the domain name uses the Seller's individual, corporate or fictitious name), (vii) all professional employee

contracts (if any), subject to Practice Purchaser's review and acceptance thereof, (viii) all managed care contracts in effect between Seller and any third party (if any), and (ix) all other miscellaneous tangible and intangible non-cash assets of the Practice that have not been specifically excluded from this sale and listed on the attached Schedule "1-B" shall be transferred and/or assigned to Practice Purchaser on the Closing Date (as hereinafter described).

GOODWILL: The corporate and personal goodwill of Seller and Dr. Ortiz, subject to the Provider Agreement, arising in connection with the operation of the Practice. Following the Closing Date (as hereinafter described) and as a specific condition of this sale, Seller and Dr. Ortiz agree to put forth reasonable, good faith efforts to transfer the Practice goodwill to Practice Purchaser. In addition, the parties acknowledge and agree that the ultimate successful transfer of the goodwill by Seller and Dr. Ortiz to Practice Purchaser requires the cooperative actions of Practice Purchaser, and Practice Purchaser also agrees to put forth Practice Purchaser's reasonable good faith efforts that would be required in order to facilitate the successful transfer of Seller's and Dr. Ortiz's goodwill to Practice Purchaser following the Closing Date. The parties acknowledge and agree that all corporate and personal goodwill arising from the Practice is based upon the personal relationships between Seller, Dr. Ortiz and Patients and referral sources of the Practice, and is being conveyed by Seller and Dr. Ortiz to Practice Purchaser through this Asset Purchase Agreement.

EXCLUDED ASSETS: Notwithstanding anything in this Asset Purchase Agreement to the contrary, except for the Practice Assets and the Real Property, Seller or Dr. Ortiz shall retain complete ownership of all of the following excluded property, and Practice Purchaser shall in no way be construed as to have purchased or acquired any interest in or to such excluded property whatsoever, including the following: All cash assets of the Practice such as checking and savings accounts, petty cash, cash on hand, cash deposits for utilities (if any), retained earnings, all tax records related thereto of the Practice that precede the Closing Date, accounts receivable relating to services rendered prior to the Closing Date and accounts payable, all corporate ownership, all pension and/or profit sharing plans, insurance premium refunds, all automobiles, cell phones, personal items (such as professional plaques, books, artwork, and personal stationery), malpractice insurance policies, casualty insurance, liability insurance and any and all other insurance policies maintained at the Real Property or otherwise by Seller or Dr. Ortiz in connection with the Practice, and all such items are and will remain the sole property of Seller or Dr. Ortiz, as applicable, following the Closing Date and are specifically excluded from this sale. In addition, the Excluded Assets described on the attached Schedule "1-B" also are excluded from this sale (all of the aforementioned excluded items and those included on the attached Schedule "1-B" shall collectively be referred to as the "**Excluded Assets**"). For clarification purposes, except for those items specifically enumerated in this paragraph and described in Schedule "1-B", all other Assets of the Practice shall be sold and conveyed by Seller to Practice Purchaser at the Closing.

- A. Unless otherwise specifically disclosed in Schedule "1-A" hereof, Seller's interest in the Practice Assets shall be absolute ownership, free and clear of any liens, pledges, debts and encumbrances of any kind and/or nature. In addition to the Practice Assets Purchase Price, should there be any charge for transferring the telephone number and yellow page ads for the Practice to Practice Purchaser (if applicable), then such expense and or payments that becomes due following the Closing Date shall be assumed and paid by Practice Purchaser.
- B. Except for the aforementioned Excluded Assets, the Practice Assets and Seller's interest in all other items used for the operation of the Practice and located on the Real Property on or after the Closing Date shall be conveyed to Practice Purchaser through this Asset Purchase Agreement by Bill of Sale or other appropriate conveyance instrument at the Closing, whether Seller's interest is joint or several, corporate or individual, proprietary or leased (to the extent assignable).

Notwithstanding anything to the contrary contained herein, Seller acknowledges and agrees that Practice Purchaser shall have the right to reject any of the Practice Assets identified to be conveyed hereunder; however, such rejection shall not affect the Practice Assets Purchase Price. By means of

example only, if Practice Purchaser shall choose to reject the purchase of certain computers and/or software in connection with its purchase of the Practice Assets and Practice, then Practice Purchaser shall not be deemed to have assumed any liabilities and/or obligations with respect thereto, nor shall Practice Purchaser have any rights to use of the same, from and after the Date of Closing. In such event, the value of the rejected Practice Asset(s) will be deducted from the portion of the Purchase Price that is allocable to the Equipment and added to the portion that is allocated to the Goodwill. Practice Purchaser shall give Seller notice of any Practice Assets that it rejects, no later than two (2) business days prior to the hearing on the Motion.

2. **SALE OF THE REAL PROPERTY:** Subject to the terms and conditions described herein, Seller agrees to sell assign, transfer, convey and deliver to Real Property Purchaser, free and clear of all liens, claims, interests, leases and encumbrances other than the lien for real estate taxes and assessments for the year 2016 and subsequent years, and Real Property Purchaser agrees to purchase, accept, assume and receive all of Seller's right, title and interest in the currently owned Real Property located at 301 Woodlands Parkway, Suite #6, Oldsmar, Florida 34677, the legal description of which is attached hereto as Schedule "2", together with all fixtures located thereon and together with all easements, rights, permits, privileges, uses, warranties and interests appurtenant thereto.
3. **ASSUMPTION OF LIABILITIES:** Except as set forth below and made a part hereof, or otherwise set forth in this Agreement, neither Practice Purchaser nor Real Property Purchaser will assume any debts, liabilities, obligations, expenses, taxes, contracts or commitments of Seller of any kind, character or description, whether accrued, absolute, contingent or otherwise, no matter whether arising before or after the Closing, and whether or not reflected or reserved against in the financial statements, books of accounts or records of Seller. With the exception of those items as specifically set forth below, Seller will retain all liabilities directly or indirectly arising out of or related to the ownership and operation of the Practice Assets, the Practice and the Real Property before or on the date of the Closing, and directly or indirectly arising out of or related to the ownership and operation of the Excluded Assets before, on or after the Closing.
4. **PURCHASE PRICE:** In consideration of the sale, transfer, conveyance, assignment and delivery of the Practice Assets and the Real Property, and in reliance upon the representations and warranties made herein by Seller:
  - A. Practice Assets Purchase Price. Practice Purchaser shall pay to Seller the sum of THREE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$320,000.00) (the "**Practice Assets Purchase Price**"), paid and allocated pursuant to the terms as hereinafter described; and
  - B. Real Property Purchase Price. Real Property Purchaser shall pay to Seller the sum of FIVE HUNDRED THIRTY THOUSAND AND 00/100 DOLLARS (\$530,000.00) (the "**Real Property Purchase Price**"), paid and allocated pursuant to the terms as hereinafter described.
  - C. Deposit. On or before the date the Bankruptcy Court enters the Bidding Procedures Order, the Real Property Purchaser shall deposit the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) (the "Deposit") with Stichter, Riedel, Blain & Postler, P.A., counsel to the Seller ("Seller's Counsel") as and for a deposit against the Real Property Purchase Price. The Deposit shall, subject to performance of Seller's obligations hereunder, be credited against the Real Property Purchase Price at Closing, and shall be refundable to Real Property Purchaser (i) up until the conclusion of the Due Diligence Period; or (ii) in the event that this Agreement is terminated pursuant to Section 12 herein except wherein Section 12 otherwise states the Deposit shall be retained by Seller.
  - D. Payment of the Balance of the Purchase Price. At Closing, by wire transfer of immediately available funds to Seller's Counsel, Practice Purchaser shall deposit the full amount of the Practice Asset Purchase Price, less the Equipment Holdback and subject to prorations as hereinafter specified, and Real Property Purchaser will deposit the balance of the Real Property Purchase Price, and Seller's Counsel shall hold these proceeds, including the Deposit, in a trust account as set forth in the Sale Order.

5. REIMBURSEMENT OF DEPOSIT AND EXPENSES UPON FAILURE TO CLOSE: In the event that Practice Purchaser and Real Property Purchaser are not the successful bidders at the Auction (hereinafter described), Seller's Counsel shall deliver the Deposit to Real Property Purchaser as set forth in the Bid Procedures Order and, in addition, in the event the Seller closes a sale to a purchaser other than Practice Purchaser and/or Real Property Purchaser, the Prevailing Bidder (as defined herein) shall reimburse Practice Purchaser and/or Real Property Purchaser, as instructed, at Closing, the sum of Twenty Thousand and No/100 Dollars (\$20,000.00) (the "**Expense Reimbursement**") as liquidated damages for their time, expenses, legal costs and lost opportunities with respect to the failure of the Transaction.
6. ALLOCATION OF THE PRACTICE ASSET PURCHASE PRICE: The Practice Asset Purchase Price shall be allocated as follows:

ASSET ALLOCATION	
Equipment	\$ _____
Furniture and Fixtures	\$ _____
Office and Clinical Supplies	\$ _____
Goodwill	\$ _____
Total:	<b><u>\$320,000.00</u></b>

Seller and Practice Purchaser each agree to report in accordance with and be governed and bound by the allocations set forth in this Section 6 with respect to any state or federal tax returns. Each party acknowledges and agrees to comply with Section 1060 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and any Treasury Regulations issued thereunder. The parties shall file Form 8594 with their respective federal income tax returns in a manner consistent with the allocations specified in this Section 6 for the tax year in which the Closing occurs.

7. SIGNATURE DATE AND CLOSING: The parties shall initial and sign this Asset Purchase Agreement before the Bankruptcy Court issues the signed Bidding Procedures Order. The closing of the Transaction (the "**Closing**") shall occur within ten (10) days after entry by the Bankruptcy Court of the Sale Order, Practice Purchaser and Real Property Purchaser being the successful bidders as recognized in the Sale Order.
  - A. The Practice Assets (not including the aforementioned Excluded Assets) shall be conveyed to Practice Purchaser, and the Real Property shall be conveyed to Real Property Purchaser at the Closing, to be held at a mutually acceptable day and time within the timeframe specified above in this Section 7 (hereinafter referred to as the "**Closing Date or Date of Closing**"). The Closing shall occur by facsimile or other electronic means facilitated by Trenam Law, counsel to Practice Purchaser and Real Property Purchaser, located at 101 East Kennedy Boulevard, Suite 2700, Tampa, Florida 33602, (813-223-7474), or the parties may elect to consummate the transactions contemplated herein by means of a face-to-face closing to be held at the offices of Seller's Counsel.
  - B. At the Closing:
    - (a) Practice Purchaser shall pay the Practice Asset Purchase Price to Seller's Counsel;
    - (b) Real Property Purchaser shall pay the balance of the Real Property Purchase Price (after accounting the credit for the Deposit) to Seller's Counsel;
    - (b) Seller shall deliver possession of the Practice Assets to Practice Purchaser and shall sign and deliver to Practice Purchaser the Bill of Sale in the form Attached as Exhibit "A" acceptable to Practice Purchaser and the Patient Records Transfer Agreement in the form attached as Exhibit "B-1", sufficient to vest in Practice Purchaser good title to, and all the right, title and interest of Seller in and to, the Practice Assets, free and clear

of all liens, pledges, charges, security interests, claims, options, imperfections of title, tenancies, or other rights, interests or encumbrances of any kind or nature (collectively, "Encumbrances," and each, an "Encumbrance"), except for the Assumed Liabilities.

- (c) Dr. Ortiz shall sign and deliver to Practice Purchaser the Restrictive Covenant Agreement, in the form attached as Exhibit "C".
- (e) Dr. Ortiz shall sign and deliver to Practice Purchaser, and Practice Purchaser shall sign, the Provider Agreement, in the form attached as Exhibit "D"; and
- (f) Seller shall execute and deliver a special warranty deed conveying the Real Property in recordable form and sufficient to vest in Real Property Purchaser good and marketable title to the Real Property and to cause the Title Company (as hereinafter defined) to issue the Title Policy (as hereinafter defined), free and clear of all liens, pledges, charges, security interests, claims, options, imperfections of title, tenancies, or other rights, interests or Encumbrances of any kind or nature, other than the lien for real property taxes and assessments not yet due and payable.
- (g) Seller shall execute a certificate, in form reasonably satisfactory to Real Property Purchaser with respect to Section 1445(a) of the Internal Revenue Code of 1986, as amended, relating to the Foreign Investors Real Property Tax Act and stating that Seller is not a "foreign person";
- (h) Seller shall execute an owner's title affidavit as to parties in possession and unfiled contractor's liens rights may be required by the Title Company to issue the Title Policy;
- (i) Seller shall pay the condominium owners association the amount set forth in the Sale Order, and Seller shall deliver to Real Property Purchaser, on or before the Closing, the most recent available financial statements of the condominium owners association, including an accounting of all reserves held by the condominium owners association for repairs or replacement to the condominium property.

C. The Closing shall be conditioned upon:

- (a) Entry by the Bankruptcy Court of the Sale Order, in form acceptable to Practice Purchaser and Real Property Purchaser;
- (b) Each party being in compliance with its representations, warranties and covenants on the Closing Date; and
- (c) Real Property Purchaser shall receive at Closing (at Real Property Purchaser's expense) a marked-up commitment (the "Title Commitment") from a title company selected by Real Property Purchaser (the "Title Company"), for the unconditional issuance to Real Property Purchaser at Closing of an ALTA Form Title Policy for the Real Property with full extended coverage over all general exceptions (the "Title Policy"), which policy shall be acceptable to Real Property Purchaser in its sole discretion. With regard to items in the Title Commitment to which Real Property Buyer objects in writing, Seller shall have ten (10) business days in which to cure objections. If after reasonable efforts Seller is unable to cure such objections within such time, Real Property Purchaser may, at Real Property Purchaser's option, extend the time in which Seller must cure objections, waive the objections not cured, or terminate this Agreement by written notice to Seller without prejudice to any right or remedies Real Property Purchaser may have. Notwithstanding the foregoing, Seller shall be obligated to remove, at or prior to Closing, all liens and encumbrances, none of which items shall be Permitted Exceptions;

- (d) Payment by the Practice Purchaser and the Real Estate Purchaser to the Seller of the Practice Assets Purchase Price and the Real Property Purchase Price, respectively;
- (e) The execution and delivery by the Seller and the Purchasers of this Agreement and of all other documents or instruments contemplated hereby, other than those documents and instruments to be executed and delivered at Closing, and the performance of all parties' obligations hereunder and thereunder, shall have been duly authorized by all necessary corporate action required to be taken by such parties.

8. **INSPECTION OF ASSETS; CORRECTION OF DEFECTS:** At any time mutually acceptable by the parties hereto, Practice Purchaser may inspect all the Practice Assets prior to the Closing Date. Seller agrees to cooperate in good faith with Purchaser in connection with its due diligence investigations and to provide true, accurate and complete copies of all information concerning the Practice, as required by Practice Purchaser. Subject to Seller's representations and warranties relating to the condition of the Practice Assets as of the Closing Date, consummation of the Closing indicates Practice Purchaser's satisfactory acceptance of the Practice Assets. Seller shall have no further responsibility or liability to Practice Purchaser related to the condition of the Practice Assets following the Date of Closing.
9. **TAXES:** If any tax, including but not limited to state or local sales tax, use tax or income tax is or becomes due as a result of the sale of the Practice Assets, then all such taxes shall be paid by Seller or Practice Purchaser, as applicable, as and when required. Any ad valorem taxes will be apportioned and prorated between Seller and Real property Purchaser at Closing based upon the current year's tax bill (or if not known, based upon the prior year's tax bill with an agreement between the parties to reproporate such taxes or assessments, when known), and the prorated portion allocable to Seller will be deducted from the consideration payable by Real Property Purchaser at the Closing.

The transfer of the Real Property, as contemplated by this Agreement, shall be accomplished pursuant to and in contemplation of the Plan. As a result thereof, pursuant to § 1146(a) of the Bankruptcy Code, the transfer of the Real Property hereunder is not subject to state transfer taxes, including, without limitation, documentary stamp taxes. The parties agree to include a provision in all instruments transferring title to the Real Property which restates the exemption provided by § 1146(a) of the Bankruptcy Code

10. **PRACTICE LIABILITIES AND PRO-RATED EXPENSES:** Seller shall pay, or the Sale Order shall specifically provide that the sale of the Practice Assets and Real Property to Practice Purchaser and Real Property Purchaser, respectively, is free and clear of, any and all liability for all taxes, assessments (including condominium association or property association assessments) telephone, contracted advertisements (such as white page and yellow page ads), water, sewer and other utility charges and all other costs and expenses of and for the Practice accruing up to the Date of Closing, regardless of when due. Practice Purchaser and Real Property Purchaser, as the case may be, shall be solely responsible for such expenses incurred on and after the Date of Closing, except to the extent that Practice Purchaser has given notice of rejection of the Practice Assets to which the expense or tax relates. Unless otherwise provided for herein, no contracts and/or agreements are being assigned by Seller to Practice Purchaser or Real Property Purchaser.
- A. All ad valorem and personal property taxes, assessments (including condominium or property owner's association assessments) and other expenses paid or to be paid for the year in which the Date of Closing occurs shall be pro-rated between Seller and Practice Purchaser or Real Property Purchaser, as the case may be, as of the Date of Closing. Except as provided in Section 9 and elsewhere in this Agreement, all taxes and expenses due and payable up to the Date of Closing shall be borne and paid solely by Seller.
  - B. Practice Purchaser shall pay any expenses incurred for changing the office sign, if applicable.
  - C. Seller shall continue to stock and maintain an adequate supply of dental and office supplies in accordance with its historical practices to ensure that, as of the Closing Date, the supplies on hand will be sufficient to operate the Practice in the ordinary course.

- D. Seller shall compensate the current employees of the Practice for all accrued salaries, vacation and sick pay, maternity leave and any other employee benefits and/or bonuses due them for the employment period ending on the day prior to the Date of Closing. In addition, Seller will terminate each of its employees and contractors as of the Date of Closing and will pay all related employment and social security taxes and insurance premiums accrued as of the Date of Closing. Practice Purchaser shall consider each of the current employees as candidates for continued employment with Practice Purchaser following the Date of Closing, but Practice Purchaser shall not have any responsibility or obligation to hire any such employees of the Practice, nor does Practice Purchaser assume any liability or responsibility for any obligation owed to such employees whatsoever, including, without limitation, any compensation, severance or other benefit, unemployment benefits, workers compensation claims and/or any employment taxes due with respect to any individuals employed in the Practice prior to the Date of Closing.
- E. The parties understand and agree that, in Practice Purchaser's sole discretion, the work-in-progress is a Practice Asset that is being conveyed to Practice Purchaser through this Asset Purchase Agreement. Practice Purchaser shall be reimbursed by Seller (on the Date of Closing) for any full or partial patient pre-paid fees paid to Seller prior to the Date of Closing that relate to or are allocable to services scheduled to be rendered on or following the Date of Closing. Should Practice Purchaser choose not to assume responsibility for work-in-process, Seller shall either (a) refund such amounts to the applicable patient(s) or (b) Dr. Ortiz shall be responsible to complete that work-in-progress at a location other than the Property on or following the Date of Closing, and Practice Purchaser shall pay to Dr. Ortiz any patient pre-paid fees or credits attributable to such services. All prepaid fees as of the Signature Date are set forth on Exhibit "E", if any. Seller agrees to update the attached Exhibit "E" as of the Date of Closing.
- F. Seller and Dr. Ortiz shall be obligated to pay to Practice Purchaser at the Closing any and all patient credits and/or patient refunds due as of the Date of Closing. Seller represents and warrants that no patient credits exist as of the Signature Date of this Asset Purchase Agreement, other than those set forth on the attached Exhibit "F". Seller agrees to update the attached Exhibit "F" as of the Date of Closing.
- G. Except as otherwise provided to the contrary in this Asset Purchase Agreement or any of the attached exhibits, Seller acknowledges that Practice Purchaser is not assuming any liability and/or obligation of Seller, the Practice or the Practice Assets, and Real Property Purchaser is not assuming any liability and/or obligation of Seller relating to the Real Property. The Sale Order shall provide that the Practice Assets and/or Real Property by the Practice Purchaser and/or Real Property Purchaser, as applicable, shall be conveyed pursuant to the Transaction free and clear of all outstanding liabilities of the Practice prior to the Date of Closing not expressly assumed by Practice Purchaser or Real Property Purchaser.
11. ACCOUNTS RECEIVABLE: The parties acknowledge that the Practice Assets being purchased do not include Seller's accounts receivable, which shall remain the property of Seller. For purposes of this Asset Purchase Agreement, "**Seller's Accounts Receivable**" shall be defined as all amounts or fees due and payable to Seller (including without limitation amounts that have been previously billed and/or that have not yet been billed) from patients or any third-party insurer and/or government reimbursement that is attributable to services rendered in the Practice, whether partially or in full, before the Date of Closing. Amounts due for patient services that have not yet been rendered because the Practice is waiting for pre-treatment authorization by a third party shall not be considered a Seller's Account Receivable. In addition:
- A. On the Date of Closing, Seller agrees to provide Practice Purchaser with a detailed list of Seller's Accounts Receivable and other receivables of the Practice then existing that are not being transferred to Practice Purchaser as part of the Transaction contemplated herein. For six (6) calendar months following the Date of Closing (the "**Collection Period**"), Practice Purchaser agrees to use efforts utilized by Practice Purchaser in collecting its own accounts receivable in the normal course of business to collect Seller's Accounts Receivable relating to services rendered by or on behalf of Seller before the Date of Closing by Seller; *provided, however*, that



aside from the obligations assumed under this Section 11, the parties agree that Practice Purchaser is not in any way assuming responsibility for collecting Seller's Accounts Receivable. Seller agrees to reimburse Practice Purchaser for all postage and stationery costs actually incurred by Practice Purchaser for the collection of Seller's accounts receivable or to permit such costs to be reduced from amounts payable to Seller by Practice Purchaser Seller on account Seller's Accounts Receivable (the "**Reimbursable Costs**"). Practice Purchaser shall forward to Seller or its designated agent on a monthly time schedule all amounts collected on Seller's accounts receivable as and when received by Practice Purchaser, in addition to an accounting of any Reimbursable Costs incurred by Practice Purchaser over that same month. After the end of the Collection Period, Practice Purchaser shall not be obligated to pursue any further collection efforts on behalf of Seller and the collection of any remaining outstanding Seller's Accounts Receivable shall be the sole responsibility of Seller or its designated agent. This provision shall survive the Closing of this Transaction. The parties shall cooperate in the collection of Seller's accounts receivable as provided in this Section 11 to further ensure the smooth transition of the Practice.

- B. During the Collection Period, except for third-party payments received by Practice Purchaser that are specifically attributed to services provided to the patients of the Practice before the Date of Closing (which shall be paid to Seller in accordance with paragraph A above), all monies received from patients for services rendered on or after the Date of Closing shall be applied first to that patient's (or head of household's) current account ("**Post Closing Account**"), and any amount paid by a patient (or paid by the head of household) that is greater than the amount due on a Post-Closing Account will be applied to Seller's Account Receivable for that patient ("**Pre-Closing Account**"). Amounts payable to Seller under this Section 11(B) shall be forwarded to Seller as and when received by Practice Purchaser in accordance with paragraph A above. The parties hereby agree to make available to each other records relating to the accounts receivable collections that are necessary during the period commencing on the Date of Closing and continuing for one (1) year after the Date of Closing for the purpose of establishing the proper reconciliation of patient receivables and payments, including third party payments and other amounts due pursuant to the provisions contained herein.
- C. Filing of insurance in lieu of a cash payment at the time the services are rendered on or after the Date of Closing (and/or any adjustment of reimbursement by the insurance company resulting in money due from such patient) shall not be considered an extension of credit by Practice Purchaser and shall be applied to the Post Closing Account. All third party payments received by Practice Purchaser on or after the Date of Closing for services rendered prior to the Date of Closing shall be delivered to Seller in accordance with paragraph A above. All third party payments received that are specifically identified for services rendered on or after the Date of Closing shall belong to Practice Purchaser.
- D. In order to facilitate the collection of money owed the Practice, Seller agrees not to change or alter Seller's business address (from that of the Real Property) with the U.S. Postal Service until one hundred eighty (180) days following the Date of Closing; provided that, to the extent Seller is entitled to any portion of any payments from patients received by Practice Purchaser, Practice Purchaser acknowledges that such portion of funds due Seller are held in trust for Seller.
- E. For a period of twelve (12) months after the Date of Closing, Seller and Dr. Ortiz hereby appoint Practice Purchaser's Manager (or, if designated by the Manager, the practice administrator or other designee of the Manager) as their agent to receive and open mail or other communications (whether written, electronic or in other form) addressed to Seller or Dr. Ortiz at the Real Property for the purpose of obtaining and transferring to Practice Purchaser (1) any Patient, payor or governmental program receipts due Practice Purchaser for services rendered after the Date of Closing, and (2) all communications related to the Practice or to the professional services or other services provided by the Practice, including without limitation communications related to billings and collections of the Post Closing Account or the Pre-Closing Account, as the case may be. During the period of Practice Purchaser's appointment described above, Practice Purchaser's Manager or designee shall have the further right as

agent, to endorse Seller's or Dr. Ortiz's name on financial instruments "for deposit" and to deposit to Practice Purchaser's account for its benefit, or for the benefit of Seller as specified in this Section 11, any check, money order or other financial instrument payable to Seller, Dr. Ortiz or Practice Purchaser that is received from any person as payment for professional services or other dental services or products provided by the Practice. Any personal mail (whether or not opened by Practice Purchaser) addressed to Dr. Ortiz at the Real Property shall be delivered or forwarded to Dr. Ortiz as soon as practical. Practice Purchaser shall use reasonable efforts in exercising its rights under this paragraph to avoid opening any mail of Dr. Ortiz that is not related to the Practice; however, neither Practice Purchaser nor the agent appointed under this paragraph shall have liability to Dr. Ortiz for the inadvertent opening of any other mail of Dr. Ortiz. Following any termination or expiration of the Provider Agreement (as hereafter defined), Practice Purchaser and Dr. Ortiz will agree upon a procedure for Dr. Ortiz to obtain personal mail addressed to Seller or Dr. Ortiz at the Real Property.

- F. Seller agrees that no extraordinary method of collection will be used by Seller for collecting any of Seller's Accounts Receivable that are less than ninety (90) days past due. Following the ninety (90) day past due period, Seller will use no extraordinary method of collection without first giving advance written notice to Practice Purchaser, and Practice Purchaser shall have ten (10) days to attempt to collect the amount due Seller from that patient or Practice Purchaser may elect to pay a like sum to Seller and assume that account receivable. If Practice Purchaser is unsuccessful in collecting from the patient or if Practice Purchaser should elect not to assume that patient's account receivable, then Seller, without further notice to Practice Purchaser, shall have the right to use any legal method of collection available to Seller for that Seller's Accounts Receivable. In all collection efforts undertaken by Seller, or on Seller's behalf, Seller agrees to clearly notify the patient that Seller is acting for Seller's own account and not that of Practice Purchaser. Seller agrees to comply with all applicable federal and state fair debt collection practice laws and to hold Practice Purchaser harmless from any violations thereof on account of Seller's collection practices. Practice Purchaser agrees to comply with all applicable federal and state fair debt collection practice laws and to hold Seller harmless from any violations thereof on account of Practice Purchaser's collection practices.
- G. The parties acknowledge and agree that Practice Purchaser is not assuming responsibility for any liability, contingent or otherwise, resulting from any disputed billings involving any former patient of Seller. The Seller shall set aside \$10,000 from the Purchase Price to create a reserve to resolve any billings which are disputed within the six (6) months following the Closing Date (the "**Disputed Billings Reserve**"). To the extent that Practice Purchaser becomes aware of a disputed billing during six (6) months following the Closing Date, Practice Purchaser shall notify Seller, and Seller shall be solely responsible to resolve such dispute from funds deposited in the Disputed Billings Reserve. Practice Purchaser will grant access to Seller or Seller's designee, during normal business hours and upon reasonable notice, to review or make copies of the clinical and financial records related to Seller's outstanding accounts receivable that is the subject of such dispute. Seller shall pay all actual costs of such copies or for any specific financial reports requested by Seller from the Disputed Billings Reserve, and Seller agrees that it shall not use the same in any manner which is violative of applicable law, rules and regulations. If the resolution of such disputed billing results in a reduction of such billing, the amount of the reduction shall be charged against the Disputed Billings Reserve.

12. TERMINATION OF AGREEMENT: This Agreement may be terminated as follows:

- A. By the mutual written consent of Seller, Practice Purchaser and Real Property Purchaser at any time prior to the Closing;
- B. By operation of any provision of this Asset Purchase Agreement;
- C. By either Practice Purchaser or Seller, if there shall be any law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited, or there shall be in effect a final non-appealable order of a Governmental Body of competent jurisdiction restraining,

enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; it being agreed that the parties hereto shall promptly appeal any adverse determination which is appealable (and pursue such appeal with reasonable diligence);

- D. By Practice Purchaser, if the Bankruptcy Case is dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the financial affairs, the business or the reorganization of Seller is appointed in the Bankruptcy Case;
- E. By either Practice Purchaser, Real Property Purchaser or Seller, if following its entry, the Sale Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of Practice Purchaser, Real Property Purchaser and Seller or is not in a form reasonably satisfactory to either Practice Purchaser or Real Property Purchaser; provided that the right to terminate this Agreement under this Section 12(E) shall not be available to any party whose failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Sale Order to meet these requirements on or before such date;
- F. By either the Practice Purchaser, Real Property Purchaser or Seller, if following its entry, the Bidding Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of the Practice Purchaser, Real Property Purchaser and Seller; provided that the right to terminate this Agreement under this Section 12(F) shall not be available to any party whose failure to fulfill any material obligation under this Asset Purchase Agreement has been the cause of, or resulted in, the failure of the Sale Order to meet these requirements;
- G. By either Practice Purchaser or Real Property Purchaser if either of them is not the successful bidder in the Auction; provided that in such event, the Deposit and Expense Reimbursement shall be due in accordance with Section 5;
- H. Automatically upon consummation of an Alternative Transaction, subject to the procedures described in Section 15(A)(c); provided that in such event, the Deposit and Expense Reimbursement shall be due in accordance with Section 5;
- I. By either Practice Purchaser or Real Property Purchaser, if there has been a material adverse effect between the Execution Date and the Closing Date;
- J. By Seller, if either Practice Purchaser or Real Property Purchaser has breached any representation, warranty, covenant or agreement contained in this Asset Purchase Agreement; provided, however, that if such breach is curable by the applicable purchaser within twenty (20) days through the exercise of its reasonable best efforts, then for as long as the applicable purchaser continues to exercise such reasonable best efforts, Seller may not terminate this Agreement under this Section 12(J) unless such breach is not cured within twenty (20) days from written notice to the applicable purchaser of such breach; provided, further, that Seller is not then in material breach of the terms of this Asset Purchase Agreement, and provided further, that no cure period shall be required for a breach which by its nature cannot be cured; further, if a termination occurs under this Section 12(J), the Seller shall retain the Deposit;
- K. By either Practice Purchaser or Real Property Purchaser, if Seller has breached any representation, warranty, covenant or agreement contained in this; provided, however, that if such breach is curable by Seller within twenty (20) days through the exercise of its respective reasonable best efforts, then for so long as Seller continues to exercise such reasonable best efforts the Purchaser may not terminate this Agreement under this Section 12(J) unless such breach is not cured within twenty (20) days from written notice to Seller of such breach;

provided, further, that the applicable purchaser is not then in material breach of the terms of this Agreement, and provided further, that no cure period shall be required for a breach which by its nature cannot be cured;

- L. By Seller, if all of the conditions set forth in Section 7(C) have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived and either Practice Purchaser fails to deliver the Practice Asset Purchase Price or Real Property Purchaser fails to deliver the Real property Purchase Price; further, if a termination occurs under this Section 12(L) the Seller shall retain the Deposit; or
- M. By either Practice Purchaser or Real Property Purchaser if, prior to the lapse of the Due Diligence Period, either of the Purchasers determines in its discretion that it will not consummate the transaction contemplated by this Agreement.

13. **PROCEDURE UPON TERMINATION:** In the event of a termination of this Asset Purchase Agreement by either Practice Purchaser or Real Property Purchaser or Seller, or both, pursuant to Section 12, (a) written notice thereof shall be given promptly by the terminating party to the other parties hereto, specifying the provision hereof pursuant to which such termination is made, (b) the consummation of the transactions contemplated by this Asset Purchase Agreement shall be abandoned without further action of the parties hereto. If this Asset Purchase Agreement is terminated as provided herein, each party shall redeliver all documents, work papers and other material of any other party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the party furnishing the same, subject to the provisions of this Asset Purchase Agreement which survive by their terms.

14. **EFFECT OF TERMINATION:** In the event that this Asset Purchase Agreement is validly terminated as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Asset Purchase Agreement effective as of the date of such termination and such termination shall be without liability to either Practice Purchaser, Real Property Purchaser or Seller; the obligation of Practice Purchaser and Real Property Purchaser to serve as the a "stalking horse" bidder hereunder shall not survive any such termination and shall be not enforceable hereunder. In no event shall any termination of this Asset Purchase Agreement relieve any party hereto of any liability for any willful breach of this Asset Purchase Agreement by such party.

15. **BANKRUPTCY CASE MATTERS:**

A. Competing Bids and Other Matters.

- (a) This Asset Purchase Agreement and the Transactions contemplated hereby are subject to Seller's right and ability to consider higher or better competing bids with respect to the Practice and the Real Property ("**Competing Bids**") pursuant to the bidding procedures specified in the Bidding Procedures Order. From the date of entry of the Bidding Procedures Order until the conclusion of the time period specified in the Bidding Procedures Order, Seller is permitted to, and may cause its representatives and affiliates to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Practice Purchaser and Real Property Purchaser and their affiliates, agents and representatives) in connection with any sale or other disposition of the Practice and the Real Property or the continuation of the Business as a reorganized, going-concern.
- (b) From the date of entry of the Bidding Procedures Order until the conclusion of the Auction, Seller shall have the responsibility and obligation to respond to any inquiries or offers to purchase all or any part of the Practice and the Real Property, and perform any and all other acts related thereto which are required under the Bankruptcy Code or other applicable law, including, without limitation, supplying information relating to the

Practice and the Real Property to prospective purchasers, subject only to the provisions of the Bidding Procedures Order.

- (c) If an Auction is conducted, and the Practice Purchaser and Real Property Purchaser are not the prevailing parties at the conclusion of such Auction (such prevailing party, the "**Prevailing Bidder**"), and if Practice Purchaser and Real Property Purchaser are the second highest bidders, as so notified by Seller, then and in that event, Practice Purchaser and Real Property Purchaser shall be required to serve as the back-up bidders (the "**Back-up Bidders**") and to keep their bids to consummate the Transactions, as contemplated by this Asset Purchase Agreement on the terms and conditions set forth herein, open and irrevocable unless and until the Prevailing Bidder consummates the acquisition of the Practice Assets and the Real Property (the "**Alternative Transaction**") in accordance with the provisions of the Bidding Procedures Order; provided, however, that notwithstanding the foregoing, in no event shall Practice Purchaser be required to consummate the purchase of the Practice Assets, or Real Property Purchaser be required to consummate the purchase of the Real Property unless both the Practice Assets and the Real Property are purchased by Practice Purchaser and Real Property Purchaser.
- (d) If an Auction is conducted, and the Practice Purchaser and Real Property Purchaser are not the prevailing parties at the conclusion of such Auction, and the Seller closes an Alternative Transaction, the Prevailing Party shall pay the Expense Reimbursement to Real Property Purchaser provided for in Section 5 at Closing.
- (e) Seller shall promptly serve true and correct copies of the Bidding Procedures Order and all related pleadings on Practice Purchaser and Real Property Purchaser in accordance with the Bidding Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules for the United States Bankruptcy Court for the Middle District of Florida and any other applicable order of the Bankruptcy Court.

B. Sale Order. Unless there is an Alternative Transaction, the Sale Order shall be entered by the Bankruptcy Court substantially in the form and substance reasonably acceptable to Seller, Practice Purchaser and Real Property Purchaser. The Sale Order shall, among other things, (i) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (A) the execution, delivery and performance by Seller of this Asset Purchase Agreement, (B) the sale of the Practice Assets to Practice Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), (C) the sale of the Real Property to Real Property Purchaser on the terms set forth herein and free and clear of all Encumbrances, and (D) the performance by Seller of its obligations under this Asset Purchase Agreement; (ii) authorize and empower Seller to assume and assign to the Purchaser the Assigned Contracts; and (iii) find that Practice Purchaser and Real Property Purchaser are "good faith" buyers within the meaning of Section 363(m) of the Bankruptcy Code, not a successor to Seller and grant Practice Purchaser and Real Property Purchaser the protections of Section 363(m) of the Bankruptcy Code. Each of Practice Purchaser and Real Property Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court approval of the Sale Order, including, without limitation, furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (a) demonstrating that each of Practice Purchaser and Real Property Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code and (b) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code. In the event that the Sale Order shall be appealed, Seller shall use reasonable efforts to defend such appeal.

16. **SELLER'S REPRESENTATIONS AND WARRANTIES:** Seller and Dr. Ortiz each hereby represents and warrants to Practice Purchaser and Real Property Purchaser the following, such representations

and warranties being true on the Signature Date and, unless the context requires otherwise, as if again made on the Date of Closing:

- A. Capacity. Subject to the entry of the Sale Order, Seller and Dr. Ortiz each has the requisite power and authority to enter into this Asset Purchase Agreement and the documents referenced herein, and perform its and his obligations thereunder.
- B. Powers. Subject to the entry of the Sale Order, Seller's execution, delivery and performance of this Asset Purchase Agreement and all other documents referenced herein or ancillary hereto to which it or he is a party, and Seller's consummation of the Transactions contemplated hereby or thereby are within its and his powers and have been approved by the Bankruptcy Court.
- C. Binding Agreement. Subject to the entry of the Sale Order, this Asset Purchase Agreement has been and, on the Closing Date, all of the agreements and documents to which Seller shall be a party in connection with this Asset Purchase Agreement shall have been, duly executed and delivered by Seller, and shall be the valid and legally binding obligation of Seller, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).
- D. Bankruptcy Court Approval. Following the execution and delivery of this Asset Purchase Agreement, Seller shall file a Notice of Filing the Executed Asset Purchase Agreement with the Bankruptcy Court.
- E. Further Assurances. From and after the Signature Date of this Agreement, Seller and Dr. Ortiz each shall grant to each of Practice Purchaser and Real Property Purchaser, their representatives and agents the right to access the Real Property of the Seller during regular business hours to review, inspect and copy any and all books, records, documents or other information concerning the Practice Assets or the Real Property as Practice Purchaser or Real Property Purchaser and their representatives or agents may reasonably request and subject to the execution of a confidentiality agreement if requested by Seller. At any time and from time to time after the Closing, at Practice Purchaser's or Real Property Purchaser's request and without further consideration, Seller will execute and deliver such other instruments of sale, transfer, conveyance, assignment, and delivery and confirmation and take such action as Practice Purchaser or Real Property Purchaser may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign the Practice Assets and the Real Property and to place Practice Purchaser and Real Property Purchaser in possession and control of, and to confirm their title to, the Practice Assets and the Real Property, as the case may be, and to assist them in exercising all rights and enjoying all benefits with respect thereto.
- F. Independent Consultation. Seller warrants that Seller has independently consulted with Seller's Counsel and accountant and is relying solely upon their respective legal, financial, tax and/or accounting advice for all issues related to this transaction
- G. Status of Tangible Practice Assets: Seller represents and warrants that, to the best of Seller's knowledge, all of the tangible Practice Assets being transferred through this Asset Purchase Agreement meet applicable state and federal regulations and shall be free from all defects, in good repair and working order (normal wear and tear excepted) on the Date of Closing, unless otherwise specified on the attached Exhibit "1-A". Seller represents that all required maintenance, repair and service (including software updates, if applicable) to clinical and/or lab equipment have been performed in accordance with the respective manufacturer's guidelines and/or applicable healthcare rules, regulations and/or guidelines and that Seller has not taken any action (including, without limitation any failure to act) that could or would have an adverse effect upon any warranty and/or service contract with respect thereto.

- H. Real Property Condition. To the best of Seller's knowledge: (a) there are no actual or threatened settlement, earth movement, termite infestation, water retention, or damage affecting the Real Property, or any defects in any mechanical, electrical, plumbing, sewer, heating, air conditioning systems of the Real Property, all of which are in good operating condition and repair; (b) there are no structural defects in the Real Property and is free of leakage.
- I. Environmental Matters. To the best of Seller's and Dr. Ortiz's knowledge:
- (a) Seller has not deposited any Hazardous Substance (as hereinafter defined), and there are no Hazardous Substances located on, in, or at the Real Property and no such substances, products, or wastes have been generated, stored, treated, deposited, buried, spilled, released, discharged, or disposed of on the Real Property other, in all such cases, than in the ordinary course of the operation of the Business in full compliance with all environmental, safety, health, and sanitation laws, rules, regulation, and ordinances;
  - (b) Seller stores, handles, and disposes of all substances (including petroleum products) used in its operations and wastes or by-products from its operations, whether Hazardous Substances or not, in a manner which complies with all environmental, safety, health, and sanitation laws, rules, regulations, and ordinances;
  - (c) The Real Property has not been used for: any industrial or commercial operation involving any Hazardous Substance; equipment, machinery, part or component cleaning or degreasing; the sale, storage, generation, disposition, or transport of Hazardous Substances; any aspect of the provision of services which utilize Hazardous Substances; drilling, mining or production of oil, gas, minerals or other naturally occurring products; or any agricultural activities involving the use and storage of fertilizers or pesticides other than in the ordinary course of the operation of the Business in full compliance with all environmental, safety, health, and sanitation laws, rules, regulations, and ordinances;
  - (d) No asbestos-containing materials have been installed in or affixed to the Real Property or utilized, stored, or disposed of anywhere on the Real Property by Seller or any other person, whether before or during Seller's ownership thereof;
  - (e) No electrical transformers, fluorescent light fixtures, or other electrical equipment containing PCBs are or have been installed in, affixed to, or located on the Real Property by Seller or any other person, whether before or during Seller's ownership thereof.

For purposes of this Agreement, the term "Hazardous Substance" shall mean any substance which shall be listed as hazardous or toxic in the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. 9601 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 et seq.), Toxic Substances Control Act (15 U.S.C. 2601 et seq.) or the regulations thereunder, or which has been determined to be a hazardous or toxic substance regulated under applicable law, including, without limitation, the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), the Clean Air Act, as amended (42 U.S.C. 7401 et seq.), or the regulations thereunder, and any other local, state, and/or federal laws or regulations that govern the existence, cleanup, and/or remedy or contamination on property, the protection of the environment, the control of hazardous wastes, or the use, generation, transport, treatment, removal, or recovery of hazardous or toxic substances, including building materials. The term "Hazardous Substance" shall also include, without limitation, raw materials, building components, the products of any

manufacturing or other activities on the subject property, wastes, petroleum, and source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 1251 et seq.).

J. Further Assurances. Seller and Dr. Ortiz each further represents and warrants that on the Signature Date:

- (a) to the best of Seller's and Dr. Ortiz's knowledge, the Real Property is properly zoned for its intended use as a dental practice;
- (b) to the best of Seller's and Dr. Ortiz's knowledge, Seller and Dr. Ortiz have complied with all applicable local, state and federal regulations, statutes, laws, ordinances, rules, regulations, orders or directives relating to the operation of the Practice and use of the Real Property, including but not limited to applicable environmental and employment laws; and
- (c) Seller, Dr. Ortiz and all clinical practitioners employed in the Practice, if any, are currently licensed to practice dentistry or dental hygiene in Florida and are in material compliance with all applicable federal, state and local laws, rules and regulations relating to such professional licensure, including all fraud and abuse, fee splitting and prohibitions on self-referrals.
- (d) Seller agrees to terminate the employment of Seller's employees effective with the close of business on the day prior to the Closing Date. Practice Purchaser shall consider each of Seller's employees as candidates for continued employment with the Practice Purchaser following the Date of Closing, and may (but shall not be obligated to) offer employment to such individuals on such terms of employment as determined by Practice Purchaser in its sole and absolute discretion.
- (e) Seller and Dr. Ortiz each shall be responsible for all taxes, charges, fees, levies, assessments, or penalties or other charges or fees imposed by any federal, state, or local taxing authority, including, without limitation, income, gross receipts, excise, ad valorem real property or personal property, sales, transfer, franchise, payroll, withholding, social security and other taxes, and shall include any interest, penalties or additions attributable thereto ("Taxes") in connection with, relating to or arising out of the Practice or the ownership of the Real Property attributable to taxable periods, or portions thereof, ending on or before 11:59 p.m. of the day immediately preceding the Closing, which Taxes shall not be assumed by either the Purchase Purchaser or the Real Property Purchaser.

K. No Other Representations or Warranties. Practice Purchaser and Real Property Purchaser acknowledge that Seller is a debtor in possession in the Bankruptcy Case and that, except as expressly set forth herein, except as specifically set forth herein, Seller has not made any warranties or representations concerning the Practice or the Real Property or any component thereof, including, without limitation, the operation of or the costs or results of the operation thereof; the condition of the Real Property or any improvements thereto; the compliance of the Real Property or any part thereof with any governmental requirement; or the accuracy or completeness of any statement or other matter previously disclosed to Practice Purchaser and Real Property Purchaser. Practice Purchaser and Real Property Purchaser represent that they are purchasing the Practice and the Real Property in an "**AS-IS, WHERE-IS**" condition, Practice Purchaser and Real Property Purchaser having made (or having had the opportunity to make prior to the date of this Agreement) its own inspection and examination of the Practice and the Real Property and all components thereof. **EXCEPT AS SPECIFICALLY PROVIDED FOR HEREIN, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES GIVEN TO PRACTICE PURCHASER AND REAL PROPERTY PURCHASER IN CONNECTION WITH**



**THE SALE OF THE PRACTICE AND THE REAL PROPERTY. SELLER HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY, HABITABILITY, AND FITNESS THAT MAY BE DUE FROM SELLER TO PRACTICE PURCHASER AND REAL PROPERTY PURCHASER. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THIS SECTION SHALL SURVIVE THE CLOSING.**

All warranties and representations of Seller shall remain in effect until the Closing Date.

17. PURCHASERS' REPRESENTATIONS AND WARRANTIES: Except to the extent otherwise set forth in this Asset Purchase Agreement, Practice Purchaser and Real Property Purchaser each represent, warrant and agree as follows, such representations and warranties being true on the Signature Date and, unless the context requires otherwise, as if again made on the Date of Closing:
- A. Financial Projections. Each of Practice Purchaser and Real Property Purchaser acknowledges that any Practice related income and expense projections provided to them by Seller are projections only and are not to be construed as a representation or warranty relating to the future business potential or income and expenses of the Practice, Seller's past results do not guarantee future performance, and any fluctuations of income and expenses following the Date of Closing are beyond the control of Seller.
  - B. Independent Consultation. Each of Practice Purchaser and Real Property Purchaser (i) has independently consulted with its own attorney and accountant and is relying solely upon their respective legal, tax and/or accounting advice for all issues related to this transaction, (ii) has independently investigated and examined to its complete satisfaction, the clinical, financial and all other records of the Practice (including third party managed care contracts, if any), and (iii) is purchasing the Practice and Real Property without any statement, representation or warranty, expressed or implied, from Seller and/or from any other third party incidental to this transaction, except for those specifically written in this Asset Purchase Agreement.
  - C. Due Diligence. Prior to the Date of Closing, each of Practice Purchaser and Real Property Purchaser shall have independently examined and determined to its complete satisfaction, all the Practice Assets and the Real Property and their respective values, and, except for Seller's representations and warranties set forth in this Asset Purchase Agreement relating to title and the working condition and title of the Practice Assets and title, is purchasing the Practice Assets and the Real Property "where and as is" on the Date of Closing, solely upon their independent examination at that time, without any representation or warranty, expressed or implied, from Seller as to the value, condition and/or merchantability of the Practice Assets and the Real Property, other than those representations set forth by Seller in Section 16 above. Each of Practice Purchaser and Real Property Purchaser agrees that, following the Date of Closing, Seller shall have no further responsibility or liability to it related to the condition of the Practice Assets and Real Property, except for a breach of Seller's warranties of title and/or any other warranties and covenants specified in this Asset Purchase Agreement. The Real Property Purchaser and the Practice Purchaser shall have thirty (30) days following the execution and delivery of this Agreement in which to conduct any remaining due diligence (the "**Due Diligence Period**"), after which the Deposit shall be retained by the Seller in the event of termination as provided for in Section 12.
  - D. Organization. Each of Practice Purchaser and Real Property Purchaser is duly created, validly existing and has active status as a limited liability company under the laws of the State of Florida and has the power to carry on its business as now conducted. Each of Practice Purchaser and Real Property Purchaser has full legal power and authority to enter into and perform this Asset Purchase Agreement and carry out its 's obligations contemplated hereby, without the necessity of any act or consent of any other person or entity, in accordance with its terms. This Asset Purchase Agreement has been duly and validly executed by each of Practice Purchaser and Real Property Purchaser and, assuming due execution and delivery by Seller,

and the executed Sale order, constitutes the valid and binding obligation of each of Practice Purchaser and Real Property Purchaser and is enforceable in accordance with its terms.

- E. No Conflict. The execution and delivery by each of Practice Purchaser and Real Property Purchaser of this Asset Purchase Agreement and the documents contemplated herein, as well as the consummation by each of Practice Purchaser and Real Property Purchaser of this acquisition, do not and will not (i) violate the terms of any instrument, document or agreement of which it is a party, or by which it Purchaser or the property of Purchaser is bound, or be in conflict with, result in a breach of or constitute (upon the giving of notice, lapse of time or both) a default under any such instrument, document or agreement, or (ii) violate any order, writ, injunction, decree, judgment, ruling, law, rule or regulation of any federal, state, county or foreign court or governmental authority applicable to each of Practice Purchaser and Real Property Purchaser relating to the Practice.
- F. Litigation. To the best knowledge of each of Practice Purchaser and Real Property Purchaser, there is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation, pending or threatened, against or affecting either entity's ability to consummate the Transaction contemplated by this Asset Purchase Agreement.

18. **PATIENT COMPLAINTS RELATING TO PRE-DATE OF CLOSING SERVICES:** The parties acknowledge that, as non-dentists, the patients of the Practice may not be qualified to judge the appropriateness, quality, circumstances or feasibility of the dental services provided by Seller or Dr. Ortiz (or any professional employee of Seller) prior to the Date of Closing. Practice Purchaser also acknowledges the difficulty in making judgments after-the-fact relating to clinical services rendered by Seller or Dr. Ortiz (or any professional employee of Seller) without knowledge of the facts and conditions that existed at the time the services were rendered. Therefore, the parties agree that, following the Date of Closing:

- A. Subject to the provisions of paragraphs "B" and "C" below, Practice Purchaser agrees to provide any extended or corrective treatment to any former patient of Seller (or any professional employee of Seller), as and when necessary, whether for a fee or at no charge to the patient, but at no expense to Seller, unless otherwise agreed to in advance and in writing by Seller. If the parties fail to agree on such a determination, then the matter shall be resolved by a clinically qualified third party mutually agreed to by both parties as specified below.
- B. Practice Purchaser agrees to promptly notify Dr. Ortiz in writing of any patient of the Practice who maintains that Seller, Dr. Ortiz (or any professional employee of Seller) warranted a service, and/or rendered an alleged defective service; and/or that a patient requests Practice Purchaser to provide, free of charge or at a reduced fee, either corrective or replacement treatment and/or a partial or full refund for services rendered by Seller or Dr. Ortiz (or any professional employee of Seller), prior to the Date of Closing (hereinafter referred to as a "**Defective Service Notice**"). In such Defective Service Notice, Practice Purchaser shall inform Seller and Dr. Ortiz; (a) whether or not Practice Purchaser has in good faith deemed, that Seller or Dr. Ortiz has allegedly rendered defective service(s), and (b) the specific damage or necessary corrective treatment necessitated by such alleged defective service(s). Dr. Ortiz may agree with Practice Purchaser's assessment that the Pre-Date of Closing services were defective, or Dr. Ortiz may disagree with such assessment. If Dr. Ortiz disagrees with such assessment, then the parties will request a qualified, licensed unrelated dentist mutually acceptable to both parties to review the facts and make a finding of whether to uphold Practice Purchaser's assessment, as spelled out in the Defective Service Notice, or to uphold Dr. Ortiz's assessment. If the qualified third party determines that corrective action is necessary, then either Dr. Ortiz or a licensed dentist selected by Dr. Ortiz, at Dr. Ortiz's option and expense and with the consent of the patient, will be given access to the Real Property, Equipment and employees of the Practice (at a time mutually agreed to by the parties) for the purpose of performing such corrective treatment. Alternatively, if mutually agreed, Practice Purchaser will

complete such treatment and shall be paid by Dr. Ortiz an amount representing sixty percent (60%) of Practice Purchaser's usual and customary fee for that procedure. However, should Practice Purchaser receive a payment from that patient then Dr. Ortiz shall be obligated to pay only the difference between the amount of the payment paid by that patient and sixty percent (60%) of Practice Purchaser's usual and customary fee for that procedure.

C. Practice Purchaser will not notify, offer to, or actually refund a fee, in full or in part, that was paid by a patient or by any third party (if applicable) for services rendered by Seller (or any professional employee of Seller), without the prior written consent of Dr. Ortiz, which consent shall not be unreasonably withheld and/or conditioned. If Dr. Ortiz consents to such a refund, then Dr. Ortiz shall pay the refund directly to the patient (or third party), but such refund shall not be construed as recompense, or an admission by Seller Dr. Ortiz to having rendered a defective service.

19. USE OF SELLER'S NAME: Seller and Dr. Ortiz hereby license to Practice Purchaser the use of Seller's and Dr. Ortiz's personal names: (A) when answering the Practice telephone for a period of up to twelve (12) months following the Date of Closing, and (B) when collecting the Pre-Date of Closing accounts receivable for a period of six (6) months after the Date of Closing, or in either event, for the maximum time allowed under applicable Florida laws and regulations, whichever is less. The foregoing notwithstanding, Practice Purchaser may, at any time during the aforesaid period, elect, in its sole discretion, to discontinue the use of Seller's or Dr. Ortiz's name in connection with the Practice. Such rights to use Seller's name does not extend to advertising, signage, or other Practice promotion. Such use of Seller's and/or Dr. Ortiz's personal name shall not be construed as creating any association, partnership or joint venture between the parties. However, all rights to any fictitious name that may be used in the operation of the Practice (whether such name is a corporate or trade name) shall be permanently transferred to Practice Purchaser on the Date of Closing. During the time that Seller's or Dr. Ortiz's name is used Practice Purchaser shall name Seller and Dr. Ortiz as an additional insured on Practice Purchaser's general liability policy(ies) pertaining to the Practice.

20. ANNOUNCEMENTS: On the Date of Closing, Seller agrees, if requested by Practice Purchaser, to notify, in writing, all patients of the Practice (or the head of household for families) for whom treatment has been rendered within three (3) years prior to the Closing Date (hereinafter referred to as the "**Active Patients**"), and to all professional or other active referral sources of the Practice, a mutually approved, appropriate announcement of this transaction, signed by Dr. Ortiz on behalf of Seller. This announcement shall include an introduction of Practice Purchaser, an acknowledgement that Dr. Ortiz will remain on staff after the Date of Closing and a recommendation to the Active Patients that they continue coming to the Practice for their future dental care. The expense of such announcements shall be paid for by the Practice Purchaser.

A. Both parties agree not to disclose or release any information concerning the negotiations and discussions pertaining to this Transaction to any other person or entity other than each party's respective legal and tax advisors and thr Bankruptcy Court, without the prior written consent of the other party; provided however this limitation shall not apply to the extent necessary or appropriate to fully comply with any applicable law regulation or the order of any court of competent jurisdiction.

B. Dr. Ortiz's announcement to the Active Patients shall be made exclusively for the benefit of Practice Purchaser only. Seller and Dr. Ortiz agree not to take any action that is designed or intended to have the effect of discouraging patients or others from using the Practice or otherwise from maintaining the same business relationships with Practice Purchaser after the Date of Closing. Seller and Dr. Ortiz further agree not to make any statement, orally or in writing, or take any other action that might damage the business and professional reputation of Practice Purchaser or interfere with or adversely affect the relations of Practice Purchaser and any of Practice Purchaser's suppliers or employees.

- C. Practice Purchaser agrees not to make any statement, orally or in writing, or take any other action that might damage the business and professional reputation of Seller or Dr. Ortiz or interfere with or adversely affect the relations of Seller and any of Seller's suppliers or employees (if applicable).
21. PATIENT RECORDS: The parties agree that to ensure continuity of care for the aforementioned Active Patients, Seller's and Dr. Ortiz's custodial interest in, and responsibility for, the patient records relating to services rendered to patients of the Practice prior to the Date of Closing (hereinafter referred to as the "**Patient Records**") shall transfer to Practice Purchaser on the Closing Date, to the extent permitted by applicable law. Practice Purchaser, Seller and Dr. Ortiz agree to comply with any applicable state and federal laws, rules and regulations relating to the transferability, confidentiality, privacy and security of the clinical and financial content of the Patient Records, including but not limited to all applicable HIPAA privacy and security regulations. Practice Purchaser agrees to retain the Active Patient Records in a safe place and manner from the Date of Closing until one (1) year after the expiration of all applicable statute of limitations for liability claims for services rendered by Seller on that particular patient.
- A. The parties agree that all patient records of inactive patients (hereinafter referred to as the "**Inactive Patient Records**") of the Practice, whether stored on the Real Property or at any other location, shall remain in the custody of Seller. Upon written request by Purchaser, Seller agrees to remove the Inactive Patient Records from the Real Property and to store them elsewhere. Upon such removal, Purchaser shall have no further obligations with respect thereto. The term Inactive Patient Records shall mean records relating to those patients of the Practice who are not Active Patients. Seller shall be responsible for maintaining the Inactive Patient Records in accordance with all applicable laws, rules and regulations.
- B. In the event of a malpractice action or claim arises against Dr. Ortiz or Seller, or a regulatory or other investigation by the government or a professional association arises, then upon reasonable request, Practice Purchaser will make all relevant original Patient Records (to the extent transferred to Practice Purchaser hereunder) available to Seller, Dr. Ortiz, Dr. Ortiz's estate, and/or any former professional employee of the Practice (at the requesting party's expense), in accordance with the confidentiality requirements of any applicable state and federal law, rules and regulations. Unless otherwise determined by the courts having jurisdiction over the matter, upon completion of such action, the original Patient Records shall be returned to Practice Purchaser. Practice Purchaser may make copies of such Patient Records, at the requesting party's cost, and maintain those copies until such time as the original Patient Records are returned.
- C. Following the date Dr. Ortiz discontinues working in the Practice, with respect to any appliance for patients treated by Dr. Ortiz and held by Practice Purchaser pending receipt of the final payment, such appliance shall not be disposed of by Practice Purchaser without first notifying Seller and the patient, in writing, at least thirty (30) days in advance of disposing of any such appliance.
22. POST-CLOSING EMPLOYMENT OF DR. ORTIZ: Dr. Ortiz agrees to make himself available for employment, and Practice Purchaser agrees to employ Dr. Ortiz, for a mutually agreeable period following the Closing Date upon the terms specified in the Provider Agreement, in the form attached hereto as Exhibit "D", to be executed by the parties at the Closing. During such employment period, Dr. Ortiz will provide professional services to the patients of the Practice and will assist in legally inducing the patients to remain with the Practice after the Closing and transitioning the patients to other dentists employed by Practice Purchaser at the Real Property.
23. INDEMNIFICATION: Seller shall have no responsibility for indemnification hereunder. Dr. Ortiz, on the one hand, and Practice Purchaser, on the other hand (in this capacity, the "**Indemnifying Party**") hereby agrees to indemnify, defend, and hold harmless the other (in this capacity, the "**Indemnified Party**") from, against and with respect to any and all liability, claim, loss, damage, obligation, cost or expense arising out of or in connection with, directly or indirectly, the Indemnifying Party's breach or

violation of any representation, warranty or covenant contained in this Agreement or its exhibits, including reasonable attorneys' and paralegals' fees and expert witness fees and other reasonable costs incurred in the defense of any legal proceeding asserting such a claim.

- A. Dr. Ortiz and/or Dr. Ortiz's assigns and successors agree to indemnify, defend and hold Practice Purchaser and Real Property Purchaser harmless from, against and with respect to any and all liabilities, claims, damages, losses, penalties, fines, costs and/or expense, of any kind and/or nature whatsoever, which, in any manner, arises or results from, directly or indirectly, the operation of the Practice prior to the Closing Date, and/or from any liability or obligation of Dr. Ortiz and/or Dr. Ortiz's employees, agents and/or independent contractors not expressly assumed by Practice Purchaser or Real Property Purchaser hereunder.
- B. Practice Purchaser shall indemnify, defend and hold Dr. Ortiz harmless from, against and with respect to any and all loss (including any loss of value of the Assets and goodwill) arising out of any conduct or practice of Practice Purchaser and Practice Purchaser's employees at any time following the Closing Date, and/or from any liabilities or obligations of Dr. Ortiz expressly assumed by Practice Purchaser and specifically described in this Agreement (if any).
- C. Upon receipt of a claim or demand for which a party is entitled to indemnification, the Indemnified Party shall promptly:
  - (a) notify the Indemnifying Party in writing of the nature of the indemnifiable claim, and the names and addresses of the persons involved in or having an interest in such claim; and
  - (b) furnish the Indemnifying Party with all documents and information within the possession, custody or control of the Indemnified Party and relating to such claim; and
  - (c) cooperate with the Indemnifying Party and his or its counsel including but not limited to appearing as a witness as may be reasonably required and responding to all reasonable requests for documents and answering interrogatories.
- D. Upon receipt of written notice of an indemnifiable claim and all other documents and instruments required to be furnished to the Indemnifying Party, the Indemnifying Party shall be responsible for providing a defense in a manner and utilizing attorneys selected by the Indemnifying Party, for which the Indemnifying Party shall be solely responsible for payment of all costs and expense. The Indemnifying Party shall not enter any negotiation or settlements with the person or entity asserting the claim without receiving the prior express written consent of the Indemnified Party, which may not be unreasonably withheld, delayed or conditioned.
- E. In the event the Indemnifying Party defends the indemnifiable claim, it may do so under a reservation of its rights to cease the defense of the indemnifiable claim at a later date (upon reasonable prior written notice to the Indemnified Party) in the event it is determined that the Indemnifying Party has no obligation to defend or indemnify.
- F. The amount payable by an Indemnifying Party to an Indemnified Party with respect to a loss shall be reduced by the amount of any proceeds received by the Indemnified Party from any third party, including, without limitation, insurance proceeds on account of such loss. The parties hereto agree to use commercially reasonable efforts to collect any and all insurance proceeds to which it may be entitled.
- G. Notwithstanding the foregoing indemnity and hold harmless provisions of this Agreement or any other provision which may provide or be deemed to provide to the contrary, none of the indemnity and hold harmless provisions hereof shall apply with respect to any actions of professional liability to the extent that such actions are insured against by either party, unless the underwriter successfully denies coverage, or the underwriter refuses to pay under the policy. Such exclusion shall not apply to any portion of a claim which exceeds the professional liability coverage.

- H. Should either party not fulfill the terms of indemnification as described herein, then, in addition to any other remedies provided by law, the following shall apply:
- (a) if Practice Purchaser does not fulfill the terms of indemnification, then Practice Purchaser shall reimburse to Dr. Ortiz all damages assessed against Dr. Ortiz (except for those which are attributable to the actions of Seller or Dr. Ortiz) which, under the terms of this Agreement, or otherwise, are the obligation of Practice Purchaser, together with all direct and actual reasonable out-of-pocket costs and expenses, including reasonable attorneys' and paralegals' fees, actually incurred by Dr. Ortiz in defending Dr. Ortiz's indemnifiable position; if Practice Purchaser does not make such reimbursement within thirty (30) days of the time Practice Purchaser receives written notice that such costs and expenses were incurred, then all the terms of the Restrictive Covenants shall become null and void and Practice Purchaser will be liable to Dr. Ortiz for all such costs, fees and expenses; or
  - (b) if Dr. Ortiz does not fulfill the terms of indemnification, then Practice Purchaser or Real Property Purchaser, as the case may be, shall deduct all damages assessed against Practice Purchaser or Real Property Purchaser which, under the terms of this Agreement, or otherwise, are the obligation of Dr. Ortiz, together with all reasonable costs and expenses incurred including reasonable attorney's and paralegals' fees for defending Practice Purchaser's or Real property Puchaser's indemnifiable position, from any monies that may be due and payable to Dr. Ortiz by Practice Purchaser or Real Property Purchaser; in the event there are insufficient funds remaining due Dr. Ortiz to pay Practice Purchaser or Real Porperty Purchaser the indemnified amounts due, then Dr. Ortiz shall immediately pay to Practice Purchaser or the Real property Purchaser the balance of any and all such costs, expenses and amounts.

Should the obligation to indemnify be in dispute between the parties, then the aforementioned required reimbursement shall be required to be paid thirty (30) days following the time such dispute has been arbitrated or otherwise determined with finality by a court of competent jurisdiction as hereinafter provided in this Agreement.

- I. Following the Closing, except for the Patient Records, Restrictive Covenants and claims of fraud, willful misconduct or intentional misrepresentation, each party acknowledges and agrees that the remedies set forth in this Section 23 shall constitute the sole and exclusive remedies for recovery by any Indemnified Party for any claim arising out of or based on this Agreement or any other agreement delivered by the parties as part of the Closing, and the transactions contemplated hereby and thereby, including claims based upon any breach, inaccuracy, inadequacy or incompleteness of a representation or warranty of any party, or based on the failure of another party to perform any covenant, agreement or undertaking that the terms hereof or thereof required to be performed by such party, and none of the Parties shall be entitled to a rescission of this Agreement or any such ancillary document, or to any further indemnification rights or claims or remedies of any nature whatsoever in respect thereof, all of which the parties hereby waive.

24. EXPENSES: Each party shall pay all their respective broker, consultant, attorney or accountant fees and expenses incurred by such party with respect to this Asset Purchase Agreement and the transaction contemplated hereby. In the event a party hereto seeks to enforce any of its rights hereunder, in a court of competent jurisdiction or in such other forum as is provided hereunder, and if such action results in a judgment (or award or opinion rendered in an alternative forum) substantially in favor of either party (a dismissal, with prejudice, by the party commencing such action, shall be deemed to be a judgment in favor of the other party for the purpose of this Section), then and in such event the prevailing party shall be entitled to recover from the other party, in addition to the relief awarded the prevailing party in or by judgment, all court costs, reasonable investigation expenses, and reasonable attorneys' and paralegals' fees, including those incurred before trial, at trial, in appellate proceedings and in proceedings in bankruptcy, incurred by the prevailing party in such action.

25. ATTORNEYS AND DOCUMENTS: The parties acknowledge that each has been represented by independent legal counsel in this transaction, and/or have been advised to use their own independent legal counsel.
26. INTEGRATION: This Asset Purchase Agreement includes the attached exhibits and any Orders of the Bankruptcy Court, and embodies the entire agreement and understanding among the parties hereto regarding the subject matter hereof, and replaces and supersedes any prior agreements between the parties, oral or written, related to the subject matter hereof.
27. GOVERNING LAW: THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF FLORIDA SHALL GOVERN, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.
28. JURISDICTION, WAIVER OF JURY TRIAL:
- A. THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THEN THE COURTS OF THE STATE OF FLORIDA AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE MIDDLE DISTRICT OF THE STATE OF FLORIDA, TAMPA DIVISION WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY.
- B. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
29. BINDING EFFECT, ASSIGNMENT: Except to the extent of any contrary provisions herein, all of the terms of this Asset Purchase Agreement and the attached Exhibits, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto, and shall inure to the benefit of, and shall be enforceable by the parties hereto and their respective heirs, executors, personal representatives, successors and assigns.
- A. With the prior written consent of Seller, which will not be unreasonably withheld, either Practice Purchaser or Real Property Purchaser may assign this Asset Purchase Agreement to a third party provided, however, that Practice Purchaser or Real Property Purchaser, as the case may be, has paid in full any outstanding monetary obligation due Seller resulting from the sale of the Practice. Such permitted assignment, however, shall not relieve Practice Purchaser or Real Property Purchaser, as the case may be, of any remaining obligations hereunder.
- B. Provided Practice Purchaser is not in default of the terms of this Asset Purchase Agreement and/or its Exhibits, should Practice Purchaser sell the Practice to any third party, for any reason following the Closing Date, then Dr. Ortiz agrees that Practice Purchaser shall have the right to assign Dr. Ortiz's covenants contained herein or in the Exhibits hereto; Dr. Ortiz agrees to remain bound by those same terms and conditions contained therein to any subsequent purchaser of the Practice. Should there be any covenants granted to Seller by a third party who is or was employed in the Practice, and/or if there are any outstanding covenants made to Seller by any former Practice owner, and such covenants relate to the Practice and are in effect at the time this Asset Purchase Agreement is signed, then, subject to the terms and conditions of those agreements with such third parties, all such outstanding covenants shall be automatically assigned to Practice Purchaser at the Closing, to the extent that they are

assignable. Seller agrees to provide reasonable assistance to Practice Purchaser in enforcing such outstanding covenants against such third parties for the entire term of said covenants, should such third parties breach or attempt to breach those covenants that would result in a material and adverse effect on the Practice.

30. SEVERABILITY: In the event any section or part of this Asset Purchase Agreement or any of the attached Exhibits or parts thereof should be adjudged invalid, such adjudication shall in no manner affect the other sections or exhibits, which shall remain in full force and effect as if the section or exhibit so declared or adjudged invalid were not originally a part hereof unless the section or exhibit so declared or adjudged invalid materially affects the consideration or obligation either party is entitled to receive or assume hereunder.
31. NOTICE: Any notice or payment required or permitted in this Asset Purchase Agreement and the attached Exhibits shall be in writing and delivered personally, sent by certified U.S. Mail, return receipt requested, with all postage and other charges pre-paid or via a nationally recognized overnight delivery service, with all charges pre-paid. Any such notice or payment from Seller to either Practice Purchaser or Real Property Purchaser shall be addressed to the principal office of that entity. Any such notice or payment from either Practice Purchaser or Real Property Purchaser to Seller shall be hand delivered to Seller or addressed to the last known residential address of Dr. Ortiz. Notice shall be deemed given upon receipt or refusal of service.
- A. Either party may change its address, or the designation of its representative, by notifying the other party of such change in writing.
- B. Except where provided to the contrary elsewhere in this Asset Purchase Agreement and subject to the terms herein, each party agrees to give to the other party written notice of any alleged breach or violation of this Asset Purchase Agreement or the attached Exhibits, or of an intention to pursue legal action against the other arising out of this Asset Purchase Agreement. The party receiving such notice shall have ten (10) days to cure such default if such default is for a late payment, and shall have thirty (30) days to cure if the default is for something other than a late payment and is curable, before the other party may proceed with any legal action or exercise their right of offset against the other
- C. This requirement of notice and time to cure shall not prohibit a party from seeking injunctive relief immediately following an alleged breach of this Asset Purchase Agreement by the other party.
32. WAIVER OF BREACH OR VIOLATION NOT DEEMED CONTINUING: Either party may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations or warranties of the other parties hereto contained herein or in any document delivered pursuant hereto and (iii) waive compliance by any of the other parties hereto with any of the agreements or conditions contained herein. The waiver by either party of a breach or violation of any provision of this Asset Purchase Agreement shall not operate as, or be construed to be, a waiver of any, or other subsequent breach or violation of any provision thereof. Acceptance of a payment or partial payment after default shall not be deemed a waiver of any preceding breach or default other than the failure of either Practice Purchaser or Real Property Purchaser to pay the particular part of a payment accepted, regardless of Seller's knowledge of the preceding breach at the time of acceptance. No breach or violation of any provision hereof may be waived except by an agreement in writing signed by the waiving party.
33. SURVIVAL: All representations, covenants, warranties, obligations, indemnification, rights and responsibilities made or undertaken in this Asset Purchase Agreement and its Exhibits, or in any document or instrument executed and delivered pursuant hereto shall survive the Closing for a period of time commensurate with the applicable statute of limitations under which an action may be maintained for a breach thereof. Time is of the essence with respect to all provisions of this Asset Purchase Agreement (and its Exhibits) that specify a time for performance: provided, however, that the foregoing



shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Asset Purchase Agreement.

34. CONSTRUCTION: Neither this Asset Purchase Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Asset Purchase Agreement has been reviewed by the parties and their respective legal counsel, or each party has had the opportunity to have his/her/its legal counsel review it and, in the case of any ambiguity or uncertainty, shall be construed according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the parties hereto. The parties acknowledge that they have had the opportunity to participate equally in the drafting of this Asset Purchase Agreement and that in the event of a dispute, no party shall be treated, for any purpose, as the author of this Asset Purchase Agreement nor have any ambiguity resolved against it on account thereof.
35. NOMENCLATURE: The use of the male gender shall include the female, the individual shall include the corporate, and the singular shall include the plural, and vice versa, wherever such usage is appropriate to the context.
36. HEADINGS AND INTERPRETATION: The Section and paragraph headings contained in this Asset Purchase Agreement are for convenience only and shall in no manner be construed as a part of this Asset Purchase Agreement. Whenever the words "include", "includes" or "including" are used in this Asset Purchase Agreement, they shall be deemed to be followed by the words "without limitation". In addition, any other information, including articles and summaries shall not affect in any way the meaning or interpretation of the text of this Asset Purchase Agreement.
37. COUNTERPARTS AND ELECTRONIC SIGNATURES: This Asset Purchase Agreement may be executed in one or more counterparts (including by hand signature or electronic means), each counterpart is deemed an original, and all counterparts collectively constitute one and the same document.

**SIGNATURE PAGE IMMEDIATELY FOLLOWS THIS PAGE**

(remainder of page intentionally left blank)

**IN WITNESS WHEREOF**, the undersigned parties acknowledge that they have read this Asset Purchase Agreement, consisting of twenty-six (26) pages, including this signature page but not including and Schedules or Exhibits hereto, in its entirety and have executed this Asset Purchase Agreement on the Signature Date specified in the opening paragraph.

**Seller:**

**RAMON F. ORTIZ, D.M.D., M.S., P.A.**

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
Ramon F. Ortiz, D.M.D, President

Witness: \_\_\_\_\_

**Dr. Ortiz:**

Witness: \_\_\_\_\_

\_\_\_\_\_  
**RAMON F. ORTIZ, D.M.D., M.S.**

Witness: \_\_\_\_\_

**Practice Purchaser:**

**SMILE DESIGN PALM HARBOR, LLC**  
By: Mili D. Patel, D.M.D., P.A., Manager

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
Sachin Patel, COO

Witness: \_\_\_\_\_

**Real Property Purchaser:**

**SD PALM HARBOR RE, LLC**

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
Sachin Patel, COO

Witness: \_\_\_\_\_

## **SCHEDULE "1-A"**

Attached to and made a part of that certain Asset Purchase Agreement by and between RAMON F. ORTIZ, D.M.D., M.S., P.A., , and RAMON F. ORTIZ, D.M.D., individually, and SMILE DESIGN PALM HARBOR,LLC and SD PALM HARBOR RE, LLC.

## **PRACTICE ASSETS**

To be furnished.

## **SCHEDULE “1-B”**

Attached to and made a part of that certain Asset Purchase Agreement by and between RAMON F. ORTIZ, D.M.D., M.S., P.A., , and RAMON F. ORTIZ, D.M.D., individually, and SMILE DESIGN PALM HARBOR LLC and SD PALM HARBOR RE, LLC.

### **ITEMS EXCLUDED FROM SALE**

In addition to the items specifically excluded in Section 1 of the Asset Purchase Agreement, the following items also are to be excluded from the Practice Assets conveyed pursuant to the Asset Purchase Agreement:

To be furnished.

## **SCHEDULE “2”**

Attached to and made a part of that certain Asset Purchase Agreement by and between RAMON F. ORTIZ, D.M.D., M.S., P.A., , and RAMON F. ORTIZ, D.M.D., individually, and SMILE DESIGN PALM HARBOR, LLC and SD PALM HARBOR RE, LLC.

### **LEGAL DESCRIPTION OF THE REAL PROPERTY**

To be furnished.

**EXHIBIT "A"**

**BILL OF SALE**

**KNOW ALL MEN BY THESE PRESENTS**, that **RAMON F. ORTIZ, D.M.D., M.S., P.A.**, a Florida professional association (the "**Seller**"), for good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, the receipt and adequacy of which are hereby acknowledged, do hereby sell, set over, transfer, assign and convey unto **SMILE DESIGN PALM HARBOR, LLC**, a Florida limited liability company (hereinafter referred to as "**Practice Purchaser**") and its successors or assigns, all of Seller's right, title and interest in and to all of the Practice Assets (as more specifically defined in that certain **Asset Purchase Agreement** by and between Seller and Practice Purchaser, dated \_\_\_\_\_ 2016) subject to the terms and conditions, warranties, representations and covenants described in the aforesaid Asset Purchase Agreement and all exhibits attached thereto, whether such interest is joint or several, individual or corporate, "As Is," "Where Is," and "With All Faults" and without recourse of any kind.

**AND FOR THE SAME CONSIDERATION**, Seller, and Seller's successors and assigns, covenant with and warrant unto Practice Purchaser and Practice Purchaser's successors and assigns, that Seller is the lawful owner of the Practice Assets hereby conveyed, that Seller has good and marketable title to Seller's interests in the Practice Assets, and, to the extent described in the Asset Purchase Agreement, that the Practice Assets are free and clear of any liens and encumbrances of any kind, character or nature, pursuant to the Sale Order.

**IN WITNESS WHEREOF**, Seller has executed and delivered this Bill of Sale, effective on the Date of Closing described in the aforementioned Asset Purchase Agreement.

Witnesses as to all:

RAMON F. ORTIZ, D.M.D., M.S., P.A.

Witness: \_\_\_\_\_

By \_\_\_\_\_  
Ramon F. Ortiz, D.M.D., President

Witness \_\_\_\_\_

## EXHIBIT "B"

### PATIENT RECORDS TRANSFER AGREEMENT

**THIS PATIENT RECORDS TRANSFER AGREEMENT** (the "**Agreement**") is made and entered into as of the close of business on \_\_\_\_\_, 2016 (the "**Effective Date**") by and between **RAMON F. ORTIZ, D.M.D., M.S., P.A.**, a Florida professional association ("**Records Owner**") and **SMILE DESIGN PALM HARBOR, LLC**, a Florida limited liability company ("**New Records Owner**").

#### RECITALS

**WHEREAS**, Records Owner has heretofore operated a dental practice (the "**Practice**"), in offices located at 301 Woodlands Parkway, Suite #6, Oldsmar, Florida 34677 ("**Records Owner's Practice Location**"), and, for purposes of §456.057 and §466.018, Florida Statutes, Records Owner is the "records owner" of the patient records of the Practice (as such term is defined in §456.057 and §466.018, Florida Statutes, regardless of medium held, including but not limited to paper or electronic forms, the "**Patient Records**"); and

**WHEREAS**, in connection with the sale of the assets of the Practice to New Records Owner pursuant to the terms of that certain Asset Purchase agreement between the parties dated \_\_\_\_\_, 2016 (the "**Asset Purchase Agreement**"), Records Owner ceased to conduct the Practice at Records Owner's Practice Location; and

**WHEREAS**, New Records Owner is legally authorized to engage in the practice of dentistry within the State of Florida, and New Records Owner has agreed to accept delivery of the Patient Records and, upon delivery, to act as the new "records owner" of Records Owner's patient files for purposes of §456.057, §456.058 and §466.018, Florida Statutes, and the applicable regulations promulgated thereunder, in accordance with the terms of this Agreement.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, which are not mere recitals hereto but are hereby incorporated into this Agreement as an integral part hereof, and the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

#### **1. Transfer of Patient Records.**

On the close of business on the Effective Date of this Agreement, Records Owner transferred custody, possession, and control of the Patient Records to New Records Owner. By its execution and delivery of this Agreement, New Records Owner accepts custody, control and possession of the Patient Records and agrees to serve as the new "records owner" of the Patient Records pursuant to §456.057, §456.058 and §466.018, Florida Statutes, and the applicable regulations promulgated thereunder.

#### **2. Confidentiality and Privacy of Patient Records.**

New Records Owner agrees to develop and implement policies and procedures to keep the Patient Records confidential and private in accordance with the requirements of law, including §456.057 and §466.018 Florida Statutes and the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and regulations promulgated thereunder and amended from time to time by the U.S. Department of Health and Human Services (collectively, "**HIPAA**"). New Records Owner agrees not to review or disclose the contents of the Patient Records, except as permitted or required by any law, including HIPAA, and that without the written authorization of the patient, the Patient Records shall not be furnished to, and the medical and dental condition of the patient may not be discussed with, any person other than New Records Owner's workforce, the patient or the patient's legal representative or other health care providers involved in the care or treatment of the patient to the extent authorized by law.

**3. Location and Retention of Patient Records.**

New Records Owner agrees that each Patient Record comprising the Patient Records shall be held by New Records Owner at Records Owner's Practice Location, or at such other location as New Records owner may hereafter choose in its discretion (and New Records Owner hereby agrees to notify Records Owner if the Patient Records are moved from Records Owner's Practice Location), for a period of not less than five (7) years from the Effective Date or, if later, the date of the applicable patient's last appointment, examination or treatment with New Records Owner. Unless otherwise proscribed by law, after the expiration of the specified seven-year period, Records Owner hereby grants to New Records Owner the authority, in the exercise of New Records Owner's discretion, to dispose of the Patient Records not then constituting Patient Records of Active Patients, as such term is defined in the Asset Purchase Agreement, in any manner authorized by law.

**4. Records Owner's Access to Patient Records.**

New Records Owner agrees to provide Records Owner with copies of the Patient Records as reasonably requested in writing from time to time by Records Owner to the extent permitted by law. The parties acknowledge that each is a "**covered entity**" under HIPAA, and as such, each is subject to the terms of HIPAA and the regulations promulgated thereunder. Each party hereby agrees to take all actions reasonably necessary to ensure that its employees or representatives and contractors will comply with the privacy and security obligations imposed under HIPAA and its regulations, including but not limited to ensuring that only persons having a right or need to know Protected Health Information ("**PHI**") will be given access to the shared PHI, that all patients are given the required notice of privacy rights, and that necessary contracts are entered into with any third party of either party who is a "business associate" as defined in HIPAA and the HIPAA Regulations.

**5. Patient Access to Patient Records.**

New Records Owner shall be responsible for providing a copy of parts of or the complete Patient Record, upon written request by the patient or the patient's legal representative in accordance with the requirements of law.

**6. Disclosure to Others.**

New Records Owner shall be entitled to make such disclosures of information contained in the Patient Records as shall be permitted by law and, to the extent prescribed by law, shall be responsible for maintaining a record of all disclosures of information contained in the patient record to a third party, including the purpose of the disclosure request.

**7. Records Owner's Representations.**

Records Owner represents to New Records Owner, which representations survive this Agreement and the transfer of the Patient Records:

**7.1. Ownership.**

Records Owner is the "records owner" (within the meaning of §456.057 and §466.018, Florida Statutes) of the Patient Records and has the legal right to transfer possession and custody of the Patient Records to New Records Owner pursuant to this Agreement. The Patient Records include all, and not less than all, of the patient records of patients seen or treated at Records Owner's Practice Location by any professional employed directly by, or by contract with, Records Owner. No professional employed directly by, or by contract with, Records Owner is, or claims to be, the owner of any of the Patient Records.

**7.2. Compliance with Law.**

Records Owner has complied and maintained the Patient Records in accordance with all requirements of law.

**7.3. No Encumbrance.**

The Patient Records are free and clear of any lien, encumbrance or interest of any other person, other than the interest of the patient as provided by law.



**7.4. No Patient Restrictions.**

The Patient Records are not subject to restrictions requested by any patient and agreed to by Records Owner under HIPAA or other applicable law or regulations that would preclude transfer to New Records Owner.

**8. Applicable Law.**

This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Florida. The courts of the State of Florida and the federal courts having jurisdiction in Hillsborough County in the State of Florida shall have exclusive jurisdiction in connection with any action to enforce the provisions of this Agreement, to recover damages or other relief for breach or default under this Agreement, or otherwise arising under or by reason of this Agreement.

**9. Construction.**

There shall be no rule of construction for or against any party by reason of the physical preparation of this Agreement.

**10. Severability.**

Each paragraph, section, provision, sentence, and part thereof of this Agreement shall be severable from each other paragraph, section, provision, sentence, or part thereof of this Agreement, and the invalidity or unenforceability of any such paragraph, section, provision, sentence, or part thereof, shall not affect the validity or enforceability of the balance of this Agreement. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by a court of competent jurisdiction, the parties to this Agreement intend that (i) such provision shall be deemed to be amended and restated to reflect as nearly as possible the original intentions of the parties in conformity with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full legal force and effect.

**11. Entire Agreement.**

This Agreement constitutes the entire agreement and understanding between the parties, and supersedes any prior agreement relating to the subject matter of this Agreement.

**12. Further Actions.**

Each of the parties to this Agreement shall execute and deliver any and all documents or instruments, and shall take or cause any and all other action to be taken which may be reasonably necessary or desirable to effect or evidence the provisions of this Agreement and the transactions contemplated by this Agreement.

**13. Headings.**

Paragraph, section and other headings used in this Agreement are used for convenience only, and shall not be construed as limiting this Agreement or any of its several paragraphs, sections or other parts to the provisions described by those headings.

**14. Counterparts.**

This Agreement may be executed, by hand or electronically, in counterparts, each of which shall constitute an original, and all of which together shall constitute one (1) and the same document.

**IN WITNESS WHEREOF**, this Patient Records Transfer Agreement, consisting of three (3) pages, including this signature page, has been executed on the date referenced above.

**Records Owner:**

**RAMON F. ORTIZ, D.M.D., M.S., P.A.**

By: \_\_\_\_\_  
Ramon F. Ortiz, D.M.D., President

**New Records Owner:**

**SMILE DESIGN PALM HARBOR, LLC**  
By: Mili D. Patel, D.M.D., P.A., Manager

By: \_\_\_\_\_  
Sachin Patel, COO

## EXHIBIT "C"

### RESTRICTIVE COVENANT AGREEMENT

**THIS RESTRICTIVE COVENANT AGREEMENT** (hereinafter referred to as the "**Restrictive Covenant Agreement**") is entered into this \_\_\_\_\_, 2016 (hereinafter referred to as the "**Date of Closing**") by and between **RAMON F. ORTIZ, D.M.D.**, a Florida resident (hereinafter referred to as the "**Covenantor**") and **SMILE DESIGN PALM HARBOR, LLC**, a Florida limited liability company (hereinafter referred to as the "**Purchaser**").

**WHEREAS**, Purchaser and Covenantor have executed that certain Asset Purchase Agreement (hereinafter referred to as the "**APA**"), pursuant to which Purchaser has acquired substantially all of the assets, including the goodwill of the dental practice previously operated by **RAMON F. ORTIZ, D.M.D., M.S., P.A.** of (hereinafter referred to as the "**Practice**"), located at the Premises (as hereinafter defined); and

**WHEREAS**, Covenantor is the sole shareholders of the Practice and, as an incentive and as a specific condition for Purchaser entering into the Asset Purchase Agreement and acquiring and paying for the goodwill of the Practice, makes, gives and agrees to the covenants prohibiting competition, solicitation and acceptance of business without solicitation, all ancillary to the sale of the Practice, in favor of Purchaser.

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are hereby incorporated as an integral part of this Restrictive Covenant Agreement, and the respective promises, representations, warranties and covenants specified in the Asset Purchase Agreement, the performance of each unto the other, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **NON-COMPETITION:** In consideration of and in conjunction with the sale of the Practice, Covenantor hereby grants and agrees to comply with the following:

A. Covenantor hereby covenants and agrees not to practice dentistry, in any location other than the Premises (except under the terms and conditions outlined in the Provider Agreement, attached to the APA as Exhibit "D"), whether as a private practitioner, partner, associate, contractor, employee or as a shareholder, member, director, manager or officer of any corporation or organization so engaged, or lend Covenantor's name to any business organization competitive with the Practice, within a radius of ten (10) miles from the Premises (hereinafter referred to as the "**Restricted Area**") for a period beginning on the Date of Closing and continuing for the longer of (i) thirty-six (36) months following the Date of Closing, or (ii) twelve (12) months after Covenantor discontinues practicing dentistry on behalf of Purchaser at the Premises (hereinafter referred to as the "**Restricted Period**").

B. Covenantor agrees, during the Restricted Period, not to make any disparaging remarks, whether orally or in writing, about Purchaser, its services, managers, officers and employees, to any persons whatsoever. The obligation under this Section 1(B) includes, but is not limited to, refraining from making any disparaging, degrading or demeaning remarks or casting any aspersions which are reasonably likely to have a harmful effect on Purchaser's reputation.

2. **NON-SOLICITATION AND NON-ACCEPTANCE:** As a further inducement to Purchaser to acquire the Practice, Covenantor hereby warrants and agrees that Covenantor, and/or any agent of Covenantor, during the Restricted Period, will not, directly or indirectly, with respect to any of the Patients of the Practice (as hereinafter defined):

A. Covenantor hereby covenants and agrees not to, directly or indirectly, solicit any professional referral sources of the Practice, for any business that could otherwise be referred to

Purchaser.

B. Covenantor hereby covenants and agrees not to, directly or indirectly, recommend to any Patients of the Practice to patronize any other dentist (in the same specialty) other than Purchaser regardless of the distance of that patient's domicile from the Premises (unless that patient is relocating to another area outside of the Restricted Area).

C. Covenantor hereby covenants and agrees not to, directly or indirectly, solicit, employ or contract with any of the employees of the Practice (who were employed by Purchaser during the Restricted Period) to work for anyone other than Purchaser.

D. Covenantor hereby covenants and agrees not to, directly or indirectly, accept (without solicitation) any request by a Patient of the Practice for services involving the practice of dentistry or any referral by a referral source of a Patient of the Practice for services involving the practice of dentistry

3. PROVISIONS APPLICABLE TO ALL RESTRICTIVE COVENANTS: The following provisions shall apply to all of the restrictive covenants described in Section 1 and Section 2 of this Restrictive Covenant Agreement (hereinafter collectively referred to as the "**Restrictive Covenants**"):

A. The term "**Premises**" shall include 301 Woodlands Parkway, Suite #6, Oldsmar, Florida 34677, and any other location to which Purchaser may move the Practice during the Restricted Period. The term "Purchaser" shall include any subsequent third party purchaser of the Practice to whom this Restrictive Covenant Agreement may be assigned by Purchaser during the Restricted Period.

B. The terms "**practice dentistry**" and "**practice of dentistry**" shall not include (i) locum tenens coverage for up to five (5) days per year at any single office during the first twelve (12) months after the Closing Date, and for up to fourteen (14) days per year at any single office after the first twelve (12) months through the remainder of the Restricted Period, or (ii) government sponsored public health or other institutional or charitable practice that is limited to treatment of non-private patients, or (iii) any non-clinical academic position in any dental related teaching institution.

C. The term "**Patients of the Practice**" means Covenantor's former patients who received treatment by the Practice at any time during the thirty-nine (39) month period immediately preceding the last day that Covenantor discontinues the practice of dentistry on the Premises.

D. Should Covenantor continue the practice of dentistry in another location other than the Premises in a manner that does not violate these Restrictive Covenants, then Covenantor's immediate family members (limited to grandparents, parents, siblings and children of both Covenantor and Covenantor's spouse) shall not be included in these Restrictive Covenants.

E. If a court should hold that the scope of any Restrictive Covenant, the Restricted Period and/or the Restricted Area is unenforceable, then to the extent permitted by law the court may prescribe a scope of the Restrictive Covenant, a duration for the Restricted Period and/or a radius or area for the Restricted Area that is reasonable, and the parties agree to accept such determination subject to their rights of appeal. Nothing herein stated shall be construed as prohibiting Purchaser from pursuing any other equitable remedy or remedies available for such breach or threatened breach, including recovery of damages from Covenantor or injunctive relief.

F. This Restrictive Covenant Agreement shall be considered a personal service agreement between Covenantor and Purchaser (and or Purchaser's successor and/or assigns, if applicable). Should Covenantor be in violation of this Restrictive Covenant, then the Restricted Period shall be extended for a period of time equal to the period during which such violation or violations occurred. If Purchaser seeks injunctive relief from any violation in court, then the running of the Restricted Period shall be suspended during the pendency of the proceeding, including all appeals by Covenantor. This suspension shall cease upon the entry of a final judgment in the matter.

4. PATIENT REVENUE REIMBURSEMENT: Covenantor acknowledges that Purchaser has given

Covenantor valuable consideration for the purchase of the Practice and Covenantor's personal goodwill, which is directly associated with, and dependent upon the personal dentist-patient relationship established by Covenantor with the Patients of the Practice. Covenantor further acknowledges and agrees that, because of Covenantor's long-term relationship with the Patients of the Practice, a significant number of these patients would very likely transfer to another office where Covenantor could elect to provide dental services to the public in the future and at a time beyond the Restricted Period. Therefore:

A. Because Purchaser has paid Covenantor valuable consideration for the goodwill of the Practice, and such consideration was paid in anticipation of Purchaser having the unfettered ability to generate future revenues for the Practice, Covenantor agrees that, should Covenantor practice dentistry on any former Patient of the Practice (except for immediate family members, limited to grandparents, parents, siblings and children of both Covenantor and Covenantor's spouse, if applicable) at any location other than the Premises within the Restricted Area, for a period of thirty-six (36) months following the date Covenantor discontinues the practice of dentistry on the Premises, then Covenantor agrees to immediately pay to Purchaser the sum of THIRTY-FIVE HUNDRED 00/100 DOLLARS (\$3,500.00) for each such former Patient of the Practice treated by Covenantor, as reimbursement for the loss of the goodwill of the Practice, as represented by future potential revenue that could have been received by the Practice.

B. In addition, Covenantor acknowledges that Purchaser has paid Covenantor valuable consideration for the trained staff currently employed in the Practice at the time of the Closing, and that such trained staff is of considerable value to Purchaser. Therefore, should Covenantor employ one or more of Purchaser's employees to work in another office, either within or outside of the Restricted Area, for a period of thirty-six (36) months following the date Covenantor discontinues the practice of dentistry on the Premises, then Covenantor agrees to immediately pay to Purchaser the sum of TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) for each such former employee of the Practice hired by Covenantor, as reimbursement for the cost to Purchaser of hiring and training a suitable replacement employee.

C. Covenantor agrees to pay the aforementioned reimbursement payment(s) to Purchaser within thirty (30) days of the date Covenantor practices dentistry on a former Patient of the Practice or employs one or more of the aforementioned employees of the Practice.

D. Covenantor acknowledges and agrees that the reimbursement payments are an incentive and are a specific condition for Purchaser acquiring and paying for the Practice. Both parties agree that the required reimbursement payments do not prohibit Covenantor from practicing dentistry on the Patients of the Practice, or employing any of the employees of the Practice in another office, but merely reimburse Purchaser for any future lost revenues resulting from such patient transfers, and/or expenses associated with hiring and training replacement employees, and such payments are liquidated damages and not a penalty or a punitive payment. In addition, the parties specifically agree that this provision does not, in any way, prevent those patients from access to dental care in any manner.

5. **WAIVER OF RIGHT TO PROTEST:** The Restrictive Covenants are ancillary to the sale of the Assets of the Practice and are to be construed as cumulative with those set forth in any other agreements between the parties hereto. Covenantor expressly agrees that the duration, geographic limitation and scope of the prohibited conduct described in this Restrictive Covenant Agreement are reasonable and that Covenantor has received valuable consideration for the Restrictive Covenants contained herein. Covenantor further expressly waives the right to protest the reasonableness of the time limits, geographic limitations and prohibited conduct specified in this Restrictive Covenant Agreement. The parties agree that all of the provisions provided herein are an essential part of the consideration for the overall agreement among the parties hereto.

6. **SPECIFIC PERFORMANCE:** Any breach of the Restrictive Covenants contained herein shall be subject to specific performance by temporary as well as permanent injunction or other equitable remedies by a court of competent jurisdiction. The obtaining of any such injunction shall not prevent the obtaining party from also seeking and obtaining any damages incurred as a result of such breach, either prior to or after obtaining such injunction. If any court of competent jurisdiction determines that either party has

breached any of the foregoing covenants, then that party shall pay all reasonable costs of enforcement of the foregoing covenants including, but not limited to, court costs and reasonable attorneys' fees, including such costs and fees through any appeals.

7. **ATTORNEYS AND DOCUMENTS:** The parties acknowledge that each has been represented by independent legal counsel in this transaction, and/or have been advised to use their own independent legal counsel.

8. **CHOICE OF LAW:** This Restrictive Covenant Agreement shall be governed, construed and enforced according to the laws of the State of Florida, without regard to its conflicts of laws principles. Venue shall be proper in any state or federal court located in Hillsborough County, Florida.

9. **SEVERABILITY:** In the event any section or part of this Restrictive Covenant Agreement or parts thereof should be adjudged invalid, such adjudication shall in no manner affect the other sections, which shall remain in full force and effect as if the section so declared or adjudged invalid were not originally a part hereof.

10. **NOTICE:** Any notice or payment required or permitted in this Restrictive Covenant Agreement shall be in writing and delivered personally, sent by certified U.S. Mail, return receipt requested, with all postage and other charges pre-paid or via a nationally recognized overnight delivery service, with all charges pre-paid. Any such notice or payment from Seller to Purchaser shall be addressed to the principal office of Purchaser. Any such notice from Purchaser to Covenantor shall be hand delivered to Covenantor or addressed to the last known residential address of Covenantor. Notice shall be deemed given upon receipt or refusal of service.

A. Either party may change its or his address, or the designation of its or his representative, by notifying the other party of such change in writing.

B. Except where provided to the contrary elsewhere in this Restrictive Covenant Agreement and subject to the terms herein, each party agrees to give to the other party written notice of any alleged breach or violation of this Restrictive Covenant Agreement, or of an intention to pursue legal action against the other arising out of this Restrictive Covenant Agreement. The party receiving such notice shall have ten (10) days to cure such default if such default is for a late payment, and shall have thirty (30) days to cure if the default is for something other than a late payment and is curable, before the other party may proceed with any legal action or exercise their right of offset against the other.

C. This requirement of notice and time to cure shall not prohibit a party from seeking injunctive relief immediately following an alleged breach of this Restrictive Covenant Agreement by the other party.

11. **WAIVER OF BREACH OR VIOLATION NOT DEEMED CONTINUING:** Either party may, to the extent legally allowed, (A) extend the time for the performance of any of the obligations or other acts of the other party hereto, and (B) waive compliance by any of the other party hereto with any of the agreements or covenants contained herein. The waiver by either party of a breach or violation of any provision of this Restrictive Covenant Agreement shall not operate as, or be construed to be, a waiver of any, or other subsequent breach or violation of any provision thereof. Acceptance of a payment or partial payment after default shall not be deemed a waiver of any preceding breach or default other than the failure of Purchaser to pay the particular part of a payment accepted, regardless of Seller's knowledge of the preceding breach at the time of acceptance. No breach or violation of any provision hereof may be waived except by an agreement in writing signed by the waiving party.

12. **CONSTRUCTION:** Neither this Restrictive Covenant Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Restrictive Covenant Agreement has been reviewed by the parties and their respective legal counsel, or each party has had the opportunity to have his/her/its legal counsel review it and, in the case of any ambiguity or uncertainty, shall be construed according to the ordinary meaning of the words used so as to fairly accomplish the purposes and

intentions of the parties hereto. The parties acknowledge that they have had the opportunity to participate equally in the drafting of this Restrictive Covenant Agreement and that in the event of a dispute, no party shall be treated, for any purpose, as the author of this Restrictive Covenant Agreement nor have any ambiguity resolved against it on account thereof.

13. **NOMENCLATURE:** The use of the male gender shall include the female, the individual shall include the corporate, and the singular shall include the plural, and vice versa, wherever such usage is appropriate to the context.

14. **ITEM HEADINGS AND INTERPRETATION:** The item headings contained in this Restrictive Covenant Agreement are for convenience only and shall in no manner be construed as a part of this Restrictive Covenant Agreement. Whenever the words “include”, “includes” or “including” are used in this Restrictive Covenant Agreement, they shall be deemed to be followed by the words “without limitation”. In addition, any other information, including articles and summaries shall not affect in any way the meaning or interpretation of the text of this Restrictive Covenant Agreement.

15. **COUNTERPARTS ANMD ELECTRONIC SIGNATURES:** This Restrictive Covenant Agreement may be executed in one or more counterparts (including by hand signature or electronic means), each counterpart is deemed an original, and all counterparts collectively constitute one and the same document.

**SIGNATURE PAGE IMMEDIATELY FOLLOWS THIS PAGE**

(remainder of page intentionally left blank)

**IN WITNESS WHEREOF**, Covenantor and Purchaser have executed this Restrictive Covenant Agreement on the Date of Closing specified in the opening paragraph.

**Covenantor:**

\_\_\_\_\_  
**RAMON F. ORTIZ, D.M.D.**

**Purchaser:**

**SMILE DESIGN PALM HARBOR, LLC**  
By: Mili D. Patel, D.M.D., P.A., Manager

By: \_\_\_\_\_  
Sachin Patel, COO

# **EXHIBIT “D”**

## **Form of Provider Agreement**

To be furnished



## **EXHIBIT “E”**

### **Existing Prepaid Patient Fees**

To be furnished

## **EXHIBIT "F"**

### **Existing Patient Credits**

To be furnished