

## Figure 3-1

### **REPRESENTATIONS AND WARRANTIES**

**1. Representations and Warranties of Seller.** Seller hereby represents and warrants to Purchaser as follows:

**1.1 Organization.** The Practice is a professional corporation duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_, has full corporate power and authority to own all of its property and assets and to carry on its dental practice as it is now being conducted.

**1.2 Authorized Agreement.** All corporate action by the Practice necessary for the authorization and consummation of the transactions contemplated hereby has been taken.

**1.3 Valid and Binding Agreement.** This Agreement has been validly executed and delivered by and constitutes a valid and binding obligation of Seller enforceable in accordance with its terms.

**1.4 Ownership of the Practice.** Seller owns beneficially and of record one hundred percent (100%) of the shares of the Practice's issued and outstanding capital stock, free and clear of all liens, claims, encumbrances or restrictions of any kind, which constitutes the "Shares". Each of the Shares has been duly authorized and validly issued and is fully paid and nonassessable. The Practice has outstanding no other equity securities, or any securities options, warranties or rights of any kind convertible into equity securities of the Practice.

**1.5 Financial Statements.** Seller has delivered to Purchaser copies of the Practice's financial statements for the fiscal year ended \_\_\_\_\_ (herein called the "Financial Statement Date"), and for the fiscal year ended on \_\_\_\_\_, of each of the years \_\_\_\_\_ and \_\_\_\_\_ and notes thereto and the Practice's "Interim Financial Statements" for the period \_\_\_\_\_ through and including \_\_\_\_\_ (all of which statements are herein collectively called the "Financial Statements"). The Financial Statements have been prepared on a compilation basis and are true, complete and correct, have been prepared, from the books and records of the Practice on a comprehensive basis of accounting, consistently applied for the periods indicated, and which present fairly the financial position and results of operations of the Practice as of the dates thereof and for the periods covered thereby. There are no facts known to Seller which would materially alter the information contained in the Financial Statements.

**1.6 Inventory.** The Practice's dental supply inventory and dental instruments are merchantable, suitable and usable in the ordinary course of the Practice's business and operations. The Practice's assets include a sufficient (but not an excessive) quantity of each type of such dental supplies and instruments in order to meet the normal requirements of the Practice's business and operations.

**1.7 Accounts Receivable.** All accounts receivable of the Practice are valid and enforceable. To the best of Seller's knowledge, the accounts receivable are fully collectible.

### Figure 3-1

**1.8 Liabilities.** Except as disclosed in the Financial Statements or on Schedule 1.8 (attached hereto and incorporated herein by reference), the Practice has no debts, liabilities or obligations of any nature whatsoever, whether accrued, absolute, contingent, or otherwise. All deposits, accounts and notes payable, and other liabilities of the Practice are current and not in default.

**1.9 Tax Matters.** The Practice has timely and duly filed with the appropriate governmental agencies all tax reports and returns required to be filed by it. All of such reports and returns are true, correct and complete for the periods covered thereby. The Practice has timely and duly paid all taxes required to be paid by it in respect of the periods covered by such returns. All deposits required by law to be made by the Practice with respect to employees' withholding taxes have been duly and timely made. True and complete copies of all federal income tax returns on Form 1120 for the tax years ending \_\_\_\_\_; \_\_\_\_\_; and \_\_\_\_\_ as filed with the Internal Revenue Service have been delivered to Purchaser, together with all supporting schedules thereto. There are no federal, state or local tax liens upon any property or assets of the Practice. The Practice has not requested any extension of time within which to file any tax returns which have not since been filed, and no deficiencies for any tax, assessment or governmental charge have been claimed, proposed or assessed by any taxing authority and there is no basis for any such deficiency or claim. As used herein, the term "tax" includes (but is not limited to) all federal, state, and local income, sales, employees' income withholding, social security, franchise, property, and all other governmental taxes, fees and charges.

**1.10 Title to and Condition of Property.** The Practice has good and marketable title to and rightful possession of all assets it owns, except assets sold or otherwise disposed of in the ordinary course of the Practice's business and operations, free and clear of all liens, security interest, encumbrances, and restrictions, except: (i) liens for current taxes not yet due and payable; and (ii) liens or encumbrances described in Schedule 1.10 (attached hereto and incorporated herein by reference). Purchaser acknowledges that Seller is making no representation or warranty with regard to the condition or use of the assets of the Practice, except as expressly set forth in this Agreement.

**1.11 Compliance with Law.** The Practice has been and is being conducted in compliance with all applicable federal, state and/or local laws, rules, regulations and orders, non-compliance with which would have a material and adverse affect on the Practice, its business and operations, or its assets.

**1.12 Insurance.** Schedule 1.12 (attached hereto and incorporated herein by reference) lists all insurance policies maintained by the Practice, showing the types of coverage, policy expiration dates, policy numbers and policy limits as to each such policy. All such policies pursuant to which coverage exists are in full force and effect and have been issued under valid policies for the benefit of the Practice by insurance carriers licensed to do business in \_\_\_\_\_. The consummation of the transactions contemplated hereunder shall not cause the termination or cancellation of any such insurance policy.

### **Figure 3-1**

**1.13 Contracts and Leases.** Except as disclosed on Schedule 1.13 (attached hereto and incorporated herein by reference), the Practice is not a party to any written or oral contract, lease or commitment. All agreements listed in Schedule 1.13, to the extent that the same grants rights to the Practice, are enforceable by the Practice and the Practice has not received notice of any claim to the contrary. Each agreement listed in Schedule 1.13 is in full force and effect, constitutes a legal, valid and binding obligation of the respective parties thereto, enforceable in accordance with its terms, except as indicated in Schedule 1.13. Complete and correct copies of all written items listed in Schedule 1.13 have been made available to Purchaser prior to the execution of this Agreement.

**1.14 Defaults.** Except as listed in Schedule 1.14 (attached hereto and incorporated herein by reference), all parties obligated under the agreements listed on Schedule 1.13 are in compliance in all material respects with the terms thereof and there has been no notice of default or termination.

**1.15 Transactions with Seller.** Except as disclosed on Schedule 1.15 (attached hereto and incorporated herein by reference), the Practice does not owe any amount to, or have any contract with or commitment to, Seller (other than compensation for current services not yet due and payable and reimbursement of expenses arising in the ordinary course of business), and Seller does not owe any amount to the Practice.

**1.16 Employee Benefit Plans.** Except as disclosed on Schedule 1.16 (attached hereto and incorporated herein by reference), the Practice has not and does not sponsor, maintain or contribute to any employee pension benefit plans within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974 ("ERISA") or any other program or arrangement under which the Practice has any obligations in respect of, or which otherwise cover, any of the current or former employees of the Practice, or their beneficiaries. Each terminated qualified retirement plan (within the meaning of Section 401(a) of the Internal Revenue Code), herein called the "Terminated Plan," (a) has received a favorable determination letter from the Internal Revenue Service with respect to its termination; and (b) was terminated in accordance with all applicable federal, state and local laws, rules and regulations. In addition to and no in limitation of the indemnification provisions contained in Section \_\_\_\_\_ hereof, Seller hereby agrees to indemnify and forever hold harmless Purchaser, individually and jointly, from and against any and all actions, causes of action, liabilities, damages, penalties, costs and expenses (including, but not limited to, attorneys' fees) directly or indirectly arising from or related to the Terminated Plan.

**1.17 Other Employee Matters.** Except as disclosed in Schedule 1.17 (attached hereto and incorporated herein by reference), the Practice has no plans and/or policies with respect to vacation pay, holiday and/or sick pay, pension and profit-sharing contributions, health, medical or any other type of employee welfare benefit plan within the meaning of Section 3(1) or ERISA to which the Practice presently contributes or is required to contribute, nor is the Practice indebted to any employee other than for wages and benefits earned during the current payroll period which are not yet due and payable. Except as set forth on Schedule 1.17, there are no

### Figure 3-1

controversies pending between the Practice and any of its employees, which controversies have affected or may affect materially and adversely the business, operations, assets, prospects or condition (financial or otherwise) of the Practice.

**1.18 Absence of Certain Changes.** Except as set forth in Schedule 1.18 (attached hereto and incorporated herein by reference), during the period from the Financial Statement Date to the Closing Date, the Practice has not and will not have:

- (a) Experienced any change in its business, financial condition or operations which may have any material adverse effect on the Practice, its financial condition, its operational results or patients; or
- (b) Incurred any obligation or liability, except current (liabilities incurred in the ordinary course of business and consistent with its prior practice;
- (c) Failed to replenish its inventory of dental supplies and instruments in a normal and customary manner consistent with its prior practice;
- (d) Created or suffered to exist any lien, claim or encumbrance with respect to its assets;
- (e) Sold, transferred or otherwise disposed of any assets or properties of the Practice other than in the ordinary course of its business;
- (f) Forgiven or cancelled any debts or claims, or waived any contractual or other rights; or
- (g) Otherwise conducted its business or entered into any transaction, except in the usual and ordinary manner and in the ordinary course of its business.

**1.19 Litigation.** No litigation or other judicial, administrative or investigative proceeding is pending or threatened against or affect the Seller, the Practice or its assets.

**1.20 Consents.** To the best of Seller's knowledge, no consents or approvals of any third party are required or will be required in order to permit the consummation of the transactions contemplated by this Agreement.

**1.21 Permits and Licenses.** Schedule 1.21 (attached hereto and incorporated herein by reference) sets forth all licenses and permits issued by applicable governmental authorities presently held by the Practice with respect to the operation of its business. Seller has not received notice of any violations with respect to any of such license or permits.

### **Figure 3-1**

**1.22 Bank Accounts.** Set forth in Schedule 1.22 (attached hereto and incorporated herein by reference) is an accurate and complete list, disclosing the name and address of each bank in which the Practice has an account or safe deposit box, the number of any such account or any such box and the names of all persons authorized to draw thereon or to have access thereto.

**1.23 No Guaranties.** None of the obligations or liabilities of the Practice are guaranteed by any other person or entity, nor has the Practice guaranteed the obligations or liabilities of any other person or entity.

**1.24 Title to the Shares.** Seller has valid and unencumbered title to the Shares, free and clear of all restrictions, liens and encumbrances, and has full legal right, power and authority to enter into this Agreement, to sell, assign, transfer, and deliver the Shares hereunder, and to perform his other obligations under this Agreement. Upon delivery of and payment for the Shares, Purchaser shall acquire title thereto, free and clear of all liens, restrictions or encumbrances.

**1.25 Correctness of Representations and Warranties.** The representations and warranties made by Seller herein or in any certificate to be furnished to Purchaser or Purchaser's counsel pursuant hereto, or in connection with the transactions contemplated hereby, do not contain and, at the Closing, shall not contain any untrue statement of a material fact and do not omit and shall not omit to state all material facts necessary to make the statement or facts contained therein not misleading. All statements made and data presented by Seller in this Agreement and in any certificate or schedule provided to Purchaser by Seller pursuant hereto shall be deemed to be representations and warranties under this Agreement to Purchaser by Seller.