THIS IS A SAMPLE FORM AND NOT INTENDED AS LEGAL ADVICE.
YOU SHOULD ALWAYS HAVE AN ATTORNEY REVIEW LEGAL DOCUMENTS.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "**Agreement**") is made and entered into as of this _____ day of _____, 20_____, by and between _____, a _____ ("**Seller**"), and _____, a _____ ("**Purchaser**").

WITNESSETH:

WHEREAS, Seller is the owner of a certain business commonly known as the _____ orthodontic practice, operated by the Seller in _____, _____ (the "**Business**"), and consisting of: (a) Seller's leasehold interest in and to that certain office space located on tract of land described on Exhibit A, attached hereto (the "**Leasehold**") by virtue of that certain Lease with _____, dated _____ (the "**Lease**"); (b) all personal property and other tangible property located in the Leasehold and used in connection with the operation of the Business, but excluding any investments or cash in bank accounts owned by Seller ("**Personal Property**"); (c) all of Seller's interest in all certificates and permits of occupancy, certificates, permits, authorizations, approvals and licenses issued by all governmental authorities having jurisdiction over the Business and Leasehold, and which under applicable law are transferable to Purchaser (the "**Governmental Approvals**"); (d) all of Seller's interest in all agreements, contracts, licenses, service contracts, memberships and patient lists relating to the Business, (collectively, the "**Contracts**"); (e) warranties and guarantees relating to the Business (collectively, the "**Warranties**"); and, (f) the exclusive right to use the name _____, any related trademarks or other intellectual property, and goodwill (the "**Intangibles**") (the Business, Leasehold, Personal Property, Governmental Approvals, Contracts, Warranties and Intangibles are sometimes hereinafter collectively referred to as the "**Property**"); and

WHEREAS, the Property shall not include either the underlying fee simple interest in the Land or the Liabilities (hereinafter defined), and the parties acknowledge and agree that the Purchaser is not assuming any of the "**Liabilities**", which shall include all liabilities of Seller or otherwise related to the Property, including, without limitation, all liabilities relating to or arising from the Property with respect to periods prior to Closing, including liabilities relating to or arising from all contractual relationships, claims of patients and suppliers, business dealings, employee services, tangible assets and intangible assets, and shall also include any debts, claims, liens, encumbrances or obligations whatsoever, whether direct or indirect, absolute, accrued, contingent or otherwise, and shall include damages, losses, actions, costs, expenses, reasonable attorneys' fees, court costs and other costs of defense relating to or arising out of the foregoing, but shall exclude the obligations assumed by Purchaser pursuant to Paragraph 15, hereof; and,

WHEREAS, Purchaser and Seller are desirous of entering into this Agreement to provide for the sale and purchase of the Property upon the terms and conditions hereafter set forth.

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NOW, THEREFORE, for and in consideration of the promises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are incorporated herein by this reference.

2. Agreement to Sell and Purchase. Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the Property in accordance with and subject to the terms and conditions of this Agreement.

3. Purchase Price: Payment of Purchase Price.

(a) The purchase price for the Property ("**Purchase Price**") shall be _____ and 00/100 Dollars ($_____) subject to credit and adjustment as provided in Section 3(b). The Purchase Price shall be paid in accordance with the provisions of Exhibit B attached hereto and incorporated herein by this reference. The Purchase Price shall be allocated as more particularly described on Exhibit C attached hereto and incorporated herein by this reference, which allocation shall be established by the Purchaser at or before Closing.

(b) The Purchase Price, less the earnest money, to be paid to Seller at Closing by cash or cash equivalent, if any, shall be subject to the following prorations and adjustments:

(1) General real estate taxes based on the latest available tax rate and special assessments shall be adjusted as of the Closing Date (hereinafter defined) on the basis of thirty (30) days to the month, Seller to have the last day. Special taxes, if any, shall be discharged by Seller. General taxes shall be reprorated and readjusted when the final tax bills for the year in which the sale is closed are issued, and Seller or Purchaser, as appropriate, shall pay to the other party the difference between the original adjustment and the readjustment. Such obligation shall survive the Closing and shall not be merged therewith. All transfer taxes applicable to the transactions contemplated by this Agreement shall be paid by Seller.

(2) All fuel, electricity, water, sewer, telephone and other utility charges, if any, other than utilities on which cutoff billings are available and which Seller has agreed to pay (both of which Seller shall pay), shall be prorated and adjusted as of the Closing Date on the basis of thirty (30) days to the month, Seller to have the last day.

(3) Unless the parties mutually agree to another method of adjustment, all prepaid memberships and prepaid gift certificates in Seller's possession at Closing shall be prorated as of the Closing date.

(4) Prepaid fees and rents or fees due under the Lease, Contracts, Governmental Approvals and Warranties for the payment period encompassing the Closing shall be prorated as of the Closing Date. Security deposits, if any, shall be assigned to Purchaser by Seller at the Closing.

(5) Purchaser and Seller shall each be responsible for the payment of their respective attorneys' fees, whether at or outside of Closing. Seller shall additionally pay the cost of preparation of the transfer documentation and related documents and other miscellaneous minor closing costs. Purchaser agrees to pay recording fees and escrow fees customarily paid by Purchaser.

(6) Purchaser shall pay the title insurance premium for the title insurance policy which may be required by Purchaser's lender and Purchaser. Seller shall pay the cost of bringing the abstract for the Property current.

4. Title. The Property shall be sold and conveyed to Purchaser free and clear of any and all liens, leases and encumbrances of any kind and nature except the following ("**Permitted Exceptions**"): (i) current taxes not delinquent; and (ii) _____. Seller agrees to supply, or cause to be supplied, a copy of the Lease to Purchaser within ten (10) days after the date hereof. Seller further agrees to supply Purchaser with a Commitment for Leasehold Policy of Title Insurance from a title company selected by Purchaser, together with all instruments referenced as exceptions therein, which Purchaser shall be entitled to review and make objections to Seller within 20 days thereafter. Upon notice from Purchaser, Seller shall, at its expense, cause all exceptions to title, other than the Permitted Exceptions, to be deleted therefrom prior to the Closing. Any matter to which Purchaser does not object within such time period shall be deemed waived.

5. Closing.

(a) Subject to the terms of this Agreement, the Closing of the purchase of the Property shall take place on _____, 20_____, or such earlier or later date as the parties may agree to in writing (the "**Closing**" or "**Closing Date**"). The Closing shall take place at _____ at a title company or at such other time or place as the parties may agree in writing.

(b) At the Closing, Seller shall deliver the following to Purchaser:

(1) An Assignment of the Lease, duly executed and acknowledged by Seller and _____ (the "**Assignment**"), together with the landlord's written consent thereof.

(2) A general warranty bill of sale transferring title to the Personal Property to Purchaser, free and clear of all liens, claims and encumbrances which are not assumed by Purchaser in writing, except for the obligations to be assumed by Purchaser pursuant to Paragraph 15, hereof.

(3) Assignment of all Contracts, Governmental Approvals, Warranties and Intangibles, together with any necessary consents.

(4) Originals of all Contracts, Governmental Approvals and Warranties not previously delivered.

(5) Possession of the Leasehold, free of all leases, tenancies, liens, encumbrances, licenses and occupants, and any keys in Seller's possession to any part of the Property.

(6) Such indicia of Seller's authority and related customary documents and instruments as may be required by Purchaser's lender or as may be reasonably requested by Purchaser, including an incumbency certificate and certified corporate resolutions indicating that Seller has been duly authorized pursuant to all requisite corporate actions and approvals to perform its obligations hereunder, convey the Property and close this transaction.

(7) Closing statement.

(8) An estoppel certificate and non-disturbance agreement from the landlord as to the Lease, in form and substance satisfactory to Purchaser.

(9) An estoppel statement from Seller as to the Lease, in form and substance satisfactory to Purchaser.

(10) Any such other documents and instruments as are necessary to consummate the transaction contemplated by this Agreement or as may be requested by Purchaser, including, but not limited to, a "no-tax due" certificate from the appropriate authorities, all documents required by the _____ Secretary of State, if any, in order to transfer the Business name from Seller to Purchaser and mechanic's liens and related affidavits.

(c) At the Closing, Purchaser shall deliver the Purchase Price subject to the prorations and adjustments set forth in Section 3(b).

6. Conditions to Purchaser's Obligations. In addition to all other conditions to Purchaser's obligations hereunder, including those more particularly described in Section 5 hereof, Purchaser's obligations to consummate the purchase described in this Agreement shall be conditioned upon the occurrence or fulfillment of each of the following conditions or events:

(a) The receipt by Purchaser at or prior to Closing of the exemplar Assignment in a form satisfactory to the Purchaser in its sole discretion.

(b) The delivery to Purchaser at or prior to Closing of each of the documents or instruments described in Section 5(b) hereof, which shall be satisfactory to Purchaser in its sole discretion.

(c) Within 30 days after the date hereof, Purchaser and Purchaser's representatives shall have made such inspections of the Property and shall have conducted or obtained, at Purchaser's expense, such examinations, tests, building and equipment inspections, a

Phase I environmental report and any other studies and reports of the Property and the Business as Purchaser shall deem desirable and the results of any such appraisal, inspections, examinations, tests, studies or reports shall be satisfactory to Purchaser in Purchaser's reasonable discretion. Any matters not objected to by Purchaser within such 30-day period shall be deemed waived. Seller hereby agrees to permit Purchaser or its representatives to enter the Property for such purposes, provided that Purchaser shall first give Seller reasonable advance notice. Purchaser agrees to restore all damage to the Property, if any, arising out of any such entry.

(d) Within thirty (30) days after the date of this Agreement, Purchaser shall have obtained all permits and approvals from all applicable governmental or quasi-governmental entities necessary in Purchaser's reasonable opinion for the use and occupancy of the Property for Purchaser's intended use.

(e) Within ten (10) days after the date of this Agreement, Seller shall deliver to Purchaser all environmental reports, surveys, title insurance policies, building inspections, patient lists, vendor lists and similar reports and studies regarding the Property and the Business, and the same shall be satisfactory to Purchaser in its sole discretion.

(f) Within ten (10) days after the date of this Agreement, Seller shall deliver to Purchaser copies of the Lease and all Contracts, Governmental Approvals and Warranties, and the same shall be satisfactory to Purchaser in its sole discretion.

(g) Seller shall have terminated all written and oral employment contracts and agreements as of Closing, unless otherwise directed by Purchaser in writing.

(h) By _____, 20_____, Seller shall have delivered to Purchaser annual financial statements for the first three (3) quarters of 20___. The Seller's 20___ financial statements are attached hereto as Exhibit D, which are certified by an officer of Seller. Simultaneously, Seller shall deliver any other financial statements in its possession prepared by or for the Seller for the years _____ and _____. Purchaser's obligations hereunder shall be contingent upon Purchaser's approval, in its sole discretion, of Seller's financial statements prior to Closing. In addition to the foregoing, Seller shall provide to Purchaser monthly financial statements not encompassed by the foregoing until the Closing, which shall be subject to Purchaser's review and approval as set forth above.

(i) As of Closing, Purchaser shall have obtained financing from a financial institution selected by Purchaser in the amount of _____ and 00/100 Dollars ($_____) at _____% simple interest per annum and with a _____ (___) year amortization, or upon other terms satisfactory to Purchaser in its sole discretion.

If any of the foregoing conditions are not fulfilled within the time periods and according to the terms indicated, this Agreement shall be null and void and of no further force or effect, unless they are waived in writing by Purchaser.

7. Seller's Representations, Warranties and Covenants. Seller represents, warrants and covenants to Purchaser as follows, which representations and warranties shall inure to the benefit of purchaser, its successors and assigns, shall be considered made as of the date hereof and as of the Closing Date:

(a) The Lease is fully assignable to Purchaser, in full force and effect, and Seller has not committed any default thereunder. Seller is a corporation duly organized and validly existing under the laws of the state of _____, and has the authority and capacity to enter into and perform this Agreement. Seller is not bankrupt or insolvent. Seller has paid or will pay all required unemployment and all state and local sales and use taxes on all sales, purchases or leases of personal property through Closing and any other taxes not otherwise specifically provided for herein.

(b) Seller has not received notice, written or otherwise, from any governmental agency, and is not aware of any pending governmental agency notification, of any violations or alleged violations of law not cured which affect the Property, or written notice of any actions, proceedings or investigations which would affect the Property, and Seller has not received notice of and is not aware of any pending or threatened eminent domain action as to the land on which the Leasehold is located. The Business and Leasehold are in full compliance with all applicable building codes, environmental, zoning and land use laws, and all other applicable federal, state and local laws and regulations, and all provisions of any applicable restrictive covenants and regulations. The current use of the Leasehold complies with all applicable laws, ordinances and regulations.

(c) There are, and as of Closing there shall be, no tenancies or occupancies, except the Lease, and no service, supply, maintenance or management contracts or agreements affecting the Business that have not been disclosed to Purchaser in writing and cannot be canceled by Purchaser immediately without penalty.

(d) There are, and as of Closing there shall be, no recorded or unrecorded contracts and/or options to which Seller is a party pertaining to or affecting title to or the sale of the Property, or any part thereof.

(e) Seller is not a party to any (i) union collective bargaining or similar agreement, (ii) profit sharing, deferred compensation, bonus, stock option, stock purchase, health, welfare or income plan, (iii) plan or policy providing for "fringe benefits" or (iv) employment agreement. No employee or former employee of Seller has any claim against Seller on account of or for violation of any statute, ordinance or regulation relating to minimum wages or maximum hours of work.

(f) All patient and vendor contracts are in full force and effect, and except as otherwise disclosed to Purchaser in writing, there are no patient complaints or requests for refunds or rebates of any professional fees.

(g) Seller is not a party, either as a plaintiff or defendant, to any litigation affecting or arising out of the Property or the Business, and knows of no threatened litigation or

claim affecting or arising out of or related to the Property or the Business. Except for those liabilities assumed by Purchaser hereunder, if any, Seller does not know of any liabilities of Seller or its agents regarding or arising out of the Property or the Business for which Purchaser may become liable.

(h) Except with respect to the liabilities assumed by Purchaser hereunder, if any, no creditor of Seller will obtain any rights or claims against Purchaser as a result of the sale of the Property to Purchaser pursuant to this Agreement.

(i) No statement by Seller in this Agreement or in any certificate, exhibit, financial statement or financial information or other writing furnished or to be furnished by or on behalf of Seller in connection with this Agreement or the actions contemplated hereunder contains or shall contain any untrue statement of material fact or omit to state a material fact necessary to make the statement made herein or therein not misleading in light of the circumstances under which they were made.

(j) Any change in the foregoing warranties between the date hereof and the Closing Date will be immediately communicated to Purchaser.

Seller shall indemnify and hold Purchaser harmless from and against any claims, liabilities, costs, demands, actions, injury, loss or damage (including attorneys', expert witnesses' and consultants' fees and expenses) sustained by reason of the breach of or inaccuracy or untruth of any of the representations and warranties herein contained as of the date hereof or as of the Closing Date. Seller's warranties and representations, its obligation to indemnify Purchaser, and Seller's liability for breach of any of its representations and warranties shall survive Closing and not be merged therewith.

8. Casualty; Eminent Domain.

(a) In the event of the damage or destruction of all or any of the Leasehold or Personal Property prior to Closing, Purchaser, at its option, may either (i) terminate this Agreement by notice to Seller, whereupon neither party shall have any further obligations hereunder, or (ii) enforce this Agreement whereupon Seller shall assign to Purchaser any insurance proceeds payable as a result of such damage or destruction.

(b) In the event that, prior to Closing, any portion of the Leasehold be taken by eminent domain, or become the subject of eminent domain proceedings threatened or commenced, Seller shall promptly notify Purchaser thereof in writing, and immediately provide Purchaser with copies of any written communication from any condemning authority. If any of said events shall occur, then, in that event, Purchaser shall have the option to terminate this Agreement by notice to Seller, whereupon neither party shall have any further obligations hereunder, or to enforce this Agreement whereupon Seller shall assign to Purchaser any awards for such taking at the Closing.

9. Brokers. Each party represents and warrants to the other that it has not engaged any agent or broker with respect to this transaction and no person is entitled to a fee as a result of the purchase and sale of the Property. Each party agrees to indemnify and hold the other harmless from

and against any loss, cost and expense, including attorneys' fees, which such party shall suffer by reason of the breach of the foregoing representation and warranty, which shall survive Closing.

10. Assignment of Agreement. Neither party may assign this Agreement without the prior written consent of the other.

11. Maintenance of Property and Conduct of Business Pending Closing. Seller shall maintain its present insurance coverage on the Property through Closing and shall further maintain and preserve the Property in the same condition existing on the date of this Agreement and shall conduct business operations on the Property in the usual, regular and ordinary course and consistent with Seller's prior practice. Seller shall not enter any long-term contracts or any leases or other material commitments affecting the Property.

12. Notices. Any and all notices required or permitted hereunder shall be in writing and shall be deemed given upon receipt (which may be evidenced by the return receipt in the event of registered or certified mail delivery) and shall be delivered by (i) personal delivery; (ii) United States registered or certified mail, return receipt requested; or (iii) overnight commercial package courier or local delivery service, in all events prepaid and addressed:

in the case of Seller to:

_____
_____
_____

and in the case of Purchaser, to:

_____
_____
_____

Each party hereto shall have the right to change its foregoing address for notices by written notice to the other party to such effect.

13. Conveyance of Assets Only. Seller is conveying only its assets pursuant to this Agreement. Seller shall expressly remain liable for and not transfer or otherwise assign to Purchaser any of the Liabilities, except as are assumed by the Purchaser hereunder. Seller shall further indemnify, save, defend and hold Purchaser harmless from any and all expenses, costs, actions and causes of action incurred by Purchaser, including, but not limited to, reasonable attorneys' fees and costs, arising out of or related to the Liabilities.

14. Assumption of Certain Liabilities. At Closing, Purchaser shall assume those liabilities set forth on Exhibit E, and shall further indemnify, save, defend and hold Seller harmless from any and all expenses, costs, actions and causes of action incurred by Seller, including, but not limited to, reasonable attorneys' fees and costs arising therefrom.

15. Confidentiality. Except as otherwise provided herein, the parties hereto agree to use their best efforts not to disclose or furnish to any third party copies of this Agreement or its terms, other than to the parties' counsel, Purchaser's lender(s), the Title company, and the various inspectors, surveyors, consultants, brokers and/or appraisers involved in the transactions contemplated by this Agreement.

16. Bulk Sale. The parties hereto waive compliance with the bulk transfer provisions of the Uniform Commercial Code as adopted in the state of _____, together with any statutory provisions relating to the liability of a purchase of assets in bulk for the taxes of the Seller of such assets, in effect on the Closing Date. The Seller agrees to pay when due and to discharge all claims of creditors and all taxes and interest and penalties thereon which could be collected from the Purchaser and local taxes owing by the Seller in respect of the operations through Closing of the business conducted on the Property.

17. Consulting and Non-Compete Agreements. Seller agrees that, for a period of _____weeks following the Closing, it shall, at no cost to Purchaser and upon reasonable request of Purchaser, answer Purchaser's questions relative to the Property and Business, and provide Purchaser with advice and recommendations as to the maintenance and operation of the Property and the Business, and to generally consult with Purchaser as to the best practices therefor. Seller further agrees that, for good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, Seller shall not, for a period of ____ years from the Closing Date, directly or indirectly compete with Purchaser relative to the Business within _____ miles of _____, through, but not limited to, contacting any customer or patient associated with Seller or Purchaser for the purpose of engaging in the business of professional orthodontic services. Seller specifically agrees that it has been provided with the opportunity to obtain counsel and/or has sought counsel as to the provisions of this Section, that the terms hereof are reasonable in both time and space, and waives any and all rights and defenses relative to the same. Seller further agrees that, in the event of Seller's breach of this provision, Purchaser would have no remedy at law and may seek specific performance of this provision in equity. The obligations of this provision shall survive the Closing and shall not be merged therewith.

18. Access to Reports**.** The Seller shall retain all original treatment records and models as to those patients only Seller has treated and for which no further treatment (including, but not limited to, retention) will be likely by Purchaser. All other original treatment records (including models) of the Business shall become the property of, and possessed by, the Purchaser as of the Closing; provided, that at Seller's option, either (1) Purchaser shall provide Seller reasonable access to such records during normal business hours, or (2) Seller may, at Seller's expense, obtain copies of such records prior to the Closing.

19. Negotiation; Mediation; Arbitration. In the event of any dispute, claim, question or disagreement (collectively, a **"Dispute"**) arising from or relating to this Agreement or the breach thereof, the parties shall use their best efforts to settle the Dispute through consulting and negotiating with each other in good faith and attempting to reach a just and equitable resolution satisfactory to both parties. If the parties do not obtain such resolution within a period of 30 days

from the date on which either party invokes this provision through written notice to the other, then, upon written notice from one party to the other, the parties shall attempt in good faith to settle the Dispute by mediation administered by the American Arbitration Association (**"AAA"**) under its Commercial Mediation Procedures before resorting to arbitration, litigation or other dispute resolution procedure. If the parties are unable to resolve the Dispute through mediation within 60 days from the date either party invokes this provision, then such Dispute shall be settled as soon as practicable by arbitration administered by the AAA in accordance with its Commercial Arbitration Rules (including the Optional Rules for Emergency Measures of Protection), who shall have the power to enter equitable judgments, including, but not limited to, specific performance, and the judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

20. Miscellaneous Provisions.

(a) Time is of the essence with respect to each and every provision of this Agreement.

(b) The captions in the various sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Agreement nor the intent of any provision hereof.

(c) If any date for the occurrence of an event or act under this Agreement falls on a Saturday or Sunday or legal holiday in the state of _____, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

(d) This Agreement, together with its Exhibit(s), constitute the entire agreement between the parties pertaining to the subject matter contained in this Agreement, and replace all prior oral and written understandings and agreements. This Agreement may be amended only by a writing signed by both Purchaser and Seller.

(e) This Agreement may be executed simultaneously in any number of counterparts, each of which shall constitute one and the same agreement.

(f) All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, administrators, legal representatives, successors and assigns.

(g) In the event of any action, suit or other proceeding to enforce this Agreement, the prevailing party shall be entitled to receive from the other party all of the prevailing party's costs and expenses of suit, including reasonable attorneys' fees, in addition to any other relief to which such party may be entitled.

(h) This Agreement shall be governed by and construed in accordance with the laws of the state of _____.

(i) If either party fails to comply with any covenant, term or provision of this Agreement, the other party shall be entitled to pursue any remedy at law and/or in equity, including, but not limited to, specific performance.

(j) If this Agreement expires according to its terms or if Purchaser terminates the same pursuant to a right set forth herein, the earnest money referenced in Exhibit B, hereto, and all documents and instruments deposited by Purchaser, shall be immediately refunded and returned to Purchaser.

(k) The obligations of Sections 3(a), 7, 9, 10, 14, 15, 17, 18, 19 and 20 shall survive the Closing and not be merged therewith.

(l) The parties shall perform their obligations under this Agreement in good faith.

IN WITNESS WHEREOF, Purchaser and Seller have executed this Agreement as of the day and year first above written.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

_____

a _____

By: _____

Name: _____

Title: _____

_____

a _____

By: _____

Name: _____

Title: _____

EXHIBIT A

(Description of the Land)

EXHIBIT B

(Purchase Price Payments)

EXHIBIT C

(Allocation of Purchase Price)

EXHIBIT D

(20___ Financial Statements)

EXHIBIT E

(Liabilities Assumed by Purchaser)