

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

In re:	)	Chapter 11
	)	
	)	
ABC DENTISTRY, P.A., <i>et al.</i> <sup>1</sup>	)	Case No. 16-34221 (MJI)
	)	
Debtors.	)	Jointly Administered
	)	

**NOTICE OF FILING OF PLAN SUPPLEMENT TO THE SECOND AMENDED JOINT  
CHAPTER 11 PLAN OF REORGANIZATION OF ABC DENTISTRY, P.A., ABC  
DENTISTRY WEST OREM, P.L.L.C., ABC DENTISTRY OLD SPANISH TRAIL,  
P.L.L.C., ABC DENTISTRY HILLCROFT, P.L.L.C., ABC DENTISTRY PASADENA,  
P.A., AND IRAJ S. JABBARY, DDS PURSUANT TO CHAPTER 11 OF THE  
BANKRUPTCY CODE**

**PLEASE TAKE NOTICE THAT** on November 22, 2016, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby file the *Plan Supplement to the Second Amended Joint Chapter 11 Plan of Reorganization of ABC Dentistry, P.A., ABC Dentistry West Orem, P.L.L.C., ABC Dentistry Old Spanish Trail, P.L.L.C., ABC Dentistry Hillcroft, P.L.L.C., ABC Dentistry Pasadena, P.A. and Iraj S. Jabary, DDS Pursuant to Chapter 11 of the Bankruptcy Code* (the “Plan Supplement”) with the United States Bankruptcy Court for the Southern District of Texas.

**PLEASE TAKE FURTHER NOTICE THAT** the Plan Supplement is being filed as a supplement to, in support of, and in accordance with the *Second Amended Joint Chapter 11 Plan of Reorganization of ABC Dentistry, P.A., ABC Dentistry West Orem, P.L.L.C., ABC Dentistry Old Spanish Trail, P.L.L.C., ABC Dentistry Hillcroft, P.L.L.C., ABC Dentistry Pasadena, P.A.*

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: ABC Dentistry, P.A.; ABC Dentistry West Orem, P.L.L.C.; and ABC Dentistry Old Spanish Trail. The Debtors’ mailing address is 1500 Southmore Ave., Pasadena, Texas 77502.

and Iraj S. Jabary, DDS Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 312] (as may be further amended, supplemented, or modified from time to time, the “Plan”). Capitalized terms used but not defined herein have the meanings ascribed to them in the Plan.

**PLEASE TAKE FURTHER NOTICE THAT** the following documents are included in the Plan Supplement, as each may be amended, modified, or supplemented as set forth below:

- Exhibit 1**      Form of Rohi Settlement and State Release Agreement
- Exhibit 2**      Form of Promissory Note
- Exhibit 3**      Form of Security Agreement
- Exhibit 4**      Schedule of Rejected Contracts
- Exhibit 5**      Schedule of Cure Amounts for Assumed Contracts
- Exhibit 6**      Schedule of Retained Causes of Action
- Exhibit 7**      Schedule of Debtors’ Post-Effective Date Officers and Directors

**PLEASE TAKE FURTHER NOTICE** that the documents contained in this Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein.

**PLEASE TAKE FURTHER NOTICE THAT** copies of the Plan and the Plan Supplement also may be obtained by contacting BMC Group, Inc. (“BMC”), the noticing agent retained by the Debtors in the chapter 11 cases, by (a) accessing the Debtors’ restructuring website at <https://www.bmcgroup.com/restructuring/geninfo.aspx?ClientID=398>, or (b) calling BMC at 1-888-909-0100 (US); or, by (c) writing to Debtors’ counsel, Baker Botts, L.L.P., at Baker Botts, L.L.P. c/o Chad Barton, 2001 Ross Avenue, Dallas, Texas 75201. You may also obtain such materials for a fee via PACER at <https://ecf.txsb.uscourts.gov/>.

Date: November 22, 2017

Respectfully submitted,

BAKER BOTTS L.L.P.

/s/ Omar J. Alaniz

BAKER BOTTS L.L.P.

Omar J. Alaniz (State Bar No. 24040402)

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**COUNSEL TO THE DEBTORS AND DEBTORS-IN-  
POSSESSION**

**Exhibit 1**

**Form of Rohi Settlement and State Release Agreement**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	Chapter 11
	§	
ABC DENTISTRY, P.A., <i>et al.</i>	§	Case No. 16-34221
	§	
DEBTORS.	§	Jointly Administered

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**SETTLEMENT AGREEMENT**

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The undersigned parties, State of Texas (“TEXAS” or “STATE”)<sup>1</sup>; Debtor Defendants ABC Dentistry, P.A. (“ABC PA”); ABC Dentistry West Orem, P.L.L.C. (“ABC WO”); and ABC Dentistry Old Spanish Trail, P.L.L.C. (“ABC OST”) (collectively referred to herein as “DEBTORS” or “DEBTOR DEFENDANTS”); as well as Defendants Iraj S. Jabbary, DDS (“Jabbary”); ABC Dentistry Pasadena, PA (“ABC Pasadena”); and ABC Dentistry Hillcroft, PLLC (“ABC Hillcroft”) (collectively referred to herein as the “NON-DEBTOR DEFENDANTS”)<sup>2</sup> now sign this document to memorialize the terms of their agreement under § 154.071 of the Texas Civil Practice & Remedies Code.

The parties and their attorneys thoroughly reviewed the document and made or had the opportunity to make any changes to it that the parties desired. The parties sign this agreement of their own free will and without duress, relying on their own understanding of the agreement and the advice of their attorneys.

The agreement is:

1. The DEFENDANTS, including Dr. Jabbary individually, agree that they shall be jointly and severally liable to make a total payment in the amount of FOUR MILLION DOLLARS (\$4,000,000.00) (the “Settlement Amount”) under the terms and conditions in the Amended Term Sheet executed by the Defendants and Dr. Rohi dated July 26, 2017 except as modified herein. The Settlement Amount will be paid in installments. The first installment will be at least in the amount of \$500,000.00 paid pursuant to an order of the Bankruptcy Court as provided in paragraph 6 herein. The remainder of the payments shall be made in equal quarterly installments through December 31, 2022 (the “Settlement Payment Obligation”). Interest shall accrue at a flat rate of 0.5% per annum. The entire Settlement Amount will be paid in full by December 31, 2022 (the “Payment Period”).

2. There shall be no prepayment penalty.

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<sup>1</sup> The “State” or “Texas” means the Civil Medical Fraud Division of the Texas Attorney General’s Office (“OAG”), the Texas Health and Human Services Commission (“HHSC”), and the Texas Health and Human Services Commission’s Office of the Inspector General (“OIG”).

<sup>2</sup> The DEBTOR DEFENDANTS and NON-DEBTOR DEFENDANTS are collectively referred to herein as the “DEFENDANTS.”

3. Subject to existing liens, to secure the DEFENDANTS' obligations in this Settlement Agreement, the DEFENDANTS, except Dr. Jabbary individually, will grant a security interest on substantially all assets except equipment, and the DEFENDANTS shall be entitled to incur secured equipment financing. All DEFENDANTS, including Dr. Jabbary individually, and the STATE agree to cooperate in the execution of a mutually agreeable secured promissory note and security agreement in form substantially similar as the promissory note and security agreement that the DEFENDANTS negotiated with the RELATOR and filed as a plan supplement on or before November 23, 2017. The Parties to this Settlement Agreement agree to cooperate in good faith in the event the DEFENDANTS desire to incur secured debt financing for business operations purposes, such that they will not unreasonably withhold consent to the incurrence of secured indebtedness (which may require the subordination of their liens) related to transactions that are intended to benefit the business operations of the DEFENDANTS or their affiliates.

4. In consideration for the Settlement Payment, the Parties agree to the releases set forth in the attached Exhibit A.

5. The Parties agree that this Settlement Agreement supersedes the previous term sheets executed by RELATOR ROHI and DEFENDANTS on November 16, 2016 and on July 26, 2017 to the extent that any terms herein are inconsistent with the terms in those term sheets. Debtors shall amend their Plan of Reorganization to incorporate the terms of this Settlement Agreement.

6. DEFENDANTS expressly acknowledge and agree that they are not entitled to direct or influence in any way the manner in which the Settlement Amount is allocated or divided in any way. The STATE and RELATOR ROHI have agreed to waive any right to appeal the decision that Judge Isgur rendered in connection with the division of the Settlement Amount as between the STATE and RELATOR.

7. The DEFENDANTS shall provide an amortization schedule that provides for pro rata payments of the portion of the Settlement Amount allocated to the STATE by the Bankruptcy Court in the total amount of \$1,599,000, plus applicable interest. These pro rata payments shall be made contemporaneously with payments made to the Relator, Dr. Saeed Rohi and/or his counsel pursuant to the chapter 11 plan. The DEFENDANTS and the STATE will cooperate to finalize logistical aspects of the payment, including the coordination and/or allocation of payments between OAG and OIG, if necessary.

8. The DEFENDANTS dispute all of the State's and the Relator's allegations and deny any wrongdoing. The DEFENDANTS' execution of this Agreement is not an admission of any liability. To avoid the uncertainty and expense of litigation of the disputed claims, the Parties agree to settle all claims arising from the TMFPA Covered Conduct and the OIG Covered Conduct as described in Exhibit A.

9. Except for the scope of releases set forth in Exhibit A, nothing herein shall affect the scope of the DEBTOR DEFENDANTS' discharge under applicable federal bankruptcy law or any Chapter 11 plan that is confirmed in the DEBTOR DEFENDANTS' bankruptcy cases.

10. The Parties further hereby agree that this agreement and settlement is subject to and conditioned upon the approval of the Executive Administrations of the OAG and HHSC, without which it is of no force or effect.

Signed on November \_\_\_\_, 2017.

**State of Texas:**

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Raymond C. Winter, Chief  
Civil Medicaid Fraud Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

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Steve Dallas Johnson  
Deputy Chief Counsel  
H.H.S.C.-Office of the Inspector General  
Mail Code 1358  
P.O. Box 85200  
Austin, Texas 78708

**Texas Health & Human Services Commission**

By:

Date:

Karen Ray, Chief Counsel  
Texas Health & Human Services Commission  
Brown-Heatly Building  
4900 N. Lamar Blvd.  
Austin, Texas 78751-2316

**Defendants:**

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Iraj S. Jabbary, DDS, individually and on behalf of  
Defendants ABC Dentistry, P.A.; ABC Dentistry West Orem, P.L.L.C.; ABC Dentistry Old  
Spanish Trail, P.L.L.C.; ABC Dentistry Pasadena, PA; and ABC Dentistry Hillcroft, PLLC

**EXHIBIT A**

**RELEASE AGREEMENT**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	Chapter 11
	§	
ABC DENTISTRY, P.A., <i>et al.</i>	§	Case No. 16-34221
	§	
DEBTORS.	§	Jointly Administered

**EXHIBIT A -- RELEASE**

1. On or about August 6, 2015, RELATOR ROHI<sup>1</sup> filed his Second Amended Petition against Debtor Defendants ABC Dentistry, P.A. (“ABC PA”); ABC Dentistry West Orem, P.L.L.C. (“ABC WO”); and ABC Dentistry Old Spanish Trail, P.L.L.C. (“ABC OST”) (collectively referred to herein as “DEBTORS” or “DEBTOR DEFENDANTS”); as well as Defendants Iraj S. Jabbary, DDS (“Jabbary”); ABC Dentistry Pasadena, PA (“ABC Pasadena”); and ABC Dentistry Hillcroft, PLLC (“ABC Hillcroft”) (collectively referred to herein as the “NON-DEBTOR DEFENDANTS”)<sup>2</sup> in *Saeed Rohi, DDS, ex rel State of Texas v. Iraj S. Jabbary, DDS et al.*; Cause No. 2014-41707 filed in the 281st Judicial District Court of Harris County, Texas (the “Rohi Litigation”). The Rohi Litigation was removed to the United States Bankruptcy Court for the Southern District of Texas on August 26, 2016, where the Rohi Litigation is currently pending. RELATOR ROHI made various allegations discussed in this paragraph that the DEFENDANTS vehemently contest and does not admit and denies the allegations. However, the DEFENDANTS believe that contesting the factual and legal assertions of the TMFPA Claims (defined below) involved too great of a financial risk for the DEFENDANTS to bear, and therefore the DEFENDANTS decided to settle the claims for business reasons. In particular, TMFPA § 36.005 could be construed to exclude the DEFENDANTS from the Medicaid program immediately upon entry of a judgment, and therefore the DEFENDANTS could potentially suffer severe financial harm without the financial ability to pursue an appeal on various grounds, including DEFENDANTS’ contention that the monetary remedies calculation under the TMFPA violates the federal and state constitutions. In the Rohi Litigation, RELATOR ROHI contends that between February 21, 2014 and May 1, 2014, the DEFENDANTS made or caused to be made allegedly false statements and/or misrepresentations to the State of Texas (“TEXAS” or “STATE”)<sup>3</sup> and/or Texas Medicaid when the DEFENDANTS: (i) knowingly charged Medicaid for unnecessary and excessive procedures or for services never rendered; (ii) knowingly billing/submitting claims for “First Dental Home” examinations in violation of Texas Medicaid requirements; (iii) knowingly billing/submitting claims for Procedure Code D9230 concerning nitrous oxide/oxygen inhalation sedation in

<sup>1</sup> Relator Saeed Rohi, DDS is referred to herein as “RELATOR ROHI.”

<sup>2</sup> The DEBTOR DEFENDANTS and NON-DEBTOR DEFENDANTS are collectively referred to herein as the “DEFENDANTS.”

<sup>3</sup> All capitalized terms not defined herein shall have the meaning provided in the Settlement Agreement to which this Exhibit A attaches.

violation of Texas Medicaid requirements; and (iv) submitting claims/bills to Texas Medicaid that failed to identify the dentists who actually provided the services in violation of TEX. HUM. RES. CODE § 36.002(8). RELATOR ROHI contends in the Rohi Litigation that these alleged false statements and/or misrepresentations, independently or in combination, resulted in payments made to DEFENDANTS from Texas Medicaid for which DEFENDANTS were not entitled. RELATOR ROHI further contends in the Rohi Litigation that the DEFENDANTS committed unlawful acts under the Texas Medicaid Fraud Prevention Act, as defined by TEX. HUM. RES. CODE § 36.002 (“TMFPA”), in connection with these alleged false statements and/or misrepresentations (together the “TMFPA Claims”). In this Agreement, the conduct described in this paragraph is referred to as the “TMFPA Covered Conduct.” This definition of TMFPA Covered Conduct does not include or apply to: (i) any actions, omissions, or other conduct of any person or entity who is not a current named defendant in the Rohi Litigation; or (ii) any actions, omissions, or other conduct occurring after August 6, 2015. The DEFENDANTS do not admit any liability for any of the TMFPA Claims or any of the allegations in the Rohi Litigation.

2. The Texas Health & Human Services Commission’s Office of Inspector General (“OIG”) delivered a “Notice of Overpayment” to Defendant ABC Pasadena dated June 16, 2017 (the “June 16 Notice”). The June 16 Notice contained various allegations of violations by one or more Defendants described therein. The DEFENDANTS also contest the allegations in the June 16 Notice. Moreover, the DEFENDANTS delivered a “Request for Informal Resolution Meeting AND Request for Formal Appeal before the SOAH,” dated June 23, 2017 to the OIG concerning the June 16 Notice. Defendants’ position is that the OIG findings were erroneous and immaterial, which OIG denies. In addition, OIG has jurisdictional authority concerning the following categories of unlawful conduct concerning dates of service from August 30, 2011 to March 3, 2016:

**a. Wrong Performing Provider**

- i. Medicaid billed and paid claims which identified performing provider. Performing provider identified in claim was not the actual dental provider who performed the services billed and paid by Medicaid.

**b. Documentation issues:**

- i. Charts were missing required documentation; x-rays in patient file were for different patient; or clinical notes in patient file were for different patient.

**c. Up-Coding:**

- i. Routinely billed for removal of coronal remnants as an extraction when tooth was naturally exfoliating.

**d. Services not rendered:**

- i. Provider billed for services there were not rendered as reflected in the dental records.

e. **Knowingly billing/submitting claims for “First Dental Home” examinations in violation of Texas Medicaid requirements.**

f. **Claims Identified in the June 16 Notice.**

The conduct described in this Paragraph is referred to herein as the “OIG Covered Conduct.” This definition of OIG Covered Conduct does not include or apply to any actions, omissions, or other conduct occurring before August 30, 2011 or after March 3, 2016. The DEFENDANTS do not admit any liability for any of the OIG Covered Conduct or any of the allegations in the June 16 Notice.

3. Subject to Paragraph 4 below and in exchange for the consideration described herein (including payment in full of the Settlement Amount), the STATE (on behalf of (i) itself, its past and present officers, agents, entities, divisions, agencies, commissions, and departments, including all of their respective predecessors, successors, and assigns, and (ii) any insurers and reinsurers of those identified in sub-clause (i)), as of the date of payment in full of the Settlement Amount, fully and finally releases, discharges, and covenants not to sue the DEFENDANTS and each of the DEFENDANTS’ respective past and present attorneys (collectively, the “Released Parties”) for any civil, regulatory, and/or administrative claim, action, suit, demand, right, cause of action, liability, judgment, damage, or proceeding, direct or indirect, known or unknown (including claims for damages, attorneys’ fees, penalties, costs, and expenses of every kind and however denominated) the STATE has, may have, has asserted, or could assert in the future under any source of law, contract, in equity or other right, for the TMFPA Covered Conduct and the OIG Covered Conduct. In addition, the Parties agree that the payment of the Settlement Amount fully discharges the Released Parties from any obligation to the STATE to pay restitution, damages, penalties, or fines to the STATE for the TMFPA Covered Conduct and the OIG Covered Conduct. This Agreement does not prevent the STATE from discussing, communicating, or sharing information with other states or federal agencies or any other person or entity as permitted by the TMFPA. This Agreement only releases claims or causes of action that arise from the TMFPA Covered Conduct and the OIG Covered Conduct. The STATE covenants not to sue the DEFENDANTS for the TMFPA Covered Conduct and the OIG Covered Conduct while Defendants are in compliance with this Agreement. This covenant will mature into the release described herein when the full Settlement Amount and Settlement Payment Obligation, plus interest due, and any other amounts due under this Agreement, are paid in full as contemplated by the DEBTORS’ chapter 11 plan of reorganization.

4. Notwithstanding any other terms of this Agreement, including the releases in Paragraph 3 above, any and all of the following are specifically reserved and excluded from the scope and terms of this Agreement, and from the scope and terms of the Releases, as to any entity or person, including the Parties:

- a. Any claim based upon an obligation created by the Agreement;
- b. Any claim for exclusion or termination of enrollment by the Texas Health & Human Services Commission’s Office of Inspector General concerning any actions, omissions, or other conduct other than the OIG Covered Conduct;

- c. Any claim based upon an express or implied product or service warranty or for defective or deficient products or services, including quality of goods and services, provided by the DEFENDANTS;
- d. Any claim based on liability that any person or entity has or may have to the STATE or to individual consumers or state program payors, other than liability relating to Texas Medicaid for the Covered Conduct, involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- e. Any claim for state or federal antitrust violations;
- f. The subrogation rights to claims for personal injury or property damage arising from usage of the DEFENDANTS' products or services by a participant in the Medicaid Program;
- g. Any claim based on a failure to deliver products or services due; and
- h. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code) or any state tax or revenue law.

5. Provided that the DEFENDANTS are making installment payments of the Settlement Amount as contemplated by the DEBTORS' chapter 11 plan of reorganization and otherwise remain in compliance with the terms of such agreement, and after the DEFENDANTS complete all payments of the Settlement Amount required by the Agreement and conditioned upon same, Texas agrees that it will not institute, recommend, direct, or maintain against DEFENDANTS any administrative claim or any action seeking voluntary exclusion, suspension, or debarment from the Texas Medicaid program for the conduct released herein (as and only to the extent set forth in Paragraphs 3 and 4 of this Agreement), unless otherwise required by federal law.

**Exhibit 2**

**Form of Promissory Note**

Draft of 11/22/2017

**0.5% SECURED PROMISSORY NOTE****DUE DECEMBER 31, 2022**

FOR VALUE RECEIVED, ABC Dentistry Pasadena, P.A., a professional association ("ABC Dentistry Pasadena"), ABC Dentistry Hillcroft, P.L.L.C., a professional limited liability company ("ABC Dentistry Hillcroft"), Dr. Iraj S. Jabbar, D.D.S. ("Jabbar"), ABC Dentistry West Orem, P.L.L.C., a professional limited liability company ("ABC Dentistry West Orem"), and ABC Dentistry Old Spanish Trail, P.L.L.C., a professional limited liability company ("ABC Dentistry OST"), and with ABC Dentistry Pasadena, ABC Dentistry Hillcroft, Jabbar, and ABC Dentistry West Orem, each is referred to as a "Maker" and collectively, "Makers") jointly and severally promise to pay to the order of Dr. Saeed Rohi and Brewer & Pritchard, P.C. or permitted assignees (collectively, "Holder") the principal sum of \$\_\_\_\_\_ pursuant to the terms set forth in Section 2 hereof, the last payment of which is due on December 31, 2022 (the "Maturity Date"), and to pay interest at the rate of 0.5% per annum to the Holder on the then outstanding principal amount of this Note in accordance with Section 2 hereof. This Note is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Note: (a) capitalized terms not otherwise defined herein have the meanings given to such terms in the Reorganization Agreement, and (b) the following terms shall have the following meanings:

"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

"Business Day" means any day except Saturday, Sunday and any day which shall be a federal legal holiday in the United States or a day on which banking institutions in the State of Texas are authorized or required by law or other government action to close.

"Company" means individually, ABC Dentistry Pasadena, ABC Dentistry Hillcroft, ABC Dentistry West Orem, or ABC Dentistry OST. The term "Companies" shall refer to all of ABC Dentistry Pasadena, ABC Dentistry Hillcroft, ABC Dentistry West Orem and ABC Dentistry OST.

"Chapter 11 Plan" means the Chapter 11 Plan of the Makers confirmed by the United States Bankruptcy Court for the Southern District of Texas, Houston Division, on \_\_\_\_\_, 2017.

"Default Interest" shall have the meaning set forth in Section 2(b).

"Event of Default" shall have the meaning set forth in Section 4.

"Houston Courts" shall have the meaning set forth in Section 5(d).

"Initial Quarterly Payment Date" shall mean the first day of \_\_\_\_\_, 2018.

"Permitted Indebtedness" means, with respect to a Company, (i) existing indebtedness, provided, that the principal amount of such indebtedness is not increased, the terms of such indebtedness are not modified to impose more burdensome terms upon the Company and the terms of such indebtedness are not materially changed in any manner that adversely affects Holder, (ii) indebtedness incurred for the purchase of equipment (not a capital lease) in the ordinary course of business and consistent with past practices, (iii) indebtedness incurred by the

Draft of 11/22/2017

Company that is made expressly subordinate in right of payment to the Note (collectively, the “Subordinated Indebtedness”), (iv) obligations in respect of guarantees and similar obligations provided in the ordinary course of business, (v) indebtedness consisting of the financing of insurance premiums incurred in the ordinary course of business, (vi) capital leases or purchase of equipment entered into in the ordinary course of business and consistent with past practices, (vii) indebtedness related to trade payables incurred in the ordinary course of the Company’s business and consistent with past practices, and (viii) additional indebtedness incurred for business purposes as agreed to by the Secured Parties, which consent shall not be unreasonably withheld or denied, whether secured or unsecured.

“Permitted Liens” means, with respect to a Company, (i) any lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent, (iii) any lien created by operation of law, such as materialmen’s liens, mechanics’ liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) leases or subleases and non-exclusive licenses and non-exclusive sublicenses granted to others in the ordinary course of the Company’s business and consistent with past practices, not interfering in any material respect with the business of the Company taken as a whole, (v) liens granted for Permitted Indebtedness and (vi) existing liens.

“Person” means a corporation, an association, a partnership, organization, a business, an individual, a government or political subdivision thereof or a governmental agency.

“Quarterly Payment” shall mean \$\_\_\_\_\_, which amount is the amortized principal amount of, and interest payable on, the Note calculated to be paid in \_\_\_\_ equal payments, payable on each of the Quarterly Payment Dates.

“Quarterly Payment Date” shall mean each of, and “Quarterly Payment Dates” shall mean collectively, (i) the Initial Quarterly Payment Date, (ii) the first day of every 3-month period that follows the Initial Quarterly Payment Date (the first such date being \_\_\_\_\_, 2018 and the last such date being \_\_\_\_\_, 2022), and (iii) the Maturity Date.

“Transaction Documents” shall mean collective references to the Note and the Security Agreement.

## Section 2. Principal and Interest.

a) Payment of Principal and Interest in Cash. The Makers shall pay the Quarterly Payments on each Quarterly Payment Date (if any Quarterly Payment Date is not a Business Day, then the applicable payment shall be due on the next succeeding Business Day) in cash, which may be in the form of a check.

b) Default Interest. All overdue accrued and unpaid Quarterly Payments hereunder shall bear interest at the rate of [ $\bullet\%$ ]<sup>1</sup> per annum (or such lower maximum amount of interest permitted to be charged under applicable law) (“Default Interest”) which will accrue daily, from the date such Quarterly Payment(s) is(are) due hereunder through and including the date of payment(s).

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<sup>1</sup> The Default Interest rate is the subject of continuing discussion between the parties.



Draft of 11/22/2017

Section 3. Negative Covenants. So long as any portion of this Note is outstanding, the Makers will not permit any Company to directly or indirectly:

a) enter into, create, incur, assume or suffer to exist any indebtedness (except for Permitted Indebtedness) or liens of any kind (other than Permitted Liens), on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom that is senior to or pari passu with, in any respect, a Maker's obligations under the Note;

b) no Maker shall, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any affiliate of any Maker; provided, however, that each Maker may enter into or permit to exist any such transaction if both (i) such transaction is disclosed to Holder (other than transactions among or between Makers in the ordinary course of business) and (ii) the terms of such transaction are not less favorable to such Maker, as the case may be, than those that might be obtained at the time from a person who is not an affiliate; further, provided, that the foregoing restrictions shall not apply to:

- I. any transaction among any two or more Makers in the ordinary course of business;
- II. reasonable and customary fees paid to members of the board of directors (or similar governing body) of the Makers that are not employees, or an affiliate, of any of Makers;
- III. compensation arrangements for officers and other employees of the Makers entered into in the ordinary course of business; or
- IV. employment, consulting and severance arrangements between a Maker and its officers and employees in the ordinary course of business and transactions pursuant to stock option plans, employee or director benefit plans and arrangements and similar plans, agreements or arrangements.

Notwithstanding the foregoing, nothing in this Section 3(b) or otherwise in this Note shall prohibit Jabbar from forming, opening or investing in new or additional clinics or other businesses, provided that (i) no such clinic or business is a subsidiary ("Subsidiary") of a Maker and (ii) none of the Collateral (as defined in the Security Agreement) of any Maker is transferred into such new clinic or other business.

Section 4. Events of Default.

a) "Event of Default", wherever used herein, means any one of the following events (whatever the reason and whether it shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

- i. any default in the payment of a Quarterly Payment (including payment at Maturity);
- ii. a Maker shall fail to observe or perform any other covenant or agreement contained in this Note (including without limitation any covenant set forth in Section 3)



Draft of 11/22/2017

or any of the other Transaction Documents which failure is not cured, if possible to cure, within 10 days after notice of such default sent by the Holder;

iii. any representation or warranty made by a Maker in this Note or, in any Transaction Document, in any written statement pursuant hereto or thereto, or in any other report, financial statement or certificate made or delivered to the Holder by a Maker, shall be untrue or incorrect in any material respect as of the date when made or deemed made;

iv. (i) a Maker shall commence, or there shall be commenced against a Maker, a case under any applicable bankruptcy or insolvency laws as now or hereafter in effect or any successor thereto, or a Maker commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to a Maker or (ii) there is commenced against a Maker any such bankruptcy, insolvency or other proceeding which remains undismissed for a period of 60 days; or (iii) a Maker is adjudicated by a court of competent jurisdiction insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or (iv) a Maker suffers any appointment of any custodian or the like for it or any substantial part of its property which continues undischarged or unstayed for a period of 60 days; or (v) a Maker shall call a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts; or (viii) a Maker shall by any act or failure to act expressly indicate its consent to, approval of or acquiescence in any of the foregoing; or (ix) any corporate or other action is taken by a Maker for the purpose of effecting any of the foregoing;

v. a Maker or any Subsidiary of a Company shall default in any of its obligations under any mortgage, credit agreement or other facility, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement of a Maker in an amount exceeding \$100,000, whether such indebtedness now exists or shall hereafter be created and such default shall result in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable; or

vi. any monetary judgment, writ or similar final process shall be entered or filed against a Maker or any of their respective property or other assets for more than [\$500,000], and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of [60] calendar days.<sup>2</sup>

b) Remedies Upon Event of Default. If any Event of Default occurs, the full principal amount of this Note, together with interest and other amounts owing in respect thereof, to the date of acceleration shall become, at the Holder's election, immediately due and payable in cash. Commencing upon the occurrence of any Event of Default that results in the eventual acceleration of this Note, Default Interest<sup>3</sup> shall accrue until this Note is paid in full. The Holder need not provide and the Makers hereby waive any presentment, demand, protest or other notice of any kind, and the Holder may immediately and without expiration of any grace period enforce

<sup>2</sup> Bracketed items in this paragraph are the subject of continuing discussion between the parties.

<sup>3</sup> The Default Interest rate is the subject of continuing discussion between the parties.

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any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such declaration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a Note holder until such time, if any, as the full payment under this Section shall have been received by it. No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 5. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder shall be in writing and delivered personally, by email, sent by a nationally recognized overnight courier service, addressed to a Maker, at the address, facsimile or email set forth below, or such other address, or email address as a Maker may specify for such purposes by notice to the Holder delivered in accordance with this Section. Any and all notices or other communications or deliveries to be provided by a Maker hereunder shall be in writing and delivered personally, by email, sent by a nationally recognized overnight courier service addressed to Holder at the address set forth below. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via email or facsimile at the email address or facsimile telephone number specified in this Section prior to 5:30 p.m. (Houston time), (ii) the date after the date of transmission, if such notice or communication is delivered via email or facsimile at the email address or facsimile telephone number specified in this Section later than 5:30 p.m. (Houston time) on any date and earlier than 11:59 p.m. (Houston time) on such date, (iii) the second Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

IF TO A MAKER OR MAKERS:

Dr. Iraj S. Jabbary, D.D.S.  
1500 Southmore Avenue  
Pasadena, TX 77502  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

ABC Dentistry Hillcroft, P.L.L.C.  
6704 Hillcroft St.  
Houston, TX 77081  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

ABC Dentistry Old Spanish Trail, P.L.L.C.  
5751 Blythewood, Suite 100  
Houston, TX 77021  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

ABC Dentistry Pasadena, P.A.  
1313 Strawberry Rd.

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Pasadena, TX 77502

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

ABC Dentistry West Orem, P.L.L.C.

5505 W. Orem Dr., Suite 200

Houston, TX 77085

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

With a copy to:

Omar J. Alaniz

Baker Botts L.L.P

2001 Ross Avenue

Dallas, Texas 75201

Telephone: 214-953-6593

Email: omar.alaniz@bakerbotts.com

IF TO HOLDER:

Dr. Saeed Rohi

1402 28<sup>th</sup> Ave. N.

Texas City, TX 77590

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

With a copy to:

Brewer & Pritchard, P.C.

800 Bering Dr., Suite 201

Houston, TX 77057

Telephone: (713) 209-2910

Facsimile: 832-538-1265

Email: brewer@bplaw.com

b) Absolute Obligation. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of a Maker, which is absolute and unconditional, to pay the principal of, interest and Default Interest<sup>4</sup> (if any) on, this Note at the time, place, and rate, and in the coin or currency, herein prescribed. This Note is a direct debt obligation of the Makers.

c) Lost or Mutilated Note. If this Note shall be mutilated, lost, stolen or destroyed, the Makers shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Note, or in lieu of or in substitution for a lost, stolen or destroyed Note, a new Note for the principal amount of this Note so mutilated, lost, stolen or destroyed.

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<sup>4</sup> The Default Interest rate is the subject of continuing discussion between the parties.

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d) Security Interest. This Note is direct debt obligation of the Makers and, pursuant to the Security Agreement is secured by a security interest all of the assets of the Makers.

e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by and construed and enforced in accordance with the internal laws of the State of Texas, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of Houston (the "Houston Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Houston Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, or such Houston Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Note or the transactions contemplated hereby. If either party shall commence an action or proceeding to enforce any provisions of this Note, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorney's fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding. Notwithstanding anything to the contrary herein, upon an occurrence of an Event of Default within the period expiring December 31, 2022, the Secured Parties shall have the right to seek to reopen the Chapter 11 cases, In Re: ABC Dentistry, P.A., et al., Jointly Administered Under Case No. 16-34221, in the United States Bankruptcy Court for the Southern District of Texas, to enforce any provision of the Note and/or this Security Agreement or to obtain such other relief available to the Secured Parties. The Debtors warrant and covenant to the Secured Parties that none of them will oppose the reopening of the Chapter 11 cases.

f) Waiver. Any waiver by a Maker or the Holder of a breach of any provision of this Note shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Note. The failure of a Maker or the Holder to insist upon strict adherence to any term of this Note on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Note. Any waiver must be in writing.

g) Severability. If any provision of this Note is invalid, illegal or unenforceable, or is in contravention of the Reorganization Agreement, the balance of this Note shall remain in effect, and if any provision is (i) inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances or (ii) is in contravention of the Reorganization Agreement, such term shall be revised to be consistent with the Reorganization Agreement. If it shall be found that any interest or other amount deemed interest due hereunder violates applicable laws governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum permitted rate of interest. The Makers covenant

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(to the extent that they may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive a Maker from paying all or any portion of the principal of or interest on this Note as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this indenture, and the Makers (to the extent they may lawfully do so) hereby expressly waive all benefits or advantage of any such law, and covenant that they will not, by resort to any such law, hinder, delay or impeded the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

h) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

i) Headings. The headings contained herein are for convenience only, do not constitute a part of this Note and shall not be deemed to limit or affect any of the provisions hereof.

j) Amendment. This Note may be modified or amended or the provisions hereof waived or amended with the written consent of each Maker and the Holder.

k) Prepayment. This Note may be prepaid in full, without penalty or premium, by the Makers at any time.

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*Draft of 11/22/2017*

IN WITNESS WHEREOF, each Maker has caused this Note to be duly executed as of the date first above indicated.

ABC Dentistry Hillcroft, P.L.L.C.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Dr. Iraj S. Jabbary, D.D.S.

ABC Dentistry Pasadena, P.A.

ABC Dentistry Old Spanish Trail, P.L.L.C.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ABC Dentistry West Orem, P.L.L.C.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit 3**

Form of Security Agreement

Draft of 11/22/2017

## SECURITY AGREEMENT

This SECURITY AGREEMENT, dated as of \_\_\_\_\_, 2017 (this "Agreement"), is among ABC Dentistry Pasadena, P.A., a professional association ("ABC Dentistry Pasadena"), ABC Dentistry Hillcroft, P.L.L.C., a professional limited liability company ("ABC Dentistry Hillcroft"), ABC Dentistry West Orem, P.L.L.C., a professional limited liability company ("ABC Dentistry West Orem"), and ABC Dentistry Old Spanish Trail, P.L.L.C., a professional limited liability company ("ABC Dentistry OST" and collectively with ABC Dentistry Pasadena, ABC Dentistry Hillcroft and ABC Dentistry West Orem, the "Debtors" and each individually a "Debtor"), and Dr. Saeed Rohi and Brewer & Pritchard, P.C., the holders of the Debtors' (and Dr. Jabbary's) 0.5% secured note due December 31, 2022, in the original principal amount of \$\_\_\_\_\_ (the "Note"), as well as their endorsees, transferees and assigns (collectively, the "Secured Parties").

### WITNESSETH:

WHEREAS, pursuant to the Note, the Secured Parties have agreed to finance a debt obligation evidenced by the Note; and

WHEREAS, in order to induce the Secured Parties to agree to finance the debt obligation evidenced by the Note, each Debtor has agreed to execute and deliver to the Secured Parties this Agreement and to grant the Secured Parties a security interest in certain property of such Debtor to secure the prompt payment, performance and discharge in full of all of the Debtors' obligations under the Note.

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

1. **Certain Definitions.** Terms used but not otherwise defined in this Agreement (i) that are defined in Chapter 9 of the UCC (such as "account", "chattel paper", "commercial tort claim", "deposit account", "document", "equipment", "fixtures", "general intangibles", "goods", "instruments", "inventory", "investment property", "letter-of-credit rights", "proceeds" and "supporting obligations") shall have the respective meanings given such terms in Chapter 9 of the UCC, (ii) shall have the meaning as defined in the Note, or (iii) as defined below in Section 1.

a) "Collateral" means the collateral in which the Secured Parties are granted a security interest by this Agreement and which shall include the following personal property of the Debtors, whether presently owned or existing or hereafter acquired or coming into existence, wherever situated, and all additions and accessions thereto and all substitutions and replacements thereof, and all proceeds, products and accounts thereof, including, without limitation, all proceeds from the sale or transfer of the Collateral and of insurance covering the same and of any tort claims in connection therewith, and all dividends, interest, cash, notes, securities, equity interest or other property at any time



and from time to time acquired, receivable or otherwise distributed in respect of, or in exchange for, any or all of the Pledged Securities (as defined below):

- (i) All goods;
- (ii) All contract rights and other general intangibles, including, without limitation, all partnership interests, membership interests, stock or other securities, rights under any of the Organizational Documents of a Company, agreements related to any Pledged Securities, licenses, distribution and other agreements, computer software (whether “off-the-shelf”, licensed from any third party or developed by any Debtor), computer software development rights, leases, franchises, customer lists, quality control procedures, grants and rights, goodwill, trademarks, service marks, trade styles, trade names, patents, patent applications, copyrights, and income tax refunds;
- (iii) All accounts, together with all instruments, all documents of title representing any of the foregoing, all rights in any merchandising, goods, motor vehicles and trucks which any of the same may represent, and all right, title, security and guaranties with respect to each account, including any right of stoppage in transit;
- (iv) All documents, letter-of-credit rights, instruments and chattel paper;
- (v) All commercial tort claims;
- (vi) All deposit accounts and all cash (whether or not deposited in such deposit accounts);
- (vii) All investment property;
- (viii) All supporting obligations; and
- (ix) All files, records, books of account, business papers, and computer programs; and
- (x) the products and proceeds of all of the foregoing Collateral set forth in clauses (i)-(ix) above.

Without limiting the generality of the foregoing, the “Collateral” shall include all investment property and general intangibles respecting ownership and/or other equity interests in each Subsidiary of a Company acquired or formed after the date hereof, including, without limitation, the shares of capital stock and the other equity interests of such after acquired/formed Subsidiary (as the same may be modified from time to time pursuant to the terms hereof), and, in each case, all certificates representing such shares and/or equity interests and, in each

case, all rights, options, warrants, stock, other securities and/or equity interests that may hereafter be received, receivable or distributed in respect of, or exchanged for, any of the foregoing and all rights arising under or in connection with any Pledged Securities, including, but not limited to, all dividends, interest and cash.

Notwithstanding the foregoing, nothing herein shall be deemed to constitute an assignment of any asset which, in the event of an assignment, becomes void by operation of applicable law or the assignment of which is otherwise prohibited by applicable law (in each case to the extent that such applicable law is not overridden by Sections 9.406, 9.407 and/or 9.408 of the UCC or other similar applicable law); provided, however, that to the extent permitted by applicable law, this Agreement shall create a valid security interest in such asset and, to the extent permitted by applicable law, this Agreement shall create a valid security interest in the proceeds of such asset.

Notwithstanding anything to the contrary herein, equipment shall not be included in the definition of “Collateral” nor shall any equipment of the Debtors be pledged to secure the Obligations, regardless of whether such equipment is the product of or is purchased with the proceeds of “Collateral”.

b) “Necessary Endorsement” means undated stock powers endorsed in blank or other proper instruments of assignment duly executed and such other instruments or documents as the Secured Parties may reasonably request.

c) “Obligations” means all of the liabilities and obligations (primary, secondary, direct, contingent, sole, joint or several) due or to become due, or that are now or may be hereafter contracted or acquired, or owing to, of any Debtor to the Secured Parties, under this Agreement, the Note and any other instruments, agreements or other documents executed and/or delivered in connection herewith or therewith, in each case, whether now or hereafter existing, voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from any of the Secured Parties as a preference, fraudulent transfer or otherwise as such obligations may be amended, supplemented, converted, extended or modified from time to time. Without limiting the generality of the foregoing, the term “Obligations” shall include, without limitation: (i) principal of, and interest on the Note and the loans extended pursuant thereto; (ii) any and all other fees, indemnities, costs, obligations and liabilities of the Debtors from time to time under or in connection with this Agreement, the Note and any other instruments, agreements or other documents executed and/or delivered in connection herewith or therewith; and (iii) all amounts (including but not limited to post-petition interest) in respect of the foregoing that would be payable but for the fact that the obligations to pay such amounts are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving any Debtor.

d) “Organizational Documents” means with respect to any Debtor, the documents by which such Debtor was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Debtor (such as bylaws, a partnership agreement or an operating, limited liability or members agreement).

e) “Pledged Interests” shall have the meaning ascribed to such term in Section 4(j).

f) “Pledged Securities” shall have the meaning ascribed to such term in Section 4(i).

g) “UCC” means the Uniform Commercial Code as adopted in the State of Texas and or any other applicable law of any state or states which has jurisdiction with respect to all, or any portion of, the Collateral or this Agreement, from time to time. It is the intent of the parties that defined terms in the UCC should be construed in their broadest sense so that the term “Collateral” will be construed in its broadest sense. Accordingly, if there are, from time to time, changes to defined terms in the UCC that broaden the definitions, they are incorporated herein and if existing definitions in the UCC are broader than the amended definitions, the existing ones shall be controlling.

2. **Grant of Security Interest in Collateral.** As an inducement for the Secured Parties to finance the debt obligation as evidenced by the Note and to secure the complete and timely payment, performance and discharge in full, as the case may be, of all of the Obligations, each Debtor hereby unconditionally and irrevocably pledges, grants and hypothecates to the Secured Parties a security interest in and to, a lien upon and a right of set-off against all of their respective right, title and interest of whatsoever kind and nature in and to, the Collateral (a “Security Interest” and, collectively, the “Security Interests”).

3. **Delivery of Certain Collateral.** Each Debtor shall deliver or cause to be delivered to the Secured Parties (a) any and all certificates and other instruments representing or evidencing the Pledged Securities (if applicable), and (b) any and all certificates and other instruments or documents representing any of the other possessory Collateral, in each case, together with all Necessary Endorsements (if applicable).

4. **Representations, Warranties, Covenants and Agreements of the Debtors.** Except as set forth under the corresponding section of the disclosure schedules delivered to the Secured Parties concurrently herewith (the “Disclosure Schedules”), which Disclosure Schedules shall be deemed a part hereof, each Debtor represents and warrants to, and covenants and agrees with, the Secured Parties as follows:

a) Each Debtor has the requisite corporate, partnership, limited liability company or other power and authority to enter into this Agreement and otherwise to carry out its obligations hereunder. The execution, delivery and performance by each Debtor of

this Agreement and the filings contemplated therein have been duly authorized by all necessary action on the part of such Debtor and no further action is required by such Debtor. This Agreement has been duly executed by each Debtor. This Agreement constitutes the legal, valid and binding obligation of each Debtor, enforceable against each Debtor in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar laws of general application relating to or affecting the rights and remedies of creditors and by general principles of equity.

b) The Debtors have no place of business or offices where their respective books of account and records are kept (other than temporarily at the offices of its attorneys or accountants) or places where Collateral is stored or located, except as set forth on Schedule A attached hereto. Except as specifically set forth on Schedule A, each Debtor is the record owner of the real property where such Collateral is located, and there exist no mortgages or other liens on any such real property except for Permitted Liens. Except as disclosed on Schedule A, none of such Collateral is in the possession of any consignee, bailee, warehouseman, agent or processor.

c) Except for Permitted Liens and except as set forth on Schedule B attached hereto, the Debtors are the sole owners of the Collateral, free and clear of any liens, security interests, encumbrances, rights or claims, and are fully authorized to grant the Security Interests. Except as set forth on Schedule C attached hereto, there is not on file in any governmental or regulatory authority, agency or recording office an effective financing statement, security agreement, license or transfer or any notice of any of the foregoing (other than those that will be filed in favor of the Secured Parties pursuant to this Agreement) covering or affecting any of the Collateral, other than as filed in connection with Permitted Liens.

d) No written claim has been received that any Collateral or any Debtor's use of any Collateral violates the rights of any third party. There has been no adverse decision to any Debtor's claim of ownership rights in or exclusive rights to use the Collateral in any jurisdiction or to any Debtor's right to keep and maintain such Collateral in full force and effect, and there is no proceeding involving said rights pending or, to the best knowledge of any Debtor, threatened before any court, judicial body, administrative or regulatory agency, arbitrator or other governmental authority.

e) Each Debtor shall at all times maintain its books of account and records relating to the Collateral at its principal place of business and its Collateral at the locations set forth on Schedule A attached hereto and may not relocate such books of account and records or tangible Collateral unless it delivers to the Secured Parties prompt notice of any such relocation (which must be within the United States).

f) This Agreement creates in favor of the Secured Parties a valid security interest in the Collateral securing the payment and performance of the Obligations. Upon making the filings described in the immediately following paragraph, all security interests created hereunder in any Collateral which may be perfected by filing Uniform

Commercial Code financing statements shall have been duly perfected. Except for the filing of the Uniform Commercial Code financing statements referred to in the immediately following paragraph, no action is necessary to create, perfect or protect the security interests created hereunder. Without limiting the generality of the foregoing, except for the filing of said financing statements, no consent of any third parties and no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for (i) the execution, delivery and performance of this Agreement, (ii) the creation or perfection of the Security Interests created hereunder in the Collateral or (iii) the enforcement of the rights of the Secured Parties hereunder.

g) Each Debtor hereby authorizes the Secured Parties to file one or more financing statements under the UCC, with respect to the Security Interests, with the proper filing and recording agencies in any jurisdiction deemed proper by it.

h) The execution, delivery and performance of this Agreement by the Debtors does not (i) violate any of the provisions of any Organizational Documents of any Debtor or any judgment, decree, order or award of any court, governmental body or arbitrator or any applicable law, rule or regulation applicable to any Debtor or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any material agreement, credit facility, material debt or other material instrument (evidencing any Debtor's debt or otherwise) to which any Debtor is a party or by which any property or asset of any Debtor is bound or affected, including the Chapter 11 Plan. If any, all required consents (including, without limitation, from stockholders or creditors of any Debtor) necessary for any Debtor to enter into and perform its obligations hereunder have been obtained.

i) Each Debtor acknowledges that it does not own any capital stock or other equity interests in any Subsidiary, but acknowledges and agrees that any capital stock or equity interest in a Subsidiary acquired or formed after the date hereof shall be Collateral subject to this Agreement ("Pledged Securities").

j) The ownership and other equity interests in partnerships and limited liability companies (if any) included in the Collateral (the "Pledged Interests") by their express terms do not provide that they are securities governed by Chapter 8 of the UCC and are not held in a securities account or by any financial intermediary.

k) Except for Permitted Liens and the liens set forth in Schedule B, each Debtor shall at all times maintain the liens and Security Interests provided for hereunder as valid and perfected first priority liens and security interests in the Collateral in favor of the Secured Parties until this Agreement and the Security Interest hereunder shall be terminated pursuant to Section 14 hereof. At the request of the Secured Parties, each Debtor will sign and deliver to the Secured Parties at any time or from time to time one or

more financing statements pursuant to the UCC in form reasonably satisfactory to the Secured Parties.

l) No Debtor will transfer, pledge, hypothecate, encumber, license, sell or otherwise dispose of any of the Collateral (except for non-exclusive licenses granted by a Debtor in its ordinary course of business and sales of inventory by a Debtor in its ordinary course of business) outside the ordinary course of business without the prior written consent of the Secured Parties, which consent shall not be unreasonably withheld or denied.

m) Each Debtor shall keep and preserve its inventory and other tangible Collateral in good condition, repair and order and shall not operate or locate any such Collateral (or cause to be operated or located) in any area excluded from insurance coverage.

n) Each Debtor shall maintain with financially sound and reputable insurers, insurance with respect to the Collateral, including Collateral hereafter acquired, against loss or damage of the kinds and in the amounts customarily insured against by entities of established reputation having similar properties similarly situated and in such amounts as are customarily carried under similar circumstances by other such entities and otherwise as is prudent for entities engaged in similar businesses but in any event sufficient to cover the full replacement cost thereof. Each Debtor shall cause each insurance policy issued in connection herewith to provide, and the insurer issuing such policy to certify to the Secured Parties, that (a) the Secured Parties will be named as lender loss payee and additional insured under each such insurance policy; (b) if such insurance be proposed to be cancelled or materially changed for any reason whatsoever, such insurer will promptly notify the Secured Parties and such cancellation or change shall not be effective as to the Secured Parties for at least thirty (30) days after receipt by the Secured Parties of such notice, unless the effect of such change is to extend or increase coverage under the policy; and (c) the Secured Parties will have the right (but no obligation) at their election to remedy any default in the payment of premiums within thirty (30) days of notice from the insurer of such default. If no Event of Default (as defined in the Note) exists, loss payments in each instance will be applied by the applicable Debtor to the repair and/or replacement of property with respect to which the loss was incurred to the extent reasonably feasible, and any loss payments or the balance thereof remaining, to the extent not so applied, shall be payable to the applicable Debtor to the extent the same is reinvested in the Debtor's business or operations; provided, however, that payments received by any Debtor which are not applied to the repair and/or replacement of property with respect to which the loss was incurred or otherwise reinvested in the Debtor's business or operations, shall be held in trust for the Secured Parties and immediately paid over to the Secured Parties. Copies of such policies or the related certificates, in each case, naming the Secured Parties as lender loss payee and additional insured shall be delivered to the Secured Parties at least annually and at the time any new policy of insurance is issued.

o) Each affected Debtor shall, within ten (10) days of obtaining knowledge thereof, advise the Secured Parties promptly, in sufficient detail, of any material adverse



change in such Debtor's Collateral, and of the occurrence of any event which would have a material adverse effect on the value of such Collateral or on the Secured Parties' security interest therein.

p) Upon the occurrence and during the continuation of an Event of Default, each Debtor shall permit the Secured Parties and their representatives and agents to inspect the Collateral during normal business hours and upon reasonable prior notice, and to make copies of records pertaining to the Collateral as may be reasonably requested by the Secured Parties from time to time.

q) Upon the occurrence and during the continuation of an Event of Default, each affected Debtor shall take all steps reasonably necessary to diligently pursue and seek to preserve, enforce and collect any rights, claims, causes of action and accounts receivable in respect of such Debtor's Collateral.

r) Each Debtor shall promptly notify the Secured Parties in sufficient detail upon becoming aware of any attachment, garnishment, execution or other legal process levied against any Collateral and of any other information received by such Debtor that may materially affect the value of the Collateral, the Security Interest or the rights and remedies of the Secured Parties hereunder.

s) All information heretofore, herein or hereafter supplied to the Secured Parties by or on behalf of any Debtor with respect to the Collateral is accurate and complete in all material respects as of the date furnished.

t) The Debtors shall at all times preserve and keep in full force and effect their respective valid existence and good standing and any rights and franchises material to its business.

u) No Debtor will change its name, type of organization, jurisdiction of organization, organizational identification number (if it has one), legal or corporate structure, or identity, or add any new fictitious name or relocate its chief executive office to a new location unless it notifies the Secured Parties of such change in writing, not more than ninety (90) days following any such change.

v) Each Debtor that is a Company was organized and remains organized solely under the laws of the State of Texas, and Schedule D attached hereto sets forth each Debtor's organizational identification number or, if any Debtor does not have one, states that one does not exist.

w) (i) The actual name of each Debtor is the name set forth in Schedule D attached hereto; (ii) no Debtor has any trade names except as set forth on Schedule E attached hereto; (iii) no Debtor has used any name other than that stated in the preamble hereto or as set forth on Schedule E for the preceding five years; and (iv) no entity has merged into any Debtor or been acquired by any Debtor within the past five years except as set forth on Schedule E.

x) No Debtor will permit any tangible chattel paper constituting Collateral to be delivered to the any person other than the Secured Parties, nor will any Debtor cause any such tangible chattel paper to contain a legend noting that it is subject to any security other than the interest created by this Agreement. To the extent that any Collateral consists of electronic chattel paper, no Debtor will permit the underlying chattel paper to be “marked” within the meaning of Section 9.105 of the UCC (or successor section thereto) other than with respect to the security interest created by this Agreement.

y) In the event that, upon the occurrence and continuation of an Event of Default, there is any investment property or deposit account included as Collateral that can be perfected by “control” through an account control agreement, the applicable Debtor shall cause such an account control agreement, in form and substance in each case satisfactory to the Secured Parties, to be entered into and delivered to the Secured Parties.

z) To the extent that any Collateral is in the possession of any third party, the applicable Debtor shall notify such third party of the Secured Parties’ security interest in such Collateral and shall use its best efforts to obtain an acknowledgement and agreement from such third party with respect to the Collateral, in form and substance reasonably satisfactory to the Secured Parties.

aa) If any Debtor shall at any time hold or acquire a commercial tort claim, such Debtor shall promptly notify the Secured Parties in a writing signed by such Debtor of the particulars thereof and grant to the Secured Parties in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement.

bb) Each Debtor shall vote any Pledged Securities to comply with the covenants and agreements set forth herein and in the Note.

cc) Each Debtor will from time to time, at the joint and several expense of the Debtors, promptly execute and deliver all such further instruments and documents, and take all such further action as may be necessary or desirable, or as the Secured Parties may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable the Secured Parties to exercise and enforce their rights and remedies hereunder and with respect to any Collateral or to otherwise carry out the purposes of this Agreement.

**5. Effect of Pledge on Certain Rights.** If any of the Collateral subject to this Agreement consists of nonvoting equity or ownership interests (regardless of class, designation, preference or rights) that may be converted into voting equity or ownership interests upon the occurrence of certain events (including, without limitation, upon the transfer of all or any of the other stock or assets of the issuer), it is agreed that the pledge of such equity or ownership interests pursuant to this Agreement or the enforcement of any of Secured Parties’ rights hereunder shall not be deemed to be the type of event which would trigger such conversion rights



notwithstanding any provisions in the Organizational Documents or agreements to which any Debtor is subject or to which any Debtor is party.

6. **Defaults.** The following events shall be “Events of Default”:

a) The occurrence of an Event of Default (as defined in the Note) under the Note;

b) Any representation or warranty of any Debtor in this Agreement shall prove to have been incorrect in any material respect when made;

c) The failure by any Debtor to observe or perform any of its obligations hereunder for ten (10) days after delivery to such Debtor of notice of such failure by or on behalf of a Secured Party unless such default is capable of cure but cannot be cured within such time frame and such Debtor is using best efforts to cure same in a timely fashion; or

d) If any provision of this Agreement shall at any time for any reason be declared to be null and void, or the validity or enforceability thereof shall be contested by any Debtor, or a proceeding shall be commenced by any Debtor, or by any governmental authority having jurisdiction over any Debtor, seeking to establish the invalidity or unenforceability thereof, or any Debtor shall deny that any Debtor has any liability or obligation purported to be created under this Agreement.

7. **Duty To Hold In Trust.**

a) Upon the occurrence and during the continuation of any Event of Default, each Debtor shall, upon receipt of any revenue, income, dividend, interest or other sums subject to the Security Interests, whether payable pursuant to the Note or otherwise, or of any check, draft, note, trade acceptance or other instrument evidencing an obligation to pay any such sum, hold the same in trust for the Secured Parties and shall forthwith endorse and transfer any such sums or instruments, or both, to the Secured Parties for application to the satisfaction of the Obligations.

b) Upon the occurrence and during the continuation of any Event of Default, if any Debtor shall become entitled to receive or shall receive any securities or other property (including, without limitation, any shares of Pledged Securities or instruments representing Pledged Securities acquired after the date hereof, or any options, warrants, rights or other similar property or certificates representing a dividend, or any distribution in connection with any recapitalization, reclassification or increase or reduction of capital, or issued in connection with any reorganization of such Debtor or any of its direct or indirect subsidiaries) in respect of the Pledged Securities (whether as an addition to, in substitution of, or in exchange for, such Pledged Securities or otherwise), such Debtor agrees to (i) accept the same as the agent of the Secured Parties; (ii) hold the same in trust on behalf of and for the benefit of the Secured Parties; and (iii) to deliver any and all certificates or instruments evidencing the same to Secured Parties on or before the close

of business on the fifth business day following the receipt thereof by such Debtor, in the exact form received together with the Necessary Endorsements, to be held by Secured Parties subject to the terms of this Agreement as Collateral.

**8. Rights and Remedies Upon Default.**

a) Upon the occurrence and continuation of any Event of Default the Secured Parties shall have the right to exercise all of the remedies conferred hereunder and under the Note, and the Secured Parties shall have all the rights and remedies of a secured party under the UCC. Without limitation, the Secured Parties shall have the following rights and powers:

(i) The Secured Parties shall have the right to take possession of the Collateral and, for that purpose, enter, with the aid and assistance of any person, any premises where the Collateral, or any part thereof, is or may be placed and remove the same, and each Debtor shall assemble the Collateral and make it available to the Secured Parties at places which the Secured Parties shall reasonably select, whether at such Debtor's premises or elsewhere, and make available to the Secured Parties, without rent, all of such Debtor's respective premises and facilities for the purpose of the Secured Parties taking possession of, removing or putting the Collateral in saleable or disposable form.

(ii) Upon notice to the Debtors by Secured Parties, all rights of each Debtor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise and all rights of each Debtor to receive the dividends and interest which it would otherwise be authorized to receive and retain, shall cease. Upon such notice, Secured Parties shall have the right to receive any interest, cash dividends or other payments on the Collateral and, at the option of Secured Parties, to exercise in such Secured Parties' discretion all voting rights pertaining thereto. Without limiting the generality of the foregoing, Secured Parties shall have the right (but not the obligation) to exercise all rights with respect to the Collateral as it were the sole and absolute owner thereof, including, without limitation, to vote and/or to exchange, at its sole discretion, any or all of the Collateral in connection with a merger, reorganization, consolidation, recapitalization or other readjustment concerning or involving the Collateral or any Debtor or any of its direct or indirect subsidiaries.

(iii) The Secured Parties shall have the right (but not the obligation) to notify any account debtors and any obligors under instruments or accounts to make payments directly to the Secured Parties, and to enforce the Debtors' rights against such account debtors and obligors.

(iv) The Secured Parties may (but are not obligated to) direct any financial intermediary or any other person or entity holding any investment property to transfer the same to the Secured Parties or designee.

b) The Secured Parties shall comply with any applicable law in connection with a disposition of Collateral and such compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. The Secured Parties may sell the Collateral without giving any warranties and may specifically disclaim such warranties. If the Secured Parties sell any of the Collateral on credit, the Debtors will only be credited with payments actually made by the purchaser. In addition, each Debtor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Secured Parties' rights and remedies hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights and remedies with respect thereto.

9. **Applications of Proceeds.** The proceeds of any such sale, lease or other disposition of the Collateral hereunder or from payments made on account of any insurance policy insuring any portion of the Collateral shall be applied first, to the expenses of retaking, holding, storing, processing and preparing for sale, selling, and the like (including, without limitation, any taxes, fees and other costs incurred in connection therewith) of the Collateral, to the reasonable attorneys' fees and expenses incurred by the Secured Parties in enforcing their rights hereunder and in connection with collecting, storing and disposing of the Collateral, and then to satisfaction of the Obligations owed to the Secured Parties, and to the payment of any other amounts required by applicable law, after which the Secured Parties shall pay to the applicable Debtor any surplus proceeds. If, upon the sale, license or other disposition of the Collateral, the proceeds thereof are insufficient to pay all amounts to which the Secured Parties are legally entitled, the Debtors will be liable for the deficiency, the reasonable fees of any attorneys employed by the Secured Parties to collect such deficiency and Default Interest (as defined in the Note).<sup>1</sup> To the extent permitted by applicable law, each Debtor waives all claims, damages and demands against the Secured Parties arising out of the repossession, removal, retention or sale of the Collateral, unless due solely to the gross negligence or willful misconduct of the Secured Parties as determined by a final judgment (not subject to further appeal) of a court of competent jurisdiction.

10. **Securities Law Provision.** Each Debtor recognizes that Secured Parties may be limited in their ability to effect a sale to the public of all or part of any Pledged Securities by reason of certain prohibitions in the Securities Act of 1933, as amended, or other federal or state securities laws (collectively, the "Securities Laws"), and may be compelled to resort to one or more sales to a restricted group of purchasers who may be required to agree to acquire the Pledged Securities for their own account, for investment and not with a view to the distribution or resale thereof. Each Debtor agrees that sales so made may be at prices and on terms less favorable than if the Pledged Securities were sold to the public, and that Secured Parties have no obligation to delay the sale of any Pledged Securities for the period of time necessary to register the Pledged Securities for sale to the public under the Securities Laws. Each Debtor shall cooperate with Secured Parties in their attempt to satisfy any requirements under the Securities Laws (including, without limitation, registration thereunder if requested) applicable to the sale of the Pledged Securities by Secured Parties.

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<sup>1</sup> The Default Interest rate is the subject of continuing discussion between the parties.

11. **[Costs and Expenses.** The Debtors will also, upon demand, pay to the Secured Parties the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, which the Secured Parties may incur in connection with (i) the enforcement of this Agreement in the event of an occurrence and continuation of an Event of Default, (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Collateral in the event of an occurrence and continuation of an Event of Default, or (iii) the exercise or enforcement of any of the rights of the Secured Parties under the Note in the event of an occurrence and continuation of an Event of Default. Until so paid, any fees payable hereunder shall be added to the principal amount of the Note and shall bear interest at the Default Interest rate.]<sup>2</sup>

12. **Responsibility for Collateral.** The Debtors assume all liabilities and responsibility in connection with all Collateral, and the Obligations shall in no way be affected or diminished by reason of the loss, destruction, damage or theft of any of the Collateral or its unavailability for any reason. Without limiting the generality of the foregoing, (a) no Secured Party (i) has any duty (either before or after an Event of Default) to collect any amounts in respect of the Collateral or to preserve any rights relating to the Collateral, or (ii) has any obligation to clean-up or otherwise prepare the Collateral for sale, and (b) each Debtor shall remain obligated and liable under each contract or agreement included in the Collateral to be observed or performed by such Debtor thereunder. No Secured Party shall have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by any Secured Party of any payment relating to any of the Collateral, nor shall any Secured Party be obligated in any manner to perform any of the obligations of any Debtor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by any Secured Party in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Secured Parties or to which any Secured Party may be entitled at any time or times.

13. **Security Interests Absolute.** All rights of the Secured Parties and all obligations of the Debtors hereunder, shall be absolute and unconditional, irrespective of: (a) any lack of validity or enforceability of this Agreement, the Note or any agreement entered into in connection with the foregoing, or any portion hereof or thereof; (b) any change in the time, manner or place of payment or performance of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Note or any other agreement entered into in connection with the foregoing; (c) any exchange, release or nonperfection of any of the Collateral, or any release or amendment or waiver of or consent to departure from any other collateral for, or any guarantee, or any other security, for all or any of the Obligations; (d) any action by the Secured Parties to obtain, adjust, settle and cancel in its sole discretion any insurance claims or matters made or arising in connection with the Collateral; or (e) any other circumstance which might otherwise constitute any legal or equitable defense available to a Debtor, or a discharge of all or any part of the Security Interests granted hereby. Until the Obligations shall have been paid and performed in full, the rights of the Secured Parties

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<sup>2</sup> This Paragraph 11 is the subject of continuing discussion between the parties, as is the Default Interest rate.

shall continue even if the Obligations are barred for any reason, including, without limitation, the running of the statute of limitations or bankruptcy. Each Debtor expressly waives presentment, protest, notice of protest, demand, notice of nonpayment and demand for performance. In the event that at any time any transfer of any Collateral or any payment received by the Secured Parties hereunder shall be deemed by final order of a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under the bankruptcy or insolvency laws of the United States, or shall be deemed to be otherwise due to any party other than the Secured Parties, then, in any such event, each Debtor's obligations hereunder shall survive cancellation of this Agreement, and shall not be discharged or satisfied by any prior payment thereof and/or cancellation of this Agreement, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof. Each Debtor waives all right to require the Secured Parties to proceed against any other person or entity or to apply any Collateral which the Secured Parties may hold at any time, or to marshal assets, or to pursue any other remedy. Each Debtor waives any defense arising by reason of the application of the statute of limitations to any obligation secured hereby.

**14. Term of Agreement.**

a) This Agreement and the Security Interests shall terminate on the date on which all payments under the Note have been paid in full and all other Obligations have been paid or discharged; provided, however, that all indemnities of the Debtors contained in this Agreement shall survive and remain operative and in full force and effect regardless of the termination of this Agreement.

b) In connection with any termination or release pursuant to clause (a), of this Section 13, the Secured Parties shall promptly execute and deliver to the applicable Debtor, any and all documents that such Debtor shall reasonably request to effect of record or otherwise evidence such termination or release.

**15. Power of Attorney; Further Assurances.**

a) Each Debtor authorizes the Secured Parties, and does hereby make, constitute and appoint the Secured Parties and their officers, agents, successors or assigns with full power of substitution, as such Debtor's true and lawful attorney-in-fact, with power, in the name of such Debtor, to, after the occurrence and during the continuance of an Event of Default, (i) endorse any note, checks, drafts, money orders or other instruments of payment (including payments payable under or in respect of any policy of insurance) in respect of the Collateral that may come into possession of the Secured Parties; (ii) to sign and endorse any financing statement pursuant to the UCC or any invoice, freight or express bill, bill of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts, and other documents relating to the Collateral; (iii) to pay or discharge taxes, liens, security interests or other encumbrances at any time levied or placed on or threatened against the Collateral; (iv) to demand, collect, receipt for, compromise, settle and sue for monies due in respect of the Collateral; and (v) to execute and deliver any and all documents and

instruments and to do all acts and things which the Secured Parties deem necessary to protect, preserve and realize upon the Collateral and the Security Interests granted therein in order to effect the intent of this Agreement and the Note all as fully and effectually as the Debtors might or could do; and each Debtor hereby ratifies all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable for the term of this Agreement and thereafter as long as any of the Obligations shall be outstanding. The designation set forth herein shall be deemed to amend and supersede any inconsistent provision in the Organizational Documents or other documents or agreements to which any Debtor is subject or to which any Debtor is a party.

b) Each Debtor hereby irrevocably appoints the Secured Parties as such Debtor's attorney-in-fact, with full authority in the place and instead of such Debtor and in the name of such Debtor, from time to time in the Secured Parties' discretion, to take any action and to execute any instrument which the Secured Parties may deem necessary or advisable to accomplish the purposes of this Agreement, including the filing of one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of such Debtor where permitted by law. This power of attorney is coupled with an interest and shall be irrevocable for the term of this Agreement and thereafter as long as any of the Obligations shall be outstanding.

16. **Notices.** Any and all notices or other communications or deliveries to be provided by the Secured Parties hereunder shall be in writing and delivered personally, by email, sent by a nationally recognized overnight courier service, addressed to the Debtors, at the address, or email set forth below, or such other address, or email address as a Debtor may specify for such purposes by notice to the Secured Parties delivered in accordance with this Section. Any and all notices or other communications or deliveries to be provided by a Debtor hereunder shall be in writing and delivered personally, by email or sent by a nationally recognized overnight courier service addressed to Secured Parties at the address set forth below. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section prior to 5:30 p.m. (Houston time), (ii) the date after the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section later than 5:30 p.m. (Houston time) on any date and earlier than 11:59 p.m. (Houston time) on such date, (iii) the second Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

#### DEBTOR OR DEBTORS

ABC Dentistry Hillcroft, P.L.L.C.

6704 Hillcroft St.

Houston, TX 77081

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_



ABC Dentistry Old Spanish Trail, P.L.L.C.  
5751 Blythewood, Suite 100  
Houston, TX 77021  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

ABC Dentistry Pasadena, P.A.  
1313 Strawberry Rd.  
Pasadena, TX 77502  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

ABC Dentistry West Orem, P.L.L.C.  
5505 W. Orem Dr., Suite 200  
Houston, TX 77085  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

Omar J. Alaniz  
Baker Botts L.L.P  
2001 Ross Avenue  
Dallas, Texas 75201  
Telephone: 214-953-6593  
Email: omar.alaniz@bakerbotts.com

**IF TO SECURED PARTIES:**

Dr. Saeed Rohi  
1402 28<sup>th</sup> Ave. N.  
Texas City, TX 77590  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Brewer & Pritchard, P.C.  
800 Bering Dr., Suite 201  
Houston, TX 77057  
Telephone: (713) 209-2910  
Facsimile: 832-538-1265  
Email: brewer@bplaw.com

**17. Miscellaneous.**

a) No course of dealing between the Debtors and the Secured Parties, nor any failure to exercise, nor any delay in exercising, on the part of the Secured Parties or the Debtors, any right, power or privilege hereunder or under the Note shall operate as a

waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

b) All of the rights and remedies of the Secured Parties with respect to the Collateral, whether established hereby or by the Note or by any other agreements, instruments or documents or by law shall be cumulative and may be exercised singly or concurrently.

c) This Agreement, together with the exhibits and schedules hereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into this Agreement and the exhibits and schedules hereto. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Debtors and the Secured Parties or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought.

d) If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void, unenforceable or in contravention of the Chapter 11 Plan, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction and, if applicable, the terms are in contravention of the Chapter 11 Plan, such terms shall be modified to be consistent with the terms set forth in the Chapter 11 Plan. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

e) No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

f) This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Neither the Debtors nor the Secured Party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the non-assigning parties.

g) Each party shall take such further action and execute and deliver such further documents as may be necessary or appropriate in order to carry out the provisions and purposes of this Agreement.



h) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Texas, without regard to the principles of conflicts of law thereof. Each Debtor agrees that all proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and the Note (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of Houston. Each Debtor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of Houston for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such proceeding is improper. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Notwithstanding anything to the contrary herein, upon an occurrence of an Event of Default within the period expiring December 31, 2022, the Secured Parties shall have the right to seek to reopen the Chapter 11 cases, In Re: ABC Dentistry, P.A., et al., Jointly Administered Under Case No. 16-34221, in the United States Bankruptcy Court for the Southern District of Texas, to enforce any provision of the Note and/or this Security Agreement or to obtain such other relief available to the Secured Parties. The Debtors warrant and covenant to the Secured Parties that none of them will oppose the reopening of the Chapter 11 cases.

i) This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement. In the event that any signature is delivered by electronic transmission, such signature shall create a valid binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such electronic signature were the original thereof.

j) All Debtors shall jointly and severally be liable for the obligations of each Debtor to the Secured Parties hereunder.

k) Nothing in this Agreement shall be construed to subject any Secured Party to liability as a partner in any Debtor or any if its direct or indirect subsidiaries that is a partnership or as a member in any Debtor or any of its direct or indirect subsidiaries that is a limited liability company, nor shall any Secured Party be deemed to have assumed any obligations under any partnership agreement or limited liability company agreement, as applicable, of any such Debtor or any if its direct or indirect subsidiaries or otherwise,

unless and until any such Secured Party exercises its right to be substituted for such Debtor as a partner or member, as applicable, pursuant hereto.

l) To the extent that the grant of the security interest in the Collateral and the enforcement of the terms hereof require the consent, approval or action of any partner or member, as applicable, of any Debtor or any direct or indirect subsidiary of any Debtor or compliance with any provisions of any of the Organizational Documents, the Debtors hereby grant such consent and approval and waive any such noncompliance with the terms of said documents.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be duly executed on the day and year first above written.

**DEBTORS:**

ABC Dentistry Hillcroft, P.L.L.C.

ABC Dentistry Pasadena, P.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ABC Dentistry Old Spanish Trail, P.L.L.C.

ABC Dentistry West Orem, P.L.L.C.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SECURED PARTIES:**

Brewer & Pritchard, P.C.

\_\_\_\_\_  
Dr. Saeed Rohi

By: \_\_\_\_\_  
Name: J. Mark Brewer  
Title: President

**Schedule A**

**PRINCIPAL PLACE OF BUSINESS OF EACH DEBTOR;  
RECORD OWNER OF REAL PROPERTY OF DEBTORS**

ABC Dentistry Hillcroft, P.L.L.C.  
6704 Hillcroft St.  
Houston, TX 77081

ABC Dentistry Old Spanish Trail, P.L.L.C.  
5751 Blythewood, Suite 100  
Houston, TX 77021

ABC Dentistry Pasadena, P.A.  
1313 Strawberry Rd.  
Pasadena, TX 77502

ABC Dentistry West Orem, P.L.L.C.  
5505 W. Orem Dr., Suite 200  
Houston, TX 77085

**Schedule B**

**EXISTING LIENS**

**Schedule C**

**EXISTING FINANCING STATEMENTS AND  
OTHER EXISTING SECURITY INTERESTS**

**Schedule D**

**NAMES OF DEBTORS**

ABC Dentistry Hillcroft, P.L.L.C. (Corporate Organizational Identification No. \_\_\_\_\_)  
6704 Hillcroft St.  
Houston, TX 77081

ABC Dentistry Old Spanish Trail, P.L.L.C. (Corporate Organizational Identification No. \_\_\_\_\_)  
5751 Blythewood, Suite 100  
Houston, TX 77021

ABC Dentistry Pasadena, P.A. (Corporate Organizational Identification No. \_\_\_\_\_)  
1313 Strawberry Rd.  
Pasadena, TX 77502

ABC Dentistry West Orem, P.L.L.C. (Corporate Organizational Identification No. \_\_\_\_\_)  
5505 W. Orem Dr., Suite 200  
Houston, TX 77085

**Schedule E**

**TRADE NAMES OF DEBTORS**

Name of Debtor	Trade Name/Assumed Name
ABC Dentistry Hillcroft, P.L.L.C.	ABC Dental
ABC Dentistry Old Spanish Trail, P.L.L.C.	ABC Dental
ABC Dentistry Pasadena, P.A.	ABC Dental
ABC Dentistry West Orem, P.L.L.C.	ABC Dental



**Exhibit 4**

**Schedule of Rejected Contracts**

1. Dentist Contract with 32 Pearls Dentistry PLLC, scheduled at Line 2.1 of ABC Dentistry Old Spanish Trail, P.L.L.C.'s Schedule G [Dkt. No. 80].

At this time, the Debtors do not anticipate rejecting any other executory contracts under the Plan.

## **Exhibit 5**

### **Schedule of Proposed Cure Amounts for Assumed Contracts**

At this time, the Debtors are not aware of any outstanding amounts owed under any contract which they intend to assume. As such, the Debtors do not propose any cure amounts at this time.

**Exhibit 6**

**Schedule of Retained Causes of Action**

The Debtors retain all Causes of Action which are not expressly released under sections 12.8 or 12.9 of the Plan.

## **Exhibit 7**

### **Schedule of Debtors' Post-Effective Date Officers and Directors**

1. ABC Dentistry Old Spanish Trail, P.L.L.C.
  - Dr. Iraj. S. Jabbary, President, Chief Executive Officer, and Sole Member
  
2. ABC Dentistry West Orem, P.L.L.C.
  - Dr. Iraj S. Jabbary, President, Chief Executive Officer, and Sole Member

For information regarding Dr. Jabbary's compensation, please see Article VII.V of the Disclosure Statement.