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Attorneys for Defendant InterDent Service Corporation

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

POCATELLO DENTAL GROUP, P.C., an Idaho professional corporation

Plaintiff,

v.

INTERDENT SERVICE CORPORATION, a Washington corporation

Defendant.

INTERDENT SERVICE CORPORATION, a Washington corporation,

Case No.: CV-03-450-E-LMB

AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT ISC'S OPPOSITION TO THIRD-PARTY DEFENDANT ERNEST SUTTON'S RULE 12(B)(6) MOTION TO DISMISS COUNTERCLAIM

AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT ISC'S OPPOSITION TO THIRD-PARTY DEFENDANT ERNEST SUTTON'S RULE 12(B)(6) MOTION TO DISMISS COUNTERCLAIM - Page 1

84

Counterclaimant,

v.

POCATELLO DENTAL Group, P.C., an Idaho professional corporation; DWIGHT G. ROMRIELL, individually; LARRY MISNER, JR., individually; PORTER SUTTON, individually; ERNEST SUTTON, individually; GREGORY ROMRIELL, individually; ERROL ORMOND, individually; and ARNOLD GOODLIFFE, individually,

Counterdefendants.

LARRY R. MISNER, JR., individually,

Counterclaimant,

v.

INTERDENT SERVICE CORPORATION, a Washington corporation,

Counterdefendant.

LARRY R. MISNER, JR., individually,

Crossclaimant,

v.

POCATELLO DENTAL GROUP, P.C., an Idaho professional corporation,

Crossdefendant.

STATE OF OREGON)

County of Multnomah)

I, Scott J. Kaplan, hereby depose and state as follows:

AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT ISC'S OPPOSITION TO THIRD-PARTY DEFENDANT ERNEST SUTTON'S RULE 12(B)(6) MOTION TO DISMISS COUNTERCLAIM – Page 2

1. I am one of the attorneys representing and counterclaimant InterDent Service Corporation ("ISC") in this matter. I am admitted to practice in Idaho pro hac vice. The facts in this affidavit are based on my personal knowledge.

2. Attached as Exhibit 1 is a copy of selected pages and Exhibit A to the October 11, 1996 Agreement & Plan of Reorganization that appears to have been signed by third-party defendant Ernest Sutton.

3. Attached as Exhibit 2 is a copy of the October 7, 1996 Group Member Resolution that appears to have been signed by Sutton on October 8, 1996.

4. Attached as Exhibit 3 is a copy of the October 10, 1996 Assignment Agreement that appears to have been signed by Sutton.

5. Attached as Exhibit 4 is a copy of the first page and signature page of Sutton's Non-Compete Agreement with ISC's predecessor that was entered into on October 11, 1996 and that appears to have been signed by Sutton.

6. Attached as Exhibit 5 is a copy of the first page and the signature page of Sutton's October 11, 1996 Employment Agreement.

7. Attached as Exhibit 6 is a copy of the first and final pages of Sutton's Share Acquisition Agreement that was entered into on October 11, 1996 and that appears to have been signed by Sutton.

8. Attached as Exhibit 7 is a copy of the Group Members' Certificate that is dated October 11, 1996 and that appears to have been signed by Sutton.

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AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT ISC'S OPPOSITION TO THIRD-PARTY DEFENDANT ERNEST SUTTON'S RULE 12(B)(6) MOTION TO DISMISS COUNTERCLAIM - Page 3

9. Attached as Exhibit 8 is a copy of the October 11, 1996 Waiver & Termination Agreement that appears to have been signed by Sutton.

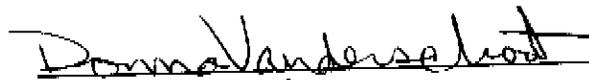
FURTHER THIS AFFIANT SAYETH NOT.

DATED this 23 day of March, 2004.

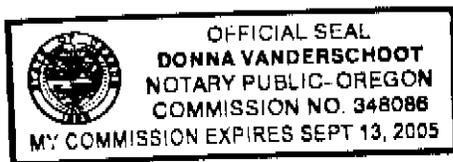


Scott J. Kaplan

SUBSCRIBED AND SWORN TO before me this 23rd day of March, 2004.



Notary Public for Oregon
My Commission Expires: _____



AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT ISC'S OPPOSITION
TO THIRD-PARTY DEFENDANT ERNEST SUTTON'S RULE 12(B)(6) MOTION TO
DISMISS COUNTERCLAIM - Page 4

AGREEMENT AND PLAN OF REORGANIZATION

by and among

GMS DENTAL GROUP, INC.,

POCATELLO DENTAL GROUP, P.L.L.C.,

THE INDIVIDUALS LISTED ON EXHIBIT A HERETO

and

IDAHO DENTAL GROUP, P.A.

October 11, 1996

AGREEMENT AND PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION (this "Agreement") is made and entered into this 11th day of October, 1996 by and among GMS DENTAL GROUP, INC., a Delaware corporation (the "Company"), POCATELLO DENTAL GROUP, P.L.L.C., an Idaho professional limited liability company ("Acquired Co"), the INDIVIDUALS LISTED ON EXHIBIT A ATTACHED HERETO, who are all of the members of and holders of all of the issued and outstanding limited liability company interests whether economic interests only or otherwise of Acquired Co (each, a "Member" and collectively, the "Members") and IDAHO DENTAL GROUP, P.A., an Idaho professional corporation ("Group").

RECITALS:

A. Subject to the terms and conditions of this Agreement, on the date provided for in Article 7 hereof (the "Closing Date"), the Company and Acquired Co shall execute an Agreement of Merger substantially in the form attached hereto as Exhibit B, which provides for the merger (the "Merger") of Acquired Co with and into the Company at the Effective Time (as defined in Section 1.1 hereof). Following the Merger and in accordance with the terms of this Agreement, all of the issued and outstanding membership interests of Acquired Co (the "Membership Interests") shall be converted into shares of Series C Preferred Stock, \$0.001 par value, of the Company ("Acquisition Preferred Stock") and the right to receive cash, in accordance with the terms of this Agreement. The rights, preferences and privileges of the Acquisition Preferred Stock are as set forth on Exhibit C attached hereto.

B. For federal income tax purposes, it is intended that the exchange of Membership Interests for shares of Acquisition Preferred Stock be part of an exchange qualifying under Section 351 of the Internal Revenue Code of 1986, as amended (the "Code").

C. As of the Closing Date, Group shall enter into a long-term dental group management agreement with the Company or with a wholly owned subsidiary of the Company ("Company Sub").

D. The parties hereto desire to enter into this Agreement for the purpose of setting forth certain representations, warranties and covenants made to each other as an inducement to the execution and delivery of this Agreement and the conditions precedent to the consummation of the Merger and the transactions related thereto.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

AGREEMENT AND PLAN OF REORGANIZATION

ARTICLE 1

THE MERGER AND RELATED TRANSACTIONS

1.1 Effective Time of the Merger. Subject to the terms and conditions of this Agreement (which shall include all exhibits and schedules attached hereto), at the Effective Time (as defined herein), the Acquired Co shall be merged with and into the Company and the separate existence of the Acquired Co shall thereupon cease. The Company shall be the surviving corporation in the Merger (sometimes referred to hereinafter as the "Surviving Corporation") and shall continue to be governed by the laws of the State of Delaware. The Merger shall become effective upon the later to occur of the filing of an executed Agreement of Merger in substantially the form attached hereto as Exhibit B (the "Agreement of Merger") with the Delaware Secretary of State, or at such time thereafter as is provided by the Agreement of Merger (the "Effective Time").

1.2 Effects of the Merger. At the Effective Time, (a) the Certificate of Incorporation of the Company in effect at the Effective Time shall be the Certificate of Incorporation of the Surviving Corporation; (b) the Bylaws of the Company in effect at the Effective Time shall be the Bylaws of the Surviving Corporation; and (c) the Merger shall, from and after the Effective Time, have all the effects provided by applicable law.

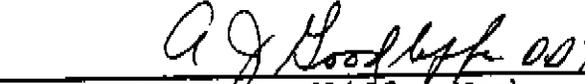
1.3 Effect of Merger on Membership Interests. As of the Effective Time, by virtue of the Merger and without any action on the part of the Company, Acquired Co or any Member, each Membership Interest shall be converted into the right to receive a combination of (a) cash in the amount set forth opposite such Member's name on Exhibit A, payable by wire transfer or cashiers' check on the Closing Date (the "Cash Consideration") and (b) that number of shares of Series C Preferred Stock of the Company ("Acquisition Preferred Stock") equal to (i) the dollar value of Acquisition Preferred Stock set forth opposite such Member's name on Exhibit A, divided by (ii) \$1,000 (the "Stock Consideration"). The Cash Consideration and the Stock Consideration collectively shall be referred to as the "Merger Consideration."

(a) Effect of Merger on Membership Interests. All Membership Interests shall no longer be outstanding and shall be canceled and retired and shall cease to exist, and each Membership Interest shall thereafter represent only the right to receive the Merger Consideration into which such Membership Interest has been converted.

(b) Adjustment of Exchange Ratio or Allocation. If, between the date of this Agreement and the Effective Time, the outstanding shares of Acquisition Preferred Stock shall have been changed into a different number of shares or a different class by reason of any


Gregory E. Romriell, Member

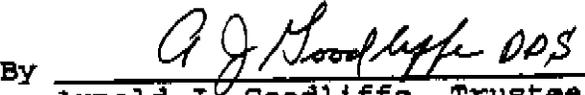

Errol K. Ormond, Member


Arnold J. Goodliffe, Member


Ernest P. Sutton, Member


L. R. Misner, Jr. Member

THE ARNOLD J. GOODLIFFE AND
BECKY B. GOODLIFFE CHARITABLE
REMAINDER UNITRUST DATED AS OF
10/5/96

By 
Arnold J. Goodliffe, Trustee

IDAHO DENTAL GROUP, P.A., AN
IDAHO PROFESSIONAL CORPORATION

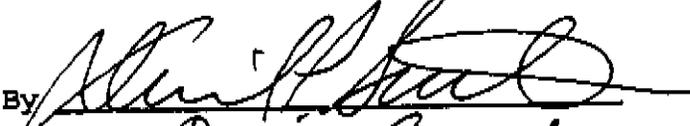
By 
title President

EXHIBIT A

Name of Member	Percentage Limited Liability Company Interest	Cash	Stock	Total
David P. Sutton	14.285	\$ 216,000	\$ 184,000	\$ 400,000
Dwight G. Romriell	14.285	400,000	0	400,000
Gregory E. Romriell	14.285	32,000	368,000	400,000
Errol K. Ormond	14.285	216,000	184,000	400,000
Arnold J. Goodliffe	14.285 (7.142 Economic Interest)	140,000	60,000	200,000
Goodliffe CRT(1)	(7.142 Economic Interest)	200,000	0	200,000
Ernest P. Sutton	14.285	216,000	184,000	400,000
L. R. Misner, Jr.	14.285	400,000	0	400,000
Total	100.000%	\$1,820,000	\$ 980,000	\$2,800,000

(1) Pursuant to Letter of Instruction from Dr. Goodliffe.

MEMBER RESOLUTION
POCATELLO DENTAL GROUP, P.L.L.C.

On October 7, 1996 at the office of Pocatello Dental Group, P.L.L.C. ("PDG") the members met pursuant to notice to discuss the proposed merger with GMS Dental Group, Inc. ("GMS") pursuant to the Agreement and Plan of Reorganization, ("POR") to be dated as of October 10, 1996 by and among GMS, PDG, Idaho Dental Group P.A. and the individuals signatory thereto. After discussing the POR, together with all of the other agreements identified in the POR, and after motion was duly made and seconded, the members unanimously adopted the following resolution:

RESOLVED: PDG shall enter into the POR and all members shall execute said document on behalf of PDG. Moreover, the undersigned, being the members and the only members of PDG, hereby authorize and delegate to David P. Sutton, (aka D. Porter Sutton), as Company Executive, all power and authority to sign on behalf of PDG any and all other documents requested by GMS to complete the merger, provided that such documents do not contain agreements or obligations by or for PDG or its members substantially inconsistent with or in addition to the POR and the obligations provided in the POR.

IN WITNESS WHEREOF, the members have executed this Resolution on the dates recited below:

10-8-96
Date


PORTER SUTTON, Member

10-8-96
Date


ERNEST SUTTON, Member

10-8-96
Date


GREGORY ROMRIELL, Member

10-7-96
Date


DWIGHT ROMRIELL, Member

10-8-96
Date


ERROL ORMOND, Member

10/8/96
Date

L.R. Misner
L.R. MISNER, Member

10-7-96
Date

A.J. Goodliffe 108
ARNOLD J. GOODLIFFE, Member

ASSIGNMENT

FOR VALUE RECEIVED, Pocatello Dental Group, PLLC (formerly Idaho Dental Group, an Idaho General Partnership), as Assignor, hereby sells, transfers and assigns to GMS Dental Group, Inc., a California corporation, as Assignee, all of its right, title and interest in and to:

- a. The Participant Agreement for Sale of Accounts Receivable ("Agreement" herein) dated October 14, 1983 between Idaho Dental Group, as Participant, and First Security Bank of Idaho, N.A., as Bank, together with and subject to any and all modifications and amendments thereto; and
- b. All funds in the Participant Reserve Account established and existing pursuant to the terms of the Agreement.

This Assignment is made upon the express condition that Assignee shall assume and perform all duties and obligations of Assignor to be performed under the Agreement. Assignee represents and states that to date hereof, all the terms and conditions of the Agreement have been fully performed.

Assignor constitutes and appoints Assignee, its attorney, to take any and all legal measures which may be necessary to enforce Assignor's rights under the Agreement and Participant Reserve Fund herein assigned.

The Assignor acknowledges that this Assignment shall be of no force and effect unless and until:

- a. All the members of Assignor, namely Arnold J. Goodliffe, Dwight G. Romriell, David Porter Sutton, Errol K. Ormoud, Ernest P. Sutton, L. R. Misner and Gregory E. Romriell have executed their consent to this Assignment and acknowledge that their existing guaranty of all obligations under the Agreement shall remain in full force and effect to guarantee the obligations of Assignee under the Agreement; and
- b. First Security Bank of Idaho, N.A., consents to the Assignment.

DATED this 10th day of October, 1996.

POCATELLO DENTAL GROUP, PLLC

David Porter Sutton
David Porter Sutton, Member

CONSENT TO ASSIGNMENT AND ACKNOWLEDGMENT OF CONTINUING GUARANTYS

The undersigned, and each of them, are members of the Pocatello Dental Group, PLLC and are guarantors of all obligations due or to become due First Security Bank of Idaho, N.A. ("Bank") under the Agreement specifically described in the foregoing Assignment.

The undersigned, and each of them, consent to the Assignment by Pocatello Dental Group, PLLC to GMS Dental Group of the Agreement and Participant Reserve Account pursuant to the terms of the foregoing Assignment. To induce Bank to consent to the foregoing Assignment, the undersigned, and each of them, acknowledge that the Guaranty (MAR/PMS) executed by each of them to secure all obligations of Pocatello Dental Group, PLLC, (formerly known as Idaho Dental Group) due or to become due Bank under the Agreement described in the Assignment, shall continue in full force and effect after the Assignment to GMS Dental Group to guaranty the obligations of GMS Dental Group due or to become due Bank under the Agreement.

DATED this 10th day of October, 1996.

Arnold J. Goodliffe
Arnold J. Goodliffe


Dwight G. Romnell

David Porter Sutton

Errol K. Ormond

Ernest P. Sutton

L. R. Misner


Gregory B. Romnell

CONSENT TO ASSIGNMENT

Subject only to all the Members of the Pocatello Dental Group, PLLC executing the foregoing Consent to Assignment and Acknowledgment of Continuing Guaranty, First Security Bank of Idaho, N.A., consents to the foregoing Assignment by Pocatello Dental Group, PLLC to GMS Dental Group, Inc. of the specific Agreement and Participant Reserve Account therein assigned.

DATED this 10th day of October, 1996.

FIRST SECURITY BANK OF IDAHO, N.A.

By: 
Authorized Officer

NON-COMPETE AGREEMENT

THIS NON-COMPETE AGREEMENT (this "Agreement") is made as of October 11, 1996 by and between GMS DENTAL GROUP MANAGEMENT, INC., a Delaware corporation ("Company Sub"), and ERNEST P. SUTTON, DMD ("Member").

RECITALS:

A. Member is currently a member of Pocatello Dental Group P.L.L.C., an Idaho professional limited liability company ("Acquired Co").

B. Company Sub is a wholly owned subsidiary of GMS Dental Group, Inc., a Delaware corporation (the "Company").

C. Member, together with his spouse, owns 14.285 percent of the issued and outstanding membership interests of Acquired Co.

D. The Company has entered into an Agreement and Plan of Reorganization dated as of October 11, 1996 with Acquired Co, all of the members of Acquired Co and Idaho Dental Group, PA, an Idaho professional corporation ("Group") pursuant to which Acquired Co shall be merged (the "Merger") with and into Company (the "Merger Agreement"). A condition to the Company's obligation to effect the Merger is the execution by the Member of a non-compete agreement with Company Sub effective as of the consummation of the Merger (the "Effective Time").

E. Member and Group have entered into an employment agreement ("Employment Agreement") effective as of the Effective Time.

F. The parties desire to provide for the terms of the non-competition by Member with Company Sub (including all of its affiliates) after the Effective Time pursuant to the terms and conditions hereinafter set forth.

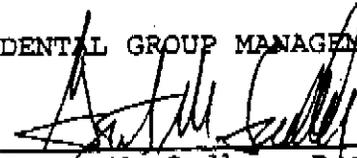
NOW, THEREFORE, the parties hereto agree as follows:

1. Term. Subject to and in consideration of the consummation of the Merger Agreement and the transactions contemplated thereby, Company Sub and Member hereby enter into this Agreement commencing at the Effective Time. The term of this Agreement shall be the greater of (a) three (3) years from the Effective Time, and (b) two (2) years from the date of termination of Member's employment with Group for cause or by Provider; provided, that this Agreement shall expire at the expiration of the term of the Employment Agreement; and provided, further, that if Group, with the consent of the Joint Operations Committee of Group, terminates the Member's employment with Group without cause (as described in the Employment Agreement), then this Agreement shall expire at the date of termination of Member's employment. Notwithstanding the foregoing, in the event that prior to the

8. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first above written.

GMS DENTAL GROUP MANAGEMENT, INC.

By: 
Grant M. Sadler, President

Address: GMS Dental Group Management, Inc.
180 North Riverview Drive, Suite 255
Anaheim, Hills, CA 92808
Attn: Grant M. Sadler
Telephone: 714-998-0587

MEMBER


Ernest P. Sutton, DMD

Address: 9045 S. Old Hwy 91
McCammern, Idaho 83430
Telephone: 208 254-3853

DENTIST'S EMPLOYMENT AGREEMENT

This Dentist's Employment Agreement (this "Agreement") is made and entered into this 11th day of October, 1996 by and between IDAHO DENTAL GROUP, P.A., an Idaho professional corporation ("Group"), whose primary office is located at Pine Ridge Mall, Chubbuck, Idaho 83202 and ERNEST P. SUTTON, DMD ("Provider"), whose address is 9045 S. Old Hwy. 91, McCammon, ID 83250.

W I T N E S S E T H:

WHEREAS, Group is a professional corporation organized under the laws of the State of Idaho to provide the professional services of dentistry; and

WHEREAS, Provider was previously affiliated as a member in Pocatello Dental Group P.L.L.C., an Idaho professional limited liability company (the "Pocatello Dental Group"); and

WHEREAS, Pocatello Dental Group has been merged (the "Merger") with and into GMS Dental Group, Inc., a Delaware corporation ("Company"), the sole shareholder of GMS Dental Group Management, Inc., with which Group has an affiliation; and

WHEREAS, prior to the Merger, pursuant to the terms of that certain Assignment Agreement dated as of October 11, 1996, all of Pocatello Dental Group's right, title and interest in all contracts with dentist employees and independent contractors and other licensed health professional employees and independent contractors, all independent physician association and managed care plan contracts, all patient records, and any and all other assets required by statute, rule or regulation to be owned or held by an entity licensed to practice dentistry, together with all goodwill associated with the foregoing (collectively, the "Dental Practice Assets") were assigned to Group; and

WHEREAS, Group desires to enter into employment agreements with dentists licensed to practice dentistry in the State of Idaho to provide dental services to patients of Group; and

WHEREAS, Provider possesses a valid, unrestricted license to practice dentistry in Idaho and specializes in the area or areas of dentistry indicated on Appendix A attached hereto and incorporated herein by reference; and

WHEREAS, Group wishes to employ Provider to provide dental services to the patients of Group and Provider wishes to accept such employment with Group in accordance with the terms and conditions set forth herein; and

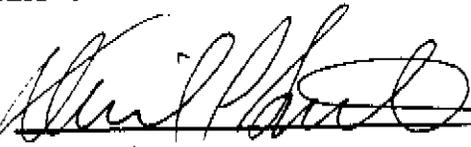
WHEREAS, Group and Provider desire that this Agreement supersede all prior employment or employment-related agreements,

held to be too restrictive shall be modified so as to give effect to the intent thereof.

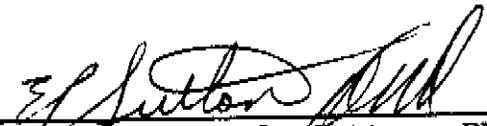
IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year set forth hereinabove.

Dated: October 11, 1996

IDAHO DENTAL GROUP, P.A.

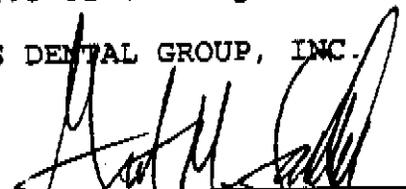
By 
Title President

PROVIDER:


Ernest P. Sutton, DMD

GMS Dental Group, Inc., as successor to Pocatello Dental Group, hereby agrees to Section 12.8 of this Agreement.

GMS DENTAL GROUP, INC.

By 
Grant M. Sadler, President

SHARE ACQUISITION AGREEMENT

This Share Acquisition Agreement ("Agreement") is made as of this 11th day of October, 1996 by and among L. R. Misner, Jr. (the "Shareholder"), GMS Dental Group Management, Inc., a Delaware corporation ("GMS"), and Idaho Dental Group, P.A., an Idaho professional corporation (the "Company").

A. The Company is a professional corporation. The Shareholder is or will be a shareholder of the Company.

B. GMS is lending the Shareholder money to purchase his stock in the Company, in return for which the Shareholder is giving GMS certain undertakings with respect to his stock and the Company is entering into certain agreements as set forth below.

NOW, THEREFORE, the parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Agent" means Ken Davis or his successor selected by GMS and Shareholder.

"Default" means any event which but for the passage of time or the giving of notice or both would be an Event of Default.

"Designee" means the individual or corporation selected by GMS to purchase the Shares pursuant to Section 5(b) hereof. A Designee must be an individual or entity eligible under Idaho law to hold stock in the Company at the time of the purchase. If a change in applicable law and in the articles of incorporation or bylaws of the Company shall permit GMS to hold stock in the Company, then "Designee" shall include GMS.

"Event of Default" means any failure by the Company to perform or observe any of its covenants set forth in Section 8 hereof.

"Expenses" mean all expenses incurred in connection with any Liability or Proceeding, and includes, without limitation, expenses of investigation, judicial or administrative proceedings or appeals, amounts paid in settlements, fines, attorneys' fees and similar costs in connection with a Proceeding.

"GAAP" shall mean generally accepted accounting principles.

"Governmental Authority" means the government of the United States or any State or any foreign country or any political subdivision of any government thereof or any branch, department, agency, instrumentality, court, tribunal or regulatory authority

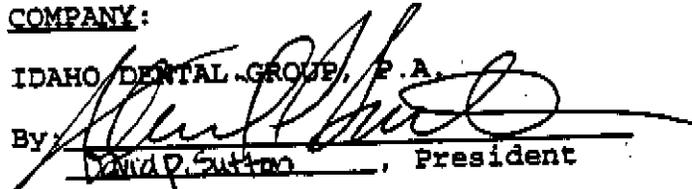
in connection with such action including without limitation, reasonable attorneys' fees.

(i) Spousal Interests in Shares. To the extent that any Shares of Shareholder constitute the community property of the Shareholder and his spouse, the Shareholder shall obtain the spouse's acknowledgment of and consent to the existence and binding effect of this Agreement, by executing a spousal consent in the form attached hereto as Exhibit A, and incorporated herein. If Shareholder marries or remarries subsequent to the date of this Agreement, the Shareholder shall obtain the required spousal consent within a reasonable time, not to exceed thirty (30) days, following the marriage.

The parties have duly executed this Agreement as of the date first written above.

COMPANY:

IDAHO DENTAL GROUP, P.A.

By: 
David P. Sutton, President

Address: 4155 Yellowstone Highway
Bozelle ID. 83202
Fax: (208) 237-3274

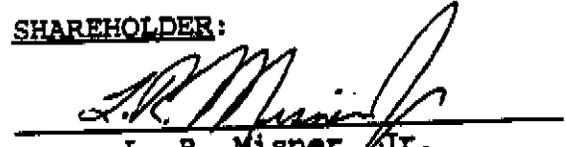
GMS:

GMS DENTAL GROUP MANAGEMENT, INC.

By: 
Grant M. Sadler, President

Address: 80 N. Riverview Dr. Suite 255
Anaheim Hills, CA 92808
Fax: (714) 998-2641

SHAREHOLDER:


L. R. Misner, Jr.

Address: 2730 Kristen Pl.
Bozelle, ID 83201
Fax: _____

POCATELLO DENTAL GROUP P.L.L.C.

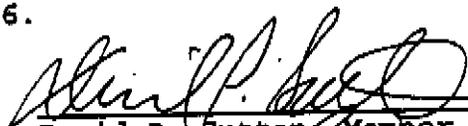
MEMBERS' CERTIFICATE

This Certificate is delivered pursuant to Sections 6.3(a) and (b) of that certain Agreement and Plan of Reorganization dated October 11, 1996 (the "Agreement") by and among GMS DENTAL GROUP, INC., a Delaware corporation (the "Company"), POCATELLO DENTAL GROUP P.L.L.C., an Idaho professional limited liability company ("Acquired Co"), the INDIVIDUALS LISTED ON EXHIBIT "A" ATTACHED TO THE AGREEMENT, who are all of the members of and holders of all of the issued and outstanding limited liability company interests of Acquired Co (each, a "Member" and collectively, the "Members") and IDAHO DENTAL GROUP, P.A., an Idaho professional corporation ("Group"). Capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Agreement.

The undersigned hereby certify that, to the best of their knowledge:

1. They are all of the Members of Acquired Co.
2. Each of the representations and warranties of Acquired Co, Group and the Members contained in Article 2 of the Agreement is true and correct in all material respects as of the date of the Agreement and as of the date signed below, except as otherwise contemplated by the Agreement.
3. Acquired Co, Group and the Members have performed in all material respects all obligations required to be performed by each under the Agreement prior to the date set forth below.

IN WITNESS WHEREOF, the undersigned have executed this Certificate as of October 11, 1996.


David P. Sutton, Member


Dwight G. Romriell, Member


Gregory E. Romriell, Member


Errol K. Ormond, Member

A. J. Goodliffe 003
Arnold J. Goodliffe, Member

E. P. Sutton
Ernest P. Sutton, Member

L. R. Misher
L. R. Misher, Jr., Member

WAIVER AND TERMINATION AGREEMENT

THIS WAIVER OF OPERATING AGREEMENT RESTRICTIONS dated as of October 11, 1996 (this "Waiver") is entered into by and among David P. Sutton, Dwight G. Romriell, Gregory E. Romriell, Errol K. Ormond, Arnold J. Goodliffe, Ernest P. Sutton and L. R. Misner, Jr., who constitute all of the members (the "Members") of Pocatello Dental Group, P.L.L.C., an Idaho professional limited liability corporation ("Pocatello"), with reference to the following facts:

A. The Members are parties to that certain Pocatello Dental Group, P.L.L.C. First Amended Operating Agreement, dated as of May 9, 1994 (as amended, the "Operating Agreement").

B. Each of the Members owns a 14.285% interest in Pocatello.

C. The Members plan to enter into an Agreement and Plan of Reorganization (the "Merger Agreement") whereby Pocatello will merge with and into GMS Dental Group, a Delaware corporation (the "Merger").

D. The Operating Agreement restricts the right of the Members to transfer their membership interest without the unanimous approval of the other Members, and contains certain other provisions regarding a final reconciliation of a Member's entitlement account and payment of a Member's interest.

E. The Members desire to enter into this Waiver to evidence the waiver of the transfer restrictions contained in the Operating Agreement, the waiver of any rights to benefits under the Operating Agreement subsequent to the effective date of the Merger, the termination of the Operating Agreement and to set forth the agreement of the Members to provide for a final reconciliation of a Member's entitlement account.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements set forth herein, the parties hereto agree as follows:

1. Waiver of Transfer Restriction. For the purpose of entering into the Merger Agreement and effecting the Merger, each of the Members hereby waives the restriction on transfer of a Member's interest set forth in Section 6.13 of the Operating Agreement, and hereby consents and approves of the Merger and the transactions necessary to consummate the Merger.

2. Waiver of Future Benefits under and Termination of the Operating Agreement. Subject to (i) the effectiveness of the Merger and (ii) the completion of the final entitlement reconciliation as set forth in Section 3 hereof, each Member

hereby waives any rights to future benefits under the Operating Agreement and agrees that the Operating Agreement shall terminate as of the Closing (as that term is defined in the Merger Agreement).

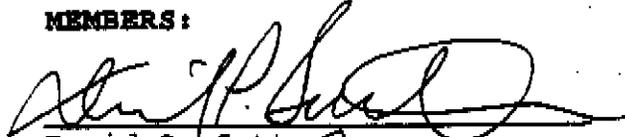
3. Final Entitlement Reconciliation. Each of the Members hereby agrees that a final entitlement reconciliation as set forth in Article VI of the Operating Agreement shall occur on behalf of each of the Members as of the date of the Closing.

4. Counterparts. This Waiver may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5. Governing Law. This Waiver shall be governed by and construed under the laws of the State of Idaho, irrespective of its choice of law principles.

IN WITNESS WHEREOF, the parties hereto have executed this Waiver and Termination Agreement as of the date first set forth above.

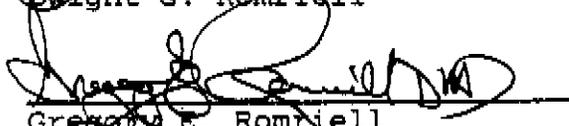
MEMBERS:



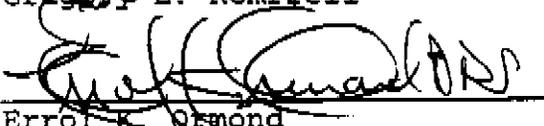
David P. Sutton



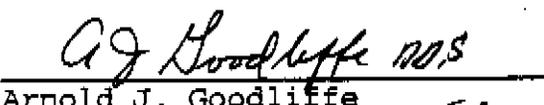
Dwight G. Romniell



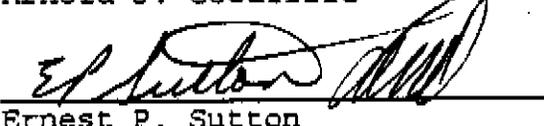
Gregory E. Romniell



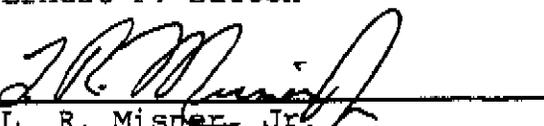
Errol K. Ormond



Arnold J. Goodliffe



Ernest P. Sutton



L. R. Misher, Jr.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT ISC'S OPPOSITION TO THIRD-PARTY DEFENDANT ERNEST SUTTON'S RULE 12(B)(6) MOTION TO DISMISS COUNTERCLAIM** on the following named persons on the date indicated below by

- mailing with postage prepaid
- " hand delivery
- " facsimile transmission
- " overnight delivery

to said persons a true copy thereof, contained in a sealed envelope, addressed to said persons at his or her last-known addresses indicated below.

Gary L. Cooper
Ron Kerl
James P. Price
COOPER & LARSEN
151 N. 3rd Avenue, Ste. 210
PO Box 4229
Pocatello, ID 83205-4229
Phone: (208) 235-1145
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Lowell N. Hawkes
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Richard A. Hearn
Stephen J. Muhonen
PO Box 1391/Center Plaza
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Phone: (208) 232-6101
Fax: (208) 232-6109

DATED: this 24 day of March, 2004.



Darian A. Stanford, Pro Hac Vice

STOEL RIVES LLP
Attorneys for Defendant

AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT ISC'S OPPOSITION TO THIRD-PARTY DEFENDANT ERNEST SUTTON'S RULE 12(B)(6) MOTION TO DISMISS COUNTERCLAIM – Page 5