

AGREEMENT

1. Payment By Debtor. Debtor will pay to the Trustee an amount sufficient to pay in full all allowed administrative claims, pay in full all allowed priority claims, and pay 27.5% of the allowed amounts of all unsecured claims, with a payment cap of \$1,150,000 (except as described in paragraph 4 below). Payment is to be made as follows:

- a. The Debtor paid the Trustee \$10,000 on November 18, 2002.
- b. The Debtor will pay to the Trustee a minimum of \$140,000 within ten days after entry of a Bankruptcy Court Order approving the settlement. The deadline for the \$140,000 payment will be extended for a reasonable time, not to exceed an additional thirty days, if the Debtor demonstrates that he and Birjandi are using their best efforts to obtain refinancing or a new loan against the real property located at 59 Asilomar Way, Laguna Niguel, California (the "Property") in order to make the minimum \$140,000 payment to the Trustee. The Debtor will use his best efforts to obtain sufficient financing against the Property to make a larger payment to the Trustee at this time if possible.
- c. Subject to paragraph 1(d) below, the Debtor shall make 18 monthly payments to the Trustee of at least \$20,000 per month. The first payment shall be due 30 days after the minimum \$140,000 payment referenced in paragraph 1(b) above, and each subsequent payment shall be due on the same date exactly one month after the immediately preceding payment was due. The entire unpaid balance of the Debtor's payment obligation shall be due one month after the 18th monthly payment was due. The unpaid balance will not accrue interest.
- d. If the Debtor's total payment pursuant to paragraphs 1(a) and 1(b) above equals or exceeds \$300,000, the Debtor's monthly payments shall be reduced to \$10,000 per month for the first six months, but shall be at least \$20,000 per month for the remaining 12 months. If the Debtor's total payment pursuant to paragraphs 1(a) and 1(b) above is between \$150,000 and \$300,000, Debtor's monthly payments will be reduced pro rata to an amount between \$10,000 and \$20,000 for the first six months, but shall be at least \$20,000 per month for the remaining 12 months. For example, if the Debtor's total payment pursuant to paragraphs 1(a) and 1(b) is \$200,000, his monthly payments will be reduced to \$16,667 for the first six months; if his total payment is \$225,000, his monthly payments will be reduced to \$15,000 for the first six months; and if his total payment is \$250,000, his monthly payments will be reduced to \$13,333 for the first six months. In any event, the payments shall be at least \$20,000 per month after the first six months.

2. Promissory Note and Deed of Trust. Within ten days after entry of a Bankruptcy Court Order approving this Agreement, the Debtor and Birjandi will execute a Promissory Note payable to the Trustee for \$1,150,000, to be secured by a deed of trust against the Property, which deed of trust shall be subordinate only to either (i) the existing first deed of trust and any second deed of trust obtained to enable the Debtor to make the payment pursuant to paragraph 1(b) above, or (ii) any new first deed of trust obtained only to pay the existing first deed of trust and to enable the Debtor to make the payment pursuant to paragraph 1(b) above. The Trustee's

deed of trust shall be recorded simultaneously with the new financing contemplated by this paragraph 2, but with the new lender's deed of trust to be recorded first and the Trustee's deed of trust to be recorded immediately thereafter. Debtor and Birjandi agree to obtain and record a reconveyance of the deed of trust securing the SMSA, Inc. note prior to the date of recording the Trustee's deed of trust. Nothing in this paragraph shall be construed to require actual payment of more than the amount set forth in paragraph 1 above.

3. Debtor's Objection to Claims. The Debtor shall be entitled to object to any claim asserted in the Debtor's bankruptcy case; provided, however, that any objections to a claim must be filed not later than 30 days after: (i) entry of a Bankruptcy Court order approving this Agreement, as to any claim reflected on the Bankruptcy Court's claims docket as of December 31, 2002; or (ii) notice to Debtor's counsel of the existence of the claim, as to any claim not reflected on the Bankruptcy Court's docket as of December 31, 2002.

4. Increased Note Balance Upon Default. If the Debtor defaults on any payment to the Trustee and fails to cure such default within five calendar days after written notice in accordance with paragraph 28 below, the Promissory Note shall increase to a default balance of \$2,250,000, less only credits for payments previously received.

5. Enforcement Action Against Podiatry Practice. Birjandi's existing podiatry practice, and all reasonable, necessary, and customary assets thereof actually used in the business, shall be exempted from the levy, execution, or any other collection effort of the Trustee in the event of a default with respect to the Promissory Note referenced in paragraph 2 above. Any unusual assets not held or received in the ordinary course of business, for example, cash transfers not received as payment for podiatric services, shall not be exempt from the Trustee's collection efforts pursuant to this paragraph 5.

6. Birjandi's Execution of Documents. Birjandi shall execute all necessary and appropriate agreements, notes, deeds of trust, releases, reconveyances, and any other documents required to facilitate the terms of this agreement.

7. Escrow. Debtor has opened an escrow Southland Title, Escrow No. BU20551.

8. Execution of Documents By Trustee. The Trustee will execute all necessary and appropriate documents to enable Debtor and Birjandi to obtain either the new first or new second deed of trust against the Property as referenced in paragraph 2 above; provided, however, that to ensure ability of the Debtor and Birjandi to obtain a new loan and to protect the Trustee's position, a release of the Trustee's recorded lis pendens will be deposited into escrow and will be recorded concurrently with (i) the new first or new second deed of trust referenced in paragraph 2 above, and (ii) the Trustee's deed of trust securing the Promissory Note referenced in paragraph 2 above.

9. Waiver of Discharge. The Debtor hereby waives his discharge pursuant to 11 U.S.C. section 727(a)(10).

10. Stay and Dismissal of Litigation. All litigation being prosecuted by the Trustee, including but not limited to Adversary Proceeding Nos. 02-90045 and 90235-M7 described in Recital C above, shall be stayed or dismissed (at the Trustee's option) in its entirety pending full performance by the Debtor and Birjandi pursuant to this Agreement. All such litigation shall be dismissed with prejudice in its entirety upon full performance by the Debtor and Birjandi pursuant to this Agreement.

11. Dissolution of Temporary Restraining Order. The Trustee's temporary restraining order obtained in Adversary Proceeding No. 02-90235-M7 shall be dissolved upon receipt of the payment described in paragraph 1(b) above, recording of a reconveyance of the SMSA, Inc. deed of trust pursuant to paragraph 2 above, delivery of the executed Promissory Note pursuant to paragraph 2 above, recording of the Trustee's deed of trust referenced in paragraph 2 above, and delivery of a copy of this Agreement executed by the Debtor and Birjandi.

12. Release By Debtor and Birjandi. Debtor and Birjandi, and each of them, their successors-in-interest, assigns, agents, employees and attorneys, or others who may claim through them, and each of them, hereby forever release and discharge Debtor's estate, its Trustee, his professionals, and their successors-in-interest, trustees, assigns, agents, employees and attorneys, and each of them, from any and all claims, demands, controversies, actions, causes of action, obligations, liabilities, costs, expenses, attorneys' fees, and damages of whatsoever character, nature or kind, in law or in equity, that could have been raised in the Debtor's bankruptcy case or in connection therewith, or that may be based upon or connected with any of the matters relating thereto, save and except only the obligations and liabilities created and preserved by this Agreement.

13. Release by Trustee. Debtor's estate, its Trustee, the Trustee's professionals, and each of them, their successors-in-interest, assigns, agents, employees and attorneys, or others who may claim through them, and each of them, hereby forever release and discharge Debtor and Birjandi, and their successors-in-interest, trustees, assigns, agents, employees and attorneys, and each of them, from any and all claims, demands, controversies, actions, causes of action, obligations, liabilities, costs, expenses, attorneys' fees, and damages of whatsoever character, nature or kind, in law or in equity, that could have been raised in the Debtor's bankruptcy case or in connection therewith, or that may be based upon or connected with any of the matters relating thereto, save and except only the obligations and liabilities created and preserved by this Agreement.

14. Waiver of Section 1542 Rights. It is the intention of the parties hereto that the releases set forth in paragraphs 12 and 13 be effective as a bar to all claims, demands, controversies, actions, causes of action, and obligations, of whatsoever character, nature, and kind, known or unknown, suspected or unsuspected, specified above to be so barred; in furtherance of this intention, the parties hereto expressly waive any and all rights and benefits conferred upon them by the provisions of section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The parties hereto acknowledge that the foregoing waiver of the provisions of section 1542 of the California Civil Code was separately bargained for; they expressly consent that this release shall be given full force and effect in accordance with each and all of its express terms and provisions, including those terms and provisions relating to unknown or unsuspected claims, demands, and causes of action, if any, to the same effect as those terms and provisions relating to any other claims, demands, or causes of action specified above.

15. Bankruptcy Court Approval. This Agreement is subject to approval by the United States Bankruptcy Court for the Southern District of California. If the United States Bankruptcy Court does not approve this Agreement, the parties will be returned to the same positions they were in prior to entering into this Agreement. The terms of this Agreement may be enforced by motion in the United States Bankruptcy Court for the Southern District of California.

16. Integration Clause. This Agreement represents the entire agreement of the parties hereto and supersedes any prior written or oral agreements between them concerning the subject matter contained herein.

17. California Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of California except to the extent that federal law applies.

18. No Prior Assignments. The parties hereto each represent and warrant to the other parties that they have not assigned or transferred to any third party any of the rights, claims, causes of action, or items that they are obligated to release or transfer pursuant to this Agreement.

19. Signatories' Authority. Each entity executing this Agreement represents that it is authorized to do so. Each person executing this Agreement on behalf of an entity, other than an individual executing this Agreement on his or her own behalf, represents that he or she is authorized to execute this Agreement on behalf of that entity.

20. Binding on Successors and Assigns. This Stipulation shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

21. Attorneys' Fees and Costs. The parties shall bear their own court costs, expenses, and attorneys' fees, except that in the event any party hereto fails to perform any of its obligations under this Agreement, or in the event a dispute arises concerning the meaning or interpretation of

any provision of this Agreement, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other parties in enforcing or establishing their rights hereunder, including without limitation court costs and reasonable attorneys' fees.

22. No Admission of Liability. The parties expressly recognize and agree that the terms and conditions of this Agreement constitute an accord and satisfaction of contested matters, and neither the offer nor the acceptance of the terms and conditions represent an admission of liability or responsibility on the part of any party, each party expressly disclaiming such liability.

23. Execution of Documents. Each party agrees to execute all such further documents as shall be necessary or appropriate to carry out all of the provisions of this Agreement.

24. Uncertainty of Damages. All parties mutually agree and recognize that damages from any party's breach of this Agreement would be impractical to determine with certainty.

25. Non-Reliance Upon Representations. Except as expressly stated in this Agreement, no party hereto, nor any officer, agent, employee, representative, or attorney for any party, has made any statement or representation to any other party hereto regarding any fact relied upon in entering into this Agreement, and no party hereto relies upon any such statement or representation in executing this Agreement.

26. Review and Consultation with Counsel. Each party to this Agreement is represented by counsel in the negotiation and execution of this Settlement Agreement. The parties have read this Agreement, have had the opportunity to consult with counsel of their own choosing in connection with this Agreement, and have made such investigation of the facts as they deem necessary.

27. Time of Essence. Time is of the essence for the performance of each and every covenant and the satisfaction of each and every condition contained in this Agreement.

28. Construction. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared it.

29. Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the second business day after mailing by United States certified mail, return receipt requested, addressed as follows:

To Colton:

Roland C. Colton, Esq.
445 Marine View Avenue, Suite 105
Del Mar, CA 92014

with a copy to:

K. Todd Curry, Esq.
Sullivan, Hill, Lewin, Rez & Engel
550 West C Street, Ste. 1500
San Diego, CA 92101
Telephone: (619) 233-4100
Facsimile: (619) 231-4372

To Kipperman:

Richard M. Kipperman
Corporation Management, Inc.
P.O. Box 3939
La Mesa, CA 91944

with a copy to:

Susan Stevenson, Esq.
Pyle Sims Duncan and Stevenson
401 B Street, Ste. 1500
San Diego, CA 92101
Telephone: (619) 687-5200
Facsimile: (619) 687-5210

To Birjandi:

Dr. Nahid Birjandi
27871 Medical Center Road, Suite 30
Mission Viejo, CA 92691

with a copy to:

L. Scott Keehn Esq.
Robbins & Keehn, APC
530 B Street, Ste. 2400
San Diego, CA 92101
Telephone: (619) 232-1700
Facsimile: (619) 544-9095

or to such other address or other person as either party hereto shall designate to the other in writing.

30. ~~Counterparts~~ This Agreement may be executed in one or more counterparts with the same force and effect as if executed in a single, complete document.

IN WITNESS WHEREOF, the parties and their respective attorneys have approved and executed this Agreement on the dates set forth opposite their respective signatures.

Dated: 2/11, 2003


Richard M. Kipperman

Dated: _____, 2003

Roland C. Colton


Dated: _____, 2003

Nahid Birjandi

Approved as to Form and Content:

Dated: 2/10, 2003

FYLE SIMS DUNCAN AND STEVENSON

By: 
Susan C. Stevenson
Attorneys for Richard M. Kipperman,
Chapter 7 Trustee

Dated: February 10, 2003

SULLIVAN, HILL, LEWIN, REZ & ENGEL

By: _____
K. Todd Curry
Attorneys for Debtor

Dated: _____, 2003

ROBBINS & KEEHN

By: _____
L. Scott Keehn
Attorneys for Nahid Birjandi

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IN WITNESS WHEREOF, the parties and their respective attorneys have approved and executed this Agreement on the dates set forth opposite their respective signatures.

Dated: _____, 2003

Richard M Kipperman

Dated: Feb. 10, 2003

Roland C. Colton

Dated: Feb. 10, 2003

Nahid Birjandi

Approved as to Form and Content:

Dated: _____, 2003

PYLE SIMS DUNCAN AND STEVENSON

By: _____
Susan C. Stevenson
Attorneys for Richard M Kipperman,
Chapter 7 Trustee

Dated: _____, 2003

SULLIVAN, HILL, LEWIN, REZ & ENGEL

By: _____
K. Todd Curry
Attorneys for Debtor

Dated: _____, 2003

ROBBINS & KEEHN

By: _____
L. Scott Keehn
Attorneys for Nahid Birjandi