

## Sample Asset Sale Agreement

### 1. Names

\_\_\_\_\_ (Seller) and \_\_\_\_\_ (Buyer) agree to the following sale.

### 2. Sale of Business Assets

Seller is selling to Buyer and Buyer is buying from Seller the assets described below of the \_\_\_\_\_ business known as \_\_\_\_\_ located at \_\_\_\_\_.

### 3. Assets Being Sold

The assets being sold consist of:

- A. The goodwill of the business, including the current business name and phone number.
- B. The lease dated \_\_\_\_\_ between \_\_\_\_\_, Seller as Tenant, and \_\_\_\_\_, Landlord, covering the premises at \_\_\_\_\_ for the time period from \_\_\_\_\_ to \_\_\_\_\_.
- C. The inventory of goods.
- D. The furniture, fixtures, and equipment listed in Attachment \_\_\_\_.
- E. The equipment leases listed in Attachment \_\_\_\_.
- F. The supply contract with \_\_\_\_\_.
- G. Intellectual property rights as follows: \_\_\_\_\_

### 4. Sale Price

The sale price for the assets listed in this section is \$\_\_\_\_\_, and is allocated as follows:

|                     |         |
|---------------------|---------|
| Goodwill            | \$_____ |
| Assignment of Lease | \$_____ |
| Inventory           | \$_____ |
| Accounts Receivable | \$_____ |

|                                    |          |
|------------------------------------|----------|
| Furniture, Fixtures, and Equipment | \$ _____ |
| Equipment Leases                   | \$ _____ |
| Assignment of Contracts            | \$ _____ |
| Intellectual Property Rights       | \$ _____ |
| <b><u>TOTAL</u></b>                | \$ _____ |

The total sale price will be adjusted by prorating rent, taxes, insurance premiums, utility costs, and security deposits as of the date of closing.

### **5. Price of Inventory**

At closing, in addition to the total sale price listed in Clause \_\_\_\_ above, Buyer will buy the inventory of goods consisting of ophthalmic parts and supplies by paying Seller the amount Seller paid for those goods, as shown in the original invoices. A physical count of the goods will be made by Seller and Buyer. Seller and Buyer will share equally the cost of having the inventory counted.

The count will be made \_\_\_\_ days before closing and will include only unopened and undamaged goods.

### **6. Accounts Receivable**

Seller's accounts receivable as of the day of closing will remain Seller's property. Buyer will have no responsibility for collecting those accounts. Seller will have the right to collect those accounts and to keep the amounts received.

### **7. Deposit**

Buyer will pay Seller a deposit of \$\_\_\_\_\_ when Buyer and Seller sign this contract. This deposit will be applied toward the amount due at closing. Seller will return this deposit to Buyer if the purchase is not completed because Seller cannot or does not meet its commitments under this agreement for any reason or if the contingencies in Clause \_\_\_\_ are not removed. Otherwise, Seller will be entitled to retain the deposit in the event the sale is not completed.

### **8. Payment at Closing**

At closing, Buyer will pay Seller the total amount of the sums referred to in Clauses \_\_\_\_ less the

deposit referred to in Clause \_\_\_\_ (if any). This payment will be made by cashier's check or wire transfer.

## **9. Promissory Note**

At closing, Buyer will sign and give to Seller a promissory note for the balance of the sale price. The promissory note will be in the form of Attachment \_\_\_\_.

## **10. Security for Payment**

At closing, to secure payment of the promissory note referred to in Clause \_\_\_\_, Buyer will sign a security agreement as shown in Attachment \_\_\_\_, giving Seller a security interest in the assets that Buyer is buying. [optional: In addition, Buyer will give Seller a security interest in \_\_\_\_]. Seller will have the right to file a UCC Financing Statement with regard to the security pledged.

## **11. Seller's Debts and Other Liabilities**

Buyer is not assuming any of Seller's debts or other liabilities. Seller will pay all debts and other liabilities, whether now known or unknown, that are or may become a lien on the assets being bought by Buyer.

## **12. Seller's Representations**

Seller represents and warrants that:

- A. Seller owns the assets being sold. At closing, the assets will be free from any claims of others.
- B. At closing, Seller will have paid all taxes that have then come due and that affect the business and its assets.
- C. To the best of Seller's knowledge, there are no judgments, claims, liens or proceedings pending against Seller, the business, or the assets being sold, and none will be pending at closing.
- D. To the best of Seller's knowledge, the business and financial information in the financial statement dated \_\_\_\_\_ that Seller has given Buyer is accurate.
- E. Until closing, Seller will operate the business in the normal manner, and will use its

best efforts to maintain the goodwill of suppliers, customers, the landlord, and others having business relationships with Seller.

F. Seller is (and at closing will be) a limited liability company in good standing under the laws of the state of \_\_\_\_\_, and has (and at closing will have) the authority to perform the obligations contained in this sales agreement.

G. To the best of Seller's knowledge, the assets being sold to Buyer constitute all the assets needed to operate Seller's business.

H. To the best of Seller's knowledge, the current uses of the Seller's business premises are permitted under the applicable zoning laws. To the best of Seller's knowledge, the business premises presently (and at closing will) meet all applicable health, safety, and disabled access requirements, and are (and at closing will be) in good repair.

I. To the best of Seller's knowledge, the tangible assets are (and at closing will be) in good repair and good operating condition.

J. To the best of Seller's knowledge, all items in the inventory of merchandise are (and at closing will be) unused and of saleable quality.

K. To the best of Seller's knowledge, Seller is (and at closing will be) in full compliance with all laws, ordinances, or regulations applicable to the operation of the business.

L. To the best of Seller's knowledge, Seller is not (and at closing will not be) in default on any contracts.

M. To the best of Seller's knowledge, Seller is (and at closing will be) in compliance with all environmental laws. To the best of Seller's knowledge, there are (and at closing will be) no hazardous materials on the business premises that may be a source of future liability under the environmental laws.

N. These representations and warranties will survive the closing.

O. Seller will indemnify, defend, and save Buyer harmless from and against any financial loss, legal liability, damage, or expense arising from any breach of the above representations and warranties.

P. The total liability of the Seller for all breaches of representations and warranties will not exceed \$\_\_\_\_\_.

### **13. Buyer's Representations**

Buyer represents and warrants that:

- A. Buyer has inspected the tangible assets that Buyer is purchasing and the leased premises, and has carefully reviewed Seller's representations regarding them. Buyer is satisfied with the physical condition of the tangible assets and the premises.
- B. To the best of Buyer's knowledge, the business and financial information in the financial statement dated \_\_\_\_\_ that Buyer has given Seller is accurate.
- C. Buyer is (and at closing will be) limited liability company in good standing under the laws of the state of \_\_\_\_\_, and has (and at closing will have) the authority to perform the obligations contained in this sales agreement.
- D. These representations and warranties will survive the closing.
- E. Buyer will indemnify, defend, and save Seller harmless from and against any financial loss, legal liability, damage, or expense arising from any breach of the above representations and warranties.
- F. The total liability of the Buyer for all breaches of representations and warranties will not exceed \$\_\_\_\_\_.

### **14. Covenant Not to Compete**

At closing, Seller will sign and deliver to Buyer a covenant not to compete in the form of Attachment \_\_, and Buyer will pay Seller the amounts specified in the attached covenant not to compete.

### **15. Future Services**

At closing, Seller and Buyer will sign an employment agreement in the form of Attachment \_\_.

### **16. Contingencies**

This sale is contingent on \_\_\_\_\_.

## **17. Closing**

The closing will take place:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

At closing, Buyer and Seller will sign the documents specified in this contract and all other documents reasonably needed to transfer the business assets to Buyer. Buyer will pay Seller the amounts required by this contract and Seller will transfer to Buyer the business assets.

## **18. Documents for Transferring Assets**

At closing, Seller will deliver to Buyer these signed documents:

- A. A bill of sale for the tangible assets being sold, including a warranty of good title.
- B. An assignment of the lease at \_\_\_\_\_, with the landlord's consent.
- C. An assignment of the other contracts that are being transferred to Buyer, with the written consent of the other contracting person, if such consent is required.
- D. Assignments of all intellectual property contracts, including trademarks, patents, and copyrights, that are part of this purchase.

Seller will also deliver to Buyer at closing all other documents reasonably needed to transfer the business assets to Buyer, including \_\_\_\_\_.

## **19. Disputes**

If a dispute arises concerning this agreement or the sale, Seller and Buyer will try in good faith to settle it through mediation conducted by a mediator to be mutually selected.

Seller and Buyer will share the cost of the mediator equally. Seller and Buyer will cooperate fully with the mediator and will attempt to reach a mutually satisfactory resolution of the dispute.

If the dispute is not resolved within 30 days after it is referred to the mediator, Seller and Buyer agree that the dispute will be arbitrated by an arbitrator to be mutually selected. Judgment on the arbitration award may be entered in any court that has jurisdiction over the matter. Costs of

arbitration, including lawyers' fees, will be allocated by the arbitrator.

**20. Risk of Loss**

Seller will replace or pay for the replacement of any assets that are destroyed or damaged before the closing.

**21. Entire Agreement**

This is the entire agreement between the parties. It replaces and supersedes any oral agreements between the parties, as well as any prior writings.

**22. Modification**

This agreement may be modified only by a written amendment signed by both parties.

**23. Governing Law**

This agreement will be governed by and interpreted under the laws of the state of \_\_\_\_\_, and any litigation will be brought in the courts of that state.

**24. Severability**

If a court or arbitrator determines that a provision in this agreement is invalid or not enforceable, that determination will affect only that provision. The provision will be modified only to the extent needed to make it valid and enforceable. The rest of the agreement will be unaffected.

**25. Notices**

All notices must be sent in writing. A notice may be delivered to a person at the address that follows the person's signature or to a new address that the person designates in writing. A notice may be delivered:

- A. in person
- B. by certified mail, or
- C. by overnight courier.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Buyer:

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Seller:

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SAMPLE