

**THE ASSET PURCHASE AGREEMENT**

**BETWEEN**

**Seller LLC**

***AND***

***BUYERS LLC***

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement"), is entered into on February 14, 2022 (the "Signature Date") by and between SELLERS LLC and SELLERS NAME (hereinafter referred to as the "Seller") and BUYERS LLC and BUYERS NAME (hereinafter referred to as the "Purchaser").

WHEREAS, the Seller owns a company of NAME OF BUSINESS, located in Location.

WHEREAS, Seller, in furtherance of this Agreement, desires to sell and/or assign to Purchaser all of Sellers' respective rights, titles and interests (to the extent of Seller's interests) in and to the assets of the company (including both the Seller's intangible assets collectively hereinafter referred to as the "Assets"); and

WHEREAS, Purchaser desires to purchase Seller's respective interests in the Assets.

NOW, THEREFORE, in consideration of the company as well as the parties' respective representations, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **SALE OF ASSETS:** Upon the terms and subject to the conditions herein, Seller agrees to sell, assign or transfer and Purchaser agrees to purchase all of the Assets owned or used by Seller, respectively, in the operation of the Business (other than those specifically excluded as listed below which shall remain with Seller following the Closing, defined below) and including, without limitation, the following Assets:

### **SELLER'S ASSETS:**

Intangible Assets: Rights to the NAME OF BUSINESS of CITY company as outlined by the NAME OF BUSINESS FDD.

EXCLUDED ASSETS: All cash assets of the Business, accounts receivable, chattel paper, checking, and savings accounts, trade accounts, petty cash, cash on hand, and retained earnings, are excluded from this sale.

2. **LIABILITIES:** No Liabilities will be assumed. Purchaser will create their own agreement with Seller.

3. **GOODWILL:** In addition to the sale of the Assets, and as a specific condition of the purchase of the Practice and in order to ensure the Purchaser receives the beneficial enjoyment of the goodwill of the Seller which Purchaser is acquiring, the Seller agrees to execute and be bound by the terms of the Restrictive Covenant set forth in Exhibit "C" attached hereto.

4. **PURCHASE PRICE:** The purchase price for the Assets (the "Purchase Price") shall be ONE HUNDRED THIRTY TWO THOUSAND DOLLARS (\$132,000) (the "Purchase Price").

5. **ALLOCATION OF THE PURCHASE PRICE:** The Purchase Price shall be allocated as follows:

CORPORATION ASSET  
ALLOCATION

Goodwill	\$100,000
Restrictive Covenant	\$1,000

Purchaser and Seller each agree that they will, with respect to any state or federal tax returns, report in accordance with and be governed and bound by the allocations set forth in this Section.

6. **METHOD OF PAYMENT:** The Purchase Price and the Restrictive Covenant Payment (as described in Exhibit "C") shall be paid as such at the time of closing;

Cash At Close Via Wire to Seller: \$66,000

Funds Paid Via Earnout as Outline in Exhibit A-1 \$66,000

7. **SIGNATURE DATE AND CLOSING:** The date the parties initial and sign this Agreement and all exhibits shall be referred to as the "Signature Date." The company and the Assets (not including the aforementioned Excluded Assets) shall be conveyed to Purchaser (the "Closing") only upon completion of the following conditions: 1) this Agreement and all the attached exhibits are signed by all parties to this Agreement; 2) the Purchase Price is paid in full by Purchaser.

The actual date the Closing is completed shall be referred to as the "Closing Date", which shall be on February 14, 2022. If any of these conditions are not satisfied by the Closing Date then this Agreement shall terminate and the parties shall be relieved of their rights and obligations.

8. **DATE OF POSSESSION:** The Purchaser agrees to assume possession and control of the Practice (the "Date of Possession") as of the Closing Date.

9. **BILL OF SALE:** Seller shall execute and deliver to Purchaser on the Closing Date, a Bill of Sale for the Assets in the form of Exhibit B attached hereto and made a part hereof.

10. **TAXES:** If any tax, including state or local sales tax, transfer or use tax or

documentary stamp tax is due or becomes due as a result of the sale of the Assets, then all such taxes (except for any income taxes resulting from this sale and any sales and/or transfer taxes owed by Seller resulting from any applicable statutes for this sale, if any) shall be paid by Purchaser as and when required.

11. **ACCOUNTS RECEIVABLE:** After Closing, Seller will remit any earned accounts receivable to the seller up through the sale date.

12. **SELLER REPRESENTATIONS, WARRANTIES, COVENANTS, AND AGREEMENTS:** Unless otherwise stated to the contrary in this Agreement, Seller acknowledges that Purchaser is not assuming any liability and/or obligation of Seller relating to the Practice or the Assets. All outstanding liabilities of the Practice prior to the Closing Date (including equipment lease(s), if any) not expressly assumed by Purchaser hereunder shall be paid in full and discharged by Seller on or before the Closing Date. In addition:

Seller represents and warrants to the best of Seller's knowledge that all financial data, certificates, schedules, exhibits or other instruments and/or information concerning the Practice furnished by Seller to Purchaser, are materially true and an accurate representation of the financial status and condition of the Practice on the Signature Date, and contain no income or expense not in the ordinary course of the business of the Practice.

Seller further represents and warrants that:

Seller has the necessary authority and capacity to enter into this Agreement and carry out its obligations contemplated hereby, and this Agreement constitutes legal, valid and binding obligations of Seller, enforceable against Seller in accordance with its terms;

13. **PURCHASER WARRANTIES:** Except to the extent otherwise set forth in this Agreement, Purchaser represents, warrants, covenants, and agrees:

That no warranties or representations concerning the Business or Seller have been made by the Seller or his agents and that, except for any client agreement between Seller and Purchaser, no understanding has been had or agreement made between the parties other than as set forth herein.

That any income and expense projections provided to Purchaser by Seller are projections only and are not in any way to be construed as a representation or warranty relating to the future business potential or income and expenses of the Practice, and that Seller's past results do not guarantee future performance and that any fluctuations in post-sale income and expenses are beyond the control of Seller and Purchasers.

Purchaser has independently examined, to Purchaser's satisfaction, the value of the Assets and, except for Seller's warranties set forth in this Agreement, including as to the working condition and title of the Assets on the Closing Date, is purchasing the Assets "AS IS" "WHERE IS", without any representation or warranty, expressed or implied, from Seller as to the value, condition and/or merchantability of the Assets. Purchaser agrees that, following the Closing Date, Seller shall have no further responsibility or liability to Purchaser related to the condition of the Assets except for a breach of Seller's warranties of title and/or any other warranties specified in this Agreement.

That Purchaser, Purchaser's attorney, or Purchaser's lending company, prior to the Closing Date, has completed a lien search of the Practice and the Assets that includes all appropriate county and state records and, in addition, has investigated to the Purchaser's satisfaction, that the office is properly zoned (including any variances, if applicable) for its intended use as a dental office.

That Purchaser has disclosed to Seller, any known and/or diagnosed condition, including drug dependency, disease, disorder and/or disability that could affect Purchaser's ability to continue to operate the Practice following the Closing, if any.

Purchaser further represents and warrants that:

Purchaser has the necessary capacity to enter into this Agreement and carry out its obligations contemplated hereby, and this Agreement constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms;

There are no actions, suits, proceedings or investigations pending or, to the best knowledge of Purchaser, threatened, in any court or before any governmental agency or instrumentality against Purchaser which if determined adversely would have a material, adverse effect on the condition, financial or otherwise, on the business, operations or affairs of Purchaser taken as a whole;

No statement contained in any certificate, schedule, financial statement, exhibit or other instrument furnished by Purchaser pursuant to this Agreement or in any exhibit hereto contains any untrue statement of fact to the best of Purchaser's knowledge and belief, or omits to state a fact necessary in order to make the statements contained therein not materially misleading.

14. **NOTICE:** Any notice or payment required or permitted in this Agreement and the attached exhibits or schedules, shall be in writing and delivered personally or sent by certified U.S. Mail, return receipt requested, with all postage and other charges prepaid. Any such notice or payment from Seller to Purchaser shall be addressed to the principal office of Purchaser. Any such notice or payment from Purchaser to Seller shall be addressed to the last known residential address of the Seller, with a copy to Seller's

statutory agent.

Either party may change its address, or the designation of its representative, by notifying the other party of such change in writing.

Except where provided to the contrary elsewhere in this Agreement and subject to the terms herein, the parties agree to give to the other party written notice of any alleged breach or violation of this Agreement or the attached exhibits, or of an intention to pursue legal action against the other arising out of this Agreement. The party receiving such notice shall have twenty (20) days to cure such default if such default is for a late payment, and shall have sixty (60) days to cure if the default is something other than a late payment and is curable, before the other party may proceed with any legal action or exercise their right of offset against the other party.

This requirement of notice and time to cure shall not prohibit a party from seeking injunctive relief immediately following an alleged breach of this Agreement by the other party.

15. **MEDIATION AND ARBITRATION:** It is the intention of the parties to bring all disputes between them to an early, efficient and final resolution. Therefore, it is hereby agreed that all disputes, claims and controversies between the parties hereto, whether individual, joint in class in nature, or otherwise, shall be resolved as provided herein: Prior to submitting any controversy or dispute to mediation or arbitration, the party must transmit a letter to the other party listing the matters in controversy in detail, listing the actions that the defaulting party must take to remedy the matters in controversy, and give the defaulting party ten (10) business days to effectuate the corrections. Failure to do this will result in all of the legal fees and costs of mediation being charged to the party who failed to provide this notice.

Following adherence to the dispute resolution procedure regarding notice with time to cure as stated above, any dispute between the parties as it relates to the terms of this Agreement or the behavior or practice of the parties as their rights or privileges may be affected in the future, shall be submitted to formal mediation, using a mediator either appointed by the MARICOPA COUNTY SUPERIOR COURT or a mediator who conducts his practice under the rules followed by the MARICOPA COUNTY SUPERIOR COURT or any other mediator to which the parties may agree. Mediation must commence not later than two weeks after one party notifies the agreed-upon mediator or MARICOPA COUNTY SUPERIOR COURT, in writing, of its request for mediation. Mediation shall be deemed to be in the nature of settlement negotiations and shall be subject to MARICOPA COUNTY SUPERIOR COURT Mediation procedures.

Any dispute not otherwise satisfactorily resolved shall be submitted to binding arbitration through MARICOPA COUNTY SUPERIOR COURT in Phoenix, Arizona. Arbitration must commence not later than sixty (60) days after either party submits a written

demand for arbitration to MARICOPA COUNTY SUPERIOR COURT, otherwise such demanding party shall be entitled to an order compelling arbitration as provided by law.

Statutes of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in any action brought by a party hereto shall be applicable in arbitration proceeding hereunder, and the parties agree that the commencement of binding arbitration proceedings hereunder shall be deemed the commencement of an action for purposes of such doctrines, whether raised in court or arbitration. Arbitration is commenced on the date a notice of demand for binding arbitration is received by MARICOPA COUNTY SUPERIOR COURT.

Arbitration shall be conducted by a single arbitrator appointed by MARICOPA COUNTY SUPERIOR COURT. Arbitration proceedings shall be conducted in accordance with MARICOPA COUNTY SUPERIOR COURT Commercial Dispute Resolution Procedures unless otherwise agreed between the parties. The arbitrator shall have the power to award monetary and/or non-monetary relief but shall not have the power to award punitive damages. The decision by the arbitrator shall be final and binding upon the parties and/or their heirs, successors and assigns. Judgment upon the award rendered may be entered in any court of competent jurisdiction for confirmation of the award and the entry of a judgment or for any other relief with respect to the award as provided by law.

During mediation and arbitration proceedings, the parties shall continue performance of this Agreement unless doing so would unnecessarily increase damages. The parties agree to adhere to all warranties and covenants (as described herein) until such time as the arbitration process has been completed and the arbitrator has determined each party's post-arbitration obligations and responsibilities as they relate to such warranties and covenants. The fees and costs of mediation shall be divided equally between the parties.

The fees and costs of arbitration, including without limitation, arbitration fees, reasonable attorneys' and accountants' fees, witness expenses and other related expenses actually incurred, shall be awarded by the arbitrator.

The requirement of arbitration shall not prohibit a party from seeking injunctive relief from a court of competent jurisdiction immediately following an alleged breach of this Agreement by the other party.

16. **TIME OF POSSESSION:** The actual timing of the sale shall occur at 6PM Arizona time on the agreed upon day of sale.

18. **OTHER PROVISIONS OR MODIFICATIONS:** Other provisions or modifications of this agreement, if any, are set forth in Exhibit "E".

*(The remainder of this page intentionally left blank)*

IN WITNESS WHEREOF, each party has executed this Agreement on the  
aforementioned Signature Date.

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

**SELLER: SELLERS LLC  
and SELLERS NAME**

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SELLERS NAME

**PURCHASER: BUYERS LLC and BUYERS NAME**

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BUYERS NAME

## **EXHIBIT "A-1"**

### **Earn-Out**

Beginning in the month of March 2022, Purchaser will make a monthly payment to the Seller based upon an earn-out.

The payment is to be made by mailed check by the 12<sup>th</sup> of each month, mailed to the Sellers address of 2003 E Beau St Washington PA 15301 or through electronic payment.

Along with Earn-Out payment, Purchaser is to email the breakdown of the previous month's income from NAME OF BUSINESS to the Seller by the 12<sup>th</sup> of the month for the previous month. The breakdown will come from NAME OF BUSINESS's monthly reporting software called Spiff.

Earnout payout from the Seller will be month and will be 25% of the monthly fees that the Purchaser receives from NAME OF BUSINESS. For example, if the Purchaser receives \$10,000 from NAME OF BUSINESS in the month of July 2022 then the Purchaser is to pay the Seller as outlined above \$2,500.

The Earn-Out balance will begin at \$66,000 and will reduce by each payment made. No interest is accrued on the Earn-Out.

## **EXHIBIT "B"**

### **BILL OF SALE**

KNOW ALL MEN & WOMEN BY THESE PRESENTS, THAT SELLERS LLC and SELLERS NAME(hereinafter referred to as "Seller"), for good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, the receipt and adequacy of which is hereby acknowledged, does hereby sell, set over, transfer, assign and convey unto BUYERS LLC, LLC and BUYERS NAME (hereinafter called "Purchaser") and any successors or assigns, all Seller's right, title and interest in and to the Corporation's Assets (as described in the attached Asset Purchase Agreement) subject to the terms and conditions, warranties and covenants described in the Asset Purchase Agreement and all exhibits attached thereto, whether such interest is joint or several, individual or corporate.

And for the same consideration, Seller, and Seller's successors and assigns, covenants with and warrants unto Purchaser and Purchaser's successors and assigns, that Seller is the lawful owner of the property hereby conveyed, that Seller has good and marketable title to Seller's interest in said property, and, to the extent described in the Asset Purchase Agreement, that said property is free and clear of any liens and encumbrances of any kind, character or nature, and that Seller, and Seller's successors and assigns will forever warrant and defend the same unto Purchaser and Purchaser's heirs and assigns, against all lawful claims and demands whatsoever. Successors and assigns include heirs, executors, administrators and personal representatives.

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale, effective the Closing Date described in the aforementioned Asset Purchase Agreement.

**SELLER: SELLERS LLC**  
And SELLERS NAME

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SELLERS NAME

**PURCHASER: BUYERS LLC and BUYERS NAME**

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BUYERS NAME

## EXHIBIT "C"

Attached to and made a part of that certain Asset Purchase Agreement by and between SELLERS LLC and SELLERS NAME and **BUYERS LLC** and BUYERS NAME.

### RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (the "Restrictive Covenant Agreement") is entered into by and between SELLERS NAME ("Covenantor") and BUYERS NAME (hereinafter referred to as "Purchaser.")

WHEREAS, Purchaser and Covenantor have simultaneously executed the attached Asset Purchase Agreement through which Purchaser has acquired the NAME OF BUSINESS company NAME OF BUSINESS of Phoenix from the Seller.

WHEREAS, Covenantor, as an incentive for Purchaser to acquire the Business, makes, gives and agrees to these covenants respecting competition and solicitation, all ancillary to the sale of the Practice in favor of Purchaser.

NOW, THEREFORE, in consideration of the premises as well as the parties' respective promises, representations, covenants and warranties, the performance of each unto the other, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.           RESTRICTIVE COVENANT: In consideration of and in conjunction with the sale of the Business and its Assets, and particularly the sale of the goodwill of SELLERS LLC and in order to insure the Purchaser the beneficial enjoyment of that goodwill, Covenantor hereby grants the following restrictive covenant (the "Restrictive Covenant").
  - A.           Covenantor hereby individually covenants and agrees not solicit businesses, bankers, or any referral sources for any type of business loan or line of credit or other financial product for the purpose of brokering out, placing, and referring for these financial products within the State of Arizona for a period of 36 months after close.
  
2.           RESTRICTIVE COVENANT PAYMENT: As consideration for granting this Restrictive Covenant, Purchaser shall pay directly to SELLERS NAME the sum of one thousand dollars (\$1,000, the "Restrictive Covenant Payment"), which is included in the total purchase price.

3.           WAIVER OF RIGHT TO PROTEST: The restrictive covenants contained herein are ancillary to a sale of the Practice, and particularly to the sale of the goodwill of SELLERS NAME and are to be construed as cumulative with those set forth in any other agreements between the parties hereto. Covenantor expressly agrees that the duration, geographical limitations and description of the prohibited conduct described in this Restrictive Covenant Agreement are reasonable and that Covenantor has received valuable consideration for the warranties and covenants contained herein. Covenantor further expressly waives the right to protest the reasonableness of the limitations, warranties, geographical limitations and prohibited conduct specified in this Restrictive Covenant Agreement.
  
4.           SPECIFIC PERFORMANCE: Any breach of the warranties and covenants contained herein shall be subject to specific performance by temporary as well as permanent injunction or other equitable remedies by a court of competent jurisdiction, and which injunctions may be sought prior to resorting to arbitration of any such breach. The obtaining of any such injunction shall not prevent the obtaining party from also seeking and obtaining any damages incurred as a result of such breach, either prior to or after obtaining such injunction. If any court of competent jurisdiction determines that either party has breached any of the foregoing covenants, then that party shall pay all reasonable costs of enforcement of the foregoing covenants including, but not limited to, court costs and reasonable attorneys' fees, including such costs and fees through any appeals.

IN WITNESS WHEREOF, Covenantor has executed this Restrictive Covenant Agreement on the aforementioned Signature Date.

**SELLER:**

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SELLERS NAME

**PURCHASER:**

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BUYERS NAME

## **EXHIBIT “D”**

### **ADDITIONAL PROVISIONS AND MODIFICATIONS**

Any provisions set forth in the Asset Purchase Agreement which are contrary to the provisions set forth in this Exhibit “D”, shall be void and have no effect.

Seller is to pay NAME OF BUSINESS the transfer fee. Transfer fee will be paid by seller upon receipt of \$66,000 from purchaser. Seller will pay NAME OF BUSINESS in a method directed by NAME OF BUSINESS.

**SELLER: SELLERS LLC**

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SELLERS NAME

**PURCHASER: BUYERS LLC and BUYERS NAME**

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BUYERS NAME