

ASSET PURCHASE AGREEMENT¹

This ASSET PURCHASE AGREEMENT ("Agreement") is dated as of the ____ day of _____, 20__, by and between XYZ Pharmacy, Inc., a ____ Corporation ("Buyer"), and ABC Pharmacy, Inc., a ____ Corporation ("Seller").

Background

Seller is in the business of providing prescription drugs, over-the-counter drugs, and related health care items ("Business").

Seller desires to sell certain assets of Seller's Business, and Buyer desires to purchase such assets, on the terms and conditions set forth in this Agreement.

Terms

In consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, Seller and Buyer agree as follows:

1. **PURCHASE AND SALE OF ASSETS.**

1.1 Purchased Assets. On the Closing Date (as defined in Section 6.1), Seller will sell to Buyer, and Buyer will purchase from Seller, free and clear of all claims, liens and encumbrances, the following assets (the "Purchased Assets") related to Seller's Business:

- (a) Inventory of Seller set out in Schedule 1.1(a).
- (b) Non-inventory assets of Seller set out in Schedule 1.1(b).
- (c) Files of all current customers of the Business set out in Schedule 1.1(c).
- (d) List of Seller's former customers, who are no longer receiving services from Seller, set out in Schedule 1.1(d).

1.2 Excluded Assets. The following assets are excluded from the purchase and sale, and Seller will retain title to such assets:

- (a) All accounts receivable.
- (b) All rights to bill and collect from patients and third-party payors for services rendered before the Closing Date.

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(c) All contracts and agreements, including without limitation third-party payor agreements, space leases, equipment leases, and supply contracts.

(d) All provider numbers, permits, licenses, trademarks, service marks, and trade names.

(e) All cash and cash equivalents.

(f) All other assets of Seller not listed in Section 1.1.

1.3 Liabilities. Buyer will not assume any liabilities of Seller, and Seller will remain responsible for all liabilities of Seller, whether related to Seller's business or otherwise.

1.4 Purchase Price. The purchase price for the Purchased Assets will be \$_____, payable as follows: \$_____ by certified check or wire transfer at closing; \$_____ pursuant to the attached Promissory Note.

1.5 Effective Date. The sale and purchase of the Purchased Assets will be effective as of 12:01 a.m. on _____, 20__.

2. REPRESENTATIONS AND WARRANTIES.

2.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

(a) Title. Seller has good and marketable title to the Purchased Assets, free of any encumbrance, with full right and power to sell the Purchased Assets.

(b) Authority. Seller has full power and authority to execute, deliver, and perform this Agreement, and upon execution and delivery, this Agreement will be a legally binding obligation of Seller enforceable in accordance with its terms.

(c) Consents and Approvals. No consent or approval of any person, including any governmental authority, is required for the execution and delivery of this Agreement by Seller and the performance of Seller's obligations under this Agreement.

(d) No Encumbrances; No Litigation. There are no liens or encumbrances of any kind affecting the Purchased Assets. There are no pending, outstanding, or threatened claims, suits, proceedings, judgments or orders against or involving Seller or any of the Purchased Assets that will materially adversely affect the Purchased Assets or Seller's ability to fulfill its obligations under this Agreement.

(e) Due Diligence Information. Seller will allow Buyer to review files prior to closing attesting that the financial and other information provided by Seller to Buyer concerning Seller's Business is accurate in all material respects. Buyer shall be allowed to randomly choose the files it would like to review.

(f) Customers. Schedule 1.1(c) contains a list of all current active customers of Seller's Business. Schedule 1.1 (d) contains a list of all customers of Seller's Business who are no longer receiving services from Seller.

(g) Representations Complete. None of the representations or warranties made by Seller in this Agreement contains, or will contain at the Closing Date, any untrue statement of a material fact, or omits or will omit at the Closing Date to state any material fact.

2.2. Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

(a) Authority. Buyer has all necessary authority to execute, deliver and perform this Agreement and upon execution and delivery, this Agreement will be a legally binding obligation of Buyer enforceable in accordance with its terms.

(b) Consents and Approvals. No consent or approval of any person, including any governmental authority, is required for the execution and delivery of this Agreement by Buyer and the performance of Buyer's obligations under this Agreement.

(c) No Violation. The execution and delivery of this Agreement do not and Buyer's performance of its obligations under this Agreement will not conflict with or result in a breach of or constitute a default under any agreement or instrument to which Buyer is a party or by which Buyer may be bound, or any judgment or order of any court or governmental agency, or any applicable law, rule or regulation.

3. COVENANTS.

3.1 Covenants of Seller. Seller covenants that from and after the date of this Agreement until the Closing Date:

(a) Best Efforts. Seller will use its best efforts to cause all of the conditions to closing set forth in section 4.1 to be satisfied on or before the Closing Date.

(b) Operation Pending Closing. From the date of execution of this Agreement through the Closing Date, Seller will conduct its Business only in the ordinary course and consistent with past practice, will maintain its assets in at least as good order and condition as existed on the date of this Agreement, and will comply with all laws, rules and regulations applicable to their businesses or assets.

3.2 Covenants of Buyer. Buyer covenants that from and after the date of this Agreement until the Closing Date. Buyer will use its best efforts to cause all of the conditions to closing set forth in section 4.2 to be satisfied on or before the Closing Date.

4. CONDITIONS TO CLOSING.

4.1 Conditions to Buyer's Obligation to Close. The obligation of Buyer to close the purchase of the Purchased Assets is subject to the satisfaction, on or before the Closing Date, of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of Seller in this Agreement and all other information delivered under this Agreement will be true in all material respects at and as of the Closing Date as though each representation, warranty, and disclosure were made and delivered at and as of the Closing Date.

(b) Compliance With Conditions. Seller will have complied with and performed all agreements, covenants, and conditions in this Agreement required to be performed and complied with by Seller. Seller will have taken all actions and received all approvals required for Seller to sell the Purchased Assets as provided in this Agreement.

(c) No Adverse Change. There will have been no material adverse change in Seller's Business or in the Purchased Assets.

(d) No Litigation. No legal or administrative suit or proceeding will have been commenced or threatened relating to any of the transactions contemplated by this Agreement.

(e) Consents of Others. Seller will provide to Buyer written consents from all persons whose consent is required with respect to the consummation of this transaction by Seller.

4.2 Conditions to Seller's Obligation to Close. The obligation of Seller to close the sale of the Purchased Assets is subject to the satisfaction, on or before the Closing Date, of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of Buyer in this Agreement and all other information delivered under this Agreement will be true in all material respects at and as of the Closing Date as though each representation, warranty, and disclosure were made and delivered at and as of the Closing Date.

(b) Compliance With Conditions. Buyer will have complied with and performed all agreements, covenants, and conditions in this Agreement required to be performed and complied with by Buyer. Buyer will have taken all actions and received all approvals required for Seller to sell the Purchased Assets as provided in this Agreement.

(c) No Litigation. No legal or administrative suit or proceeding will have been commenced or threatened relating to any of the transactions contemplated by this Agreement.

5. CLOSING.

5.1 Time and Place of Closing. The closing of the purchase and sale of assets will take place at a location agreed upon by both parties on or before _____, 20__, or at such other time and place as Seller and Buyer may agree (the "Closing Date").

5.2 Seller's Deliveries. At the Closing, Seller will deliver to Buyer:

(a) A bill of sale in the form attached as Exhibit A, sufficient to convey to Buyer all of Seller's right, title, and interest in and to all of the Purchased Assets.

(b) All documentation in the possession of Seller necessary to operate and to use the Purchased Assets.

(c) All of the customer lists, records, files and other documents, books and records that are part of the Purchased Assets.

(d) Such other instruments and documents as may be reasonably required to consummate the transactions contemplated by this Agreement.

5.3 Buyer's Deliveries. At the Closing, Buyer will deliver to Seller the first installment of the Purchase Price, in the amount of \$_____, by certified check or wire transfer. At the Closing, Buyer will execute the Promissory Note attached hereto.

6. POST-CLOSING OBLIGATIONS.

6.1 Further Assurances. Upon Buyer's request, Seller will execute, acknowledge, deliver and record such further instruments and do such further acts as may be reasonably necessary, desirable or proper to carry out the intent of this Agreement.

6.2 Access to Records. From and after the Closing Date, Seller will allow Buyer and its counsel, accountants, and other representatives access to records that are in the custody or control of Seller as reasonably required for Buyer to comply with its legal obligations or when reasonably necessary for the operations of Buyer's business.

6.3 Cooperation with Patient Transfer. Seller agrees to personally contact the current customers of Seller subject to this Agreement, using Seller's best efforts to effectuate the expeditious transfer of said patients to Buyer. Such contacts shall be in all respects consistent with applicable laws and regulations. Seller further agrees to execute and send the attached patient transfer letter within three (days) of the closing of this transaction.

7. MISCELLANEOUS.

7.1 Survival of Representations, Warranties, and Covenants. The representations, warranties, covenants, and agreements of the parties contained in this Agreement or in any writing delivered pursuant to this Agreement will survive the Closing Date.

7.2 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding on and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

7.3 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of _____.

7.4 Amendment; Waiver. This Agreement may be amended only by a writing executed by authorized officers of both parties. No waiver of any provision of this Agreement will arise from any action or inaction of any party, except an instrument in writing expressly waiving the provision executed by the party entitled to the benefit of the provision.

7.5 Entire Agreement. This Agreement, together with the schedules and other documents delivered pursuant to this Agreement, constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written.

7.6 Notices. All notices required or permitted pursuant to this Agreement will be in writing and will be delivered personally, by nationally-recognized overnight delivery service with signed evidence of receipt, or by registered or certified mail, return receipt requested, postage prepaid as follows:

If to Seller: ABC Pharmacy, Inc.

Attn.: _____

If to Buyer: XYZ Pharmacy, Inc.

Attn.: _____

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of _____, 20__.

SELLER:

ABC Pharmacy, Inc.

By: _____
Name, Title

BUYER:

XYZ Pharmacy, Inc.

By: _____
Name, Title