

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
Vitamin World, Inc., <i>et al.</i> , <sup>1</sup>	)	Case No. 17-11933 (KJC)
Debtors.	)	Jointly Administered
	)	<b>Re: Docket Nos. 374 and 550</b>
	)	

**ORDER (I) APPROVING AND AUTHORIZING SALE OF SUBSTANTIALLY ALL OF DEBTORS' ASSETS PURSUANT TO SUCCESSFUL BIDDER'S ASSET PURCHASE AGREEMENT, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO, AND (III) GRANTING RELATED RELIEF**

This matter is before the Court on the Motion of the above-captioned debtors (the "Debtors") pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the "Bankruptcy Rules"), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the Bankruptcy Court for the District of Delaware (the "Local Rules"), for Entry of an Order (I) Approving the Sales or Other Acquisition Transactions for the Assets, (II) Authorizing the Sales Free and Clear of All Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief (the "Sale Motion")<sup>2</sup> [Dkt. No. 374]; and the Court having heard statements of counsel, the testimony and the evidence

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<sup>1</sup> Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vitamin World, Inc. (2283); VWRE Holdings, Inc. (8915); VW Interholdings, Inc. (4744); VW Online, Inc. (8763); Precision Engineered Limited (USA) (0916); Vitamin World (V.I.), Inc. (9839); Vitamin Depot, LLC (6747); Vitamin World of Guam, LLC (2056); and Nutrition Warehouse, Inc. (5095). Debtors' mailing address is 4320 Veterans Highway, Holbrook, NY 11741.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or the Final APA (as defined below), as applicable.

presented or proffered in support of the relief requested by the Debtors in the Sale Motion at a hearing before the Court on December 21, 2017 (the "Sale Hearing"); and it further appearing that the legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon,

**THE COURT HEREBY FINDS AND DETERMINES THAT:**

**Determination with Respect to the Findings of Fact and Conclusions of Law**

A. The findings of fact and conclusions of law set forth in this Order constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are hereby adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are hereby adopted as such. Any findings of fact or conclusions of law stated by the Court on the record at the Sale Hearing are hereby incorporated, to the extent they are not inconsistent with this Order.

**Jurisdiction, Final Order and Statutory Predicates**

B. The Court has jurisdiction to hear and determine the Sale Motion and over the Debtors, their estates and the Acquired Assets, as defined in the Final APA, including, without limitation, the Transferred Contracts and Assumed Leases, pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a) and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent

necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth in this Order.

D. The statutory predicates for the relief requested in the Sale Motion are sections 105(a), 363(b), (f) and (m) and 365 of the Bankruptcy Code and Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9007 and 9014.

E. On November 21, 2017, the Court entered the *Order (I) Scheduling a Hearing to Consider Approval of the Sale or Sales of Substantially All of the Debtors' Assets and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures, Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, and (III) Granting Related Relief* (the "Bidding Procedures Order") [Dkt. No. 443].

F. Also on November 21, the Court entered the *Order Authorizing (I) The Employment and Retention of SSG Advisors, LLC as Investment Banker to the Debtors Nunc Pro Tunc to November 7, 2017 and (II) a Waiver of Compliance with Certain Requirements of Local Rule 2016-2* [Dkt. No. 438].

G. The Acquired Assets constitute property of the Debtors' estates, and title to the Acquired Assets is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code.

H. In the absence of a stay pending appeal, the Successful Bidder, is a good faith purchaser under section 363(m) of the Bankruptcy Code and as such may close the transaction contemplated by the *Asset Purchase Agreement*, dated as of December 8, 2017 [Dkt. No. 483],

by and among Debtor Vitamin World, Inc. and its affiliated Debtor Subsidiaries, as Sellers, and Vitamin World USA Corporation ("Successful Bidder"), as Buyer (as may be amended from time to time, the "Final APA," a copy of which is attached hereto as Exhibit A), at any time on or after entry of this Sale Order, and cause has been shown as to why this Sale Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

**Notice of the Sale, Sale Hearing and the Cure Amounts**

I. Actual written notice of the Sale Motion and a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein have been afforded to all known interested persons and entities, including, but not limited to the following parties: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Official Committee of Unsecured Creditors (the "Committee"); (iii) counsel to the Debtors' prepetition secured lender and DIP Agent, Wells Fargo Bank, National Association (the "DIP Agent"); (iv) each of the Debtors' thirty (30) largest creditors on a consolidated basis; (v) all applicable federal, state, and local taxing and regulatory authorities having jurisdiction over the Assets; (vi) all parties known to the Debtors who hold any liens or security interests in the Debtors' Assets who have filed UCC-1 financing statements against the Debtors, or who, to the Debtors' knowledge, have asserted any liens on any of the Debtors' Assets; (vii) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. *See* Dkt. No. 385.

J. In accordance with the provisions of the Bidding Procedures Order, the Debtors have served the *Notice of Sale of Assets* [Dkt No. 446] and the *Amended Notice of Sale of Assets* [Dkt. No. 494] (collectively, (the "Sale Notice") on the following parties: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Committee; (iii) counsel to

the DIP Agent; (iv) all parties known by the Debtors to assert a lien on any of the Acquired Assets; (v) all persons known or reasonably believed to have asserted an interest in any of the Acquired Assets, (vi) all non-Debtor parties to any potentially assumed executory contracts and unexpired leases; (vii) all persons known or reasonably believed to have expressed an interest in acquiring all or any portion of the Acquired Assets or making an equity or other investment in the Debtors within the twelve (12) months prior to the Petition Date; (viii) the Office of the United States Attorney for the District of Delaware; (ix) the Office of the Attorney General in each state in which the Debtors operate; (x) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (xi) all taxing authorities having jurisdiction over any of the Acquired Assets, including the Internal Revenue Service; (xii) all regulatory authorities having jurisdiction over any of the Acquired Assets; (xiii) the Securities and Exchange Commission; (xiv) the United States Attorney General/Antitrust Division of Department of Justice; (xv) the United States Environmental Protection Agency and similar agencies for each state in which the Acquired Assets are located; and (xi) all other parties that had filed a notice of appearance and demand for service of papers as of the date of service of the Sale Notice. *See* Dkt. No. 450. The Sale Notice provided all interested parties with timely and proper notice of the Sale, Sale Objection Deadline, Bid Deadline, Auction, and Sale Hearing.

K. In accordance with the provisions of the Bidding Procedures Order, the Debtors served the *Notice of Assumption, Assignment and Cure Amount With Respect to Executory Contracts and Unexpired Leases of the Debtors* [Dkt. No. 456] (the "Cure Notice"), upon each counterparty to any potentially assumed executory contract and unexpired lease and its counsel (if known) (the "Contract Counterparties"). *See* Dkt. No. 457. The Cure Notice (i) stated the date, time and place of the Auction and Sale Hearing, (ii) listed each potentially assumed

executory contract and unexpired lease, (iii) specified the date by which any objection to the assumption and assignment of any potentially assumed executory contract or unexpired lease must be filed and served, and (iv) identified the amount, if any, that the Debtors believe is owed to each Contract Counterparty in order to cure any monetary defaults thereunder (the "Cure Amounts") pursuant to section 365 of the Bankruptcy Code. The Cure Notice further notified the Contract Counterparties that information regarding the identity of the Successful Bidder, along with the Adequate Assurance Information to be provided by the Successful Bidder, would be provided by the Debtors via e-mail or fax within an hour of the closing of the Auction if such Contract Counterparties notified the Debtors in writing of a request to receive such information. Pursuant to Bankruptcy Rule 6006(c), the Court finds that the service of the Cure Notice was adequate, sufficient and appropriate under the circumstances, in compliance with the Bidding Procedures Order, and no further notice need be given in respect of establishing the Cure Amounts. The Contract Counterparties have had an opportunity to object to the Cure Amounts set forth in the Cure Notice. The Debtors served the Adequate Assurance Information of the Successful Bidder on December 15, 2017. *See* Dkt. Nos. 516, 517.

L. As evidenced by the affidavits of service previously filed with the Court, proper, timely, adequate and sufficient notice of the Sale Motion, Auction, Sale Hearing, and Sale has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014. The Debtors also have complied with all obligations to provide notice of the contemplated Auction, the Sale Hearing and the Sale as required by the Bidding Procedures Order. The notices described in Paragraphs I through K herein were adequate, sufficient and appropriate under the circumstances, and no other or further notice of the Sale Motion, Sale Hearing, Sale or assumption and assignment of the potentially

assumed executory contracts and unexpired leases is required, other than a notice of a final schedule of the Transferred Contracts and Assumed Leases.

M. The Cure Notice provided the Successful Bidder and each Contract Counterparty with proper notice of the potential assumption and assignment of the Transferred Contracts and Assumed Leases and any Cure Amounts relating thereto, and the procedures set forth therein with regard to any such Cure Amounts satisfy section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

N. The Debtors have articulated good and sufficient reasons for the Bankruptcy Court to grant the relief requested in the Sale Motion.

O. The disclosures made by the Debtors concerning the Sale Motion, the Sale, the Final APA, and the Sale Hearing, were good, complete and adequate.

**Good Faith of the Successful Bidder**

P. The Successful Bidder is purchasing the Acquired Assets in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and is, therefore, entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that, *inter alia*: (a) the Successful Bidder recognized that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets; (b) the Successful Bidder complied with the provisions in the Bidding Procedures Order; (c) the Successful Bidder agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (d) the Successful Bidder did not induce or cause the chapter 11 filing by any of the Debtors; (e) all payments to be made by the Successful Bidder and other agreements or arrangements entered into by the Successful Bidder in connection with the Sale have been disclosed; (f) the Successful Bidder has not violated section

363(n) of the Bankruptcy Code by any action or inaction; and (g) the negotiation and execution of the Final APA and any other agreements or instruments related thereto were at arms' length and in good faith.

**Highest or Otherwise Best Offer**

Q. The Debtors solicited offers and noticed the Auction in accordance with the provisions of the Bidding Procedures Order. The Auction was duly noticed, the sale process was conducted in a non-collusive manner, and the Debtors afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Acquired Assets.

R. No other Qualified Bid was received by the Bid Deadline. Accordingly, on December 19, 2017, the Debtors filed the *Notice of Successful Bidder* [Dkt. No. •] with the Court.

S. The Final APA constitutes the highest or otherwise best offer for the Acquired Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination, in consultation with the Committee and the DIP Agent, that the Final APA constitutes the highest or best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment.

T. The Final APA represents a fair and reasonable offer to purchase the Acquired Assets, including the Transferred Contracts and Assumed Leases, under the circumstances of these Chapter 11 Cases. No other person or entity or group of entities has offered to purchase the Acquired Assets for greater economic value to the Debtors' estates than the Successful Bidder.



U. Approval of the Sale Motion and the Final APA and the consummation of the transactions contemplated thereby is in the best interests of the Debtors, their creditors, their estates and other parties in interest.

V. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale outside of a plan of reorganization.

**No Fraudulent Transfer**

W. The consideration provided by the Successful Bidder pursuant to the Final APA is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession and the District of Columbia. The Final APA was not entered into and will not be consummated for the purpose of hindering, delaying or defrauding creditors of the Debtors, and neither the Debtors nor the Successful Bidder has entered into the Final APA or is consummating the transactions contemplated thereby with any fraudulent or otherwise improper purpose.

**Validity of Transfer**

X. The Debtors have full corporate power and authority to execute and deliver the Final APA and all other documents contemplated thereby, and no further consents or approvals are required for the Debtors to consummate the transactions contemplated by the Final APA, except as otherwise set forth in the Final APA.

Y. The transfer of each of the Acquired Assets, including the Transferred Contracts and Assumed Leases, to the Successful Bidder will be, as of the Closing Date, a legal, valid and effective transfer of such assets and will vest the Successful Bidder with all right, title and interest of the Debtors to the Acquired Assets free and clear of all Encumbrances (as defined

below) accruing, arising or relating to any time prior to the Closing Date, except for any Permitted Liens and Assumed Liabilities under the Final APA.

**Section 363(f) of the Bankruptcy Code Is Satisfied**

Z. The Successful Bidder would not have entered into the Final APA and would not consummate the transactions contemplated thereby (by paying the Purchase Price and assuming the Assumed Liabilities) if the sale of the Acquired Assets to the Successful Bidder, and the sale and assumption and assignment of the Transferred Contracts and Assumed Leases to the Successful Bidder, were not, except as otherwise provided in the Final APA with respect to the Assumed Liabilities, free and clear of all Encumbrances of any kind or nature whatsoever, or if the Successful Bidder would, or in the future could, be liable for any of such Encumbrances, including, but not limited to the following (except and only to the extent expressly provided in the Final APA or this Order): (1) all of the Sellers' Cure Amounts; (2) any Liability not relating to or arising out of the Business or the Acquired Assets; (3) any Liability of the Debtors for Taxes; (4) any Liabilities under the Final APA or any Related Agreement and the transactions contemplated thereby; (5) any Liability associated with any indebtedness or guarantees of third party obligations and reimbursement obligations to guarantors of the Debtors' obligations or under any letters of credit of any Debtor; (6) any Liabilities related to any executory contracts or unexpired leases that accrued prior to the Closing or are not obligations arising under the Transferred Contracts or Assumed Leases first arising on or after the Closing Date; (7) all Liabilities (i) for fees, costs and expenses incurred and/or owed in connection with the Final APA or the administration of the Bankruptcy Cases, (ii) administrative expenses and priority claims accrued through the Closing Date and specified post-closing administrative wind-down expenses of the Estates, and (iii) costs and expenses incurred in connection with the Final APA,

the DIP Credit Agreement, and the consummation of the transactions contemplated by the Final APA; (8) all employee and employment-related Liabilities, including, without limitation for (i) Company WARN Payments, (ii) Company Severance Payments, (iii) Company PTO Payments; (iv) all Liabilities related to the termination of employment of Company “insiders” as defined by the Bankruptcy Code; (v) all Company Benefit Plans; and (vi) all Liabilities with respect to any terminated employee under COBRA; (9) all Liabilities of the Debtors to their equity holders for dividends, distributions in liquidation, redemptions of interest, option payments, or otherwise, or pursuant to any Affiliate Agreement; (10) all Liabilities for any business or property formerly owned or operated by the Debtors, their Affiliates or predecessors but not owned and operated by the Debtors as of the Closing Date; (11) all Liabilities related to any claims, action, suit, or other proceeding involving the Acquired Assets, the Business, the Company, or any of the Debtors’ assets or properties that is not filed, initiated or threatened prior to Closing and which relate to facts, events or circumstances existing prior to Closing; (12) all Liabilities arising under Environmental Laws related to facts, events or circumstance existing prior to Closing; (13) accounts payable; (14) Liabilities to any employees existing prior to Closing, with the exception of vacation, sick leave, parental leave, and other paid time accrued by Transferred Employees as set forth in the Final APA; and (15) all Liabilities of the Debtors or their predecessors arising from any contract, agreement, Permit, franchise, or claim not transferred to Successful Bidder as part of the Acquired Assets or not transferred to Successful Bidder for failure to obtain any required consents.

AA. The Successful Bidder (i) is not, and shall not be considered, a successor to the Debtors, (ii) has not, *de facto* or otherwise, merged with or into the Debtors, (iii) is not a continuation or substantial continuation, and is not holding itself out as a mere continuation, of

any of the Debtors or their respective estates, businesses or operations, or any enterprise of the Debtors, and (iv) does not have a common identity of incorporators, directors or equity holders with the Debtors. The Successful Bidder shall have no, and shall not be deemed to have or to have assumed or become obligated by operation of law or in equity for, any Liability or Encumbrance except as expressly assumed under the Final APA.

BB. The Debtors may sell the Acquired Assets, including the Transferred Contracts and Assumed Leases, free and clear of all Encumbrances (except for the Assumed Liabilities) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of the Encumbrances who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Encumbrances, if any, attach to the cash proceeds of the Sale attributable to the Acquired Assets in which such holder alleges an Encumbrance, in the same order of priority, with the same validity, force and effect that such Encumbrance had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto and by having proceeds applied in accordance with Paragraph 25 of this Order.

**Assumption and Assignment of Executory Contracts and Leases**

CC. The sale and assumption and assignment of the Transferred Contracts and Assumed Leases pursuant to the terms of this Order is integral to the Final APA, is in the best interests of the Debtors and their estates, creditors and other parties in interest and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

DD. Pursuant to the terms of the Final APA, at Closing, the Debtors shall assume and assign to the Successful Bidder each of the Transferred Contracts and Assumed Leases identified in Schedule 2.7(b) of the Final APA that is capable of being assumed and assigned. The Successful Bidder shall pay as part of the Purchase Price an amount equal to one-half of all Cure Amounts listed on Schedule 2.7(b) of the Final APA in excess of \$2,400,000 from the Escrow Account, in connection with such assumption and assignment. The Debtors shall pay promptly all Cure Amounts. The Successful Bidder shall assume and perform and discharge the Assumed Liabilities, if any, under the Transferred Contracts and Assumed Leases, including pursuant to any contract or lease assignment agreements, as applicable. The Successful Bidder has provided adequate assurance of its future performance under the Transferred Contracts and Assumed Leases within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code to any counterparty to a Transferred Contract or Assumed Lease that requests such assurance and shall have no further obligation to provide assurance of performance to any counterparty, except to the extent of timely- filed objections to such adequate assurance information.

**Compelling Circumstances for an Immediate Sale**

EE. To enhance the Debtors' level of liquidity, to preserve the value of the Debtors' estates and reduce the amount of postpetition financing borne by the Debtors, and to maximize the amount of funding available to provide for a timely exit from these Chapter 11 Cases, it is essential that the Sale of the Acquired Assets occur within the time constraints set forth in the Final APA. Time is of the essence in consummating the Sale.

FF. Given all of the circumstances of these Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the Final APA, the proposed Sale of the Acquired Assets

to the Successful Bidder constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

GG. The Sale does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it does not propose to (i) impair or restructure existing debt of, or equity interests in, the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the Debtors, (iii) circumvent chapter 11 safeguards, including those set forth in sections 1125 and 1129 of the Bankruptcy Code, or (iv) classify claims or equity interests.

HH. The consummation of the Sale is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the Sale.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

**General Provisions**

1. The relief requested in the Sale Motion is GRANTED AND APPROVED as set forth in this Order, and the Sale contemplated thereby is APPROVED.
2. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order and above are fully incorporated into this Order by reference.
3. Notice of the Sale Motion, the Sale Hearing, and the Sale was adequate, fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006. All objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights

included therein, are hereby overruled on the merits or have been otherwise satisfied or adequately provided for.

**Approval of the Final APA**

4. The Final APA and the terms and conditions thereof are hereby APPROVED, and the Debtors are authorized to enter into all Related Agreements and such other ancillary documents consistent with the terms hereof and in furtherance thereof.

5. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to (i) consummate the Sale of the Acquired Assets to the Successful Bidder pursuant to and in accordance with the terms and conditions of the Final APA, (ii) close the Sale as contemplated in the Final APA and this Order, and (iii) execute and deliver, perform under, consummate, implement and close the Final APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Final APA and the Sale or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Final APA and such ancillary documents.

6. This Order shall be binding in all respects upon the Debtors, their estates, all holders of equity interests in any Debtor, all holders of any Claim(s) (as defined in the Bankruptcy Code) against any Debtor, whether known or unknown, any holders of Liens (as defined in the Bankruptcy Code) and Encumbrances on all or any portion of the Acquired Assets, all Contract Counterparties, the Successful Bidder, all successors and assigns of the Successful Bidder, any other bidders for the Acquired Assets, any trustees, if any, subsequently appointed in any of the Debtors' Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases, and all employee benefit plans in which the Debtors participated. This Order and the Final APA shall inure to the benefit of the Debtors, their estates,

their creditors, the Successful Bidder and their respective successors and assigns. Unless otherwise ordered by the Court, nothing contained in any plan of reorganization or liquidation or order of any type or kind entered in these Chapter 11 Cases or any subsequent chapter 7 or chapter 11 case for any of the Debtors or any related proceedings subsequent to the entry of this Order shall directly conflict with or derogate from the provisions of the Final APA or the terms of this Order.

**Transfer of the Acquired Assets**

7. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Acquired Assets on the Closing Date. The Acquired Assets (including the Transferred Contracts and Assumed Leases) shall be transferred to the Successful Bidder upon and as of the Closing Date, and such transfer shall constitute a legal, valid, binding and effective transfer of such Acquired Assets and, upon the Debtors' receipt of the Purchase Price, shall be free and clear of all Liens, Claims, interests, rights of setoff, netting and deductions, rights of first offer, first refusal and any other similar contractual rights, and any successor or successor-in-interest liability theories (collectively, the "Encumbrances"), except for the Assumed Liabilities under the Final APA. Notwithstanding any provision in the Final APA, the transfer of the Acquired Assets shall not be free and clear of the right of recoupment. Upon the Closing, the Successful Bidder shall take title to and possession of the Acquired Assets subject only to the Assumed Liabilities; provided, however, that the Successful Bidder shall not be relieved of liability with respect to the Assumed Liabilities and any obligations accruing under the Transferred Contracts and Assumed Leases as provided in paragraph 19 of this Order. All Encumbrances shall attach to the proceeds of the Sale with the same validity, priority, force and effect that they now have as against the Acquired Assets, subject to any claims and defenses the Debtors and their estates may possess with respect



thereto and subject to application of such proceeds in accordance with Paragraph 24 of this Order; provided, further, notwithstanding anything to the contrary in this Order, and subject to the provisions of section 362 of the Bankruptcy Code, any rights of third parties, including landlords, to seek coverage under any existing insurance policy of the Debtors are reserved, to the extent such coverage is available.

8. The Sale of the Acquired Assets to the Successful Bidder, and the sale and assumption and assignment of the Transferred Contracts and Assumed Leases to the Successful Bidder, shall be, except as otherwise provided in the Final APA and this Order, free and clear of all Encumbrances of any kind or nature whatsoever, including, but not limited to, in respect of the following: (1) all of the Sellers' Cure Amounts; (2) any Liability not relating to or arising out of the Business or the Acquired Assets; (3) any Liability of the Debtors for Taxes; (4) any Liabilities under the Final APA or any Related Agreement and the transactions contemplated thereby; (5) any Liability associated with any indebtedness or guarantees of third party obligations and reimbursement obligations to guarantors of the Debtors' obligations or under any letters of credit of any Debtor; (6) any Liabilities related to any executory contracts or unexpired leases that accrued prior to the Closing or are not obligations arising under the Transferred Contracts or Assumed Leases first arising on or after the Closing Date; (7) all Liabilities (i) for fees, costs and expenses incurred and/or owed in connection with the Final APA or the administration of the Bankruptcy Cases, (ii) administrative expenses and priority claims accrued through the Closing Date and specified post-closing administrative wind-down expenses of the Estates, and (iii) costs and expenses incurred in connection with the Final APA, the DIP Credit Agreement, and the consummation of the transactions contemplated by the Final APA; (8) all employee and employment-related Liabilities, including, without limitation for (i) Company

WARN Payments, (ii) Company Severance Payments, (iii) Company PTO Payments; (iv) all liabilities related to the termination of employment of Company "insiders" as defined by the Bankruptcy Code; (v) all Company Benefit Plans; and (vi) all Liabilities with respect to any terminated employee under COBRA; (9) all Liabilities of the Debtors to their equity holders for dividends, distributions in liquidation, redemptions of interest, option payments, or otherwise, or pursuant to any Affiliate Agreement; (10) all Liabilities for any business or property formerly owned or operated by the Debtors, their Affiliates or predecessors but not owned and operated by the Debtors as of the Closing Date; (11) all Liabilities related to any claims, action, suit, or other proceeding involving the Acquired Assets, the Business, the Company, or any of the Debtors' assets or properties that is not filed, initiated or threatened prior to Closing and which relate to facts, events or circumstances existing prior to Closing; (12) all Liabilities arising under Environmental Laws related to facts, events or circumstance existing prior to Closing; (13) accounts payable; (14) Liabilities to any employees existing prior to Closing, with the exception of vacation, sick leave, parental leave, and other paid time accrued by Transferred Employees; and (15) all Liabilities of the Debtors or their predecessors arising from any contract, agreement, Permit, franchise, or claim not transferred to Successful Bidder as part of the Acquired Assets or not transferred to Successful Bidder for failure to obtain any required consents.

9. Except as expressly provided by the Final APA, all persons and entities holding Encumbrances on all or any portion of the Acquired Assets hereby are forever barred, estopped and permanently enjoined from asserting against the Successful Bidder or its successors or assigns, their property or the Acquired Assets, such Encumbrances and all claims and rights relating thereto. On the Closing Date, each holder of an Encumbrance is authorized and directed to execute such documents and take all other actions as may be deemed by the Successful Bidder

to be necessary or desirable to release its Encumbrances on the Acquired Assets, as provided for herein, as such Encumbrances may have been recorded or may otherwise exist.

10. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Acquired Assets, including the sale, assumption and assignment of the Transferred Contracts and Assumed Leases, to the Successful Bidder in accordance with the terms of the Final APA and this order.

11. All persons and entities that are in possession of some or all of the Acquired Assets on the Closing Date are directed to surrender possession of such Acquired Assets to the Successful Bidder or its assignee at the Closing.

12. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any Encumbrances of record.

13. If any person or entity that has filed statements or other documents or agreements evidencing Encumbrances on all or any portion of the Acquired Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens and easements and any other documents necessary or desirable to the Successful Bidder for the purpose of documenting the release of all Encumbrances, which the person or entity has or may assert with respect to all or any portion of the Acquired Assets, the Debtors are hereby authorized and directed, and the Successful Bidder is hereby authorized, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets.

14. This Order shall govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby authorized to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Final APA.

**Executory Contracts and Leases**

15. The Debtors are authorized and directed to assume and sell and assign the Transferred Contracts and Assumed Leases to the Successful Bidder free and clear of all Encumbrances, except for the Successful Bidder's obligation to pay certain applicable Cure Amounts, if any, and the obligations expressly provided for in paragraph 19 of this Order. With respect to each Transferred Contract and Assumed Lease, the payment of the applicable Cure Amount (if any) by the Debtors, or the Debtors and the Successful Bidder if the Cure Amount exceeds \$2,400,000 pursuant to the Final APA and Paragraph 16 of this Order, shall (a) effect a cure of all monetary defaults existing thereunder as of the Closing Date, (b) compensate the applicable Contract Counterparty for any actual pecuniary loss resulting from such default, and (c) together with the assumption of the Transferred Contracts and Assumed Leases by the Successful Bidder, constitute adequate assurance of future performance thereof; provided, however, that to the extent any counterparty to the Transferred Contracts and Assumed Leases timely interposed an objection to such Adequate Assurance Information, the hearing as to such objectors shall be continued until a further hearing before the Court. As of the

Closing Date, the Successful Bidder shall be deemed to have acquired and assumed the Transferred Contracts and Assumed Leases, pursuant to sections 363 and 365(f) of the Bankruptcy Code, the assignment by the Debtors of such Transferred Contracts and Assumed Leases shall not be a default thereunder and the Successful Bidder entitled to the protections afforded under section 363(m) of the Bankruptcy Code with respect thereto.

16. The Successful Bidder shall be liable for payment as part of the Purchase Price of one-half of all Cure Amounts in excess of \$2,400,000 (the "Buyer Cure Costs"). The Debtors shall be liable for all other Cure Amounts excluding the Buyer Cure Costs. The Debtors and the Successful Bidder shall cooperate concerning the resolution of disputed Cure Amounts.

17. Any provision in or effect of any Transferred Contract or Assumed Lease that prohibits or conditions the assignment of such Transferred Contract or Assumed Lease or allows the party to such Transferred Contract or Assumed Lease to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Transferred Contract or Assumed Lease, constitutes an unenforceable anti-assignment provision that is void and of no force and effect pursuant to section 365(f) of the Bankruptcy Code. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Successful Bidder of the Transferred Contracts and Assumed Leases have been satisfied, and such assumption and assignment shall not constitute a default thereunder. Upon the Closing and the payment of the required Cure Amounts, in accordance with sections 363 and 365 of the Bankruptcy Code, the Successful Bidder shall be fully and irrevocably vested with all right, title and interest of the Debtors under each Transferred Contract and Assumed Lease.

18. Notwithstanding anything in the Final APA to the contrary, the Successful Bidder may remove executory contracts and unexpired leases from the list of Transferred Contracts and Assumed Leases at any time until three (3) business days prior to the Closing Date.

19. Notwithstanding anything to the contrary contained in this Order, the Sale Motion or the Cure Notice, the Successful Bidder shall be obligated for any rent, fees, charges or other expenses or obligations arising or incurred in the ordinary course under any Transferred Contract or Assumed Lease, other than Cure Amounts, provided that such amounts become due and payable on or after the Closing Date, regardless of whether such amounts relate to a period of time prior to the assignment of the Transferred Contract or Assumed Lease to the Successful Bidder; provided, however, that all counter-parties to Transferred Contracts or Assumed Leases shall in good faith remit by the Closing Date an estimate, and recent three-year historical averages of, any and all such rent, fees, charges or other expenses or obligations arising or incurred in the ordinary course under any Transferred Contract or Assumed Lease that relate to the time prior to calendar year end.

20. Upon the Closing and the payment of the Cure Amounts applicable to any Transferred Contract or Assumed Lease, the Successful Bidder shall be deemed to be substituted for the relevant Debtor as a party to such Transferred Contract or Assumed Lease, and the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability to the Contract Counterparties under such Transferred Contract or Assumed Lease.

21. Upon the Closing and the payment of the applicable Cure Amounts, if any, the Transferred Contracts and Assumed Leases shall remain in full force and effect, and no default shall exist thereunder nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

22. Other than as provided under the Final APA, there shall be no rent accelerations or increases, assignment fees, deposits, increases (including advertising rates) or any other fees charged to the Successful Bidder or the Debtors as a result of the assumption and assignment (including any change in control) of the Transferred Contracts or Assumed Leases.

23. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtors, their estates, the Successful Bidder, or any of their respective successors and assigns any increased rent or fees, assignment fee, default, breach or claim or pecuniary loss or condition to assignment, arising under or related to the Transferred Contracts or Assumed Leases existing as of the Closing Date or arising by reason of the Closing.

24. Notwithstanding anything to the contrary in this Order or the Final APA (a) the Debtors shall not assume and assign any Transferred Contracts or Assumed Leases that are the subject to a timely asserted objection to the Successful Bidder's adequate assurance of future performance under Bankruptcy Code Section 365(b)(1)(C) absent the consent of the non-debtor party to such Transferred Contracts or Assumed Leases or further order of the Court, (b) upon the later to occur of: (i) entry of an order of the Court approving the Debtors' assumption and assignment of a Transferred Contract or Assumed Lease or (ii) the Closing Date, the Debtors shall pay the counter-party to any Transferred Contract or Assumed Lease the undisputed portion of the Cure Amount attributable to such Transferred Contract or Assumed Lease, with any disputed portion of such Cure Amount being escrowed by the Debtors pending either agreement among the non-debtor party to such Transferred Contract or Assumed Lease and the Debtors, or further order of the Court determining the allowed amount of such disputed Cure Amount, and (c) all timely asserted objections to the Successful Bidder's adequate assurance of future

performance under Bankruptcy Code Section 365(b)(1)(C) and to the Cure Amounts are fully preserved. Notwithstanding any provision to the contrary contained herein or in the Final APA, all pending objections timely filed by landlords and all rights under Bankruptcy Code section 365 and the leases are hereby preserved pending further resolution of the parties and/or Order of the Court and nothing herein shall prejudice the Successful Bidder's reliance on, among other things, advancing payment of January rent, purchasing GOB inventory on or prior to December 31, 2017, funding a cure escrow to the extent of \$2.5 million, funding a deposit in consideration of the purchase price to the extent of \$2.8 million, and capitalizing the Successful Bidder with \$5 million, in demonstrating that the Successful Bidder has provided adequate assurance of future performance under the Transferred Contracts and Assumed Leases.

**Payment of DIP Obligations**

25. In connection with the Closing of the transactions provided for under the Purchase Agreement and this Order, the Debtors are authorized and directed to pay the DIP Agent, for the benefit of the DIP Lenders, the proceeds of the sale as provided under the Final APA, which payment shall be in satisfaction of the DIP Obligations (as defined in that certain "*Final Order Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, 364, And 507 And Fed. R. Bankr. P. 2002, 4001 And 9014 (I) Authorizing Debtors And Debtors In Possession To Obtain Postpetition Financing, (II) Authorizing Use Of Cash Collateral, (III) Granting Liens And Super-Priority Claims, (IV) Granting Adequate Protection To Prepetition Secured Lenders; (V) Modifying the Automatic Stay; and (VI) Granting Related Relief*", dated November 9, 2017 [Dkt. No. 370] (the "Final DIP Order"). Upon the Closing of the transactions provided for under the Final APA this Order and the payment of sale proceeds in satisfaction of the DIP Obligations as provided herein, the respective Commitments of the DIP Lenders under the DIP Credit Agreement shall be



terminated, and neither the DIP Agent nor any DIP Lender shall be obligated to make any further Loan (as defined in the DIP Credit Agreement) or other extension of credit under the DIP Financing Agreements (as defined in the Final DIP Order). Upon the earlier to occur of the following: (x) January 19, 2018 or (y) the occurrence of a closing of the transactions provided for under the Final APA and this Order, the Debtors shall pay the DIP Agent, for the benefit of itself and the DIP Lenders, as their interests may appear, a DIP Facility extension fee of \$100,000, which fee shall be fully earned and non-refundable upon entry of this Order and payable in the amount and at the time provided herein. Except as provided in this Paragraph 24 and in Paragraphs 15-16 in respect of the Cure Amounts, the Debtors shall retain all sale proceeds pending order of this Court.

**Miscellaneous**

26. The Debtors and the Successful Bidder anticipate that the Closing shall take place on January 19, 2018. The Debtors and the Successful Bidder may extend the Closing Date past January 19, 2018 only upon further order of this Court.

27. Effective upon the Closing Date and except as otherwise provided by stipulations filed with or announced to the Court with respect to a specific matter, all persons and entities are forever prohibited and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Successful Bidder, its successors and assigns, or the Acquired Assets including without limitation the Transferred Contracts or Assumed Leases, with respect to (a) any Encumbrance arising prior to the Closing Date, (b) any theory of claim or remedy sounding in successor liability, or (c) revoking, terminating, failing or refusing to renew any license, permit or authorization to operate any of the Acquired Assets or conduct any of the businesses operated with the Acquired Assets.

28. Except as otherwise provided in this Order and to the maximum extent available under applicable law and to the extent provided for under the Final APA, the Successful Bidder shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Acquired Assets, including the Transferred Contracts or Assumed Leases and, to the maximum extent available under applicable law and to the extent provided for under the Final APA, all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been transferred to the Successful Bidder as of the Closing Date. All existing licenses or permits applicable to the Acquired Assets shall remain in place for the Successful Bidder's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred in accordance with applicable administrative procedures. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license relating to the operation of the Acquired Assets sold, transferred or conveyed to the Successful Bidder on account of the filing or pendency of these Chapter 11 Cases or the consummation of the Sale.

29. Except for the Permitted Liens and Assumed Liabilities, the Successful Bidder shall not have any liability for any obligation of the Debtors arising under or related to any of the Acquired Assets. Without limiting the generality of the foregoing, the Successful Bidder shall not be liable for any Claims against the Debtors or any of their predecessors or affiliates. By virtue of the Sale, the Successful Bidder and its affiliates, successors and assigns shall not be deemed or considered to (a) be a legal successor or otherwise be deemed a successor to any of the Debtors, (b) have, *de facto* or otherwise, merged with or into any or all Debtors or (c) be a continuation or substantial continuation, or be holding itself out as a mere continuation, of any of

the Debtors or their respective estates, businesses or operations, or any enterprise of the Debtors, in each case by any law or equity, and the Successful Bidder has not assumed nor is it in any way responsible for any liability or obligation of the Debtors or the Debtors' estates, except with respect to the Assumed Liabilities. The Successful Bidder shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of any of the Acquired Assets prior to the Closing.

30. [RESERVED].

31. The transactions contemplated by and consummated under the Final APA are undertaken by the Successful Bidder without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Transferred Contracts and Assumed Leases), unless such authorization and such Sale are duly stayed pending such appeal. The Successful Bidder is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code. The Final APA and the transactions contemplated thereby cannot be avoided under section 363(n) of the Bankruptcy Code. The Debtors and the Successful Bidder have not engaged in any conduct that would cause or permit the Final APA or the consummation of the transactions

contemplated thereby to be avoided, or costs or damages to be imposed, under section 3636(n) of the Bankruptcy Code.

32. Pursuant to Bankruptcy Rules 6004(h), 6006(d), 7062 and 9014, this Order shall be effective immediately upon its entry, and the Debtors and the Successful Bidder are authorized to close the Sale immediately upon entry of this Order.

33. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

34. The failure specifically to include any particular provision of the Final APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Final APA be authorized and approved in its entirety.

35. The Final APA and any Related Agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court but after consultation with the Committee and the DIP Agent, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates or on the interests of the Successful Bidder.

36. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

37. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Sale Motion filed in these Chapter 11 Cases, the terms of this Order shall govern.

38. (a) After the Closing Date, the Debtors shall receive in trust and remit any payment or revenue received by the Debtors that belongs to the Successful Bidder pursuant to the terms of the Final APA to the Successful Bidder within two (2) business days of the Debtors' receipt thereof and, prior to such transmission, such payments shall be held by the Debtors in

trust for the Successful Bidder; and (b) after the Closing Date, the Successful Bidder shall receive in trust and remit any payment or revenue received by the Successful Bidder that belongs to any of the Debtors pursuant to the terms of the Final APA to the Debtors within two (2) business days of the Successful Bidder's receipt thereof and, prior to such transmission, such payments shall be held by the Successful Bidder in trust for the Debtors.

39. The Debtors are authorized and directed to change their corporate names in the domestic jurisdictions in which they are registered or authorized to do business under names mutually agreed upon between the Debtors and the Successful Bidder, and to provide the Successful Bidder with evidence of such name changes upon request thereof. Upon the filing of a Certification of Counsel, following consultation with the Successful Bidder, the Committee, the DIP Agent, and the Office of the United States Trustee for the District of Delaware, the caption of all pleadings shall be changed as stated in such Certification of Counsel (with any necessary reflection that the case was formerly known as *In re Vitamin World, Inc., et al.*), and all pleadings shall be filed under the new caption.

40. Upon the reasonable request of the Successful Bidder and upon reasonable advance written notice, from the date of the entry of this Order the Debtors will permit the Successful Bidder and its representatives to have access to the premises, properties, books and records and Transferred Contracts and Assumed Leases included within the Acquired Assets during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of any Debtor, provided that no Person shall be required to waive its attorney-client privilege with respect thereto. Upon reasonable notice, the Successful Bidder shall be permitted to contact vendors, suppliers, licensors, and licensees. Debtors and their representatives are permitted to be present at any such meetings.

41. Notwithstanding anything to the contrary in the Final APA or this Order, the Debtors shall consult with the Committee on all outstanding issues relating to the Final APA, and the Debtors shall consult with the Committee regarding the resolution of any such disputes, whether before the Court or otherwise. Nothing in this Order restricts any right the Committee may have to seek direct involvement in the resolution of such disputes to the extent that the Committee believes such involvement is necessary.

42. Promptly following the Closing, the Debtors shall pay from the sale proceeds the 2017 taxes due to Brazos County, Texas, Hays County, Texas, Hill County, Texas, Hill County Appraisal District, and Midland Central Appraisal District in the aggregate amount of \$4,531.31.

43. Notwithstanding any provision to the contrary in the Sale Motion, this Order, and any implementing Sale documents, nothing shall (1) authorize the assumption, assignment or other transfer to the Successful Bidder of any contracts between the Debtors and the Army and Air Force Exchange Service, an instrumentality of the United States ("AAFES Agreements") without compliance by the Debtors and the Successful Bidder with all terms of the AAFES Agreements and applicable non-bankruptcy law; or (2) be interpreted to set cure amounts or to require the government to novate or otherwise consent to the transfer of any AAFES Agreements; or (3) affect the government's rights to offset or recoup any amounts due under, or relating to, the AAFES Agreements.

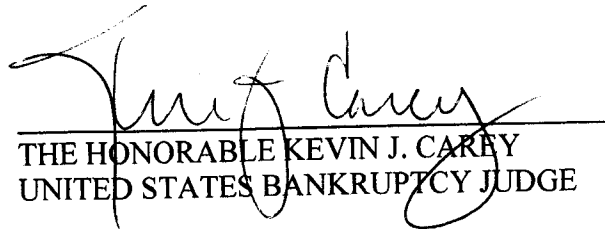
44. The Court shall retain jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this Order and the Final APA, all amendments thereto and any releases, waivers and consents hereunder and thereunder, and each of the agreements executed in connection therewith to which any of the Debtors are a party or which has been

assigned by the Debtors to the Successful Bidder, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to any of the foregoing.

45. Nothing in this Order or the Final APA releases, nullifies, precludes or enjoins the enforcement of any valid police or regulatory liability to a governmental unit, to which that Successful Bidder may be subject to as the post-sale owner or operator of any property that is an Acquired Asset after the date of entry of this Order. Nothing in this Order or the Final APA authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law.

Nothing in this Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order.

Dated: December 22, 2017  
Wilmington, Delaware

  
THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE



**Exhibit A**

**(Final APA)**

*Execution Copy*

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**AMENDED AND RESTATED ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**VITAMIN WORLD, INC.,**

**THE OTHER SELLER PARTIES HERETO**

**AND**

**VITAMIN WORLD USA CORPORATION**

**DECEMBER 21, 2017**

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**AMENDED AND RESTATED ASSET PURCHASE AGREEMENT**

This Amended and Restated Asset Purchase Agreement (this "Agreement") is entered into as of December 21, 2017 by and among Vitamin World, Inc., a Delaware corporation ("Vitamin World" or the "Company"), and the other direct and indirect Subsidiaries and affiliates of Vitamin World (together with Vitamin World, "Sellers"), and Vitamin World USA Corporation, a Delaware corporation ("Buyer"). Sellers and Buyer are referred to collectively herein as the "Parties".

**WITNESSETH**

WHEREAS, on September 11, 2017 (the "Petition Date"), Sellers and certain of their affiliates filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, Sellers wish to sell their on-going retail health care business (the "Business");

WHEREAS, on December 8, 2017, Sellers and Valuable Hero Limited, a British Virgin Islands company (the "Original Buyer") entered into that certain Asset Purchase Agreement (the "Prior Agreement");

WHEREAS, Sellers, Buyer and the Original Buyer desire to amend and restate the Prior Agreement to provide for Buyer to purchase, acquire and assume from Sellers all of the Acquired Assets (as defined below) and Assumed Liabilities (as defined below), all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with Sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

Section 1.1 Definitions. For purposes of this Agreement:

"Acquired Assets" means, all of Sellers' right, title and interest, free and clear of all Liens (other than Permitted Liens), in and to all of the properties, rights, interests and other tangible and intangible assets of Sellers for use in or relating to the Business (wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP) including any assets acquired by Sellers after the date hereof but prior to the Closing; provided, however, that the Acquired Assets shall not include any Excluded Assets. Without limiting the generality of the foregoing, the Acquired Assets shall include the following (except to the extent listed or otherwise included as an Excluded Asset):

(a) to the extent transferable, all Intellectual Property related to the Business, including all intellectual property rights arising from or relating to: all algorithms, APIs, designs, net lists, data, databases, data collections, diagrams, inventions (whether or not patentable), know how, methods, processes, proprietary information, protocols, schematics, specifications, tools, systems, servers, hardware, computers, point of sale equipment, inventory management equipment, software, software code (in any form, including source code and executable or object code), subroutines, techniques, user interfaces, URLs, web sites, works of authorship and other similar materials, including all documentation related to any of the foregoing, including instruction manuals, laboratory notebooks, prototypes, samples, studies and summaries, whether or not embodied in any tangible form and whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing;

(b) all tangible assets owned or leased by Sellers related to the Business or Stores, including all fixtures, trade fixtures, store models, shelving, refrigeration equipment, computers and computer systems located at the Stores, any distribution centers and corporate offices;

(c) all rights under the Assumed Leases and Transferred Contracts;

(d) the Inventory, whether in the Stores, any distribution center or in transit to the Stores;

(e) all customer and end-user data and information, including that derived from branded loyalty promotion programs and other similar information related to customer purchases at the Stores, in each case, to the extent permitted to be assigned, used, or provided by Sellers under applicable Laws;

(f) all in-process customer orders;

(g) all trade receivables, whether current or non-current, and all other accounts receivable, including payment processor receivables, for sales made at the Stores prior to the Closing;

(h) any Permit, to the extent transferable;

(i) any and all books, records and other data relating to the Business, including customer lists and customer and end-user information and data, supplier lists, mailing lists, accounting records, documentation or records, catalogs and printed materials relating thereto to the extent available;

(j) all of Sellers' prepaid expenses to the extent related to an Assumed Lease or a Transferred Contract;

(k) any promotional materials, displays, media content and other property or equipment used in or related to the existing Business;

- (l) the Store Cash Amount;
- (m) to the extent transferable, all Intellectual Property Licenses, including the licenses set forth on Schedule A;
- (n) to the extent transferable, all warranties related to any of the foregoing;
- (o) financial, marketing and business data, pricing and cost information, business and marketing plans and other information, files, correspondence, records, data, plans, reports and recorded knowledge, historical trademark files, prosecution files of Sellers in whatever media retained or stored, including computer programs and disks, including files in the possession of Sellers;
- (p) all goodwill associated with the Business or the Acquired Assets;
- (q) all right of publicity and all similar rights, including all commercial merchandising rights;
- (r) product designs, design rights, tech packs, artwork, archival materials and advertising materials, copy, commercials, images and artwork;
- (s) royalty payments and licensing receivables generated by the Business and attributable to the period from and/or after the Closing;
- (t) all Sellers' telephone, fax numbers and email addresses;
- (u) any avoidance actions under chapter 5 of the Bankruptcy Code relating to any Transferred Contract or trade vendor that Buyer will conduct business with, following the Closing (the "Acquired Avoidance Actions"); and
- (v) any insurance claims, and related proceeds, related to an Acquired Asset.

provided, however, notwithstanding anything to the contrary set forth in this definition, the Acquired Assets shall not include any Excluded Assets.

"Affiliate" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where "control" means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

"Affiliate Agreement" has the meaning set forth in Section 3.16.

"Agreement" has the meaning set forth in the preamble.

"Assignment and Assumption Agreement" has the meaning set forth in Section 2.5(b).

"Assumed Leases" has the meaning set forth in Section 2.7(b).



“Assumed Liabilities” means only the following Liabilities of each Seller incurred exclusively in the operation of the Business and existing as of the Closing (to the extent not paid prior to the Closing), or to the extent set forth in the following clauses (a) and (b):

(a) all Liabilities under the Transferred Contracts and Assumed Leases to the extent such Liabilities arise from and after the Closing Date;

(b) all Liabilities to pay for goods or services delivered or performed, but not paid by Sellers, between the Petition Date and the Closing; provided, that Buyer shall only assume such Liabilities up to \$500,000;

(c) all Liabilities to pay for goods or services ordered (and not paid by Sellers), prior to the Closing in the Ordinary Course of Business, but which are not delivered or performed until after the Closing;

(d) all (i) store or customer credits, sales promotions, rebates, coupons, gift cards and certificates or (ii) returns of goods or merchandise, customer prepayments and overpayments, customer refunds, credits, reimbursements and related adjustments with respect to goods or merchandise;

(e) all accrued and unused vacation and sick time of the Transferred Employees; and

(f) all Buyer Cure Costs;

provided, however, that notwithstanding anything to the contrary set forth in this definition, the Assumed Liabilities shall not include any Excluded Liabilities.

“Auction” has the meaning set forth in the Bidding Procedures Order.

“Back-up Bidder” has the meaning set forth in Section 5.3(e).

“Bankruptcy Cases” means the jointly administered cases under chapter 11 of the Bankruptcy Code commenced by Sellers and certain of their Affiliates on September 11, 2017, and continuing immediately thereafter, in the Bankruptcy Court and styled *In re Vitamin World, Inc., et al.*, Case No. 17-11933 (KJC).

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bid Protections” has the meaning set forth in Section 5.3(b).

“Bidding Procedures Motion” has the meaning set forth in Section 5.3(a).

“Bidding Procedures Order” means the Bankruptcy Court order (supplementing the Bidding Procedures Order I) authorizing and approving the bidding, auction and sale procedures regarding the Acquired Assets, and other related relief, on terms further described in Section 5.3

(Bankruptcy Court Matters) herein and otherwise in form and substance reasonably satisfactory to Sellers and Buyer.

“Bidding Procedures Order I” means that order entered in the Bankruptcy Cases at D.I. 443 on November 31, 2017, as amended from time to time.

“Bill of Sale” has the meaning set forth in Section 2.5(b).

“Break-Up Fee” has the meaning set forth in Section 5.3(b).

“Business” has the meaning set forth in the recitals.

“Business Day” means any day, other than a Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.

“Buyer” has the meaning set forth in the preamble.

“Buyer Cure Costs” means one-half of all Cure Costs in excess of \$2,400,000 (if any) arising out of the assumption by the applicable Seller and assignment to Buyer of the Assumed Leases and Transferred Contracts, to the extent such Contract is an Assumed Lease or a Transferred Contract.

“Buyer Cure Cost Escrow Amount” has the meaning set forth in Section 2.3(c).

“Buyer Proration Amount” has the meaning set forth in Section 2.6.

“Cash Purchase Price” has the meaning set forth in Section 2.3(a).

“Claim” means any claim within the meaning of section 101(5) of the Bankruptcy Code.

“Closing” has the meaning set forth in Section 2.4.

“Closing Date” has the meaning set forth in Section 2.4.

“COBRA” means sections 601 through 608 of the Employee Retirement Income Security Act of 1974 and section 4980B of the IRC.

“Company” has the meaning set forth in the preamble.

“Company Benefit Plan” has the meaning set forth in Section 3.12(a).

“Company PTO Payments” has the meaning set forth in clause (h) of the definition of Excluded Liabilities.

“Company Severance Payments” has the meaning set forth in clause (h) of the definition of Excluded Liabilities.

“Company WARN Payments” has the meaning set forth in clause (h) of the definition of Excluded Liabilities.

“Competing Bid” has the meaning set forth in Section 5.3(d).

“Confidentiality Agreement” means that certain confidentiality agreement entered into by and between Vitamin World and a Buyer affiliated entity.

“Contract” means any agreement, contract, license, arrangement, commitment, promise, obligation, right, instrument, document or other similar understanding, which in each case is in writing and signed by parties intending to be bound thereby (other than any Leases).

“Covered Employee” means an employee of Vitamin World or any of its Subsidiaries as of the date hereof whose duties relate primarily to the operation of any of the Business, including such employees who are on short-term disability, long-term disability or any other approved leave of absence as of the Closing.

“Cure Costs” means all amounts payable, and obligations that must be satisfied, in order to cure any monetary defaults required to be cured under section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption of executory Contracts and Leases.

“Decree” means any judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order or any other order of any Governmental Authority.

“DIP Agent” means Wells Fargo Bank, National Association, as administrative agent under that certain DIP Financing Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time), among the DIP Agent, the DIP Lenders, the Company, as borrower, and the guarantors party thereto.

“DIP Financing Agreement” means that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, including that certain First Amendment to Senior Secured Super-Priority Debtor-In-Possession Credit Agreement dated as of October 19, 2017), among the DIP Agent, the DIP Lenders, the Company, as borrower, and the guarantors party thereto.

“DIP Lenders” means the financial institutions that are or may become parties to the DIP Financing Agreement (together with their respective successors and assigns).

“DIP Order” means that certain Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors And Debtors In Possession To Obtain Post-Petition Financing, (II) Authorizing Use Of Cash Collateral, (III) Granting Liens And Super-Priority Claims, (IV) Granting Adequate Protection To Prepetition Lenders, (V) Modifying The Automatic Stay, And (VI) Granting Related Relief [D.I. 370], as such order has been or may be amended or modified from time to time.

“Disclosure Schedule” has the meaning set forth in Article III.

“Display Merchandise” means those items of inventory used in the ordinary course of business as displays or floor models, including inventory that has been removed from its original packaging for the purpose of putting such item on display, which goods are not otherwise damaged or defective. For the avoidance of doubt, Merchandise created for display and not saleable in the ordinary course of business shall not constitute Display Merchandise.

“Encumbrances” means any claim, community or other marital property interest, condition, equitable interest, right of way, encroachment, servitude, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental Law” means any federal, state, local or foreign law, statute, code, ordinance, rule or regulation relating to the protection of the environment or natural resources.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any Person that, at any relevant time, is or was treated as a single employer with any Seller for purposes of IRC § 414.

“Escrow Agent” means such party agreed to by the Parties in writing.

“Escrow Agreement” means that certain Escrow Agreement, dated as of the date hereof, by and among the Escrow Agent, the Company and Buyer.

“Escrow Amount” has the meaning set forth in Section 2.3(b).

“Excluded Assets” means the following assets of Sellers as of the Closing, and only the following assets:

(a) all files, books, records and documents prepared in connection with this Agreement or the transactions contemplated hereby or primarily relating to the Bankruptcy Cases, all minute books, corporate records (such as stock registers) and organizational documents of Sellers, Tax Returns, other Tax work papers, and all other documents not related to the Business, the Stores, the Acquired Assets or the Covered Employees;

(b) all files, books, records and documents constituting work product of Sellers’ legal counsel;

(c) all files, books, records and documents the disclosure or transfer of which is prohibited by third party agreement or applicable Laws;

(d) any Contract that is not a Transferred Contract;

(e) any Lease that is not an Assumed Lease;

(f) any Tax refunds, rebates or credits of Sellers;

(g) all avoidance actions under chapter 5 of the Bankruptcy Code, except for any avoidance actions under chapter 5 of the Bankruptcy Code relating to any Transferred Contract or trade vendor that Buyer will conduct business with, following the Closing;

(h) any security deposits or pre-paid expenses paid prior to the Closing Date and not associated with the Acquired Assets;

(i) to the extent not associated with the Acquired Assets, all insurance policies and binders, all claims, refunds and credits from insurance claims, insurance policies or binders due or to become due with respect to such policies or binders and all rights to proceeds thereof;

(j) all shares of capital stock or other equity interests of any Seller and all securities convertible into or exchangeable or exercisable for shares of capital stock or other equity interests of any Seller or any other Person; and

(k) all assets, properties, rights, interests, and Claims of every kind and description of any Sellers which (A) are not Acquired Assets, (B) are not related to, used, or held for use in, the Business, or (C) are described on Schedule B.

“Excluded Liabilities” means any Liabilities of Sellers, whether existing on the Closing Date or arising thereafter as a result of any act, omission or circumstances taking place prior to the Closing, other than the Assumed Liabilities. Without limiting the foregoing, Buyer shall not be obligated to assume, and does not assume, and hereby disclaims all the Excluded Liabilities, including the following Liabilities (which shall also be considered Excluded Liabilities) of any of Sellers or of any predecessor of any of Sellers, whether incurred or accrued before or after the Closing:

(a) all Sellers’ Cure Costs (which, for the avoidance of doubt, do not include the Buyer Cure Costs);

(b) any Liability not relating to or arising out of the Business or the Acquired Assets, including any Liability exclusively relating to or primarily arising out of the Excluded Assets;

(c) any Liability of Sellers for Taxes (except as provided for in Section 2.9 and Section 6.5);

(d) all Liabilities of Sellers under this Agreement or any Related Agreement and the transactions contemplated hereby or thereby;

(e) any Liability associated with any and all indebtedness including any guarantees of third party obligations and reimbursement obligations to guarantors of Sellers’ obligations or under letters of credit of any Seller;

(f) any Liabilities in respect of any Contracts or Leases that are not Transferred Contracts or Assumed Leases, respectively;

(g) all Liabilities for fees, costs and expenses that have been incurred or that are incurred or owed by Sellers in connection with this Agreement or the administration of the Bankruptcy Cases (including all fees and expenses of professionals engaged by Sellers) and administrative expenses and priority claims accrued through the Closing Date and specified post-closing administrative wind-down expenses of the bankrupt estates pursuant to the Bankruptcy Code (which such amounts shall be paid by Sellers from the proceeds collected in connection with the Excluded Assets) and all costs and expenses incurred in connection with (i) the negotiation, execution and consummation of the transactions contemplated under this Agreement and each of the other documents delivered in connection herewith, (ii) the negotiation, execution and consummation of the DIP Financing Agreement, and (iii) the consummation of the transactions contemplated by this Agreement, including any retention bonuses, “success” fees, change of control payments and any other payment obligations of Sellers payable as a result of the consummation of the transactions contemplated by this Agreement and the documents delivered in connection herewith;

(h) all Liabilities (i) related to the WARN Act, to the extent applicable, with respect to the termination of employment of Sellers’ employees (the “Company WARN Payments”), (ii) for any action resulting from Sellers’ employees’ separation of employment (the “Company Severance Payments”), and (iii) for vacation, sick leave, parental leave, and other paid time accrued by Sellers’ employees who are not Transferred Employees (the “Company PTO Payments”);

(i) all Liabilities with respect to the termination of employment of the Company “insiders” (as such term is defined under the Bankruptcy Code);

(j) all Company Benefit Plans (including all assets, trusts, insurance policies and administration service contracts related thereto);

(k) all Liabilities with respect to any terminated employees with respect to COBRA;

(l) all Liabilities of Sellers to its equity holders respecting dividends, distributions in liquidation, redemptions of interests, option payments or otherwise, and any liability of Sellers pursuant to any Affiliate Agreement;

(m) all Liabilities arising out of or relating to any business or property formerly owned or operated by any of Sellers, any Affiliate or predecessor thereof, but not presently owned and operated by any of Sellers;

(n) all Liabilities relating to claims, actions, suits, arbitrations, litigation matters, proceedings or investigations (in each case whether involving private parties, Governmental Authorities, or otherwise) involving, against, or affecting any Acquired Asset, the Business, the Company or any assets or properties of Sellers, commenced, filed, initiated or threatened before the Closing and relating to facts, events or circumstances arising or occurring before the Closing;

(o) all Liabilities arising under Environmental Laws relating to facts, events or circumstances arising or occurring before the Closing;

(p) accounts payable;

(q) Liabilities to any employees arising prior to the Closing, except for vacation, sick leave, parental leave and other paid time accrued by Sellers' employees who are Transferred Employees; and

(r) all Liabilities of Sellers or its predecessors arising out of any contract, agreement, Permit, franchise or claim that is not transferred to Buyer as part of the Acquired Assets or is not transferred to Buyer because of any failure to obtain any third-party or governmental consent required for such transfer.

“Expense Reimbursement” has the meaning set forth in Section 5.3(b).

“GAAP” means United States generally accepted accounting principles consistently applied.

“GOB Store” means any Store at which there is “going out of business sale” as of the date hereof.

“Governmental Authority” means any federal, state, local or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department or other governmental entity.

“Intellectual Property” means any and all intellectual property and other similar proprietary rights, in any jurisdiction in the world (whether arising under statutory or common law, contract, or otherwise), which includes rights pertaining to or arising from: (a) inventions, discoveries, processes, designs, techniques, developments and related improvements whether or not patentable; (b) patents, patent applications, industrial design registrations and applications therefor, divisions, divisionals, continuations, continuations-in-part, reissues, substitutes, renewals, registrations, confirmations, re-examinations, extensions and any provisional applications, or any such patents or patent applications, and any foreign or international equivalent of any of the foregoing; (c) trademarks (whether registered, unregistered or pending), trade dress, service marks, service names, trade names, brand names, product names, logos, domain names, internet rights (including IP addresses and AS numbers), corporate names, fictitious names, other names, symbols (including business symbols), slogans, translations of any of the foregoing and any foreign or international equivalent of any of the foregoing and all goodwill associated therewith and (to the extent transferable by law but subject to Section 6.1(d)) any applications or registrations in connection with the foregoing and all advertising and marketing collateral including any of the foregoing; (d) work specifications, databases and artwork; (e) technical, scientific and other know-how and information (including promotional material and tech packs and blocks), trade secrets, confidential information, methods, processes, practices, formulas, designs, patterns, assembly procedures, specifications; (f) rights associated with works of authorship including copyrights, moral rights, design rights, rights in databases, copyright applications, copyright registrations, rights existing under any copyright laws and rights to prepare derivative works; (g) work for hire; (h) the name “Vitamin World” or any

derivation thereof, (i) customer lists and databases, websites, social media sites and accounts (including the content contained therein, user names and passwords), diagrams, drawings, domain names, and all advertising and marketing materials and collateral (including all physical, digital, or electronic imagery and design files), samples, product catalogs, product designs and specifications (including tech specifications) vendor and merchandise supplier data and information, (j) computer software and firmware, including data files, source code, object code and software-related specifications and documentation, (k) all books and records, files, data, reports, computer codes and sourcing data, advertiser and supplier lists, cost and pricing information, business plans, and manuals, blueprints, research and development files, and other records; (l) financial, marketing and business data, pricing and cost information, business and marketing plans and other information, files, correspondence, records, data, plans, reports and recorded knowledge, historical trademark files, prosecution files in whatever media retained or stored, including computer programs and disks, (m) the right to sue for infringement and other remedies against infringement of any of the foregoing, and (n) rights to protection of interests in the foregoing under the laws of all jurisdictions.

“Intellectual Property Licenses” means (i) any grant to a third Person of any right to use any Intellectual Property owned by Sellers and (ii) any grant to Sellers of a right to use a third Person’s Intellectual Property rights (other than off-the-shelf software for which Company pays less than \$30,000 in licensing or other fees per software title per annum).

“Inventory” means all of Sellers’ inventory and goods now owned or hereinafter acquired, wherever located, relating to the Business, including all Merchandise, Returned Merchandise, inventory and goods that (a) are leased by Sellers as lessor, (b) are held by Sellers for sale or lease or to be furnished by Sellers under a Contract of service, or (c) consist of raw materials, work in process, finished goods, supplies, or material used or consumed in connection with the Business maintained or held by, stored by or on behalf of, or in transit to, any of Sellers.

“IRC” means the Internal Revenue Code of 1986, as amended.

“IRS” means the Internal Revenue Service.

“January Rent” has the meaning set forth in Section 2.3(d).

“Knowledge” of Sellers or the Company (and other words of similar import) means the actual knowledge of Michael Madden and Frank Conley.

“Law” means any constitution applicable to, and any statute, treaty, code, rule, regulation, ordinance or requirement of any kind of, any Governmental Authority.

“Leases” means all leases, subleases, licenses, concessions, options, contracts, extension letters, easements, reciprocal easements, assignments, termination agreements, subordination agreements, nondisturbance agreements, estoppel certificates and other agreements (written or oral), and any amendments or supplements to the foregoing, and recorded memoranda of any of the foregoing, pursuant to which any Seller holds any leasehold or subleasehold estates and other rights in respect of any Store.



“Liability” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.

“Lien” means any lien (statutory or otherwise), Claim, Encumbrance, deed of trust, right of first offer, easement, servitude, transfer restriction under any shareholder or similar agreement, mortgage, pledge, lien, charge, security interest, option, right of first refusal, easement, security agreement or other encumbrance or restriction on the use or transfer of any property, hypothecation, license, preference, priority, covenant, right of recovery, order of any Governmental Authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, and (iii) any leasehold interest, license or other right, in favor of a third party or a Seller, to use any portion of the Acquired Assets), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown; provided, however, that “Lien” shall not be deemed to include any license of Intellectual Property.

“Litigation” means any action, cause of action, suit, claim, investigation, audit, demand, hearing or proceeding, whether civil, criminal, administrative or arbitral, whether at law or in equity and whether before any Governmental Authority.

“Material Adverse Effect” means any effect, circumstance or change that has a material adverse effect on the condition of the Acquired Assets, taken as a whole, other than any effects, circumstances or changes to the extent arising from or related to: (a) general business or economic conditions in any of the geographical areas in which the Stores operate; (b) any condition or occurrence affecting retail vitamin or nutritional supplement stores generally; (c) national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; (d) financial, banking or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (e) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including any strike, labor dispute, civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event; (f) changes in Law or accounting rules (including GAAP); (g) the taking of any action required or permitted by this Agreement or any Related Agreement or taken (or omitted to be taken) with the consent of the other Party (other than any action taken pursuant to Section 5.2(a)); (h) any effects or changes as a result of the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with Sellers; (i) any filing or motion made under sections 1113 or 1114 of the Bankruptcy Code; (j) the closing of any stores not acquired by Buyer or the sale of any other assets or stores to any third parties by any Seller or any of its Affiliates; (k) any effects or changes arising from or related to the breach of the Agreement by Buyer; (l) the failure of Sellers to obtain any consent, permit, authorization, waiver or approval required in connection with the transactions

contemplated hereby; (m) any items set forth in the Disclosure Schedule; or (n) any effect resulting from the filing or pendency of the Bankruptcy Cases.

“Merchandise” shall mean (A) all finished goods inventory that is owned by the Company and located at the Stores as of the Closing Date; (B) any Merchandise located at a distribution center; and (C) the Display Merchandise.

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Business through the date hereof consistent with past practice from the date of the filing of the Bankruptcy Cases, but subject, however, to (x) changes arising or resulting from the filing or pendency of the Bankruptcy Cases and (y) the “going out of business sales” contemplated as of the date hereof.

“Original Buyer” has the meaning set forth in the recitals.

“Outside Back-up Date” has the meaning set forth in Section 5.3(e).

“Overbid Protection” has the meaning set forth in Section 5.3(b).

“Owned Intellectual Property” means all Intellectual Property owned or purported to be owned by Sellers.

“Parties” has the meaning set forth in the preamble.

“Permit” means any franchise, approval, permit, license, order, registration, certificate, variance or similar right obtained from any Governmental Authority.

“Permitted Lien” means (a) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings and arising or incurred in the Ordinary Course of Business; (b) mechanic’s, workmen’s, repairmen’s, warehousemen’s, carrier’s or other similar Liens, including all statutory liens, arising or incurred in the Ordinary Course of Business for amounts which are not delinquent and which are not, individually or in the aggregate, material to the business of Sellers; (c) with respect to leased or licensed real or personal property, the terms and conditions of the lease, license, sublease or other occupancy agreement applicable thereto which are customary; (d) with respect to real property, usual and customary zoning, building codes and other land use laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such real property; (e) usual and customary easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects provided that they do not materially detract from the property.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or any other entity, including any Governmental Authority or any group of any of the foregoing.

“Petition Date” has the meaning set forth in the recitals.

“Prevailing Bidder” has the meaning set forth in Section 5.3(e).

“Prior Agreement” has the meaning set forth in the recitals.

“Prorated January Rent” has the meaning set forth in Section 2.3(d).

“Purchase Price” has the meaning set forth in Section 2.3(a).

“Related Agreements” means the Bill of Sale, the Assignment and Assumption Agreement and the Escrow Agreement.

“Representative” means, when used with respect to a Person, the Person’s controlled and controlling Affiliates (including Subsidiaries) and such Person’s and any of the foregoing Person’s respective officers, directors, managers, members, shareholders, partners, employees, agents, representatives, advisors (including financial advisors, bankers, consultants, legal counsel and accountants) and financing sources.

“Requesting Party” has the meaning set forth in Section 6.2.

“Returned Merchandise” means goods sold by Sellers prior to the Closing Date and returned by a customer prior to the Closing Date in compliance with Sellers’ return policy.

“Sale Hearing” means the hearing for approval of, among other things, this Agreement and the transactions contemplated herein, currently scheduled for December 21, 2017 at 10:00 a.m. (ET) before the Bankruptcy Court.

“Sale Order” means the sale order or orders in form and substance reasonably agreed by Buyer, Sellers and the DIP Agent.

“Seller Proration Amount” has the meaning set forth in Section 2.6.

“Sellers” has the meaning set forth in the preamble.

“Sellers’ Cure Costs” means all Cure Costs arising out of the assumption by the applicable Seller and assignment to Buyer of the Assumed Leases and Transferred Contracts, except for the Buyer Cure Costs.

“Store Cash Amount” means Sellers’ cash located at the Stores as of the Closing Date.

“Stores” has the meaning set forth in Section 3.6.

“Subsidiary” means, with respect to any Person, means, on any date, any Person (a) the accounts of which would be consolidated with and into those of the applicable Person in such Person’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date or (b) of which securities or other ownership interests representing more than fifty percent of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests or more than fifty percent of the profits or losses of which are, as of such date, owned, controlled or held by the applicable Person or one or more subsidiaries of such Person.

“Tax” or “Taxes” means any United States federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, stamp, occupation, premium, windfall profits, environmental (including taxes under section 59A of the IRC), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether disputed or not.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Termination Date” has the meaning set forth in Section 8.1(b)(ii).

“Transfer Tax” has the meaning set forth in Section 6.5.

“Transferred Contracts” has the meaning set forth in Section 2.7(b).

“Transferred Employee” has the meaning set forth in Section 6.3(a).

“Vitamin World” has the meaning set forth in the preamble.

“WARN Act” means, collectively, the Worker Adjustment and Retraining Notification Act of 1989 and any similar state or local law.

Section 1.2 Interpretations. Unless otherwise indicated herein to the contrary:

(a) When a reference is made in this Agreement to an Article, Section, Exhibit, Schedule, clause or subclause, such reference shall be to an Article, Section, Exhibit, Schedule, clause or subclause of this Agreement.

(b) The words “include,” “includes” or “including” and other words or phrases of similar import, when used in this Agreement, shall be deemed to be followed by the words “without limitation.”

(c) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

(d) The word “if” and other words of similar import shall be deemed, in each case, to be followed by the phrase “and only if.”

(e) The use of “or” herein is not intended to be exclusive.

(f) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter

forms, and the singular form of names and pronouns shall include the plural and vice versa.

(g) All terms defined in this Agreement have their defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein.

(h) References herein to a Person are also to its successors and permitted assigns. Any reference herein to a Governmental Authority shall be deemed to include reference to any successor thereto.

(i) Any reference herein to "Dollars" or "\$" shall mean United States dollars.

(j) Buyer acknowledges and agrees that the specification of any dollar amount in the representations, warranties or covenants contained in this Agreement is not intended to imply that such amounts or higher or lower amounts are or are not material, and Buyer shall not use the fact of the setting of such amounts in any dispute or controversy between the Parties as to whether any obligation, item, or matter is or is not material.

(k) References in this Agreement to materials or information "furnished to Buyer" and other phrases of similar import include all materials or information made available to Buyer or its Representatives in the data room prepared by Sellers or provided to Buyer or its Representatives in response to requests for materials or information.

## ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, Buyer will purchase and acquire from Sellers, and Sellers will sell, transfer, assign, convey and deliver to Buyer at the Closing all of the Acquired Assets.

Section 2.2 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, Buyer will assume and become responsible for the Assumed Liabilities at the Closing. Buyer agrees to pay, perform, honor and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms thereof, including paying all Buyer Cure Costs. For the avoidance of doubt, Sellers shall not be liable for, and shall have no obligation to pay or cause to be paid, any Buyer Cure Costs, and Buyer shall not be liable for, and shall have no obligation to pay or cause to be paid, any Sellers' Cure Costs.

Section 2.3 Consideration; Deposit; Escrow Amounts.

(a) The consideration for the Acquired Assets shall be (i) an aggregate Dollar amount equal to the sum of (A) \$28,000,000 (the "Cash Purchase Price"), *plus* (B) Seller Proration Amount, if any, and *minus* (C) the Buyer Proration Amount, if any (such sum, the "Purchase Price"), and (ii) Buyer's assumption of the Assumed Liabilities.

(b) Upon the Bankruptcy Court's entry of its order approving the Bidding Procedures Motion, and pursuant to the terms of the Escrow Agreement, Buyer shall promptly deposit with the Escrow Agent the sum of \$2,800,000 by wire transfer of immediately available funds (the "Escrow Amount"), to be released by the Escrow Agent and delivered to either Buyer or Sellers, in accordance with the provisions of the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrow Amount shall be distributed as follows:

(i) if the Closing shall occur, the Escrow Amount shall be applied towards the Purchase Price payable by Buyer to Sellers under Section 2.3(a) and shall be delivered to Sellers at the Closing;

(ii) if this Agreement is terminated by Sellers pursuant to Section 8.1(d), the Escrow Amount shall be delivered to Sellers; or

(iii) if this Agreement is terminated for any reason other than by a Seller pursuant to Section 8.1(d), the Escrow Amount shall in each case be returned to Buyer.

(c) Upon the Bankruptcy Court's entry of its order approving the Bidding Procedures Motion, and pursuant to the terms of the Escrow Agreement, Buyer shall promptly deposit with the Escrow Agent the sum of \$2,500,000 by wire transfer of immediately available funds (the "Buyer Cure Cost Escrow Amount"), to fund Buyer Cure Costs, if any, and to provide evidence of adequate assurance of future performance by Buyer under Section 365(b)(1) of the Bankruptcy Code. Pursuant to the Escrow Agreement, the Buyer Cure Escrow Amount shall be distributed as follows:

(i) if the Closing shall occur, the Buyer Cure Escrow Amount shall be retained by the Escrow Agent and released as provided in the Escrow Agreement; or

(ii) if this Agreement is terminated for any reason, the Buyer Cure Escrow Amount shall be returned to Buyer.

(d) On or prior to December 28, 2017, Buyer shall pay to Sellers, by wire transfer of immediately available funds into an account designated by Sellers, an amount sufficient to pay the rent on all of the Stores and the Company's support center office for the month of January 2018, which amount is agreed to be \$1,597,109 (the "January Rent"). At the Closing, the Cash Purchase Price will be reduced by an amount equal to the (x) the January Rent multiplied by (y) a fraction (A) the numerator of which is the number of days in the month of January 2018 from January 1, 2018 through and including the Closing Date and (B) the denominator of which is 31 (the "Prorated January Rent"). Sellers shall use the January Rent to timely pay the rent on all of the Stores and the Company's support center office for the month of January 2018. In the event that this Agreement is terminated for any reason, no portion of the January Rent that Sellers paid prior to such termination for rent on all the Stores and the Company's support center office shall be returned to Buyer. Any portion of the January Rent not paid by Sellers

prior to such termination for rent on the Stores and the Company's support center office shall be returned to Buyer upon such termination. In the event that this Agreement is terminated pursuant to Section 8.1(e)(i), Buyer shall have an administrative claim against the Company's bankruptcy estate in the amount of any January Rent paid to Sellers and not returned to Buyer pursuant to the foregoing sentence. In the event that this Agreement is terminated pursuant to Section 8.1(c), Buyer shall have the right to assert an administrative claim against the Company's bankruptcy estate in the amount of any January Rent paid to Sellers and not returned to Buyer pursuant to the second foregoing sentence; provided, however, that Sellers reserve the right to object to such claim.

**Section 2.4 Closing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of DLA Piper LLP (US), 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801 (or such other location as shall be mutually agreed upon by Sellers and Buyer) commencing at 10:00 AM local time on January 19, 2018, subject to the prior or simultaneous satisfaction or waiver all of the conditions to the obligations of Sellers and Buyer to consummate the transactions contemplated hereby set forth in Article VII, or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto. The date on which the Closing is to occur shall be referred to herein as the "Closing Date".

**Section 2.5 Closing Payments and Deliveries.**

(a) On the Closing Date, Buyer shall pay the Cash Purchase Price (less the Escrow Amount, which shall be released to Sellers by the Escrow Agent, and less the Prorated January Rent, which had been previously paid to Sellers pursuant to Section 2.3(d)) to Sellers, which shall be paid by wire transfer of immediately available funds into an account designated by Sellers.

(b) At the Closing, Sellers will deliver to Buyer: (i) a duly executed Bill of Sale substantially in the form of Exhibit A (the "Bill of Sale"); (ii) a duly executed Assignment and Assumption Agreement, substantially in the form of Exhibit B (the "Assignment and Assumption Agreement"); (iii) a duly executed certificate from an officer of each Seller to the effect that each of the conditions specified in Section 7.1(a) and Section 7.1(b) is satisfied; and (iv) a non-foreign affidavit from each Seller that is organized in or under the Laws of the United States or any state thereof, dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under Treasury Regulations issued pursuant to section 1445 of the IRC.

(c) At the Closing, Buyer will deliver to Sellers: (i) the Bill of Sale duly executed by Buyer; (ii) the Assignment and Assumption Agreement duly executed by Buyer; and (iii) a duly executed certificate from an officer of Buyer to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) are satisfied.

**Section 2.6 Prorations.** The following items shall be prorated between Sellers and Buyer as of the Closing Date: (i) applicable property and personal taxes (other than Transfer Taxes), (ii) post-petition utilities, and (iii) post-petition lease payments under the Assumed Leases. Unless otherwise stated herein, all prorations shall be on an accrual basis in accordance with GAAP, and based on the actual number of days in each month. Sellers shall be responsible

for amounts relating to the period prior to the Closing Date, and Buyer shall be responsible for amounts relating from the Closing Date. Property taxes on Acquired Assets will be prorated using applicable property tax rates if known, and if not known, applicable property tax rates from the last known period shall be utilized but subject to later adjustments for actual property tax rates. The net amount of all prorations owed to Buyer and Sellers under this shall be referred to as the "Buyer Proration Amount" if owed to Buyer or the "Seller Proration Amount" if owed to Sellers.

Section 2.7 Assumption/Rejection of Certain Contracts and Leases.

(a) Schedule 2.7(a) sets forth a list, as of the date hereof, of all executory Contracts and unexpired Leases to which any Seller is a party.

(b) From and after the date hereof until three Business Days prior to the Closing, Buyer may, in its sole discretion, (i) designate a Contract listed on Schedule 2.7(a) for assumption and assignment to Buyer, effective on and as of the Closing (such Contracts, the "Transferred Contracts"), (ii) designate a Lease listed on Schedule 2.7(a) for assumption and assignment to Buyer, effective on and as of the Closing, including, but not limited to, any amendment or modification that may contain lease concessions (such Leases, the "Assumed Leases"), or (iii) designate any Contract or Lease listed on Schedule 2.7(a) for rejection. The Transferred Contracts and Assumed Leases as of the date hereof are set forth on Schedule 2.7(b) hereto, which will be supplemented as additional Leases and Contracts are (y) designated for assumption and assignment or rejection prior to the conclusion of the Auction as set forth in this Section 2.7(b); provided that additional Contracts or Leases may be designated for assumption and assignment prior to the conclusion of the Auction only with the written consent of the counterparty to such Contract or Lease.

(c) Sellers shall take all actions reasonably required to assume and assign the Transferred Contracts and Assumed Leases to Buyer (including the payment of Sellers' Cure Costs, if so required), including taking all actions reasonably necessary to facilitate any negotiations with the counterparties to such Contracts or Leases and, if necessary, to obtain an order of the Bankruptcy Court containing a finding that the proposed assumption and assignment of the Contracts or Leases to Buyer satisfies all applicable requirements of section 365 of the Bankruptcy Code.

(d) Buyer shall take all actions reasonably required for Sellers to assume and assign the Transferred Contracts and Assumed Leases to Buyer (including the payment of the Buyer Cure Costs, if so required), including taking all actions reasonably necessary to facilitate any negotiations with the counterparties to such Contracts or Leases and, if necessary, to obtain an order of the Bankruptcy Court containing a finding that the proposed assumption and assignment of the Contracts or Leases to Buyer satisfies all applicable requirements of section 365 of the Bankruptcy Code.

(e) Subject to Buyer's obligation to pay Buyer Cure Costs (if any), Sellers shall promptly pay all Sellers' Cure Costs (if any), or reserve, if disputed (until fully resolved), in connection with such assumption and assignment.



Section 2.8 Allocation. Buyer and Sellers agree to allocate the Purchase Price (as finally determined hereunder), the Assumed Liabilities, and all other relevant items among the Acquired Assets in accordance with section 1060 of the IRC and the Treasury Regulations thereunder.

Section 2.9 Removal of Excluded Assets. As promptly as practicable following the Closing Date (and in any event within ten (10) Business Days), Sellers shall remove at their expense all of the Excluded Assets that are located at the Stores and, if requested by Sellers, Buyer shall arrange transportation of such Excluded Assets to a location designated by Sellers at Sellers' expense.

### **ARTICLE III SELLERS' REPRESENTATIONS AND WARRANTIES**

Sellers represent and warrant to Buyer that the statements contained in this Article III are true and correct as of the date of this Agreement, except as set forth in the disclosure schedule accompanying this Agreement (the "Disclosure Schedule").

Section 3.1 Organization of Sellers; Good Standing. Each Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation and has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate power and authority to own, lease and operate its assets and to carry on its business as now being conducted, except where the failure to be so organized, existing or in good standing or have such power and authority would not reasonably be expected to have a Material Adverse Effect.

Section 3.2 Authorization of Transaction. Subject to the Bankruptcy Court's entry of the Sale Order, each Seller has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which each Seller is a party have been duly authorized by such Seller. Upon due execution hereof by each Seller, this Agreement (assuming due authorization and delivery by Buyer) shall constitute, subject to the Bankruptcy Court's entry of the Sale Order, the valid and legally binding obligation of such Seller, enforceable against such Seller in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity.

Section 3.3 Noncontravention; Government Filings. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II), will (a) conflict with or result in a breach of the organizational documents of any Seller, (b) subject to the entry of the Sale Order, violate any Law or Decree to which any Seller is subject in respect of the Acquired Assets, or (c) subject to the entry of the Sale Order, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any material Contract or Lease to which any Seller is a party or to which any of the Acquired Assets is subject, except, in the case of either clause (b) or (c), for such conflicts, violations, breaches, defaults, accelerations, rights or failures to give

notice as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Other than as required by, or pursuant to, the Bankruptcy Code, the Bidding Procedures Order or the Sale Order, no Seller is required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent or materially impair or delay any Seller's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 3.4 Title to Assets. At the Closing, subject to any Permitted Liens, Sellers will have good and valid title to, or the right to use, the tangible Acquired Assets, except to the extent the failure to have such title or right to use would not reasonably be expected to have a Material Adverse Effect. Pursuant to the Sale Order, Sellers will convey such title to or rights to use, all of the tangible Acquired Assets, free and clear of all Liens (other than Permitted Liens).

Section 3.5 Transferred Contracts. True and materially complete copies of all Contracts and Leases set forth on Schedule 2.7(a) have been made available to Buyer in the data room prepared by Sellers.

Section 3.6 Real Property. Sellers do not have any title interest in real property which is related to, used, useful or held for use in the conduct of the Business. Section 3.6 of the Disclosure Schedule sets forth the location of each of the 156 operating stores (each, a "Store", and collectively, the "Stores"), each of which is leased to a Seller by a third party, and a list of all Leases. The total number of operating stores related to the Business is 156. Sellers have made available to Buyer a true and materially complete copy of each Lease. With respect to each Lease, (a) assuming due authorization and delivery by the other party thereto, such Lease constitutes the valid and legally binding obligation of the Seller party thereto and, to Sellers' Knowledge, the counterparty thereto, enforceable against such Seller and, to Sellers' Knowledge, the counterparty thereto in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity, and (b) neither such Seller nor, to Sellers' Knowledge, the counterparty thereto is in breach or default under such Lease, except (i) for those defaults that will be cured in accordance with the Sale Order or waived in accordance with section 365 of the Bankruptcy Code (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Leases) or (ii) to the extent such breach or default would not reasonably be expected to have a Material Adverse Effect.

Section 3.7 Litigation; Decrees. Except as set forth in Section 3.7 of the Disclosure Schedule and other than the Bankruptcy Cases, there is no Litigation pending that (a) would reasonably be expected to have a Material Adverse Effect or (b) challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Other than the Bankruptcy Cases, no Seller is subject to any outstanding Decree that would (x) reasonably be expected to have a Material Adverse Effect or (y) prevent or materially delay such Seller's ability to consummate the transactions contemplated hereby or perform in any material respect its obligations hereunder.

Section 3.8 Labor Relations. Except as set forth in Section 3.8 of the Disclosure Schedule:

(a) No Seller is a party to or bound by any collective bargaining agreement. To Sellers' Knowledge, no union or other labor organization; (i) is currently attempting to organize any employees of the Company for the purpose of representation; or (ii) has demanded recognition or filed any petition seeking certification.

(b) There has been no "mass layoff" or "plant closing" as defined by WARN and similar state and local law), or "mass termination" or similar event with respect to the Company within the five year period prior to the Closing.

(c) To Sellers' Knowledge, the Company (x) is in compliance with all applicable Laws regarding labor, employment and employment practices, including all Laws relating to terms and conditions of employment, wages and hours, discrimination, immigration, workplace safety and health, "mass layoffs" and "plant closings" (as those terms are defined in the WARN Act and similar state and local laws), classification of independent contractors, and workers' compensation; (y) has no grievance or arbitration proceeding or unfair labor practice charge or complaint, pending or threatened against it that arises out of or under any Seller's collective bargaining agreements or relates to any employee of the Company; and (z) is not currently experiencing, and has received no current threat of, any strike, slowdown, work stoppage, picketing or lockout, and no such event has occurring within the past two (2) years.

(d) Section 3.8(c) of the Disclosure Schedule sets forth a true, correct and complete list, as of the date of this Agreement, of all employees of the Company and identifies the job title, work location, date of hire, exempt or non-exempt status, employment status (whether active or on leave of absence), part-time or full-time, annual base salary or regular hourly wage rate, and bonus or commission entitlement for each such employee, as well as whether such employee is on leave and the date of such leave.

(e) To Sellers' Knowledge, there is no charge or complaint of discrimination or retaliation, lawsuit, governmental investigation or audit or other similar proceeding pending or threatened against the Company by, on behalf of or relating to any employee(s) of the Company.

Section 3.9 Brokers' Fees. Other than the fees and expenses payable to SSG Capital Advisors in connection with the transactions contemplated hereby, which shall be borne by Sellers, no Seller has entered into any Contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby for which Buyer could become liable or obligated to pay.

Section 3.10 Taxes.

(a) Except as set forth in Section 3.10 of the Disclosure Schedule and for matters that would not be reasonably expected to have a Material Adverse Effect, (i) Sellers have timely filed all Tax Returns required to be filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to

be filed (taking into account any extension of time to file granted or to be obtained on behalf of Sellers); (ii) all Taxes shown as due on such Tax Returns have been paid (other than any Taxes not due as of the date of the filing of the Bankruptcy Cases as to which subsequent payment was prohibited by reason of the Bankruptcy Cases); (iii) Sellers are not a party to any Litigation by any taxing authority; and (iv) there are no pending or, to Seller's Knowledge, threatened Litigation by any taxing authority.

(b) Sellers are not foreign persons within the meaning of section 1445 of the IRC.

Section 3.11 Tangible Personal Property. Section 3.11 of the Disclosure Schedule sets forth all Contracts on Schedule 2.7(a) that constitute leases of personal property involving annual payments in excess of \$50,000 relating to personal property used by Sellers in the Business.

Section 3.12 Employee Benefits.

(a) Section 3.12(a) of the Disclosure Schedule lists all "employee benefit plans," as defined in section 3(3) of ERISA, including any multiemployer plans as defined in section 3(37) of ERISA, and all other material employee benefit plans or arrangements (other than governmental plans and statutorily required benefit arrangements), including bonus or incentive plans, deferred compensation arrangements, severance pay, sick leave, vacation pay, disability, medical insurance and life insurance maintained or contributed to by Sellers with respect to Covered Employees (the "Company Benefit Plans").

(b) The Company has delivered or made available to Buyer true, correct and materially complete copies of the following documents with respect to each Company Benefit Plan: (i) each Company Benefit Plan (and all amendments thereto), and in the case of an unwritten Company Benefit Plan, a written description thereof, and any trust agreement, investment management contract, custodial agreement or insurance contract relating to such plan, (ii) the most recent summary plan description and all summaries of material modifications thereto, and (iii) the most recently filed annual reports on Form 5500 and all Schedules thereto.

(c) Each of the Company Benefit Plans sponsored by Sellers that is intended to qualify under section 401 of the IRC has been determined by the IRS to be so qualified, and, except as disclosed on Section 3.12(c) of the Disclosure Schedule, to the Knowledge of Sellers, nothing has occurred with respect to the operation of any such plan which could reasonably be expected to result in the revocation of such favorable determination.

(d) To Sellers' Knowledge, each of the Company Benefit Plans has been maintained, in all material respects, in accordance with its terms and all provisions of applicable Law.

(e) No Company Benefit Plan is a "multiemployer plan" (as defined in section 3(37) of ERISA) ("Multiemployer Plan") or other pension plan that is subject to Title IV or Section 302 of ERISA or Section 412 of the Code and neither the Company nor any of

its ERISA Affiliates has sponsored or contributed to or been required to contribute to a Multiemployer Plan or other pension plan subject to Title IV or Section 302 of ERISA or Section 412 of the Code at any time within the previous six years. Neither the Company nor any of its ERISA Affiliates has any liability (contingent or otherwise) relating to the withdrawal or partial withdrawal from a Multiemployer Plan.

(f) No Company Benefit Plan provides benefits, including death or medical benefits, beyond termination of service or retirement other than (i) coverage mandated by Law or (ii) death or retirement benefits under a Company Benefit Plan qualified under Section 401(a) of the Code, and neither the Company nor any of its ERISA Affiliates has made a written or oral representation promising the same.

(g) With respect to each Company Benefit Plan providing termination or retirement benefits that is subject to the laws of a jurisdiction outside of the United States, or covering any Person residing or primarily working outside the United States, (i) to Sellers' Knowledge, each such Company Benefit Plan complies in all material respects with all applicable Laws; and (ii) each such Company Benefit Plan that is required to be registered with a Governmental Authority is so registered.

#### Section 3.13 Intellectual Property.

(a) Section 3.13(a) of the Disclosure Schedule sets forth a complete and correct list of all (i) patents and patent applications, (ii) registered trademarks and trademark applications, (iii) material unregistered trademarks and social media accounts, (iv) registered copyrights, (v) internet domain names, and (vi) material software, in each case (i) – (vi) included in the Owned Intellectual Property, and specifying as to each such item, as applicable, the owner(s) of record (and, in the case of domain names, the registrar), jurisdiction of application or registration, the application or registration number, and the date of application or registration.

(b) Except for Owned Intellectual Property set forth in Sections 3.13(a)(iii) and (vi) of the Disclosure Schedule, each other item required to be identified in Section 3.13(a) of the Disclosure Schedule: (i) is registered or recorded in the name of Company, is, to Sellers' Knowledge, in full force and has been duly applied for and registered in accordance with applicable Law; (ii) has no filings, payments or similar actions that must be taken by Company within 120 days following the Closing Date for the purposes of obtaining, maintaining, perfecting or renewing such registration of Intellectual Property; (iii) has no unsatisfied past or outstanding maintenance or renewal obligation; and (iv) has not been and is not involved in any opposition, cancellation, interference, reissue, reexamination or other similar proceeding.

(c) The Company or another Seller is the sole and unrestricted legal and beneficial owner of all Owned Intellectual Property, and no Owned Intellectual Property will at the Closing be subject to any Liens, adverse claims, any requirement of any past (if outstanding), present or future royalty payments or otherwise encumbered or restricted by any rights of any third party, other than Permitted Liens. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated

thereby will not result in the loss, forfeiture, termination, license or impairment of, or give rise to any obligation to transfer or to create, change or abolish, or limit, terminate or consent to the continued use of any material Intellectual Property owned or used by Sellers in the Business as currently conducted.

(d) To the Knowledge of Sellers, the Owned Intellectual Property is valid and enforceable. To the Knowledge of Sellers, the Owned Intellectual Property and Intellectual Property licensed to Sellers under the Intellectual Property Licenses listed in Section 3.13(d) of the Disclosure Schedule constitute all of the Intellectual Property used in and necessary to conduct and operate the Business as currently conducted (other than off-the-shelf software for which Sellers pay less than \$30,000 in licensing or other fees per software title per annum).

(e) No Owned Intellectual Property is or has been the subject of any Litigation or Decree that bars or limits the use of such rights (excluding oppositions, rejections, orders or rulings issues in the context of the application for registration of the Owned Intellectual Property). No Seller is and, to the Knowledge of Sellers, has been party to any Litigation relating to its use of Intellectual Property, including any Litigation involving any claim that the Company infringed, misappropriated, diluted or otherwise violated the rights of any third party. Except for the Permitted Liens, the license agreements listed in Section 3.13(d) of the Disclosure Schedule and non-exclusive licenses granted by Sellers (expressly or implicitly) in the ordinary course of business in connection with the sale, lease or transfer of finished products or services to customers, Sellers have not granted any options with respect to, or has otherwise encumbered or placed limitations on any Owned Intellectual Property or Sellers' use thereof.

(f) Except as set forth in Section 3.13(f) of the Disclosure Schedule, since February 1, 2016: (i) no Seller has received any written communication alleging that any Owned Intellectual Property or Intellectual Property Licenses are invalid or unenforceable, or challenging such Seller's ownership of or right to use any such rights; (ii) no Seller has received any written cease and desist, written invitation to license or other written communication alleging that such Seller requires any license with respect to, or is infringing, misappropriating, diluting or otherwise violating the Intellectual Property Licenses of any third party; and (iii) no Seller has sent any written communication to or asserted or threatened in writing any action or claim against any Person involving or relating to any Owned Intellectual Property.

(g) To the Knowledge of Sellers, the products and services of Sellers as offered currently (including, the use thereof), and the operation of the Business as currently conducted, do not infringe, misappropriate, dilute or otherwise violate the rights of any third party. To the Knowledge of Sellers, no third party has or is infringing on, misappropriating or otherwise violating any Owned Intellectual Property.

(h) Sellers have taken commercially reasonable and appropriate steps to protect, maintain and preserve the confidentiality of any trade secrets included in the Owned Intellectual Property.

(i) To the Knowledge of Sellers, no Owned Intellectual Property was developed, in whole or in part (i) pursuant to or in connection with the development of Intellectual Property for any standards-setting bodies, industry groups or other similar standards organizations, (ii) under contract with or using the resources of any Governmental Authority, academic institution or other entity that would subject any Owned Intellectual Property to the rights of any Governmental Authority, academic institution or other entity, (iii) under any grants or other funding arrangements with third parties, or (iv) using any software, software development toolkits, databases, libraries, scripts, or other, similar modules of software that are subject to "open source" or similar license terms in a manner that subjects the software included in Intellectual Property Licenses to any copyleft license or that requires or purports to require Company to grant any license with respect to Owned Intellectual Property.

(j) Except as set forth in Section 3.13(j) of the Disclosure Schedule, to the Knowledge of Sellers, all material software owned, licensed, used or otherwise held for use in the Business is in good working order and condition and is sufficient in all material respects for the purposes for which it is currently used in the Business. To the Knowledge of Sellers, no Seller has experienced any material defects in design, workmanship or material in connection with the use of such software that have not been corrected. To the Knowledge of Sellers, no such software contains any computer code or any other procedures, routines or mechanisms which may: (i) disrupt, disable, harm or impair in any material way such software's operation, (ii) cause such software to damage or corrupt any data, storage media, programs, equipment or communications of Sellers or their clients, or otherwise interfere with Sellers' operations as currently conducted, or (iii) permit any third party to access any such software to cause disruption, disablement, harm, impairment, damage erasure or corruption (sometimes referred to as "traps", "viruses", "access codes", "back doors" "Trojan horses," "time bombs," "worms," or "drop dead devices").

Section 3.14 Compliance with Laws; Permits.

(a) Sellers are in compliance with all Laws applicable to the Business, except as resulting from the filing and pendency of the Bankruptcy Cases or where the failure to be in compliance would not be reasonably expected to have a Material Adverse Effect. Sellers have not received any written notice of or been charged with the violation of any Laws, except where such violation would not be reasonably expected to have a Material Adverse Effect.

(b) Sellers have all Permits which are required for the operation of the Business as presently conducted, except where such failure to have Permit would not be reasonably be expected to have a Material Adverse Effect. Sellers are not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit to which they are parties, except where such default or violation would not be reasonably expected to have a Material Adverse Effect.

Section 3.15 Environmental Matters. The representations and warranties contained in this Section 3.15 are the sole and exclusive representations and warranties of Sellers with respect to environmental matters, including matters relating to Environmental Laws. Except as would not be reasonably likely to have a Material Adverse Effect:

(a) the operations of Sellers are in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining and complying with all Permits issued pursuant to Environmental Laws necessary to operate the Business;

(b) no Seller is the subject of any outstanding Litigation with any Governmental Authority with respect to Environmental Laws;

(c) no Seller is the subject of any pending, or to the Knowledge of Sellers, threatened Litigation alleging that Sellers may (i) be in violation of any Environmental Law, or any Permit issued pursuant to Environmental Law, or (ii) have any liability under any Environmental Law; and

(d) to the Knowledge of Sellers, there are no pending or threatened investigations of Sellers, or currently or previously owned, operated or leased property of Sellers, which would reasonably be expected to result in Sellers or their Subsidiaries incurring liability pursuant to any Environmental Law.

Section 3.16 Related Party Transactions. Except as set forth on Section 3.16 of the Disclosure Schedule and other than the Company Benefit Plans, no officer, director or executive committee member of any Seller or any member of their immediate family or any Affiliate of the Company or such Seller (a) is a party to any Contract or Lease set forth on Schedule 2.7(b) of the Disclosure Schedule or has any material business arrangement with, or has any material financial obligations to or is owed any financial obligations from, the Company or any actual competitor, vendor or licensor of the Company (each such Contract, Lease or business arrangement, an "Affiliate Agreement"), (b) to the Knowledge of Sellers, none of the foregoing Persons have any cause of action or other claim whatsoever against or related to the Business or the Acquired Assets, and (c) to the Knowledge of Sellers, the Company does not have any direct or indirect business arrangement with or financial obligation to the foregoing Persons.

Section 3.17 Disclaimer of Other Representations and Warranties. Except for the representations and warranties contained in this Article III (as modified by the Disclosure Schedule) or expressly contained in any Related Agreement, no Seller nor any other Person makes, or shall be deemed to have made, any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding any Seller, any Acquired Assets, any Assumed Liabilities or any other matter. Notwithstanding anything herein to the contrary, but without limitation of any representation or warranty expressly contained in this Article III or any Related Agreement, NO SELLER MAKES ANY OTHER (AND HEREBY DISCLAIMS EACH OTHER) REPRESENTATION, WARRANTY OR GUARANTY WITH RESPECT TO THE VALUE, CONDITION OR USE OF THE ACQUIRED ASSETS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.



Except as expressly set forth in this Agreement, Sellers disclaim all Liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated or furnished (orally or in writing) to Buyer or its Affiliates or Representatives (including any opinion, information, projection or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant or Representative of Sellers or any of their Affiliates).

Section 3.18 Financial Statements. True, correct and complete copies of (a) the consolidated balance sheets and statements of operations and comprehensive income, stockholders' equity and cash flow of the Company as of and for the years ended December 31, 2016 and December 31, 2015 (the "Yearly Financial Statements") and (b) an unaudited consolidated balance sheets and statements of operations and comprehensive loss, cash flow and stockholders' equity of the Company as of and for the nine-month period ended September 30, 2017 (such date being the "Interim Balance Sheet Date") (the "Interim Financial Statements") and, together with Yearly Financial Statements, the "Financial Statements") have been provided to Buyer. The Financial Statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Company as of the dates and for the periods indicated in such Financial Statements, have been prepared in accordance with the books of account and other financial records of the Company and have been prepared in conformity with GAAP (except, in the case of the Interim Financial Statements, for the absence of footnotes and other presentation items and for normal year-end adjustments that are not material individually or in the aggregate).

Section 3.19 Inventory. The Inventory as a whole is of a quantity and quality historically useable or saleable in the conduct of the Business since the filing of the Bankruptcy Cases. All Inventory is free from defects in materials and workmanship (normal wear and tear excepted), except as would not have a Material Adverse Effect.

Section 3.20 Sufficiency of Assets. The Acquired Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted since the filing of the Bankruptcy Cases and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted immediately prior to the date hereof.

Section 3.21 GOB Stores. Notwithstanding anything in this Agreement to the contrary, Sellers make no, and they hereby disclaim any, representation or warranty whatsoever with respect to the GOB Stores, the conduct of any business thereat or the condition or use of any assets used in connection with or related to the GOB Stores. Buyer agrees that the sale of any asset related to the GOB Stores is made on "as-is", "where-is" basis.

#### **ARTICLE IV BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer represents and warrants to each Seller that the statements contained in this Article IV are true and correct as of the date of this Agreement.

Section 4.1 Organization of Buyer; Good Standing. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its assets and to carry on its business as now being conducted.

Section 4.2 Authorization of Transaction. Buyer has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and all other agreements contemplated hereby to which Buyer is a party have been duly authorized by Buyer. This Agreement (assuming due authorization and delivery by Sellers) constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity.

Section 4.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II) will (a) conflict with or result in a breach of the certificate of incorporation or bylaws, or other organizational documents, of Buyer, (b) violate any law or Decree to which Buyer is, or its assets or properties are, subject or (c) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract or Lease to which Buyer is a party or by which it is bound, except, in the case of either clause (b) or (c), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, have a material adverse effect on Buyer. Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.4 Litigation; Decrees. There is no Litigation pending or, to Buyer's knowledge, threatened in writing that challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Neither Buyer nor any of its Subsidiaries is subject to any outstanding Decree that would prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.5 Brokers' Fees. Buyer has not entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Sellers or any of their Affiliates could become liable or obligated to pay.

Section 4.6 Sufficient Funds; Adequate Assurances. Buyer has and will have at the Closing immediately available funds sufficient for the satisfaction of all of Buyer's obligations under this Agreement, including the payment of the Purchase Price, the Buyer Cure Costs and all fees, expenses of and other amounts required to be paid by Buyer in connection with the

transactions contemplated hereby. Buyer is capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Transferred Contracts and Assumed Leases and the related Assumed Liabilities.

## ARTICLE V PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing (except as otherwise expressly stated to apply to a different period):

Section 5.1 Efforts; Cooperation. Upon the terms and subject to the conditions set forth in this Agreement (including Section 5.4(a)), each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things reasonably necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby, except as otherwise specifically provided in Section 5.4. Without limiting the generality of the foregoing, (i) each Seller shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.1 that are within its control or influence to be satisfied or fulfilled, and (ii) Buyer shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.2 that are within its control or influence to be satisfied or fulfilled.

### Section 5.2 Conduct of the Business Pending the Closing.

(a) During the period prior to the Closing, Sellers shall use commercially reasonable efforts, except as otherwise required, authorized or restricted pursuant to the Bankruptcy Code or a Decree of the Bankruptcy Court, to operate the Business in the Ordinary Course of Business. Sellers shall use commercially reasonable efforts to, except as related to or the result of the filing or pendency of the Bankruptcy Cases, (A) preserve intact their business organizations, (B) maintain the Business and the Acquired Assets (normal wear and tear excepted), (C) keep available the services of its officers and Covered Employees, (D) maintain satisfactory relationships with licensors, licensees, suppliers, contractors, distributors, consultants, vendors and others having business relationships with Sellers in connection with the operation of the Business (other than payment of pre-petition claims), and (E) continue to operate the Business and Acquired Assets in all material respects in compliance with all Laws applicable to the Business and Sellers consistent with past practice.

(b) Except (i) as set forth on Section 5.2(b) of the Disclosure Schedule, (ii) as required by applicable Law or by Decree of the Bankruptcy Court, (iii) as otherwise contemplated by this Agreement or (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), no Seller shall, solely as it relates to the Business:

(i) other than in the Ordinary Course of Business, (A) materially increase the annual level of compensation of any Covered Employee or (B)

materially increase the coverage or benefits available under any (or create any new) Employee Benefit Plan;

(ii) subject any of the Acquired Assets to any Lien, except for Permitted Liens and any Lien securing any debtor in possession loan facility or granted in an order authorizing use of cash collateral;

(iii) terminate, amend or fail to renew, obtain or preserve any material Permit;

(iv) make any material loans or material advances;

(v) enter into any Contract that limits or restricts the conduct or operations of the business of the Company;

(vi) incur, create, assume, guarantee or become liable for any indebtedness, other than trade debt and other indebtedness incurred in the Ordinary Course of Business;

(vii) use "liquidation" sales or use "brand sale", "going out of business", "out of business", "going out of business sale", "we quit", "quitting business", "everything must go", "liquidation/liquidating" or similar language with respect to the Business, except as being used as of the date hereof;

(viii) except as previously disclosed to or known by Buyer, materially modify, amend, supplement or terminate any Contract or Lease set forth on Schedule 2.7(a);

(ix) fail to maintain in full force and effect any filings necessary to maintain the Owned Intellectual Property, other than in the Ordinary Course of Business;

(x) write up, write down or write off the book value of any assets other than in the Ordinary Course of Business;

(xi) engage any new employee other than in the Ordinary Course of Business; provided, however, that Sellers shall not engage any new employee whose annual base salary would exceed \$90,000;

(xii) reject any Contracts or Leases other than as set forth on Section 5.2(b)(xii) of the Disclosure Schedule;

(xiii) seek to accelerate the receipt of any royalty payments or licensing receivables generated by the Business, by way of discount or otherwise;

(xiv) terminate any Covered Employee unless such termination is for "cause"; or

(xv) agree to do anything prohibited by this Section 5.2.

Section 5.3 Bankruptcy Court Matters.

(a) No later than December 8, 2017, Sellers shall file with the Bankruptcy Court an application or motion seeking approval of (i) the Bidding Procedures Order (ii) the form of this Agreement and Sellers' authority to enter into this Agreement and (iii) the Bid Protections (as defined below) (the "***Bidding Procedures Motion***").

(b) If this Agreement is terminated pursuant to Section 8.1(e)(i), Buyer shall be entitled to the reimbursement of, and Sellers shall promptly reimburse Buyer in immediately available funds for, its actual, reasonable and documented actual and necessary out-of-pocket fees and expenses in connection with the transaction contemplated hereby in the maximum amount of \$350,000 (the "***Expense Reimbursement***") and the payment of a break-up fee of \$500,000 (the "***Break-Up Fee***", together with the Expense Reimbursement, the "***Bid Protections***"). In addition, the Bidding Procedures Order shall provide for an initial overbid protection in the amount of \$400,000 over and above the aggregate of the Purchase Price and the Bid Protections and minimum bid increments thereafter of \$200,000 (the "***Overbid Protection***"). The obligations of Sellers to pay the Bid Protections (i) shall, subject to the provisions of the DIP Order, be entitled to administrative expense claim status under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code, (ii) shall not be subordinate to any other administrative expense claim against Sellers, other than as provided in the DIP Order or any adequate protection order in existence at the time the Expense Reimbursement is approved, and (iii) shall survive the termination of this Agreement in accordance with Section 8.2. The Bidding Procedures Order shall approve the Bid Protections as set forth in this paragraph.

(c) Unless otherwise agreed by the Parties in writing, the Bidding Procedures Order shall also (i) be entered by the Bankruptcy Court on or before December 8, 2017, (ii) provide that qualified bids must be submitted by December 18, 2017, and an auction, if any, shall take place on December 19, 2017, and (iii) provide that the Closing shall occur on or before December 31, 2017. Notwithstanding the foregoing, the Closing shall occur as provided in Section 2.4.

(d) This Agreement and the transactions contemplated hereby are subject to Sellers' right and ability to consider higher or better competing bids with respect to the Business and a material portion of the Acquired Assets pursuant to the Bidding Procedures Order (each a "***Competing Bid***").

(e) If an Auction is conducted, and Buyer is not the prevailing party at the conclusion of such Auction (such prevailing party, the "***Prevailing Bidder***"), Buyer shall be required to serve as a back-up bidder (the "***Back-up Bidder***") and keep Buyer's bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable until the earlier of (i) 5:00 p.m. (prevailing Eastern time) on January 31, 2018 (the "***Outside Back-up Date***"), or (ii) the date of closing of a Competing Bid with the Prevailing Bidder. Following the Sale Hearing and prior to the Outside Back-up Date, if the Prevailing Bidder fails to consummate the applicable alternative transaction as a result of a breach or failure to perform

on the part of such Prevailing Bidder, the Back-up Bidder (if the Back-up Bidder is the next highest bidder at the Auction) will be deemed to have the new prevailing bid, and Sellers will be authorized, without further order of the Bankruptcy Court, to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) with the Back-up Bidder. Notwithstanding the foregoing, no Auction was conducted.

(f) Sellers shall promptly serve true and correct copies of the Sale Motion and all related pleadings in accordance with the Bidding Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules for the United States Bankruptcy Court for the District of Delaware and any other applicable order of the Bankruptcy Court.

(g) The Sale Order shall be entered by the Bankruptcy Court. The Sale Order shall, among other things, (i) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (A) the execution, delivery and performance by Sellers of this Agreement, (B) the sale of the Acquired Assets to Buyer on the terms set forth herein and free and clear of all Liens (other than Liens included in the Assumed Liabilities and Permitted Liens), and (C) the performance by Sellers of their respective obligations under this Agreement; (ii) authorize and empower Sellers to assume and assign to Buyer the Transferred Contracts; and (iii) find that Buyer is a "good faith" buyer within the meaning of Section 363(m) of the Bankruptcy Code, not a successor to any Seller and grant Buyer the protections of Section 363(m) of the Bankruptcy Code. Buyer shall promptly take such actions as are reasonably requested by Sellers to assist in obtaining Bankruptcy Court approval of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (a) demonstrating that Buyer is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code and (b) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code. In the event that the Bankruptcy Court's approval of the Sale Order shall be appealed, Sellers shall use reasonable efforts to defend such appeal.

(h) Unless otherwise provided in the Bidding Procedures Order, the Bidding Procedures Order I shall apply to the sale of the Business hereunder.

Section 5.4 Notices and Consents. Prior to the Closing and as necessary following the Closing:

(a) Sellers will give, or will cause to be given, any notices to third parties, and each of the Parties will use its commercially reasonable efforts to obtain any third party consents or sublicenses, in connection with the matters referred to in Section 5.4(a) of the Disclosure Schedule or as are otherwise necessary and appropriate to consummate the transactions contemplated hereby

(b) Each of the Parties will give any notices to, make any filings with, and use its commercially reasonable efforts to obtain any authorizations, consents, and approvals of Governmental Authorities necessary and appropriate to consummate the transactions contemplated hereby.

Section 5.5 Notice of Developments. Each Seller and Buyer will give prompt written notice to the other Parties of (a) the existence of any fact or circumstance, or the occurrence of any event, of which it has Knowledge that would reasonably be likely to cause a condition to a Party's obligations to consummate the transactions contemplated hereby set forth in Article VII not to be satisfied as of a reasonably foreseeable Closing Date, or (b) the receipt of any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; provided, however, that the delivery of any such notice pursuant to this Section 5.5 shall not be deemed to amend or supplement this Agreement and the failure to deliver any such notice shall not constitute a waiver of any right or condition to the consummation of the transactions contemplated hereby by any Party.

Section 5.6 Access. Upon the reasonable request of Buyer, Sellers will permit Buyer and its Representatives to have, upon reasonable advance written notice, access to all premises, properties, books and records and Transferred Contracts and Assumed Leases included in the Acquired Assets during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of any Seller; provided, however, that, for avoidance of doubt, the foregoing shall not require any Person to waive, or take any action with the effect of waiving, its attorney-client privilege with respect thereto. Buyer shall upon reasonable notice to, and with the prior written consent of, Sellers be permitted to contact vendors, suppliers, licensors and licensees. Sellers shall be entitled to be present at any such meetings.

Section 5.7 Bulk Transfer Laws. Buyer acknowledges that Sellers will not comply with the provisions of any bulk transfer laws or similar laws of any jurisdiction in connection with the transactions contemplated by this Agreement, including the United Nations Convention on the Sale of Goods, and hereby waives all claims related to the non-compliance therewith.

## ARTICLE VI OTHER COVENANTS

The Parties agree as follows with respect to the period from and after the Closing:

### Section 6.1 Further Assurances.

(a) In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, each of the Parties will, at the requesting Party's sole cost and expense, take such further action (including the execution and delivery of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation, providing materials and information) as the other Party may reasonably request which actions shall be reasonably necessary to transfer, convey or assign to Buyer all of the Acquired Assets or to confirm Buyer's assumption of the Assumed Liabilities.

(b) If, following the Closing, Buyer or any Seller becomes aware that Buyer or any of its Affiliates owns any asset or rights which is an Excluded Asset, such Party shall promptly inform the other Party of that fact. Thereafter, at the request of any Seller, Buyer shall execute, or cause the relevant Affiliate(s) of Buyer to execute, such

documents as may be reasonably necessary to cause the transfer of and Buyer shall thereafter transfer any such asset or right to such Seller or such other entities nominated by such Seller for no consideration and such Seller shall do all such things as are reasonably necessary to facilitate such transfer. If, following the Closing, Buyer receives any payments in respect of an Excluded Asset, Buyer shall promptly remit such payments to the applicable Seller or other entity nominated by such Seller.

(c) If, following the Closing, Buyer or any Seller becomes aware that a Seller or any of its Affiliates owns any asset or rights which is an Acquired Asset, such Party shall promptly inform the other Party of that fact. Thereafter, at the request of Buyer, the applicable Seller shall execute or cause the relevant Affiliate(s) of such Seller to execute such documents as may be reasonably necessary to cause the transfer of and such Seller shall thereafter transfer any such asset or right to Buyer or any other entities nominated by Buyer for no consideration and Buyer shall do all such things as are reasonably necessary to facilitate such transfer. If, following the Closing, a Seller or its Affiliates receive any payments in respect of the Acquired Assets, such Seller shall promptly remit such payments to Buyer or other entity nominated by Buyer.

(d) With respect to any Acquired Asset (and any asset which is not an Acquired Asset solely as a result of a restriction on transfer or assignment) for which consent or approval is required for transfer or assignment but is not obtained prior to the Closing, Sellers shall reasonably cooperate with Buyer in any reasonable arrangement that Buyer may request to provide Buyer with all of the benefits of, or under, the applicable Acquired Assets (or assets that are not Acquired Assets solely as a result of a restriction on transfer or assignment), including taking actions reasonably required to enforce, for the benefit of Buyer, any and all rights of Sellers against any party to the applicable Acquired Asset.

Section 6.2 Access; Enforcement; Record Retention. From and after the Closing, upon request by any Party (the "Requesting Party"), the other Parties will permit such Requesting Party and its Representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of such Party, to all premises, properties, personnel, books and records, and Contracts or Leases of such Party for the purposes of (a) preparing Tax Returns, (b) monitoring or enforcing rights or obligations under this Agreement or any of the Related Agreements, or (c) complying with the requirements of any Governmental Authority; provided, however, that, for avoidance of doubt, the foregoing shall not require a Party to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege, (ii) such action could reasonably be expected to result in violation of applicable law, or (iii) providing such access or information would be reasonably expected to be disruptive to its normal business operations. Buyer agrees to maintain the files or records which are contemplated by the first sentence of this Section 6.2 in a manner consistent in all material respects with its document retention and destruction policies, as in effect from time to time, for six (6) years following the Closing.



Section 6.3 Covered Employees.

(a) Buyer shall offer employment to all of the Covered Employees employed at a Store (including, for the avoidance of doubt, Inactive Employees). At least two (2) Business Days prior to the Auction, Buyer shall provide Sellers a list of any non-Store Covered Employees that Buyer would like to make an offer of employment. Any such offer of employment will be effective as of the Closing Date and contingent upon the Closing, and with respect to each of the Covered Employees who is then employed by Sellers or their respective Subsidiaries shall be at the same location, at the same base wage or hourly rate, with employee benefits which are substantially comparable in the aggregate and on the same terms and conditions of employment (excluding, for the avoidance of doubt, severance) as in effect immediately prior to the Closing. Each Covered Employee who accepts such offer of employment shall be deemed a "Transferred Employee"; provided that any Covered Employee who is on an approved leave of absence as of the Closing (an "Inactive Employee") shall not be considered a Transferred Employee unless and until such Inactive Employee returns to active status pursuant to the following sentence, and notwithstanding anything herein to the contrary, Buyer and its Affiliates shall only be responsible for Liabilities relating to such Inactive Employee from and after the date such Inactive Employee becomes a Transferred Employee. The employment of any Inactive Employee with Buyer or one of its Affiliates, as applicable, shall be effective upon his or her return to active work, provided that the Inactive Employee reports to work with Buyer or one of its Affiliates, as applicable, within five (5) Business Days after the end of any such approved leave and, to the extent permitted by applicable Law, in no event later than six (6) months following the Closing Date, and, as of such date, such Inactive Employee shall be a Transferred Employee. Buyer, in its sole discretion shall also be permitted to offer employment to any Covered Employee that is not employed at a Store and any such Covered Employee that accepts such offer of employment shall be a Transferred Employee. Sellers will reasonably cooperate with any reasonable requests by Buyer in order to facilitate the offers of employment and the delivery of such offers.

(b) Service Credit. Each Transferred Employee shall be given credit for all service with Sellers and their Subsidiaries, and their respective predecessors under any employee benefit plans or arrangements of Buyer and its Affiliates maintained by Buyer or its Affiliates in which such Transferred Employees participate following the Closing Date, for purposes of eligibility, vesting and entitlement to benefits, including for severance benefits and vacation entitlement and for accrual of pension benefits. Notwithstanding the foregoing, nothing in this Section 6.3(b) shall be construed to require crediting of service that would result in a duplication of benefits.

(c) No Third Party Beneficiary Rights. Without limiting the generality of this Section 6.3 or Section 6.4 below, no provision of this Agreement shall create any third party beneficiary rights in any current or former employee or service provider of any Seller, any Covered Employee or Transferred Employee (including any beneficiary or dependent thereof) in respect of continued employment by Sellers or its Affiliates or Buyer or its Affiliates or otherwise. Nothing herein shall (i) guarantee employment for any period of time or preclude the ability of Buyer or any of its Affiliates to terminate

any Transferred Employee for any reason, (ii) require Buyer or any of its Affiliates to continue any Company Benefit Plans, employee benefit plans or arrangements or prevent the amendment, modification or termination thereof after the Closing, or (iii) constitute an amendment to any Company Benefit Plan, employee benefit plans or arrangements.

**Section 6.4 Offer of Employment; Cooperation.**

(a) After the Closing Date, Buyer shall, and shall cause its Affiliates to, cooperate with Sellers to provide such current information regarding the Covered Employees on an ongoing basis as may be necessary to facilitate determinations of eligibility for, and payments of benefits to, the Covered Employees under any applicable employee benefit that continues to be maintained by Sellers. Buyer shall, and shall cause its Affiliates to, permit Covered Employees to provide such assistance to Sellers as may be required in respect of claims against Sellers, whether asserted or threatened, to the extent that, in Seller's opinion, (i) a Covered Employee has knowledge of relevant facts or issues, or (ii) a Covered Employee's assistance is reasonably necessary in respect of any such claim.

(b) Except for any Assumed Liabilities, Sellers will have the sole and absolute responsibility for any financial or other commitments to their employees for the period prior to the Closing, including any and all claims or obligations for severance pay and any and all claims and obligations arising under any collective bargaining agreement, employee benefit plan (including, any withdrawal liability) or any local, state or federal law, rule or regulation (including, the WARN Act). Other than as set forth in Section 6.3(a), Buyer shall have no contractual or other obligation with respect to hiring, offering to hire or employing any of Sellers' employees. Except as set forth in Section 6.3(a), in no event shall Buyer be obligated to commit to any particular usage of employees or to any particular benefits or wage rates. Nothing contained herein shall be deemed an admission that Sellers have any financial obligation to employees or that obligations, if any, are entitled to a particular treatment or priority under the Bankruptcy Code. Sellers' failure to pay an obligation, if any, under this Section 6.4 shall not be a default under this Agreement.

**Section 6.5 Transfer Taxes.** Buyer and Sellers shall each pay one-half of any stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or other non-income Tax, fee or governmental charge (a "Transfer Tax") imposed under applicable Law in connection with the transactions contemplated hereby. The Party that is required by applicable Law to file any Tax Returns in connection with Transfer Taxes described in the immediately preceding sentence shall prepare and timely file such Tax Returns. The Parties hereto shall cooperate to permit the filing Party to prepare and timely file any such Tax Returns.

**Section 6.6 Press Releases and Public Announcements.** No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Parties, unless a press release or public announcement is required by applicable Law or a Decree of the Bankruptcy Court. If any such announcement or other disclosure is required by applicable Law or a Decree of the Bankruptcy Court, the disclosing Party shall give the nondisclosing Parties prior notice of, and an

opportunity to comment on, the proposed disclosure. The Parties acknowledge that Sellers shall file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order.

Section 6.7 Personally Identifiable Information.

(a) Buyer acknowledges that the Acquired Assets include “personally identifiable information” within the meaning of section 363(b) of the Bankruptcy Code, along with associated information about Sellers’ customers (the “Customer Information”).

(b) Buyer shall: (i) employ appropriate security controls and procedures (technical, operational, and managerial) to protect the Customer Information; (ii) abide by all applicable Laws with respect to the Customer Information; and (iii) take any such actions as may be agreed between Sellers and Buyer.

(c) Buyer shall abide by Sellers’ privacy policies, and privacy-related covenants made in Sellers’ terms of service, governing the Customer Information and in effect as of the Petition Date.

(d) Buyer shall honor all prior requests by any individual who has opted out of receiving marketing messages from Sellers.

(e) Buyer may use the Customer Information solely for the purpose of continuing Sellers’ business operations and continuing to provide similar goods and services to individuals. Buyer shall not contact any individual derived from the Customer Information other than with respect to a transaction with Sellers already initiated by such individual.

(f) Buyer may use the Customer Information collected in connection with all “Vitamin World” brands solely for the purpose of marketing and advertising in connection with the “Vitamin World” brands and subject to the terms of the existing privacy policy.

(g) To the extent the Customer Information contains social security numbers (“SSNs”), Buyer shall limit the use of SSNs to tax reporting purposes and should purge that information from its database when any such SSN is no longer required for any such tax reporting purpose.

Section 6.8 Transition Services Agreement. The Parties shall negotiate in good faith for a Transition Services Agreement with a term no longer than one hundred twenty (120) days after the Closing, subject to one extension of sixty (60) days as reasonably required by the Sellers, and which transition services shall be provided at no cost except Sellers shall reimburse Buyer for any out-of-pocket expenses.

Section 6.9 [reserved].

Section 6.10 No Successor Liability. The Parties intend that upon the Closing, the Buyer and its Affiliates shall not and shall not be deemed to: (a) be a successor (or other such

similarly situated party), or otherwise be deemed a successor, to Sellers, including a “successor employer” for the purposes of the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, or other applicable laws; (b) have any responsibility or liability for any obligations of Sellers, or any affiliate of Sellers, based on any theory of successor or similar theories of liability; (c) have, de facto or otherwise, merged with or into any of Sellers; (d) be an alter ego or a mere continuation or substantial continuation of any of Sellers (and there is no continuity of enterprise between the Buyer and any Seller), including within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to Sellers’ liability under such law, rule or regulation or doctrine; or (e) be holding itself out to the public as a continuation of any of Sellers or their respective estates.

Section 6.11 Acquired Avoidance Actions. Buyer shall not at any time following the Closing pursue, prosecute, sell and/or transfer any of the Acquired Avoidance Actions.

## ARTICLE VII CONDITIONS TO OBLIGATION TO CLOSE

Section 7.1 Conditions to Buyer’s Obligations. Buyer’s obligation to consummate the transactions contemplated hereby in connection with the Closing is subject to satisfaction or waiver of the following conditions:

- (a) the representations and warranties set forth in Article III shall have been true and correct on the date hereof and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date), except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to “material” or “Material Adverse Effect” set forth therein) has not resulted in a Material Adverse Effect;
- (b) Sellers shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects;
- (c) the Bankruptcy Court shall have entered the Bidding Procedures Order pursuant to the terms and conditions of Section 5.3 herein.
- (d) the Bankruptcy Court shall have entered the Sale Order, and no Decree staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date;
- (e) no material Decree shall be in effect that prohibits consummation of the transactions contemplated by this Agreement; and
- (f) each delivery contemplated by Section 2.5(b) to be delivered to Buyer shall have been delivered.

Section 7.2 Conditions to Sellers' Obligations. Sellers' obligations to consummate the transactions contemplated hereby in connection with the Closing are subject to satisfaction or waiver of the following conditions:

(a) the representations and warranties set forth in Article IV shall have been true and correct in all material respects (except that any representation or warranty that is qualified by materiality shall have been true and correct in all respects) on the date hereof and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date);

(b) Buyer shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects;

(c) the Bankruptcy Court shall have entered the Sale Order, and no Decree staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date;

(d) no material Decree shall be in effect that prohibits consummation of any of the transactions contemplated by this Agreement; and

(e) each payment contemplated by Section 2.5(a) to be made to Sellers shall have been made, and each delivery contemplated by Section 2.5(c) to be delivered to Sellers shall have been delivered.

Section 7.3 No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 7.1 or Section 7.2, as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliates' failure to use its reasonable best efforts (or such other applicable efforts standard expressly contemplated hereby) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty or covenant hereunder.

## ARTICLE VIII TERMINATION

Section 8.1 Termination of Agreement. The Parties may terminate this Agreement at any time prior to the Closing as provided below:

(a) by the mutual written consent of the Parties;

(b) by any Party by giving written notice to the other Parties if:

(i) any court of competent jurisdiction or other competent Governmental Authority shall have enacted or issued a Law or Decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Law or Decree or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 8.1(b)(i)

shall not be available to any Party if the failure to consummate the Closing because of such action by a Governmental Authority shall be due to the failure of such Party to have fulfilled any of its obligations under this Agreement; or

(ii) the Closing shall not have occurred prior to the Termination Date; provided, however, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer or Sellers, then the breaching Party may not terminate this Agreement pursuant to this Section 8.1(b)(ii). The "Termination Date" shall be January 19, 2018, unless the Parties mutually agree to a later Closing Date pursuant to Section 2.4, upon which such later date shall be the Termination Date.

(c) by Buyer by giving written notice to each Seller if there has been a breach by any Seller of any representation, warranty, covenant or agreement contained in this Agreement (including the obligation to use the January Rent to timely pay the rent on all of the Stores and the Company's support center office as provided in Section 2.3(d)) that has prevented the satisfaction of the conditions to the obligations of Buyer at the Closing set forth in Section 7.1(a) and Section 7.1(b), and such breach has not been waived by Buyer, or, if such breach is curable, cured by such Seller prior to the earlier to occur of (A) ten (10) days after receipt of Buyer's notice of intent to terminate and (B) the Termination Date; provided, that Buyer shall not have a right of termination pursuant to this Section 8.1(c) if Seller could, at such time, terminate this Agreement pursuant to Section 8.1(d);

(d) by any Seller by giving written notice to Buyer and the other Sellers if there has been a breach by Buyer of any representation, warranty, covenant or agreement contained in this Agreement (including the obligation to pay the January Rent as provided in Section 2.3(d)) that has prevented the satisfaction of the conditions to the obligations of Sellers at the Closing set forth in Section 7.2(a) and Section 7.2(b), and such breach has not been waived by such Seller, or, if such breach is curable (it being understood that the failure by Buyer to pay the January Rent on or prior to December 28, 2017 is not a curable breach), cured by Buyer prior to the earlier to occur of (A) ten (10) days after receipt of such Seller's notice of intent to terminate and (B) the Termination Date; provided, that Sellers shall not have a right of termination pursuant to this Section 8.1(d) if Buyer could, at such time, terminate this Agreement pursuant to Section 8.1(c);  
or

(e) by Sellers or Buyer, if (i) (x) Sellers enter into a definitive agreement with respect to a Competing Bid, (y) the Bankruptcy Court enters a Decree approving a Competing Bid and (z) the Person making the Competing Bid consummates the Competing Bid or (ii) the Bankruptcy Court enters an order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement.

(f) Notwithstanding anything contained herein to the contrary, in the event that Sellers terminate this Agreement pursuant to Section 8.1(d), the Escrow Amount,

shall be delivered to Sellers in accordance with Section 2.3(b)(ii) (within one (1) Business Day following the date of any such termination). Sellers' receipt of the Escrow Amount shall constitute liquidated damages (and not a penalty) in a reasonable amount that will compensate Sellers in the circumstances in which this Agreement is terminated pursuant to Section 8.1(d), which amount would otherwise be impossible to calculate with precision, and (subject to the following sentence) be the sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) of Sellers against Buyer, and any of its former, current, or future general or limited partners, stockholders, managers, members, directors, officers, Affiliates or agents for any loss suffered as a result of any breach of any covenant, representation, warranty or agreement in this Agreement by Buyer or the failure of the transactions contemplated hereby to be consummated, and upon payment of such amounts, none of Buyer nor any of its former, current, or future general or limited partners, stockholders, managers, members, directors, officers, Affiliates or agents shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby. Notwithstanding the previous sentence, if Sellers terminate this Agreement pursuant to Section 8.1(d) as a result of Buyer's willful misconduct, then, in addition to the Escrow Amount, Sellers shall be entitled to any other remedies available at law or in equity.

Section 8.2 Effect of Termination. If any Party terminates this Agreement pursuant to Section 8.1, all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I, Section 3.17, Article IX, and this Section 8.2 shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 5.3 and Section 2.3(d)) to the other Party hereunder; provided, however, that nothing in this Section 8.2 shall relieve any Party from Liability for any breach occurring prior to any such termination (but solely to the extent such breach was willful, grossly negligent or fraudulent) set forth in this Agreement.

## ARTICLE IX MISCELLANEOUS

Section 9.1 Survival. Except for any covenant that by its terms is to be performed (in whole or in part) by any Party following the Closing, none of the representations, warranties, or covenants of any Party set forth in this Agreement or in any certificate delivered pursuant to Section 2.5(b) or Section 2.5(c) shall survive, and each of the same shall terminate and be of no further force or effect as of, the Closing. Any obligations to be performed post-Closing shall survive until completion.

Section 9.2 Expenses. Each Party will bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of law firms, commercial banks, investment banks, accountants, public relations firms, experts and consultants. For the avoidance of doubt, Buyer shall pay all recording fees arising from the transfer of the Acquired Assets.

Section 9.3 Entire Agreement. This Agreement, the Related Agreements and the Confidentiality Agreement constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or between the

Parties to the extent they relate in any way to the subject matter hereof (including the Prior Agreement).

Section 9.4 Incorporation of Exhibits and Disclosure Schedule. The Exhibits to this Agreement and the Disclosure Schedule are incorporated herein by reference and made a part hereof.

Section 9.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party (and, in the case of any amendment extending the Termination Date or that would reasonably be expected to prevent or result in the failure of Sellers to indefeasibly repay all amounts owing under the DIP Financing Agreement at the Closing, the DIP Agent), except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder with the prior written consent of the other Parties. Notwithstanding the foregoing, Buyer may assign (in whole or in part) either this Agreement or any of its rights, interests, or obligations hereunder to an Affiliate of Buyer without the prior written consent of the other Parties; provided that such assignment shall not relieve Buyer of its obligations hereunder.

Section 9.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) upon receipt of confirmation of receipt if sent by facsimile transmission; (d) on the day such communication was sent by e-mail; or (e) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to any Seller: 105 Orville Drive  
Bohemia, New York 11716  
Attention: Michael Madden  
E-mail: mmadden@vitaminworld.com



With a copy (which shall not constitute notice to Sellers) to:

Saul Ewing Arnstein & Lehr LLP  
1201 North Market Street, Suite 2300  
Wilmington, Delaware 19801  
Attention: Mark Minuti; Jeffrey C. Hampton  
E-mail: Mark.Minuti@saul.com; Jeffrey.Hampton@saul.com

If to Buyer: Star City Int'l Bldg., 10 Jiuxianqiao Rd., C-16th FL  
Chaoyang District, Beijing, China 100016  
Attention: Mr. Hua Liu, CFO  
E-mail: liuhua@feihe.com

With a copy (which shall not constitute notice to Buyer) to:

DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, New York 10020  
Attention: Richard Chesley; Andrew Ledbetter  
E-mail: Richard.Chesley@dlapiper.com;  
Andrew.Ledbetter@dlapiper.com

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 9.7.

Section 9.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware (without giving effect to the principles of conflict of Laws thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

Section 9.9 Submission to Jurisdiction; Service of Process. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby and agrees that all claims in respect of such Litigation may be heard and determined in any such court. Each Party also agrees not to (a) attempt to deny or defeat such exclusive jurisdiction by motion or other request for leave from the Bankruptcy Court or (b) bring any action or proceeding arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby in any other court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue in, and any defense of inconvenient forum to the maintenance of, any Litigation so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 9.7; provided, however, that nothing in this Section 9.9 shall affect the right of any Party to serve legal process in any other manner permitted by law

or in equity. Each Party agrees that a final judgment in any Litigation so brought shall be conclusive and may be enforced by Litigation or in any other manner provided by law or in equity. The Parties intend that all foreign jurisdictions will enforce any Decree of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby.

Section 9.10 Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 9.11 Specific Performance. Prior to the Closing, without the requirement of posting a bond or other security, Sellers shall be entitled to an injunction or injunctions to enforce specifically Buyer's obligation to deliver written instructions to the Escrow Agent to release the Escrow Amount to Sellers if and to the extent required by Section 2.3(b)(ii); provided that Sellers shall not be entitled to enforce specifically any other covenant or agreement prior to the Closing. From and after the Closing, the Parties shall be entitled to an injunction or injunctions to enforce specifically the Parties' respective covenants and agreements under this Agreement that survive the Closing, without the requirement of posting a bond or other security.

Section 9.12 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. In the event that any of the provisions of this Agreement shall be held by any Governmental Authority to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

Section 9.13 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than Buyer, each Seller, and their respective successors and permitted assigns. Notwithstanding anything to the contrary in this Agreement, the DIP Agent and DIP Lenders shall be third party beneficiaries of all provisions of this Agreement that expressly relate to the DIP Agent or DIP Lenders, as applicable.

Section 9.14 Non-Recourse. All claims, obligations, liabilities or causes of action that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement, the negotiation, execution or performance of this Agreement (including any representation or warranty made in connection with or as an inducement to this Agreement) or the transactions contemplated hereby may be made only against (and are those solely of) the Persons that are expressly identified as Parties to this Agreement. No other Person, including any of their Affiliates, directors, officers, employees, incorporators, members, partners, managers, stockholders, agents, attorneys, or representatives of, or any financial advisors or lenders to any of the foregoing shall have any liabilities for any claims, causes of action, obligations, or liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach.

Section 9.15 Mutual Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.16 Disclosure Schedule. All capitalized terms not defined in the Disclosure Schedule shall have the meanings ascribed to them in this Agreement. The representations and warranties of Sellers in this Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in the Disclosure Schedule. The listing of any matter shall expressly not be deemed to constitute an admission by Sellers, or to otherwise imply, that any such matter is material, is required to be disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the listing of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Sellers' representations, warranties, or covenants set forth in this Agreement. All attachments to the Disclosure Schedule are incorporated by reference into the applicable section of the Disclosure Schedule in which they are directly or indirectly referenced. The information contained in the Disclosure Schedule is in all respects provided subject to the Confidentiality Agreement.

Section 9.17 Headings; Table of Contents. The section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.18 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**SELLERS:**

VITAMIN WORLD, INC.  
AND ITS SUBSIDIARIES

By: \_\_\_\_\_

Name:

Title:

VW ONLINE, INC.

By: \_\_\_\_\_

Name:

Title:

**BUYER:**

VITAMIN WORLD USA CORPORATION

By: \_\_\_\_\_

Name:

Title:

**ORIGINAL BUYER:**

(solely for purposes of amending and restating the  
Prior Agreement)

VALUABLE HERO LIMITED

By: \_\_\_\_\_

Name:

Title: