

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - FLINT**

In re:	)	
	)	Chapter 11
VPH Pharmacy, Inc.	)	
	)	Case No. 17-30077
	)	
Debtor.	)	Hon. Daniel S. Opperman

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**DEBTOR’S MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 363 AND 365, BANKRUPTCY RULES 2002 AND 6004, AND LOCAL RULES 6004-1 AND 9014-1 (A) ESTABLISHING BIDDING PROCEDURES FOR THE AUCTION SALE OF SUBSTANTIALLY ALL OF DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND TRANSFERRING LIENS TO PROCEEDS; (B) SCHEDULING AN AUCTION AND SALE HEARING TO CONSIDER APPROVAL OF SALE; (C) ESTABLISHING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND TRANSFERRING LIENS TO PROCEEDS; (E) APPROVING THE FORM AND MANNER OF THE AUCTION NOTICE, THE FORM OF THE NOTICE TO NON-DEBTOR CO-PARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND THE NOTICE OF THE SALE HEARING; (F) SCHEDULING HEARING ON APPROVAL OF SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS; AND (G) GRANTING OTHER MISCELLANEOUS RELIEF**

VPH Pharmacy, Inc. (the “Debtor”) hereby moves the Court for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”), pursuant to sections 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 and 6004 of the Federal Rules of

Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1 and 9014-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Michigan (the “Local Rules”), granting the *Debtor’s Motion for Entry of an Order (A) Establishing Bidding Procedures for the Auction Sale of Substantially all of the Debtor’s Assets Free and Clear of Liens, Claims and Encumbrances and Transferring Liens to Proceeds; (B) Scheduling an Auction and Sale Hearing to Consider Approval of Sale; (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Approving the Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims and Encumbrances and Transferring Liens to Proceeds; (E) Approving the Form and Manner of the Auction Notice, the Form of the Notice to Non-Debtor Co-Parties to Executory Contracts and Unexpired Leases, and the Notice of the Sale Hearing; (F) Schedule Hearing on Approval of Sale of Substantially All of the Debtor’s Assets; and (G) Granting Other Miscellaneous Relief* (the “Motion”). In support of the Motion, the Debtor respectfully states as follows:

**JURISDICTION**

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these proceedings and the Motion in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Rules 6004-1 and 9014-1.

### **BACKGROUND**

3. The Debtor is a closed-door pharmacy that provides medications and consulting services to approximately 60 different assisted living centers, children's foster care facilities, adult foster care facilities, retirement communities and long term care facilities. For some of these facilities, medications are needed daily. As of the Petition Date, there were approximately 1,500 patients that relied on the Debtor to timely deliver their medication.

4. The Debtor leases the building and property located at 5376 Miller Road, Swartz Creek, Michigan.

5. The Debtor was formed in 2005. Prior to the Petition Date, the Debtor was operated by Devenkumar C. Patel ("Mr. Patel"). Mr. Patel is currently serving a prison sentence in West Virginia, and therefore, cannot operate the day to day affairs of the Debtor.

6. Prior to his incarceration, on December 2, 2016, Mr. Patel and his wife, Ameer Patel ("Mrs. Patel"), executed a *Durable Power of Attorney* ("Power of Attorney"). Pursuant to the Power of Attorney, Mrs. Patel has the legal authority to act on behalf of the Debtor. Pursuant to the Power of Attorney, she had the power

to “continue operating and managing any business in which [Mr. Patel] now or later own[s] an interest for the period of time and in any manner [she] considers appropriate....” *See* Power of Attorney, ¶ 3.07.

7. Certain of the Debtor’s customers are nursing homes in which Mrs. Patel has an ownership interest.

8. Gene R. Kohut was retained as the Chief Restructuring Officer of the Debtor (“CRO”) on January 6, 2017.

9. On January 13, 2017 (the “Petition Date”), the Debtor filed a voluntary chapter 11 petition.

10. A committee of unsecured creditors was appointed in this case on March 3, 2017 (the “Committee”). *See Appointment of Committee of Unsecured Creditors* [Docket No. 65].

11. Cardinal Health 110, LLC and its affiliates (“Cardinal Health”) alleges that it has a first-priority, secured lien on a majority of the Debtor’s assets.

12. On the Petition Date, the Debtor filed its *First Day Motion of the Debtor for Entry of an Interim and Final Orders (I) Authorizing Debtor to Obtain Post-Petition Financing and Use Cash Collateral, (II) Scheduling a Final Hearing and, (III) Granting Certain Related Relief* [Docket No. 5] (the “DIP Financing Motion”). In the DIP Financing Motion, the Debtor sought to borrow \$150,000 from Winrose Plus Group, Inc. (the “DIP Lender”). Upon a stipulation of the Debtor, Cardinal

Health and other interested parties, the Court entered an order approving the financing. *See First Day Interim Order (I) Authorizing Debtor to Obtain Interim Post-Petition Financing and Use Cash Collateral, (II) Scheduling a Final Hearing, and (III) Granting Certain Related Relief (Dated: January 19, 2017)* [Docket No. 37].

13. On February 7, 2017, a revised financing order was entered. *See Revised First Day Interim Order (I) Authorizing Debtor to Obtain Interim Post-Petition Financing and Use Cash Collateral, (II) Adjourning the Final Hearing, and (III) Granting Certain Related Relief* [Docket No. 51].

14. On February 28, 2017, the Debtor, Cardinal Health, the DIP Lender and other interested parties entered into a stipulation which provided another \$150,000 of financing from the DIP Lender. *See Second Revised First Day Interim Order (I) Authorizing the Debtor to Obtain Additional Interim Post-Petition Financing and Use Cash Collateral, (II) Adjourning the Final Hearing, and (III) Granting Certain Related Relief* [Docket No. 63] (the “Second Financing Order”).

15. However, on or about March 6, 2017, the DIP Lender refused to provide additional funds to the Debtor, as set forth in the Second Financing Order.

16. As a result of the DIP Lender’s failure to provide additional funds, the Debtor was unable to continue its operations. Therefore, on March 13, 2017, the Debtor outsourced its business to Innovative Pharmaceutical Solutions Group, LLC

solely on a temporary, interim basis in an effort to ensure patient safety and preserve accounts receivable owed by its customers to the Debtor. Notwithstanding this temporary outsourcing arrangement, all of the assets subject to this outsourcing arrangement remain property of the Debtor's estate and are subject to sale under this Motion. The Debtor continues to undertake efforts to maximize the value of its estate for the benefit of creditors.

### **RELIEF REQUESTED**

17. The Debtor has determined that the best method to provide the highest return to its estate and creditors is to conduct a public auction of its assets. In furtherance of that goal, the Debtor and its professionals have solicited offers to purchase the Debtor's assets from more than 200 parties identified as closed-door pharmacies in Michigan. The Debtor desires to sell its assets to the highest and best bidder pursuant to the procedures set forth herein.

18. The Debtor hereby requests that the Court enter the Bidding Procedures Order approving the procedures detailed herein. The Debtor further requests that the Court schedule a hearing on the proposed sale (the "Sale Hearing") at which it will consider entering an order (the "Sale Order") approving a sale to the Successful Bidder pursuant to the Successful Bidder Purchase Agreement (as defined below) free and clear of all liens, claims, encumbrances and interests, with all liens to

transfer to proceeds of sale in the same manner and priority, and subject to the same defenses, as existed pre-petition.

**Qualification as a Bidder, Form of Purchase Agreement**

19. In order to qualify to participate in the Auction (as defined below), an offeror must be a Qualified Bidder, which is a party who submits a purchase agreement substantially in the form of the proposed purchase agreement, a copy of which is attached as **Exhibit B** hereto (the “Proposed Purchase Agreement”), and containing the following pertinent provisions:

- A. A cash purchase price for the Purchased Assets (as defined below), including a cash payment for some or substantially all of the Debtor’s assets, payable in full at closing.
- B. The Proposed Purchase Agreement must be accompanied by an earnest money deposit equal to ten percent (10%) of the proposed purchase price for the Purchased Assets to be held by the Debtor’s counsel pursuant to a mutually acceptable escrow agreement. The deposit will be applied against the purchase price if the Qualified Bidder is the successful purchaser of the Purchased Assets. If the sale is not consummated on account of the Qualified Bidder’s failure to perform any of its obligations under the Proposed Purchase Agreement, the Debtor will retain

the earnest money deposit. If the Qualified Bidder is not in breach of the Proposed Purchase Agreement, it will be entitled to return of the deposit if: (i) the Purchased Assets are sold to another purchaser and the sale closes; (ii) the sale is not consummated on account of the Debtor's failure to perform under the Proposed Purchase Agreement, or (iii) the sale is not consummated because conditions precedent in the Proposed Purchase Agreement were not timely satisfied by the Debtor.

- C. The purchased assets may include all of the tangible and intangible assets and personal property owned by the Debtor that are used to operate and conduct the Debtor's business operations including, but not limited to, inventory, goodwill, machinery and equipment, furniture, computers and software (collectively, the "Purchased Assets"). Certain assets of the Debtor will be excluded from the sale, which include claims and causes of action under Chapter 5 of the Bankruptcy Code, bank accounts, accounts receivable (unless a Qualified Bidder seeks to include them, Cardinal Health consents, and the Qualified Bidder allocates a separate purchase price to acquire them), cash, tax refunds, life insurance policies, and vehicles (unless a Qualified



Bidder seeks to include them, the Committee consents and the Qualified Bidder allocates a separate purchase price to acquire them), as well as the proceeds of all of the foregoing (the “Excluded Assets”).

- D. Closing on the sale transaction(s) contemplated herein will occur and conclude on or before June 30, 2017.
- E. The Qualified Bidder may also assume executory contracts and unexpired leases.
- F. Subject only to the Committee’s rights, if any, to challenge the validity, priority or amount of Cardinal Health’s claims, Cardinal Health shall have the unqualified right to credit bid its secured debt for the Purchased Assets and is a Qualified Bidder for all purposes.

20. The Debtor submits that the procedures contemplated herein, and the Proposed Purchase Agreement, are in the best interest of the Debtor’s estate and will increase the likelihood that the value of the Debtor’s assets will be maximized pursuant to the auction process outlined below and, thus, respectfully requests entry of the Bidding Procedures Order.

## **Sale Free and Clear of Liens, Claims, and Interests**

21. The Proposed Purchase Agreement provides for the sale of the Purchased Assets free and clear of all liens, claims and interests, with liens to transfer to proceeds of sale in the same manner and priority, and subject to the same defenses, as existed pre-petition. The Debtor asserts that a sufficient basis exists to sell the Purchased Assets free and clear of liens, claims and interests, pursuant to section 363(f) of the Bankruptcy Code, and hereby requests approval of the auction process governing the sale (subject to the Sale Order) of substantially all of its assets outside the ordinary course of business pursuant to the procedures set forth herein.

22. Section 363 of the Bankruptcy Code authorizes a debtor to use, sell or lease property of the estate outside the ordinary course of business free and clear of any interest in such property. 11 U.S.C. § 363(f). Section 363(f) of the Bankruptcy Code authorizes the sale of property to be free and clear of interests in such property held by an entity if:

- (1) [A]pplicable nonbankruptcy law permits a sale of such property free and clear of such interest;
- (2) [S]uch entity consents;
- (3) [S]uch interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) [S]uch interest is in bona fide dispute; or

- (5) [S]uch entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

*See generally, In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996); *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 506 (Bankr. N.D. Ala. 2002). The “interests” in property that assets may be sold “free of” include liens, claims and other encumbrances. *See Leckie Smokeless*, 99 F.3d at 581-82 (scope of 11 U.S.C. § 363(f) not limited to in rem interests); *In re Aneco Elect. Const., Inc.*, 377 B.R. 338 (Bankr. M.D. Fla. 2006).

23. Section 363(f) of the Bankruptcy Code is drafted in the disjunctive. Thus, satisfaction of any one of the requirements enumerated therein will suffice to warrant the sale of the Purchased Assets free and clear of all interests, except with respect to any interests that are liabilities to be assumed under the asset purchase agreement. *See Gulf States*, 285 B.R. at 506; *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988).

24. Courts have also consistently held that a buyer of a debtor’s assets pursuant to a section 363 sale takes free and clear from successor liability relating to the debtor’s business. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) barred successor liability claims for employment discrimination and rights under travel voucher program); *In re Leckie Smokeless Coal Co.*, 99 F.3d at 585 (affirming the sale of debtors’ assets

free and clear of certain taxes): *In re Insilco Techs., Inc.*, 531 B.R. 313, 322 (Bankr. D. Del. 2006) (stating that a 363 sale permits a buyer to take ownership of property without concern that a creditor will file suit based on a successor liability theory); *see also, In re Chrysler LLC*, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) (“[I]n personam claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction.”).

25. Section 363(b) of the Bankruptcy Code specifically authorizes asset sales outside the ordinary course of business. *See* 11 U.S.C. § 363(b)(1) (“[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate”). In approving the sale of assets outside the ordinary course of business and outside of a chapter 11 plan pursuant to section 363 of the Bankruptcy Code, courts, including those in the Sixth Circuit, have adopted the “sound business reason” test established by the Second Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *see also Stephens Industries, Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986); *In re Nicole Energy Services, Inc.*, 385 B.R. 201, 230 (Bankr. S.D. Ohio 2008); *In re Jillian’s Entertainment Holdings*, 327 B.R. 616, 617 (Bankr. W.D. Ky. 2005) (stating that the Lionel standard has been adopted by the vast majority of courts). The issue before the *Lionel* court was “to what extent chapter 11 permits a bankruptcy judge to authorize the sale of an

important asset of the bankrupt's estate, out of the ordinary course of business and prior to acceptance and outside of any plan of reorganization." *Lionel*, 722 F.2d at 1066.

26. Several sound business reasons exist for selling the Purchased Assets free and clear of liens, claims and interests, with such liens, claims and interests attaching to proceeds, at this time. An asset sale under the proposed procedures is designed to maximize the financial recovery to the Debtor's estate. The Debtor has sought bids from more than 200 parties for the Purchased Assets. An open, public auction will enable the Debtor to select the highest and best offer.

27. Cardinal Health supports the relief requested in this Motion.

28. The proposed procedures for the sale of the Purchased Assets, free of all liens, claims and interests, should be approved because the Debtor has articulated sound business reasons to support such a sale procedure, and because such a sale will maximize the value and recovery to all major constituents.

### **The Sale and Auction Process**

29. The Debtor desires to maximize the value for the Purchased Assets through an auction to determine the highest and the best offer. Accordingly, the following procedures (the "Bidding Procedures") are proposed with the objective of promoting active bidding that will result in the highest and best offer. At the same time, the Bidding Procedures reflect the Debtor's objective of conducting the

Auction in a controlled, but fair and open, fashion that promotes interest in the Purchased Assets by financially-capable, motivated bidders who are likely to close on a transaction.

30. In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or public auction. The Debtor believes that good cause exists to expose the Purchased Assets to sale at a public auction as this will enable the Debtor to obtain the highest and the best offers for the Purchased Assets, thereby maximizing the value of their assets.

31. The Debtor asserts that the following Bidding Procedures are appropriate for this transaction, and requests entry of the Bidding Procedures Order approving the procedures set forth herein:

- A. Parties desiring to bid on the Purchased Assets at the Auction must execute a confidentiality agreement prior to being provided due diligence material or access to the data room by the Debtor.
- B. “Qualified Bidder” means a Potential Bidder that demonstrates to the satisfaction of the Debtor, after consultation with the Committee and Cardinal Health, that it possesses the financial capability to consummate the transaction proposed, and who timely executed the confidentiality agreement referenced in the preceding paragraph.

C. The Debtor will designate a representative to coordinate all reasonable requests for information and due diligence access from all Qualified Bidders. The Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (as defined below). The Debtor is not responsible for, and will bear no liability with respect to, the accuracy of any information obtained by any Qualified Bidder in connection with the sale of the Purchased Assets.

D. The Debtors will consider only Qualified Bids from Qualified Bidders at the Auction. To be a “Qualified Bid”, the bid must (unless waived by the Debtor, after consultation with the Committee and Cardinal Health) among other things:

- i. be submitted to the Debtor’s counsel, David G. Dragich, Esquire, The Dragich Law Firm PLLC, 17000 Kercheval Ave., Suite 210, Grosse Pointe, Michigan 48230; and/or email [ddragich@dragichlaw.com](mailto:ddragich@dragichlaw.com) by no later than **May 17, 2017** (the “Bid Deadline”);
- ii. be accompanied: (A) by a duly executed asset purchase agreement (in Word and PDF formats) that substantially conforms with the Proposed Purchase Agreement attached as **Exhibit B**; (B) a letter stating that the bidder’s offer is irrevocable until the conclusion of the Sale Hearing and acknowledging and agreeing to be bound by the Stand-by Provision (as defined below); (C) written evidence of a commitment for financing for the full amount of the proposed purchase price (without contingencies) or other evidence of the Bidder’s ability to consummate the transaction

satisfactory to the Debtor, after consultation with the Committee and Cardinal Health; (D) an earnest money cash deposit at least equal to ten percent (10%) of the cash portion of the purchase price, which deposit shall not be subject to any liens or encumbrances created in favor of any person or entity, and which shall be applied to the purchase price if the Qualified Bidder becomes a Successful Bidder (as defined below) or forfeited to the Debtor if the Qualified Bidder defaults under the Qualified Bidder's Proposed Purchase Agreement. In any event, due to the Stand-By Bidder provision below, deposits will not be returned until 5 days after the sale closes;

- iii. be on terms no less favorable (and no more burdensome or conditional) to the Debtor than the terms of the Proposed Purchase Agreement, if any, with a purchase price satisfying subparagraph (vii) below;
- iv. not include any contingencies relating to due diligence, financing, environmental or labor issues, customer contracts, or any other material conditions precedent to the bidder's obligation to close, that exist as of the Auction and that are not otherwise contained in the Proposed Purchase Agreement, if any;
- v. designate the executory contracts and unexpired leases that the bidder may request the Debtor to assume and assign to the Qualified Bidder in conjunction with the sale; and
- vi. be made by one or more Qualified Bidders, each of which can demonstrate that, individually or in the aggregate, it is (or they are) financially able to consummate the transaction contemplated by such bid(s) on the terms contemplated therein.

E. Qualified Bids may be for all or a portion of the Purchased Assets provided, however, that at the conclusion of the Auction, the Debtor, after consultation with the Committee and Cardinal Health,



will determine if the highest and best value for the assets is achieved by a sale of all of the Purchased Assets or, alternatively, one or more sales of portions of the Purchased Assets.

F. If one or more Qualified Bids have been received by the Bid Deadline, the Debtor shall conduct an auction (the “Auction”) with respect to the Purchased Assets. The Auction shall commence at **10:00 a.m. (eastern time) on May 24, 2017**, and be held at the offices of Jaffe Raitt Heuer & Weiss, P.C., 27777 Franklin Road, Suite 2500, Southfield, Michigan 48034. Unless otherwise agreed by the Debtor, the Committee and Cardinal Health, the Sale Hearing must occur on or before June 30, 2017, pursuant to the Bidding Procedures Order.

G. In the event that none of the Qualified Bids are acceptable to the Debtor, after consultation with the Committee and Cardinal Health, the Debtor may terminate the Auction prior to the commencement of the Auction.

H. Only those Qualified Bidders who submitted Qualified Bids and who are present at the Auction will be allowed to participate in the Auction. Debtors shall notify all Qualified Bidders who have

submitted Qualified Bids of their status as Qualified Bidders, as well as the terms of the Proposed Purchase Agreement, if any.

- I. The Debtor may conduct the Auction in the manner it determines will result in the highest and best offer.
- J. Bidding at the Auction will commence with the highest and best Qualified Bid as determined by the Debtor after consultation with the Committee and Cardinal Health. Qualified Bidders that have submitted a Qualified Bid may submit bids at the Auction, and may increase or modify bids in accordance with the Incremental Bid Amount (as defined below) to make their bid more favorable to the Debtor. Bidding will continue until such time as the Qualified Bidder(s) with the highest and best offer or combination of offers for the purchase of the Purchased Assets (the “Successful Bid”) is determined by the Debtor, in consultation with the Committee and Cardinal Health, (the “Successful Bidder”). However, the Debtor reserves the right to terminate the Auction at the conclusion of bidding if the offers from the Qualified Bidders are not acceptable to the Debtor, after consultation with the Committee and Cardinal Health. The Debtor shall announce at the Auction the Successful Bidder and the Qualified Bidder that submitted the next highest or

otherwise best Qualified Bids (the “Stand-By Bidder”). The Stand-By Bidder shall remain bound to close on its most recent bid at the Auction consistent with subparagraphs O and P below.

- K. At the Auction, Qualified Bidders will be permitted to increase their bids (such increased Qualified Bid, a “Qualified Overbid”), provided that each successive overbid shall exceed the then existing highest bid by at least \$10,000.00 (the “Incremental Bid Amount”).
- L. Each Qualified Bidder shall submit to the Debtor at or before the Auction evidence of its financial capability or committed financing sufficient to close on its offer based on any incremental Qualified Overbid, provided that such Qualified Overbid shall not be contingent on financing.
- M. The Auction shall not conclude until each Qualified Bidder has the opportunity to submit, while present at the Auction, a Qualified Overbid with full knowledge of the then existing highest bid. Based upon the terms of the Qualified Overbids received, the number of Qualified Bidders participating in the Auction, and such other information as the Debtor, after consultation with the Committee and Cardinal Health, determines is relevant, Debtor may conduct the Auction in the manner it determines will achieve the maximum

value for the Purchased Assets. The Debtor will inform the Qualified Bidders participating in the Auction of the manner in which the Auction will be conducted (provided that in all events bidding shall take place by “open out-cry”).

- N. At the conclusion of the Auction and prior to the Sale Hearing, the Debtor shall designate the Successful Bidder and any Stand-By Bidders. The Successful Bidder and the Debtor shall enter into a purchase agreement reflecting the Successful Bid(s) (the “Successful Bidder Purchase Agreement”), which shall be subject only to Bankruptcy Court approval at the Sale Hearing.
- O. The Debtor shall seek approval of the Successful Bidder Purchase Agreement from the Bankruptcy Court at the Sale Hearing. The Debtor shall also seek approval of a sale to one or more Stand-By Bidders at the Sale Hearing in the event that a closing on the Successful Bidder Purchase Agreement does not timely occur.
- P. Following the Sale Hearing, if the Successful Bidder fails to consummate the approved sale prior to the deadline set forth in the Successful Bidder Purchase Agreement, the Stand-By Bidder shall be deemed to be the Successful Bidder and the Debtor shall be authorized to consummate the sale with the Stand-By Bidder

without further order of the Bankruptcy Court, and such Stand-By Bidder shall be required to consummate the sale on the terms of the Stand-By Bidder's most recent bid (the "Stand-By Provision"). The Stand-By Provision can be waived by the Debtor, after consultation with the Committee and Cardinal Health.

33. The Debtor respectfully requests that this Court approve the Bidding Procedures to be employed in connection with the proposed sale by entering the Bidding Procedures Order.

#### **Form and Manner of Notice of Auction**

34. Pursuant to Bankruptcy Rule 2002, the Debtor requests that it be authorized to serve notice of the Bidding Procedures, the Auction and the Sale Hearing, by mailing a copy of the Auction and Sale Notice, a copy of which is attached hereto as **Exhibit C** (the "Auction and Sale Notice"), by first class mail, to the following (collectively, the "Notice Parties"): (a) all creditors asserting a security interest in and/or lien against the Debtor's assets; (b) the Office of the United States Trustee; (c) counsel for the Committee; (d) counsel for Cardinal Health; (e) counsel for the DIP Lender, (f) all parties to the executory contracts and unexpired leases which the Debtor intends to assume and assign and/or reject in conjunction with the sale; (g) all applicable federal and state taxing authorities; (h) all parties who have

requested notice in the case; and (i) all parties who have previously expressed an interest in acquiring the Purchased Assets.

35. The Auction and Sale Notice sufficiently describes the terms and conditions of the sale and the Bidding Procedures. *See Delaware & Hudson Railway*, 124 B.R. 169, 180 (Del. 1991) (the disclosures in sale notice do not need to include the functional equivalent of a disclosure statement).

36. The Auction and Sale Notice will provide that any objections to the sale contemplated herein must be filed with the Bankruptcy Court and served on the attorney for the Debtor, The Dragich Law Firm PLLC c/o David G. Dragich, 17000 Kercheval Ave., Suite 210, Grosse Pointe, Michigan 48230 by a date to be set by the Bankruptcy Court (the “Objection Deadline”). The Debtor further proposes, pursuant to Bankruptcy Rule 9014, that objections (if any) to the sale, must: (a) be in writing; (b) set forth the nature of the objector’s claims against or interests in the Debtor’s estate and the basis for the objection and the specific grounds therefor; (c) comply with the Bankruptcy Rules, the Local Bankruptcy Rules and all orders of this Court; and (d) be filed with the Bankruptcy Court on or before the Objection Deadline.

37. The Debtor submits that the Auction and Sale Notice is reasonably calculated to provide timely and adequate notice to the Debtor and all parties in interest, including those persons potentially interested in the bidding on the

Purchased Assets. Accordingly, the Debtor submits that such notice constitutes good and sufficient notice under the circumstances and that no further notice need be given.

38. The Debtor respectfully requests that this Court enter the Bidding Procedures Order approving, among other things, the form and manner of the Auction and Sale Notice.

**Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases and Setting Objection Deadline**

39. The Debtor has executory contracts and unexpired leases that a purchaser may deem necessary to the successful operation of the Debtor's business. Conversely, the Debtor may have contracts associated with the business or its assets that may interfere with the sale or are deemed detrimental to its estates, and upon the sale of the Purchased Assets will no longer be beneficial to the Debtor.

40. Within three (3) business days of a bidder becoming a Qualified Bidder, the Debtor will provide such Qualified Bidder with a list and a copy of all contracts and leases related to the Purchased Assets, along with proposed cure amounts owing on each contract and lease (the "Cure Schedule"). Each Qualified Bidder must provide with its Qualified Bid to the Debtor a list (each a "Contract List" and, together, the "Contract Lists") of the contracts and leases that it would like the Debtor to assume and assign to the Qualified Bidder (the "Assumed Contracts and Assumed Leases").

41. The Debtor requests that the following procedures be approved by the Bankruptcy Court for the assumption and assignment of Assumed Contracts and Assumed Leases (“Assumption and Assignment Procedures”):

a. Three (3) business days after the entry of the Bidding Procedures Order, the Debtor shall serve on the counterparties to the Assumed Contracts and Assumed Leases a notice (the “Assumption and Assignment Notice”) in the form attached as **Exhibit D** containing the following information:

- (i) The Debtor’s intent to assume and assign the Assumed Contracts and Assumed Leases to the Successful Bidder;
- (ii) The Cure Schedule (as supplemented pursuant to the procedure described below);
- (iii) The cure amount to be paid to each counterparty in compliance with the requirements of section 365 of the Bankruptcy Code (the “Cure Amount”)<sup>1</sup>;
- (iv) That the counterparties to the Assumed Contracts and Assumed Leases shall file with the Bankruptcy Court and serve any objections to the assumption and assignment of the Assumed Contracts and Assumed Leases or the Cure Amount on or before the Assumption/Assignment Objection Deadline (as defined below); and
- (v) That for each Assumed Contract and Assumed Lease for which an objection is timely received, a hearing will be held

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<sup>1</sup> The Debtor does not have sufficient funding to pay cure costs and, thus, if a Qualified Bidder elects to assume and have the Debtor assign an executory contract or unexpired lease, such bidder must itself pay the cure costs associated with such contracts and leases.



at the Sale Hearing, or such other date as the Court may designate, upon three (3) days' telephonic, electronic or facsimile notice to the objection party; provided, however, that if the Assumed Contracts and Assumed Leases that are the subject of objections are assumed and assigned prior to the time of the hearing, the cure amount asserted by the objecting party or such other amount as may be agreed to by the parties or fixed by the Court, will be held in a segregated account by the Debtor pending further order of the Court.

- b. The counterparties to the Assumed Contracts and Assumed Leases shall file any objections to the assumption and assignment of the Assumed Contracts and Assumed Leases or the Cure Amount at least three (3) business days prior to the Sale Hearing (the "Assumption/Assignment Objection Deadline"). Any and all objections must state with detail: the grounds for the objection; if the objecting party proposes an alternative cure amount and the amount thereof; and the basis for the calculation of the proposed alternative amount;
- c. Any party who fails to object by the Assumption/Assignment Objection Deadline shall be forever barred from objecting to the assumption and assignment of its respective executory contract or unexpired lease;
- d. Cure payments will be paid by the purchaser within thirty (30) days after the date of the closing of the sale of the Purchased Assets and any letters of credit associated with any assumed contract or assumed lease

will be replaced by a new letter of credit provided by the Successful Bidder; and

- e. The Debtor may file one or more supplemental lists of Assumed Contracts and Assumed Leases (the “Supplemental List”), if necessary. The Debtor shall serve to the counterparties to the Assumed Contracts and Assumed Leases on the Supplemental List a supplemental Assumption and Assignment Notice substantially in the form and containing the information described above. The counterparties to contracts and leases on the Supplemental List shall have until the later of: (i) five (5) calendar days after the service of the Supplemental List, or (ii) the Objection Deadline, to file an objection in accordance with the requirements outlined above and serve upon the parties described above. The Debtor also reserves the right to withdraw any executory contract or unexpired lease from the sale.
42. The Debtor proposes the following procedure for rejection of executory contracts and unexpired leases:
- a. Promptly after both the receipt of the Contract Lists from the Successful Bidder and Closing, the Debtor will notify each counter-party to a contract that will be rejected of such rejection (the “Rejection Notice”). Notice shall be effective upon mailing. Objections, if any, to the

rejection (a “Rejection Objection”) must be filed with the Bankruptcy Court within fourteen (14) days after the Rejection Notice was mailed (the “Rejected Contract Objection Deadline”);

- b. Upon receipt of a timely Rejection Objection, the Debtor may request that the Bankruptcy Court set a hearing on the Rejection Objection. If the Bankruptcy Court authorizes the rejection, the rejection shall be deemed to have been effective upon the date the sale of the Purchased Assets is closed, unless otherwise determined by the Bankruptcy Court;
- c. Any party who fails to object by the Rejected Contract Objection Deadline shall be barred from objecting to the rejection of the contract. In such instances, the rejection of executory contracts or unexpired leases will be effective upon notice to the party that its contract or unexpired lease has been rejected.

43. The Debtor submits that the foregoing procedures and notices are reasonably calculated to provide the appropriate parties with timely and adequate notice and opportunities to object to the Debtor’s proposed assignment and assumption of the Assumed Contracts and Assumed Leases and/or rejection of certain contracts. The Debtor further submits that such notice constitutes good and sufficient notice under the circumstances with respect to the assumption and

assignment of the Assigned Contracts and Assumed Leases and/or the rejection of certain contracts as proposed in this Motion, and that no further notice need be given.

**Waiver of Bankruptcy Rules 6004(g) and 6006(d)**

46. Time is of the essence in completing this transaction. Further, the notice contemplated in this Motion is calculated to give reasonable notice to all affected parties. Accordingly, the Debtor asserts that cause exists to waive the requirements of Bankruptcy Rules 6004(g) and 6006(d), and the Debtor requests that the Order approving the sale (as well as the assumption and assignment of the Assumed Contracts and Assumed Leases) provide that it shall be effective immediately and that the fourteen day stay under Bankruptcy Rule 6004(h) shall not apply to the sale transaction (and the assumption and assignment of the Assumed Contracts and Assumed Leases.)

**Notice**

47. A complete copy of this Motion has been served by first class mail, hand delivery, facsimile, electronic mail or overnight mail upon (a) all creditors asserting a security interest in and/or lien against the Debtor's assets; (b) the Office of the United States Trustee; (c) counsel for the Committee; (d) counsel for Cardinal Health; (e) counsel for the DIP Lender, (f) all parties to the executory contracts and unexpired leases which the Debtor intends to assume and assign and/or reject in conjunction with the sale; (g) all applicable federal and state taxing authorities; (h)

all parties who have requested notice in the case; and (i) all parties who have previously expressed an interest in acquiring the Purchased Assets.

**No Prior Relief Requested**

48. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that this Court: (i) enter the Bidding Procedures Order attached as **Exhibit A**, (ii) schedule the Sale Hearing, and (iii) grant such other relief that is just and equitable in this matter.

Dated: April 25, 2017

Respectfully submitted,

**THE DRAGICH LAW FIRM PLLC**

By: /s/ David G. Dragich  
David G. Dragich (P63234)  
Amanda Vintevoghel (P76567)  
17000 Kercheval Avenue, Suite 210  
Grosse Pointe, MI 48230  
(313) 886-4550 (Telephone)  
[ddragich@dragichlaw.com](mailto:ddragich@dragichlaw.com)  
[avintevoghel@dragichlaw.com](mailto:avintevoghel@dragichlaw.com)

*Counsel for VPH Pharmacy, Inc.*

# EXHIBIT A

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - FLINT**

In re:	)	
	)	Chapter 11
VPH Pharmacy, Inc.	)	
	)	Case No. 17-30077
	)	
Debtor.	)	Hon. Daniel S. Opperman
<hr/>		/

**ORDER GRANTING DEBTOR’S MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 363 AND 365, BANKRUPTCY RULES 2002 AND 6004, AND LOCAL RULES 6004-1 AND 9014-1 (A) ESTABLISHING BIDDING PROCEDURES FOR THE AUCTION SALE OF SUBSTANTIALLY ALL OF DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND TRANSFERRING LIENS TO PROCEEDS; (B) SCHEDULING AN AUCTION AND SALE HEARING TO CONSIDER APPROVAL OF SALE; (C) ESTABLISHING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND TRANSFERRING LIENS TO PROCEEDS; (E) APPROVING THE FORM AND MANNER OF THE AUCTION NOTICE, THE FORM OF THE NOTICE TO NON-DEBTOR CO-PARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND THE NOTICE OF THE SALE HEARING; (F) SCHEDULING HEARING ON APPROVAL OF SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS; AND (G) GRANTING OTHER MISCELLANEOUS RELIEF**

*This matter having come before the Court upon the Debtor’s Motion for Entry of an Order (A) Establishing Bidding Procedures for the Auction Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims and Encumbrances and Transferring Liens to Proceeds; (B) Scheduling an Auction and*

*Sale Hearing to Consider Approval of Sale; (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Approving the Sale of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims and Encumbrances and Transferring Liens to Proceeds; (E) Approving the Form and Manner of the Auction Notice, the Form of the Notice to Non-Debtor Co-Parties to Executory Contracts and Unexpired Leases, and the Notice of the Sale Hearing; (F) Scheduling Hearing on Approval of Sale of Substantially All of the Debtor's Assets; and (G) Granting Other Miscellaneous Relief* (the "Motion"); due and sufficient notice having been given; no objections to the relief requested in the Motion having been filed, or all such objections having been overruled, no further notice or hearing on the Debtor's requested being necessary or required; and the Court being fully advised in the premises:

THE COURT FINDS THAT:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the requested relief are sections 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of



Bankruptcy Procedure (the “Bankruptcy Rules”). This is a final order within the meaning of 28 U.S.C. § 158(a).<sup>1</sup>

B. Capitalized terms not herein defined shall have those meanings ascribed to them in the Motion.

C. The Debtor has articulated good and sufficient business reasons for the Court to: (i) approve the Motion and the Bidding Procedures contained therein, and (ii) set the date for the Auction, the Sale Hearing and the other dates set forth herein.

D. Due, sufficient and adequate notice of the Motion and the relief granted in this Order has been given in light of the circumstances and the nature of the relief requested, and no other or further notice thereof is required.

E. The proposed Auction and Sale Notice and the proposed Assumption and Assignment Notice are appropriate and reasonably calculated to provide all interested parties with timely and proper notice thereof and no further notice is necessary or required.

F. The relief granted herein is in the best interests of the Debtor, its estate and creditors and other parties in interest.

**IT IS THEREFORE ORDERED AND ADJUDGED THAT:**

---

<sup>1</sup> The findings and conclusions set forth herein 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 adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

1. The Motion is GRANTED in its entirety.
2. Any objection to the Motion or any relief granted in this Order, to the extent not resolved, waived or withdrawn, and all reservations of rights included therein, is hereby overruled and denied on the merits.
3. The Proposed Purchase Agreement (which may be obtained from counsel for the Debtor upon written request) is hereby approved and is appropriate and reasonably calculated to enable the Debtor and other parties in interest to easily compare and contrast the differing terms of the bids presented at the Auction.

#### **Relevant Dates and Deadlines**

1. As further described in the Bidding Procedures, the Bid Deadline for a potential bidder who desires to make a bid for the Purchased Assets is **May 17, 2017**.
2. The Auction is scheduled for **May 24, 2017 at 10:00 a.m. (eastern time)** at the offices of Jaffe Raitt Heuer & Weiss, P.C., 27777 Franklin, Suite 2500, Southfield, Michigan 48034.
3. Except as otherwise set forth herein with respect to Assumed Contracts and Assumed Leases set forth on a Supplemental List, all objections to the proposed sale of the Purchased Assets, or to the assumption and assignment of executory contracts and unexpired leases, must be filed with the Bankruptcy Court no later than three days before the Sale Hearing (the “Objection Deadline”).

4. The Sale Hearing is scheduled for **June \_\_, 2017 at \_\_ a.m./p.m.** at the United States Bankruptcy Court for the Eastern District of Michigan, 226 West Second Street, Flint, Michigan 48502 before the Honorable Daniel S. Opperman.

### **Bidding Procedures**

5. The Bidding Procedures are hereby approved. The Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety.

### **Qualifications as a Bidder, Subject to Higher and Better Bids**

6. In order to qualify to participate in the Auction, an offeror must be a Qualified Bidder, which is a party who submits a purchase agreement substantially in the form of the Proposed Purchase Agreement, and containing the following pertinent provisions:

- a. A cash purchase price for the Purchased Assets, including a cash payment for some or substantially all of the Debtor's assets, payable in full at closing.
- b. The Proposed Purchase Agreement must be accompanied by an earnest money deposit equal to ten percent (10%) of the proposed purchase

price for the Purchased Assets to be held by the Debtor's counsel pursuant to a mutually acceptable escrow agreement. The deposit will be applied against the purchase price if the Qualified Bidder is the successful purchaser of the Purchased Assets. If the sale is not consummated on account of the Qualified Bidder's failure to perform any of its obligations under the Proposed Purchase Agreement, the Debtor will retain the earnest money deposit. If the Qualified Bidder is not in breach of the Proposed Purchase Agreement, it will be entitled to return of the deposit if: (i) the Purchased Assets are sold to another purchaser and the sale closes; (ii) the sale is not consummated on account of the Debtor's failure to perform under the Proposed Purchase Agreement, or (iii) the sale is not consummated because conditions precedent in the Proposed Purchase Agreement were not timely satisfied by the Debtor.

- c. The purchased assets may include all of the tangible and intangible assets and personal property owned by the Debtor that are used to operate and conduct the Debtor's business operations including, but not limited to, inventory, goodwill, machinery and equipment, furniture, computers and software (collectively, the "Purchased Assets"). Certain assets of the Debtor will be excluded from the sale, which include

claims and causes of action under Chapter 5 of the Bankruptcy Code, bank accounts, accounts receivable (unless a Qualified Bidder seeks to include them, Cardinal Health consents, and the Qualified Bidder allocates a separate purchase price to acquire them), cash, tax refunds, life insurance policies, and vehicles (unless a Qualified Bidder seeks to include them, the Committee consents and the Qualified Bidder allocates a separate purchase price to acquire them), as well as the proceeds of all of the foregoing (the “Excluded Assets”).

- d. Closing on the sale transaction(s) contemplated herein will occur and conclude on or before June 30, 2017.
- e. The Qualified Bidder may also assume executory contracts and unexpired leases.

4. Subject only to the Committee’s rights, if any, to challenge the validity, priority or amount of Cardinal Health’s claims, Cardinal Health shall have the unqualified right to credit bid its secured debt for the Purchased Assets and is a Qualified Bidder for all purposes.

### **The Sale and Auction Process**

7. Parties desiring to bid on the Purchased Assets at the Auction must execute a confidentiality agreement prior to being provided due diligence material or access to the data room by the Debtor.

8. “Qualified Bidder” means a Potential Bidder that demonstrates to the satisfaction of the Debtor, after consultation with the Committee and Cardinal Health, that it possesses the financial capability to consummate the transaction proposed, and who timely executed the confidentiality agreement referenced in the preceding paragraph.

9. The Debtor will designate a representative to coordinate all reasonable requests for information and due diligence access from all Qualified Bidders. The Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (as defined below). The Debtor is not responsible for, and will bear no liability with respect to, the accuracy of any information obtained by any Qualified Bidder in connection with the sale of the Purchased Assets.

10. The Debtors will consider only Qualified Bids from Qualified Bidders at the Auction. To be a “Qualified Bid”, the bid must (unless waived by the Debtor, after consultation with the Committee and Cardinal Health) among other things:

- i. be submitted to the Debtor’s counsel, David G. Dragich, Esquire, The Dragich Law Firm PLLC, 17000 Kercheval Ave., Suite 210, Grosse Pointe, Michigan 48230; and/or email [ddragich@dragichlaw.com](mailto:ddragich@dragichlaw.com) by no later than **May 17, 2017** (the “Bid Deadline”);
- ii. be accompanied: (A) by a duly executed asset purchase agreement (in Word and PDF formats) that substantially conforms with the Proposed Purchase Agreement attached as **Exhibit B**; (B) a letter stating that the bidder’s offer is irrevocable until the conclusion of the Sale Hearing and acknowledging and agreeing to be bound by the Stand-by Provision (as defined below); (C) written evidence of a commitment for financing for the full amount of the proposed

purchase price (without contingencies) or other evidence of the Bidder's ability to consummate the transaction satisfactory to the Debtor, after consultation with the Committee and Cardinal Health; (D) an earnest money cash deposit at least equal to ten percent (10%) of the cash portion of the purchase price, which deposit shall not be subject to any liens or encumbrances created in favor of any person or entity, and which shall be applied to the purchase price if the Qualified Bidder becomes a Successful Bidder (as defined below) or forfeited to the Debtor if the Qualified Bidder defaults under the Qualified Bidder's Proposed Purchase Agreement. In any event, due to the Stand-By Bidder provision below, deposits will not be returned until 5 days after the sale closes;

- iii. be on terms no less favorable (and no more burdensome or conditional) to the Debtor than the terms of the Proposed Purchase Agreement, if any, with a purchase price satisfying subparagraph (vii) below;
- iv. not include any contingencies relating to due diligence, financing, environmental or labor issues, customer contracts, or any other material conditions precedent to the bidder's obligation to close, that exist as of the Auction and that are not otherwise contained in the Proposed Purchase Agreement, if any;
- v. designate the executory contracts and unexpired leases that the bidder may request the Debtor to assume and assign to the Qualified Bidder in conjunction with the sale; and
- vi. be made by one or more Qualified Bidders, each of which can demonstrate that, individually or in the aggregate, it is (or they are) financially able to consummate the transaction contemplated by such bid(s) on the terms contemplated therein.

9. Qualified Bids may be for all or a portion of the Purchased Assets provided, however, that at the conclusion of the Auction, the Debtor, after consultation with the Committee and Cardinal Health, will determine if the highest

and best value for the assets is achieved by a sale of all of the Purchased Assets or, alternatively, one or more sales of portions of the Purchased Assets.

10. If one or more Qualified Bids have been received by the Bid Deadline, the Debtor shall conduct an auction (the “Auction”) with respect to the Purchased Assets. The Auction shall commence at **10:00 a.m. (eastern time) on May 24, 2017**, and be held at the offices of Jaffe Raitt Heuer & Weiss, P.C., 27777 Franklin Road, Suite 2500, Southfield, Michigan 48034. Unless otherwise agreed by the Debtor, the Committee and Cardinal Health, the Sale Hearing must occur on or before June 30, 2017, pursuant to the Bidding Procedures Order.

11. In the event that none of the Qualified Bids are acceptable to the Debtor, after consultation with the Committee and Cardinal Health, the Debtor may terminate the Auction prior to the commencement of the Auction.

12. Only those Qualified Bidders who submitted Qualified Bids and who are present at the Auction will be allowed to participate in the Auction. Debtors shall notify all Qualified Bidders who have submitted Qualified Bids of their status as Qualified Bidders, as well as the terms of the Proposed Purchase Agreement, if any.

13. The Debtor may conduct the Auction in the manner it determines will result in the highest and best offer.

14. Bidding at the Auction will commence with the highest and best Qualified Bid as determined by the Debtor after consultation with the Committee



and Cardinal Health. Qualified Bidders that have submitted a Qualified Bid may submit bids at the Auction, and may increase or modify bids in accordance with the Incremental Bid Amount (as defined below) to make their bid more favorable to the Debtor. Bidding will continue until such time as the Qualified Bidder(s) with the highest and best offer or combination of offers for the purchase of the Purchased Assets (the “Successful Bid”) is determined by the Debtor, in consultation with the Committee and Cardinal Health, (the “Successful Bidder”). However, the Debtor reserves the right to terminate the Auction at the conclusion of bidding if the offers from the Qualified Bidders are not acceptable to the Debtor, after consultation with the Committee and Cardinal Health. The Debtor shall announce at the Auction the Successful Bidder and the Qualified Bidder that submitted the next highest or otherwise best Qualified Bids (the “Stand-By Bidder”). The Stand-By Bidder shall remain bound to close on its most recent bid at the Auction consistent with paragraphs 19 and 20 below.

15. At the Auction, Qualified Bidders will be permitted to increase their bids (such increased Qualified Bid, a “Qualified Overbid”), provided that each successive overbid shall exceed the then existing highest bid by at least \$10,000.00 (the “Incremental Bid Amount”).

16. Each Qualified Bidder shall submit to the Debtor at or before the Auction evidence of its financial capability or committed financing sufficient to

close on its offer based on any incremental Qualified Overbid, provided that such Qualified Overbid shall not be contingent on financing.

17. The Auction shall not conclude until each Qualified Bidder has the opportunity to submit, while present at the Auction, a Qualified Overbid with full knowledge of the then existing highest bid. Based upon the terms of the Qualified Overbids received, the number of Qualified Bidders participating in the Auction, and such other information as the Debtor, after consultation with the Committee and Cardinal Health, determines is relevant, Debtor may conduct the Auction in the manner it determines will achieve the maximum value for the Purchased Assets. The Debtor will inform the Qualified Bidders participating in the Auction of the manner in which the Auction will be conducted (provided that in all events bidding shall take place by “open out-cry”).

18. At the conclusion of the Auction and prior to the Sale Hearing, the Debtor shall designate the Successful Bidder and any Stand-By Bidders. The Successful Bidder and the Debtor shall enter into a purchase agreement reflecting the Successful Bid(s) (the “Successful Bidder Purchase Agreement”), which shall be subject only to Bankruptcy Court approval at the Sale Hearing.

19. The Debtor shall seek approval of the Successful Bidder Purchase Agreement from the Bankruptcy Court at the Sale Hearing. The Debtor shall also seek approval of a sale to one or more Stand-By Bidders at the Sale Hearing in the

event that a closing on the Successful Bidder Purchase Agreement does not timely occur.

20. Following the Sale Hearing, if the Successful Bidder fails to consummate the approved sale prior to the deadline set forth in the Successful Bidder Purchase Agreement, the Stand-By Bidder shall be deemed to be the Successful Bidder and the Debtor shall be authorized to consummate the sale with the Stand-By Bidder without further order of the Bankruptcy Court, and such Stand-By Bidder shall be required to consummate the sale on the terms of the Stand-By Bidder's most recent bid (the "Stand-By Provision"). The Stand-By Provision can be waived by the Debtor, after consultation with the Committee and Cardinal Health.

21. Each Qualified Bidder must appear in person at the Auction or through a duly authorized representative, unless alternative arrangements acceptable to the Debtor have been made in advance with the Debtor.

22. Each Qualified Bidder, as a consequence of submitting a bid, shall be deemed to acknowledge (i) that it understands and is bound by the Bidding Procedures and other terms of this Order, including the Stand-By Provision; (ii) that it had an opportunity to inspect and examine the Purchased Assets and the existing contracts and to review all pertinent documents and information with respect to such Purchased Assets before making its offer, and that each Qualified Bidder relied solely on that review and upon its own investigation and inspection in making its

bid; (iii) that it is not relying upon any written or oral statements, representations, promises, warranties or guarantees of any kind whether express or implied, by operation of law or otherwise, made by any person or party, including the Debtor, Cardinal Health, the Committee, their respective agents or representatives regarding the Debtor, their business or its assets, these Bidding Procedures or the completeness of any information provided in connection therewith; and (iv) that it submits its own bid of its own volition and with full knowledge of the potential consequences.

23. The Debtor shall, in advance of the Auction, provide Cardinal Health and the Committee with a detailed estimate of the financial impact on the estate of the executory contracts and leases to be assumed or rejected to the terms of each Qualified Bid.

### **The Auction and Sale Notice**

24. The Auction and Sale Notice, and the proposed service of the Auction and Sale Notice on the Notice Parties as set forth in the Motion, are hereby approved.

25. The Auction and Sale Notice is reasonably calculated to provide timely and adequate notice to the Debtor and all parties in interest, including those persons potentially interested in the bidding on the Purchased Assets. Such notice constitutes good and sufficient notice under the circumstances and that no further notice need be given.

26. Any objections to the proposed sale of the Purchased Assets must be filed with the Bankruptcy Court and served on the attorney for the Debtor, The Dragich Law Firm PLLC c/o David G. Dragich, 17000 Kercheval Ave., Suite 210, Grosse Pointe, Michigan 48230 on or before three (3) days prior to the Sale Hearing (the “Objection Deadline”). Pursuant to Bankruptcy Rule 9014, objections (if any) to the sale, must: (a) be in writing; (b) set forth the nature of the objector’s claims against or interests in the Debtor’s estate and the basis for the objection and the specific grounds therefor; (c) comply with the Bankruptcy Rules, the Local Bankruptcy Rules and all orders of this Court; and (d) be filed with the Clerk of the Bankruptcy Court on or before the Objection Deadline.

**Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Setting Objection Deadline**

27. The Assumption and Assignment Notice, and the proposed service thereof, is hereby approved.

28. Within three (3) business days of a bidder becoming a Qualified Bidder, the Debtor will provide such Qualified Bidder with a list and a copy of all contracts and leases related to the Purchased Assets, along with proposed cure amounts owing on each contract and lease (the “Cure Schedule”). Each Qualified Bidder must provide with its Qualified Bid to the Debtor a list (each a “Contract List” and, together, the “Contract Lists”) of the contracts and leases that it would like the

Debtor to assume and assign to the Qualified Bidder (the “Assumed Contracts and Assumed Leases”).

29. The following procedures for the assumption and assignment of Assumed Contracts and Assumed Leases (“Assumption and Assignment Procedures”) are hereby approved:

a. Three (3) business days after the entry of the Bidding Procedures Order, the Debtor shall serve on the counterparties to the Assumed Contracts and Assumed Leases a notice (the “Assumption and Assignment Notice”) in the form attached as **Exhibit D** to the Motion containing the following information:

- (i) The Debtor’s intent to assume and assign the Assumed Contracts and Assumed Leases to the Successful Bidder;
- (ii) The Cure Schedule (as supplemented pursuant to the procedure described below);
- (iii) The cure amount to be paid to each counterparty in compliance with the requirements of section 365 of the Bankruptcy Code (the “Cure Amount”);
- (iv) That the counterparties to the Assumed Contracts and Assumed Leases shall file with the Bankruptcy Court and serve any objections to the assumption and assignment of the Assumed Contracts and Assumed Leases or the Cure Amount on or before the Assumption/Assignment Objection Deadline (as defined below); and
- (v) That for each Assumed Contract and Assumed Lease for which an objection is timely received, a hearing will be held at the Sale Hearing, or such other date as the Court may

designate, upon three (3) days' telephonic, electronic or facsimile notice to the objection party; provided, however, that if the Assumed Contracts and Assumed Leases that are the subject of objections are assumed and assigned prior to the time of the hearing, the cure amount asserted by the objecting party or such other amount as may be agreed to by the parties or fixed by the Court, will be held in a segregated account by the Debtor pending further order of the Court.

- b. The counterparties to the Assumed Contracts and Assumed Leases shall file any objections to the assumption and assignment of the Assumed Contracts and Assumed Leases or the Cure Amount at least three (3) business days prior to the Sale Hearing (the "Assumption/Assignment Objection Deadline"). Any and all objections must state with detail: the grounds for the objection; if the objecting party proposes an alternative cure amount and the amount thereof; and the basis for the calculation of the proposed alternative amount;
- c. Any party who fails to object by the Assumption/Assignment Objection Deadline shall be forever barred from objecting to the assumption and assignment of its respective executory contract or unexpired lease;
- d. Cure payments will be paid by the purchaser within thirty (30) days after the date of the closing of the sale of the Purchased Assets and any letters of credit associated with any assumed contract or assumed lease will be replaced by a new letter of credit provided by the Successful Bidder; and

- e. The Debtor may file one or more supplemental lists of Assumed Contracts and Assumed Leases (the “Supplemental List”), if necessary. The Debtor shall serve to the counterparties to the Assumed Contracts and Assumed Leases on the Supplemental List a supplemental Assumption and Assignment Notice substantially in the form and containing the information described above. The counterparties to contracts and leases on the Supplemental List shall have until the later of: (i) five (5) calendar days after service of the Supplemental List, or (ii) the Objection Deadline, to file an objection in accordance with the requirements outlined above and serve upon the parties described above. The Debtor also reserves the right to withdraw any executory contract or unexpired lease from the sale.
30. The following procedures for the rejection of executory contracts and unexpired leases are approved:
- a. Promptly after both the receipt of the Contract Lists from the Successful Bidder and Closing, the Debtor shall notify each counter-party to a contract that will be rejected of such rejection (the “Rejection Notice”). Notice shall be effective upon mailing. Objections, if any, to the rejection (a “Rejection Objection”) must be filed with the Bankruptcy



Court within fourteen (14) days after the Rejection Notice was mailed (the “Rejected Contract Objection Deadline”);

- b. Upon receipt of a timely Rejection Objection, the Debtor may request that the Bankruptcy Court set a hearing on the Rejection Objection. If the Bankruptcy Court authorizes the rejection, the rejection shall be deemed to have been effective upon the date the sale of the Purchased Assets is closed, unless otherwise determined by the Bankruptcy Court;
- c. Any party who fails to object by the Rejected Contract Objection Deadline shall be barred from objecting to the rejection of the contract. In such instances, the rejection of executory contracts or unexpired leases will be effective upon notice to the party that its contract or unexpired lease has been rejected.

### **Miscellaneous Relief**

31. The Debtor is hereby authorized and empowered to take such actions as may be reasonably necessary to implement and effect the terms and requirements established by this Order.

32. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) and 6004(d) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

33. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

# EXHIBIT B

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (“Agreement”), dated as of \_\_\_\_\_, 2017 (together with any schedules, exhibits and attachments hereto, collectively, the “Agreement”), is made by and between \_\_\_\_\_ (the “Buyer”) and VPH Pharmacy, Inc. (the “Company”). The Buyer and the Seller shall each also be referred to individually as a “Party” and collectively as the “Parties.”

### **RECITALS**

**WHEREAS**, the Company is currently a Chapter 11 debtor in the United States Bankruptcy Court, Eastern District of Michigan (the “Bankruptcy Court”), Case No. 17-30077 (the “Bankruptcy Case”);

**WHEREAS**, the Company is a closed-door pharmacy that provided medications and consulting services to assisted living centers, children’s foster care facilities, adult foster care facilities, retirement communities and long term care facilities;

**WHEREAS**, on April 24, 2017, the Company filed with the Court a motion seeking the approval of certain bidding procedures and the sale of assets as contemplated by this Agreement [Docket No. \_\_\_] (the “Motion”);

**WHEREAS**, pursuant to paragraph \_\_\_ of the Motion, the Company is seeking to sell substantially all of its assets;

**WHEREAS**, the Buyer is willing to purchase the Purchased Assets (as defined below) pursuant to the terms herein; and

**WHEREAS**, the Buyer is willing to assume certain Executory Contracts (as defined below).

### **TERMS**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

#### **1. DEFINITIONS**

For the purposes of this Agreement, the terms listed below shall have the respective meanings indicated:

1.1 “Assumed Liabilities” shall mean the Cure Costs, and the accounts payable and accrued expenses that Buyer agrees to assume and pay when due.

1.2 “Bankruptcy Code” shall mean the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

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1.3 “Bankruptcy Rule” shall mean the Federal Rules of Bankruptcy Procedure.

1.4 “Cardinal Health” shall mean Cardinal Health 110, LLC, the secured creditor with an all asset lien on the Purchased Assets, other than documents, the vehicles and fixtures of the Company. The Official Committee of Unsecured Creditors (the “Committee”) expressly reserves any and all rights that it has to challenge the validity, priority or amount of Cardinal Health’s claims.

1.5 “Closing Date” shall mean a date that is fourteen (14) days after the Sale Order is entered by the Bankruptcy Court, unless waived by the Bankruptcy Court pursuant to Bankruptcy Rule 6004(h), but not later than June 30, 2017, unless otherwise extended by the Parties in writing.

1.6 “Committee” shall mean the Official Committee of Unsecured Creditors appointed by the Office of the United States Trustee in the Bankruptcy Case.

1.7 “Cure Costs” means those amounts required to be paid to assume and assign the Executory Contracts, as provided in the Motion.

1.8 “Executory Contracts” shall mean those executory contracts and unexpired leases of the Company set forth in **Exhibit B** hereto.

1.9 “Execution Date” shall mean the date that all the Parties have executed this Agreement.

1.10 “Excluded Assets” shall mean claims and causes of action under Chapter 5 of the Bankruptcy Code, bank accounts, accounts receivable (unless the Buyer seeks to include them, Cardinal Health consents and the Buyer allocates a separate Purchase Price to acquire them as part of this Agreement), cash, tax refunds, life insurance policies and vehicles (unless the Buyer seeks to include them, the Committee consents and Buyer allocates a separate Purchase Price to acquire them as part of this Agreement), as well as the proceeds of all of the foregoing.

1.11 “Purchased Assets” shall include, but are not limited to, inventory, good will, machinery and equipment, furniture, computers and software, as listed on **Exhibit A** hereto other than the Excluded Assets.

1.12 “Sale” shall mean a transfer of the Purchased Assets from the Company to the Buyer.

1.13 “Sale Order” shall mean an order approving the Agreement entered by the Bankruptcy Court.

1.14 “Sale Term” shall mean the period of time beginning with the date of the entry of the Sale Order and ending on the Closing Date.

## **2. SALE AND PURCHASE OF ASSETS**

2.1 Effective as of the Closing Date, Company shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase from Company all of Company's right, title, and interest in and to the Purchased Assets

2.2 On the terms and conditions set forth herein, after entry of the Sale Order and upon satisfaction of the conditions precedent hereunder, the Company shall transfer all of the Purchased Assets to the Buyer.

2.3 Notwithstanding anything to the contrary in this Agreement or any schedule or exhibit hereto, except for Buyer's (a) obligation to pay any liabilities arising out of ownership of the Purchased Assets after the Closing Date, (b) Buyer's assumption of the Cure Costs, and (c) Buyer's assumption of any Assumed Liabilities as part of this Agreement, Buyer will not assume or take title to the Purchased Assets subject to, or in any way be liable or responsible for, and does not and shall not be deemed to assume any Excluded Liabilities (defined below). "Excluded Liabilities" means all liabilities, obligations or commitments (x) of Company or (y) which in any manner relate to or arise out of the operation of the business or the ownership of the Purchased Assets during any period prior to the Closing Date, in each case other than the Assumed Liabilities.

2.4 Except as otherwise set forth in this Agreement, the Purchased Assets are being sold on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis and COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OF THE PURCHASED ASSETS ACQUIRED BY BUYER HEREUNDER, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

## **3. PURCHASE PRICE**

3.1 The aggregate purchase price for the Purchased Assets shall be \$\_\_\_\_\_ (the "Purchase Price"). The Purchase Price shall be paid on the Closing Date to the Company for credit to Company by application and payment of the Deposit (as defined below) via wire in immediately available funds using the wire transfer instructions provided by Company.

3.2 The Buyer will pay a non-refundable deposit of \$\_\_\_\_\_ (the "Deposit") to the Company upon execution of this Agreement.

## **4. EXPENSES**

4.1 Each Party shall be responsible for their respective transaction costs irrespective of whether or not the terms herein are satisfied.

**5. REPRESENTATIONS AND WARRANTIES OF THE BUYER**

5.1 The Buyer hereby represents, warrants and covenants in favor of the Company as follows:

- (a) The Buyer is a duly organized and validly existing corporation under the laws of the State of \_\_\_\_\_;
- (b) The Buyer has taken all necessary action required to authorize the execution, performance and delivery of this Agreement, and to consummate the transactions contemplated hereby;
- (c) This Agreement is a valid binding obligation of the Buyer enforceable in accordance with its terms; and
- (d) To the best of the Buyer's knowledge, no action or proceeding has been instituted or threatened affecting the consummation of this Agreement or the transactions contemplated herein.

**6. REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

6.1 The Company hereby represents, warrants and covenants in favor of the Buyer as follows:

- (a) Upon entry of the Sale Order, the Company will take all necessary action required to authorize the performance and delivery of the Purchased Assets pursuant to this Agreement free and clear of any liens, claims or encumbrances;
- (b) The Company has good and valid authority to consummate the transactions contemplated hereby;
- (c) The Company has legal title to the Purchased Assets;
- (d) Upon entry of the Sale Order, this Agreement shall be a valid and binding obligation of the Company enforceable in accordance with its terms;
- (e) No action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or government body has been instituted by or against the Company or has been settled or resolved, or to the Company's knowledge, is threatened against the Company or the Company's business or properties, that impacts or affects the validity of this Agreement or that, if adversely determined, would adversely affect the conduct of the Sale; and
- (f) Throughout the Sale Term, the Buyer shall be permitted to communicate with the Company's customers about matters that relate to the Purchased

Assets to preserve the ongoing business of the Company that is being purchased by the Buyer pursuant to this Agreement.

## **7. AFFIRMATIVE DUTIES OF THE BUYER**

7.1 The Buyer shall reimburse, indemnify, defend and hold the Company and its officers, directors, agents, and employees, harmless from and against any damage, loss, expense (including reasonable attorneys' fees) or penalty, or any claim or action therefore, by or on behalf of any person, arising out of the Buyer's breach of this Agreement.

7.2 The Buyer shall be responsible for obtaining, in the name of and with the assistance of the Company, any permits or licenses necessary to complete the Sale, if any.

7.3 The Buyer is responsible for funding the Cure Costs required for assumption and assignment of those Executory Contracts included as part of the Purchased Assets on the Closing Date.

7.4 Contemporaneously with the execution of this Agreement, the Buyer will provide the Company with evidence of financial wherewithal to be able to pay for the Purchased Assets, including written evidence of a commitment for financing for the full amount of the proposed Purchase Price (without contingencies) or other evidence of the Buyer's ability to consummate the transaction satisfactory to the Company, after consultation with the Committee and Cardinal Health.

## **8. AFFIRMATIVE DUTIES OF THE COMPANY**

8.1 To the extent applicable, the Company shall deliver the corresponding certificates of title for the title assets included in the Purchased Assets on the Closing Date.

8.2 The Company will obtain the Sale Order as soon as practicable after (i) the Buyer being declared the "Successful Purchaser," as defined in the Motion on the sale of the Purchased Assets by the Company, and (ii) the execution of this Agreement by the Buyer. Among other things, the Sale Order will approve the assumption and assignment to the Buyer of those Executory Contracts designated as part of the Purchased Assets by the Buyer as of the Closing Date.

## **9. CONDITIONS PRECEDENT**

9.1 The obligations of the Buyer and the Company hereunder are directly conditioned upon the satisfaction of the following conditions at the time or during the time periods indicated:

- (a) All representations and warranties of the Buyer and the Company hereunder shall be true and correct in all material respects and no Event of Default (as defined below) shall have occurred as of (i) the Execution Date or (ii) the Closing Date;
- (b) The Purchased Assets are available for sale;



- (c) The Buyer has paid the Purchase Price in immediately available funds to the Company;
- (d) The Company will have received all such further instruments and documents as the Company may reasonably request; and
- (e) The Sale Order has been entered by the Bankruptcy Court.

## **10. DEFAULTS**

10.1 The following shall constitute an “Event of Default” hereunder:

- (a) The failure by the Buyer or the Company to perform any of the respective material obligations hereunder; or
- (b) The failure of the Buyer to comply with any terms of any bidding procedures order entered by the Court; or
- (c) The failure of the Buyer to close on the Purchase Agreement on the Closing Date; or
- (d) Any representation or warranty made by the Company or the Buyer that proves untrue in any material respect as of the date made and until the Closing Date.

10.2 In the event of an Event of Default, the non-defaulting Party may, in its discretion, elect to terminate this Agreement upon three (3) business days’ written notice to the other Party. If the Buyer is the defaulting Party, the Buyer shall forfeit the Deposit.

## **11. MISCELLANEOUS**

11.1 Any notice or other communication under this Agreement shall be in writing and may be delivered personally, sent by facsimile or by prepaid registered or certified mail, or by electronic mail, addressed as follows:

- (i) in the case of the Buyer:

(ii) in the case of the Company:

VPH Pharmacy, Inc.  
c/o David G. Dragich  
The Dragich Law Firm PLLC  
17000 Kercheval Ave., Suite 210  
Grosse Pointe, MI 48230  
[ddragich@dragichlaw.com](mailto:ddragich@dragichlaw.com)

with a copy to:

Cardinal Health 110, LLC  
c/o Scott A. Zuber  
Chiesa Shahinian & Giantomasi, P.C.  
One Boland Drive  
West Orange, NJ 07052  
[szuber@csglaw.com](mailto:szuber@csglaw.com)

and

Judith Greenstone Miller  
Jaffe Raitt Heuer & Weiss, P.C.  
27777 Franklin Road, Suite 2500  
Southfield, MI 48034  
[jmiller@jaffelaw.com](mailto:jmiller@jaffelaw.com)

and with a copy to:

The Official Committee of Unsecured Creditors  
Scott A. Wolfson  
Wolfson Bolton PLLC  
3150 Livernois Rd., Ste. 275  
Troy, MI 48083-5034  
[swolfson@wolfsonbolton.com](mailto:swolfson@wolfsonbolton.com)

11.2 This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Michigan, without reference to any conflict of laws provisions.

11.3 Any action or proceeding regarding this Agreement may be brought against any of the Parties in the Bankruptcy Court. Each of the Parties consents to the jurisdiction of such court (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world by U.S. mail.

11.4 Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms

and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

11.5 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations and understandings, and can only be modified by a writing signed by the Company and the Buyer.

11.6 The provisions of this Agreement are intended for the sole benefit of Buyer and Company as specifically provided herein, and shall not inure to the benefit of any other entity or person (other than successors and permitted assigns of the Parties hereto) either as a third party beneficiary or otherwise. No Party may assign either this Agreement or any of his or its rights, interests, or obligations hereunder without the prior written approval of the Parties, and any attempt to do so will be void.

**11.7 IN NO EVENT SHALL ANY PARTY BE OBLIGATED OR LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.**

**11.8 THE COMPANY AND THE BUYER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANOTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.**

11.9 This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, together, shall constitute one and the same instrument. Delivery by facsimile of this Agreement or an executed counterpart hereof shall be deemed a good and valid execution and delivery hereof or thereof.

11.10 Nothing contained hereof shall be deemed to create any relationship between the Buyer and the Company other than an agency relationship. It is stipulated that the Parties are not partners or joint venturers.

*[Remainder of Page Intentionally Left Blank – Signatures on Following Page]*

**IN WITNESS WHEREOF**, the undersigned Parties have entered into and executed this Agreement to be effective as of the day and year first above written.

**BUYER**

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

Its: \_\_\_\_\_

**VPH PHARMACY, INC.**

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

Its: \_\_\_\_\_

**List of Exhibits**

- Exhibit A - List of Purchased Assets
- Exhibit B - List of Executory Contracts and Unexpired Lease(s)