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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(D)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

**January 30, 2020**  
**Date of Report (Date of Earliest Event Reported)**

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**STEIN MART, INC.**

(Exact Name of Registrant as Specified in its Charter)

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**Florida**  
(State or Other Jurisdiction  
of Incorporation)

**0-20052**  
(Commission  
File Number)

**64-0466198**  
(IRS Employer  
Identification No.)

**1200 Riverplace Blvd., Jacksonville, Florida 32207**  
(Address of Principal Executive Offices Including Zip Code)

**(904) 346-1500**  
(Registrant's telephone number, including area code)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	SMRT	The NASDAQ Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act (§240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 1.01. Entry into a Material Definitive Agreement.**

On January 30, 2020, Stein Mart, Inc. (the “Company”) entered into an Agreement and Plan of Merger (the “Merger Agreement”), by and among the Company, Stratosphere Holdco, LLC, a Delaware limited liability company (“Parent”), and Stratosphere Merger Sub, Inc., a Florida corporation and an indirect wholly-owned subsidiary of Parent (“Merger Sub”). The Merger Agreement provides for, upon the terms and subject to the conditions set forth in the Merger Agreement, and in accordance with the Florida Business Corporation Act, the merger of Merger Sub with and into the Company with the Company being the surviving corporation as an indirect wholly-owned subsidiary of Parent (the “Merger”).

Pursuant to the Merger Agreement, at the effective time of the Merger (the “Effective Time”), each of the Company’s issued and outstanding shares of common stock, par value \$0.01 per share (other than (i) shares held by the Company or any of its wholly-owned subsidiaries or Parent or its subsidiaries, (ii) shares held by an entity managed by Jay Stein, the Chairman of the Company’s Board (the “Rollover Investor”), and (iii) shares whose holders have not voted in favor of adopting the merger agreement and have demanded and perfected their appraisal rights in accordance with, and have complied in all respects with, the Florida Business Corporation Act) will be cancelled and will be converted automatically into the right to receive \$0.90 in cash, without interest (the “Merger Consideration”).

Shareholders of the Company will be asked to vote on the adoption and approval of the Merger Agreement at a special meeting that will be held on a date to be announced. Consummation of the Merger is subject to customary conditions, including without limitation: (i) the adoption and approval of the Merger Agreement by the affirmative vote of the holders of a majority of the outstanding shares of common stock as of the record date for the special meeting (the “Requisite Company Vote”); and (ii) the absence of any order enjoining or prohibiting the Merger. Moreover, each party’s obligation to consummate the Merger is subject to certain other conditions, including without limitation: (a) the accuracy of the other party’s representations and warranties contained in the Merger Agreement (subject to certain materiality qualifiers) and (b) the other party’s compliance with its covenants and agreements contained in the Merger Agreement in all material respects. In addition, the obligation of Parent to consummate the Merger is subject to the non-occurrence of any Company Material Adverse Effect (as defined in the Merger Agreement) from the date of the Merger Agreement to the Effective Time. Availability of financing for the Merger is not a condition to Parent’s obligations to consummate the Merger. A Company Material Adverse Effect shall be deemed to have occurred if, among other things, at the time when the closing of the Merger is to occur, the Company does not satisfy certain minimum liquidity conditions.

The Company has made customary representations and warranties to Parent and Merger Sub in the Merger Agreement. The Company has also entered into certain customary covenants and agreements in the Merger Agreement, including, without limitation, covenants regarding: (i) the conduct of the business of the Company prior to the consummation of the Merger; (ii) the calling and holding of the special meeting of the Company’s shareholders for the purpose of obtaining the Requisite Company Vote; and (iii) the use of its reasonable best efforts to cause the Merger to be consummated.

Under the Merger Agreement, the Company is subject to a restriction on its ability to solicit offers or proposals relating to a takeover proposal or to provide information to or engage in discussions or negotiations with third parties regarding a takeover proposal. This restriction is subject to certain exceptions that allow the Company to provide information and participate in discussions with respect to an unsolicited written takeover proposal if the Company’s Board of Directors (the “Board”) or the special committee of independent members of the Board (the “Special Committee”) has determined, after consultation with the Company’s outside legal and financial advisors, that such takeover proposal constitutes or would reasonably be expected to lead to a Superior Proposal (as defined below), and that not doing so would be inconsistent with its fiduciary duties.

The Merger Agreement contains certain termination rights for both the Company and Parent. The Board (with the approval of the Special Committee) or the Special Committee may cause the Merger Agreement to be terminated in response to a Superior Proposal only under certain circumstances. A “Superior Proposal” is a bona fide written takeover proposal, not resulting from a material breach of the no-shop provision in the Merger Agreement, that the Special Committee has determined in good faith, after consultation with its outside legal counsel and financial advisors, (i) is on terms and conditions more favorable, from a financial point of view, to the shareholders of the Company (excluding the Rollover Investor) than those contemplated by the Merger Agreement and (ii) is reasonably capable of being completed on a timely basis, taking into account all material financial, regulatory, legal and other aspects of such proposal (including the identity of the counterparty).

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The Merger Agreement provides that, upon termination under specified circumstances, the Company would be required to pay Parent a termination fee in an amount equal to approximately \$2.2 million. The Merger Agreement also provides that Parent will be required to pay to the Company a reverse termination fee of approximately \$2.2 million upon termination under certain specified circumstances.

Any actions taken by, or omissions of, the Company (i) in breach of the interim operating covenants, or (ii) in breach of the Company's covenants to facilitate Parent's debt financing, in each case at the direction of, or with the consent of Parent, will in each case be disregarded and will not constitute a breach of the interim operating covenants or financing covenants, as applicable.

To finance the transaction contemplated by the Merger Agreement, Parent and Merger Sub have obtained debt financing commitments and the Rollover Investor has entered into a rollover equity commitment letter (the "Rollover Commitment") pursuant to which the Rollover Investor has committed to roll-over all of its shares of capital stock of the Company on the terms and subject to the conditions set forth in the Rollover Commitment.

Wells Fargo Bank, National Association and Pathlight Capital LP (the "Lenders") have committed to provide debt financing on the terms and subject to customary conditions set forth in the debt commitment letters entered into by Parent and Merger Sub in connection with the Merger.

In connection with the execution of the Merger Agreement, certain funds affiliated with Parent have provided the Company with a limited non-recourse guarantee in favor of the Company guaranteeing the payment of certain monetary obligations that may be owed by Parent pursuant to the Merger Agreement, including any reverse termination fee that may become payable by Parent.

In addition, in connection with the execution of the Merger Agreement, the Rollover Investor, which owns approximately 35% of the Company's outstanding common stock, has entered into a voting agreement (the "Voting Agreement") with Parent and the Company pursuant to which the Rollover Investor agreed to vote in favor of the Merger and the adoption of the Merger Agreement, subject to the limitations set forth in the Voting Agreement. The Rollover Investor's obligations under the Voting Agreement will automatically terminate without any further action required by any person upon the earliest to occur of (i) the mutual agreement of the parties thereto to terminate the Voting Agreement; (ii) the termination of the Merger Agreement in accordance with its terms, and (iii) the Effective Time.

The Merger and the Merger Agreement were unanimously recommended by the Special Committee to the Board, and thereafter approved unanimously by the entire Board (other than Mr. Stein). PJ Solomon Securities, LLC served as the financial advisor to the Special Committee of the Board in connection with the Merger and the Merger Agreement.

The Merger Agreement has been attached as an exhibit to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about the Company, Parent, Merger Sub or any of their respective affiliates or businesses. The representations, warranties, covenants and agreements contained in the Merger Agreement were made only for the purposes of such agreement and as of specified dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties. The representations and warranties may have been made for the purposes of allocating contractual risk between the parties to the Merger Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors and security holders are not third-party beneficiaries under the Merger Agreement and should not rely on the representations, warranties, covenants and agreements or any descriptions thereof as characterizations of the actual state of facts or condition of the Company, Parent, Merger Sub or any of their respective affiliates or businesses. Moreover, the assertions embodied in the representations and warranties contained in the Merger Agreement are qualified by information in disclosure letters that the parties have exchanged. Accordingly, investors and security holders should not rely on the representations and warranties as characterizations of the actual state of facts of the Company, Parent, Merger Sub or any of their respective affiliates or businesses. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

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The foregoing description of the Merger Agreement is only a summary, does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, which is filed as Exhibit 2.1 hereto, and is incorporated herein by reference.

### **Forward-Looking Statement**

Certain statements in this report regarding the Merger Agreement and the proposed Merger constitute “forward-looking statements” under the federal securities laws. These forward-looking statements are intended to be covered by the safe harbors created by the Private Securities Litigation Reform Act of 1995. When we use words such as “anticipate,” “intend,” “plan,” “believe,” “estimate,” “expect,” or similar expressions, we do so to identify forward-looking statements. Forward-looking statements are based on current expectations that involve assumptions that are difficult or impossible to predict accurately and many of which are beyond our control. Actual results may differ materially from those expressed or implied in these statements as a result of significant risks and uncertainties, including, but not limited to, the occurrence of any event, change or other circumstances that could give rise to the termination of the merger agreement, the inability to obtain the requisite shareholder approval for the proposed merger or the failure to satisfy other conditions to completion of the proposed merger, risks that the proposed transaction disrupts current plans and operations, the ability to recognize the benefits of the merger, and the amount of the costs, fees, and expenses and charges related to the merger. Additional information about these risks and uncertainties, as well as others that may cause actual results to differ materially from those projected, is contained in the Company’s filings with the SEC, including the Company’s Annual Report on Form 10-K and the Company’s quarterly reports on Form 10-Q. The statements in this report speak only as of the date of hereof and we undertake no obligation to update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

### **Additional Information And Where To Find It**

In connection with the proposed transaction, the Company will file with the SEC a proxy statement on Schedule 14A and may file other documents with the SEC regarding the proposed transaction. This report is not a substitute for the proxy statement or any other document that the Company may file with the SEC. INVESTORS IN, AND SECURITY HOLDERS OF, THE COMPANY ARE URGED TO READ THE PROXY STATEMENT AND ANY OTHER RELEVANT DOCUMENTS THAT ARE FILED OR WILL BE FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THESE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND RELATED MATTERS. Investors and security holders may obtain free copies of the proxy statement (when available) and other documents filed with the SEC by the Company through the web site maintained by the SEC at [www.sec.gov](http://www.sec.gov) or by contacting Kingsdale Advisors by telephone at 1.866.581.1479 toll-free in North America (+1.416.867.2272 for collect calls outside of North America) or by e-mail at [contactus@kingsdaleadvisors.com](mailto:contactus@kingsdaleadvisors.com).

### **Participants in the Solicitation**

The Company and its directors and executive officers may be deemed to be participants in the solicitation of proxies in connection with the proposed transaction. Information regarding the Company’s directors and executive officers, including a description of their direct interests, by security holdings or otherwise, in the Company is contained in the Company’s Definitive Annual Meeting Proxy Statement filed with the SEC on May 7, 2019. You may obtain a free copy of this document as described in the preceding paragraphs. Investors may obtain additional information regarding the direct and indirect interests of the Company and its directors and executive officers in the proposed transaction by reading the proxy statement and other public filings referred to above.

### **Item 7.01 Regulation FD Disclosure.**

On January 31, 2020, the Company issued a press release announcing the entry into the Merger Agreement. This information is intended to be furnished, rather than filed. Such information, including Exhibit 99.1 attached hereto, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall it be incorporated by reference into any filing made under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference to such filing.

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**Item 9.01. Financial Statements and Exhibits**

**(d) Exhibits**

Exhibit 2.1\* [Agreement and Plan of Merger, dated January 30, 2020, by and among the Company, Parent and Merger Sub.](#)

Exhibit 2.2 [Voting Agreement dated January 30, 2020](#)

Exhibit 99.1 [Press release dated January 31, 2020.](#)

\* Certain schedules and exhibits to this agreement have been omitted in accordance with Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished supplementally to the SEC upon request.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**STEIN MART, INC.**  
(Registrant)

Date: January 31, 2020

By: /s/ James B. Brown

James B. Brown  
Executive Vice President and Chief Financial Officer

**AGREEMENT AND PLAN OF MERGER**

**by and among**

**STRATOSPHERE HOLDCO, LLC,  
STRATOSPHERE MERGER SUB, INC.**

**and**

**STEIN MART, INC.**

**Dated as of January 30, 2020**

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## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of January 30, 2020 (this "**Agreement**"), by and among **Stratosphere Holdco, LLC**, a Delaware limited liability company ("**Parent**"), **Stratosphere Merger Sub, Inc.**, a Florida corporation and an indirect wholly-owned subsidiary of Parent ("**Merger Sub**"), and **Stein Mart, Inc.**, a Florida corporation (the "**Company**").

### RECITALS

WHEREAS, the Board of Directors of the Company (the "**Company Board**") established a Special Committee (the "**Special Committee**"), consisting solely of independent and disinterested directors, to, among other things, explore, consider and negotiate strategic transactions involving the Company to maximize shareholder value, including the merger of Merger Sub with and into the Company on the terms and subject to the conditions of this Agreement (the "**Merger**") and the other transactions contemplated by this Agreement, and to make a recommendation to the Company Board with respect thereto;

WHEREAS, at the outset of the Special Committee's work leading to negotiation of the Merger, the Company Board (i) expressly empowered the Special Committee to elect not to pursue any proposed transaction in which the Chairman of the Company Board and his affiliates roll over all or a material portion of their Common Stock into the surviving company if the Special Committee determined, in its sole discretion, that such transaction is not in the best interests of shareholders of the Company that are not Rollover Investors; and (ii) resolved not to approve such a rollover transaction without the favorable prior recommendation of the Special Committee;

WHEREAS, the Special Committee has determined that it is fair to, advisable and in the best interests of the Company and the holders of Common Stock other than the Rollover Investors to enter into this Agreement with Parent and Merger Sub, providing for the Merger and the other transactions contemplated hereby, in each case in accordance with the Florida Business Corporation Act (the "**FBCA**");

WHEREAS, the Company Board, based on the recommendation of the Special Committee, at a meeting thereof duly called and held, has (a) approved and adopted this Agreement, the Merger and the other transactions contemplated by this Agreement, (b) declared that it is fair to, advisable and in the best interests of the Company and the shareholders of the Company other than the Rollover Investors that the Company enter into this Agreement and consummate the Merger on the terms and subject to the conditions set forth in this Agreement, (c) directed that this Agreement be submitted for approval by the shareholders of the Company, and (d) recommended to the shareholders of the Company that they approve this Agreement (the "**Company Board Recommendation**");

WHEREAS, a majority of the "disinterested directors" of the Company Board (as such term is used in Section 607.0901 of the FBCA) have approved and adopted this Agreement, the Merger and the other transactions contemplated by this Agreement, on the terms and subject to the conditions set forth in this Agreement;

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WHEREAS, (a) the Managing Member of Parent and the board of directors of Merger Sub have (i) determined that this Agreement and the transactions contemplated by this Agreement, including the Merger, are fair and reasonable to, and in the best interests of, Parent and Merger Sub, respectively, and (ii) approved and adopted this Agreement and the transactions contemplated by this Agreement, including the Merger, and (b) the board of directors of Merger Sub has (i) recommended the approval of this Agreement by the sole shareholder of Merger Sub, and (ii) directed that this Agreement be submitted to the sole shareholder of Merger Sub for approval;

WHEREAS, concurrently with the execution of this Agreement, and as a condition and inducement to the willingness of the Company to enter into this Agreement, the Guarantors are entering into the Guarantee and in favor of the Company with respect to certain of Parent's and Merger Sub's obligations under this Agreement;

WHEREAS, concurrently with the execution of this Agreement, and as a condition and inducement to the willingness of Parent and Merger Sub to enter into this Agreement, the Rollover Investor has entered into a Rollover Letter with Parent pursuant to which, among other things, the Rollover Investor has agreed, on the terms and subject to the conditions set forth in the Rollover Letter, to make the Rollover Investment; and

WHEREAS, concurrently with the execution of this Agreement, and as a condition and inducement to the willingness of Parent and the Company to enter into this Agreement, certain shareholders of the Company (the "**Principal Shareholders**") are entering into a voting agreement (the "**Voting Agreement**") with Parent pursuant to which, among other things, the Principal Shareholders have agreed, on the terms and subject to the conditions set forth in the Voting Agreement, to (a) vote their shares of Common Stock in favor of adoption of this Agreement to so vote with respect to this Agreement to the extent provided therein) and (b) take certain other actions in furtherance of the transactions contemplated by this Agreement.

Accordingly, in consideration of the mutual representations, warranties, covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement, intending to be legally bound, agree as follows:

## ARTICLE I

### THE MERGER

1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the FBCA, at the Effective Time, (a) Merger Sub shall be merged with and into the Company, (b) the separate corporate existence of Merger Sub shall cease and the Company shall continue its corporate existence under the FBCA as the surviving corporation in the Merger (the "**Surviving Corporation**") and (c) the Surviving Corporation shall become a wholly-owned Subsidiary of Parent.

1.2 Closing. Subject to the satisfaction or waiver of all of the conditions to closing contained in Article VI, the closing of the Merger (the "**Closing**") shall take place (a) at the offices of Foley & Lardner LLP, One Independent Drive, Suite 1300, Jacksonville, Florida, at 10:00 a.m.



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(local time) on the second Business Day after the day on which the conditions set forth in Article VI (other than those conditions that by their terms are to be satisfied by actions taken at the Closing, but subject to the satisfaction or waiver of those conditions) are satisfied or waived in accordance with this Agreement, or (b) at such other place and time as Parent and the Company may agree in writing. The date on which the Closing occurs is referred to as the “**Closing Date**.”

1.3 Effective Time. At the Closing, Parent and the Company shall cause an articles of merger (the “**Articles of Merger**”) to be executed, signed, acknowledged and filed with the Department of State of the State of Florida in such form as is required by the relevant provisions of the FBCA, and shall make all other deliveries, filings or recordings required by the FBCA in connection with the Merger. The Merger shall become effective when the Articles of Merger has been duly filed with the Secretary of State of the State of Florida or at such other subsequent date or time as Parent and the Company may agree and specify in the Articles of Merger in accordance with the FBCA (the “**Effective Time**”).

1.4 Effects of the Merger. The Merger shall have the effects set forth in the FBCA, this Agreement and the Articles of Merger. From and after the Effective Time, the Surviving Corporation shall possess all of the rights, powers, privileges, franchises and be subject to all of the obligations, liabilities, restrictions and disabilities of the Company, all as provided in the FBCA.

1.5 Certificate of Incorporation. The certificate of incorporation of the Company shall, at the Effective Time and without any further action on the part of any party hereto, be amended and restated to be the certificate of incorporation of Merger Sub with the name of the entity changed to “Stein Mart, Inc.”, and as so amended and restated, shall be the certificate of incorporation of the Surviving Corporation (the “**Surviving Charter**”), until amended as provided therein and by applicable Law.

1.6 Bylaws. The bylaws of the Company shall, at the Effective Time and without any further action on the part of any party hereto, be the bylaws of the Surviving Corporation (the “**Surviving Bylaws**”), until amended as provided in the Surviving Charter and the Surviving Bylaws and by applicable Law.

1.7 Directors. The parties shall take all requisite action so that the directors of Merger Sub immediately before the Effective Time shall be, from and after the Effective Time, the directors of the Surviving Corporation until their successors are duly elected and qualified or until their earlier death, resignation or removal in accordance with the Surviving Charter, the Surviving Bylaws and applicable Law.

1.8 Officers. The parties shall take all requisite action so that the officers of Merger Sub immediately before the Effective Time shall be, from and after the Effective Time, the officers of the Surviving Corporation until their successors are duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Charter, the Surviving Bylaws and applicable Law.

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## ARTICLE II

### EFFECT OF THE MERGER ON CAPITAL STOCK

2.1 Conversion of Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holder of any shares of capital stock of Merger Sub or the Company:

(a) Conversion of Merger Sub Capital Stock. Each share of common stock, par value \$0.001 per share, of Merger Sub issued and outstanding immediately before the Effective Time shall be converted into and become one fully paid and non-assessable share of common stock, par value \$0.01 per share, of the Surviving Corporation.

(b) Cancellation of Treasury Stock and Parent-Owned Stock. Each share of Common Stock owned by the Company or any of its Subsidiaries (or held in the Company's treasury) or by Parent or any of its Subsidiaries (including Merger Sub) immediately before the Effective Time, including, for the avoidance of doubt, each share of Common Stock contributed to Parent by the Rollover Investors ("**Rollover Shares**") in accordance with the Rollover Letters (collectively, the "**Excluded Shares**"), shall be canceled automatically and shall cease to exist, and no consideration shall be paid for those Excluded Shares.

(c) Conversion of Common Stock.

(i) Each share of Common Stock issued and outstanding immediately before the Effective Time (other than Excluded Shares and Dissenting Shares) shall be converted into the right to receive \$0.90 in cash, without interest (the "**Merger Consideration**").

(ii) All shares of Common Stock that have been converted pursuant to Section 2.1(c)(i) shall be canceled automatically and shall cease to exist, and the holders of (A) certificates which immediately before the Effective Time represented such shares (the "**Certificates**") or (B) shares represented by book-entry (the "**Book-Entry Shares**") shall cease to have any rights with respect to those shares, other than the right to receive the Merger Consideration in accordance with Section 2.2 and any dividends or other distributions with a record date prior to the Effective Time which may have been authorized by the Company and which remain unpaid at the Effective Time.

(d) Equitable Adjustment. If at any time during the period between the date of this Agreement and the Effective Time, any change in the number of outstanding shares of Common Stock shall occur by reason of any reclassification, recapitalization, reorganization, stock split (including a reverse stock split), combination, exchange or readjustment of shares, or any stock dividend or stock distribution (including any dividend or distribution of securities convertible into or exchangeable for shares of Common Stock) is declared with a record date during such period, then the Merger Consideration shall be proportionately and equitably adjusted, without duplication, to reflect such change.

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2.2 Surrender of Certificates and Book-Entry Shares.

(a) Paying Agent. Not less than three (3) Business Days before the Effective Time, Parent shall (i) select a bank or trust company, satisfactory to the Company in its reasonable discretion, to act as the paying agent in the Merger (the "**Paying Agent**") and (ii) enter into a paying agent agreement with the Paying Agent, the terms and conditions of which are satisfactory to the Company in its reasonable discretion. The Surviving Corporation shall be responsible for all fees and expenses of the Paying Agent.

(b) Payment Fund. Immediately prior to the Effective Time, Parent shall deposit, or cause to be deposited, with the Paying Agent, for the benefit of the holders of Certificates and Book-Entry Shares, for payment in accordance with this Article II through the Paying Agent, sufficient funds for the payment of the aggregate Merger Consideration for all issued and outstanding shares of Common Stock (other than Excluded Shares) and other amounts payable under this Article II. Such funds provided to the Paying Agent are referred to as the "**Payment Fund**."

(c) Payment Procedures.

(i) Letter of Transmittal. As soon as reasonably practicable, and in any event within three (3) Business Days, after the Effective Time, Parent shall cause the Paying Agent to mail to each holder of record of a share of Common Stock converted pursuant to Section 2.1(c)(i), (A) a letter of transmittal in the Paying Agent's standard form (and reasonably satisfactory to Parent and the Company), specifying that delivery shall be effected, and risk of loss and title to such holder's shares shall pass, only upon proper delivery of Certificates (or affidavit of loss in lieu thereof) to the Paying Agent or, in the case of Book-Entry Shares, upon adherence to the procedures set forth in the letter of transmittal and (B) instructions for surrendering such Certificates (or affidavit of loss in lieu thereof) or Book-Entry Shares in exchange for the Merger Consideration multiplied by the number of shares evidenced by such Certificates (or affidavit of loss in lieu thereof) or Book-Entry Shares. Such instructions shall provide that: (1) at the election of the surrendering holder, Certificates (or affidavit of loss in lieu thereof) may be surrendered by hand delivery or otherwise and (2) the Merger Consideration payable in exchange for Certificates (or affidavit of loss in lieu thereof) and/or Book-Entry Shares will be payable by wire transfer to the surrendering holder.

(ii) Surrender of Shares. Upon surrender of a Certificate (or affidavit of loss in lieu thereof) or of a Book-Entry Share for cancellation to the Paying Agent, together with a duly executed letter of transmittal and any other documents reasonably required by the Paying Agent, the holder of that Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share shall be entitled to receive, and the Paying Agent shall promptly pay in exchange therefor, the Merger Consideration payable in respect of the number of shares formerly evidenced by that Certificate (or affidavit of loss in lieu thereof) or such Book-Entry

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Share less any required withholding of Taxes. Any Certificates (or affidavit of loss in lieu thereof) and Book-Entry Shares so surrendered shall be canceled immediately. No interest shall accrue or be paid on any amount payable upon surrender of Certificates (or affidavit of loss in lieu thereof) or Book-Entry Shares.

(iii) Unregistered Transferees. If any Merger Consideration is to be paid to a Person other than the Person in whose name the surrendered Certificate or Book-Entry Share is registered, then the Merger Consideration may be paid to such a transferee so long as (A) the surrendered Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share is accompanied by all documents reasonably required by Parent to evidence and effect that transfer and (B) the Person requesting such payment (x) pays any applicable transfer Taxes or other Taxes required by reason of payment of the Merger Consideration to a Person other than the registered holder of the Certificate or Book-Entry Shares or (y) establishes to the reasonable satisfaction of Parent and the Paying Agent that all such transfer Taxes have already been paid or are not applicable.

(iv) No Other Rights. Until surrendered in accordance with this Section 2.2(c), each Certificate (or affidavit of loss in lieu thereof) and each Book-Entry Share shall be deemed, from and after the Effective Time, to represent only the right to receive the applicable Merger Consideration, subject to the Surviving Corporation's obligation to pay any dividends or other distributions with a record date prior to the Effective Time which may have been authorized by the Company and which remain unpaid at the Effective Time. Any Merger Consideration paid upon the surrender of any Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share shall be deemed to have been paid in full satisfaction of all rights pertaining to such Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share and, in the case of a Certificate, the shares of Common Stock formerly represented by it.

(d) Lost, Stolen or Destroyed Certificates. If any Certificate is lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if reasonably required by the Surviving Corporation, the execution and delivery by such Person of a customary indemnity agreement to provide indemnity against any claim that may be made against it with respect to such Certificate, the Paying Agent shall pay the Merger Consideration to such Person in respect of the shares of Common Stock represented by such Certificate.

(e) No Further Transfers. At the Effective Time, the stock transfer books of the Company shall be closed and there shall be no further registration of transfers of the shares of Common Stock that were outstanding immediately before the Effective Time. If, after the Effective Time, Certificates or Book-Entry Shares are presented to the Surviving Corporation for transfer, they shall be cancelled and exchanged for the Merger Consideration as provided in this Article II.

(f) Required Withholding. Parent, Merger Sub, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from any consideration otherwise payable under this Agreement such amounts as they are

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required to deduct or withhold therefrom under the Code, or any applicable state, local or foreign Tax Law. To the extent that any amounts are so deducted and withheld and paid to the appropriate taxing authorities, those amounts shall be treated as having been paid to the Person in respect of whom such deduction or withholding was made for all purposes under this Agreement.

(g) No Liability. None of Parent, the Surviving Corporation or the Paying Agent shall be liable to any holder of Certificates or Book-Entry Shares for any amount properly paid to a public official under any applicable abandoned property, escheat or similar Law.

(h) Investment of Payment Fund. The Paying Agent shall invest the Payment Fund as directed by Parent; provided, that such investment shall be in obligations of, or guaranteed by, the United States of America, in commercial paper obligations of issuers organized under the Law of a state of the United States of America, rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Ratings Service, respectively, or in certificates of deposit, bank repurchase agreements or bankers' acceptances of commercial banks with capital exceeding \$10 billion, or in mutual funds investing solely in such assets and, in any such case, no such instrument shall have a maturity exceeding three (3) months. Any such investment shall be for the benefit, and at the risk, of Parent, and any interest or other income resulting from such investment shall be for the benefit of Parent; provided, that no such investment or losses thereon shall affect the Merger Consideration payable hereunder and Parent shall promptly provide, or shall cause the Surviving Corporation to promptly provide, additional funds to the Paying Agent for the benefit of the holders of Common Stock, Company Options and Company Stock Awards immediately prior to the Effective Time in the amount of any such losses to the extent necessary to satisfy the obligations of Parent and the Surviving Corporation under this Article II.

(i) Termination of Payment Fund. Any portion of the Payment Fund that remains unclaimed by the holders of Certificates or Book-Entry Shares six months after the Effective Time shall be delivered by the Paying Agent to Parent upon demand. Thereafter, any holder of Certificates or Book-Entry Shares who has not complied with this Article II shall look only to Parent and/or the Surviving Corporation, which shall remain responsible for payment of the applicable Merger Consideration.

### 2.3 Company Options and Company Stock Awards.

(a) Except as otherwise agreed in writing after the date hereof by Parent and the applicable holder thereof, the Company shall take all necessary and appropriate actions so that, at the Effective Time, each option to acquire shares of Common Stock under the Company Equity Plan (each, a "**Company Option**") outstanding immediately prior to the Effective Time, whether or not then vested or exercisable, by virtue of the Merger and without any further action by Parent, Merger Sub, the Company or the holder of that Company Option, shall be canceled and each

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Company Option shall be converted into the right to receive from Parent or the Surviving Corporation promptly following the Effective Time an amount in cash, without interest, equal to the Option Consideration (as defined below) multiplied by the aggregate number of shares of Common Stock that may be acquired upon exercise of such Company Option. The Company Board or the compensation committee thereof shall take all necessary and appropriate actions so that all Company Options shall be vested in full as of immediately prior to the Effective Time. “**Option Consideration**” means the excess, if any, of the Merger Consideration over the per share exercise or purchase price of the applicable Company Option at the time of calculation. Notwithstanding the foregoing, if the exercise or purchase price of the applicable Company Option is equal to or greater than the Merger Consideration, such Company Option shall be cancelled without any payment being made in respect thereof.

(b) Except as otherwise agreed in writing after the date hereof by Parent and the applicable holder thereof or as otherwise provided below, each share of restricted Common Stock that vests solely based on continued service (each, a “**Company Restricted Stock Award**”) outstanding immediately prior to the Effective Time, by virtue of the Merger and without any action by Parent, Merger Sub, the Company or the holder of that Company Restricted Stock Award, shall be, at the Effective Time, converted into the right to receive from Parent or the Surviving Corporation the Merger Consideration per share in accordance with Section 2.1(c).

(c) Except as otherwise agreed in writing after the date hereof by Parent and the applicable holder thereof or as otherwise provided below, each share of restricted Common Stock that vests based on the achievement of performance goals (each, a “**Company Performance Stock Award**”) outstanding immediately prior to the Effective Time, by virtue of the Merger and without any action by Parent, Merger Sub, the Company or the holder of that Company Performance Stock Award, shall be, at the Effective Time, converted into the right to receive a cash award determined by multiplying the Merger Consideration by the number of shares of Common Stock that would vest based on the achievement of any applicable performance goals at the target level.

(d) Except as otherwise agreed in writing after the date hereof by Parent and the applicable holder thereof or as otherwise provided below, each award of restricted stock units payable in shares of Common Stock or whose value is determined with reference to the value of shares of Common Stock (“**Company RSU Awards**” and collectively with the Company Restricted Stock Awards and Company Performance Stock Awards, the “**Company Stock Awards**”) outstanding immediately prior to the Effective Time, by virtue of the Merger and without any action by Parent, Merger Sub, the Company or the holder of that Company RSU Award, shall be, at the Effective Time, converted into the right to receive a cash award determined by multiplying the Merger Consideration by the number of shares of Common Stock subject to each Company RSU Award. The Company Board or the compensation committee thereof shall take all necessary and appropriate actions so that all Company Stock Awards shall be fully vested and all restricted periods shall lapse thereon in full as of immediately prior to the Effective Time.

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(e) Subject to the provisions of this Section 2.3, the Company shall take all necessary and appropriate actions so that all Company Options, as well as all Company RSU Awards, shall be canceled and the Company Equity Plan shall terminate at the Effective Time. Following the Effective Time, no holder of any Company Option or any Company Stock Award will have any right to acquire any equity securities of the Company, its Subsidiaries or the Surviving Corporation as a result of such holder's Company Options or Company Stock Awards.

(f) Not later than ten (10) days prior to the Effective Time, the Company shall mail to each holder of Company Options and Company Stock Awards a letter describing the treatment of and payment for such Company Options or Company Stock Awards pursuant to this Section 2.3 and providing instructions for use in obtaining payment for such Company Options or Company Stock Awards (which instructions shall provide that the cash payable to such holder of Company Options or Company Stock Awards pursuant to this Section 2.3 will be made by check or wire transfer in accordance with the holder's instructions on file with the Company in respect of payroll and, if no such instructions are applicable to such holder, may be, at the election of such holder, mailed to such holder or transferred to such holder by wire transfer).

(g) At the first regularly scheduled payroll payment date after Closing, the Surviving Corporation shall cause its payroll agent to mail a check (or transfer by wire transfer) to each applicable holder of a Company Option or Company Stock Award, in such amount due and payable to such holder pursuant to Section 2.3(a) in respect of such Company Option or Company Stock Award. Notwithstanding the foregoing, in lieu of the payments contemplated by the immediately preceding sentence, Parent and the Surviving Corporation may direct the Paying Agent to pay the Surviving Corporation (or its designees) for (but only to the extent of) any amounts the Surviving Corporation elects to pay to each holder of a Company Option or Company Stock Award in respect of the consideration payable therefor plus any amounts deducted and withheld with respect to any such amounts; in this event, Parent and Surviving Corporation will provide the necessary funds to the Paying Agent to effectuate the payment to holders of such Company Options or Company Stock Awards.

(h) Company Employee Stock Purchase Plan. With respect to the Company Employee Stock Purchase Plan, (i) participation in the Company Employee Stock Purchase Plan shall be limited to those individuals who are participants in the Company Employee Stock Purchase Plan on the date of this Agreement; (ii) no new Offering Period (as defined in the Company Employee Stock Purchase Plan), other than the Offering Period in effect as of the date of this Agreement, shall be authorized, continued or commenced on or after the date of this Agreement; (iii) participants in the Company Employee Stock Purchase Plan may not increase their payroll deductions or purchase elections from those in effect on the date of this Agreement;

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(iv) any holding period relating to Company Common Stock received in respect of the Company Employee Stock Purchase Plan shall be waived as of immediately prior to the Effective Time; and (v) the Company Employee Stock Purchase Plan shall be suspended on January 28, 2020 and terminate effective as of the Effective Time.

2.4 Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary (but subject to the other provisions of this Section 2.4), any shares of Common Stock for which the holder thereof (i) has not voted in favor of the Merger or consented to it in writing and (ii) has demanded the appraisal of such shares in accordance with, and has complied in all respects with, the FBCA (collectively, the “***Dissenting Shares***”), shall not be converted into the right to receive the Merger Consideration in accordance with Section 2.1(c). At the Effective Time, (A) all Dissenting Shares shall be canceled and cease to exist and (B) the holders of Dissenting Shares shall be entitled only to such rights as may be granted to them under the FBCA.

(b) Notwithstanding the provisions of Section 2.4(a), if any holder of Dissenting Shares effectively withdraws or loses such appraisal rights (through failure to perfect such appraisal rights or otherwise), then that holder’s shares (i) shall be deemed no longer to be Dissenting Shares and (ii) shall be treated as if they had been converted automatically at the Effective Time into the right to receive the Merger Consideration upon surrender of the Certificate (or affidavit of loss in lieu thereof) formerly representing such shares or, in the case of Book-Entry Shares, upon adherence to the procedures set forth in the letter of transmittal, in each case in accordance with Section 2.2.

(c) The Company shall give Parent (i) notice of any written demands for appraisal of any shares of Common Stock, any withdrawals of such demands and any other instrument served on the Company under the FBCA and (ii) the right to direct all negotiations and proceedings with respect to such demands for appraisal. Except to the extent required by applicable Law, the Company shall not offer to make or make any payment with respect to any such demands for appraisal or otherwise settle any such demands without the prior written consent of Parent.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in (x) the confidential disclosure letter delivered by the Company to Parent before or in connection with the execution of this Agreement (the “***Company Disclosure Letter***”), it being agreed that disclosure of any item in any section of the Company Disclosure Letter (whether or not an explicit cross reference appears) shall be deemed to be disclosure with respect to any other section of the Company Disclosure Letter and any other representation or warranty made elsewhere in Article III, in either case, to which the relevance of such item is reasonably apparent on the face of such disclosure or (y) the Company SEC Reports filed with, or



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furnished to, the SEC on or after January 1, 2018 and prior to the date of this Agreement (other than predictive, forward-looking or cautionary disclosures contained or referenced therein, including under the captions “Risk Factors” and “Quantitative and Qualitative Disclosures About Market Risk” or in any “forward-looking statements” disclaimer) (collectively, “*Forward-Looking Information*”), the Company represents and warrants to Parent and Merger Sub that:

3.1 Organization and Power. The Company is duly organized, validly existing and in good standing under the laws of the State of Florida and has the requisite power and authority to own, lease and operate its assets and properties and to carry on its business as now conducted. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each of the Company’s Subsidiaries is duly organized, validly existing and in good standing under the Laws of the relevant jurisdiction of organization and has the requisite power and authority to own, lease and operate its assets and properties and to carry on its business as now conducted.

3.2 Foreign Qualifications. Each of the Company and its Subsidiaries is duly qualified or licensed to do business as a foreign corporation, limited liability company or other legal entity and is in good standing in each jurisdiction where the nature of its business or ownership, leasing or operation of its properties requires such qualification, except where failure to be so qualified, licensed or in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

3.3 Corporate Authorization. The Company has all necessary corporate power and authority to enter into, deliver, and perform its obligations under, this Agreement and, subject to the receipt of the Requisite Company Vote with respect to the Merger, to consummate the transactions contemplated by this Agreement, including the Merger. On or prior to the date of this Agreement, the Special Committee, the Company Board (upon recommendation of the Special Committee) and a majority of the “disinterested directors” of the Company Board (as such term is used in Section 607.0901 of the FBCA) at a meeting duly called and held has duly adopted resolutions: (a) authorizing and approving the execution, delivery and performance of this Agreement and the transactions contemplated hereby, (b) approving and declaring advisable this Agreement, the Merger and the transactions contemplated by this Agreement, (c) declaring that it is in the best interests of the shareholders of the Company other than Rollover Investors that the Company enter into this Agreement and consummate the Merger on the terms and subject to the conditions set forth in this Agreement, (d) directing that the adoption of this Agreement be submitted to a vote at a meeting of the shareholders of the Company and (e) recommending to the shareholders of the Company that they adopt this Agreement. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated by this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Company.

3.4 Enforceability. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions.

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3.5 Subsidiaries. Section 3.5 of the Company Disclosure Letter sets forth a true and complete list of all of the Subsidiaries of the Company, including the jurisdiction of organization of each such Subsidiary.

3.6 Governmental Authorizations. Assuming that the representations and warranties of Parent and Merger Sub contained in Section 4.3 are true and correct, the execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated by this Agreement, including the Merger, do not and will not require any consent, approval, order, waiver or other authorization of, or, registration, declaration or filing with or notification to (collectively, "**Governmental Authorizations**"), any Governmental Authority, other than:

- (a) the filing of the Articles of Merger with the Secretary of State of the State of Florida;
- (b) the filing with the Securities and Exchange Commission (the "**SEC**") of (i) a proxy statement (the "**Company Proxy Statement**") relating to the special meeting of the shareholders of the Company to be held to consider the adoption of this Agreement (the "**Company Shareholders Meeting**"), (ii) a Rule 13E-3 transaction statement on Schedule 13E-3 (the "**Schedule 13E-3**") relating to the adoption of this Agreement by the shareholders of the Company and (iii) any other filings and reports that may be required in connection with this Agreement and the transactions contemplated by this Agreement under the Securities Exchange Act of 1934 (the "**Exchange Act**") and the FBCA;
- (c) any filings and reports that may be required in connection with this Agreement and the transactions contemplated by this Agreement under state securities Laws or "blue sky" Laws;
- (d) compliance with the Applicable Exchange rules and regulations; and
- (e) any such Governmental Authorizations, the failure of which to make or obtain, would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

3.7 Non-Contravention. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated by this Agreement, including the Merger, do not and will not (with or without notice or lapse of time or both) (a) contravene or conflict with, or result in any violation or breach of, any provision of the Organizational Documents of the Company, (b) contravene or conflict with, or result in any violation or breach of, any Law applicable to the Company or any of its Subsidiaries or by which any assets of the Company or any of its Subsidiaries ("**Company Assets**") are bound, assuming that all Governmental Authorizations described in Section 3.6 have been obtained or made, (c) conflict with or result in any violation or breach of, or constitute a default or trigger or accelerate loss of rights or benefits or accelerate performance or obligations required) under, or give rise to, or to a right of, termination, modification or cancellation under, any Material

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Contracts, (d) result in the creation of any Lien upon any of the properties, assets or rights of the Company or any of its Subsidiaries (other than any Lien created as a result of any action taken by Parent or Merger Sub) or (e) require any consent, approval or other authorization of, or filing with or notification to, any Person under any Material Contracts, other than in the case of clauses (b), (c), (d) and (e) of this Section 3.7, as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

### 3.8 Capitalization.

(a) Except as set forth on Section 3.8(a) of the Company Disclosure Letter, the Company's authorized capital stock consists solely of (i) 100,000,000 shares of Common Stock and (ii) 1,000,000 shares of preferred stock, par value \$0.01 per share (the "**Preferred Stock**"). As of January 27, 2020, (A) 48,354,642 shares of Common Stock were issued and outstanding (which number of shares includes the Company Stock Awards enumerated in clause (B) hereafter), (B) 584,743 Company Stock Awards were outstanding, (C) no shares of Common Stock were held in treasury by the Company or any of its Subsidiaries, (D) 1,439,509 shares of Common Stock were subject to issued and outstanding Company Options, (E) 1,172,552 Company RSU Awards payable in shares of Common Stock were outstanding, (F) 1,524,904 shares of Common Stock were reserved for issuance pursuant to the Company Stock Purchase Plan, and (G) no shares of Preferred Stock were outstanding. Except as set forth above, as of the date hereof, there are no shares of capital stock or securities convertible into, or exchangeable or exercisable for, shares of capital stock of the Company.

(b) Section 3.8(b) of the Company Disclosure Letter sets forth a true and complete list, as of January 27, 2020, of all Company Options, Company Stock Awards and any other awards issued under the Company Equity Plan then outstanding (including Company RSU Awards), specifying on a holder-by-holder basis (i) the name of such holder, (ii) the number of shares of Common Stock subject to each such award, (iii) the grant date of each such award, (iv) the vesting schedule of each such award, (v) the exercise price for each such Company Option, (vi) the Company Equity Plan under which the grant was made, and (vii) whether the holder thereof is a current or former employee of the Company or any of its Subsidiaries. With respect to each outstanding Company Option, Company Stock Award and Company RSU Award, (A) such grant was duly authorized no later than the date on which the grant was by its terms to be effective (the "**Grant Date**") by all necessary corporate action, (B) such grant had and has a per share exercise price equal to no less than the per share fair market value of the underlying Common Stock on the Grant Date, as determined in accordance with section 409A of the Code, (C) such grant was made in all material respects in accordance with the terms of the Company Equity Plans and all applicable Laws, including valid registration under or exemptions from registration under the Securities Act and all other applicable securities laws, and (D) such grant was properly accounted for in all material respects in accordance with GAAP in the financial statements (including the related notes) of the Company. The Company Equity Plan is the only plan or program the Company maintains under which outstanding equity-based or equity-linked compensation has been paid or promised.

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(c) All issued and outstanding shares of Common Stock and all shares of Common Stock that are subject to issuance, upon issuance prior to the Effective Time in accordance with the terms and subject to the conditions specified in the instruments under which they are issuable (i) are, or upon issuance will be, duly authorized, validly issued, fully paid and non-assessable and (ii) are not, or upon issuance will not be, subject to any pre-emptive or similar rights.

(d) Each outstanding share of capital stock of each Subsidiary of the Company that is a corporation is duly authorized, validly issued, fully paid and non-assessable and not subject to any pre-emptive or similar rights. All equity interests of each Subsidiary that is not a corporation are duly created pursuant to the Laws of such Subsidiary's jurisdiction of organization or formation, are issued and paid for in accordance with the Organizational Documents of such Subsidiary and are fully paid and non-assessable. Except as disclosed in Section 3.8(d) of the Company Disclosure Letter, each of the outstanding shares of capital stock, or other equity or voting interest, in each Subsidiary is owned by the Company free and clear of any Lien (other than Permitted Liens).

(e) Except for the capital stock and other equity interests of the Company's Subsidiaries or as disclosed in Section 3.8(e) of the Company Disclosure Letter, the Company does not own, directly or indirectly, any capital stock or other voting or equity securities or interests in any Person. There are no outstanding contractual obligations of the Company or any of its Subsidiaries (i) to repurchase, redeem or otherwise acquire any shares of Common Stock or capital stock of any Subsidiary of the Company or (ii) to provide any funds to or make any investment (including in respect of any unsatisfied subscription obligation or capital contribution or capital account funding obligation) in (A) any Subsidiary of the Company that is not wholly-owned by the Company or (B) any other Person.

(f) There are no voting trusts, proxies, shareholder agreements, registration rights agreements or similar Contracts to which the Company or any of its Subsidiaries is a party with respect to the voting or registration of any shares of capital stock or other voting or equity interests of the Company or any of its Subsidiaries or any preemptive rights with respect thereto, other than the Voting Agreement. There are no bonds, debentures, notes or other indebtedness the Company or any of its Subsidiaries that entitle the holder thereof to vote (or which are convertible into or exchangeable or exercisable for securities having the right to vote) together with shareholders of the Company or its Subsidiaries on any matters with respect to the Company or its Subsidiaries.

(g) Except as set forth above in this Section 3.8, there are no preemptive or other outstanding rights, options, warrants, conversion rights, "phantom" stock rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound that obligate the Company or any of its Subsidiaries to issue or sell any shares of capital stock or other equity interests of the Company or any of

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its Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any shares of capital stock or other equity interests of the Company or any of its Subsidiaries or outstanding bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) with the Company's shareholders on any matter, and no securities or obligations evidencing such rights are authorized, issued or outstanding.

3.9 Voting. The Requisite Company Vote is the only vote of the holders of any class or series of the capital stock of the Company necessary to approve and adopt this Agreement, the Merger and the transactions contemplated by this Agreement.

3.10 SEC Reports; Company Proxy Statement; Schedule 13E-3.

(a) The Company and its Subsidiaries have timely filed with, or furnished to, as applicable, the SEC (including following any extensions of time for filing provided by Rule 12b-25 promulgated under the Exchange Act) all forms, prospectuses, reports, schedules, statements, amendments, supplements and other documents required to be filed or furnished by the Company or its Subsidiaries with the SEC (collectively, together with any exhibits and schedules thereto and other information incorporated therein, the "**Company SEC Reports**") since January 1, 2017. Except to the extent corrected by subsequent Company SEC Reports filed prior to the date hereof, such Company SEC Reports (a) complied, and each of the Company SEC Reports filed subsequent to the date of this Agreement will comply, in all material respects with the applicable requirements of the Securities Act of 1933 (the "**Securities Act**"), the Exchange Act, the Sarbanes-Oxley Act and other applicable Laws, including the applicable rules and regulations promulgated thereunder and (b) did not, and each of the Company SEC Reports filed subsequent to the date of this Agreement and prior to the Effective Time (other than the Company Proxy Statement and the Schedule 13E-3 with respect to information provided by Parent and Merger Sub) will not, at the time of filing, or if amended or restated, at the time of such later amendment or restatement, contain any untrue statement of any material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which such statements were or are made, not misleading in any material respect. No Subsidiary of the Company is subject to the periodic reporting requirements of the Exchange Act or is otherwise required to file any periodic forms, reports, schedules, statements or other documents with the SEC. The Company has made available to Parent copies of all comment letters received by the Company from the SEC since January 1, 2017, together with all written responses of the Company thereto except to the extent such documents are publicly available on EDGAR in unredacted versions. As of the date hereof, there are no outstanding or unresolved comments in any such comment letters received by the Company from the SEC. To the knowledge of the Company, none of the Company SEC Reports is the subject of any ongoing review or investigation by the SEC.

(b) None of the information to be supplied by or on behalf of the Company for inclusion in the Company Proxy Statement or the Schedule 13E-3 will

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(i) in the case of the Schedule 13E-3 (or any amendment thereof or supplement thereto), as of the date of filing and as of the date of the Company Shareholders Meeting, and (ii) in the case of the Company Proxy Statement (or any amendment thereof or supplement thereto), as of the date of filing or mailing to the Company's shareholders and as of the date of the Company Shareholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

3.11 Financial Statements; Internal Controls. Except as disclosed in Section 3.11 of the Company Disclosure Letter, each of the consolidated financial statements (including, in each case, the related notes and schedules thereto) of the Company and its consolidated Subsidiaries since January 1, 2017, included in the Company SEC Reports:

(a) when filed complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC;

(b) were prepared in accordance with United States generally accepted accounting principles ("**GAAP**") applied on a consistent basis (except as may be indicated in the notes to the audited financial statements and subject, in the case of unaudited financial statements, to the absence of footnotes and normal year-end adjustments); and

(c) fairly presented in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries, as of the date thereof, and the consolidated results of operations and cash flows for the period then ended (subject, in the case of unaudited financial statements, to normal and recurring year-end adjustments).

3.12 Liabilities. There are no liabilities or obligations (collectively, "**Liabilities**"), of the Company or any of its Subsidiaries which are required to be reflected or reserved against on a consolidated balance sheet of the Company and its Subsidiaries in accordance with GAAP, other than:

(a) Liabilities disclosed in the consolidated balance sheet of the Company and its consolidated Subsidiaries as of February 2, 2019 (the "**Balance Sheet Date**") or the footnotes thereto set forth in the Company SEC Reports;

(b) Liabilities incurred since the Balance Sheet Date in the ordinary course of business;

(c) Liabilities incurred in connection with the transactions contemplated by this Agreement or as permitted or contemplated by this Agreement;

(d) Liabilities disclosed in Section 3.12 of the Company Disclosure Letter; and

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(e) other Liabilities that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

3.13 Absence of Certain Changes. Except as otherwise contemplated, required or permitted by this Agreement, since the Balance Sheet Date (a) through the date hereof, the businesses of the Company and its Subsidiaries have been conducted, in all material respects, in the ordinary course of such businesses consistent with past practice, (b) except as disclosed in Section 3.13 of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries has taken any material action that if taken after the date of this Agreement would constitute a violation of Section 5.1(c), (d)(v), (d)(vi), (h), (k), (l), (m), or (n) and (c) there has not been any effect that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

3.14 Litigation. Except as set forth in Section 3.14 of the Company Disclosure Letter, there are no, and since January 1, 2017, there have not been any, legal actions, arbitrations, litigations, suits or other civil or criminal proceedings (collectively, "**Legal Actions**") pending or, to the Knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries or to which any of the Company Assets is subject that have had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and as of the date of this Agreement there is no Legal Action pending or, to the Knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries that would or seeks to materially delay or prevent the consummation of the Merger or the transactions contemplated by this Agreement. There are no, and since January 1, 2017, there have not been any, Orders outstanding to which the Company or any of its Subsidiaries is subject or bound that have had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect nor are there any Orders outstanding as of the date of this Agreement that would or seek to materially delay or prevent the consummation of any of the transactions contemplated by this Agreement.

3.15 Material Contracts. Except for Contracts filed as exhibits to the Company SEC Reports or as disclosed in Section 3.15 of the Company Disclosure Letter, as of the date of this Agreement, (i) neither the Company nor any of its Subsidiaries is a party to, and (ii) none of the Company, any of its Subsidiaries or any of the Company Assets are bound by (collectively, the Contracts of the type described in clauses (a) through (o) below are referred to herein as, the "**Material Contracts**"):

(a) any "material contract" (as defined in Item 601(b)(10) of Regulation S-K promulgated by the SEC, other than those agreements and arrangements described in Item 601(b)(10)(iii) of Regulation S-K);

(b) any Contract containing a covenant (i) prohibiting the Company or any of its Subsidiaries from competing with any Person in any material line of business, (ii) prohibiting the Company or any of its Subsidiaries from engaging in any material line of business or levying a fine, charge or other payment for doing so, (iii) containing and limiting the right of the Company or any of its Subsidiaries pursuant to any "most favored nation" or "exclusivity" provisions, in each case other than any such Contracts that may be cancelled without material liability to, or material

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ongoing obligations of, the Company or any of its Subsidiaries upon notice of thirty (30) days or less, or (iv) that is a right of first refusal or right of first offer for any Company Asset material to the Company and its Subsidiaries taken as a whole;

(c) any limited liability company agreement, joint venture or other similar agreement or arrangement relating to the formation, creation, operation, management or control of any partnership or joint venture that is material to the business of the Company or any of its Subsidiaries, other than any such limited liability company, partnership or joint venture that is a Subsidiary of the Company;

(d) all Leases;

(e) any Contract under which (i) any Person (other than the Company or any of its Subsidiaries) has directly or indirectly guaranteed Liabilities of the Company or any of its Subsidiaries or (ii) the Company or any Subsidiary has directly or indirectly guaranteed Liabilities of any Person (other than the Company or any Subsidiary) (in each case of (i) and (ii), which guarantee obligation exceeds \$250,000, other than, in each case, endorsements for the purpose of collection in the ordinary course of business);

(f) any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other Contracts relating to the borrowing of money, extension of credit or other indebtedness, in each case in excess of \$250,000, other than (A) accounts receivables and payables in the ordinary course of business, (B) pursuant to or arising in connection with the Company's existing credit facilities which are filed as exhibits to the Company's most recent Form 10-K and (C) loans to wholly-owned Subsidiaries of the Company in the ordinary course of business;

(g) any Contract providing for the payment, increase or vesting of any material benefits or compensation in connection with the Merger;

(h) any Contract that obligates the Company or any of its Subsidiaries to make any future capital commitment or expenditure (including pursuant to any joint venture) in excess of \$1,000,000 and that is not terminable by the Company or its Subsidiaries upon notice of thirty (30) days or less without penalty or liability to the Company or its Subsidiaries;

(i) any Contract (other than among consolidated Subsidiaries of the Company) relating to any interest rate, currency or commodity derivatives or hedging transactions involving an amount in excess of \$250,000;

(j) any Contract under which the Company or the applicable Subsidiary, directly or indirectly, has agreed to make any advance, loan, extension of credit or capital contribution to, or other investment in, any Person that will be outstanding after the date hereof (other than the Company or any of its Subsidiaries and other than extensions of trade credit in the ordinary course of business), in any such case which, individually, is in excess of \$250,000;



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(k) any Contract that is a settlement, conciliation or similar agreement that materially limits the operations of the Company and its Subsidiaries (or will so limit Parent or any of its Affiliates after the Closing);

(l) any Contract that prohibits the payment of dividends or distributions in respect of the capital stock of the Company or any of its Subsidiaries, prohibits the pledging of the capital stock of the Company or any of its Subsidiaries, or prohibits the issuance of guarantees by any Subsidiary of the Company;

(m) any Contract with vendors or suppliers to or distributors for the Company or any of its Subsidiaries which requires any minimum amount of purchases or sales in excess of \$250,000 over a period specified therein, or which provides for any exclusive rights for such vendor, supplier or distributor;

(n) any voting, shareholders or registration rights agreement; and

(o) any Contract that requires the future acquisition from another Person or future disposition to another Person of assets or capital stock or other equity interest of another Person and any other Contract that relates to an acquisition or similar transaction which contain indemnities or "earn-out" obligations with respect to the Company or any of its Subsidiaries, in any such case, that remain in effect and have a value in excess of \$250,000.

Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect: (i) each Material Contract is, subject to the Enforceability Exceptions, a valid and binding agreement of the Company or its applicable Subsidiary and, to the Knowledge of the Company, each other party thereto, and is in full force and effect and enforceable against the Company or its Subsidiary and, to the Knowledge of the Company, each other party thereto, in accordance with its terms, (ii) none of the Company, its applicable Subsidiary or, to the Knowledge of the Company, any other party thereto, is in breach of or default under any such Material Contract, (iii) to the Knowledge of the Company, no party to any Material Contract has committed or failed to perform any act under and no event has occurred which, with or without notice, lapse of time or both, would constitute a default, require consent or result in the loss of a material benefit or give rise to any right of termination, amendment, acceleration or cancellation, under the provisions of such Material Contract, and (iv) neither the Company nor any of its Subsidiaries has received written notice from any other party to a Material Contract of the existence of any event, or condition which constitutes, or, after notice or lapse of time or both, will constitute, a default on the part of the Company or any of its Subsidiaries under any Material Contract. The Company has made available to Parent true and complete copies of all Material Contracts in effect as of the date hereof, including any material amendments thereto.

### 3.16 Benefit Plans.

(a) Section 3.16(a) of the Company Disclosure Letter lists, as of the date hereof, all material "employee benefit plans" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974 ("*ERISA*") (whether

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or not such “employee benefit plan” is subject to ERISA), and all material stock purchase, stock option, severance, offer letter, employment, consulting, change-of-control, retention, collective bargaining, bonus, incentive compensation, profit sharing, savings, retirement, retiree medical or life, disability, insurance, vacation, incentive, deferred compensation, supplemental retirement and other material benefit plans (including the Company Equity Plans), agreements, programs, policies or commitments, whether or not subject to ERISA, (i) under which any current or former director, officer, employee or consultant of the Company or any of its Subsidiaries has any right to benefits and (ii) to which the Company or any of its Subsidiaries makes or is required to make contributions with respect to such directors, officers, employees or consultants or which are maintained, sponsored or contributed to by the Company or any of its Subsidiaries or any trade or business (whether or not incorporated) which would be treated at any relevant time as a single employer with the Company or any of its Subsidiaries under Section 414 of the Code or Section 4001 of ERISA (an “*ERISA Affiliate*”), excluding plans, agreements, programs, policies or commitments under which neither the Company nor any Subsidiary of the Company has any remaining obligations. All such plans, agreements, programs, policies and commitments, without regard to materiality, are collectively referred to as the “*Company Employee Benefits*.”

(b) With respect to each of the material Company Employee Benefits, if applicable, the Company has made available to Parent true and complete copies of (i) the plan document or a written description thereof, (ii) the most recent summary plan description, (iii) the most recent annual report on Form 5500 (including all schedules), (iv) the most recent annual audited financial statements and opinion, (v) if the Company Employee Benefits are intended to qualify under Section 401(a) of the Code, the most recent determination letter received from the Internal Revenue Service (the “*IRS*”), (vi) any related trust or funding agreements or insurance policies, and (vii) any material correspondence between the Company and the Department of Labor or the IRS relating to any Company Employee Benefit.

(c) No Company Employee Benefit is a “multiemployer plan” (as defined in Section 4001(a)(3) of ERISA) and neither the Company nor any ERISA Affiliate has any liability in respect of any multiemployer plan. Neither the Company nor any ERISA Affiliate maintains, sponsors or contributes to, and has not within the preceding six years maintained, sponsored or contributed to, any employee benefit plan subject to Section 412 of the Code or Title IV of ERISA and no liability under Title IV of ERISA, Section 412 of the Code or Section 302 of ERISA has been incurred by the Company or any ERISA Affiliate which, in each case, has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(d) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each of the Company Employee Benefits is in compliance with ERISA, the Code and other applicable Law. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, there has not

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occurred any “reportable event” (as such term is defined in Section 4043 of ERISA), other than those events as to which the thirty-day notice period is waived. With respect to each of the Company Employee Benefits that is intended to qualify under Section 401(a) of the Code (i) a favorable determination or opinion letter has been issued by the IRS with respect to such Company Employee Benefit and (ii) to the Knowledge of the Company, no event has occurred since the date of such qualification or exemption that would materially and adversely affect such qualification.

(e) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, none of the Company Employee Benefits provides health, medical, life insurance or death benefits to current or former employees of the Company or any of its Subsidiaries beyond their retirement or other termination of service, other than coverage mandated by COBRA or Section 4980B of the Code, or any similar state group health plan continuation Law.

(f) Except as set forth on Section 3.16(f) of the Company Disclosure Letter or in this Agreement (including Section 2.3), the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement (whether alone or in connection with any subsequent event(s)) will not (i) entitle any Company officer to severance pay or any increase in severance pay upon any termination of employment after the date of this Agreement, (ii) result in any payment from the Company or any of its Subsidiaries becoming due, or increase the amount of any compensation due, to any current or former officer of the Company, (iii) increase any material benefits otherwise payable under any of the Company Employee Benefits, (iv) result in the acceleration of the time of payment or vesting of any material compensation or benefits from the Company or any of its Subsidiaries to any current or former officer of the Company or (v) limit or restrict the right of Parent or the Surviving Corporation to merge, amend or terminate any of the Company Employee Benefits.

(g) No Company Employee Benefit provides for and none of the Company or any of its Subsidiaries is otherwise obligated to provide any gross-up or reimbursement of Taxes under Section 4999 of the Code or Section 409A of the Code. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement (either alone or in combination with any other event) will (i) give rise to the payment of any amount or the provision of any benefit that constitutes an “excess parachute payment” within the meaning of Section 280G of the Code or would be nondeductible under Section 280G of the Code on account of the transactions contemplated by this agreement or (ii) result in the disallowance of any amount pursuant to Section 162(m) of the Code. The Company will have provided to Parent, prior to the Closing, good faith estimates of the amount of any “excess parachute payments” within the meaning of Section 280G of the Code that could reasonably be expected to become payable to any employee, director, officer or other service provider in connection with the transactions contemplated by this Agreement, whether contingent or otherwise.

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(h) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each Contract, whether or not a Company Employee Benefit, to which the Company or any of its Subsidiaries is a party that is a “nonqualified deferred compensation plan” subject to Section 409A of the Code, has been maintained in compliance with Section 409A of the Code.

(i) There are no pending, or, to the Knowledge of the Company, threatened in writing, Legal Actions against any of the Company Employee Benefits, other than ordinary claims for benefits by participants and beneficiaries or as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(j) Except as set forth in Section 3.16(i) of the Company Disclosure Letter, no Company Employee Benefit provides health or welfare benefits, including death or medical benefits, beyond termination of service or retirement other than coverage mandated by Law.

### 3.17 Labor Relations.

(a) Section 3.17(a) of the Company Disclosure Letter contains list of Company employees that is complete and accurate in all material respects, as of the date set forth therein, setting forth titles/categories of employees (e.g., “store manager,” “restocker,” etc.) and number of employees with such title or in such category, base salary, hourly wage, commission, bonus eligibility and compensation ranges and whether classified as exempt or non-exempt for wage and hour purposes.

(b) Section 3.17(b) of the Company Disclosure Letter contains a list that is complete and accurate in all material respects of all of the material independent contractors, consultants, temporary employees, leased employees or other agents employed or used by the Company and classified by the Company as other than employees, or compensated other than through wages paid by the Company through the Company’s payroll department (“*Contingent Workers*”), showing for each Contingent Worker such individual’s role in the business, fee or compensation arrangements and other contractual terms with the Company. No employee of the Company or any of its Subsidiaries is represented by a union and, to the Knowledge of the Company, no union organizing efforts have been conducted within the last three years or are now being conducted. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or other labor Contract. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries as of the date hereof has, or, to the Knowledge of the Company, is there now threatened, a strike, picket, work stoppage, work slowdown or other organized labor dispute. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) there is no, and during the past four (4) years there has not been any, pending charge or complaint against the Company or any of its Subsidiaries by the National Labor Relations Board

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or any comparable U.S. or foreign Governmental Authority and (ii) none of the Company and its Subsidiaries is a party, or otherwise bound by, any consent decree with, or citation by, any Governmental Authority relating to employees or employment practices.

(c) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) each of the Company and its Subsidiaries is, and at all times in the past three (3) years has been, in compliance with all applicable Laws relating to the employment of labor, hiring and termination of employees, the proper classification of employees and/or independent contractors, wages, hours, collective bargaining, employment discrimination, immigration and work authorization pay equity, pay transparency, civil rights, safety and health, workers' compensation, pay equity, wrongful discharge or violation of rights of employees, former employees or prospective employees and the collection and payment of withholding or social security Taxes and (ii) neither the Company nor any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or any similar state or local Law within the six months prior to the date of this Agreement that remains unsatisfied.

(d) Since January 1, 2018, no allegations of sexual harassment have been made to the Company in writing against any employee or independent contractor of the Company,

(e) Except as set forth on Section 3.17(e) of the Company Disclosure Letter, all employees of the Company are employed at-will, i.e., no employee is guaranteed employment for any particular length of time.

(f) The Company currently classifies and has properly classified each of its and its Subsidiaries' employees as exempt or non-exempt for the purposes of the Fair Labor Standards Act. To the extent that any Contingent Workers are or were engaged by the Company, the Company currently classifies and has properly classified and treated them as Contingent Workers (as distinguished from Form W-2 employees) in accordance with applicable law and for the purpose of all employee benefit plans and perquisites in all material respects.

(g) Section 3.16 and this Section 3.17 constitute the exclusive representations and warranties of the Company with respect to the subject matters set forth in Section 3.16 and this Section 3.17.

3.18 Taxes. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(a) All material Tax Returns required to be filed by or with respect to the Company or any of its Subsidiaries have been timely filed (taking into account any extension of time within which to file), and all such Tax Returns are true, complete and correct in all material respects. The Company has made available to Parent prior to the date of this Agreement accurate copies of the U.S. federal income Tax Returns filed by the Company and its Subsidiaries for each of the Tax years ended February 2, 2019, February 3, 2018 and January 28, 2017.

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(b) Except as disclosed in Section 3.18(b) of the Company Disclosure Letter, the Company and its consolidated Subsidiaries have no material Liabilities for unpaid federal, state, local or foreign Taxes that have not been accrued or reserved on the consolidated balance sheet of the Company and its consolidated Subsidiaries as of the Balance Sheet Date, whether asserted or unasserted, contingent or otherwise, and the Company and its Subsidiaries have incurred no material Liability for Taxes since the Balance Sheet Date other than in the ordinary course of business.

(c) The Company and its Subsidiaries have fully and timely paid all Taxes that are required to be paid and withheld all material amounts that the Company or any of its Subsidiaries are obligated to withhold from amounts owing to any employee, creditor, shareholder, Affiliate or third party.

(d) There are no outstanding agreements extending or waiving the statutory period of limitations applicable to any claim for, or the period for the collection, assessment or reassessment of, material Taxes due from the Company or any of its Subsidiaries for any taxable period and no request for any such waiver or extension is currently pending.

(e) Except as set forth in Section 3.18(e) of the Company Disclosure Letter, no audit or other proceeding by any Governmental Authority is pending or, to the Knowledge of the Company, threatened with respect to any material Tax matter with respect to, or material Taxes due from or with respect to the Company or any of its Subsidiaries.

(f) All deficiencies for Taxes asserted or assessed in writing against the Company or any of its Subsidiaries have been fully and timely paid, settled or properly reflected in the most recent financial statements contained in the Company SEC Reports in accordance with GAAP.

(g) Neither the Company nor any of its Subsidiaries was a “distributing corporation” or a “controlled corporation” in a transaction intended to be governed by Section 355 of the Code.

(h) There are no Liens for Taxes upon the assets of the Company or any of its Subsidiaries other than Permitted Liens.

(i) No claim (which remains unresolved) has been made in writing by any taxing authority in a jurisdiction where the Company and its Subsidiaries do not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to Tax in that jurisdiction.

(j) Neither the Company nor any of its Subsidiaries (i) has any liability for Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any comparable provision of local,

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state or foreign Law), as transferee or successor or otherwise by operation of law, or (ii) is a party to, bound by or has any liability under any Tax sharing, allocation or indemnification agreement or arrangement (other than (x) an agreement or arrangement solely among the Company and/or its Subsidiaries or (y) customary Tax indemnifications contained in commercial agreements the primary purpose of which does not relate to Taxes).

(k) There are no Tax rulings, requests for rulings, or “closing agreements” (as described in Section 7121 of the Code or any corresponding provision of state, local or foreign Tax Law) relating to the Company or its Subsidiaries that could affect the Company’s or its Subsidiaries’ Liability for Taxes for any period after the Closing Date. Neither the Company nor its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any Tax period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting for a taxable period ending on or prior to the Closing Date or use of an improper method of accounting for a taxable period ending on or prior to the Closing Date; (ii) installment sale or open transaction disposition made on or prior to the Closing Date; (iii) prepaid amount received on or prior to the Closing Date; or (iv) intercompany transaction or any excess loss account described in Treasury Regulations under Section 1502 of the Code.

(l) Neither the Company nor its Subsidiaries has engaged in a “listed transaction” as set forth in Treasury Regulations Section 1.6011-4(b)(2).

(m) The Company has never been, at any time, a “United States Real Property Holding Corporation” within the meaning of Section 897(c)(2) of the Code.

3.19 Environmental Matters. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect: (a) since January 1, 2016, the operations of the Company and each of its Subsidiaries have complied with applicable Law relating to (i) pollution, contamination, protection of the environment, and human health and safety to the extent relating to exposure to Hazardous Substances, (ii) emissions, discharges, disseminations, releases or threatened releases of Hazardous Substances into the air (indoor or outdoor), surface water, groundwater, soil, land surface or subsurface, or (iii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances (collectively, “*Environmental Law*”), (b) the Company and its Subsidiaries possess and maintain in good standing all Permits required under Environmental Law for their respective operations, and such operations are in compliance with applicable Permits, (c) no Legal Action or written notice of violation or potential liability arising under or pursuant to Environmental Law is pending, or to the Knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries, (d) there are no Orders arising under or pursuant to Environmental Law outstanding to which the Company or any of its Subsidiaries is subject or bound, and (e) to the Knowledge of the Company, there has been no release of Hazardous Substances on, at, above, under or from any facility or real property currently or formerly owned, leased or operated by the Company or any of its Subsidiaries. This Section 3.19 constitutes the exclusive representations and warranties of the Company with respect to the subject matters set forth in this Section 3.19.

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3.20 Intellectual Property.

(a) Section 3.20(a) of the Company Disclosure Letter sets forth a list of all registered and material unregistered trademarks, service marks or trade names, registered copyrights and domain names owned by the Company and its Subsidiaries.

(b) To the Knowledge of the Company, the Company or one of its Subsidiaries, as applicable, owns, is licensed to use or otherwise has the right to use all Intellectual Property that is material to the conduct of the business of the Company and its Subsidiaries, taken as a whole, as presently conducted, free and clear of all Liens (other than Permitted Liens), except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) Except as set forth on Section 3.20(c) of the Company Disclosure Letter, to the Knowledge of the Company, (i) the conduct of the business of the Company and its Subsidiaries, as conducted since January 1, 2018, does not infringe upon or misappropriate (or has not infringed upon or misappropriated) the Intellectual Property rights of any third party and no claim is pending or asserted in writing since January 1, 2018 against the Company or any of its Subsidiaries alleging that the conduct of the business of the Company and its Subsidiaries infringes upon or misappropriates (or infringed upon or misappropriated) any material Intellectual Property rights of a third party and (ii) no third party is infringing or violating (or has infringed or violated since January 1, 2018) any of the Owned Intellectual Property in any material respect.

(d) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries have obtained and possess valid licenses to use all of the software programs present on the computers and other software-enabled electronic devices that they own or lease or that they have otherwise provided to their employees and contractors for their use.

(e) (i) In connection with the collection or use by the Company and its Subsidiaries of any personally identifiable information ("**Personal Data**") from any third parties, the Company and its Subsidiaries have complied in all material respects with (A) all applicable statutes and regulations in all relevant jurisdictions and its publicly available privacy policy relating to the collection, storage, use and onward transfer of all such Personal Data (the "**Privacy Requirements**") and (B) all applicable statutes and regulations concerning marketing; (ii) there is no restriction under Privacy Requirements that would materially limit the use of Personal Data by the Company in conducting its business consistent with past practice; (iii) the Company and its Subsidiaries have reasonable



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security measures in place to protect all Personal Data under their control and/or in their possession and to protect such Personal Data from unauthorized access by any parties; (iv) to the Company's Knowledge, the Company and its Subsidiaries have not suffered any breach in security that has permitted any unauthorized access to the Personal Data or other data concerning customers under the control or possession of the Company or any of its Subsidiaries; and (v) the Company and its Subsidiaries have required and do require all third parties to which they provide Personal Data or other confidential customer data and/or access thereto to maintain the privacy and security of such Personal Data, including by contractually obligating such third parties to protect such Personal Data from unauthorized access by and/or disclosure to any unauthorized third parties.

3.21 Real Property.

(a) Owned Real Property. Except as disclosed in Section 3.21(a) of the Company Disclosure Letter, neither the Company nor any Subsidiary of the Company owns or has ever owned any real property.

(b) Leased Real Property.

(i) Set forth in Section 3.21(b)(i) of the Company Disclosure Letter is a list of the leases under which the Company or any Subsidiary of the Company are lessees, together with all amendments supplements, non-disturbance agreements and any other material documents pertaining thereto (the "Leases"), including the address of each leased real property (the real property leased pursuant to the Leases being referred to herein as the "Leased Real Property"). True and correct copies of such Leases have been made available to Parent. True, accurate and correct copies of the Leases have been provided to the Parent.

(ii) The Company or a Subsidiary of the Company, as applicable, has a valid and enforceable leasehold interest in, all Leased Real Property. Subject to the respective terms and conditions in the Leases, the Company or a Subsidiary of the Company is the sole legal and equitable owner of the leasehold interest in the Leased Real Property, and there are no Liens on such leasehold interest in the Leased Real Property, except for Permitted Liens and those matters set forth on Section 3.21(b)(ii) of the Company Disclosure Letter.

(iii) Except as disclosed in Section 3.21(b)(iii) of the Company Disclosure Letter, each of the Leases is, subject to the Enforceability Exceptions, valid binding and in full force and effect. None of the Company or any of its Subsidiaries is in breach or default under any Lease in any material respect. Neither the Company nor any of its Subsidiaries has received any notice of termination from any lessor under any Lease.

(c) All Real Property. The use and operation of the Leased Real Property used by the Company and the Company Subsidiaries do not violate any Law, covenant, condition, restriction, easement, license, permit or agreement, except for such violations as have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

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3.22 Permits; Compliance with Law.

(a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) each of the Company and its Subsidiaries is in possession of all licenses, registrations and other permits of any Governmental Authority (“*Permits*”) necessary for it to own, lease and operate its properties and assets or to carry on its business as it is now being conducted (collectively, the “*Company Permits*”) and (ii) all such Company Permits are in full force and effect. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, as of the date of this Agreement, no suspension or cancellation of any of the Company Permits is pending or threatened in writing.

(b) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, since January 1, 2017, the Company and its Subsidiaries have been in compliance with all Laws applicable to their business or operations and have not received any written notice of any violations of such Laws. Since January 1, 2017 until the date hereof, neither the Company nor any of its Subsidiaries has received written notice from any Governmental Authority that any Permit will be terminated or materially modified or, to the Knowledge of the Company, is threatened with suspension or will not be renewed in the ordinary course of business consistent with past practice, except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) No representation is made under this Section 3.22 with respect to SEC reports, financial statements and internal controls, employee benefits, labor, Tax, environmental or intellectual property matters, which matters are addressed in Section 3.10, Section 3.11, Section 3.16, Section 3.17, Section 3.18, Section 3.19 and Section 3.20, respectively.

3.23 Insurance. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (a) the Company and/or its Subsidiaries maintain insurance policies in such amounts and against such risks as are customary in the industry in which the Company and its Subsidiaries operate, (b) to the Knowledge of the Company, each such insurance policy is legal, valid, binding and enforceable subject to the Enforceability Exceptions, (c) neither the Company nor any of its Subsidiaries is in breach of, or default under, any such insurance policy and (d) as of the date hereof, no written notice of cancellation or termination has been received with respect to any such insurance policy, other than in connection with ordinary renewals.

3.24 Affiliated Transactions. No director, officer or Affiliate (other than Subsidiaries of the Company) of the Company is, or since January 1, 2018 has been, a party to any transaction, Contract, agreement, arrangement or understanding with the Company or its Subsidiaries, nor are there any of the foregoing currently proposed to the Company’s audit committee, or has any material interest in any property used by the Company or its Subsidiaries, in each case that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act

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(collectively, "*Affiliate Transactions*"). The Company maintains and enforces a policy requiring that all Affiliate Transactions be presented to the Company's audit committee for prior authorization and approval or ratification.

3.25 Opinions of Financial Advisor. PJ SOLOMON, L.P. (the "*Company Financial Advisor*") has delivered to the Special Committee its written opinion (or an oral opinion to be confirmed in writing) to the effect that, as of the date of this Agreement, and subject to the various limitations, assumptions, factors and matters set forth therein, the Merger Consideration is fair to the shareholders of the Company (other than Parent, Merger Sub, Rollover Investors and their Affiliates), from a financial point of view.

3.26 Brokers. No broker, finder or investment banker other than the Company Financial Advisor is entitled to any brokerage, finder's or other similar fee or commission in connection with the Merger or the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company or any of its Subsidiaries. The Company has made available to Parent true and complete copies of all Contracts under which any such fees or expenses are payable and all indemnification and other Contracts related to the engagement of the Person to whom such fees are payable.

3.27 State Takeover Laws. Assuming the representations and warranties of Parent and Merger Sub contained in Section 4.5(c) are true and correct, the Board of Directors of Company has approved this Agreement and the transactions contemplated hereby as required to render inapplicable to this Agreement and such transactions the restrictions on "business combinations," "affiliated transactions" and "control-share acquisitions" set forth in Section 607.0901 and Section 607.0902 of the FBCA or any other "moratorium," "control share," "fair price," "takeover" or "interested shareholder" Law.

3.28 No Other Representations or Warranties. Except for the representations and warranties contained in this Article III, neither the Company nor any other Person on behalf of the Company makes any express or implied representation or warranty with respect to the Company or with respect to any other information provided to Parent or Merger Sub in connection with the Merger and the other transactions contemplated hereby.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as set forth in the corresponding sections of the confidential disclosure letter delivered by Parent to the Company before or in connection with the execution of this Agreement (the "*Parent Disclosure Letter*"), it being agreed that disclosure of any item in any section of the Parent Disclosure Letter (whether or not an explicit cross reference appears) shall be deemed to be disclosure with respect to any other section of the Parent Disclosure Letter and any other representation and warranty made elsewhere in Article IV, in either case, to which the relevance of such item is reasonably apparent on the face of such disclosure, Parent and Merger Sub, jointly and severally, represent and warrant to the Company that:

4.1 Organization and Power. Each of Parent and Merger Sub is duly organized, validly existing and in good standing under the Law of its jurisdiction of organization. Each of Parent and Merger Sub has the requisite power and authority to own, lease and operate its assets and properties and to carry on its business as now conducted.

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4.2 Corporate Authorization. Each of Parent and Merger Sub has all necessary power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement, including the Merger. The board of directors or equivalent governing body of each of Parent and Merger Sub has adopted resolutions approving this Agreement and the transactions contemplated by this Agreement, including the Merger. The board of directors or equivalent governing body of each of Parent and Merger Sub have (a) approved and declared advisable this Agreement, the Merger and the transactions contemplated by this Agreement and (b) declared that it is in the best interests of the securityholders of Parent or Merger Sub that Parent or Merger Sub, as applicable, enter into this Agreement and consummate the Merger on the terms and subject to the conditions set forth in this Agreement. The execution, delivery and performance of this Agreement by each of Parent and Merger Sub and the consummation by each of Parent and Merger Sub of the transactions contemplated by this Agreement have been duly and validly authorized by all necessary action on the part of Parent and Merger Sub. This Agreement constitutes a legal, valid and binding agreement of Parent and Merger Sub, enforceable against each of them in accordance with its terms, subject to the Enforceability Exceptions. No vote or consent of the members of Parent is required by applicable Law or the Organizational Documents of Parent in connection with the Merger or the other transactions contemplated by this Agreement.

4.3 Governmental Authorizations. The execution, delivery and performance of this Agreement by Parent and Merger Sub and the consummation by Parent and Merger Sub of the transactions contemplated by this Agreement do not and will not require any Governmental Authorization, other than:

- (a) the filing of the Articles of Merger with the Secretary of State of the State of Florida;
- (b) the filing with the SEC of any filings or reports that may be required in connection with this Agreement and the transactions contemplated by this Agreement under the Exchange Act and the FBCA; and
- (c) any such Governmental Authorizations, the failure of which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

4.4 Non-Contravention. The execution, delivery and performance of this Agreement by Parent and Merger Sub and the consummation by Parent and Merger Sub of the transactions contemplated by this Agreement, including the Merger, do not and will not:

- (a) contravene or conflict with, or result in any violation or breach of, any provision of the Organizational Documents of Parent or Merger Sub;
- (b) contravene or conflict with, or result in any violation or breach of, any Law applicable to Parent or any of its Subsidiaries or by which any assets of Parent or any of its Subsidiaries ("**Parent Assets**") are bound, assuming that all Governmental Authorizations described in Section 4.3 have been obtained or made;

(c) result in any violation or breach of, or constitute a default (with or without notice or lapse of time or both) under any Contracts to which Parent or any of its Subsidiaries is a party or by which any Parent Assets are bound (collectively, "**Parent Contracts**"), other than as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect; or

(d) require any consent, approval or other authorization of, or filing with or notification to, any Person under any Parent Contracts, other than as, if not obtained, would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

#### 4.5 Capitalization; Interim Operations of Merger Sub; Ownership of Common Stock

(a) As of the date of this Agreement, the authorized capital stock of Merger Sub consists solely of 100 shares of common stock, par value \$0.001 per share. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned by Parent. Merger Sub has no outstanding option, warrant, right or any other agreement pursuant to which any Person other than Parent may acquire any equity security of Merger Sub.

(b) Merger Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated by this Agreement.

(c) Except for the Rollover Shares or as contemplated by this Agreement, neither Parent nor Merger Sub owns, directly or indirectly, (i) any shares of capital stock or other equity securities of the Company or any of its Subsidiaries or (ii) any securities that are convertible, exchangeable or exercisable into shares of Common Stock. Except for the Voting Agreement, the Guarantee, the Financing Commitments and the Rollover Letter, true and complete copies of which have been made available to the Company before the date of this Agreement, none of Parent, Merger Sub and their respective Affiliates has any agreement, arrangement or understanding concerning (x) the transactions contemplated by this Agreement or (y) any material assets of the Company from or after the Closing, in each case with any Principal Shareholder, Rollover Investor, director or officer of the Company or any other Person.

#### 4.6 Financing.

(a) Section 4.6 of the Parent Disclosure Letter sets forth true and complete copies of (i) (x) executed rollover commitment letter (the "**Rollover Letter**") from the Rollover Investor having sole voting and dispositive power with respect to 17,339,544 shares of the Company, which number of shares, when contributed to Parent under the Rollover Letter, will satisfy all minimum requirements for equity

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contributions to Parent under the Debt Financing (whether expressed in terms of minimum value or percentage of shares), pursuant to which, and subject to the terms and conditions of which, the Rollover Investors have committed to contribute to Parent the amount of shares of Common Stock set forth therein (the "**Rollover Investment**"), and (y) a schedule setting forth each Rollover Investor, the number of shares of the Company beneficially owned by and over which such Rollover Investor holds sole voting and dispositive power, and an indication of whether such shares of the Company are held directly or indirectly by such Rollover Investor, and (ii) executed debt commitment letters and related term sheets from Wells Fargo Bank, National Association (the "**ABL Commitment Letter**") and Pathlight Capital LP (the "**TL Commitment Letter**") and together with the ABL Commitment Letter, the "**Debt Commitment Letters**" or the "**Financing Commitments**") (Wells Fargo Bank, National Association and Pathlight Capital LP, the "**Lenders**") pursuant to which, and subject to the terms and conditions of which, the Lenders have committed to provide Parent and/or Merger Sub with financing in the amounts described therein, the proceeds of which may be used to consummate the Merger and the other transactions contemplated by this Agreement (the "**Debt Financing**" or the "**Financing**"). As of the date hereof, each of the Financing Commitments and the Rollover Letters is a legal, valid and binding obligation of Parent or Merger Sub and, to the Knowledge of the Parent, the other parties thereto, enforceable in accordance with its terms, subject to the Enforceability Exceptions. As of the date hereof, each of the Financing Commitments and the Rollover Letters is in full force and effect, and none of the Financing Commitments or the Rollover Letters has been withdrawn, rescinded or terminated or otherwise amended or modified in any respect. As of the date hereof, to the Knowledge of the Parent, neither Parent nor Merger Sub is in breach of any of the material terms or conditions set forth in any of the Financing Commitments or the Rollover Letters. As of the date hereof, to the Knowledge of Parent with respect to the Company and its Subsidiaries, there is no fact or occurrence existing on the date hereof that, with or without notice, lapse of time or both, would reasonably be expected to (A) make any of the assumptions or any of the statements set forth in the Financing Commitments or the Rollover Letters inaccurate, (B) result in any of the conditions in the Financing Commitments or the Rollover Letters not being satisfied, (C) cause any of the Financing Commitments or the Rollover Letters to be ineffective or (D) otherwise result in the Financing not being available, or the Rollover Investment not being made, in each case, on a timely basis in order to consummate the transactions contemplated by this Agreement. As of the date hereof, neither the Rollover Investors nor any Lender has notified Parent or Merger Sub of its intention to terminate any Financing Commitment or not to provide the Financing, and none of the Rollover Investors has notified Parent or Merger Sub of its intention to terminate any Rollover Letter or not to make the Rollover Investment. Parent has not, without the prior written consent of the Company, amended, modified, supplemented or waived any of the conditions or contingencies to funding contained in any Financing Commitment (including definitive agreements related thereto) or to the Rollover Investment contained in any Rollover Letter, or any other provision of, or remedies under, any Financing Commitment (including definitive agreements related thereto) or any Rollover Letter (except for any increases in the amount of funds available thereunder

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or the addition of Financing Sources in accordance with the terms thereof, or other relevant entities who did not execute a Financing Commitment or a Rollover Letter as of the date of this Agreement or as otherwise expressly permitted by Section 5.12(a)). Assuming (1) the Financing is funded in accordance with its terms and conditions, (2) the Rollover Investment is made in accordance with the terms and conditions of the Rollover Letters and (3) the satisfaction of the conditions to the Company's obligation to consummate the Merger set forth in Section 6.3(a), the net proceeds from the Financing will, together with the Rollover Investment and other funds available to Parent, be sufficient to consummate the Merger and the other transactions contemplated by this Agreement, including the payment by Parent and Merger Sub of the Merger Consideration, any fees and expenses of or payable by Parent, Merger Sub or the Surviving Corporation, and any related repayment or refinancing of any indebtedness of the Company or any of its Subsidiaries, and any other amounts required to be paid in connection with the consummation of the transactions contemplated by this Agreement. Parent or Merger Sub has paid in full any and all commitment or other fees required by any Financing Commitment that are due as of the date hereof, and will pay, after the date hereof, all such commitments and fees as they become due. There are no side letters, understandings or other agreements or arrangements relating to the Financing (except for customary fee letters and engagement letters which do not contain any additional conditions to closing or other agreements relating to the availability of the full amount of the Financing, and a complete copy of the fee letter has been made available to the Company with customary redactions of fee amounts, pricing caps, "market flex," other economic terms and certain other terms, none of which redacted provisions would adversely affect the conditionality or aggregate principal amount of the Financing) or the Rollover Investment to which Parent, Merger Sub or any of their respective Affiliates are a party that relate to the amount, availability or conditions of the Financing or the Rollover Investment, other than the Financing Commitments and the Rollover Letters. There are no conditions precedent related to the funding of the full amount of the Financing, other than as explicitly set forth in the Financing Commitments, and there are no conditions precedent related to the contribution of the full amount of the Rollover Investment, other than as explicitly set forth in the Rollover Letters. Assuming the satisfaction of the conditions to the Company's obligation to consummate the Merger set forth in Section 6.3(a), neither Parent nor Merger Sub has any reason to believe that it will be unable to satisfy on a reasonably timely basis any conditions to the funding of the full amount of the Financing or the contribution of the full amount of the Rollover Investment, or that the Financing will not be available to, or that the Rollover Investment will not be contributed to, Parent or Merger Sub on the Closing Date. For the avoidance of doubt, it is not a condition to Closing under this Agreement, nor to the consummation of the Merger, for Parent or Merger Sub to obtain the Financing, the Rollover Investment or any alternative financing.

(b) Neither Parent, Merger Sub nor any of their Affiliates has entered into any Contract, arrangement or understanding with any bank or investment bank or other potential provider of debt or equity financing that would prevent or hinder such provider from providing or seeking to provide such financing to any third party in connection with a transaction relating to the Company or its Subsidiaries

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(including in connection with the making of any Takeover Proposal), in the case of clauses (i) and (ii), in connection with the Merger or the other transactions contemplated by this Agreement. Neither Parent, Merger Sub nor any of their Affiliates has caused or induced any Person to take any action that, if taken by Parent and/or Merger Sub, would be a breach of, or would cause to be untrue, any of the representations in this Section 4.6(b).

4.7 Solvency. On and as of the Closing Date, and after giving effect to the transactions contemplated by this Agreement, including the Financing and any alternative financing (including any financing to be issued or incurred in lieu of any bridge facility in any Debt Commitment Letter) permitted by this Agreement, the payment of the Merger Consideration, the incurrence of indebtedness in connection with the Debt Financing, and the repayment or refinancing of debt as contemplated herein and in the Financing Commitments, and assuming (i) the Company is Solvent immediately prior to the Effective Time, (ii) the satisfaction of the conditions to Parent's and Merger Sub's obligations to consummate the Merger as set forth herein, or the waiver of such conditions and (iii) the satisfaction of the conditions to the Company's obligation to consummate the Merger set forth in Section 6.3(a), Parent, the Surviving Corporation and the Surviving Corporation's Subsidiaries, taken as a whole, will be Solvent.

4.8 Litigation. As of the date of this Agreement, there is no Legal Action pending or, to the Knowledge of Parent, threatened in writing against Parent or any of its Affiliates before any Governmental Authority that would or seeks to materially delay or prevent the consummation of the Merger or the transactions contemplated by this Agreement. As of the date of this Agreement, neither Parent nor any of its Affiliates is subject to any Order of, or, to the Knowledge of Parent, continuing investigation by, any Governmental Authority, or any Order of any Governmental Authority that would or seeks to materially delay or prevent the consummation of any of the transactions contemplated by this Agreement.

4.9 No Regulatory Impediment. There is no material fact relating to Parent or any of its Affiliates' respective businesses, operations, financial condition or legal status, including any officer's, director's or current employee's status, that would reasonably be expected to impair the ability of the parties to this Agreement to obtain, on a timely basis, any authorization, consent, Order, declaration or approval of, or ability to contract with, any Governmental Authority or third party necessary for the consummation of the transactions contemplated by this Agreement.

4.10 Absence of Certain Arrangements. Other than this Agreement, the Voting Agreement, the Rollover Letters and those other agreements contemplated hereby, there are no Contracts, undertakings, commitments, agreements or obligations or understandings between Parent or Merger Sub or any of their respective Affiliates, on the one hand, and any member of the Company's management or the Company Board or any of their respective Affiliates (including any of the Principal Shareholders), on the other hand, relating to the transactions contemplated by this Agreement or the operations of the Company after the Effective Time.

4.11 Brokers. The Company will not be responsible for any brokerage, finder's or other fee or commission to any broker, finder or investment banker in connection with the transactions contemplated by this Agreement based on arrangements made by or on behalf of Parent or Merger Sub, other than any such fee that is conditioned upon consummation of the Merger.



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4.12 Guarantee. Concurrently with the execution of this Agreement, Parent and Merger Sub have delivered to the Company a limited guarantee of Kingswood Capital Opportunities Fund I, L.P. and Kingswood Capital Opportunities Fund I-A, L.P. (collectively, the “**Guarantors**”) in favor of the Company, dated the date hereof (as amended, modified or supplemented from time to time in accordance with its terms, the “**Guarantee**”). The Guarantee is in full force and effect and constitutes the legal, valid and binding obligation of the Guarantors, enforceable against the Guarantors in accordance with its terms, subject to the Enforceability Exceptions, and has not been amended, withdrawn or rescinded in any respect. As of the date hereof, no event has occurred which, with or without notice, lapse of time or both, would constitute a default on the part of the Guarantors under the Guarantee.

4.13 Proxy Statement; Schedule 13E-3. None of the information to be supplied by Parent or Merger Sub for inclusion in the Company Proxy Statement or the Schedule 13E-3 will (i) in the case of the Schedule 13E-3 (or any amendment thereof or supplement thereto), as of the date of filing and as of the date of the Company Shareholders Meeting and (ii) in the case of the Company Proxy Statement (or any amendment thereof or supplement thereto), as of the date of filing or mailing to the Company’s shareholders and as of the date of the Company Shareholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, with respect to information provided by Parent or Merger Sub, in light of the circumstances under which they are made, not misleading.

4.14 Independent Investigation. In entering into this Agreement and each of the other documents and instruments relating to the Merger and the other transactions contemplated by this Agreement, Parent and Merger Sub have each relied solely upon its own investigation and analysis, and Parent and Merger Sub acknowledge and agree (a) that, except for the specific representations and warranties of the Company contained in this Agreement (including the Company Disclosure Letter and the Company SEC Reports), none of the Company, its Affiliates or any of its or their respective shareholders, controlling persons or Representatives makes or has made any representation or warranty, either express or implied, with respect to the Company or its Subsidiaries or Affiliates or their business, operations, technology, assets, Liabilities, results of operations, financial condition, prospects, projections, budgets, estimates or operational metrics, or as to the accuracy or completeness of any of the information (including any statement, document or agreement delivered pursuant to this Agreement and any financial statements and any projections, estimates or other forward-looking information) provided (including in any management presentations, information or descriptive memorandum, certain “data rooms” maintained by the Company, supplemental information or other materials or information with respect to any of the above) or otherwise made available to Parent and Merger Sub or any of their respective shareholders or Representatives and (b) that, to the fullest extent permitted by applicable Law, none of the Company, its Affiliates or any of its or their respective shareholders, controlling persons or Representatives shall have any liability or responsibility whatsoever to Parent or Merger Sub, their respective Affiliates, shareholders, controlling persons or Representatives on any basis (including in contract or tort, at law or in equity, under federal or state securities Laws or otherwise) based upon any information provided or made available, or statements made (or any omissions therefrom), to Parent or Merger Sub, their respective Affiliates, shareholders, controlling persons or Representatives, except as and only to the extent expressly set forth in this Agreement or in the event of fraud. Each of Parent and Merger Sub acknowledges and agrees that

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it has been furnished with, or given adequate access to, all information and materials relating to the Company and its Subsidiaries that it has requested and Representatives of the Company have answered all inquiries that Parent or Merger Sub has made of them concerning the Company and its Subsidiaries.

## ARTICLE V

### COVENANTS

5.1 Conduct of Business of the Company. From and after the date of this Agreement and until the earlier of the Effective Time or the termination of this Agreement pursuant to Article VII, except (i) as expressly provided in this Agreement, (ii) as set forth in Section 5.1 of the Company Disclosure Letter, (iii) as required by applicable Law, Order or to comply with any notice from a Governmental Authority, or (iv) with the prior written consent of Parent, such consent not to be unreasonably withheld, delayed or conditioned, the Company shall use reasonable best efforts to, and shall cause each of its Subsidiaries to use reasonable best efforts to, (1) conduct its operations only in the ordinary course of business consistent with past practice, including with respect to capital expenditures, payment of accounts payable and other liabilities, maintenance of inventory and accruals, (2) maintain its cash management and working capital management policies and practices in a manner consistent in all material respects with past practice, (3) maintain a level of working capital, consistent with past practice, to satisfy the needs of its daily operations, (4) maintain its existence in good standing pursuant to applicable Law, (5) preserve substantially intact the business organization of the Company and its Subsidiaries, (6) keep available the services of the current officers, employees and consultants of the Company and its Subsidiaries, and (7) preserve intact, in all material respects, the current relationships of the Company and its Subsidiaries with customers, licensees, suppliers, lenders, Governmental Authorities, and other Persons with which the Company or such Subsidiary has material business relations. Without limiting the generality of the foregoing, and except (A) as otherwise expressly provided in this Agreement, (B) as set forth in Section 5.1 of the Company Disclosure Letter, or (C) as otherwise required by applicable Law, from and after the date of this Agreement and prior to the earlier of the Effective Time or the termination of this Agreement pursuant to Article VII, the Company shall use reasonable best efforts not to, and shall cause its Subsidiaries to use reasonable best efforts not to, take any of the following actions, without the prior written consent of Parent, such consent not to be unreasonably withheld, delayed or conditioned:

- (a) Organizational Documents. Amend or otherwise modify any of the Organizational Documents of the Company or any of its Subsidiaries;
- (b) Dividends. Make, declare, set aside or pay any dividend or distribution (whether in cash, shares or property or any combination thereof) in respect of any shares of its capital stock or other equity or voting security, make any actual, constructive or deemed distribution in respect of the shares of capital stock or other equity or voting interest, or set any record date therefor, other than cash dividends and cash distributions by wholly-owned Subsidiaries of the Company to the Company or one of its other wholly-owned Subsidiaries;

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(c) Capital Stock. (i) Adjust, split, combine or reclassify its capital stock, (ii) redeem, purchase or otherwise acquire, or offer to redeem, purchase or otherwise acquire, directly or indirectly, any shares of its capital stock or any securities convertible or exchangeable into or exercisable for any shares of its capital stock, (other than pursuant to (x) the vesting or forfeiture of Company Stock Awards in accordance with the terms in effect on the date of this Agreement and (y) the purchase, redemption or other acquisition of Common Stock or equity interests of the Company or its Subsidiaries from former employees, directors and consultants in accordance with any Contract or Company Employee Benefit providing for the repurchase of Common Stock or such other equity interests in connection with any termination of services to the Company or any of its Subsidiaries), (iii) grant any Person any right or option to acquire any shares of its capital stock or (iv) issue, authorize the issuance of, propose the issuance of, deliver or sell any shares of its capital stock or any securities convertible or exchangeable into or exercisable for any shares of its capital stock (other than pursuant to the exercise of the Company Options in accordance with the terms in effect on the date of this Agreement or the vesting of Company Options as provided in [Section 2.3](#);

(d) Compensation and Benefits. (i) Increase the compensation, bonus opportunity or benefits payable or to become payable to, or pay any special bonus or special remuneration to, any of its current or former directors, officers, employees or independent contractor (other than increases in the base salaries or wages of employees other than officers in the ordinary course of business consistent with past practice); (ii) grant or increase any severance, change of control, retention or termination pay to any current or former director, officer, employee or independent contractor; (iii) renew, enter into or amend any Contract providing for the employment or consultancy of any director, officer or employee with a title of Vice President or above or otherwise providing compensation or other benefits to any director, officer or employee with a title of Vice President or above; (iv) establish, adopt, enter into, amend, renew, alter the prior interpretation of or terminate any Company Employee Benefit or any other employee benefit plan, incentive plan, agreement, policy, program or commitment that, if in effect on the date of this Agreement, would be a Company Employee Benefit; (v) enter into any collective bargaining agreement or other agreement with any labor organization, works council, trade union, labor association or other employee representative; (vi) implement any facility closings or employee layoffs or reductions in force that would trigger the notice requirements under the WARN Act or any similar state, local or foreign law or regulation affecting any site of employment of the Company or one or more facilities or operating units within any site of employment or facility of the Company; (vii) take any action to accelerate the vesting, payment or funding of any compensation or benefits to any current or former employee or any directors or officers; or (viii) hire or terminate any employee with a title of Vice President or above, other than a termination for "cause," except, in the case of each of clauses (i) through (iv), (A) to the extent required by applicable Law, this Agreement or any Company Employee Benefit in effect on the date of this Agreement and set forth in [Section 3.16\(a\)](#) of the Company Disclosure Letter, or (B) in conjunction with new hires, promotions or other changes in job status, in each case, in the ordinary course of business and consistent with past practice, for employees with a title below Vice President;

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(e) Acquisitions. Acquire (by merger, consolidation, acquisition of equity interests or assets, or otherwise) any interest in any business or any corporation, partnership, limited liability company, joint venture or other business organization or division or assets, securities or property thereof, except for any such transaction (i) which is solely between the Company and any of its wholly-owned Subsidiaries or between any such wholly-owned Subsidiaries of the Company, (ii) pursuant to any Material Contract listed on Section 3.15 of the Company Disclosure Letter existing and in effect as of the date hereof or (iii) enter into any new Lease;

(f) Dispositions. Sell, lease, license, transfer, pledge, mortgage, encumber, grant or dispose of or enter into negotiations to with respect to the disposition of any real property or any other material Company Asset or business, including the capital stock of Subsidiaries of the Company, other than (i) the sale of inventory in the ordinary course of business, (ii) the disposition of used, obsolete or excess equipment that is not (or no longer) material to the business of the Company and its Subsidiaries in the ordinary course of business, (iii) any Permitted Liens or (iv) pursuant to any Material Contract listed on Section 3.15 of the Company Disclosure Letter existing and in effect as of the date hereof;

(g) Loans. Make any loans, advances or capital contributions to or investments in any Person (other than (i) to wholly-owned Subsidiaries of the Company or (ii) to employees for advancement of related business expenses in the ordinary course of business consistent with past practice;

(h) Indebtedness; Guarantees. (i) Incur, assume or guarantee any new indebtedness for borrowed money or issue or sell any debt securities or warrants or rights to acquire any debt securities of the Company or any of its Subsidiaries, other than (1) revolving loans under any existing Company revolving credit facilities or (2) performance bonds or letters of credit (to the extent issued under the Company's existing revolving credit facility) entered into in the ordinary course of business consistent with past practice; (ii) assume, guarantee or endorse, or otherwise become responsible for (whether directly, contingently, or otherwise), the obligations of any Person (other than the Company or any of its wholly-owned Subsidiaries) with respect to any indebtedness for borrowed money (including any debt securities; or (iii) pledge or encumber any shares of the capital stock or other equity or voting interest of the Company or any of its Subsidiaries;

(i) Capital Expenditures. Make capital expenditures that exceed, individually or in the aggregate, (x) the amount of capital expenditures contemplated by the capital expenditure information previously made available to Parent as set forth in Section 5.1 (i) of the Company Disclosure Letter, plus (y) \$250,000;

(j) Material Contracts. (i) Enter into any (A) Contract (including any Lease) that would be a Material Contract (including by amendment of any

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Contract that is not a Material Contract such that such Contract becomes a Material Contract) in excess of \$250,000 individually or \$1,000,000 in the aggregate, or (B) Lease, or (ii) terminate, renew, extend or amend in any material respect any Material Contract or any Lease or waive any material right, breach or default thereunder;

(k) Dissolution. Propose, adopt or enter into a plan or agreement of complete or partial liquidation, dissolution, merger, consolidation or other reorganization;

(l) Accounting. Other than as required by GAAP or applicable Law, (i) make any material change to its accounting policies, procedures, methods or practices or (ii) revalue in any material respect any of its properties or assets, other than in the ordinary course of business;

(m) Legal Actions. Subject to Section 5.15, waive, release, assign, settle or compromise any Legal Action, other than (i) in the ordinary course of business in an amount not to exceed \$250,000 (net of any amount covered by insurance) and/or (ii) if the Company has received written notification from an insurer that it will cover in full (subject to any deductible or retention) any such loss resulting from such waiver, release, assignment settlement or compromise;

(n) Taxes. Except as otherwise required by applicable Law, make, revoke or change any material Tax election other than consistent with past practice, file any income or other material amended Tax Return, adopt or change any material method of Tax accounting, change any Tax accounting period, settle or surrender any material Tax claim relating to the Company or any of its Subsidiaries or surrender a right to a material Tax refund, or, except in connection with the matter set forth, and to the extent provided, in Section 3.18(e) of the Company Disclosure Letter, enter into any closing agreement or similar agreement with any Governmental Authority in respect of Taxes;

(o) Insurance. Maintain insurance at less than current levels or otherwise in a manner inconsistent with past practice;

(p) New Business. Enter into any new line of business outside of the business being conducted by the Company and its Subsidiaries as of the date of this Agreement;

(q) Voting Agreements. Enter into any agreement with respect to the voting of any capital stock or other equity or voting interest of the Company or any of its Subsidiaries;

(r) Related Party Transactions. Engage in any material transaction with, or enter into any agreement, arrangement or understanding with any, (i) stockholder, director or officer of the Company or any of its Subsidiaries or (ii) Affiliate of the Company or other Person covered in Item 404 of Regulation S-K promulgated by the SEC;

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- (s) Intellectual Property. Sell, assign, license, sublicense, abandon, allow to lapse, transfer or otherwise dispose of, or create or incur any Lien (other than a Permitted Lien) on, any material Intellectual Property, other than in the ordinary course of business pursuant to non-exclusive licenses;
  - (t) Liens. Grant any Lien on its assets (other than Permitted Liens); or
  - (u) Related Actions. Authorize, commit, resolve or agree to do any of the foregoing.

Notwithstanding anything to the contrary herein, any or all actions taken by, or omissions of, the Company at the direction of Parent, in an effort to facilitate the Debt Financing will not constitute a breach of the Company's obligations under this Section 5.1 (including for purposes of Section 6.2(b) and Section 5.12(b)), and shall in each case be disregarded and not deemed to be a breach of Section 5.1 (including for purposes of Section 6.2(b) and Section 5.12(b)).

Nothing contained in this Agreement gives, or is intended to give, Parent or Merger Sub, directly or indirectly, the right to control or direct the Company's or its Subsidiaries' operations prior to the Effective Time, and nothing contained in this Agreement gives, or is intended to give, the Company, directly or indirectly, the right to control or direct Parent's or its Subsidiaries' operations. Prior to the Effective Time, each of Parent, Merger Sub and the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations.

5.2 Conduct of Business of Parent. Parent shall not, and shall not permit any of its Affiliates to, without the prior written consent of the Company (such consent not to be unreasonably withheld, delayed or conditioned) take or agree to take any action that would reasonably be expected to (a) delay or prevent the consummation of the transactions contemplated by this Agreement, (b) impose or cause any delay in the obtaining of, or increase the risk of not obtaining, any Governmental Authorization necessary to consummate the transactions contemplated by this Agreement or the expiration or termination of any waiting period under applicable Law, (c) result in any Governmental Authority entering an Order prohibiting the consummation of the transactions contemplated by this Agreement or (d) materially interfere with Parent's ability to make available to the Paying Agent immediately prior to the Effective Time funds sufficient for the satisfaction of all of Parent's and Merger Sub's obligations under this Agreement, including the payment by Parent and Merger Sub of the Merger Consideration, any fees and expenses of or payable by Parent, Merger Sub or the Surviving Corporation, and any related repayment or refinancing of any indebtedness of the Company or any of its Subsidiaries, and any other amounts required to be paid in connection with the consummation of the transactions contemplated by this Agreement.

5.3 Access to Information; Confidentiality.

- (a) The Company shall, and shall cause its Subsidiaries to, (i) provide to Parent and its Representatives (including the Financing Sources) access at all reasonable times during the period commencing with the execution and delivery of

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this Agreement and terminating upon the earlier to occur of the termination of this Agreement pursuant to Article VII and the Effective Time, upon prior notice to the Company, to the books, records and personnel of the Company and its Subsidiaries and (ii) furnish promptly such information concerning the Company and its Subsidiaries as Parent and its Representatives (including the Financing Sources) may reasonably request. Nothing herein shall require the Company or any of its Subsidiaries to disclose information to the extent such disclosure would, in the Company's good faith opinion after consultation with legal counsel, (x) result in a waiver of attorney-client privilege, work product doctrine or similar privilege or (y) violate any applicable Law or any Material Contract. In the event that the Company does not provide access or information in reliance on the preceding sentence, it shall provide notice to Parent that it is withholding such access or information and the Company shall collaborate with Parent and use its reasonable best efforts to communicate the applicable information or provide access, as the case may be, in a way that would not violate the applicable Law, Material Contract or obligation or risk waiver of such privilege.

(b) Parent and the Company shall comply with, and shall cause their respective Representatives to comply with, all of their respective obligations under the Confidentiality Agreement, dated April 17, 2019 (the "*Confidentiality Agreement*"), between Kingswood Capital Management, LLC, on the one hand, and the Company, on the other hand, with respect to the information disclosed under this Section 5.3; provided, that notwithstanding the terms of the Confidentiality Agreement, Parent may provide such information to potential sources of capital, including the Financing Sources, and to rating agencies and prospective lenders and investors during syndication of the Debt Financing (including any alternative financing) subject to customary confidentiality arrangements that have been approved in advance by the Company (such approval not to be unreasonably withheld, conditioned or delayed).

(c) Nothing contained in this Agreement shall give Parent or its Affiliates, directly or indirectly, rights to conduct or cause to be conducted any invasive environmental investigation of the current or former operations or facilities of the Company or any of its Subsidiaries without the prior written consent of the Company in its sole discretion.

#### 5.4 No Solicitation.

(a) From the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement pursuant to Article VII hereof, and except as expressly permitted by the other provisions of this Section 5.4, the Company shall not, and the Company shall cause any of its Subsidiaries not to, and the Company shall use its commercially reasonable efforts to cause its Representatives acting on its behalf not to, directly or indirectly, (i) solicit, initiate, induce the making of, knowingly facilitate or knowingly encourage (including by way of furnishing or providing access to any non-public information) any inquiries regarding, or the making of any proposal or offer that constitutes or could reasonably be expected to

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lead to, a Takeover Proposal, (ii) enter into or participate in any discussions or negotiations with any Person regarding a Takeover Proposal (other than to state that the Company is not permitted to have discussions or negotiations), (iii) approve or recommend, or propose to approve or recommend, or execute or enter into any letter of intent, memorandum of understanding or Contract with respect to, a Takeover Proposal or that would require the Company to abandon or terminate this Agreement or fail to consummate the Merger (other than an Acceptable Confidentiality Agreement), (iv) waive the applicability of all or any portion of any anti-takeover Laws in respect of any Person (other than Parent, Merger Sub and their Affiliates), or (v) modify, waive, amend, release or fail to enforce any existing standstill obligations owed by any Person to the Company or any of its Subsidiaries. The Company shall immediately cease and cause to be terminated any solicitation, encouragement, discussion or negotiation with any Person conducted prior to the date of this Agreement by the Company or any of its Subsidiaries or any of their respective Representatives with respect to any Takeover Proposal, including by terminating access to any physical or electronic data rooms and requesting that any such Person and its Representatives promptly return or destroy all confidential information concerning the Company and its Subsidiaries furnished by or on behalf of the Company or any of its Subsidiaries (and all analysis and other materials prepared by or on behalf of such Person that contain any such information). Without limiting the foregoing, it is agreed that if any Representative of the Company or any of its Subsidiaries, acting on their behalf, takes any action that would constitute a breach of this Section 5.4, such action shall constitute a breach of this Section 5.4 by the Company.

(b) Notwithstanding Section 5.4(a), following the receipt by the Company of a Takeover Proposal until the date the Requisite Company Vote has been obtained, (i) the Special Committee and the Company Board shall be permitted to participate in discussions regarding such Takeover Proposal solely to clarify the terms of such Takeover Proposal and (ii) with respect to a written, bona fide Takeover Proposal that did not result from any breach in any material respect of any of the provisions set forth in this Section 5.4, if the Special Committee or the Company Board determines in good faith, (A) after consultation with the Company's outside legal and financial advisors, that such Takeover Proposal constitutes or would reasonably be expected to lead to a Superior Proposal and (B) after consultation with outside legal counsel, that the failure to take the actions set forth in clauses (x) and (y) below with respect to such Takeover Proposal would be inconsistent with its fiduciary duties, then the Company may, in response to such Takeover Proposal, (x) furnish access and non-public information with respect to the Company and any of its Subsidiaries to the Person who has made such Takeover Proposal pursuant to an Acceptable Confidentiality Agreement, so long as any written material non-public information provided under this clause (x) has previously been provided to Parent or is provided to Parent substantially concurrently with being provided to such Person, and (y) participate in discussions and negotiations regarding such Takeover Proposal. Notwithstanding anything to the contrary in this Agreement, the Special Committee and the Company Board shall be permitted (but only upon the express written request of the counterparty), to the extent it determines in good faith, after consultation with



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outside legal counsel, that failure to take such action would be inconsistent with its fiduciary duties, to modify, waive, amend or release any existing standstill obligations owed by any Person to the Company or any of its Subsidiaries only to the extent necessary to allow a confidential Takeover Proposal to be made to the Special Committee or the Company Board; provided that the Company promptly notifies Parent of any such modification, waiver, amendment or release.

(c) From and after the date of this Agreement, (i) the Company shall advise Parent orally and in writing within 24 hours of the receipt of any (x) Takeover Proposal, (y) any written requests, inquiries, proposals or offers received, or any discussions or negotiations sought to be initiated, with respect to any Takeover Proposal, or (z) any inquiry, offer or proposal that could reasonably be expected to lead to a Takeover Proposal, specifying the material terms and conditions thereof and the identity of the party making such Takeover Proposal and including copies of any written documents or material correspondence delivered in connection therewith, and (ii) the Company shall keep Parent reasonably informed on a current basis with respect to the status and material terms of any such Takeover Proposal and shall promptly notify the Company of any material modifications to the financial or other material terms and conditions of such Takeover Proposal, in each case within one Business Day after (but not including) the date of the Company's receipt thereof.

(d) Except as set forth in Section 5.4(e) and Section 5.4(f), the Company Board and the Special Committee shall not (i) withdraw, modify or amend the Company Board Recommendation in any manner adverse to Parent, or publicly propose to do so, (ii) approve, endorse, find advisable or recommend a Takeover Proposal or publicly propose to do so or (iii) approve, recommend or allow the Company to enter into a Contract relating to a Takeover Proposal (other than an Acceptable Confidentiality Agreement).

(e) Notwithstanding Section 5.4(d), the Special Committee or the Company Board may, at any time before obtaining the Requisite Company Vote and in response to a Superior Proposal received by the Special Committee or the Company Board after the date of this Agreement, if the Special Committee or the Company Board has concluded in good faith, (A) following consultation with its outside legal counsel, that its failure to withdraw, modify or amend the Company Board Recommendation would be inconsistent with its fiduciary duties to shareholders under applicable Law, and (B) after consultation with the Company's outside legal and financial advisors, that such Takeover Proposal constitutes a Superior Proposal, withdraw, modify or amend the Company Board Recommendation in a manner adverse to Parent or terminate this Agreement to enter into a Contract, in accordance with Article VII with respect to such Superior Proposal, but only if:

(i) the Company shall have complied in all material respects with its obligations under this Section 5.4;

(ii) the Company shall have first provided prior written notice to Parent that it is prepared to terminate this Agreement to enter into a Contract with respect to such

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Superior Proposal, which notice shall include the material terms and conditions of the transaction that constitutes such Superior Proposal and the identity of the party making such Superior Proposal, and to the extent provided to the Company, a copy of any material Contract evidencing or relating to the Superior Proposal; and

(iii) Parent does not make, within five (5) Business Days after the receipt of such notice, a proposal that the Special Committee or the Company Board determines in good faith, after consultation with its financial advisor, causes the Takeover Proposal that constituted a Superior Proposal to no longer constitute a Superior Proposal; provided, that the Company (acting through the Special Committee) shall, and shall cause its Representatives to, negotiate with Parent in good faith (to the extent Parent desires to negotiate) during such period with respect to such proposal to make such adjustments in the terms and conditions of this Agreement so that the Superior Proposal described in such notice ceases to constitute a Superior Proposal.

(f) Notwithstanding anything to the contrary in this Agreement, at any time before obtaining the Requisite Company Vote, if any event, fact, development, circumstance or occurrence (but specifically excluding any Takeover Proposal or Superior Proposal) that materially improves the business, assets, operations or prospects of the Company or its Subsidiaries that was not known (and should not reasonably have been known) to the Special Committee and the Company Board as of the date hereof, becomes known to the Special Committee and the Company Board after the date of this Agreement (an “*Intervening Event*”) (provided, that in no event shall the following constitute, or be taken into account in determining the existence of, an Intervening Event: (A) the fact alone that the Company meets or exceeds any internal or published budgets, plan, forecasts or projections for any period, or (B) any changes alone after the date of this Agreement in the market price or trading volume of Company Common Stock) and the Special Committee or the Company Board has concluded in good faith, following consultation with its outside legal counsel, that its failure to withdraw, modify or amend the Company Board Recommendation would be inconsistent with its fiduciary duties to shareholders under applicable Law, then the Company Board may withdraw, modify or amend the Company Board Recommendation in a manner adverse to Parent but only if:

(i) the Company shall have first provided prior written notice to Parent that the Special Committee or the Company Board intends to withdraw, modify or amend the Company Board Recommendation in a manner adverse to Parent, which notice shall include a description in reasonable detail of the Intervening Event and the Company Board’s reasons for taking such action; and

(ii) Parent does not, within five (5) Business Days after the receipt of such notice, propose revisions to the terms and conditions of this Agreement in response to such Intervening Event that the Special Committee or the Company Board determines, after consultation with its outside legal counsel and financial advisors, obviate the need for the Special Committee or the Company Board to withdraw, modify or amend the Company Board Recommendation, and the Company (acting through the Special Committee) shall, and shall cause its Representatives to, negotiate with Parent in good faith (to the extent Parent desires to negotiate) during such period with respect to such proposed revisions.

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(g) Nothing contained in this Agreement shall prohibit the Company from complying with Rules 14a-9, 14d-9, 14e-2 and Item 1012(a) of Regulation M-A promulgated under the Exchange Act, or from issuing a “stop, look and listen” statement pending disclosure of its position thereunder or making any required disclosure to the Company’s shareholders if, in the good faith judgment of the Special Committee or the Company Board, after consultation with its outside legal counsel, the failure to do so would be inconsistent with its fiduciary duties under applicable Law or such disclosure is otherwise required under applicable Law; provided, that this Section 5.4(g) shall not be deemed to permit the Company Board to (or the Special Committee to recommend that the Company Board) take any action prohibited by Section 5.4(d) except to the extent permitted by Sections 5.4(e) - 5.4(f). For the avoidance of doubt, in no event shall the issuance of a “stop, look and listen” statement (or other similar statement pursuant to any requirement of applicable Law) in and of itself constitute a change, withdrawal, modification or amendment of the Company Board Recommendation under this Agreement.

5.5 Company Proxy Statement; Schedule 13E-3; Company Shareholders Meeting.

(a) As promptly as reasonably practicable following the date of this Agreement (and in any event, within thirty (30) Business Days of the date hereof), the Company shall prepare and file with the SEC the Company Proxy Statement and the Company and Parent shall jointly prepare and file with the SEC the Schedule 13E-3. The Company shall use reasonable best efforts as promptly as reasonably practicable (and after consultation with Parent) to respond to any comments or requests for additional information made by the SEC with respect to the Company Proxy Statement and the Company and Parent shall use reasonable best efforts as promptly as reasonably practicable to jointly respond to any comments or requests for additional information made by the SEC with respect to the Schedule 13E-3. The Company will use reasonable best efforts to cause the Company Proxy Statement to be mailed to the Company’s shareholders as promptly as reasonably practicable after confirmation from the SEC that it has no further comments on the Company Proxy Statement and the Schedule 13E-3 (or that the Company Proxy Statement and Schedule 13E-3 is otherwise not to be reviewed by the SEC). Parent and Merger Sub shall cooperate with the Company in the preparation of the Company Proxy Statement and the Schedule 13E-3. Without limiting the generality of the foregoing, (i) each of Parent and Merger Sub will furnish to the Company the information relating to it and its Affiliates required by the Exchange Act and the rules and regulations promulgated thereunder to be set forth in the Company Proxy Statement, that is customarily included in proxy statements or Rule 13E-3 transaction statements on Schedule 13E-3 prepared in connection with transactions of the type contemplated by this Agreement or that is reasonably requested by the Company, and (ii) prior to the filing with the SEC or the mailing to the Company’s shareholders of the Company Proxy Statement or the filing with the SEC of the Schedule 13E-3, the Company shall provide Parent with a reasonable opportunity to review and comment on, and the Company shall

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reasonably consider in good faith all comments reasonably proposed by Parent with respect to, the Company Proxy Statement and the Schedule 13E-3. The Company shall promptly (and in any event, within twenty-four (24) hours) (A) notify Parent upon the receipt of any such comments or requests and (B) provide Parent with copies of all correspondence between the Company and its Representatives, on the one hand, and the SEC and its staff, on the other hand, to the extent such correspondence relates to the Company Proxy Statement or the Schedule 13E-3.

(b) The Company agrees that none of the information included or incorporated by reference in the Company Proxy Statement or the Schedule 13E-3 will, at the date it is first mailed to the shareholders of the Company or filed with the SEC, as applicable, or at the time of any amendment or supplement thereof, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading; provided, that no representation or warranty is made by the Company with respect to statements made or incorporated by reference therein to the extent based on information supplied by or on behalf of Parent or Merger Sub or any Affiliate of Parent or Merger Sub in connection with the preparation of the Company Proxy Statement or the Schedule 13E-3 for inclusion or incorporation by reference therein. The Company agrees that the Company Proxy Statement and the Schedule 13E-3 will comply in all material respects with the applicable provisions of the Exchange Act and the rules and regulations thereunder.

(c) Parent and Merger Sub hereby covenant and agree that none of the information supplied by or on behalf of Parent or Merger Sub or any Affiliate of Parent or Merger Sub for inclusion or incorporation by reference in the Company Proxy Statement or the Schedule 13E-3 shall, at the date it is first mailed to the shareholders of the Company or filed with the SEC, as applicable, or at the time of the Company Shareholders Meeting or at the time of any amendment or supplement thereof, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading; provided, that no representation or warranty is made by either Parent or Merger Sub with respect to statements made or incorporated by reference therein to the extent based on information supplied by the Company or any Affiliate of the Company in connection with the preparation of the Company Proxy Statement or the Schedule 13E-3 for inclusion or incorporation by reference therein.

(d) The Company Proxy Statement shall include the Company Board Recommendation unless the Company Board has withdrawn, modified or amended the Company Board Recommendation in accordance with Section 5.4.

(e) Following the clearance of the Company Proxy Statement and Schedule 13E-3 by the SEC, the Company shall call and hold the Company Shareholders Meeting as promptly as reasonably practicable following the date of this Agreement for the purpose of obtaining the Requisite Company Vote. Subject to

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Section 5.4, the Company shall use its reasonable best efforts to solicit or cause to be solicited from its shareholders proxies in favor of adoption of this Agreement; provided, that the Company (after consultation with Parent) may postpone, recess or adjourn the Company Shareholders Meeting: (i) with the consent of Parent, (ii) for the absence of a quorum, (iii) to allow reasonable additional time for the filing and distribution of any supplemental or amended disclosure which the Company Board has determined in good faith (after consultation with its outside legal counsel) is necessary or advisable under applicable Laws and for such supplemental or amended disclosure to be disseminated to and reviewed by the Company's shareholders prior to the Company Shareholders Meeting (iv) to allow additional solicitation of votes in order to obtain the Requisite Company Vote, or (v) if the Company has provided a written notice to Parent pursuant to Section 5.4(e)(ii) or Section 5.4(f)(i) and the latest deadline contemplated by Section 5.4(e)5.4(e) or 5.4(f) with respect to such notice, as the case may be, has not been reached.

5.6 Employees; Benefit Plans

(a) Until the end of the current plan year for any Company Benefit Plan (the "***Continuation Period***"), Parent shall, or shall cause the Surviving Corporation or its Subsidiaries to, provide to individuals who, immediately prior to the Effective Time, were employees of the Company or any of its Subsidiaries and, subject to Section 5.6(e) below, continue to be employees of the Surviving Corporation after the Effective Time (each, a "Continuing Employee") benefits under Company Benefit Plans (but not including equity and equity-based awards or plans) that for such individual are substantially comparable in the aggregate to such benefits being provided to Employees immediately prior to the Effective Time.

(b) Parent shall, or shall cause the Surviving Corporation or any of their respective Affiliates to, honor all contracts with employees related to severance, subject to any amendment or termination thereof that may be permitted by Parent and except as provided herein; provided, that nothing herein shall prevent the amendment or termination of any specific plan, program policy, agreement or arrangement, or interfere with Parent's, the Surviving Corporation's or any of their respective Affiliates' rights or obligations to make such changes, in each case as are necessary to comply with applicable Law.

(c) As of and after the Effective Time, Parent shall, or shall cause the Surviving Corporation or any of their respective Affiliates to, recognize, without duplication, credit for purposes or vesting, eligibility to participate and for calculating severance and vacation entitlements (which shall, for the avoidance of doubt, exclude benefit accruals under any qualified or non-qualified defined benefit pension plan) for each such Employee's years of service with the Company and its Subsidiaries (and their predecessor entities) prior to the Effective Time ("***Prior Service***") (to the extent the Company recognized such service for corresponding benefits) under any employee compensation, incentive and benefit (including vacation and severance) plans, programs, policies and arrangements maintained for the benefit of Employees as of and after the Effective Time by Parent, its Subsidiaries or the Surviving Corporation

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(each, a “**Parent Plan**”). With respect to each Parent Plan that is a “welfare benefit plan” (as defined in Section 3(1) of ERISA), Parent and its Subsidiaries shall use commercially reasonable efforts to (i) cause there to be waived any pre-existing condition or eligibility limitations (to the extent waived, satisfied or inapplicable under the corresponding plan maintained by the Company and its Subsidiaries immediately prior to the Effective Time) and (ii) give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, Employees under similar plans maintained by the Company and its Subsidiaries immediately prior to the Effective Time.

(d) With respect to any accrued but unused vacation time to which any Employee is entitled pursuant to the vacation policy or individual agreement or other arrangement applicable to such Employee immediately prior to the Effective Time, Parent shall, or shall cause the Surviving Corporation or any of their respective Affiliates to, allow such Employee to use such accrued vacation pursuant to the terms of Parent’s or the Surviving Corporation’s vacation policy, as in effect from time to time.

(e) Without limiting Section 8.11, nothing in this Section 5.6, whether express or implied, shall: (i) confer upon any current or former employee of the Company, Parent, the Surviving Corporation or any of their respective Affiliates (including any Employee), any rights or remedies including any right to employment or continued employment for any specified period, of any nature or kind whatsoever under or by reason of this Section 5.6, or restrict the ability of Parent, Surviving Corporation or any of their respective Subsidiaries or Affiliates to terminate the employment or service of any Person; (ii) be construed to modify, amend or create any employee benefit plan of the Company, Parent, Surviving Corporation or any of their respective Affiliates, (iii) limit the ability of Parent, the Surviving Corporation or any of their respective Subsidiaries or Affiliates to amend, modify or terminate any benefit or compensation plan, program, agreement, Contract, policy or arrangement at any time assumed, established, sponsored or maintained by any of them; or (iv) create any third-party beneficiary rights or obligations in any Person (including any Employee) other than the parties to this Agreement.

#### 5.7 Directors’ and Officers’ Indemnification and Insurance.

(a) For a period of six years commencing at the Effective Time (provided, that such period shall be extended with respect to all unresolved claims for indemnification by any Indemnified Party as of the sixth anniversary of the Effective Time until such claims are finally resolved), Parent and the Surviving Corporation shall cause all rights to indemnification, advancement of expenses and exculpation now existing in favor of any present or former director or officer of the Company or any of its Subsidiaries and the fiduciaries of any Company Employee Benefits (the “**Indemnified Parties**”) as provided in (i) the Organizational Documents of the Company, or (ii) agreements between an Indemnified Party and the Company or one of its Subsidiaries to survive the Merger and to continue in full force and effect for a period of not less than six years after the Effective Time or, if longer, for such period

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as is set forth in any applicable agreement with an Indemnified Party in effect on the date of this Agreement. In addition, for a period of six years commencing at the Effective Time, the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) cause the Organizational Documents of the Surviving Corporation and its Subsidiaries to contain provisions with respect to indemnification, advancement of expenses and exculpation that are at least as favorable as the indemnification, advancement of expenses and exculpation provisions set forth in the Organizational Documents of the Company as of the date of this Agreement.

(b) For a period of six years commencing at the Effective Time provided that if any time prior to the sixth anniversary of the Effective Time, any Indemnified Party delivers to Parent a written notice asserting a claim for indemnification pursuant to this Section 5.7(b), then such period shall be extended with respect to the claim asserted in such notice until such claims are finally resolved), the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) indemnify and hold harmless all Indemnified Parties to the fullest extent permitted by applicable Law with respect to all acts and omissions arising out of or relating to their services as directors or officers of the Company, its Subsidiaries or another Person, if such Indemnified Party is or was serving as a director, officer or employee of such other Person at the request of the Company, or fiduciaries of Company Employee Benefits, whether asserted or claimed at, after or before the Effective Time (including in connection with the negotiation and execution of this Agreement and the consummation of the transactions contemplated by this Agreement or otherwise). If any Indemnified Party is or becomes involved in any Legal Action in connection with any matter subject to indemnification hereunder, then the Surviving Corporation shall advance as incurred any costs or expenses (including reasonable legal fees and disbursements), judgments, fines, losses, claims, damages or Liabilities (“*Damages*”) arising out of or incurred in connection with such Legal Action, subject to the Surviving Corporation’s receipt of an undertaking by or on behalf of such Indemnified Party to repay such Damages if it is ultimately determined under applicable Law that such Indemnified Party is not entitled to be indemnified. In the event of any such Legal Action, (i) each of Parent and the Surviving Corporation shall cooperate with the Indemnified Party in the defense of any such Legal Action and (ii) neither Parent nor the Surviving Corporation shall settle, compromise or consent to the entry of any judgment in any Legal Action pending or threatened in writing to which an Indemnified Party is a party (and in respect of which indemnification could be sought by such Indemnified Party hereunder), unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liability arising out of such Legal Action.

(c) If the Company has not purchased a “tail” policy in compliance with the last sentence of this Section 5.7(c), Parent shall cause the Surviving Corporation to, maintain in effect for at least six years commencing at the Effective Time the current policies of directors’ and officers’ liability insurance maintained by the Company or policies of at least the same coverage and amounts containing terms and conditions which are no less advantageous with respect to claims arising out of or relating to events which occurred before or at the Effective Time (including in

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connection with the negotiation and execution of this Agreement and the consummation of the transactions contemplated by this Agreement) so long as Parent and the Surviving Corporation are not required to pay a premium in excess of 250% of the renewal premium paid or payable by the Company in connection with its most recent renewal (such 250% amount being the “*Maximum Premium*”). If Parent and the Surviving Corporation are unable to obtain the insurance described in the prior sentence for an amount less than or equal to the Maximum Premium, then Parent and the Surviving Corporation shall, jointly and severally, instead obtain as much comparable insurance as possible for an annual premium equal to the Maximum Premium. Notwithstanding the foregoing, in lieu of the arrangements contemplated by this Section 5.7(c), before the Effective Time, the Company shall be entitled to purchase, and at the written request of Parent shall purchase, a “tail” directors’ and officers’ liability insurance policy covering the matters described in this Section 5.7(c) and, if the Company purchases such a policy before the Effective Time, then Parent and the Surviving Corporation’s obligations under this Section 5.7(c) shall be satisfied so long as Parent and the Surviving Corporation cause such policy to be maintained in effect for a period of six years following the Effective Time, provided that the cost of such policy may not exceed the Maximum Premium.

(d) The covenants contained in this Section 5.7 are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties and their respective heirs and legal representatives and shall not be deemed exclusive of any other rights to which an Indemnified Party is entitled, whether pursuant to Law, Contract or otherwise.

(e) In the event that Parent or the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any person, then, and in each such case, Parent and the Surviving Corporation shall take all necessary action so that the successors or assigns of Parent or the Surviving Corporation, as the case may be, shall succeed to the obligations set forth in this Section 5.7.

5.8 Efforts. Unless otherwise indicated by the terms hereof and subject to the conditions set forth in this Agreement and in accordance with applicable Law, each of the parties to this Agreement shall, and shall cause its Affiliates to, use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done and assist and cooperate with the other parties hereto in doing (or causing to be done), all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement as promptly as practicable, including by (a) causing the conditions of the Merger set forth in Article VI to be satisfied; (b) (1) obtaining all consents, waivers, approvals, orders and authorizations from Governmental Authorities, and (2) making all registrations, declarations and filings with Governmental Authorities, in each case, that are necessary or advisable to consummate the transactions contemplated hereby; (c) obtaining all consents, waivers and approvals and delivering all notifications pursuant to any Material Contracts (or, if reasonably requested by Parent, other Contracts) in connection with this Agreement and the consummation of the Merger; and



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(d) executing and delivering any Contracts and other instruments that are in each case reasonably necessary to consummate the Merger prior to the Effective Time, in no event shall the Company or its Subsidiaries be required to pay, or otherwise incur any Liability, nor shall it so pay or incur without Parent's prior written consent, with respect to, any fees (except for customary fees to Governmental Authorities), penalties, material conditions or obligations, including amendments to existing material conditions, or other consideration to obtain any consent or approval required for the consummation of the transactions contemplated by this Agreement; provided that the Company shall, and shall cause its Subsidiaries to, agree to any of the foregoing payments, security, conditions or obligations if requested by Parent and effective only upon the consummation of the Merger. Notwithstanding the foregoing, the terms of this Section 5.8 shall not limit the rights of the Company set forth in Section 5.4.

5.9 Consents; Filings; Further Action; Notices.

(a) Upon the terms and subject to the conditions of this Agreement and in accordance with applicable Law, each of Parent and the Company shall, and Parent shall cause each of its Affiliates to, use its commercially reasonable efforts to promptly (i) obtain any consents, approvals or other authorizations, and make any filings and notifications, required in connection with the transactions contemplated by this Agreement, (ii) make any other submissions either required or deemed appropriate by either Parent or the Company in connection with the transactions contemplated by this Agreement under the Securities Act, the Exchange Act, the FBCA, the Applicable Exchange rules and regulations and any other applicable Law and (iii) take or cause to be taken all other actions necessary, proper or advisable consistent with this Section 5.9 to cause the expiration of the applicable waiting periods, or receipt of required consents, approvals or authorizations, as applicable, under such Laws as soon as reasonably practicable. Parent and the Company shall cooperate and consult with each other in connection with the making of all such filings and notifications, including by providing copies of all relevant documents to the non-filing party and its advisors before filing. No party shall consent to any voluntary extension of any statutory deadline or waiting period or to any voluntary delay of the consummation of the transactions contemplated by this Agreement at the behest of any Governmental Authority without the consent of the other parties to this Agreement, which consent shall not be unreasonably withheld, delayed or conditioned.

(b) Each of Parent and the Company shall, and shall cause their Affiliates to, promptly inform the other party upon receipt of any material or substantive communication from any Governmental Authority regarding any of the transactions contemplated by this Agreement. If Parent or the Company (or any of their respective Affiliates) receives a request for additional information from any Governmental Authority that is related to the transactions contemplated by this Agreement, then such party shall endeavor in good faith to make, or cause to be made, to the extent practicable and after consultation with the other party, an appropriate response to such request. No party shall, or shall permit any of its Affiliates to, participate in any meeting or engage in any material or substantive conversation with any Governmental Authority without giving the other party prior notice of the meeting or conversation and, unless prohibited by such Governmental Authority, the

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opportunity to attend or participate. Parent shall advise the Company promptly of any understandings, undertakings or agreements (oral or written) which Parent or any of its Affiliates proposes to make or enter into with any Governmental Authority in connection with the transactions contemplated by this Agreement. In furtherance and not in limitation of the foregoing, Parent shall, and shall cause its Affiliates to, use its commercially reasonable efforts to resolve any objections that may be asserted with respect to the transactions contemplated by this Agreement under any antitrust, competition or trade regulatory Law as promptly as practicable.

(c) Notwithstanding anything to the contrary in this Agreement, Parent shall take, and shall cause its Affiliates to take (and, notwithstanding anything to the contrary in this Agreement, including Section 5.1 and Section 5.4, the Company and its Affiliates shall be permitted to take, without affecting any representation, warranty, covenant or condition in this Agreement), all action necessary to avoid the entry or to effect the dissolution of, or vacate or lift, any Order which would otherwise have the effect of preventing impairing or delaying the Closing, including (i) selling, licensing, divesting or disposing of or holding separate any entities, assets, Intellectual Property or businesses (including, after the Effective Time, the Surviving Corporation or any of its Subsidiaries), (ii) terminating, amending or assigning existing relationships or contractual rights and obligations, (iii) changing or modifying any course of conduct regarding future operations, (iv) otherwise taking actions that would limit its freedom of action with respect to, or its ability to retain, one or more of their respective businesses, assets or rights or interests therein and (v) committing to take any such actions in the foregoing clauses (i), (ii), (iii) or (iv) (all of the foregoing a “**Divestiture Action**”). Notwithstanding the foregoing, neither Parent nor its Affiliates shall be required to, and the Company and its Subsidiaries shall not, without the prior written consent of Parent, take or agree to take or commit to take any Divestiture Action. For the avoidance of doubt, Parent shall not require the Company or its Subsidiaries to, and the Company and its Subsidiaries shall not be required to, take any action with respect to any Order or any applicable Law which would bind the Company or its Subsidiaries prior to the Effective Time or in the event the Merger does not occur.

5.10 Public Announcements. The initial press release concerning this Agreement and the transactions contemplated hereby shall be a joint press release to be reasonably agreed upon by the Company and Parent. Following such initial press release, Parent and the Company shall consult with each other before issuing any press release or otherwise making any public statements (including any general communications to employees, customers, partners or vendors) about this Agreement or any of the transactions contemplated by this Agreement. Neither Parent nor the Company shall issue any such press release or make any such public statement without prior consent of the other, which consent shall not be unreasonably withheld, delayed or conditioned, except (i) to the extent required by applicable Law or Order or the applicable rules of the Applicable Exchange, Parent or the Company may issue such a press release or make such a statement if it has used its reasonable efforts to consult with the other party before issuing any such press release or making any such public statement but has been unable to do so prior to the time such press release or public statement is so required to be issued or made and (ii) that each party may, without complying with the foregoing obligations, may make internal announcements to

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employees, to the extent that such statements are not inconsistent with previous press releases, public disclosures or public statements made jointly or individually by the parties and otherwise in compliance with this Section 5.10 and do not reveal material non-public information regarding this Agreement or the transactions contemplated by this Agreement; provided, that Parent's consent shall not be required, and the Company shall not be required to consult with Parent in connection with, or provide Parent an opportunity to review or comment upon, any press release or other public statement or comment to be issued or made with respect to any Takeover Proposal or with respect to any actions contemplated by Section 5.4(e), Section 5.4(f) or Section 5.4(g). Notwithstanding the foregoing, without the prior consent of the other parties, (a) the Company may communicate with customers, vendors, suppliers, financial analysts, investors and media representatives in a manner consistent with its past practice in compliance with applicable Law, (b) may disseminate the information included in a press release or other document previously approved for external distribution by Parent and (c) this Section 5.10 shall not apply to any disclosure of information concerning this Agreement in connection with any dispute between the parties regarding this Agreement.

5.11 Fees, Expenses and Conveyance Taxes. Except as explicitly provided otherwise in this Agreement, whether or not the Merger is consummated, all fees, costs and expenses (including those payable to Representatives) incurred by any party to this Agreement or on its behalf in connection with this Agreement and the transactions contemplated by this Agreement ("**Expenses**") shall be paid by the party incurring those Expenses; except that all documentary, sales, use, real property transfer, real property gains, registration, value added, transfer, stamp, recording and similar Taxes, fees, and costs together with any interest thereon, penalties, fines, costs, fees, additions to Tax or additional amounts with respect thereto incurred in connection with this Agreement and the transactions contemplated hereby ("**Conveyance Taxes**"), shall be paid by Parent, and Parent shall file all Tax Returns related thereto, regardless of who may be liable therefor under applicable Law.

5.12 Financing Efforts.

(a) Each of Parent and Merger Sub shall, and shall cause each of its Affiliates to, use its commercially reasonable efforts to obtain the Financing as soon as reasonably practicable on the terms and conditions contained in the Financing Commitments and to consummate the Rollover Investment pursuant to the Rollover Letters in accordance with the terms thereof, including using its commercially reasonable efforts to (i) comply with its obligations under the Financing Commitments and the Rollover Letters, (ii) negotiate and enter into definitive agreements with respect to the Financing Commitments on terms and conditions that would not (A) reduce the aggregate amount of the Financing unless the Rollover Investment is increased by a corresponding amount or (B) materially delay the receipt of the Financing or make it materially less likely that the Financing would be received, (iii) satisfy on a reasonably timely basis all conditions applicable to Parent and Merger Sub contained in the Financing Commitments (including definitive agreements related thereto) and the Rollover Letters, including the payment of any commitment, engagement or placement fees required as a condition to the Financing, and (iv) consummate the Financing and the Rollover Investment at or prior to the Closing Date (it being understood that it is not a condition to Closing under this Agreement,

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nor to the consummation of the Merger, for Parent or Merger Sub to obtain the Financing, the Rollover Investment or any alternative financing). Notwithstanding anything to the contrary in the immediately preceding sentence, each of Parent and Merger Sub shall, and shall cause each of its Affiliates to, take all actions reasonably necessary to (i) maintain in effect each Financing Commitment and each Rollover Letter (it being understood that the Financing Commitments and the Rollover Letters may be replaced or amended as provided below) and (ii) enforce all of its rights under each Financing Commitment (or any definitive agreements relating thereto) and each Rollover Letter (it being agreed that nothing herein shall require the Parent to commence litigation to enforce such rights). Upon request, Parent shall keep the Company reasonably informed of the status of its efforts to arrange the Financing (including providing the Company with copies of material draft and definitive agreements and other material documents related to the Financing) and the Rollover Investment. Parent and Merger Sub shall give the Company notice as promptly as reasonably practicable after obtaining Knowledge thereof (x) of any material breach or default by any party to any of the Financing Commitments, any Rollover Letter or definitive agreements related to the Financing of which Parent or Merger Sub becomes aware, (y) of the receipt of any written notice or other written communication from any Person with respect to (1) any actual or potential breach, default, termination or repudiation by any party to any of the Financing Commitments, any Rollover Letter or definitive agreements related to the Financing of any provisions of any Financing Commitment, any Rollover Letter or definitive agreements related to the Financing or (2) material dispute or disagreement between or among the parties to any of the Financing Commitments, any Rollover Letter or definitive agreements related to the Financing with respect to the obligation to fund the Financing or the amount of the Financing to be funded at the Closing or to consummate the Rollover Investment or the amount of shares of Common Stock to be contributed prior to Closing, and (z) any other circumstance that would adversely affect the ability of Merger Sub to obtain all or any portion of the Financing or the Rollover Investment on a timely basis. As soon as reasonably practicable and in any event within two (2) Business Days, Parent and Merger Sub shall provide any information reasonably requested by the Company relating to any circumstance referred to in clause (x), (y) or (z) of the immediately preceding sentence. Parent shall not, without the prior written consent of the Company, amend, modify, supplement or waive any of the conditions or contingencies to funding contained in any Financing Commitment (including definitive agreements related thereto) or to the making of the Rollover Investment contained in any Rollover Letter, or any other provision of, or remedies under, any Financing Commitment (including definitive agreements related thereto) or any Rollover Letter, the effect of which (I) reduces the amount of aggregate cash proceeds available from the Financing unless there is a corresponding increase in the Rollover Investment, (II) would delay, prevent or adversely impact, or, individually or in the aggregate, would reasonably be expected to have the effect of delaying, preventing or adversely impacting, in each case, in any material respect, the funding of the Financing (or satisfaction of the conditions to the Financing) on the Closing Date, or (III) would prevent or adversely impact or delay, or, individually or in the aggregate, would reasonably be expected to have the effect of preventing, adversely impacting, or delaying, in each case, in any

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material respect the ability of Parent to timely consummate the transactions contemplated by this Agreement on the Closing Date (any modification of the type described in clauses (I) through (III), “**Restricted Modifications**”); provided, however, that, notwithstanding the foregoing, Parent may modify, supplement or amend the Financing Commitments to (i) amend, replace, supplement, or otherwise modify or waive any provision of any Debt Commitment Letter and/or substitute other debt financing for all or a portion of the Financing from the same and/or alternative Financing Sources, so long as such amendments, replacements, supplements or modifications or waivers, or such substitute financing, shall not expand in a material way the conditions precedent contained therein or materially delay the funding of the Debt Financing at Closing, (ii) reflect the exercise of any “market flex” provisions in connection therewith, and (iii) add lenders, lead arrangers, bookrunners, syndication agents, other agents or similar entities that have not executed the Financing Commitments as of the date hereof or to increase the amount of funds available thereunder, and Parent or Merger Sub shall promptly deliver to the Company copies of any such amendment, modification, supplement, restatement or replacement. In the event all conditions applicable to a Financing Commitment and/or a Rollover Letter have been satisfied, Parent shall use its commercially reasonable efforts to cause the Lenders and the Rollover Investors to fund the Financing and make the Rollover Investment, as applicable, required to consummate the transactions contemplated by this Agreement as soon as reasonably practicable. In the event that any portion of the Financing becomes unavailable and such portion is not otherwise available under the Debt Financing or Rollover Investment, as applicable, Parent shall notify the Company and use its commercially reasonable efforts to arrange alternative financing from the same or other sources of financing that do not contain any Restricted Modifications (such terms and conditions, the “**Alternate Terms and Conditions**”), in an amount sufficient to enable Parent to consummate the transactions contemplated by this Agreement on the Alternate Terms and Conditions.

(b) The Company shall, and shall cause its Subsidiaries to, and shall use reasonable best efforts to cause their respective Representatives to, at Parent’s sole cost and expense, use reasonable best efforts to provide all reasonable cooperation requested by Parent, Merger Sub, any Financing Sources and their respective authorized Representatives in connection with the Financing (which, for purposes of this Section 5.12(b) shall include any alternative financing), including:

(i) participating in, and causing the Company’s management team, with appropriate seniority and expertise, including senior officers, to participate in, including the preparation for, a reasonable number of meetings, conference calls, road show, investor and similar presentations, lender presentations, drafting sessions, due diligence sessions and sessions with rating agencies in connection with the Financing on reasonable advance notice, including direct contact between such management and representatives of the Company and its Subsidiaries, on the one hand, and the Financing Sources, potential lenders and investors for the Financing, on the other hand;

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- (ii) providing to Parent, Merger Sub and the Financing Sources from time to time all information and disclosures regarding the Company and its Subsidiaries reasonably requested by the Financing Sources;
- (iii) executing and delivering customary authorization letters to the Financing Sources authorizing the distribution of information to prospective lenders (including customary 10b-5 and material non-public information representations);
- (iv) assisting with the preparation of appropriate and customary materials for rating agency presentations, bank information memoranda, offering and syndication documents, business projections and other marketing documents customarily required or reasonably requested by the Financing Sources in connection with the Financing;
- (v) furnishing no later than ten (10) Business Days prior to Closing all documentation and other information that is reasonably requested no later than twenty (20) Business Days prior to Closing and required by regulatory authorities in connection with applicable “know your customer” and anti-money laundering rules and regulations, including U.S.A. Patriot Act of 2001, relating to the Company and its Subsidiaries;
- (vi) assisting Parent in obtaining corporate, credit, facility and securities ratings from rating agencies;
- (vii) facilitating the pledging of collateral;
- (viii) taking corporate actions reasonably necessary or advisable to permit the consummation of the Debt Financing and to permit the proceeds thereof to be made available to the Company by the Company and its Subsidiaries immediately following the Effective Time;
- (ix) cooperating with the Financing Sources’ due diligence, to the extent customary and reasonable and not unreasonably interfering with the business of the Company, including by granting the Financing Sources access as provided in Section 5.3(a), subject to the limitations on, and requirements with respect to, disclosure and access set forth in the second sentence of Section 5.3(a), Section 5.3(b) and Section 5.3(c);
- (x) [reserved];
- (xi) ensuring that any syndication efforts with respect to the Financing benefit from the existing lending and investment banking relationships of the Company;
- (xii) cooperating with consultants or other suitable professional advisors engaged to undertake field examinations and appraisals for purposes of the Financing, including furnishing information to such Persons in respect of accounts receivable, inventory and other applicable assets and providing customary consent and release letters in respect of the resulting reports or in respect of field examinations and appraisals done in connection with the Company’s existing ABL credit agreement; and

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(xiii) assisting in the preparation and negotiation of, and executing and delivering, one or more credit agreements, pledge and security documents and other definitive financing documents as may be reasonably requested by Parent or the Financing Sources (including landlord waivers, and other third party agreements, hedging arrangements, customary officer's and other closing certificates and back-up therefor and a solvency certificate of the chief financial officer of the Company in the form contemplated by the Financing Commitments); provided, that (A) the Company shall not be required to become subject to any obligations or Liabilities with respect to any agreements or documents under this clause (xiii) prior to the Closing and (B) nothing shall obligate the Company to provide a solvency certificate or the like, any legal opinion or other opinion of counsel, or any information that would, after consultation with legal counsel, reasonably be expected to violate any obligations of confidentiality or result in a violation of Law or loss of any privilege; provided, further, the Company and its Subsidiaries shall not be required under this Section 5.12 to deliver any corporate (or similar) authorization or approval of the execution of the Financing (or any alternative financing), in each case, that would be effective prior to the Effective Time and no officers or directors of the Company that will not be continuing following the Merger (including for the avoidance of doubt any non-employee directors of the Company who tender resignations effective as of the Effective Time) shall be required to execute or enter into or perform any agreement with respect to the Financing (including providing any corporate (or similar) authorization or approval in connection therewith).

Any information provided to Parent or Merger Sub pursuant to this Section 5.12(b) shall be subject to the Confidentiality Agreement. Parent shall, on demand, reimburse the Company for all reasonable and documented out-of-pocket costs incurred by the Company and its Subsidiaries in connection with such cooperation (it being understood and agreed, however, that the Company (and not Parent or Merger Sub) shall be responsible for (a) de minimis expenses, (b) fees payable to existing legal, financial or other advisors of the Company with respect to services provided prior to the Closing Date, (c) any ordinary course amounts payable to existing employees of or consultants to the Company, its Subsidiaries or any of their respective Affiliates with respect to services provided prior to the Closing Date and (d) any amounts that would have been incurred in connection with the transactions contemplated hereby regardless of the Financing). The Company and its Representatives shall be given a reasonable opportunity to review and comment on any materials that are to be presented during any meetings conducted in connection with the Financing, and Parent shall give due consideration to any such comments proposed by the Company and its Representatives. The Company hereby consents to the reasonable use of its and its Subsidiaries' logos in connection with the Financing; provided, that such logos are used solely in a manner that is not intended to, and is not reasonably likely to, harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company, its Subsidiaries and its or their respective marks. Notwithstanding anything to the contrary, the condition set forth in Section 6.2(b) of this Agreement, as it applies to the Company's obligations under this Section 5.12(b), shall be deemed satisfied if the Company's material breach hereof was not the primary cause of the failure of funding under the Financing Commitments (including for purposes of Section 6.2(b)). Parent and Merger Sub acknowledge and agree that the Company and its Affiliates and their respective Representatives shall not have any responsibility for, or incur any Liability to any Person under or in connection with, the arrangement of the Financing or any alternative financing that Parent or Merger Sub may raise in connection with the transactions contemplated by this

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Agreement except arising from the actual and intentional fraud, willful misconduct or intentional misrepresentation of the Company, any of its Subsidiaries or any of their respective Representatives, and Parent and Merger Sub shall, on a joint and several basis, indemnify and hold harmless the Company, its Affiliates and its and their respective Representatives from and against any and all Damages suffered or incurred by any of them in connection with the arrangement of the Financing or any alternative financing, except to the extent such Damages arose out of or resulted from the actual and intentional fraud, willful misconduct or intentional misrepresentation of the Company, any of its Subsidiaries or any of their respective Representatives.

(c) In no event shall Parent or Merger Sub enter into any exclusivity, lock-up or other similar agreement, arrangement or understanding with any bank or investment bank or other potential provider of debt or equity financing that could reasonably be expected to prevent such provider from providing or seeking to provide such financing to any third party in connection with a transaction relating to the Company or its Subsidiaries (including a Takeover Proposal), in connection with the Merger or the other transactions contemplated by this Agreement.

5.13 Section 16b-3. Prior to the Effective Time, the Company shall (and shall be permitted to) take such steps as may be reasonably required to cause dispositions of the Company's equity securities (including derivative securities) pursuant to the transactions contemplated by this Agreement by each individual who is a director or officer of the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act.

5.14 Agreements with Principal Shareholders. From and after the date hereof until the Requisite Company Vote is obtained, in no event shall Parent or Merger Sub or any of their respective Affiliates, on the one hand, enter into any Contract with any of the Principal Shareholders or any of their respective Affiliates, on the other hand, relating to the transactions contemplated by this Agreement or the business, operations or other interests of the Company and its Subsidiaries after the Effective Time, unless such Contract shall terminate, by its terms, upon the termination of this Agreement without payment or penalty or any further obligations. In addition, from and after the date hereof until the Requisite Company Vote is obtained, in no event shall Parent amend, or waive any requirement under, the Voting Agreement or any Rollover Letter, in each case, without the prior written consent of the Company.

5.15 Transaction Litigation. Prior to the earlier of the Effective Time or the termination of this Agreement pursuant to Article VII, the Company shall control the defense of any Legal Action (including any class action or derivative litigation) relating directly or indirectly to this Agreement or transactions contemplated by this Agreement, including disclosures made under securities laws and regulations related thereto ("**Transaction Litigation**"); provided, however, that the Company shall (a) provide Parent with prompt notice of all Transaction Litigation (including by providing copies of all pleadings with respect thereto) and keep Parent reasonably informed with respect to the status thereof, (b) keep Parent apprised of proposed strategy and other significant decisions with respect to the Transaction Litigation by the party receiving notice of Transaction Litigation (to the extent that the attorney-client privilege between such party and its counsel is not undermined or otherwise affected), (c) give Parent the right to review and comment on all filings or responses to be made by the Company in connection with any Transaction Litigation (and the Company shall in good faith take such comments into account), and the



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opportunity to participate in the defense, settlement and prosecution of any Transaction Litigation and (d) keep Parent reasonably and promptly informed with respect to the status of such Transaction Litigation. Except as permitted on Section 5.15 of the Company Disclosure Letter, no compromise or settlement of any Transaction Litigation shall be agreed to by the Company without Parent's prior written consent.

5.16 Anti-Takeover Statutes. The Company and the Company Board shall (a) take all actions within their power to ensure that no "anti-takeover" statute or similar statute or regulation is or becomes applicable to this Agreement, the Voting Agreement, the Merger or any other transaction contemplated by this Agreement; and (b) if any "anti-takeover" statute or similar statute or regulation becomes applicable to this Agreement, the Voting Agreement, the Merger or any other transaction contemplated by this Agreement, take all action within their power to ensure that the Merger and the other transactions contemplated by this Agreement may be consummated as promptly as reasonably practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such statute or regulation on the Merger and such other transactions contemplated hereby.

5.17 Applicable Exchange De-Listing; De-Registration Under Exchange Act. Prior to the Effective Time, the Company shall cooperate with Parent and use its reasonable best efforts to take, or cause to be taken, all actions and do, or cause to be done, all things reasonably necessary, proper or advisable on its part pursuant to applicable Law and the rules and regulations of the Applicable Exchange to cause (a) the de-listing of the Common Stock from the Applicable Exchange as promptly as practicable following the Effective Time and (b) the de-registration of the Common Stock pursuant to the Exchange Act as promptly as practicable after such de-listing. Following the Effective Time, the Parent shall cause the Surviving Corporation to take any additional action necessary to cause the Common Stock to be de-listed from the Applicable Exchange and de-registered under the Exchange Act at or as soon as practicable following the Effective Time.

## ARTICLE VI

### CONDITIONS

6.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligation of each party to this Agreement to effect the Merger and the other transactions contemplated hereby is subject to the satisfaction or waiver on or before the Closing Date of each of the following conditions:

(a) Company Shareholder Approval. This Agreement shall have been duly adopted by the Requisite Company Vote in accordance with the FBCA and the Organizational Documents of the Company at a duly called Company Shareholders Meeting.

(b) No Orders. No Law, temporary restraining order, preliminary or permanent injunction issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger will be in effect, and no statute, rule, regulation or order will have been enacted, entered, enforced or deemed applicable to the Merger, that in each case enjoins, makes illegal or otherwise prohibits consummation of the Merger.

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(c) No Orders. No Governmental Authority shall have issued any Order that enjoins or otherwise prohibits consummation of the Merger.

6.2 Conditions to Obligations of Parent and Merger Sub. The obligations of each of Parent and Merger Sub to effect the Merger and the other transactions contemplated hereby are also subject to the satisfaction or waiver by Parent on or before the Closing Date of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Company set forth in (i) Article III of this Agreement (other than those contained in Section 3.1 (the first sentence thereof), Section 3.3, Section 3.4, Section 3.8(a), Section 3.9, Section 3.25, Section 3.26 and Section 3.27) shall be true and correct in all respects, without regard to any “materiality” or “Company Material Adverse Effect” qualifications contained in them, at and as of the Effective Time, as though made at and as of the Effective Time (except for representations and warranties made as of a specified date, the accuracy of which shall be determined as of that specified date), with only such exceptions as do not have and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect; (ii) Section 3.1 (the first sentence thereof), Section 3.3, Section 3.4, Section 3.9, Section 3.25, Section 3.26 and Section 3.27 shall be true and correct in all material respects at and as of the Effective Time, as though made at and as of the Effective Time (except for representations and warranties made as of a specified date, the accuracy of which shall be determined as of that specified date); and (iii) Section 3.8(a) shall be true and correct in all but de minimis respects, other than as resulting from permitted exercises of existing outstanding equity awards set forth in Section 3.8(a) following the date of this Agreement, in each case, at and as of the Effective Time, as though made at and as of the Effective Time (except for representations and warranties made as of a specified date, the accuracy of which shall be determined as of that specified date).

(b) Performance of Obligations. The Company shall have, in all material respects, performed or complied with all obligations required to be performed or complied with by it under this Agreement at or before the Closing Date.

(c) No Company Material Adverse Effect. Since the date of this Agreement, there shall not have occurred a Company Material Adverse Effect.

(d) Officer’s Certificate. Parent shall have received a certificate, signed by either the Chief Executive Officer or Chief Financial Officer of the Company, certifying as to the matters set forth in Section 6.2(a), Section 6.2(b) and Section 6.2(c).

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(e) The Company shall have delivered to Merger Sub:

(i) at least three (3) days before the Closing, duly executed payoff letters in form and substance reasonably satisfactory to Merger Sub, setting forth the amounts (including customary per diem amounts) required to pay and satisfy in full all Indebtedness other than Indebtedness that is expressly permitted to remain outstanding after the Closing under this Agreement and providing for the release and termination of all Liens, guaranties and loan and collateral documentation provided or entered into in connection therewith, effective immediately and automatically upon payment of such amounts, together with applicable Lien termination documentation in appropriate form for filing (collectively, the "**Payoff Letters**") from each holder of Indebtedness other than Indebtedness that is expressly permitted to remain outstanding after the Closing under this Agreement, together with all UCC-3 financing statement terminations and other instruments necessary to reflect the release of all Liens securing such Indebtedness upon payment thereof in accordance with the terms of such Payoff Letter;

(ii) evidence of the release of any Liens (other than Permitted Liens that are expressly permitted to remain in place after the Closing under this Agreement) set forth on Section 6.2(e)(ii) of the Company Disclosure Letter; and

(iii) a certification from the Company, in form and substance reasonably satisfactory to Parent and in accordance with Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3), certifying that interests in the Company, including shares of capital stock of the Company, do not constitute "United States real property interests" within the meaning of Section 897(c)(1) of the Code, and the Company shall have provided notice to the Internal Revenue Service in accordance with the provisions of Treasury Regulations Section 1.897-2(h).

6.3 Conditions to Obligation of the Company. The obligation of the Company to effect the Merger and the other transactions contemplated hereby is also subject to the satisfaction or waiver by the Company on or before the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of each of Parent and Merger Sub set forth in this Agreement shall be true and correct in all respects, without regard to any "materiality" or "Parent Material Adverse Effect" qualifications contained in them, at and as of the Effective Time as though made at and as of the Effective Time (except for representations and warranties made as of a specified date, the accuracy of which shall be determined as of that specified date), unless the failure or failures of representations and warranties to be true and correct in all respects would not individually or in the aggregate have a Parent Material Adverse Effect.

(b) Performance of Obligations. Each of Parent and Merger Sub shall have, in all material respects, performed or complied with all obligations required to be performed or complied with by it under this Agreement at or before the Closing.

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(c) Officer's Certificate. The Company shall have received a certificate, signed by an executive officer of Parent, certifying as to the matters set forth in Section 6.2(a) and Section 6.2(b).

6.4 Frustration of Closing Conditions. Neither the Company, on the one hand, nor Parent or Merger Sub, on the other hand, may rely, either as a basis for not consummating the Merger or for terminating this Agreement and abandoning the Merger and the other transactions contemplated hereby, on the failure of any condition set forth in Section 6.1, Section 6.2 or Section 6.2(e), as the case may be, to be satisfied if such party's breach of any provision of this Agreement or failure to use its reasonable best efforts to consummate the Merger and the other transactions contemplated by this Agreement, as required by and subject to Section 5.8, Section 5.9 and Section 5.12, materially contributed to the failure of such condition to be satisfied.

## ARTICLE VII

### TERMINATION; TERMINATION FEES AND EXPENSES

7.1 Termination by Mutual Consent. This Agreement may be terminated at any time before the Effective Time by mutual written consent of Parent and the Company (but with respect to the Company, only pursuant to a resolution adopted by the Special Committee).

7.2 Termination by Either Parent or the Company. This Agreement may be terminated by either Parent or the Company (only pursuant to a resolution adopted by the Special Committee) at any time before the Effective Time:

(a) whether before or after obtaining the Requisite Company Vote, if the Merger has not been consummated by July 29, 2020 (the "**Termination Date**"). Notwithstanding the foregoing, the right to terminate this Agreement under this Section 7.2(a) shall not be available to any party to this Agreement whose breach of any representation, warranty, covenant or agreement of this Agreement has been the principal cause of the failure to consummate the Merger by such date;

(b) if this Agreement has been submitted to the shareholders of the Company for adoption at a duly convened Company Shareholders Meeting and the Requisite Company Vote is not obtained upon a vote taken thereof (or adjournment, postponement or recess thereof); or

(c) whether before or after obtaining the Requisite Company Vote, if any Governmental Authority having jurisdiction over any party hereto shall have issued any Order that permanently enjoins or otherwise permanently prohibits consummation of the Merger and such Order is or shall have become final and nonappealable; provided, that the party seeking to terminate this Agreement pursuant to this Section 7.2(c) shall have used reasonable best efforts to challenge such Order and cause such Order to be withdrawn, rescinded, terminated, cancelled or otherwise nullified.

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7.3 Termination by Parent. This Agreement may be terminated by Parent at any time before the Effective Time:

(a) prior to the Requisite Company Vote, if the Company Board or the Special Committee withdraws, modifies or amends the Company Board Recommendation (or the Special Committee recommends that the Company Board take any such action) in any manner adverse to Parent or the Company Board or the Special Committee publicly proposes to do so;

(b) prior to the Requisite Company Vote, if (i) the Company Board or the Special Committee approves, endorses or recommends a Takeover Proposal or publicly proposes to do so or approves, recommends or allows the Company to enter into a Contract relating to a Takeover Proposal (other than an Acceptable Confidentiality Agreement); (ii) a tender offer or exchange offer that if consummated would result in any Person(s) beneficially owning 20% or more of any class of equity securities of the Company then outstanding is commenced and the Company Board or Special Committee recommends in favor of, or within ten (10) Business Days after the commencement thereof the Company Board fails to recommend against, such tender offer or exchange offer by its shareholders or the Company Board or the Special Committee publicly proposes to do so; or (iii) if a Takeover Proposal (including a material amendment to the terms of an existing Takeover Proposal, other than as contemplated by the foregoing clause (ii)) shall have been publicly announced or disclosed, and the Company Board or Special Committee fails to reaffirm the Company Board Recommendation upon the written request of Parent within five (5) Business Days after such written request; or

(c) if the Company breaches any of its representations, warranties, covenants or agreements contained in this Agreement, which breach (i) would give rise to the failure of a condition to Closing set forth in Section 6.2(a) or Section 6.2(b) and (ii) (A) is not capable of being cured prior to the Termination Date or (B) has not been cured by the Company within twenty (20) Business Days after the Company's receipt of written notice of such breach from Parent, but only so long as neither Parent nor Merger Sub are then in breach of their respective representations, warranties, covenants or agreements contained in this Agreement, which breach would give rise to the failure of a condition to Closing set forth in Section 6.3(a) or Section 6.3(b).

7.4 Termination by the Company. This Agreement may be terminated by the Company (only pursuant to a resolution adopted by the Special Committee) at any time before the Effective Time:

(a) pursuant to and in accordance with the terms and conditions of Section 5.4(e);

(b) if Parent or Merger Sub breaches any of their respective representations, warranties, covenants or agreements contained in this Agreement, which breach (i) would give rise to the failure of a condition to Closing set forth in Section 6.3(a) or Section 6.3(b) and (ii) (A) is not capable of being cured prior to the Termination Date or (B) has not been cured by Parent within twenty (20) Business Days after Parent's receipt of written notice of such breach from the Company, but only so long as the Company is not then in breach of its representations, warranties, covenants or agreements contained in this Agreement, which breach would give rise to the failure of a condition to Closing set forth in Section 6.2(a) or Section 6.2(b); or

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(c) if (i) all of the conditions to the Closing set forth in Section 6.1 and Section 6.2 have been satisfied or waived (other than any condition the failure of which to be satisfied is attributable to a breach by Parent or Merger Sub of their respective representations, warranties, covenants or agreements contained in this Agreement and other than conditions that, by their nature, are to be satisfied at the Closing and which were, at the time of termination, capable of being satisfied), (ii) the Company confirmed to Parent in writing that all conditions set forth in Section 6.3 have been satisfied (or that it is willing to waive (to the extent permitted by Law) any unsatisfied conditions set forth in Section 6.3) and that it stands and will stand ready, willing and able to consummate the Merger and (iii) Parent and Merger Sub have failed to consummate the Closing by the earlier of (x) the date that is five (5) Business Days after receipt of such confirmation by the Company and (y) the Termination Date.

7.5 Manner and Effect of Termination. Any party terminating this Agreement pursuant to any of Section 7.2, Section 7.3 or Section 7.4 shall give written notice of such termination to the other party in accordance with this Agreement, which written notice shall specify the provision or provisions hereof pursuant to which such termination is being effected. If this Agreement is terminated pursuant to this Article VII, it shall become void and of no further force and effect, with no Liability on the part of any party to this Agreement (or any Parent Related Party or Company Related Party) other than as provided in Section 7.6; provided, that notwithstanding anything to the contrary contained in this Agreement, (i) the provisions of Section 5.3(b), Section 5.10, Section 5.11, the final sentence of Section 5.12(b), this Section 7.5, Section 7.6, Article VIII, the Guarantee and the Confidentiality Agreement shall survive any termination of this Agreement and (ii) subject to Section 7.6(f), nothing herein shall relieve any party from liability for any Willful and Material Breach of this Agreement prior to the date of such termination, in which case the aggrieved party shall be entitled to all rights and remedies available at Law or in equity, except to the extent expressly provided in this Agreement, and in all events subject to Section 8.15(e).

7.6 Fees and Expenses Following Termination.

(a) Except as set forth in Section 5.12(b) or this Section 7.6, all Expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid in accordance with the provisions of Section 5.11.

(b) The Company shall pay, or cause to be paid, to Parent by wire transfer of immediately available funds an amount equal to the Company Termination Fee:

(i) if this Agreement is terminated by the Company pursuant to Section 7.4(a), in which case payment shall be made concurrently with such termination;

(ii) if this Agreement is terminated by Parent pursuant to Section 7.3(a) or Section 7.3(b) in which case payment shall be made within two (2) Business Days following such termination; or

(iii) if (A) a Takeover Proposal shall have been publicly made or publicly proposed to the Company or otherwise publicly announced (or, in the case of a termination pursuant to (x) Section 7.2(a) and Parent would have been entitled to terminate the Agreement pursuant to Section 7.3(a) or Section 7.3(b) or (y) Section 7.3(c), in each case, otherwise communicated to the Company), in each case following the date hereof and, (I) prior to the date of the Company Shareholders Meeting (in the case of a termination under Section 7.2(b)) and not subsequently withdrawn or (II) prior to the action or event giving rise to the termination of this Agreement (in the case of a termination under (x) Section 7.2(a) and Parent would have been entitled to terminate the Agreement pursuant to Section 7.3(a) or Section 7.3(b) or (y) Section 7.3(c)) and not subsequently withdrawn, (B) this Agreement is terminated by the Company or Parent pursuant to (x) Section 7.2(b), (y) Section 7.3(c), or (z) Section 7.2(a) and Parent would have been entitled to terminate the Agreement pursuant to Section 7.3(a) or Section 7.3(b), in each case as applicable, and (C) within twelve months following the date of such termination, the Company or any of its Subsidiaries consummates a Takeover Proposal or enters into a Contract providing for the implementation of any Takeover Proposal, in which case payment shall be made within five (5) Business Days following the earlier of the date on which the Company or any of its Subsidiaries consummates such Takeover Proposal and the date on which the Company or any of its Subsidiaries enters into a Contract therefor. For purposes of the foregoing clause (C) only, references in the definition of the term "Takeover Proposal" to the figure "20%" shall be deemed to be replaced by "more than 50%."

(c) For purposes of this Agreement, the "**Company Termination Fee**" means an amount in cash equal to \$2,229,000.

(d) Parent shall pay to the Company by wire transfer of immediately available funds an amount equal to \$2,229,000 (such amount, the "**Parent Termination Fee**") within two (2) Business Days after termination if this Agreement is terminated by the Company pursuant to Section 7.4(b) or Section 7.4(c) or if this Agreement is terminated by the Company or Parent pursuant to Section 7.2(a) and the Company would have been entitled to terminate this Agreement pursuant to Section 7.4(b) or Section 7.4(c) but for (A) such termination pursuant to Section 7.2(a) or (B) the fact that the expiration of the two-Business Day period described in Section 1.2 occurs after the Termination Date.

(e) If the Company fails to pay the Company Termination Fee, or Parent fails to pay the Parent Termination Fee, as applicable, in each case as required pursuant to this Section 7.6 when due, such fee shall accrue interest for the period commencing on the date such fee became past due, at a rate equal to the rate of interest publicly announced by JPMorgan Chase Bank, N.A., in the City of New York from time to time during such period, as such bank's Prime Lending Rate. In addition, if the Company or Parent, as applicable, fails to pay such fee when due, the Company or Parent, as applicable, shall also pay to the other party all of such party's costs and expenses (including reasonable attorneys' fees) in connection with all actions to collect such fee.

(f) Parent and the Company acknowledge that (i) the fees and other provisions of this Section 7.6 are an integral part of the transactions contemplated by this Agreement, (ii) without these agreements, Parent and the Company would not enter into this Agreement and (iii) any amount payable pursuant to this Section 7.6 does not constitute a penalty. Notwithstanding anything to the contrary in this Agreement, (A) Parent's right to receive the Company Termination Fee pursuant to this Section 7.6 shall be the sole and exclusive remedy (whether at law, in equity, in contract, tort or otherwise) of Parent and its Affiliates, as applicable, against the Company Related Parties for (x) any Damages suffered as a result of the failure of the Merger to be consummated and (y) any other Damages suffered as a result of or under this Agreement and the transactions contemplated by this Agreement, and upon payment of the Company Termination Fee in accordance with this Section 7.6, none of the Company Related Parties shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated by this Agreement; provided, that the foregoing shall not impair the rights of Parent, if any, to obtain injunctive relief pursuant to Section 8.15 prior to any termination of this Agreement and (B) the Company's right to receive the Parent Termination Fee pursuant to this Section 7.6 shall be the sole and exclusive remedy (whether at law, in equity, in contract, tort or otherwise) of the Company and its Affiliates, as applicable, against the Parent Related Parties for (i) any Damages suffered as a result of the failure of the Merger to be consummated and (ii) any other Damages suffered as a result of or under this Agreement and the transactions contemplated hereby, and upon payment of the Parent Termination Fee in accordance with this Section 7.6, none of the Parent Related Parties shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby; provided, that (1) the foregoing shall not impair the rights of the Company, if any, to obtain injunctive relief pursuant to Section 8.15 prior to any termination of this Agreement and (2) Parent and Merger Sub shall remain liable hereunder and the Guarantors shall remain liable under the Guarantee for any expense reimbursement or indemnification obligations of Parent or Merger Sub pursuant to Section 5.11 and Section 5.12(b) and the applicable parties to the Confidentiality Agreement shall remain liable thereunder. Notwithstanding anything in this Agreement or the Financing Commitments to the contrary, the Financing Sources shall have no liability or obligation to the Company or any of its Subsidiaries, Affiliates or Representatives relating to or arising out of this Agreement, the Financing Commitments or the Financing.

## ARTICLE VIII

### MISCELLANEOUS

8.1 Certain Definitions. For purposes of this Agreement:

(a) "*Acceptable Confidentiality Agreement*" means a confidentiality agreement between the Company and a Person making a Takeover



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Proposal that is either (i) in effect as of the execution and delivery of this Agreement, or (ii) executed, delivered and effective after the execution and delivery of this Agreement, in either case containing provisions substantially similar in the aggregate to and not less restrictive in any material respect than the Confidentiality Agreement (it being understood that such agreement need not contain any “standstill” or similar provisions); provided, however, that such confidentiality agreement shall not prohibit the Company from complying with Section 5.4.

(b) “**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by or is under common control with, such first Person; provided, that, (i) neither any Person that owns equity securities of the Company nor any Affiliate or portfolio company of such Person shall be deemed to be an Affiliate of the Company solely by virtue of such Person’s ownership of equity securities of the Company and (ii) for purposes of this Agreement, the Company and its Subsidiaries shall not be deemed to be Affiliates of Parent and Merger Sub prior to the Closing. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), when used with respect to any Person, means the power to direct or cause the direction of the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

(c) “**Applicable Exchange**” means the NASDAQ Global Select Market.

(d) “**Business Day**” means any day other than Saturday, Sunday or a day on which commercial banks in New York, New York are authorized or required by Law to close, and shall consist of the time period from 12:01 a.m. through 12:00 midnight New York time.

(e) “**Code**” means the Internal Revenue Code of 1986, as amended.

(f) “**Common Stock**” means the common stock, par value \$0.01 per share, of the Company.

(g) “**Company Equity Plan**” means the Stein Mart, Inc. 2018 Omnibus Incentive Plan, as amended and/or amended and restated from time to time.

(h) “**Company Material Adverse Effect**” means any fact, circumstance, change, event, development, occurrence or effect that has, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, properties, assets or results of operations, financial condition of the Company and its Subsidiaries, taken as a whole; provided, that the term “Company Material Adverse Effect” shall not include any such effect relating to or arising from (i) any national, international or any foreign or domestic regional economic, financial, social or political conditions (including changes therein), including the results of any primary or general elections, (ii) changes in any financial,

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debt, credit, capital or banking markets or conditions (including any disruption thereof), (iii) changes in interest, currency or exchange rates or the price of any commodity, security or market index, (iv) changes in legal or regulatory conditions, including changes or proposed changes in Law, GAAP or other accounting principles or requirements, or standards, interpretations or enforcement thereof, (v) changes in the Company's and its Subsidiaries' industries in general or seasonal fluctuations in the business of the Company or any of its Subsidiaries, (vi) any change in the market price or trading volume of any securities or indebtedness of the Company or any of its Subsidiaries, or the change in, or failure of the Company to meet, or the publication of any report regarding, any internal or public projections, forecasts, budgets or estimates of or relating to the Company or any of its Subsidiaries for any period, including with respect to revenue, earnings, cash flow or cash position (it being understood that the underlying causes of any of the foregoing may, if they are not otherwise excluded from the definition of Company Material Adverse Effect, be taken into account in determining whether a Company Material Adverse Effect has occurred), (vii) the occurrence, escalation, outbreak or worsening of any hostilities, war, police action, acts of terrorism or military conflicts, whether or not pursuant to the declaration of an emergency or war, (viii) the existence, occurrence or continuation of any force majeure events, including any earthquakes, floods, hurricanes, tropical storms, fires or other natural disasters or any national, international or regional calamity, (ix) compliance by the Company and its Subsidiaries with the terms of this Agreement, including the failure to take any action restricted by this Agreement, or any actions taken to the extent required by this Agreement (other than the conduct of the operations of the Company and its Subsidiaries in the ordinary course consistent with past practice pursuant to the first sentence of [Section 5.1](#)), (x) any actions taken, or not taken, with the written consent, waiver or at the written request of Parent, (xi) any matters solely to the extent of the facts, circumstances, changes, events, developments, occurrences or effects disclosed in [Section 3.14](#) of the Company Disclosure Letter, (xii) the public announcement of this Agreement, the transactions contemplated by this Agreement and the identities of Parent, Merger Sub and their respective Affiliates, (xiii) the execution, announcement, performance or existence of this Agreement and the Voting Agreement and (xiv) any Legal Actions threatened, made or brought by any current or former shareholder(s) of the Company against the Company, any of its executive officers or other employees or any member of the Company Board, in each case arising from or relating to this Agreement, the Voting Agreement or the transactions contemplated by this Agreement or the Voting Agreement, except, in the case of clauses (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii), to the extent any such effect has a disproportionate adverse impact on the Company and its Subsidiaries, taken as a whole, relative to other similarly situated companies in the principal industries in which the Company and its Subsidiaries operate. Notwithstanding the foregoing, a "Company Material Adverse Effect" shall be deemed to have occurred if, at the time when the Closing is to occur pursuant to Section 1.2, the Company's Excess Availability (as defined in the Credit Agreement) is less than thirty-five percent (35%) of the Loan Cap (as defined in the Credit Agreement).

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(i) “**Company Related Parties**” means (i) the Company and its Subsidiaries, (ii) the former, current and future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, shareholders or assignees of the Company or its Subsidiaries or (iii) any future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, shareholders, assignees of any of the foregoing.

(j) “**Company Stock Purchase Plan**” means Company Employee Stock Purchase Plan.

(k) “**Contract**” means any contract, agreement, indenture, note, bond, loan, lease, sublease, conditional sales contract, mortgage, license, sublicense, obligation, promise, undertaking, commitment or other binding arrangement (in each case, whether written or oral).

(l) “**Credit Agreement**” means the Second Amended and Restated Credit Agreement entered into as of February 3, 2015, among the Company, and Stein Mart Buying Corp, the Guarantors from time to time party thereto, each lender from time to time party thereto, and Wells Fargo Bank, National Association, as the Administrative Agent, Collateral Agent, Swing Line Lender and LC Issuer.

(m) “**Enforceability Exceptions**” means (i) any applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws of general applicability affecting creditors’ rights generally and (ii) general principles of equity.

(n) “**Financing Sources**” means any Person, other than Parent, Rollover Investors or any of their respective Affiliates, that commits to provide or otherwise enter into agreements in connection with the Debt Financing proposed to be provided to Parent or any of its Subsidiaries (including Merger Sub) in connection with the transactions contemplated hereby, including the Lenders, agents, bookrunners and arrangers of any Financing, together with their respective former, current and future holders of any equity, partnership or limited liability company interests, officers, employees, directors, consultants, Affiliates (including underwriters, placement agents and initial purchasers), affiliated (or commonly advised) funds, partners (general or limited), shareholders, managers, members, controlling parties, attorneys, agents advisors, accountants, agents and representatives and any successors or assigns of the foregoing, including any successors or assigns via joinder agreements or credit agreements relating thereto.

(o) “**Governmental Authority**” means: (i) any federal, state, local, municipal, foreign or international government or governmental authority, quasi-governmental entity of any kind, regulatory or administrative agency, governmental commission, department, board, bureau, agency or instrumentality, court, tribunal, arbitrator or arbitral body (public or private) or any body exercising or entitled to

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exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, (ii) any self-regulatory organization (including any stock exchange) or (iii) any political subdivision of any of the foregoing.

(p) “**Hazardous Substances**” means: (i) any substance that is listed, classified or regulated as hazardous, toxic or a pollutant or contaminant, or words of similar import or regulatory effect, under any Environmental Law or (ii) any petroleum product or by-product, asbestos-containing material, lead-containing paint or plumbing, polychlorinated biphenyls, radioactive material, per- or polyfluoroalkyl substances, or radon.

(q) “**Intellectual Property**” means all rights in and to intellectual property of any type or nature throughout the world, including: (i) trademarks, service marks, brand names, Internet domain names, logos, trade dress, trade names, and other indicia of origin, all applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby; (ii) proprietary works of authorship, including works protected by copyright and proprietary industrial designs; (iii) patents and applications therefor, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, extensions, reexaminations and reissues; (iv) proprietary data, confidential information, trade secrets and know-how; and (v) copyrights, whether registered or unregistered.

(r) “**Knowledge**” means, when used with respect to Parent or the Company, the actual knowledge, after due inquiry, of the Persons set forth in Section 8.1(s) of the Parent Disclosure Letter or Company Disclosure Letter, respectively.

(s) “**Law**” means any law, statute, ordinance, code, regulation, rule, treaty, convention or other requirement of, or promulgated or enacted by, any Governmental Authority, and any Orders.

(t) “**Liens**” means any mortgages, liens, pledges, security interests, claims, options, rights of first offer or refusal, charges or other encumbrances in respect of any property or asset.

(u) “**Orders**” means any orders, decisions, judgments, writs, injunctions, decrees, awards or other determination of any Governmental Authority.

(v) “**Organizational Documents**” means the certificate of incorporation and bylaws (or the equivalent organizational documents) executed, adopted or filed in connection with the creation, formation or organization of a Person, including any amendments thereto.

(w) “**Owned Intellectual Property**” means all Intellectual Property owned by either the Company or any of its Subsidiaries.

(x) “**Parent Material Adverse Effect**” means any event, circumstance, development, change or effect that, individually or in the aggregate with

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all other events, circumstances, developments, changes and effects, would prevent or materially impair or delay the consummation of the Merger and the other transactions contemplated hereby or prevent or materially impair or delay the ability of Parent or Merger Sub to perform its obligations hereunder.

(y) “**Parent Related Parties**” means (i) Parent, Merger Sub, the Guarantors, the Rollover Investors and the Financing Sources, (ii) the former, current and future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, shareholders or assignees of Parent, Merger Sub, the Guarantors, the Rollover Investors or the Financing Sources or (iii) any future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, shareholders, assignees of any of the foregoing.

(z) “**Permitted Lien**” shall mean (i) any Lien for Taxes or other governmental charges which are not yet due or which are being contested in good faith by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP, (ii) Liens securing indebtedness or Liabilities that are reflected in the Company SEC Reports filed on or prior to the date hereof, (iii) such non-monetary Liens or other imperfections of title, if any, that are not materially adverse to the Company and its Subsidiaries, including (A) easements whether or not shown by the public records, overlaps, encroachments and any matters not of record which would be disclosed by an accurate survey or a personal inspection of the property, (B) any supplemental Taxes or assessments not shown by the public records and (C) title to any portion of the premises lying within the right of way or boundary of any public road or private road, (iv) rights of parties in possession, (v) Liens imposed or promulgated by Laws with respect to real property and improvements, including zoning regulations, (vi) Liens disclosed on existing title insurance policies, title reports or existing surveys which have (together with all title exception documents) been delivered to Parent, (vii) materialmen’s, mechanics’, carriers’, workmen’s, repairmen’s and similar Liens incurred in the ordinary course of business for amounts not yet due or which are being contested in good faith and for which adequate accruals or reserves have been established, in each case, to the extent required by GAAP, (viii) in the case of leased or licensed real property, any Lien to which the fee or any other superior interest in the leased or licensed premises is subject, and any rights contained in the applicable lease, license or other occupancy agreement, (ix) licenses or other grants of rights to use of Intellectual Property and (x) other Liens that are not material to the Company or any of its Subsidiaries.

(aa) “**Person**” means any natural person, corporation, company, partnership, association, limited liability company, limited partnership, limited liability partnership, trust or other legal entity or organization, including a Governmental Authority.

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(bb) “**Representatives**” means, when used with respect to Parent or the Company, the directors, officers, employees, consultants, accountants, legal counsel, investment bankers or other financial advisors, agents and other representatives of Parent or the Company, as applicable, and their respective Affiliates; provided, however, that, for purposes of this Agreement, neither the Rollover Investor nor his family members or Affiliates will be deemed Representatives of the Company or any its Subsidiaries; provided, further, that, for purposes of this Agreement, no Representative of Parent or any of its Affiliates shall be deemed to be a Representative of the Company prior to the Closing.

(cc) “**Requisite Company Vote**” means adoption of this Agreement by the affirmative vote of holders of a majority of the outstanding shares of Common Stock entitled to vote thereon as of the record date for the Company Shareholders Meeting.

(dd) “**Rights**” means any rights, title, interest or benefit of whatever kind or nature.

(ee) “**Rollover Investor**” means Stein Family Holdco LLC.

(ff) “**Solvent**” means, when used with respect to any Person, that, on a consolidated basis as of any date of determination, (i) the amount of the present fair saleable value of the assets of such Person will, as of such date, exceed the amount of all Liabilities of such Person, as of such date, as such amounts are determined in accordance with applicable Law governing determinations of the insolvency of debtors, (ii) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the Liabilities of such Person on its debts as such debts become absolute and matured, (iii) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business and (iv) such Person will be able to pay its debts as they mature. For purposes of this definition, (A) “debt” means liability on a “claim” and (B) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured. The amount of Liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can reasonably be expected to become an actual or matured Liability.

(gg) “**Subsidiary**” means, when used with respect to any Person, any other Person that such Person directly or indirectly owns or has the power to vote or control more than 50% of the voting stock or other interests the holders of which are generally entitled to vote for the election of the board of directors or other applicable governing body of such other Person.

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(hh) “**Superior Proposal**” means a bona fide written Takeover Proposal (with all percentages in the definition of Takeover Proposal changed to 50%), not resulting from a material breach of Section 5.4, which the Special Committee determines in good faith, after consultation with the Company’s outside legal counsel and financial advisors, (i) is on terms and conditions more favorable, from a financial point of view, to the shareholders of the Company (excluding the Rollover Investors) than those contemplated by this Agreement and (ii) is reasonably capable of being completed on a timely basis, taking into account all material financial, regulatory, legal and other aspects of such proposal (including the identity of the counterparty).

(ii) “**Takeover Proposal**” means, other than the transactions contemplated by this Agreement, any bona fide written proposal or offer relating to (i) a merger, consolidation, spin-off, share exchange (including a split-off) or business combination involving the Company or any of its Subsidiaries representing 20% or more of the assets of the Company and its Subsidiaries, taken as a whole, (ii) a sale, lease, exchange, mortgage, transfer or other disposition, in a single transaction or series of related transactions, of 20% or more of the assets of the Company and its Subsidiaries, taken as a whole, (iii) a purchase or sale of shares of capital stock or other securities, in a single transaction or series of related transactions, representing 20% or more of the voting power of the capital stock of the Company, including by way of a tender offer or exchange offer, (iv) a reorganization, recapitalization, liquidation or dissolution involving 20% or more of the assets of the Company and its Subsidiaries, taken as a whole or (v) any other transaction having a similar effect to those described in clauses (i) through (iv).

(jj) “**Tax Returns**” means any and all reports, returns, declarations, claims for refund, elections, disclosures, estimates, information reports or returns or statements filed or required to be filed with a Governmental Authority in connection with Taxes, including any schedule or attachment thereto or amendment thereof.

(kk) “**Taxes**” means all federal, state, provincial, county, local, municipal, foreign and other taxes, assessments, duties and similar charges and impositions in the nature of taxes, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, alternative or add on minimum, transfer, franchise, withholding, payroll, recapture, escheat and unclaimed property, employment, capital stock, excise, stamp, severance, premium, environmental, profits and property taxes, as well as public imposts, fees and social security charges (including health, unemployment and pension insurance), together with all interest, penalties and additions imposed with respect to such amounts, imposed by any Governmental Authority.

(ll) “**Willful and Material Breach**” means a willful and deliberate act or a willful and deliberate failure to act (including a failure to cure), in each case that is the consequence of an act or omission by a party that knows that the taking of such act or failure to take such act would or would reasonably be expected to cause a material breach of this Agreement (regardless of whether breaching was the object of the act or failure to act), it being understood that such term shall include, in any event, the failure to consummate the Merger when required to do so by this Agreement.

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8.2 Interpretation. Unless the express context otherwise requires:

- (a) the words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (b) terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa;
- (c) the terms “Dollars” and “\$” mean U.S. dollars;
- (d) references herein to a specific Section, Subsection, Recital, Schedule or Exhibit shall refer, respectively, to Sections, Subsections, Recitals, Schedules or Exhibits of this Agreement;
- (e) wherever the word “include,” “includes” or “including” is used in this Agreement, it shall be deemed to be followed by the words “without limitation”;
- (f) references herein to any gender shall include each other gender;
- (g) references herein to any Person shall include such Person’s heirs, executors, personal representatives, administrators, successors and assigns; provided, that nothing contained in this Section 8.2 is intended to authorize any assignment or transfer not otherwise permitted by this Agreement;
- (h) references herein to a Person in a particular capacity or capacities shall exclude such Person in any other capacity;
- (i) with respect to the determination of any period of time, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”;
- (j) the word “or” shall be disjunctive but not exclusive;
- (k) references herein to any Law shall be deemed to refer to such Law as amended, modified, codified, reenacted, supplemented or superseded in whole or in part and in effect from time to time, and also to all rules and regulations promulgated thereunder;
- (l) references herein to any Contract mean such Contract as amended, supplemented or modified (including any waiver thereto) in accordance with the terms thereof;
- (m) the headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the parties to this Agreement;



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(n) with regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence;

(o) if the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action shall be extended to the next succeeding Business Day;

(p) references herein to “as of the date hereof,” “as of the date of this Agreement” or words of similar import shall be deemed to mean “as of immediately prior to the execution and delivery of this Agreement”; and

(q) The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of such parties. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with Section 8.9 without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties. Consequently, Persons other than the parties hereto may not rely on the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

8.3 No Survival. None of the representations and warranties contained in this Agreement or in any instrument delivered under this Agreement (other than the Guarantee in accordance with its terms) shall survive the Effective Time. This Section 8.3 shall not limit any covenant or agreement of the parties to this Agreement which, by its terms, contemplates performance after the Effective Time, which, in each case, shall survive in accordance with its terms and conditions.

8.4 Governing Law.

(a) This Agreement, and any dispute, claim, legal action, suit, proceeding or controversy arising out of or relating hereto, shall be governed by, and construed in accordance with, the Laws of the State of Florida, without regard to conflict of law principles thereof.

(b) Notwithstanding anything herein to the contrary, the parties hereto agree that any dispute, claim, cross-claim, third-party claim, legal action, suit, proceeding or controversy of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, involving or against a Financing Source arising out of or relating hereto, including but not limited to any dispute arising out of or relating in any way to the Financing or the Financing Commitments or the performance thereof, or any of the transactions contemplated by this Agreement, shall be governed by, and construed in accordance with, the Laws of the State of New York, without regard to conflict of law principles thereof.

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8.5 Submission to Jurisdiction: Service.

(a) Each party to this Agreement (i) irrevocably and unconditionally submits to the personal jurisdiction of the federal and state courts of the United States of America located in the State of Florida, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (iii) agrees that any actions or proceedings arising in connection with this Agreement or the transactions contemplated by this Agreement against any Company Related Party or any Parent Related Party shall be brought, tried and determined only in the state and federal courts in Duval County, State of Florida (or, only if the state and federal courts in Duval County, State of Florida decline to accept jurisdiction over a particular matter, any state or federal court within the State of Florida) (the “*Chosen Courts*”), (iv) waives any claim of improper venue or any claim that those courts are an inconvenient forum and (v) agrees that it will not bring any action relating to this Agreement or the transactions contemplated by this Agreement against any Company Related Party or any Parent Related Party in any court other than the Chosen Courts, except to the extent that all such courts shall lawfully decline to exercise such jurisdiction and except that any party may seek to enforce or implement any Order obtained in any such courts or in any other court of competent jurisdiction. The parties to this Agreement agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 8.7 or in such other manner as may be permitted by applicable Law, shall be valid and sufficient service thereof.

(b) Notwithstanding anything to the contrary contained herein, each party to this Agreement acknowledges and irrevocably agrees (i) that any action, suit, claim or proceeding, cause of action, cross-claim or third-party claim of any kind of description, whether in law or in equity, whether in contract or in tort or otherwise, involving or against any of the Lenders or other Financing Sources or any Affiliate thereof arising out of or relating to this Agreement or any Debt Commitment Letter or the performance thereunder shall be subject to the exclusive jurisdiction of any state or federal court sitting in the Borough of Manhattan in the City and State of New York, and any appellate court from any thereof (it being understood and agreed that, notwithstanding the selection of such exclusive jurisdiction, any interpretation of “Company Material Adverse Effect” or any similar term shall be solely governed by the Laws of the State of Florida), (ii) not to bring or permit any of their Affiliates to bring or support anyone else in bringing any such action or proceeding in any other court, (iii) to waive any right to trial by jury in respect of any such action or proceeding and (iv) that the Lenders and other Financing Sources and their respective Affiliates are express third-party beneficiaries of this Section 8.5(b). For clarity, in no event shall the provisions of this Section 8.5(b) apply to Parent, Rollover Investors or any of their respective Affiliates, regardless of whether any such Person is a Lender, Financing Source or an Affiliate thereof.

8.6 WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE,

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EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE FINANCING COMMITMENTS OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY LITIGATION AGAINST ANY FINANCING SOURCES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE FINANCING COMMITMENTS. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED AND UNDERSTANDS THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.6.

8.7 Notices. All notices and other communications hereunder shall be in writing and shall be addressed as follows (or at such other address for a party as shall be specified by like notice):

If to Parent or Merger Sub, to:

Kingswood Capital Management, L.P.  
11777 San Vicente Blvd., Suite 650  
Los Angeles, CA 90049  
Attention: Alex Wolf  
Email: awolf@kingswood-capital.com

with a copy (which shall not constitute notice) to:

Goodwin Procter LLP  
100 Northern Avenue  
Boston, Massachusetts 02210  
Attention: John Haggerty  
Facsimile: 617.649.1411  
Email: JHaggerty@goodwinlaw.com

If to the Company, to:

Stein Mart, Inc.  
1200 Riverplace Blvd.,  
Jacksonville, Florida 32207  
Attention: D. Hunt Hawkins  
Facsimile: 904.858.2636  
Email: hhawkins@steinmart.com

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with a copy (which shall not constitute notice) to:

Foley & Lardner LLP  
One Independent Drive, Suite 1300  
Jacksonville, FL 32202  
Attention: Gardner Davis  
John Wolfel  
Facsimile: 904.359.8700  
Email: gdavis@foley.com  
jwolfel@foley.com

All such notices or communications shall be deemed to have been delivered and received (a) if delivered in person, on the day of such delivery, (b) if by facsimile or electronic mail, on the day on which such facsimile or electronic mail was sent; provided, that receipt is personally confirmed by telephone, (c) if by certified or registered mail (return receipt requested), on the seventh Business Day after the mailing thereof or (d) if by reputable overnight delivery service, on the second Business Day after the sending thereof.

8.8 Amendment. This Agreement may be amended by the parties to this Agreement at any time before the Effective Time, whether before or after obtaining the Requisite Company Vote, so long as (a) no amendment that requires further shareholder approval under applicable Law after shareholder approval hereof shall be made without such required further approval and (b) such amendment has been duly approved by the board of directors or manager, as applicable, of each of Merger Sub, Parent and the Company (only pursuant to a resolution adopted by the Special Committee). This Agreement may not be amended except by an instrument in writing signed by each of the parties to this Agreement. Notwithstanding anything to the contrary in this Section 8.8, any amendments, modifications supplements to or waivers of any FS Provisions (or any other provision or definition of this Agreement to the extent an amendment or waiver of such provision or definition, as applicable, would modify the substance of any FS Provision) in a manner adverse to the Financing Sources shall require the prior written consent of the Financing Sources.

8.9 Extension; Waiver. At any time before the Effective Time, Parent and Merger Sub, on the one hand, and the Company (only pursuant to a resolution adopted by the Special Committee), on the other hand, may (a) extend the time for the performance of any of the obligations of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained in this Agreement or in any document delivered under this Agreement or (c) subject to applicable Law, waive compliance with any of the covenants or conditions contained in this Agreement; provided that, notwithstanding anything to the contrary in this Section 8.9, any waivers of any FS Provisions (or any other provision of this agreement to the extent a waiver of such provision would modify the substance of any FS Provision) in a manner adverse to the Financing Sources shall require the prior written consent of the Financing Sources. Any agreement on the part of a party to any extension or waiver shall be valid only if set forth in an instrument in writing signed by such party. The failure of any party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege under this Agreement.

8.10 Entire Agreement. This Agreement (including the exhibits and schedules hereto), the Company Disclosure Letter, the Parent Disclosure Letter, the Guarantee, the Rollover Letters,

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the Voting Agreement and the Confidentiality Agreement (collectively, the “*Transaction Documents*”) contain all of the terms, conditions and representations and warranties agreed to by the parties relating to the subject matter of this Agreement and supersede all prior or contemporaneous agreements, negotiations, correspondence, undertakings, understandings, representations and warranties, both written and oral, among the parties to this Agreement with respect to the subject matter of this Agreement. Without limiting the generality of Section 4.14, no representation, warranty, inducement, promise, understanding or condition not set forth in this Agreement (including the exhibits and schedules hereto), the Company Disclosure Letter, the Parent Disclosure Letter, the Guarantee, the Rollover Letters, the Voting Agreement and the Confidentiality Agreement has been made or relied upon by any of the parties to this Agreement.

8.11 No Third-Party Beneficiaries. Except (a) as provided in Section 5.7, (b) for the provisions of Article II (which, from and after the Effective Time, shall be for the benefit of holders of Common Stock, Company Options and Company Stock Awards as of the Effective Time) and (c) for the provisions of the last sentence of Section 5.12(b), which shall be for the benefit of the Company, its Affiliates and their respective Representatives, Parent and the Company hereby agree that their respective representations, warranties, covenants and agreements set forth herein are solely for the benefit of the other party hereto, in accordance with and subject to the terms of this Agreement, and this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein, except that the Financing Sources are made express third party beneficiaries to Section 7.6(f), Section 8.4(b), Section 8.5(b), Section 8.6, Section 8.8, Section 8.9, this Section 8.11, Section 8.14, Section 8.15 and Section 8.18 (collectively, the “*FS Provisions*”). The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with Section 8.9 without notice or liability to any other Person. The representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the Knowledge of any of the parties hereto. Accordingly, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

8.12 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions of this Agreement. If any provision of this Agreement, or the application of that provision to any Person or any circumstance, is invalid or unenforceable, then (a) a suitable and equitable provision shall be substituted for that provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of the invalid or unenforceable provision and (b) the remainder of this Agreement and the application of that provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of that provision, or the application of that provision, in any other jurisdiction. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a reasonably acceptable manner so that the transactions contemplated hereby may be consummated as originally contemplated to the fullest extent possible.

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8.13 Rules of Construction. The parties have participated jointly in negotiating and drafting this Agreement. If an ambiguity or a 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 provision of this Agreement. Subject to and without limiting the introductory language to Article III and Article IV, each party to this Agreement has or may have set forth information in its respective disclosure letter in a section of such disclosure letter that corresponds to the section of this Agreement to which it relates. The fact that any item of information is disclosed in a disclosure letter to this Agreement shall not constitute an admission by such party that such item is material, that such item has had or would have a Company Material Adverse Effect or Parent Material Adverse Effect, as the case may be, or that the disclosure of such be construed to mean that such information is required to be disclosed by this Agreement.

8.14 Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their permitted successors and assigns. No party to this Agreement may assign or delegate, by operation of law or otherwise, all or any portion of its rights or liabilities under this Agreement without the prior written consent of the other parties to this Agreement, which any such party may withhold in its absolute discretion; and any purported assignment without such prior written consents shall be void; provided that, notwithstanding anything contained in this Agreement to the contrary, Parent and Merger Sub may assign this Agreement to any Financing Source (so long as any such assignment does not relieve Parent or Merger Sub of its respective obligations hereunder) under terms of the Financing solely for the purpose of creating a security interest herein or otherwise assigning collateral with respect to the Financing; and provided, further, that the Parent may assign its rights and liabilities under this Agreement to any direct or indirect wholly-owned subsidiary.

8.15 Specific Performance.

(a) The parties to this Agreement agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties to this Agreement shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Chosen Courts, this being in addition to any other remedy at law or in equity, and the parties to this Agreement hereby waive any requirement for the posting of any bond or similar collateral in connection therewith. The parties acknowledge and agree that each party hereto shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity. Each party hereto agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that (a) the other party has an adequate remedy at law or (b) an award of specific performance is not an appropriate remedy for any reason at law or equity.

(b) Notwithstanding anything to the contrary set forth in this Agreement, the parties hereto agree that the right of the Company to obtain an

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injunction, specific performance or other equitable relief in each case to cause Parent and Merger Sub to close the Merger or the Company's ability, as a third-party beneficiary, to cause the Rollover Investment to be funded pursuant to the Rollover Letters shall be subject to the requirements that:

- (i) all of the conditions set forth in Section 6.1 and Section 6.2 would have been satisfied if the Closing were to have occurred at the date Closing is required to occur pursuant to Section 1.2 (other than those conditions that by their terms are to be satisfied by actions taken at the Closing, each of which shall be capable of being satisfied at the Closing, or the failure of which to be satisfied is attributable primarily to a breach by Parent or Merger Sub of their respective representations, warranties, covenants or agreements contained in this Agreement);
- (ii) the Debt Financing has been funded or will be funded at the date the Closing is required to have occurred pursuant to Section 1.2 upon delivery of a drawdown notice by Parent and/or notice from Parent that the Rollover Investment will be funded at such date;
- (iii) Parent fails to complete the Closing in accordance with Section 1.2; and
- (iv) the Company has irrevocably confirmed to Parent in writing that (A) all of the conditions in Section 6.1 and Section 6.3 have been satisfied or that it is willing to waive any such open conditions, and (B) if specific performance is granted and if the Financing and the Rollover Investment were funded, it would take such actions that are required of it by this Agreement to cause the Closing to occur.

In no event will the Company be entitled to enforce or seek to enforce specifically Parent's obligation or the Company's ability, as a third-party beneficiary, to cause the Rollover Investment to be funded or to complete the Merger if the Debt Financing has not been funded (or will not be funded at the Closing if the Rollover Investment is funded at the Closing). In no event shall the Company, any Company Related Party or any of their respective Affiliates or Representatives be entitled to seek the remedy of specific performance of this Agreement against the Financing Sources, solely in their respective capacities as lenders or arrangers in connection with the Debt Financing.

(c) Notwithstanding anything in this Agreement to the contrary, while the Company may be entitled to (i) specific performance, subject in all respects to this Section 8.15, and (ii) payment of the Parent Termination Fee, if, as and when payable pursuant to Section 7.6(d), under no circumstances shall the Company, directly or indirectly, be permitted or entitled to receive (A) both a grant of specific performance or other equitable relief pursuant to which the Merger is actually consummated and the aggregate Merger Consideration is actually received, on the one hand, and payment of all or a portion of the Parent Termination Fee or other monetary damages hereunder, on the other hand, or (B) both payment of the Parent Termination Fee, on the one hand, and payment of other monetary damages, on the other hand.

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(d) None of the Financing Sources will have any liability to the Company, the Company Related Parties or any of their respective Affiliates relating to or arising out of this Agreement, the Financing or otherwise, whether at law or equity, in contract, in tort or otherwise, and neither the Company, the Company Related Parties or any of their respective Affiliates will have any rights or claims against any of the Financing Sources hereunder or thereunder.

(e) Notwithstanding anything in this Agreement to the contrary, the maximum aggregate liability of Parent and Merger Sub (and their Affiliates) for Damages or other monetary remedies in connection with this Agreement or the transactions contemplated hereby, the termination of this Agreement the Financing Commitment and the Financing, the failure to consummate any of the transactions contemplated hereby or thereby or any claims or actions under applicable law arising out of any such breach, termination or failure shall be limited to an amount equal to the Parent Termination Fee in the aggregate, and in no event shall any Company Related Party seek or obtain, nor shall it permit any of its Representatives or any other Persons on its or their behalf to seek or obtain, any monetary recovery or monetary award or any monetary damages of any kind against the Parent Related Parties in excess of the Parent Termination Fee in the aggregate.

8.16 Counterparts: Effectiveness. This Agreement may be executed in any number of counterparts, as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. Facsimile signatures or signatures received as a pdf attachment to electronic mail shall be treated as original signatures for all purposes of this Agreement. This Agreement shall become effective when, and only when, each party hereto shall have received a counterpart signed by all of the other parties hereto.

8.17 Special Committee Approval. Notwithstanding anything to the contrary herein, no amendment or waiver of any provision of this Agreement under or with respect to this Agreement without first obtaining the approval of the Special Committee.

8.18 No Recourse.

(a) Notwithstanding anything herein or in the Financing Commitments to the contrary, (i) no Financing Source shall have any liability for any obligations or liabilities of the parties hereto, or any of their respective Subsidiaries, Affiliates or Representatives, or for any claim (whether in tort, contract or otherwise), based on, in respect of, or by reason of this Agreement, the Financing, the Financing Commitments or the transactions contemplated hereby or thereby or in respect of any oral representations made or alleged to be made in connection herewith or therewith and (ii) neither the Company nor its Subsidiaries, Affiliates or Representatives shall have any rights or claims (whether in tort, contract or otherwise) against any Financing Source based on, in respect of, by reason of, or in any way relating to this Agreement, the Financing, the Financing Commitments or the transactions contemplated hereby or thereby or in respect of any oral representations made or alleged to be made in connection herewith or therewith. Notwithstanding anything herein to the contrary, other than pursuant to the Financing Commitments with respect to Parent and/or



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Merger Sub, (i) in no event shall any party hereto, nor any of its Affiliates, and each of the parties hereto hereby agrees not to and to cause its Affiliates not to, (a) seek to enforce this Agreement against, make any claims for breach of this Agreement against, or seek to recover monetary damages from, any Financing Source or (b) seek to enforce the commitments against, make any claims for breach of any Debt Commitment Letter against, or seek to obtain any other damages of any kind from, or otherwise sue, the Financing Sources for any reason, including in connection with any Debt Commitment Letter. Nothing in this Section 8.18 shall in any way limit or qualify the liabilities of the Financing Sources and the other parties to the Financing (or the definitive documents entered into pursuant thereto) to each other thereunder or in connection therewith. No Financing Source shall be subject to any special, consequential, punitive or indirect damages or damages of a tortious nature.

(b) No Company Related Parties (other than (i) the Company, and (ii) to the extent set forth in the Voting Agreement and the Rollover Letter) and no Parent Related Parties (other than (i) Parent and Merger Sub, and (ii) the Guarantors to the extent set forth in the Guarantee or Equity Commitment Letter) shall have any liability for any obligations or liabilities of the parties to this Agreement or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, the transactions contemplated hereby or in respect of any oral representations made or alleged to be made in connection herewith; provided, however, that, for the avoidance of doubt, this Section 8.18(b) shall not apply to the Company, Parent or Merger Sub.

8.19 Breach of Rollover Investors Disregarded. Any breach or assertion of any breach of this Agreement by the Company or any of its Representatives that is attributable to or caused by the actions of or failure to act by Rollover Investors, including in connection with any representations or warranties made hereunder or any actions taken or failure to act, in each case in contravention hereof, shall be disregarded for all purposes under this Agreement.

*[Signature page follows]*

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties to this Agreement as of the date first written above.

PARENT:

Stratosphere Holdco, LLC

By: /s/ Alex Wolf

Name: Alex Wolf

Title: Managing Partner

MERGER SUB:

Stratosphere Merger Sub, Inc.

By: /s/ Alex Wolf

Name: Alex Wolf

Title: President

COMPANY:

Stein Mart, Inc.

By: /s/ D. Hunt Hawkins

Name: D. Hunt Hawkins

Title: Chief Executive Officer

**VOTING AGREEMENT**

This VOTING AGREEMENT (this “Agreement”), is dated as of January 30, 2020, by and among Stratosphere Holdco, LLC, a Delaware limited liability company (“*Parent*”), and the undersigned individuals and entities listed on Annex A (each, a “*Shareholder*” and collectively, the “*Shareholders*”).

WHEREAS, each Shareholder is the record and beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act, which meaning will apply for all purposes of this Agreement whenever the term “beneficial owner” or “beneficially own” is used) of the shares of Common Stock set forth opposite such Shareholder’s name on Annex A hereto (together with any New Shares (as defined below), with respect to such Shareholder, the “*Shares*”);

WHEREAS, concurrently with this Agreement, Parent, Stein Mart, Inc., a Florida corporation (the “*Company*”), and Stratosphere Merger Sub. Inc., a Florida corporation (“*Merger Sub*”), are entering into an Agreement and Plan of Merger, dated as of the date hereof (as it may be amended or supplemented pursuant to the terms thereof, the “*Merger Agreement*”), and as a condition and inducement to Parent and Merger Sub’s willingness to enter into the Merger Agreement and consummate the transactions contemplated thereby, including the Merger, Parent and each Shareholder are entering into this Agreement with respect to all Shares owned by such Shareholder;

WHEREAS, capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in the Merger Agreement; and

WHEREAS, each Shareholder acknowledges that Parent and Merger Sub are entering into the Merger Agreement in reliance on the representations, warranties, covenants and other agreements of such Shareholder set forth in this Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and other agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

**ARTICLE 1  
VOTING AGREEMENT**

1.1 Voting Agreement. During the term of this Agreement, unless the Company Board Recommendation (as defined in the Merger Agreement) has withdrawn, modified or amended in a manner adverse to Parent in compliance with Section 5.4(e) or (f) of the Merger Agreement, each Shareholder shall:

(a) appear at the Company Shareholder Meeting (or any adjournment or postponement thereof) or otherwise cause the Shares to be counted as present thereat for purposes of calculating a quorum; and

(b) vote all Shares (or, as applicable, cause or direct all Shares to be voted): (A) in favor of approval and adoption of the Merger Agreement and the transactions contemplated thereby, including the Merger, at least four (4) Business Days prior to the Company Shareholder Meeting, and at any adjournment or postponement thereof, at which such Merger Agreement is submitted for the consideration and vote of the shareholders of the Company, (B) against (i) any Takeover Proposal and (ii) any other action, agreement, transaction or other proposal that would reasonably be expected to impede, interfere with, delay, postpone, discourage or adversely affect the consummation of the Merger or the other transactions contemplated by the Merger Agreement, and (C) in favor of any other matter necessary to the consummation of the transactions contemplated by the Merger Agreement and considered and voted upon by the shareholders of the Company.

Each Shareholder shall not take or commit or agree to take any action inconsistent with the foregoing. Each Shareholder hereby acknowledges receipt and review of the Merger Agreement.

1.2 Grant of Proxy. In furtherance of the agreements contained in Section 1.1 of this Agreement and as security for such agreement, by execution of this Agreement, each Shareholder hereby irrevocably appoints Parent as the sole and exclusive attorney-in-fact and irrevocable proxy of such Shareholder, for and in the name, place and stead of such Shareholder, with full power of substitution and resubstitution, to vote, grant a consent or approval in respect of, or execute and deliver a proxy to vote, the Shares solely with respect to the matters set forth in, and in accordance with, Section 1.1 of this Agreement. THIS PROXY IS IRREVOCABLE AND COUPLED WITH AN INTEREST, AND EACH SHAREHOLDER HEREBY REVOKES ANY PROXY PREVIOUSLY GRANTED BY SUCH SHAREHOLDER WITH RESPECT TO THE SHARES AND REPRESENTS THAT NONE OF SUCH PREVIOUSLY-GRANTED PROXIES ARE IRREVOCABLE.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF SHAREHOLDER**

Each Shareholder represents and warrants to Parent that:

2.1 Authorization. Such Shareholder, if an entity, is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation. Such Shareholder has all requisite right, capacity, power and authority to execute and deliver this Agreement, to consummate the transactions contemplated by this Agreement and to comply with the provisions of this Agreement. The execution and delivery of this Agreement by such Shareholder, the consummation by such Shareholder of the transactions contemplated by this Agreement and the compliance by such Shareholder with the provisions of this Agreement have been duly authorized by all necessary action on the part of Shareholder. This Agreement has been duly executed and delivered by such Shareholder and constitutes a valid and binding obligation of such Shareholder, enforceable against such Shareholder in accordance with its terms, subject to the Enforceability Exceptions.

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2.2 No Conflicts.

(a) No authorization, consent or approval of any other Person is necessary for the execution, delivery and performance of this Agreement by such Shareholder.

(b) None of the execution and delivery of this Agreement by such Shareholder, the consummation by such Shareholder of the transactions contemplated hereby or compliance by such Shareholder with any of the provisions hereof shall (i) result in, or give rise to, a violation or breach of or a default under any of the terms of any material contract, agreement or other instrument or obligation to which such Shareholder is a party or by which such Shareholder or any of the Shares is bound or (ii) violate any applicable order, writ, injunction, decree, judgment, statute, rule or regulation, except for any of the foregoing as would not reasonably be expected to impair such Shareholder's ability to perform his or its obligations under this Agreement. There is no legal or administrative proceeding, claim, suit or action pending against such Shareholder or, to the knowledge of such Shareholder, threatened against such Shareholder that impairs or would reasonably be expected to impair such Shareholder's ability to perform his or its obligations under this Agreement.

2.3 Inconsistent Agreements. Such Shareholder hereby represents, covenants and agrees that, except as contemplated by this Agreement, neither such Shareholder nor any entity under such Shareholder's control (a) has entered into, or shall enter into at any time prior to the termination of this Agreement in accordance with Section 5.2(b), any voting trust or other agreement or arrangement with respect to the voting of the Shares nor (b) has granted, or shall grant at any time prior to the termination of this Agreement in accordance with Section 5.2(b), a proxy or power of attorney with respect to any Shares.

2.4 Ownership of Shares. Shareholder is the beneficial owner (except as permitted by this Agreement in connection with the Permitted Transfer of any Shares), and has good and valid title to, the Shares, free and clear of any Lien. Such Shareholder has sole voting power, sole power of disposition, sole power to demand appraisal rights and sole power to agree to all of the matters set forth in this Agreement, in each case with respect to all of such Shares, with no limitations, qualifications or restrictions on such rights, subject to applicable federal securities Laws and the terms of this Agreement. None of the Shares is subject to any voting trust or other agreement or arrangement with respect to the voting of such Shares.

2.5 Total Shares. Except for the Shares set forth opposite each Shareholder's name on Annex A hereto and except for any Company Options and Company Stock Awards disclosed in the Disclosure Letter accompanying the Merger Agreement as being held by Shareholder, Shareholder does not beneficially or otherwise own, as of the date hereof, any (i) shares of capital stock or voting securities of the Company, (ii) securities of the Company convertible into, exercisable for, or exchangeable for shares of capital stock or voting securities of the Company or (iii) other rights to acquire from the Company any capital stock, voting securities or securities convertible into, exercisable for or exchangeable for capital stock or voting securities of the Company.

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**ARTICLE 3  
REPRESENTATIONS AND WARRANTIES OF PARENT**

Parent represents and warrants to the Shareholders:

3.1 Authority; Execution and Delivery; Enforceability. Parent has all requisite power and authority to execute and deliver this Agreement, to consummate the transactions contemplated by this Agreement and to comply with the provisions of this Agreement. The execution and delivery of this Agreement by Parent, the consummation by Parent of the transactions contemplated by this Agreement and the compliance by Parent with the provisions of this Agreement have been duly authorized by all necessary action on the part of Parent. This Agreement has been duly executed and delivered by Parent and constitutes a valid and binding obligation of Parent, enforceable against Parent in accordance with its terms, subject to the Enforceability Exceptions.

3.2 No Conflicts.

(a) No authorization, consent or approval of any other Person is necessary for the execution, delivery and performance of this Agreement by Parent.

(b) None of the execution and delivery of this Agreement by Parent, the consummation by Parent of the transactions contemplated hereby or compliance by Parent with any of the provisions hereof shall (i) result in, or give rise to, a violation or breach of or a default under any of the terms of any material contract, agreement or other instrument or obligation to which Parent is a party or by which Parent is bound or (ii) violate any applicable order, writ, injunction, decree, judgment, statute, rule or regulation, except for any of the foregoing as would not reasonably be expected to impair Parent's ability to perform its obligations under this Agreement.

**ARTICLE 4  
COVENANTS OF SHAREHOLDER**

During the term of this Agreement, Shareholder hereby covenants and agrees that:

4.1 No Proxies for or Encumbrances on Shares

(a) Except as permitted by terms of this Agreement (including 4.1(b)), such Shareholder shall not during the term of this Agreement, directly or indirectly, without the prior written consent of Parent and the Company, (i) grant any proxy or power of attorney with respect to any of the Shares or deposit any Shares into any voting trust or enter into any agreement or arrangement with respect to the voting of any Shares or any agreement or arrangement that is inconsistent with this Agreement, (ii) offer for sale, sell (constructively or otherwise), transfer, assign, tender in any tender or exchange offer, pledge, grant, encumber, hypothecate or similarly dispose of (by testamentary disposition, operation of Law or otherwise) (collectively, "**Transfer**"), or enter into any contract, option or other arrangement with respect to the Transfer of, any Shares,

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or any interest therein, including, without limitation, any swap transaction, option, warrant, forward purchase or sale transaction, futures transaction, cap transaction, floor transaction, collar transaction or any other similar transaction (including any option with respect to any such transaction) or combination of any such transactions, in each case, involving any Shares, (iii) knowingly take any action that would have the effect of preventing or delaying such Shareholder from performing any of his or its obligations under this Agreement, or (iv) agree or commit (whether or not in writing) to take any of the actions referred to in clauses (i), (ii) and (iii). For the avoidance of doubt, the fact that any Shares are held in a margin account shall not be deemed a violation of this Section 4.1 so long as such Shareholder is able to perform his or its obligations under this Agreement.

(b) Notwithstanding the foregoing, such Shareholder may effect a Transfer of Shares to a Permitted Transferee of such Shareholder, provided that such Shareholder, prior to and as a condition to the effectiveness of such Transfer, notifies Parent in writing at least five (5) business days in advance and causes all Permitted Transferees to execute a counterpart signature page to this Agreement and deliver the same to the Parent and the Company, pursuant to which such Permitted Transferee agrees to be a "Shareholder" pursuant to, and to be bound by, this Agreement with respect to the Shares that are the subject of such Transfer (such Transfer, a "**Permitted Transfer**"). "**Permitted Transferee**" means, with respect to each Shareholder, (A) any other Shareholder; (B) a spouse, lineal descendant or antecedent, brother or sister, adopted child or grandchild or the spouse of any child, adopted child, grandchild or adopted grandchild of such Shareholder; (C) any trust, the trustees of which include only the persons named in clauses (A) and/or (B) and the beneficiaries of which include only the persons named in clauses (A) and/or (B); (D) any corporation, limited liability company or partnership, the shareholders, members or general or limited partners of which include only the persons named in clauses (A) and/or (B); (E) if such Shareholder is a trust, the beneficiary or beneficiaries authorized or entitled to receive distributions from such trust; (F) any Person by will upon the death of such Shareholder; or (G) a charitable donation to any charitable organization. Transfers of Shares to Permitted Transferees made pursuant to and in accordance with this Section 4.1(b) shall not be a breach of this Agreement.

(c) Any Transfer not effected in accordance with the terms and conditions of this Section 4.1 shall be null and void *ab initio*.

4.2 Appraisal Rights. Subject to the terms of this Agreement, such Shareholder irrevocably waives and agrees not to exercise any rights to demand appraisal of any Shares which may arise with respect to the Merger or dissent from the Merger.

4.3 Company Proxy Statement. Such Shareholder hereby agrees to permit the Company to publish and disclose in the Company Proxy Statement Shareholder's identity, to the extent required by applicable Law, and beneficial ownership of the Shares and the nature of Shareholder's commitments under this Agreement.

4.4 No Solicitation. From and after the date hereof until the termination of this Agreement in accordance with Section 5.2(b), each Shareholder shall not, and shall not permit his or its Representatives to, directly or indirectly, (a) solicit, initiate or knowingly induce, knowingly encourage or knowingly facilitate (including by way of furnishing information) any inquiries or

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the making of any proposal that constitutes, or would reasonably be expected to lead to, a Takeover Proposal, (b) participate in any discussions or negotiations or cooperate in any way not permitted by this Section 4.4 regarding any proposal the consummation of which would constitute a Takeover Proposal, (c) provide any information or data concerning the Company or any of its Subsidiaries to any person in connection with any proposal the consummation of which would constitute a Takeover Proposal, or (d) approve or recommend, make any public statement approving or recommending, or enter into any agreement related to, any inquiry, proposal or offer that constitutes, or would reasonably be expected to lead to, a Takeover Proposal, in each case except when acting in his capacity as a director or as an officer of the Company and solely to the extent expressly permitted by Section 5.4 of the Merger Agreement and subject to the covenants, restrictions and obligations set forth therein. Notwithstanding anything to the contrary contained herein, (i) each Shareholder or its Representatives shall be entitled to participate in discussions or negotiations with any Person making a Takeover Proposal with respect to entering into (x) a voting agreement in support thereof substantially similar to the terms and conditions set forth herein and (y) an agreement to roll over its Shares in connection with such Takeover Proposal, in each case, if and only if the Company and its Representatives are permitted to engage in discussions or negotiations in response to such Takeover Proposal pursuant to and in accordance with Section 5.4(b) of the Merger Agreement and (ii) each Shareholder shall be entitled to enter into any such voting agreement or agreement to roll over its Shares with any Person making a Superior Proposal simultaneously with the execution and delivery of a Contract by the Company with respect to a Superior Proposal entered into as and to the extent permitted by the Merger Agreement (including Section 7.4(a) thereof).

4.5 Acquisition of Additional Shares. During the term of this Agreement, each Shareholder shall notify Company and Parent promptly in writing of the direct or indirect acquisition of record or beneficial ownership of additional shares of Common Stock after the date hereof, including, without limitation by purchase, as a result of a stock dividend, stock split, recapitalization, combination, reclassification, exchange or change of such shares, or upon exercise or conversion of any securities (any such securities, "*New Shares*"). All New Shares shall be considered Shares and be subject to the terms and conditions of this Agreement as though owned by such Shareholder on the date hereof, and the representation and warranties in Article 2 above shall be true and correct as of the date that beneficial ownership of such New Shares is acquired.

## **ARTICLE 5 MISCELLANEOUS**

5.1 Further Assurances. Parent and each Shareholder shall each execute and deliver, or cause to be executed and delivered, all further documents and instruments and use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law, to perform their respective obligations under this Agreement, including executing such other documents or certificates evidencing the irrevocable proxy granted by such Shareholder pursuant to Section 1.2 of this Agreement as Parent may reasonable request or as may be necessary to effectuate the intent of such irrevocable proxy. Each Shareholder shall not, directly or indirectly, take any action that would make any representation or warranty of such Shareholder contained herein untrue or incorrect in any material respect.



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5.2 Amendments and Waivers: Termination.

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or in the case of a waiver, by the party against whom the waiver is to be effective. No waiver by any party hereto of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall 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 such occurrence. No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege.

(b) This Agreement, and all rights and obligations of the parties contained herein, shall automatically terminate without any further action required by any Person upon the earliest to occur of (i) the mutual agreement of the parties hereto to terminate this Agreement, (ii) the valid termination of the Merger Agreement in accordance with its terms, and (iii) the Effective Time. Upon termination of this Agreement, no party shall have any further obligations or liabilities under this Agreement; provided, however, that such termination shall not relieve any party from liability for common law fraud or willful, knowing and material breach of this Agreement prior to termination hereof.

5.3 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

5.4 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, legal representatives, beneficiaries, executors and permitted assigns; provided that, other than as permitted by Section 4.1(b), no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other parties hereto.

5.5 Governing Law: Jurisdiction: WAIVER OF JURY TRIAL.

(a) This Agreement, and any dispute, claim, legal action, suit, proceeding or controversy arising out of or relating hereto, shall be governed by, and construed in accordance with, the Laws of the State of Florida, without regard to conflict of law principles thereof. Each of the parties hereto (i) irrevocably and unconditionally submits to the personal jurisdiction of the federal and state courts of the United States of America located in the State of Florida, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (iii) agrees that any actions or proceedings arising in connection with this Agreement or the transactions contemplated by this Agreement shall be brought, tried and determined only in the state and federal courts in Duval County, State of Florida (the "*Chosen Courts*"), (iv) waives any claim of improper venue or any claim that those courts are an inconvenient forum and (v) agrees that it will not bring any action relating to this Agreement or the transactions contemplated by this Agreement in any court other than the Chosen Courts, except to the extent that all such courts shall lawfully decline to exercise such jurisdiction and except that any party may seek to enforce or implement any Order obtained in any such courts or in any other court of competent jurisdiction.

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(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (II) SUCH PARTY HAS CONSIDERED AND UNDERSTANDS THE IMPLICATIONS OF THIS WAIVER, (III) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

5.6 Specific Performance. The parties hereto acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with its specific terms or were otherwise breached and further agree that each party hereto shall be entitled to an injunction, specific performance and other equitable relief against any other party to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which it is entitled at law or in equity, and shall not be required to provide any bond or other security in connection with any such order or injunction. Each party hereto further agrees that it will not oppose the granting of any such injunction, specific performance and other equitable relief on the basis that (a) any other party has an adequate remedy at law or (b) an award of an injunction, specific performance or other equitable relief is not an appropriate remedy for any reason at law or equity.

5.7 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

5.8 Counterparts. 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.

5.9 Severability. 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.

5.10 Capacity. Each Shareholder is signing this Agreement solely in such Shareholder's capacity as a shareholder of the Company and not in any other capacity, and this Agreement shall not limit or otherwise affect any actions taken, or required or permitted to be taken, by such Shareholder or any Affiliate or Representative of such Shareholder or any of its Affiliates in any

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other capacity, including, if applicable, as an officer or director of the Company or any of the Company's Subsidiaries, and any actions taken (whatsoever), or failure to take any actions (whatsoever), by any of the foregoing Persons in such capacity as a director or officer of the Company or any of the Company's Subsidiaries shall not be deemed to constitute a breach of this Agreement.

5.11 Notice. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or sent by overnight courier (providing proof of delivery) to the Company in accordance with Section 8.7 of the Merger Agreement and to each Shareholder at the address set forth on Annex A hereto.

5.12 Non-Recourse. Each party to this Agreement enters into this Agreement solely on its own behalf, the obligations of each Shareholder under this Agreement are several (with respect to itself) and not joint with the obligations of any other Shareholder and each such party shall be liable, severally and not jointly, solely for any breaches of this Agreement by such party and in no event shall any party be liable for breaches of this Agreement by any other party hereto. Nothing contained herein, and no action taken by any Shareholder pursuant hereto, shall be deemed to constitute the parties as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the parties are in any way acting in concert or as a group with respect to the obligations or the transactions contemplated by this Agreement. Nothing contained in this Agreement shall be deemed to vest in the Company or Parent any direct or indirect ownership or incident of ownership of or with respect to any Shares.

5.13 Entire Agreement. This Agreement (together with the Merger Agreement) constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes all other prior agreements and understandings, both written and oral, among the parties, with respect to the subject matter hereof.

*[Signature page follows]*

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IN WITNESS WHEREOF, the parties hereto have caused this Voting Agreement to be duly executed as of the day and year first above written.

STRATOSPHERE HOLDCO, LLC

By: Kingswood Capital Management, L.P., its Manager

By: /s/ Alex Wolf

Name: Alex Wolf

Title: Managing Partner

**SHAREHOLDER:**

STEIN FAMILY HOLDCO LLC

By: /s/ Jay Stein

Name: Jay Stein

Title: Manager

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ANNEX A

<b>Name of Shareholder</b>	<b>Shares</b>	<b>Address for Notice</b>
Stein Family Holdco LLC	17,339,544	



January 31, 2020

**FOR IMMEDIATE RELEASE**

For more information:  
Linda L. Tasseff  
Director, Investor Relations  
(904) 858-2639  
ltasseff@steinmart.com

**Stein Mart Enters into Transaction to Become a Private Company**

***Stein Mart Shareholders to Receive \$0.90 per Share in Cash***

***Price Represents a 38% Premium to the Closing Price on January 30, 2020***

JACKSONVILLE, Fla. – Stein Mart, Inc. (NASDAQ: SMRT) (“Stein Mart” or the “Company”) today announced it has entered into a definitive merger agreement under which an affiliate of Kingswood Capital Management, L.P. (“Kingswood”) will acquire all of the outstanding common stock of Stein Mart not already beneficially owned by affiliates of Jay Stein, Stein Mart’s former CEO and current Chairman of the Board of Directors, and related investors for \$0.90 per share in cash. Upon closing, Stein Mart will become a privately held company and Stein Mart common stock will no longer be listed or traded on any public stock market.

The purchase price represents a premium of approximately 38% to Stein Mart’s closing stock price on January 30, 2020, the last trading day prior to this announcement.

The transaction was unanimously approved by the Stein Mart Board of Directors (other than Mr. Stein), acting on the unanimous recommendation of a Special Committee of independent directors that was granted full authority to conduct a comprehensive strategic review and evaluate, and if warranted, negotiate an acquisition proposal.

“The Special Committee and its advisors conducted a thorough and independent process to review the Company’s strategic alternatives and identify a transaction that would maximize shareholder value. We believe that this transaction is in the best interest of all Stein Mart stakeholders, including our many loyal employees,” said Richard L. Sisisky, Stein Mart Board member and Chairman of the Special Committee.

The transaction will be financed by debt provided by Wells Fargo Bank, National Association and Pathlight Capital LP and by equity provided by affiliates of Kingswood. As part of the transaction, an entity managed by Jay Stein will contribute its equity and, following the closing of the merger, will indirectly own one-third of Stein Mart after the closing.

The transaction, which is expected to close in the first half of calendar year 2020, is subject to approval by Stein Mart shareholders and the satisfaction of other customary closing conditions. The Stein Mart Board of Directors recommends that Stein Mart’s shareholders vote to adopt and approve the merger agreement.

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Stein Mart will file a Current Report on Form 8-K with the Securities and Exchange Commission (SEC), which will more fully describe the terms and conditions of the merger agreement and the proposed transaction.

#### **Advisors**

PJ SOLOMON is serving as financial advisor to the Special Committee, Foley & Lardner LLP is serving as the Special Committee's legal counsel, and Kingsdale Advisors is serving as the Company's proxy solicitor. Goodwin Procter LLP is serving as legal counsel to Kingswood and Latham & Watkins LLP is serving as legal advisor to Jay Stein.

#### **About Stein Mart**

Stein Mart, Inc. is a national specialty off-price retailer offering designer and name-brand fashion apparel for him, for her and now for Kids!, home décor, accessories and shoes at everyday discount prices. Stein Mart provides real value that customers love every day. The company operates 283 stores across 30 states. For more information, please visit [www.SteinMart.com](http://www.SteinMart.com).

#### **Safe Harbor Statement**

Certain statements in this press release regarding the merger agreement and the proposed merger constitute "forward-looking statements" under the federal securities laws. These forward-looking statements are intended to be covered by the safe harbor provisions created by the Private Securities Litigation Reform Act of 1995. When we use words such as "anticipate," "intend," "plan," "believe," "estimate," "expect," or similar expressions, we do so to identify forward-looking statements. Forward-looking statements are based on current expectations that involve assumptions that are difficult or impossible to predict accurately and many of which are beyond our control. Actual results may differ materially from those expressed or implied in these statements as a result of significant risks and uncertainties, including, but not limited to, the occurrence of any event, change or other circumstances that could give rise to the termination of the merger agreement, the inability to obtain the requisite shareholder approval for the proposed merger or the failure to satisfy other conditions to completion of the proposed merger, risks that the proposed transaction disrupts current plans and operations, the ability to recognize the benefits of the merger, and the amount of the costs, fees, and expenses and charges related to the merger. Additional information about other risks and uncertainties that may cause actual results to differ materially from those projected, is contained in the Company's filings with the SEC, including the Company's Annual Report on Form 10-K and the Company's quarterly reports on Form 10-Q. The statements in this press release speak only as of the date of hereof and we undertake no obligation to update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

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**Additional Information and Certain Information Regarding Participants**

In connection with the proposed transaction, the Company will file with the SEC a proxy statement on Schedule 14A and may file other documents with the SEC regarding the proposed transaction. This press release is not a substitute for the proxy statement or any other document that the Company may file with the SEC. INVESTORS IN, AND SECURITY HOLDERS OF, THE COMPANY ARE URGED TO READ THE PROXY STATEMENT AND ANY OTHER RELEVANT DOCUMENTS THAT ARE FILED OR WILL BE FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THESE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND RELATED MATTERS. Investors and security holders may obtain free copies of the proxy statement (when available) and other documents filed with the SEC by the Company through the web site maintained by the SEC at [www.sec.gov](http://www.sec.gov) or by contacting Kingsdale Advisors by telephone at 1.866.581.1479 toll-free in North America (+1.416.867.2272 for collect calls outside of North America) or by e-mail at [contactus@kingsdaleadvisors.com](mailto:contactus@kingsdaleadvisors.com).

**Certain Participant Information**

The Company and its directors and executive officers may be deemed to be participants in the solicitation of proxies in connection with the proposed transaction. Information regarding the Company's directors and executive officers, including a description of their direct interests, by security holdings or otherwise, in the Company is contained in the Company's Definitive Annual Meeting Proxy Statement filed with the SEC on May 7, 2019. You may obtain a free copy of this document as described in the preceding paragraph. Investors may obtain additional information regarding the direct and indirect interests of the Company and its directors and executive officers in the proposed transaction by reading the proxy statement and other public filings referred to above.