

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**
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In re:	Chapter 11
STEIN MART, INC. ¹	Case No. 3:20-bk-2387
	Jointly Administered with
STEIN MART BUYING CORP.	Case No. 3:20-bk-2388
STEIN MART HOLDING CORP.,	Case No. 3:20-bk-2389
Debtors.	

**DEBTORS' MOTION FOR ENTRY OF AN ORDER, PURSUANT TO
SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE,
(I) AUTHORIZING THE SALE OF CERTAIN INTELLECTUAL
PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
AND OTHER INTERESTS, AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) in these jointly-administered chapter 11 cases hereby submit this motion (this “Motion”) for the entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing the sale (the “Sale”) of certain intellectual property, on an “as is, where is” basis, free and clear of all liens, claims, encumbrances, and interests, to Stein Mart Online, Inc., a Delaware corporation (the “Stalking Horse Bidder”) or such entity or entities (each, a “Purchaser”)

¹ The tax identification numbers of the Debtors are as follows: Stein Mart, Inc. 6198; Stein Mart Buying Corp. 1114; and Stein Mart Holding Corp. 0492. The address of the Debtors’ principal offices: 1200 Riverplace Blvd., Jacksonville, FL 32207. The Debtors’ claims agent maintains a website, <https://cases.stretto.com/SteinMart>, which provides copies of the Debtors’ first day pleadings and other information related to the case.

that submit the highest or otherwise best offer for the Intellectual Property as determined by the Debtors in their business judgment pursuant to the solicitation and auction process described below, and (ii) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the General Order of Reference of the United States District Court for the Middle District of Florida. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are Bankruptcy Code sections 105(a) and 363, along with Bankruptcy Rules 2002, 6004, and 9014.

BACKGROUND

4. On March 11, 2020 (the “Petition Date”), each of the Debtors commenced with this Court voluntary cases (the “Chapter 11 Cases”) under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.

5. On August 18, 2020, the Office of the United States Trustee for the Middle District of Florida appointed an Official Committee of Unsecured Creditors (the “Committee”).

6. The Debtors’ cases are being jointly administered under lead Case No. 3:20-bk-2387, pursuant to Bankruptcy Rule 1015.

7. Information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the

Declaration of Hunt Hawkins In Support of Debtors' Chapter 11 Petitions and First Day Motions [Docket No. 5], which incorporates by reference that certain Case Management Summary filed on the petition date at Docket No. 3 (the "First Day Declaration").

8. The Debtors determined that the best way to maximize value for the benefit of all interested parties was a prompt and orderly wind-down of their businesses through the implementation of store closing sales (collectively, the "Store Closing Sales") and related liquidation initiatives.

9. The Court entered a *Final Order (I) Authorizing the Debtors to Assume the Consulting Agreement, (II) Approving Procedures for Store Closing Sales, and (III) Approving the Implementation of Customary Store Bonus Program and Payments to Non-Insiders Thereunder* [Docket No. 406], and pursuant thereto the Debtors, with the assistance of court-approved consultants, have completed the liquidation of substantially all of its tangible personal property at more than 275 retail stores throughout the United States. As a result, other than general intangibles, including potential tax refunds and choses in action, including claims under Chapter 5 of the Bankruptcy Code, the remaining substantial asset of the Debtor is its intellectual property, which consists of trademarks, domain names, customer files and related transaction data and social media assets (the "Intellectual Property").

A. The Sale of Intellectual Property

10. In connection with their retail operations, the Debtors have developed and utilized the Intellectual Property.

11. On August 18, 2020, the Debtors entered into an agreement with Hilco IP Services, LLC d/b/a Hilco Streambank ("Hilco Streambank") to market and sell the Debtors' Intellectual Property assets. Since that time, Hilco Streambank, with the assistance and oversight of the Debtors' management and advisors, has been actively engaged in the process of marketing the

Debtors' Intellectual Property assets for sale. After consultation with Hilco Streambank and their other advisors, the Debtors have determined that in order to maximize value of the Intellectual Property assets, the Sale of their Intellectual Property needs to occur consistent with an open auction process for those assets.

12. On October 15, 2020, the Court entered the *Order Authorizing the Retention and Employment of Hilco IP Services, LLC d/b/a Hilco Streambank as Intellectual Property Disposition Consultant, Nunc Pro Tunc to August 18, 2020* [Docket No. 561].

13. It is important that the Debtors conduct the Sale process with respect to the Intellectual Property now to ensure that name recognition in the marketplace remains. To that end, the Debtors have entered into an Intellectual Property Asset Purchase Agreement attached hereto as **Exhibit B** (the "Stalking Horse Agreement") with the Stalking Horse Bidder for the sale of the Intellectual Property. The Stalking Horse Agreement, which proposes cash consideration to the Debtors' estates of \$4,001,800.00, provides a platform for a competitive process subject to higher or better offers.

14. The Debtors believe it is prudent at this time and in the best interests of their estates and creditors to implement the sale procedures (the "Sale Procedures") summarized below and, accordingly, intend to employ the Sale Procedures prior to a hearing on this Motion.

B. The Proposed Sale Procedures

15. The Debtors propose to sell the Intellectual Property assets either in whole or part to the Stalking Horse Bidder or through one or more sale transactions pursuant to the terms of a purchase agreement (or agreements) to be negotiated by and between the Debtors and proposed purchaser(s) and executed upon completion of one or more auctions for the Intellectual Property (each, an "Auction"). In conjunction with the Auction(s), the Debtors propose to implement the Sale Procedures described below in an effort to maximize the realizable value of the Intellectual

Property for the benefit of the Debtors' estates, creditors, and other interested parties. The Sale Procedures contemplate an Auction process pursuant to which bids for the Intellectual Property will be subject to higher or better offers. The Debtors are not seeking approval of Court-sanctioned bidding procedures in advance but, rather, propose conducting the Auction(s) in connection with the proposed Sale Procedures prior to the hearing on this Motion (the "Sale Hearing"), so as to derive maximum value for such assets. The Debtors will present evidence with respect to the sale process and the winning bid(s) at the Sale Hearing. As described more fully below, only bidders who timely submit Qualified Bids (as defined below) may be eligible to participate in the Auction(s), unless otherwise agreed by the Debtors.

16. Specifically, the Debtors will implement the following Sale Procedures, on substantially the terms set forth below, for the Sale of the Intellectual Property and conduct the Auction(s) in accordance therewith:

- (a) Bid Deadline: Monday, November 16, 2020 at 5:00 p.m. (ET).²
- (b) Qualified Bid: The Debtors will require a qualified bid (a "Qualified Bid") to meet the following requirements: (i) enclose a proposed purchase agreement (the "Purchase Agreement") that specifically identifies the Intellectual Property proposed to be purchased, which may be all or a portion of the Intellectual Property, and the proposed consideration, and a blackline against the Stalking Horse Agreement; (ii) provides for an initial overbid of cash consideration of \$4,221,854, which is inclusive of the Break-Up Fee; (iii) subsequent bids in excess of the prior Qualified Bid shall be in cash increments of \$100,000 or more (at option of the bidder) (iv) confirms that the offer shall remain open and irrevocable until the closing of a Sale to the Successful Bidder or the Next Highest Bidder (as defined herein); (v) be accompanied by a certified or bank check or wire transfer in an amount equal to 10% of the purchase price identified in the Purchase Agreement as a minimum good faith deposit (the "Minimum Deposit"), which Minimum Deposit shall be used to fund a portion of the purchase price provided for in the bid; (vi) not be conditioned on obtaining financing or the outcome of any due diligence by the bidder; and (vii) fully

² Interested parties wishing to bid on the Intellectual Property should contact David Peress and Richelle Kalnit at Hilco Streambank: dperess@hilcoglobal.com and rkalin@hilcoglobal.com.

disclose the identity of each entity that will be bidding for the Intellectual Property or otherwise participating in connection with such bid, and the complete terms of any such participation. In the event of a credit bid, the party submitting the credit bid must agree to add cash to its bid in an amount sufficient to pay the commission and expenses due to Hilco Streambank. The Stalking Horse Agreement is deemed a Qualified Bid.

- (c) Auction(s): If the Debtors receive more than one Qualified Bid (other than from the Stalking Horse Bidder) for the Intellectual Property (or certain subset of the Intellectual Property), the Auction(s) with respect to the Sale will commence on November 18, 2020 at 10:00 a.m. or such later time as the Debtors may provide so long as such change is communicated reasonably in advance by the Debtors to all bidders, and other invitees. The Auction will be conducted by video conference, the detail of which will be provided to Qualified Bidders in advance of the Auction.
- (d) Auction Rules: If one or more Auctions are held, the following rules for the Auction's conduct will be observed: (i) only a bidder who has submitted a Qualified Bid by the Bid Deadline (a "Qualified Bidder") will be eligible to participate at the Auction; (ii) a minimum Qualified Bid amount for the Intellectual Property may be announced and/or posted prior to the Auction. Such minimum Qualified Bid amounts may be established based upon a variety of factors, including, but not limited to, the highest bids received prior to the Auction; (iii) at the Auction, Qualified Bidders will be permitted to increase their bids, and bidding at the Auction will continue until such time as the highest or otherwise best offer is determined in accordance with these Sale Procedures or until such Auction is adjourned by the Debtors, *provided*, the Stalking Horse Bidder will be entitled to a credit in the amount of its Break-Up Fee against the increased purchase price for the Acquired Assets; (iv) immediately prior to concluding the Auction, the Debtors shall, in consultation with the pre-petition lenders and Committee, (a) review each Qualified Bid on the basis of its financial and contractual terms and the factors relevant to the Sale process and the best interests of the Debtors' estates and creditors; (b) determine and identify the highest or otherwise best Qualified Bid (the "Successful Bid") and the Qualified Bidder submitting such bid (the "Successful Bidder"); (c) determine and identify the next highest or otherwise best Qualified Bid after the Successful Bid (the "Next Highest Bid") and the Qualified Bidder submitting such bid (the "Next Highest Bidder"); and (d) have the right to reject any and all bids; and (v) within one business day of the completion of the Auction, the Successful Bidder shall complete and execute all agreements, instruments, or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.
- (e) Acceptance of Successful Bid. If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Successful Bid on the record at the Auction and (ii) definitive

documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Court of the Successful Bid and the entry of an Order approving the Sale and such Successful Bid. If no other Qualified Bids are received, the Stalking Horse Agreement shall be deemed the Successful Bid.

- (f) Notice of Successful Bid(s). As soon as reasonably practicable following the conclusion of the Auction(s), the Debtors shall file a Notice of Successful Bid(s). The Notice of Successful Bid(s) shall identify the identity of the Successful Bidder(s), the amount of the Successful Bid(s), and shall include a substantially final version of the Purchase Agreement and shall further identify the Next Highest Bidder.
- (g) Sale Hearing. November 23, 2020 at 10:00 a.m.
- (h) Reservation of Rights. The Debtors reserve the right to seek approval of the Sale of portions of the Intellectual Property through separate Purchase Agreements with different purchasers in the event that the combination of such Sales is determined by the Debtors to obtain the highest value for the Intellectual Property. The Debtors further reserve the right as they may reasonably determine, in consultation with the prepetition lenders and Committee, to be in the best interests of their estates to: (i) determine which bidders are Qualified Bidders; (ii) determine which bids are Qualified Bids; (iii) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal, (iv) reject any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Sale Procedures or the requirements of the Bankruptcy Code or (c) contrary to the best interests of the Debtors and their estates; (v) remove some or all of the Intellectual Property from the Auction(s); (vi) waive terms and conditions set forth in these Sale Procedures with respect to all potential bidders; (vii) impose additional terms and conditions with respect to all potential bidders; (viii) extend the deadlines set forth herein; (ix) adjourn or cancel the Auction(s) and/or Sale Hearing in open court without further notice; and (x) modify the Sale Procedures as they may determine to be in the best interests of their estates or to withdraw this Motion at any time with or without prejudice.

17. The Debtors believe that the process contemplated hereby will foster a competitive bidding atmosphere that will generate significant value for their estates.

RELIEF REQUESTED

18. By this Motion, the Debtors seek entry of an order (i) authorizing the Sale of the Debtors' Intellectual Property free and clear of liens, claims, encumbrances, and interests, pursuant

to one or more Purchase Agreements executed by and between the Debtors and the Purchaser(s), and (ii) granting related relief.

BASIS FOR RELIEF REQUESTED

19. For the reasons explained below and throughout this Motion, the Debtors' decision to sell the Intellectual Property is a sound exercise of the Debtors' business judgment. Indeed, the Debtors are confident that the aforementioned process will generate the highest value for the Intellectual Property because (i) the Debtors and Hilco Streambank have been actively marketing, and will continue to market, the Intellectual Property to all known and likely potential purchasers, (ii) the Auction(s) will foster a competitive bidding process through which the highest or otherwise best offer will be generated, and (iii) the Sale Procedures offer maximum flexibility and security to the Debtors in conjunction with selling the Intellectual Property in an expeditious and value-maximizing manner.

A. Sales of the Intellectual Property Should Be Approved.

20. Bankruptcy Code section 363(b)(1) provides: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Bankruptcy Code section 105(a) provides: "The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). In pertinent part, Bankruptcy Rule 6004 states that, "all sales not in the ordinary course of business may be by private sale or by public auction." Fed. R. Bankr. P. 6004(f)(1). With respect to the notice required in connection with a sale, Bankruptcy Rule 2002(c)(1) states, in pertinent part, that:

the notice of a proposed use, sale or lease of property . . . shall include the time and place of any public sale, the terms and conditions of any private sale and the deadline for filing objections. The notice of a proposed use, sale or lease of property, including real estate, is sufficient if it generally describes the property.

Fed. R. Bankr. P. 2002(c)(1).

21. To approve the use, sale, or lease of property outside the ordinary course of business, the Court must find “some articulated business justification” for the proposed action. *See In re Abbotts Dairies, Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the “articulated business justification” and good-faith tests of *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983)); *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that the Third Circuit had adopted a “sound business purpose” test in *Abbotts Dairies*); *Titusville Country Club v. PennBank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Indus. Valley Refrigeration & Air Conditioning Supplies, Inc.*, 77 B.R. 15, 19 (Bankr. E.D. Pa. 1987).

22. Generally, courts have applied four factors in determining whether a sale of a debtor’s assets should be approved: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. *See Lionel*, 722 F.2d at 1071 (setting forth the “sound business purpose” test); *Abbotts Dairies*, 788 F.2d at 145-57 (implicitly adopting the articulated business justification test and adding the “good faith” requirement); *Del. & Hudson Ry.*, 124 B.R. at 176 (“Once a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the purchaser is proceeding in good faith.”).³

³ Even if the proposed Sale is deemed to be private, rather than public, this fundamental analysis does not change. *See, e.g., In re Ancor Exploration Co.*, 30 B.R. 802, 808 (Bankr. N.D. Okla. 1983) (“[T]he bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in

23. Here, the Sale of the Intellectual Property meets these requirements and, accordingly, the Debtors submit it should be approved. The Debtors submit that implementation of the Sale Procedures and Auction process as outlined herein will generate maximum interest in the Intellectual Property, thereby yielding the highest or otherwise best bids for such assets. Accordingly, the Debtors submit that the proposed Sale will be the culmination of a thorough and exhaustive marketing process, and that the decision to sell the Intellectual Property to the Purchaser(s) is adequately informed, reasonable, and in the best interests of the Debtors, their estates, and other stakeholders.

I. The Sale Process is a Sound Exercise of the Debtors' Business Judgment.

24. There is more than ample business justification to sell the Intellectual Property as set forth herein, and as such, an order granting the relief requested is a matter within the discretion of the Court and would be consistent with the provisions of the Bankruptcy Code. *See* 11 U.S.C. § 105(a). Subject to the Purchaser(s) willingness to provide fair and reasonable consideration, the Debtors' estates and creditors will benefit from the approval of the Sale without the added costs in terms of time and expenses associated with a Court-approved sale process.

25. The Debtors are fully liquidating all of their assets. But for the completion of the Store Closing Sales, the Intellectual Property assets are some of the few remaining assets of the Debtors' estates. The Debtors' ecommerce site is no longer operational, and their retail stores are expected to be closed by the end of October. In order for the Debtors' brand to stay relevant in the mind of the customer, the Debtors seek to achieve a sale of the Intellectual Property promptly. As

the ordinary course of business under § 363(b)."). The bankruptcy court "has ample discretion to administer the estate, including authority to conduct public or private sales of estate property." *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991), *vacated on other grounds*, 165 B.R. 1 (D.P.R. 1992); *accord In re Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985).

a result, it is imperative that the Debtors seek to monetize all of their assets in as efficient and expeditious manner as possible. Thus, the Debtors believe that the proposed Sale process is in the best interests of the Debtors, their estates, and creditors and should go forward as soon as is practicable.

26. Simply put, in the Debtors' business judgment, selling the Intellectual Property through the aforementioned Sale process is the best option for maximizing the overall value of these assets for the benefit of all stakeholders.

II. The Proposed Sale Procedures Are Fair and Reasonable.

27. The Sale Procedures are designed to maximize the value received for the Intellectual Property and will allow for a timely Auction process while providing bidders with ample time and information to submit a timely Qualified Bid. The Sale Procedures are designed to ensure that the Intellectual Property will be sold for the highest or otherwise best possible purchase price under the circumstances of these Chapter 11 Cases. The Debtors shall continue to subject the value of the Intellectual Property to market testing, and by permitting prospective purchasers to bid on the Intellectual Property, the Debtors shall ensure that the ultimate Sale price is an accurate reflection of the Intellectual Property's true value. Similar procedures, pursuant to which liquidating chapter 11 debtors solicit bids and implement an auction process without first seeking court approval thereof, have been implemented in other chapter 11 cases. *See e.g. In re Modell's Sporting Goods, Inc., et al.*, Case No. 20-14179 (Bankr. D.N.J.); *In re Fred's, Inc., et al.*, Case No. 19-11984 (Bankr. D. Del.); *In re Charming Charlie Holdings Inc.*, Case No. 19-11534 (Bankr. D. Del.); *In re The Wet Seal LLC*, Case No. 17-10229 (Bankr. D. Del.); *In re Anchor Blue Holding Corp.*, Case No. 11-10110 (Bankr. D. Del.); *In re Kid Brands, Inc.*, Case No. 14-22582 (Bankr. D.N.J.). Accordingly, the Debtors and all parties in interest can be assured that the consideration received for the Intellectual Property will be fair and reasonable, and the third prong

of the *Abbotts Dairies* standard is satisfied. As discussed below, the “good faith” prong of the *Abbotts Dairies* standard is also satisfied in this instance.

28. The Debtors and Hilco Streambank will continue to market the Intellectual Property in an appropriate and cost-efficient manner given the value of the Intellectual Property and the associated exigencies. In light of the marketing efforts and the nature of the assets, the Debtors believe that the Sale will provide fair and reasonable value for the Intellectual Property.

III. The Sale is Proposed in Good Faith.

29. The Sale is being proposed in good faith. The Sale will be the product of good-faith, arms’-length negotiations between the Debtors, on the one hand, and the Stalking Horse Bidder and/or Purchaser(s), on the other. The Debtors believe that the Sale of the Intellectual Property will not be the product of collusion or bad faith. No evidence exists to suggest that the Sale will be anything but the product of arms’-length negotiations between the Debtors and the Purchaser(s), conducted under the purview of one or more Auction(s).

30. The Purchase Agreement(s) ultimately executed by and between the Debtors and the Purchaser(s) and subject to Court approval will be the culmination of a fair and open solicitation and negotiation process. The Sale Procedures are designed to ensure that no party is able to exert undue influence over the process. Under the circumstances, the Debtors intend to ask the Court to find that the Successful Bidder (or Next Highest Bidder) be afforded the protections that Bankruptcy Code section 363(m) provides to a good-faith purchaser. Furthermore, the Sale Procedures are designed to prevent the Debtors or the Successful Bidder (or Next Highest Bidder) from engaging in any conduct that would cause or permit the Purchase Agreement(s), or the Sale of the Intellectual Property to the Successful Bidder (or Next Highest Bidder), to be avoided under Bankruptcy Code section 363(n).

IV. Adequate and Reasonable Notice of the Sale Will Be Provided.

31. The Debtors will provide adequate notice of this Motion to parties in interest, as required by the applicable procedural rules. *See* Fed. R. Bankr. P. 2002(c)(1) (notice must contain “the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections.”); *see also Del. & Hudson Ry.*, 124 B.R. at 180 (the disclosures necessary in such a sale notice need only include the terms of the sale and the reasons why such a sale is in the best interests of the estate and do not need to include the functional equivalent of a disclosure statement).

32. Numerous potential Qualified Bidders have already received information regarding the Intellectual Property Sale process from Hilco Streambank. In addition, the Debtors will serve this Motion on all parties that have expressed interest (via the data room containing documents relevant to the Intellectual Property), or the Debtors believe may have an interest, in purchasing the Intellectual Property. Those parties will be alerted to the Auction, have an opportunity to participate in the Auction, and can submit other or additional offers prior to the Bid Deadline. Consistent with their fiduciary duties to their estates, the Debtors will consider all such offers.

33. To summarize, in the Debtors’ informed business judgment, the Debtors will continue to market the Intellectual Property, conduct one or more Auctions prior to the Sale Hearing with respect thereto, and complete the disposition of the Intellectual Property in a manner best-tailored to generate value for the Debtors’ estates while simultaneously limiting the deterioration in value of the Intellectual Property and the Debtors’ exposure to burdensome and unnecessary administrative expenses. For these reasons, the Debtors’ submit that the Court should approve the sale of the Intellectual Property to the Purchaser(s) selected by the Debtors pursuant to the Sale Procedures.

B. The Sales Satisfies the Requirements of Bankruptcy Code Section 363(f).

34. Under Bankruptcy Code section 363(f), a debtor in possession may sell all or any part of its property free and clear of any and all liens, claims, or interests in such property if (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim, or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a *bona fide* dispute; or (v) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f); *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that Bankruptcy Code section 363(f) is written in the disjunctive; therefore, a court may approve a sale “free and clear” provided at least one of the subsections is met).

35. Because the Debtors expect that they will satisfy the second and fifth of these requirements, if not others as well, approving the sale of the Intellectual Property free and clear of all adverse interests is warranted. Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325 at *3, 6 (Bankr. D. Del. March 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987).

C. The Break-Up Fee Should Be Approved

36. In entering into the Stalking Horse Agreement, the Stalking Horse Bidder proceeded in reliance on promises by the Debtor to seek the approval of a break-up fee in the amount of \$120,054 (the “Break-Up Fee”) and in reasonable expectation that this Court would enter an order providing such relief. The Debtors submit that the Break-Up Fee is a normal and oftentimes necessary component of sales outside the ordinary course of business under Section

363 of the Bankruptcy Code. In particular, such protections encourage a potential purchaser to invest the requisite time, money and effort to conduct due diligence and sale negotiations with a debtor despite the inherent risks and uncertainties of the Chapter 11 process. *See, e.g., In re Comdisco, Inc.*, Case No. 01-24795 (RB) (Bankr. N.D. Ill. Aug. 9, 2002) (approving a termination fee as, inter alia, an actual and necessary cost and expense of preserving the debtor's estate, of substantial benefit to the debtor's estate and a necessary inducement for, and a condition to, the proposed purchaser's entry into the purchase agreement); *In re Integrated Resources, Inc.*, 147 B.R. 650, 660 (Bankr. S.D.N.Y. 1992) (noting that fees may be legitimately necessary to convince a "white knight" to offer an initial bid by providing some form of compensation for the expenses such bidder incurs and the risks such bidder faces by having its offer held open, subject to higher and better offers); *In re Hupp Indus.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1997) (without any reimbursement, "bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's. . . due diligence"); *In re Marrose Corp.*, 1992 WL 33848, at *5 (Bankr. S.D.N.Y. 1992) (stating that "agreements to provide reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more favorable offers"); *In re 995 Fifth Ave. Assocs.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (finding that bidding incentives may be "legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking") (citations omitted).

37. A proposed bidding incentive, such as the Break-Up Fee, should be approved when it is in the best interests of the estate. *In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995); *see also In re America West Airlines, Inc.*, 166 B.R. 908 (Bankr. D. Ariz. 1994); *In re Hupp Indus., Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the bidding

incentive provide some benefit to the debtor's estate. *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999) (holding even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context).

38. In *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy)*, the Third Circuit found that whether break-up fees and expenses could be paid to Calpine Corp. ("Calpine") as a "stalking horse" depended on whether such fees were necessary to preserve the value of the estate. *O'Brien Envtl. Energy*, 181 F.3d at 536. The court determined that Calpine's right to break-up fees and expenses depended on whether it provided a benefit to the debtor's estate by promoting competitive bidding or researching the value of the assets at issue to increase the likelihood that the selling price reflected the true value of the company. *Id.* at 537. The Debtors believe that approval of the Break-Up Fee will create such a competitive bidding process.

39. First, the Break-Up Fee induced the Stalking Horse Bidder to submit a bid that will serve as a minimum floor bid upon which other bidders may rely. Therefore, the Stalking Horse Bidder has provided a material benefit to the Debtors, their estates and their respective creditors by encouraging bidding and increasing the likelihood that the best possible price for the Intellectual Property will be received. *See, e.g., In re Comdisco, Inc.*, Case No. 01-24795 (RB) (Bankr. N.D. Ill. Aug. 9, 2002) (finding proposed termination fee to be of substantial benefit to the debtor's estate); *In re Kmart Corp.*, Case No. 02-02474 (SPS) (Bankr. N.D. Ill. May 10, 2002); *Integrated Resources*, 147 B.R. at 659 (noting that termination payment is an "important tool to encourage bidding and to maximize the value of the debtor's assets").

40. Second, the proposed Break-Up Fee is the result of an arm's-length negotiated agreement between the Debtors and the Stalking Horse Bidder. There is no evidence or reason to believe that the relationship between the Debtors and the Stalking Horse Bidder has been tainted by self-dealing or manipulation.

41. Third, the Debtors do not believe that the Break-Up Fee will have a chilling effect on the sale process. Rather, the Stalking Horse Bidder will increase the likelihood that the best possible price for the Intellectual Property will be received, by permitting other qualified bidders to rely on the diligence performed by the Stalking Horse Bidder, and moreover, by allowing qualified bidders to utilize the Stalking Horse Agreement as a platform for negotiations and modifications in the context of a competitive bidding process.

42. Accordingly, the Debtors request that the Court approve and authorize the Break-Up Fee in the event the Stalking Horse Bidder is not the successful bidder at the Auction.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

43. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). To preserve the value of the Intellectual Property and limit the costs of administering and preserving such assets, it is critical that the Debtors close the Sale as soon as possible after all closing conditions have been achieved or waived.

44. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

NOTICE

45. Notice of this Motion has been provided to (i) the Office of the United States Trustee for Region 21, 400 West Washington Street, Suite 1100, Orlando, Florida 32801; (ii) counsel for the Committee, (a) Frost Brown Todd LLC, 301 East Fourth Street, Suite 3300, Cincinnati, OH 45202 (Attn: Ronald E. Gold, Esq. and Douglas L. Lutz, Esq.) and (b) Gray Robinson PA, 333 S.E. 2nd Avenue, Suite 3200, Miami, Florida 33131 (Attn: Steven J. Solomon, Esq.); (iii) counsel for Wells Fargo Bank, National Association: (a) Otterbourg P.C., 230 Park Avenue, New York, NY 10169, Attn: Daniel F. Fiorillo, Esq. and Chad B. Simon, Esq; and (b) Smith Hulsey & Busey, One Independent Drive, Suite 3300, Jacksonville, Florida 32202 (Attn: Stephen D. Busey); (iv) counsel for Gordon Brothers Finance Company LLC (a) Morgan, Lewis & Bockius LLP, One Federal St., Boston, MA 02110-1726, Attn: Julia Frost-Davies, Esq., Matthew F. Furlong, Esq. and Christopher L. Carter and (b) Holland & Knight LLP, 50 North Laura Street, Suite 3900, Jacksonville, Florida 32202, Attn: Alan Weiss, Esq.; (v) the Internal Revenue Service; (vi) the United States Attorney's Office for the Middle District of Florida; and (vii) any party requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient, and no other or further notice need be provided.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as is just and proper.

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Dated: Jacksonville, Florida
October 30, 2020

Respectfully submitted,

FOLEY & LARDNER LLP

/s/ Mark J. Wolfson

Gardner F. Davis (FL 0471712)

Telephone: 904.359.8726

Email: gdavis@foley.com

Richard E. Guyer (FL 1004150)

Telephone: 904.633.8902

Email: rguyer@foley.com

One Independent Drive, Suite 1300

Jacksonville, FL 32202-5017

and

Mark J. Wolfson (FL 0352756)

Foley & Lardner LLP

100 N Tampa St Suite 2700

Tampa, FL 33602

Telephone: 813.225.4119

Email: mwolfson@foley.com

and

Marcus Helt (TX 24052187)

Foley & Lardner LLP

2021 McKinney Avenue, Suite 1600

Dallas, TX 75201

Telephone: 214.999.4526

Email: mhelt@foley.com

Admitted Pro hac vice

Counsel for Debtors

and Debtors in Possession

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:	Chapter 11
STEIN MART, INC. ¹	Case No. 3:20-bk-2387
	Jointly Administered with
STEIN MART BUYING CORP.	Case No. 3:20-bk-2388
STEIN MART HOLDING CORP.,	Case No. 3:20-bk-2389
Debtors.	

**ORDER GRANTING AND APPROVING DEBTORS' MOTION FOR ENTRY OF
AN ORDER, PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE,
(I) AUTHORIZING THE SALE OF CERTAIN INTELLECTUAL
PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
AND OTHER INTERESTS, AND (II) GRANTING RELATED RELIEF**

This matter came for hearing upon the DEBTORS' MOTION FOR ENTRY OF AN ORDER, PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE, (I) AUTHORIZING THE SALE OF CERTAIN INTELLECTUAL PROPERTY FREE AND

¹ The tax identification numbers of the Debtors are as follows: Stein Mart, Inc. 6198; Stein Mart Buying Corp. 1114; and Stein Mart Holding Corp. 0492. The address of the Debtors' principal offices: 1200 Riverplace Blvd., Jacksonville, FL 32207. The Debtors' claims agent maintains a website, <https://cases.stretto.com/SteinMart>, which provides copies of the Debtors' first day pleadings and other information related to the case.

CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (II) GRANTING RELATED RELIEF (the “Motion”)² (Docket No. _____) filed by the above-captioned debtors and debtors and possession (collectively, the “Debtors”) for entry of an order, pursuant to pursuant to 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing the Sale of the Acquired Assets, including the Intellectual Property, on an “as is, where is” basis, free and clear of all liens, claims, encumbrances, and interests, to Stein Mart Online, Inc. (the “Buyer”) as set forth in the Intellectual Property Asset Purchase Agreement, dated as of October 29, 2020, annexed as Exhibit B to the Motion (the “Purchase Agreement”) (ii) granting related relief; and this Court having determined that the relief set forth in this Order is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and due and adequate notice of the Motion having been given under the circumstances; and upon the entire record in these Chapter 11 Cases; and after due deliberation thereon, and good and sufficient cause appearing therefor, it is hereby³

FOUND AND DETERMINED THAT:

A. Findings of Fact and Conclusions. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

² Capitalized terms not defined herein shall have the meanings provided to them in the Motion or the Purchase Agreement, as applicable.

³ Unless otherwise indicated, capitalized terms used but not defined herein have the meanings assigned to them in the Motion or the Purchase Agreement, as applicable; to the extent there is a conflict between a capitalized term in the Motion and a capitalized term in the Purchase Agreement, the meaning ascribed to such term in the Purchase Agreement shall control and govern.

B. Jurisdiction and Venue. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157 and the *General Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the Middle District of Florida. This is a core matter pursuant to 28 U.S.C. § 157(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution. Venue of the Chapter 11 Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Statutory and Legal Predicates. The statutory predicates for the relief sought in the Motion are Bankruptcy Code sections 105 and 363 and Bankruptcy Rules 2002, 6004, and 9014.

D. Notice. Due and adequate notice of the Motion, the proposed Sale, the Sale Hearing, and the subject matter thereof has been provided to all parties in interest herein, and no other or further notice is necessary. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

E. Interests Property of the Estate. The Acquired Assets sought to be transferred by Seller to the Buyer pursuant to the Purchase Agreement are property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. Each Seller is the sole and rightful owner of such Assets with all right, title and interest to transfer and convey the Acquired Assets to the Buyer, and no other person has any ownership right, title, or interests therein.

F. Sufficiency of Marketing. (i) The Debtors and their advisors engaged in a robust and extensive marketing and sale process for Acquired Assets through their postpetition sale process in accordance with the Sale Procedures as set forth in the Motion and such testimony presented at the Sale Hearing; (ii) the Debtors and their advisors conducted a fair and open sale

process; (iii) the sale process, the Sale Procedures and the Auction and the actions of the Debtors and the Buyer in connection therewith were non-collusive, duly noticed and provided a full, fair and reasonable opportunity for any entity to make an offer to purchase Acquired Assets; and (iv) the process conducted by the Debtors and the Sale Procedures afforded a full and fair opportunity for any entity to make a higher or otherwise better offer to purchase Acquired Assets; (v) the process conducted by the Debtors pursuant to the Sale Procedures obtained the highest or otherwise best value for Acquired Assets for the Seller and the Debtors' estates, and any other transaction would not have yielded as favorable an economic result. No other person or entity or group of persons or entities has offered to purchase Acquired Assets for an amount that would give equal or greater economic value to the Debtors than the value being provided by the Buyer pursuant to the Purchase Agreement. Among other things, the sale of the Acquired Assets pursuant to the Purchase Agreement (the "Sale") is the best alternative available to the Debtors to maximize the return to their creditors. The terms and conditions of the Purchase Agreement, including the Break-Up Fee, are fair and reasonable. Approval of the Motion, the Purchase Agreement, and the transactions contemplated thereby, including the Sale, is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

G. Financial Wherewithal of Buyer. The Buyer has demonstrated its financial wherewithal to satisfy its obligations under the Purchase Agreement, including its payment of the Purchase Price and otherwise provided adequate assurance of future performance of this Purchase Agreement.

H. Corporate Authority. Each Seller: (i) has full requisite corporate or other organizational power and authority to execute, deliver, and perform the Purchase Agreement and all other documents contemplated thereby, and the Transactions (defined below) have been duly

and validly authorized by all necessary corporate action of each of the Debtors; and (ii) has taken all requisite corporate or other organizational actions and formalities necessary to authorize and approve the execution, delivery and performance of the Purchase Agreement and to consummate the transactions contemplated by the Purchase Agreement (including the Sale) (collectively, the “Transactions”), including as required by their respective organizational documents, and, upon execution thereof, the Purchase Agreement and the related documents will be duly and validly executed and delivered by such Seller and enforceable against such Seller in accordance with its terms and, assuming due authorization, execution, and delivery thereof by the other parties thereto, will constitute a valid and binding obligation of each such Seller. No government, regulatory, or other consents or approvals are required for the execution, delivery, and performance by the Seller of the Purchase Agreement and the consummation of the Transactions (including the Sale) contemplated thereby.

I. Compliance with Sale Procedures. As demonstrated by the testimony and other evidence proffered or adduced at the Sale Hearing and the representations of counsel made on the record at the Sale Hearing, the Debtors have adequately marketed the Acquired Assets and conducted the sale process in compliance with the Sale Procedures, and the bidding process was duly noticed and conducted in a non-collusive, fair, and good faith manner. As set forth in the Motion, the Debtors designated the Buyer as the Stalking Horse Bidder for the Acquired Assets and executed the Purchase Agreement, including the Break-Up Fee. The Debtors and their professionals conducted the sale process in compliance with the Sale Procedures and have afforded potential buyers a full and fair opportunity to participate in the bidding process for the Acquired Assets and make higher or better offers. In accordance with the Sale Procedures, the Purchase Agreement was deemed a Qualified Bid and the Buyer was a Qualified Bidder eligible to

participate at the Auction. The Buyer acted in compliance with the Sale Procedures and conducted itself in a non-collusive, fair, and good faith manner. In accordance with the Sale Procedures, the Debtors determined that the bid submitted by the Buyer and memorialized by the Purchase Agreement is the Successful Bid.

J. Arms-Length and Buyer's Good Faith. The Purchase Agreement and each of the Transactions contemplated therein were negotiated, proposed and are undertaken by the Debtors, their management, independent boards of directors or equivalent governing bodies, officers, directors, employees, agents, members, managers and representatives and the Buyer and its management, board of directors or equivalent governing body, officers, directors, employees, agents, members, managers and representatives, from arm's-length bargaining positions without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Buyer has proceeded in good faith, including by: (i) recognizing that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets; (ii) complying with the applicable Sale Procedures in all respects, including the provisions prohibiting collusion with other prospective bidders; (iii) willingly subjecting its bid to the competitive Sale Procedures; (iv) negotiating and entering into the Purchase Agreement and all Related Agreements without collusion, without fraud, and from arm's length bargaining positions; and (v) guaranteeing the absence of common identity of directors, incorporators or any controlling shareholders between the Buyer and any of the Debtors. The Debtors and the Buyer have not engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Sale to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code. All payments to be made by the Buyer and other agreements or arrangements entered into by the Buyer in connection with the Sale have been disclosed, neither the Buyer, nor the Debtors have violated

section 363(n) of the Bankruptcy Code by any action or inaction. As a result of the foregoing, in the absence of a stay pending appeal, the Buyer will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing and consummating the Sale at any time after the entry of this Sale Order, and, accordingly, such closing and consummation in the face of an appeal will not deprive the Buyer of their status as good faith purchasers. Without limiting the generality of the foregoing, the reversal or modification on appeal of the authorization provided herein to consummate the Sale or any portion thereof, shall not affect the validity of the Sale. The Buyer and the Debtors are entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

K. Highest or Best Offer. The total consideration provided by the Buyer for the Acquired Assets as reflected in the Purchase Agreement is the highest or otherwise best offer received by the Debtors for the Acquired Assets. Following the Auction, the Debtors determined that the Purchase Agreement constituted the highest or otherwise best offer for the Acquired Assets in accordance with the process set forth in the Sale Procedures and selected the Purchase Agreement as the Successful Bid. The Debtors' determination that the Purchase Agreement constitutes the highest or otherwise best offer and the Debtors' selection of the Purchase Agreement as the Successful Bid each constitute a valid and sound exercise of the Debtors' business judgment, and the Seller's decision to enter into the Purchase Agreement and the Transactions constitutes a proper exercise of the fiduciary duties of the Debtors and their officers and managers. The offer of the Buyer, upon the terms and conditions set forth in the Purchase Agreement, including the total consideration to be realized by the Debtors thereunder, (i) is the highest or otherwise best offer received by the Debtors after extensive marketing, including through the Sale Procedures and (ii) is in the best interests of the Debtors, their creditors, their estates and other parties in interest. The Purchase Agreement and Transactions will present the

best opportunity to realize the value of the Acquired Assets and avoid decline and devaluation of the Acquired Assets. Unless the Sale and all of the other Transactions contemplated by the Purchase Agreement are concluded expeditiously, as provided for in the Motion and pursuant to the Purchase Agreement, recoveries to creditors may be diminished. Taking into consideration all relevant factors and circumstances, no other entity has offered to purchase the Acquired Assets for greater economic value to the Debtors or their estates than that provided by the Purchase Agreement.

L. No Fraudulent Purpose. The Purchase Agreement was not entered into, and neither the Seller nor the Buyer have entered into the Purchase Agreement, or propose to consummate the Sale, for the purpose of hindering, delaying or defrauding the Debtors' present or future creditors. Neither the Seller nor the Buyer have entered into the Purchase Agreement, or are proposing to consummate the Sale, fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or the laws of the United States, any state, territory, possession thereof, the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

M. No Successor or Other Liability. The Buyer is not a mere continuation of the Debtors, the Seller, or their estates, and there is no continuity of enterprise or common identity between the Buyer and the Debtors or the Seller. The Buyer is not holding itself out to the public as a continuation of the Debtors, the Seller, or their estates. The transfer of the Acquired Assets to the Buyer, and the assumption of any assumed liabilities by the Buyer under the Purchase Agreement, if any, does not, and will not, subject the Buyer to any liability whatsoever, with respect to the Debtors, the Seller or the operation or winding down of their businesses prior to the Closing or by reason of such transfer including under the laws of the United States, any state,

territory, or possession thereof, or the District of Columbia, or any foreign jurisdiction, based, in whole or in part, directly or indirectly, on any, or any theory of, successor liability, vicarious liability, antitrust liability, environmental liability, revenue, pension liability, ERISA liability, tax liability, labor (including any WARN Act) liability, employment or benefits liability, merger or de facto merger, business continuation, substantial continuity, alter ego liability, derivative liability, transferee liability, veil piercing, escheat, continuity of enterprise, mere continuation, product line liability, or products liability or law, or other applicable law, rule, or regulation (including filing requirements under any such law, rule, or regulation), or theory of liability, whether legal, equitable, or otherwise (collectively, the “Successor or Other Liabilities”). Pursuant to the Purchase Agreement, the Buyer is not purchasing all of the Debtors’ or Seller’s assets in that the Buyer is not purchasing any of the Designated Assets or assets of the Seller other than the Acquired Assets, or assuming any liabilities except as set forth in the Purchase Agreement, and shall have no liability for any liabilities except as set forth in the Purchase Agreement. The Buyer asserts that it will not consummate the Transactions contemplated by the Purchase Agreement unless such agreement specifically provides, and the Court specifically orders, that neither the Buyer nor their affiliates, members or shareholders or the Acquired Assets be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any liability, other than as set forth in the Purchase Agreement.

N. Sale Free and Clear. Except as expressly provided for in the Purchase Agreement or any Related Agreement, or this Sale Order, if at all, the Buyer is not acquiring or assuming any liability, warranty or other obligation of the Debtors, including without limitation the Excluded Liabilities and the Encumbrances (except Permitted Encumbrances). The transfer of the Acquired Assets to the Buyer will not subject the Buyer to any liability whatsoever with respect to the

operation of the Debtors' businesses prior to the Closing, including, without limitation, any liability arising from the Excluded Liabilities and the Encumbrances (except Permitted Encumbrances), including without limitation any of the following: (a) amounts due to employees, independent contractors, consultants or advisors of the Seller, including the Employee Obligations; (b) any obligations that arise from the Employee Retirement Income Security Act of 1974, as amended, the Fair Labor Standard Act, Title VII of the Civil rights Act of 1964, the Age Discrimination and Employment Act of 1967, as amended, the Federal Rehabilitation Act of 1973, the National Labor Relations Act; (c) any Taxes of any Seller for any taxable period; (d) Transfer Taxes; (e) all environmental liabilities of the Seller; (f) all accounts payable, trade debt and loan obligations of the Seller; (g) all Liabilities of the Seller to any owner or former owner of capital stock or warrants, holder of indebtedness for borrowed money, or current or former officer or director of Seller; (h) all Liabilities of the Seller under any futures contracts, options on futures, swap agreements or forward sale agreements; (i) drafts or checks of the Seller outstanding at the Closing; (j) all workers' compensation claims and occupational health claims related to the Acquired Assets, including and with respect to the Seller's employees and former employees of the Seller who worked or who were employed at the Acquired Assets, in each case arising out of acts prior to the Closing, even if the claims are instituted after the Closing; (k) all Liabilities with respect to the Seller's employees, or the Seller's former employees, or both (or their representatives or beneficiaries, contractors or consultants of the Seller, and employees, contractors or consultants of any ERISA Affiliate, for any action or inaction of either Seller (or any predecessor of either Seller)) occurring prior to or on the Closing, including with respect to vacation, payroll, sick leave, unemployment benefits, retirement benefits, pension benefits, employee stock option, equity compensation, employee stock purchase or profit sharing plans, health care and other welfare

plans, policies, programs, agreements, arrangements, practices or benefits (including COBRA or the Coal Act), WARN or any other employee plans, policies, programs, practices, agreements, arrangements or benefits or other compensation of any kind to any employee, including under any benefit of any subsidiary or ERISA Affiliate, to the extent arising or accruing prior to or on the Closing; (l) any and all Liabilities of the Seller accruing, arising out of, or relating to any federal, state or local investigations of, or claims or actions against, the Seller, to the extent arising out of (i) actions taken prior to the Closing, and (ii) notices of such claims delivered to the Seller prior to the Closing; (m) any and all Liabilities for the Seller's costs and expenses incurred or owed in connection with (i) the administration of the Bankruptcy Case, and (ii) the negotiation, execution and consummation of the transactions contemplated hereby, in each case, except as otherwise set forth herein; and (n) all Liabilities of the Seller arising from the Excluded Assets.

O. Sale as an Exercise of Business Judgment. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for approval of and entry into the Sale, the Purchase Agreement, and any related agreements (the "Related Agreements"). The Seller's entry into and performance under the Purchase Agreement and any Related Agreements and the consummation of the Transactions contemplated thereby, including the Sale, constitutes sound business judgment and such acts are in the best interests of each Debtor, its estate, and all parties in interest. The Court finds that each Debtor has articulated good and sufficient reasons justifying the Transactions. Such reasons include, but are not limited to, the following: (i) are a result of due deliberation by the Debtors and constitute a sound and reasonable exercise of the Debtors' business judgment consistent with their fiduciary duties; (ii) provide value to and are beneficial to the Debtors' estates, and are in the best interests of the Debtors and their estates, creditors and other parties in interest; and (iii) are reasonable and appropriate under the circumstances. Business

justifications for the Sale include, but are not limited to, the following: (x) the Purchase Price set forth in the Purchase Agreement constitutes the highest or otherwise best offer received for the Acquired Assets; (y) the Purchase Agreement and the Transactions contemplated thereby present the best opportunity to maximize the value of the Acquired Assets; and (z) the value of the Debtors' estates will be maximized through the sale of the Acquired Assets pursuant to the Purchase Agreement.

P. Compelling Reasons for an Immediate Sale. The sale of the Acquired Assets must be approved and consummated promptly in order to preserve the value of the Acquired Assets. Therefore, time is of the essence in consummating the Transactions, and the Debtors and the Buyer intend to close the Transactions as soon as reasonably practicable. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Transactions contemplated by the Purchase Agreement outside: (a) the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code; and (b) a plan of reorganization or liquidation (as the case may be), in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to preserve and to maximize the value of the Debtors' estates. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004 and 6006 with respect to the transactions contemplated by this Sale Order.

Q. No Sub Rosa Plan. The Purchase Agreement and the Sale do not constitute a sub rosa chapter 11 plan for which approval has been sought without the protection that a disclosure statement would afford. Neither the Purchase Agreement nor the Sale impermissibly restructures the rights of the Debtors' creditors, nor impermissibly dictates the terms of a chapter 11 plan for the Debtors.

S. Final Order. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, waives any stay, and expressly directs entry of judgment as set forth herein. The Debtors have demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the immediate approval and consummation of the Sale as contemplated by the Purchase Agreement. Buyer, being a good faith Buyer under section 363(m) of the Bankruptcy Code, may close the Sale contemplated by the Purchase Agreement at any time after entry of this Sale Order.

IT IS HEREBY ORDERED THAT:

1. Motion Granted. The Motion is GRANTED as set forth herein.
2. Objections Overruled. All objections to the Motion or relief provided herein that have not been withdrawn, waived, or settled are hereby overruled and denied on the merits.
3. Notice. Notice of the Motion, Sale Procedures, Sale (and the Transactions and Purchase Agreement contemplated in connection therewith), Sale Hearing, and all deadlines related thereto was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.
4. Approval. The Debtors are authorized to enter into the Purchase Agreement, the Sale, any Related Agreements, and the other Transactions (including any amendments, supplements and modifications thereto, and all of the terms and conditions therein). Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized and directed to consummate the Sale, including, without limitation, the sale and transfer of the Acquired Assets

to the Buyer in accordance with, and subject to, the terms and conditions of the Purchase Agreement, and to transfer and assign all right, title and interest (including common law rights) to all property, licenses and rights to be conveyed free and clear of all Excluded Liabilities (except Permitted Encumbrances), liens, claims, interests and encumbrances to the extent set forth in, and in accordance with and subject to, the terms and conditions of the Purchase Agreement. The Debtors, Seller, and the Buyer are each hereby authorized and directed to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Acquired Assets to the Buyer and the Closing of the Sale and the Transactions pursuant to the Purchase Agreement and this Sale Order and (b) perform, consummate, implement and close fully the Purchase Agreement together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement. The Debtors and Seller are hereby authorized and directed to perform each of their respective covenants and undertakings as provided in the Purchase Agreement prior to or after the Closing of the Sale without further order of the Court. The failure to specifically include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement (including, but not limited to, all ancillary agreements and Related Agreements contemplated thereby) be authorized and approved in its entirety. All Persons are prohibited from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Acquired Assets to the Buyer in accordance with the Purchase Agreement and this Sale Order. The Acquired Assets, including the Intellectual Property, sold pursuant to the Purchase Agreement to the Buyer is being sold "AS IS-WHERE IS," without any representations or warranties from the Debtors as to the quality or fitness of such assets for either their intended or any other purposes.

5. Fair Purchase Price. The consideration provided by the Buyer under the Purchase Agreement is fair and reasonable and constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Voidable Transactions Act (f/k/a Uniform Fraudulent Transfer Act), (ii) fair consideration under the Uniform Fraudulent Conveyance Act, and (iii) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession or the District of Columbia.

6. Amendments to Purchase Agreement; No Plan Modifications. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, supplemented, waived or restated by the parties thereto in a writing signed by such parties and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment, supplement, waiver or restatement does not have a material adverse effect on the Debtors' estates. The Purchase Agreement, any Related Agreement and the Debtors' obligations therein shall not be altered, amended, rejected, discharged or otherwise affected by any chapter 11 plan proposed or confirmed in the Chapter 11 Cases without the prior written consent of the Buyer. The provisions of this Sale Order and any actions taken pursuant hereto shall survive the entry of any order which may be entered confirming any plan of reorganization for the Debtors or converting the Debtors' cases, or any of them, from chapter 11 to a case under chapter 7 of the Bankruptcy Code.

7. Transfer Free and Clear. One or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Acquired Assets are transferred by the Debtors to the Buyer free and clear of the Excluded Liabilities, Encumbrances (except Permitted Encumbrances), any lien (statutory or otherwise), hypothecation, encumbrance, security interest, mortgage, pledge, restriction, charge,

instrument, license, preference, priority, security agreement, easement, covenant, encroachment, option, or other interest in the subject property, including, without limitation, any right of recovery, tax (including foreign, federal, state, and local tax), order of any governmental authority, or other claim with respect thereto, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, and (iii) any claims based on any theory that the Buyer is a successor, transferee or continuation of the Debtors, the Seller, or the Acquired Assets, or that a de facto merger resulted from the transfer of the Acquired Assets, and (iv) any leasehold interest, license or other right, in favor of a person other than the Buyer, to use any portion of the Acquired Assets), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or noncontingent, material or nonmaterial, known or unknown (collectively, “Interests”, and individually, an “Interest”). Each holder of any Interest against the Debtors, the Seller, or any of them, their estates, or any of the Acquired Assets: (i) has, subject to the terms and conditions of this Sale Order, consented to the Sale or is deemed to have consented to the Sale; (ii) could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such Interest; or (iii) otherwise falls within the provisions of 11 U.S.C. § 363(f). Those holders of Interests who did not object, or who withdrew their objections, to the Motion and the Sale are deemed, subject to the terms of this Sale Order, to have consented pursuant to 11 U.S.C. § 363(f)(2). All holders of Interests are adequately protected by having their Interests attach to the proceeds ultimately attributable to the Acquired Assets against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, that such Interests had prior the Sale, subject to any rights, claims and defenses the Debtors or their

estates, as applicable, may possess with respect thereto. The Debtors are authorized and directed to transfer the Acquired Assets to the Buyer in accordance with the terms of the Purchase Agreement and this Sale Order. Upon the Closing, such transfer shall: (i) be valid, legal, binding and effective; (ii) vest the Buyer with all right, title and interest of the Debtors and the Seller in the Acquired Assets; and (iii) be free and clear of all Interests, Encumbrances (except for the Permitted Encumbrances), Excluded Liabilities and any other claims and interests in accordance with section 363(f) of the Bankruptcy Code. All Persons having claims or interests of any kind or nature whatsoever against the Debtors or the Acquired Assets, including without limitation Interests, Encumbrances (except for the Permitted Encumbrances), or Excluded Liabilities, shall be forever barred, estopped and permanently enjoined from creating, perfecting, pursuing, enforcing, attaching, collecting, recovering, or asserting such claims or interests against the Buyer or any of its assets, property, affiliates, successors, assigns, or the Acquired Assets.

8. Proceeds of the Sale. The proceeds of the sale of the Acquired Assets shall be subject to the *Final Order (I) Authorizing Use of Cash Collateral and Affording Adequate Protection; (II) Modifying Automatic Stay; and (III) Granting Related Relief* [Docket No. 407]

9. Surrender of Possession. Except as otherwise provided in the Purchase Agreement, any Acquired Assets in the possession or control of any person or entity, including any vendor, supplier, attorney or employee of the Debtors, shall be delivered to the Buyer free and clear of all Interests, including without limitation free and clear of the Encumbrances (except for Permitted Encumbrances) and the Excluded Liabilities, and deemed delivered at the time of Closing (or such other time as provided in the Purchase Agreement).

10. Vesting of Assets in the Buyer. Effective upon the Closing, the transfer to the Buyer of the Acquired Assets pursuant to the Purchase Agreement shall be, and hereby is deemed

to be, a legal, valid and effective transfer of the Acquired Assets, and vests with or will vest in the Buyer all the Acquired Assets free and clear of Interests, including without limitation free and clear of Encumbrances (except for the Permitted Encumbrances) and Excluded Liabilities.

11. Injunction. Except as expressly provided in the Purchase Agreement or by this Sale Order, effective upon the Closing all persons and entities, including, but not limited to, all debt holders, equity security holders, governmental, tax and regulatory authorities, lenders, vendors, suppliers, employees, trade creditors, litigation claimants and other persons holding Excluded Liabilities or Encumbrances (except Permitted Encumbrances) on the Acquired Assets shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Excluded Liabilities or Encumbrances (except Permitted Encumbrances). All persons are hereby enjoined from taking any action that would interfere with or adversely affect the ability of the Seller to transfer the Acquired Assets in accordance with the terms of the Purchase Agreement and this Sale Order.

12. Direction to Creditors and Parties in Interest. On the Closing, but subject to the Purchase Agreement, each of the Debtors' creditors and the holders of any claims are authorized and directed to execute such documents and take all other actions as may be necessary to terminate, discharge or release their Encumbrances against the Acquired Assets, if any, as such Encumbrances may otherwise exist.

13. Direction to Government Agencies. Each and every filing agent, filing officer, title agent, recording agency, governmental department, secretary of state, federal, state and local official, and any other person and entity who may be required by operation of law, the duties of its office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Acquired Assets, is

hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale and any other Transactions contemplated by the Purchase Agreement and approved by this Sale Order.

14. Good Faith Buyer. The Buyer is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code, and the Buyer has proceeded in good faith in all respects in connection with the Sale.

15. Consummation of Sale. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtors, as well as their officers, employees and agents, are authorized to enter into, execute, deliver and perform their obligations under and comply with the terms of the Purchase Agreement and the Related Agreements and to close and consummate the Sale, including by taking any and all actions as may be reasonably necessary or desirable to implement the Sale and each of the Transactions contemplated thereby pursuant to and in accordance with the terms and conditions of the Purchase Agreement, the Related Agreements, and this Sale Order.

16. Transfer of Marketable Title. Upon the Closing, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Acquired Assets or a bill of sale transferring good and marketable title in the Acquired Assets to the Buyer at the Closing pursuant to the terms of the Purchase Agreement, free and clear of all Encumbrances (except for the Permitted Encumbrances) and Excluded Liabilities.

17. No Successor Liability. By virtue of the Sale, the Buyer and its affiliates, successors and assigns shall not be deemed or considered to: (i) be a legal successor, or otherwise be deemed a successor to any of the Debtors or the Seller; (ii) have, *de facto* or otherwise, merged with or into any or all Debtors or Seller; (iii) be a consolidation with the Debtors, Seller or their estates; or (iv) be an alter ego or a continuation or substantial continuation, or be holding itself out

as a mere continuation, of any of the Debtors, Seller, or their respective estates, businesses or operations, or any enterprise of the Debtors or Seller, in each case by any law or equity.

18. Approval to Release Encumbrances. If any person or entity that has filed financing statements or other documents or agreements evidencing Encumbrances on the Acquired Assets shall not have delivered to the Debtors before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens, and any other documents necessary for the purpose of documenting the release of all Encumbrances that the person or entity has or may assert with respect to the Acquired Assets, the Debtors and the Buyer are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets. The Buyer is hereby authorized to file, register or otherwise record a certified copy of this Sale Order.

19. Inconsistencies with Prior Orders, Pleadings or Agreements. To the extent this Sale Order is inconsistent with any prior order or pleading with respect to the Motion in these Chapter 11 Cases, the terms of this Sale Order shall govern. To the extent there is any inconsistency between the terms of this Sale Order and the terms of the Purchase Agreement (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern; *provided*, nothing herein shall modify, abrogate or otherwise limit the provisions of Section 7.6 of the Purchase Agreement and the rights conferred thereunder.

20. Subsequent Orders and Plan Provisions. Unless otherwise agreed to by the Debtors and the Buyer, this Sale Order shall not be modified by any chapter 11 plan confirmed in these Chapter 11 Cases or any subsequent order(s) of this Court.

21. Binding Effect of Sale Order. This Sale Order and the Purchase Agreement shall be binding in all respects upon the Debtors, their estates, all creditors of, and holders of equity interests in, the Debtors, any holders of liens on the Acquired Assets (whether known or unknown), the Buyer and all successors and assigns of the Buyer, notwithstanding the dismissal of any of the Debtors' cases or any subsequent appointment of any trustees, examiners, "responsible persons" or other fiduciaries in the Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code, and the Purchase Agreement shall not be subject to rejection or avoidance under any circumstances.

22. No Avoidance of Purchase Agreement. Neither the Debtors nor the Buyer have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code. Accordingly, the Purchase Agreement and the Sale shall not be avoidable under section 363(n), chapter 5 of the Bankruptcy Code, or under any other applicable laws of the United States, any state, territory or possession or the District of Columbia, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Purchase Agreement or the Sale.

23. Entire Purchase Agreement Approved. The failure to specifically include any particular provisions of the Purchase Agreement or any related agreements in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtors and the Buyer that the Purchase Agreement and any Related Agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Sale Order.

24. Nonseverable. The provisions of this Sale Order are nonseverable and mutually dependent.

25. Immediate Effect. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, the terms of this Order shall be immediately effective and enforceable upon its entry and not subject to any stay, notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d) or otherwise.

26. Satisfaction of Conditions Precedent. Neither the Buyer nor the Seller shall have an obligation to close the Transactions until all conditions precedent in the Purchase Agreement to each of their respective obligations to close the Transactions have been met, satisfied, or waived in accordance with the terms of the Purchase Agreement.

27. Bulk Sales; Taxes. No bulk sales law, bulk transfer law or similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the Purchase Agreement, the Sale Motion or this Sale Order. Except as otherwise expressly provided in the Purchase Agreement, all obligations of the Debtors relating to taxes, whether arising under any law, by the Purchase Agreement, or otherwise, shall be the obligation of and fulfilled and paid by the Debtors.

28. Automatic Stay. The Buyer shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Purchase Agreement, and any Related Agreements, documents or other instruments. The automatic stay imposed by section 362 of the Bankruptcy Code is modified to the extent necessary to implement the provisions of the Purchase Agreement, any Related Agreement, and this Sale Order.

29. Retention of Jurisdiction. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order, the Purchase Agreement, all amendments thereto, and the Related Agreement in connection with any disputes involving the Debtors, and to adjudicate, if necessary, any and all disputes concerning the Debtors and related in any way to the Sale; provided, however, that in the event the Court abstains from exercising or declines to exercise jurisdiction or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

Debtors' counsel is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of this order.

EXHIBIT B

Asset Purchase Agreement

[See attached]

INTELLECTUAL PROPERTY ASSET PURCHASE AGREEMENT

THIS INTELLECTUAL PROPERTY ASSET PURCHASE AGREEMENT (this “Agreement”) is made as of October 29, 2020 (the “Effective Date”), by and between Stein Mart Online, Inc., a Delaware corporation (the “Buyer”), STEIN MART, INC., a Florida corporation (the “Company”) and each of its affiliated debtors in the Bankruptcy Case (defined below) to the extent such affiliated debtor owns any of the Acquired Assets (defined below) (each, separately and collectively, “Seller.” Capitalized terms used herein and not otherwise defined herein have the meaning set forth in Article I.

RECITALS

WHEREAS, the Company is a national specialty omnichannel off-price retailer offering discount designer and name-brand fashion apparel, home décor, accessories and shoes;

WHEREAS, on August 12, 2020, the Company, together with each affiliated Seller, filed a voluntary petition for relief (the “Filing”) commencing a case under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Florida (the “Bankruptcy Court”);

WHEREAS, Buyer has delivered to Hilco IP Services, LLC d/b/a Hilco Streambank (the “Escrow Agent”) an amount in cash totaling \$400,180 (such amount, as it may be adjusted pursuant hereto, the “Deposit”) in immediately available funds pursuant to the terms of an escrow agreement, attached hereto as Exhibit A (the “Escrow Agreement”), by and between the Escrow Agent, Buyer and Seller;

WHEREAS, Seller believes, following consultation with Seller’s financial advisors and other professionals, and consideration of available alternatives, that, in light of the current circumstances, a sale of certain of Seller’s intellectual property assets as provided herein is necessary to preserve and maximize value, and is in the best interest of Seller, Seller’s creditors, and stakeholders;

WHEREAS, Seller desires to sell to Buyer all of the Acquired Assets and transfer to Buyer the Assumed Liabilities (defined below), and Buyer desires to purchase from Seller all of the Acquired Assets and assume all of the Assumed Liabilities, in each case on the terms and subject to the conditions hereinafter set forth;

WHEREAS, the execution and delivery of this Agreement and Seller’s ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order under, *inter alia*, sections 363 and 365 of the Bankruptcy Code; and

WHEREAS, the Parties desire to consummate the proposed transaction as promptly as practicable after the Bankruptcy Court enters the Sale Order.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, the following terms have the meaning specified or referenced below.

“Acquired Assets” shall have the meaning set forth in Section 2.1.

“Affiliate” shall have the meaning ascribed to it section 101(2) of the Bankruptcy Code.

“Agreement” shall have the meaning set forth in the Preamble.

“Alternative Transaction” means a transaction or series of related transactions (whether by asset sale, equity purchase, merger or otherwise) pursuant to which Seller enters into an agreement to sell all of the Acquired Assets or any group of assets that includes all or any material portion of the Acquired Assets to a Third Party, at the highest or best offer.

“Auction” shall mean the auction of the Acquired Assets.

“Avoidance Actions” means any and all claims for relief of Seller under chapter 5 of the Bankruptcy Code, or state fraudulent conveyance, fraudulent transfer or other similar state laws.

“Bankruptcy Case” means, collectively, the bankruptcy cases commenced by Seller under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court in the Filing.

“Bankruptcy Code” means Title 11 of the United States Code, section 101 *et seq.*

“Bankruptcy Court” shall have the meaning set forth in the Recitals.

“Bidding Procedures” means the bidding procedures in the form attached hereto as Exhibit B.

“Break-Up Fee” means \$120,054 as compensation to Buyer for serving as the “stalking horse” and subjecting this Agreement to higher and better offers.

“Business Day” means any day of the year, other than a Saturday or Sunday, on which national banking institutions in New York, New York are open to the public for conducting business and are not required or authorized by Law to close.

“Buyer” shall have the meaning set forth in the Preamble.

“Buyer Termination Notice” shall have the meaning set forth in Section 10.1(c)(i).

“Cash Consideration” means \$4,001,800.

“Claims” means all claims, causes of action, rights of recovery and rights of set-off of Seller, in each case, of whatever kind or description against any Third Party.

“Closing” shall have the meaning set forth in Section 3.4.

“Closing Date” shall have the meaning set forth in Section 3.4.

“Closing Date Cash Payment” shall have the meaning set forth in Section 3.3.

“Closing Legal Impediment” shall have the meaning set forth in Section 8.3.

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

“Competing Bids” shall have the meaning set forth in Section 6.2(a).

“Confidential Information” means any information concerning, including any formula, pattern, device or compilation of information, or which is used in, the Purchased Intellectual Property, and includes, but is not limited to, proprietary technology, operating procedures and methods of operation, financial statements and other financial information, Trade Secrets, market studies and forecasts, competitive analyses, target markets, advertising techniques, pricing policies and information, the substance of agreements with customers, subcontractors and others, marketing and similar arrangements, servicing and training programs and arrangements, Customer Data, and any documents embodying confidential and proprietary information.

“Contract” means any contract, agreement, undertaking, license, sublicense, sales order, purchase order or other commitment, whether written or oral (including commitments to enter into any of such), that is binding on any Person or any part of its property under applicable Law.

“Copyrights” means: (a) works of authorship whether or not copyrightable; and (b) any other copyrights and works, together with all common law rights, and any applications and registrations therefor.

“Customer Data” means information pertaining to current or past customers of Seller, as described on Schedule 1.1(a) attached hereto.

“Deposit” shall have the meaning set forth in the Recitals.

“Documents” means all vendor contact information from A/P database (for the last 3 years), Reports on customer behavior on SteinMart.com (search results, click through rate comparisons, funnel analysis), Contact information for drop ship vendors, Approximately one years’ worth of marketing promotion emails (appx 1,000 emails), Sampling of digital ads from 2019, approximately one year’s worth of direct mailers (approximately 40 mailers), a Google category demand and Stein Mart brand interest index report, and the Customer Data. To the extent they are in the possession of Seller, Documents shall also include any books, records, files, invoices, inventory records, product specifications, cost and pricing information, supplier lists, business plans, catalogs, customer literature, quality control records and manuals and all digital and camera-ready artwork of logos and designs, including all data and other information stored on hard drives (including those located on remote servers, whether operated by Seller or by Third Party providers), discs, tapes or other media, in each case, solely to the extent owned by Seller.

“Domain Name” means an Internet resource name of Seller and understood by web servers and online organizations that provides pertinent destination information, including those identified on Schedule 2.1(a).

“Effective Date” shall have the meaning set forth in the Preamble.

“Employee Obligations” means, in each case accrued prior to the Closing, (i) any and all obligations under applicable Law or agreements owed by Seller to employees, including without limitation, wages, salaries, commissions, accrued vacation, severance, sick leave pay, and expense reimbursements, and (ii) any and all payroll and other taxes associated with (i), including without limitation, federal income taxes, state and local income taxes, FICA, Medicare, and state disability insurance.

“Encumbrance” means any charge, lien, claim, mortgage, lease, sublease, license, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, or other similar restriction of any kind.

“Escrow Agreement” shall have the meaning set forth in the Recitals.

“Excluded Assets” shall have the meaning set forth in Section 2.2.

“Excluded Liabilities” shall have the meaning set forth in Section 2.4.

“Filing” shall have the meaning set forth in the Recitals.

“Governmental Authority” means any United States federal, state, municipal or local or any foreign government, governmental agency or authority, or regulatory or administrative authority, including the United States Patent and Trademark Office and United States Copyright Office, or any court, tribunal or judicial body having jurisdiction, including the Bankruptcy Court.

“Intellectual Property” means, collectively, all Copyrights, Patents, Trademarks and Online Properties used in or related to the conduct of the business or owned by Seller, including as set forth on Schedule 2.1(a).

“Knowledge” means, with respect to any matter in question, in the case of Seller, the actual knowledge after due inquiry of each of Hunt Hawkins and James Brown with respect to such matter.

“Law” means any foreign or domestic law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction or decree by any Governmental Authority.

“Liability” means any debt, loss, claim, damage, demand, fine, judgment, penalty, liability or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“Material Adverse Effect” means any effect, change, condition, circumstance, development or event that, individually or in the aggregate with all other effects, changes, conditions, circumstances, developments and events has had, or would reasonably be expected to have, a material adverse effect on (x) the Purchased Intellectual Property or any other Acquired Assets taken as a whole or (y) Seller’s ability to consummate the transactions contemplated hereby, excluding any effect, change, condition, circumstance, development or event that results from or arises out of: (i) general business or economic conditions in any of the geographical areas in which Seller operates the Acquired Assets; (ii) geopolitical conditions or any outbreak or escalation of hostilities or acts of terrorism or war or any effect, change or event that is otherwise generally applicable to the industries and markets in which Seller operate; (iii) changes in (or proposals to change) Laws or accounting regulations or principles; (iv) any event, change, occurrence or effect affecting United States financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (v) the occurrence of any act of God or other calamity or force majeure events, including, but not limited to the COVID-19 pandemic; (vi) the Bankruptcy Case, including, without limitation, the Auction and any announced liquidation of Seller or any of Seller’s respective assets, including pursuant to any Store Closing Sales; or (vii) any action expressly contemplated by this Agreement or taken at the written request of Buyer; except in the case of clauses (i) – (v), to the extent such effect, change, condition, circumstance, development or event has a disproportionate impact on the Purchased Intellectual Property or other Acquired Assets, as compared to the impact on the Purchased Intellectual Property or other Acquired Assets, mutatis mutandis, of other participants engaged in the industries and geographies in which Seller operates.

“Next Highest Bidder” means the Person submitting a bid at the Auction that is the highest bid immediately before submission of the bid submitted by the Successful Bidder.

“Online Properties” means any Domain Names, uniform resource locators and Internet Protocol Addresses owned by Seller, including those listed on Schedule 2.1(a).

“Order” means any award, writ, injunction, judgment, order or decree entered, issued, made or rendered by any Governmental Authority.

“Outside Date” shall have the meaning set forth in Section 10.1(b)(ii).

“Party” or “Parties” means, individually or collectively, Buyer and Seller.

“Patents” means (a) any patent, (b) any patent applications, (c) any continuation, continuation-in-part, divisional, and any patent applications based on any of the foregoing, and (d) any patents issuing from any of the items reference in the foregoing clauses (a)-(c).

“Permitted Encumbrances” means the non-exclusive outbound licenses of Intellectual Property set forth on Schedule 1.1(b)(1).

“Person” means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization or other entity or Governmental Authority.

“Pre-Closing Apportioned Taxes” shall have the meaning set forth in Section 7.1(c).

“Pre-Closing Covenants” shall have the meaning set forth in 11.13.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority, other than an Avoidance Action.

“Purchase Price” has the meaning set forth in Section 3.1.

“Qualified Bid” shall have the meaning set forth in the Bidding Procedures

“Representative” means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

“Sale Motion” shall mean the motion in the form attached as Exhibit C, with such changes as are not adverse to Buyer or as the Parties may mutually agree, to be filed by the Seller seeking approval of the sale of the Acquired Assets .

“Sale Order” means an Order of the Bankruptcy Court approving this Agreement and the transactions contemplated hereby, which Order shall be substantially in the form of the proposed order attached to the Sale Motion as Exhibit A with such changes as are not adverse to Buyer or as the Parties may mutually agree.

“Seller” shall have the meaning set forth in the Preamble.

“Seller Termination Notice” shall have the meaning set forth in Section 10.1(d)(i).

“Social Media Accounts” means the account registrations of Seller with Facebook, Instagram, Twitter and Pinterest, and includes handle names and direct links to each of such account registrations.

“Store Closing Sales” has the meaning set forth in Section 7.6.

“Subsidiary” means any entity with respect to which a specified Person (or a Subsidiary thereof) has the power, through the ownership of securities or otherwise, to elect a majority of the directors or similar managing body.

“Supplier Trademark Agreement” means the limited trademark license previously granted by Sellers to TKO and Samsonico Limited to use the Company’s trademarks in order to permit TKO and Samsonico to liquidate merchandise ordered by the Company from them prior to bankruptcy which contain Company trademarks for which Company refused to accept delivery.

“Successful Bidder” means the Person submitting the bid determined to be the highest or best offer at the Auction.

“Tax” or “Taxes” means any federal, state, provincial, local, municipal, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), natural resources, real property, personal property, escheat, abandoned or unclaimed property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar tax, duty, levy or other governmental charge or assessment or deficiency thereof (including all interest and penalties thereon and additions thereto), in each case imposed by any Governmental Authority, including any such amounts payable pursuant to any Tax-sharing agreement or other agreement relating to the payment of any such Tax, fee, assessment or charge, whether imposed directly, under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a result of being a transferee, successor, or member of an affiliated, consolidated, unitary or combined group, by contract, or otherwise.

“Tax Return” means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, schedules, statements, or information) filed with or required to be filed with any Governmental Authority or required to be provided to any Person, in each case in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

“Third Party” means a Person who or which is neither a Party nor an Affiliate of a Party.

“Trade Secrets” means trade secrets, industrial secret rights, and rights in know-how, data and confidential or proprietary business or technical information, in all cases that derives independent economic value, whether actual or potential, from not being known to, and not being readily ascertainable by proper means by, other Persons who can obtain economic value from its disclosure or use and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

“Trademarks” means all trademarks, service marks, trade names, logos, slogans, designs and designations of origin, registered and unregistered, and all registrations thereof, applications therefor and all common law and prior usage rights related to each of the foregoing (including any right to control all

uses of the common law trademarks and service marks, including the first use of the common law trademarks and service marks, with respect to the nature and quality of the goods and services), and all goodwill appurtenant to any or all of the foregoing.

“Transaction Documents” means this Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 7.1(a).

Section 1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise indicated to the contrary in this Agreement by the context or use thereof:

(i) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Any reference in this Agreement to “\$” means U.S. dollars.

(iii) Unless the context otherwise requires, all capitalized terms used in the Exhibits and Schedules shall have the respective meanings assigned in this Agreement. No reference to or disclosure of any item or other matter in the Exhibits and Schedules shall be construed as an admission or indication that such item or other matter is material. No disclosure in the Exhibits and Schedules relating to any possible breach or violation of any Contract or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. Any information, item or other disclosure set forth in any Schedule shall be deemed to have been set forth in all other applicable Schedules if the relevance of such disclosure to such other Schedule is reasonably apparent on its face. All Exhibits and Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

(iv) Any reference in this Agreement to gender includes all genders, and words importing the singular number also include the plural and vice versa.

(v) The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any “Section,” “Article,” “Schedule,” or “Exhibit” are to the corresponding Section, Article, Schedule, or Exhibit of or to this Agreement unless otherwise specified.

(vi) Words such as “herein,” “hereof” and “hereunder” refer to this Agreement as whole and not merely to a subdivision in which such words appear, unless the context otherwise requires.

(vii) The word “including” or any variation thereof means “including, without limitation,” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) No Strict Construction. Buyer, on the one hand, and Seller, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on

the one hand, and Seller, on the other hand, 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. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any Person with respect to this Agreement.

ARTICLE II

PURCHASE AND SALE

Section 2.1 Purchase and Sale of the Acquired Assets. On the terms and subject to the conditions set forth in this Agreement, on the Closing Date, in consideration of payment of the Purchase Price and assumption of the Assumed Liabilities by Buyer, Seller shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, free and clear of any Encumbrances, and Buyer shall purchase, assume and accept from Seller, all right, title and interest of Seller in, to, or under the following (collectively, the “Acquired Assets”):

- (a) the Intellectual Property;
- (b) the Documents and all goodwill associated with the Intellectual Property;
- (c) all Claims of Seller to the extent arising out of, or relating to, the Intellectual Property;
- (d) Trade Secrets comprising or arising out of the Intellectual Property (items (a)-(e) collectively referred to as the “Purchased Intellectual Property”);
- (e) The Social Media Accounts;
- (f) All Customer Data; and
- (g) all transferrable rights of Seller under non-disclosure or confidentiality, non-compete, or non-solicitation Contracts relating to the Purchased Intellectual Property or the Documents.

Section 2.2 Excluded Assets. Notwithstanding anything herein to the contrary, the Buyer shall not acquire any right, title or interest in or to any assets, properties, rights, interests, or claims of any kind or description of Seller or its Affiliates other than the Acquired Assets (collectively, the “Excluded Assets”).

Section 2.3 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, contemporaneously with the sale, assignment and transfer of the Acquired Assets to Buyer, Buyer shall assume and agree to pay, perform and discharge, as and when due (in accordance with the respective terms and subject to the respective conditions thereof) only those Liabilities arising from the ownership of the Acquired Assets and the use thereof by Buyer from and after the Closing, Transfer Taxes to the extent of Buyer’s obligations set forth in Section 7.1(a), (collectively, the “Assumed Liabilities”), and no other Liabilities whatsoever of Seller.

Section 2.4 Excluded Liabilities. Buyer shall not assume or be obliged to pay, perform or otherwise discharge, and Seller shall be solely and exclusively liable with respect to, any Liability of Seller that is not an Assumed Liability (such Liabilities, collectively, the “Excluded Liabilities”). For the avoidance of doubt, Excluded Liabilities shall include any and all Liabilities and obligations for (i) Taxes relating to the Acquired Assets and the Assumed Liabilities for any taxable period (or portion thereof) ending on or prior to the Closing Date (as determined in accordance with the principles set forth in Section

7.1(c)), (ii) any Taxes of Seller for any taxable period, (iii) Transfer Taxes to the extent of Seller's obligations set forth in Section 7.1(a), (iv) gift cards, rewards points or loyalty rewards issued by Seller, (v) any of Seller's retail store leases, (vi) amounts due to employees, independent contractors or consultants of Seller, (vi) any Employee Obligations and (vii) any amounts owed to third party service providers in respect of the Social Media Accounts and Online Properties.

Section 2.5 Further Assurances. Following the Closing, Seller, on the one hand, and Buyer, on the other hand, shall use their respective commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things reasonably necessary under applicable Law, and execute and deliver such instruments and documents and to take such other actions, as may be required to consummate the transactions contemplated by this Agreement at or after the Closing; provided that nothing in this Section 2.5 shall prohibit Seller from ceasing operations or winding up Seller's affairs following the Closing. In furtherance and not in limitation of the foregoing, in the event that any of the Acquired Assets shall not have been conveyed at Closing, Seller shall use commercially reasonable efforts to convey such Acquired Assets to Buyer as promptly as practicable after the Closing.

Section 2.6 Withholding. Buyer shall be entitled to deduct and withhold from any payment to be made under this Agreement all Taxes that Buyer is required to deduct and withhold with respect to such payment under any provision of applicable Law. Taxes withheld pursuant to this Section 2.6 by Buyer will be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

ARTICLE III

PURCHASE PRICE

Section 3.1 Purchase Price. In consideration for the purchase, sale, assignment and conveyance of the Acquired Assets, Buyer shall pay to Seller cash in the amount of the Cash Consideration (the "Purchase Price") and assume the Assumed Liabilities.

Section 3.2 Deposit. Buyer has delivered to the Escrow Agent the Deposit in immediately available funds pursuant to the Escrow Agreement. The Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of Seller or Buyer. The Deposit shall be retained by Seller at the Closing (and deducted from the Purchase Price due and payable at the Closing), or if this Agreement is terminated, treated in the manner set forth in Section 10.2.

Section 3.3 Closing Date Payment. At the Closing, (a) Buyer shall pay to Seller cash by wire transfer of immediately available funds in an amount equal to the Cash Consideration less the Deposit (the "Closing Date Cash Payment") and (b) Buyer and Seller shall direct the Escrow Agent to indefeasibly transfer the Deposit to an account designed by Seller.

CLOSING

Section 3.4 Closing Date. On the terms and subject to the conditions set forth in this Agreement, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall take place by telephone conference and electronic exchange of documents commencing at 8:00 AM local time on a date no later than the first (1st) Business Day following the date on which the conditions set forth in Section 7.5 and Section 8.6 have been satisfied or (if permissible) waived (other than the conditions that by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or at such other place

or time as Buyer and Seller may mutually agree upon in writing. The date and time at which the Closing actually occurs is referred to herein as the “Closing Date.”

Section 3.5 Buyer’s Deliveries to Seller. At the Closing, Buyer shall deliver to Seller each of the following:

- (a) the Closing Date Cash Payment in accordance with clause (a) of Section 3.3;
- (b) each other Transaction Document not previously executed to which Buyer is a party, duly executed by Buyer;
- (c) the certificates of Buyer to be received by Seller pursuant to Section 9.1 and Section 9.2; and
- (d) such assignments and other good and sufficient instruments of assumption and transfer, each in form reasonably satisfactory to Seller, as Seller may reasonably request to transfer and assign the Acquired Assets and Assumed Liabilities to Buyer.

Section 3.6 Seller’s Deliveries to Buyer. At the Closing, Seller shall deliver to Buyer each of the following:

- (a) each other Transaction Document to which Seller is a party, duly executed by Seller;
- (b) confirmation that the Bankruptcy Court shall have entered the Sale Order, which shall have become final and non-appealable, and no order staying, reversing, modifying, or materially amending the Sale Order shall be in effect on the applicable Closing Date;
- (c) the certificates of Seller to be received by Buyer pursuant to Section 8.1 and Section 8.2;
- (d) such bills of sale, deeds, endorsements, assignments (including requisite assignments of all Purchased Intellectual Property, Social Media Accounts and Customer Data), powers of attorney, UCC terminations and other filings and other good and sufficient instruments, each in form reasonably satisfactory to Buyer, which are necessary to vest in Buyer all the right, title and interest of Seller in, to or under any or all of the Acquired Assets free and clear of Encumbrances other than Permitted Encumbrances;
- (e) with respect to the Online Properties, Seller’s login credentials for and such documents as may be reasonably necessary to transfer to Buyer all administrative rights to the Online Properties;
- (f) a duly completed and executed certificate pursuant to Treasury Regulation Section 1.1445-2(b) from Seller in form and substance reasonably acceptable to Buyer; and
- (g) the Customer Data and the Documents.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Schedules, Seller hereby represents and warrants to Buyer that the following statements contained in this Article IV are true and correct as of the date hereof and as of the Closing Date:

Section 4.1 Organization and Good Standing. Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of Seller's organization. Subject to the limitations imposed on Seller as a result of the Filing, (x) Seller has the requisite corporate power and authority to own or lease and to operate and use Seller's properties and (y) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which its ownership of property or the conduct of its business as now conducted requires, or has required it, to qualify, except where the failure to be so qualified or have qualified would not reasonably be expected to have a Material Adverse Effect.

Section 4.2 Authority; Validity; Consents. Seller has, subject to requisite Bankruptcy Court approval, as applicable, the requisite corporate power and authority necessary to enter into and perform Seller's obligations under this Agreement and the other Transaction Documents to which Seller is a party and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by Seller and each other Transaction Document required to be executed and delivered by Seller at the Closing will be duly and validly executed and delivered by Seller at the Closing. Subject to requisite Bankruptcy Court approval, as applicable, this Agreement and the other Transaction Documents constitute, with respect to Seller, the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to, and after giving effect to, requisite Bankruptcy Court approval (including, without limitation, the Sale Order), as applicable, and except (a) for entry of the Sale Order and (b) for notices, filings and consents required in connection with the Bankruptcy Case, Seller is not required to give any notice to, make any filing with or obtain any consent from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby and thereby.

Section 4.3 Title to Acquired Assets. Immediately prior to Closing, Seller will have and, upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 3.6, and subject to the terms of the Sale Order, Seller will thereby transfer to Buyer, title to or, where expressly provided for herein a valid contractual interest in, all of the Acquired Assets free and clear of all Encumbrances, except (i) as set forth on Schedule 4.3 and (ii) for Permitted Encumbrances.

Section 4.4 Taxes. In each case, to the extent relating to the Acquired Assets, the Assumed Liabilities or the Business:

(a) Seller has timely filed (taking into account any valid extensions) all Tax Returns required to be filed by such Seller and has timely paid all Taxes (whether or not shown or required to be shown on any Tax Return). Seller is not currently the beneficiary of any extension of time within which to file any Tax Return other than extensions of time to file Tax Returns obtained in the ordinary course of business.

(b) Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

(c) Seller has withheld and paid all Taxes required to have been withheld and paid in connection with any amount paid or owing to any employee, independent contractor, creditor, stockholder or other third party, and all Forms W-2 and 1099 required with respect thereto have been properly completed in all material respects and timely filed.

(d) No deficiencies for any material amount of Taxes have been proposed, asserted or assessed against Seller as of the date hereof.

(e) There are no pending or threatened in writing audits, examinations, investigations or other proceedings relating to a material amount of Taxes imposed on the Seller or with respect to the Acquired Assets.

(f) In the last three (3) years, no claim has been made in writing by an authority in a jurisdiction where a Seller does not currently file Tax Returns that such Seller may be subject to Tax by that jurisdiction with respect to the Acquired Assets or Seller's business.

(g) Seller has not given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the assessment or payment of Taxes.

(h) No Acquired Asset is (i) "tax exempt use property" within the meaning of Section 168(h)(1) of the Code or Section 470(c)(2) of the Code, (ii) tax-exempt bond financed property within the meaning of Section 168(g) of the Code, or (iii) subject to a lease under Section 7701(h) of the Code or any predecessor provision.

(i) There are no Encumbrances for Taxes on any of the Acquired Assets other than Permitted Encumbrances, and Seller has no Knowledge of any basis for assertion of any claims attributable to Taxes which, if adversely determined, would result in any such Encumbrance.

Section 4.5 Legal Proceedings. As of the date hereof, except for the Bankruptcy Case and as set forth on Schedule 4.5, there is no Proceeding or Order pending, outstanding or, to Seller's Knowledge, threatened against Seller that (a) seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the transactions contemplated hereby or (b) would have a material effect on the Acquired Assets.

Section 4.6 Brokers or Finders. Except as set forth on Schedule 4.6 hereof, Seller has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment owed in connection with this Agreement, the other Transaction Documents to which it is a party or the transactions contemplated hereby or thereby, in all cases for which Buyer is or will become liable following the Closing.

Section 4.7 Intellectual Property.

(a) Schedule 2.1(a) sets forth a correct and complete list as of the date hereof of all Intellectual Property that is registered, filed or issued under the authority of any Governmental Authority, all applications for Intellectual Property filed with any Governmental Authority, and any material unregistered Intellectual Property, specifying as to each, as applicable: the title of the Patent, the Trademark, the Copyright, the Online Property or the design; the jurisdiction by or in which it has been issued, registered or filed; the patent, registration or application serial number; the issue, registration or filing date (the "Scheduled Intellectual Property"). Except as set forth on Schedule 4.7(a), the Seller owns all right, title and interests in and to the Scheduled Intellectual Property, all Social Media Accounts and the Customer

Data, free and clear of all Encumbrances, other than Permitted Encumbrances. The Scheduled Intellectual Property and the Social Media Accounts included in the Acquired Assets are subsisting and, to Seller's Knowledge, valid and enforceable.

(b) To Seller's Knowledge, no Third Party is infringing or misappropriating any Scheduled Intellectual Property included in the Acquired Assets, nor any of Seller's rights in the Social Media Accounts, in a material manner. Seller is not subject to any outstanding or prospective Order (including any motion or petition therefor) that does or would restrict or impair the use of the Scheduled Intellectual Property, Social Media Accounts or Customer Data. To Seller's Knowledge, the use of the Scheduled Intellectual Property does not infringe any Third Party's Trademarks, Copyrights or other intellectual property rights.

(c) Seller represents and warrants that all uses of the Trademarks included in the Acquired Assets for goods and services, including but not limited to all uses under the Supplier Trademark Agreement, have been made pursuant to the consistent and uniform quality control standard for the goods and services administered and enforced by Seller for sale in the Company stores prior to the bankruptcy. Seller represents that the Supplier Trademark License was granted merely to permit TKO and Samsonico to liquidate merchandise ordered by the Company from them prior to bankruptcy which contain Company trademarks for which Company refused to accept delivery, and that neither TKO nor Samsonico have been granted any rights to produce, market or sell products bearing any of the Trademarks other than the specific goods included in the Supplier Trademark License. Seller further represents that the goods subject to the Supplier Trademark License were not rejected by the Company due to defects or quality issues, and that no license has been granted to any Third Party to sell goods or services bearing any of the Trademarks included in the Acquired Assets of a quality lower than the quality of the goods historically sold or offered for sale by Seller or the Company prior to the bankruptcy.

Section 4.8 Customer Data. The Seller's privacy policies do not prohibit the transfer of the Customer Data to Buyer or the use by Buyer thereof, other than for general restrictions under applicable Law on the use of such data.

Section 4.9 No Other Representations or Warranties; No Survival. Buyer acknowledges, on behalf of itself and its Affiliates, that, except for the representations and warranties contained in this Article IV, none of Seller, Seller's Affiliates or any other Person on behalf of Seller or Seller's Affiliates makes any express or implied representation or warranty with respect to Seller, the Acquired Assets, or with respect to any information provided by or on behalf of Seller or its Affiliates to Buyer. Without limiting the generality of the foregoing, and except as otherwise provided herein, Seller expressly disclaims any representations or warranties regarding accuracy, sufficiency, fitness for a particular purpose, merchantability, and non-infringement of third-party rights. The representations and warranties of Seller will expire upon the earlier of the Closing Date or the termination of this Agreement. Nothing in this Section 4.9, however, shall relieve Seller from any Liability on account of fraud.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that the following statements contained in this Article V are true and correct as of the date hereof and as of the Closing Date:

Section 5.1 Organization and Good Standing. Buyer is a Delaware corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction Buyer's organization.

Buyer has the requisite power and authority to own or lease and to operate and use Buyer's properties and to carry on Buyer's business as now conducted.

Section 5.2 Authority; Validity; Consents. Buyer has the requisite power and authority necessary to enter into and perform Buyer's obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated herein have been duly and validly authorized by all requisite corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document to which Buyer is a party will be duly and validly executed and delivered by Buyer at the Closing. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to requisite Bankruptcy Court approval, as applicable, Buyer is not and will not be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby or thereby.

Section 5.3 No Conflict. the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) any agreement, indenture, or other instrument to which it is bound, (b) the certificate of incorporation of Buyer, (c) any Order or (d) any Law.

Section 5.4 Availability of Funds; Solvency. Buyer will have at the Closing sufficient cash in immediately available funds to pay the Purchase Price and any other costs, fees and expenses required to be paid by it under this Agreement and the other Transaction Documents. As of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other transactions contemplated by the Transaction Documents, Buyer will not, assuming that the representations and warranties made by Seller in Article IV of this Agreement are accurate in all material respects, (i) be insolvent (either because Buyer's financial condition is such that the sum of Buyer's debts is greater than the fair value of Buyer's assets or because the present fair value of Buyer's assets will be less than the amount required to pay Buyer's probable Liability on Buyer's debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in Buyer's business, or (iii) have incurred or plan to incur debts beyond Buyer's ability to repay such debts as they become absolute and matured.

Section 5.5 Legal Proceedings. There are no Proceedings pending or, to the knowledge of Buyer, threatened, that would affect in any material respect Buyer's ability to perform Buyer's obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

Section 5.6 Brokers or Finders. Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which Seller is or will become liable, and Buyer shall hold harmless and indemnify Seller from any claims with respect to any such fees or commissions.

Section 5.7 Condition of Acquired Assets; Representations. Notwithstanding anything contained in this Agreement to the contrary, Buyer acknowledges and agrees that Seller is not making any representations or warranties whatsoever, express or implied, beyond those expressly made by Seller in

Article IV (subject to the disclosures set forth on the Schedules), and Buyer acknowledges and agrees that, except for the representations and warranties contained in Article IV, the Acquired Assets are being transferred on a “where is” and, as to condition, “as is” basis. Buyer acknowledges that it has conducted to Buyer’s satisfaction Buyer’s own independent investigation of Seller’s business (including the Acquired Assets and Assumed Liabilities) and, in making the determination to proceed with the transactions contemplated by this Agreement, Buyer has relied on the results of Buyer’s own independent investigation. In connection with Buyer’s investigation, Buyer has received or may receive from Seller certain projections, forward-looking statements and other forecasts and certain business plan information. Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Buyer is familiar with such uncertainties, that Buyer is taking full responsibility for making Buyer’s own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to Buyer (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that Buyer shall have no claim against anyone with respect thereto. Accordingly, Buyer acknowledges that Seller makes no representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans). Nothing in this Section 5.7, however, shall relieve Seller from any Liability on account of actual and knowing fraud.

ARTICLE VI

ACTIONS PRIOR TO THE CLOSING DATE

Section 6.1 Operations Prior to the Closing Date. Seller covenants and agrees that, except (i) as expressly contemplated by this Agreement, (ii) with the prior written consent of Buyer (which consent, other than with respect to Section 6.1(b)(ii), shall not be unreasonably withheld or delayed), (iii) as required by the Bankruptcy Court or (v) as otherwise required by Law, after the Effective Date and prior to the Closing Date:

(a) Seller shall use commercially reasonable efforts, taking into account Seller’s status as debtors-in-possession in the Bankruptcy Case, to maintain and preserve the Acquired Assets in their present condition in all material respects and, without limiting the generality of the foregoing,

(b) Seller shall not:

(i) sell, lease (as lessor), transfer or otherwise dispose of, or mortgage or pledge, or voluntarily impose or suffer to be imposed any Encumbrance (other than Permitted Encumbrances) on, any Acquired Asset; or

(ii) cancel or compromise any material claim or waive or release any material right, in each case, that is a claim or right related to an Acquired Asset;

(iii) enter into any agreement that limits or restricts the conduct of the Acquired Assets in any location or with any Person;

(iv) allow any insurance policies covering the Acquired Assets to lapse unless replaced with insurance policies providing substantially similar coverage with respect to the Acquired Assets;

(v) send more than five (5) emails to customers in any one-week period; or

(vi) enter into any agreement or commitment to take any action prohibited by this Section 6.1.

Section 6.2 Bankruptcy Court Filings and Approval.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids (whether through cash, assumed liabilities or credit bid) in respect of a sale, reorganization, or other disposition of the Acquired Assets (collectively, "Competing Bids"). From the date hereof (and any prior time) and until the transactions contemplated hereby are consummated, Seller is permitted to and to cause its Representatives and Affiliates to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates and Representatives) in connection with any Alternative Transaction. In addition, Seller shall have the authority to respond to any inquiries or offers with respect to an Alternative Transaction and perform any and all other acts related thereto to the extent any such act is not in violation of the Sale Procedures or the Bankruptcy Code.

(b) Seller shall use Seller's commercially reasonable efforts to conduct the hearing on approval of this Agreement and the transactions contemplated by this Agreement pursuant to the Bidding Procedures in the event of a competing bid and to obtain entry of the Sale Order and such other relief from the Bankruptcy Court as may be necessary or appropriate in connection with this Agreement and the consummation of the transactions contemplated by this Agreement. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in implementing the Bidding Procedures at the hearing in the event of a competing offer and obtaining the Sale Order and, consistent with Section 2.5, a finding by the Bankruptcy Court of adequate assurance of future performance by Buyer.

(c) Seller and Buyer acknowledge that this Agreement and the sale of the Acquired Assets are subject to Bankruptcy Court approval. Seller and Buyer acknowledge that to obtain such approval, Seller must demonstrate that they have taken reasonable steps to obtain the highest or otherwise best offer possible for the Acquired Assets and Buyer hereby agrees to provide reasonable assurances thereof necessary in order to obtain the foregoing approvals.

(d) Seller shall give all notices required to be given by applicable Law, to all Persons entitled thereto, of all motions (including the motions seeking entry of the Sale Order), orders, hearings and other proceedings relating to this Agreement and the transactions contemplated hereby and thereby and such additional notice as ordered by the Bankruptcy Court or as Buyer may reasonably request.

(e) Seller shall (i) provide Buyer with drafts of any and all pleadings and proposed orders to be filed or submitted in connection with this Agreement and the transactions contemplated hereby, and such pleadings and proposed orders, including the Sale Order, shall be in form and substance reasonably acceptable to Buyer and (ii) make reasonable efforts to consult and cooperate with Buyer regarding any discovery taken in connection with seeking entry of the Sale Order (including any depositions).

(f) After entry of the Sale Order, Seller shall not take any action that is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order. In the event that the entry of the Sale Order is appealed or a stay pending appeal is sought in connection with the Sale Order, the Company shall oppose the appeal or the stay pending appeal and seek the dismissal of any appeal (including a petition for certiorari, motion for rehearing, re-argument, reconsideration or revocation). Notwithstanding the foregoing, any resulting changes to this Agreement or any other agreement or document contemplated hereby or resulting changes to the Sale Order shall be subject to the approval of Buyer in its discretion.

(g) Break-Up Fee.

(i) In the event that an Alternative Transaction is consummated and Seller has not terminated, or does not have the right to terminate, this Agreement pursuant to Section 10.1(d)(i) or Section 10.1(d)(iii), in consideration for Buyer having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Seller, Seller shall pay Buyer, in accordance with the terms hereof the Break-Up Fee. The Break-Up Fee shall be paid on the first Business Day following the date of consummation of an Alternative Transaction from the proceeds of thereof if no material breach by Buyer of this Agreement has occurred. Nothing in this Section 6.2(g) shall relieve Buyer or Seller of any Liability for a breach of this Agreement prior to the date of termination; provided, that Seller's Liability hereunder for any and all such breaches shall be capped at an amount equal to the Break-Up Fee. Upon payment of the Break-Up Fee to Buyer in accordance with this Section 6.2(g), Seller and their respective Representatives and Affiliates, on the one hand, and Buyer and its Representatives and Affiliates, on the other, will be deemed to have fully released and discharged each other from any Liability resulting from the termination of this Agreement and neither Seller, their Representatives or Affiliates, on the one hand, nor Buyer, its Representatives or Affiliates, on the other hand, or any other Person will have any other remedy or cause of action under or relating to this Agreement or any applicable Law, including for reimbursement of expenses. The Seller acknowledges that the Break-Up Fee is a material inducement for, and condition of, the Buyer's execution of the Agreement and unless it is assured that the Break-Up Fee will be available, the Buyer is unwilling to remain obligated to consummate the purchase of the Acquired Assets or otherwise be bound under the Agreement. Seller agrees not to take any action or do anything inconsistent with obtaining approval of the Break-Up Fee in favor of Buyer.

(ii) As soon as reasonably practicable following the execution of this Agreement, Seller shall file with the Bankruptcy Court the Sale Motion, which shall, among other things, seek approval and implementation of the Bidding Procedures, including payment of the Break-Up Fee pursuant to the Bidding Procedures. The Bidding Procedures provide that the Break-Up Fee (a) (i) is an actual and necessary cost and expense of preserving the Seller's estates within the meaning of section 503(b) of the Bankruptcy Code, and (ii) shall be treated as an allowed administrative expense claim against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code; (b) is commensurate to the real and material benefits conferred upon the Debtors' estates by the Buyer; and (c) is fair, reasonable, and appropriate, including in light of the size and nature of the sale transaction, the necessity to announce a sale transaction for the Acquired Assets, and the efforts that have been and will be expended by Buyer. Further, the Bidding Procedures shall provide that if a Competing Bid is submitted at the Auction, Buyer will be entitled to a credit in the amount of its Break-Up Fee against the increased purchase price for the Acquired Assets.

Section 6.3 Transition. Seller shall reasonably cooperate with the Buyer and will provide to Buyer a commercially reasonable time in advance of the Closing, all information necessary to run and maintain (but not transfer) the Online Properties and to transition over to the Buyer the Social Media Accounts and the Online Properties (i) at the Closing, and (ii) as of the Closing and the Closing Date.

ARTICLE VII

ADDITIONAL AGREEMENTS

Section 7.1 Taxes.

(a) Any sales, use, property transfer, documentary, stamp, registration, recording or similar Tax payable in connection with the sale or transfer of the Acquired Assets ("Transfer Taxes") shall

be borne 50% by Seller and 50% by Buyer, and to the extent Buyer is required by applicable Law to pay Transfer Taxes, such Transfer Taxes shall be paid by Buyer to Seller at Closing. Seller and Buyer shall use reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Acquired Assets from any such Transfer Taxes to the extent allowed under applicable Law. Seller shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes; provided, however, that in the event any such Tax Return requires execution by Buyer, Seller shall prepare and deliver to Buyer a copy of such Tax Return at least fifteen (15) Business Days before the due date thereof for Buyer's review, comment, and consent, Seller shall incorporate all of Buyer's comments with respect thereto, and Buyer shall promptly execute such Tax Return to the extent it accurately reflects Buyer's comments and deliver it to Seller, which shall cause it to be filed.

(b) Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Acquired Assets (including access to the Documents) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claims, suit or proceeding relating to any Tax; provided, however, that (other than as required pursuant to this Section 7.1(b)) neither Buyer nor Seller shall be required to disclose the contents of its income tax returns to any Person. Any expenses incurred in furnishing such information or assistance pursuant to this Section 7.1(b) shall be borne by the Party requesting it.

Notwithstanding any other provisions in this Agreement, Buyer and Seller hereby waive compliance with all "bulk sales," "bulk transfer" and similar laws that may be applicable with respect to the sale and transfer of any or all of the Acquired Assets to Buyer.

(c) Any personal property or similar Taxes, if any, applicable to the Acquired Assets for a taxable period that includes but does not end on the Closing Date (each, a "Taxable Period") shall be apportioned between the Buyer on the one hand and Seller on the other hand based on the number of days in the portion of the taxable period that ends on and includes the Closing Date (the "Pre-Closing Apportioned Taxes") and the portion of the Taxable Period that begins after the Closing and the last day of such Taxable Period and the number of days in the entire Taxable Period. Seller shall pay to the Buyer an amount equal to any such Taxes payable by the Buyer which are attributable to the Pre-Closing Apportioned Taxes, and the Buyer shall pay to Seller an amount equal to any such Taxes which have been paid by Seller, which are not attributable to the Pre-Closing Apportioned Taxes. Such payments shall be made on the Closing Date, or if later, on the date such Taxes are due (or thereafter, promptly after request by the Buyer or Seller if such Taxes are not identified by the Buyer or Seller on or prior to the Closing Date).

Section 7.2 Payments Received. Seller, on the one hand, and Buyer, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using each of their best efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which properly belongs to the other and will account to the other for all such receipts.

Section 7.3 Access to Information; Confidentiality.

(a) The terms of any confidentiality agreement to which Buyer (or an Affiliate of Buyer) is party in respect of Seller (or any Affiliate of Seller) shall continue in full force and effect until the Closing, at which time Buyer's obligations under any such confidentiality agreement shall terminate only insofar as they pertain to the Acquired Assets, and shall otherwise remain in full force and effect in accordance with the terms thereof.

(b) From the date hereof until the Closing (or the earlier termination of this Agreement), Seller will (x) provide Buyer and its Representatives with reasonable access to, and upon reasonable advance notice and during regular business hours, furnish reasonably promptly, such information concerning Seller's business, the Acquired Assets and/or the Assumed Liabilities, including such financial, operating and other data and information related to Seller's business, the Acquired Assets and/or the Assumed Liabilities, as Buyer or any of its Representatives may reasonably request and (y) instruct the Representatives of Seller to cooperate to provide the access contemplated by the foregoing clause (x).

(c) From and after the Closing Date, and subject to any disclosure by Seller with respect to any of the Store Closing Sales, Seller shall not, directly or indirectly, disclose, reveal, divulge or communicate to any Person other than authorized officers, directors, managers, Representatives and employees of Buyer or its Affiliates or use or otherwise exploit for its own benefit or for the benefit of anyone other than Buyer or its Affiliates, any Confidential Information or Trade Secret. Seller shall not have any obligation to keep confidential any Confidential Information if and to the extent disclosure thereof is specifically required by applicable Law. To the extent practical and legally permissible, the applicable Person shall notify Buyer of its intention to make such disclosure and provide a list of the Confidential Information that such Person intends to disclose prior to making such disclosure. Seller agrees to cooperate with Buyer so that Buyer may seek, at its sole cost and expense, an appropriate protective order.

Section 7.4 Preservation of Books and Records. For a period of seven (7) years after the Closing Date, Buyer shall preserve and retain all business records and other accounting, legal, auditing, and other books and records of the Seller included in the Acquired Assets (including any documents relating to any governmental or non-governmental claims, Proceedings, or investigations with respect to the Acquired Assets) relating to the ownership of the Acquired Assets prior to the Closing Date.

Section 7.5 Seller's Actions at Closing. Concurrent with the Closing and Seller's delivery to Buyer of the Acquired Assets, Seller shall (i) delete and erase the Customer Data from all of Seller's systems and records, and (ii) relinquish complete control of the Online Properties to Buyer.

Section 7.6 Store Closings.

(a) From and after the Closing Date, Buyer hereby grants to Company a limited, non-exclusive, royalty-free, fully paid-up, irrevocable right and license to use the Buyer's Trademarks identified on Schedule 7.6 (the "Store Closing Trademarks"), in each case solely as expressly authorized herein (each, a "Store Closing License"). The Company Store Closing License grants Company, and authorized representatives of Company's liquidation sales consultants (collectively, "Liquidator Service Provider") administering the sale of inventory at the existing brick and mortar locations of Seller in accordance with the Orders of the U.S. Bankruptcy Court in the Bankruptcy Case, Docket No. 406 (the "Store Closing Sale Orders"), the right to use the Store Closing Trademarks solely in conjunction with the wind-down plan of Seller's estate (including the sale of inventory at the existing brick and mortar locations of Seller in accordance with the Store Closing Sale Orders) (the "Company Wind Down"). The Company Wind Down is referred to as the "Store Closing Sales." Each of the Store Closing Licenses will terminate upon the date which is the earlier of the conclusion of the applicable Store Closing Sale or October 31, 2020, (the "Liquidation Period"). Each of the Store Closing Licensees (i.e., the Company and the Liquidation Service Providers, each solely as acting within the scope of the Store Closing Sale Orders) acknowledges and agrees that, as of the Closing, (i) the Store Closing Trademarks shall be the exclusive property of the Buyer, and that any and all goodwill arising in connection with the use of the Store Closing Trademarks inures solely to Buyer, (ii) subject to Section 7.6(b), that no Store Closing Licensee shall take any action that would reasonably be expected to impair the value of or goodwill associated with any of the Store Closing Trademarks, (iii) no Store Closing Licensee shall apply the Store Closing Trademarks to any product or

any other materials for the sale, promotion, or commercialization of any retail store or consumer product (including promotional materials) unrelated to the Store Closing Sales (unless approved by Buyer) or use the Store Closing Trademarks in connection with any location that was not existing as of the Closing, or (iv) use the Store Closing Trademarks in a manner that is of a different character than used by Company prior to the Closing. The Store Closing Licensees shall use the Store Closing Trademarks in accordance with quality control requirements regarding the character and quality of the goods, services and promotional materials provided in association with the Store Closing Trademarks, and such quality control obligations shall be deemed to be met so long as the goods, services and promotional materials provided in association with the Store Closing Trademarks are of a character and quality substantially equivalent to or better than the quality of those provided by Company in the twelve (12) month period prior to the Closing or not of a character or quality that would reasonably be expected to impair the value of or goodwill associated with the applicable Store Closing Trademarks. At the end of the applicable Liquidation Period, all licenses to the Store Closing Trademarks shall terminate, and each of the Store Closing Licensees shall cease, and each shall cause all others operating under or pursuant to any license of the Store Closing Trademarks to cease all usage of the Store Closing Trademarks, it being agreed and understood that following the end of the Liquidation Period, Company shall change its corporate name to name that no longer include any of the Trademarks, in whole or in part.

(b) Notwithstanding anything herein to the contrary, (A) the association of a Store Closing Trademark with the Bankruptcy Case, execution of the Store Closing Sales, or wind-down of Seller's estate shall not be considered to be an impairment to the value or goodwill thereof, and (B) the use of the Store Closing Trademarks for the Store Closing Sales as historically used by Company, or as retailer trademarks have been customarily used in connection with going out of business sales, including as the Store Closing Trademarks are currently being used consistent with the quality requirements of the Store Closing Sale Orders shall not be considered to be of a different character than the character of the use of such Store Closing Trademark prior to the Closing. At the end of the Liquidation Period, each of the Store Closing Licensees shall cease all usage of the Store Closing Trademarks.

(c) Prior to November 1, 2020, the Buyer shall not (and shall not permit any other Person to) issue any press release or other public statement that states, or could reasonably be construed by a reasonable consumer to mean, that any Store Closing Licensee is no longer conducting "going out of business" or "store closing" sales at their stores, or otherwise interfere with or undermine any promotion that states that any Store Closing Licensee is conducting "going out of business" or "store closing" sales at their stores. Buyer shall reasonably cooperate and assist the Store Closing Licensees in connection with the Store Closing Sales. Notwithstanding the foregoing, after the Closing, Buyer shall be entitled to use the Acquired Assets to conduct e-commerce on the Online Properties and Social Media Accounts, subject to the provisions of Section 7.8 below. As of Closing, Buyer shall be entitled to redirect the DNS (including MX records, CPART records, CNAME records, A records, or TXT records) relating to, referencing, or with respect to any of the Online Properties and all Domain Names to sites maintained by Buyer (and away from the sites used by Sellers at the time of the Closing) provided that the new sites shall maintain the Store Closing Domains and the Seller Subdomains as provided in the provisions of Section 7.8 below.

Section 7.7 Transfer of the Social Media Accounts. At the Closing, Seller will deliver to Buyer a bill of sale of all rights of Seller in the Social Media Accounts. During the Liquidation Period, Seller with cooperate with Buyer to effect the transfer of the Social Media Accounts to Buyer.

Section 7.8 Post-Closing Domain Operation.

(a) In conjunction with the Store Closing Sales and the Liquidation Period and the rights and licenses granted in Section 7.6, during the Liquidation Period, and terminating at the conclusion of the Liquidation Period, Buyer shall not (and shall not permit any Person to) sell, assign, license, transfer,

convey, lease, surrender, relinquish, abandon, let lapse, fail to maintain or otherwise dispose of, the Internet domain names and subdomains set forth on Schedule 7.8(a) (the “**Store Closing Domains**”). During the Liquidation Period, and terminating at the conclusion of the Liquidation Period, Buyer shall not (and shall not permit any Person to) modify any DNS records (including MX records, CPART records, CNAME records, A records, or TXT records) relating to, referencing, or with respect to any of the Store Closing Domains and, at the conclusion of the Liquidation Period, Buyer shall be entitled to redirect the DNS (including MX records, CPART records, CNAME records, A records, or TXT records) relating to, referencing, or with respect to any of the Store Closing Domains to sites maintained by Buyer (and away from the sites used by Sellers at the time of the Closing), subject to the limitations of Section 7.8(b) below.

(b) From the Closing Date until January 31, 2021 (the “Seller Wind Down Period”), and terminating on February 1, 2021, Buyer shall not (and shall not permit any Person to) sell, assign, license, transfer, convey, lease, surrender, relinquish, abandon, let lapse, fail to maintain or otherwise dispose of, the Internet subdomains set forth on Schedule 7.8 (b) (the “**Seller Subdomains**”) or modify any DNS records (including MX records, CPART records, CNAME records, A records, or TXT records) relating to, referencing, or with respect to any of the Seller Subdomains. During the Liquidation Period and Seller Wind Down Period, and terminating at the conclusion of the Seller Wind Down Period, the Store Closing Licensees shall have the non-exclusive right to use the Seller Subdomains as an internal network domain and the Company shall also have the non-exclusive right to use the Store Closing Domains as part of any email address in connection with Seller’s operational matters concerning finance, human resources and other operational matters but excluding for marketing or sales offers or campaigns and/or promotional emails (the “Operational Functions”), and Buyer may use the Domain Names (including without limitation, the Store Closing Domains) as part of an email address except for the email addresses notified by the Company to Buyer prior to Closing or as reasonably updated to include pre-closing email addresses inadvertently omitted by the Company. To the extent the Buyer chooses not to modify any of the applicable DNS records (including some or all of the MX records, CPART records, CNAME records, A records, or TXT records) relating to directing emails associated with the STEINMART.COM Domain Name during all or any portion of the Seller Wind Down Period, then Seller shall agree to promptly implement any directions from Buyer to give Buyer full access to and sole use of the email address support@steinmart.com, and establish and support up to four (4) additional email addresses not already in use using the STEINMART.COM Domain Name, solely for Buyer’s purposes, including but not limited to, Buyer conducting e-commerce on the Online Properties and Social Media Accounts (including on a redirected website at the STEINMART.COM Domain Name).

ARTICLE VIII

CONDITIONS PRECEDENT TO THE OBLIGATION OF BUYER TO CLOSE

Buyer’s obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver by Buyer (to the extent waivable), at or prior to the Closing, of each of the following conditions:

Section 8.1 Accuracy of Representations. The representations and warranties of Seller contained in Article IV shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties addressing matters as of a particular date which shall be true and correct as of such date); provided, however, that, other than in respect of Section 4.1, Section 4.2, Section 4.3 and Section 4.6, the condition in this Section 8.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to “materiality” or “Material Adverse Effect” set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to have a Material

Adverse Effect. At the Closing, Buyer shall receive a certificate of Seller, signed by a duly authorized officer of Seller, to that effect.

Section 8.2 Seller's Performance. Seller shall have performed and complied in all material respects with the covenants and agreements that Seller is required to perform or comply with pursuant to this Agreement at or prior to the Closing. At the Closing, Buyer shall receive a certificate of Seller, signed by a duly authorized officer of Seller, to that effect.

Section 8.3 No Order. No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement (a "Closing Legal Impediment"); provided, however, that prior to asserting this condition Buyer shall have taken all actions required by Section 6.2 to prevent the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 8.4 Seller's Deliveries. Each of the deliveries required to be made to Buyer pursuant to Section 3.6 shall have been so delivered.

Section 8.5 Sale Order in Effect. The Bankruptcy Court shall have entered the Sale Order , which shall not be subject to a stay pending appeal.

Section 8.6 E-Commerce Liquidation Sale. Seller's e-commerce going-out-of-business sales shall have been completed.

ARTICLE IX

CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLER TO CLOSE

Seller's obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver by Seller (to the extent waivable), at or prior to the Closing, of each of the following conditions:

Section 9.1 Accuracy of Representations. The representations and warranties of Buyer contained in Article V shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties addressing matters only as of a particular date which shall be true and correct as of such date); provided, however, that, other than in respect of Section 5.1, Section 5.2 and Section 5.6, the condition in this Section 9.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to "materiality" or "material adverse effect" set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to prevent or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement. At the Closing, Seller shall receive a certificate of Buyer, signed by a duly authorized officer of Buyer, acting solely in such capacity, to that effect.

Section 9.2 Buyer's Performance. Buyer shall have performed and complied in all material respects with the covenants and agreements that Buyer is required to perform or comply with pursuant to this Agreement at or prior to the Closing. At the Closing, Seller shall receive a certificate of Buyer, signed by a duly authorized officer of Buyer, to that effect.

Section 9.3 No Order. No Closing Legal Impediment shall be in effect, provided, however, that prior to asserting this condition Seller shall have taken all actions required by Section 6.2 to prevent

the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 9.4 Buyer's Deliveries. Each of the deliveries required to be made to Seller pursuant to Section 3.5 shall have been so delivered.

Section 9.5 Sale Order in Effect. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not be subject to a stay pending appeal.

ARTICLE X

TERMINATION

Section 10.1 Termination Events. Notwithstanding anything contained in this Agreement to the contrary (other than as provided in the last sentence of this Section 10.1), this Agreement may be terminated at any time prior to the Closing Date:

(a) by mutual written consent of Seller and Buyer; or

(b) by either Seller or Buyer:

(i) if the Bankruptcy Court does not approve this Agreement for any reason or if a Governmental Authority issues a final, non-appealable ruling or Order permanently prohibiting the transactions contemplated hereby, provided, however, that the right to terminate this Agreement pursuant to this Section 10.1(b)(i) shall not be available to any Party whose breach of any of its representations, warranties, covenants or agreements contained herein results in such failure to approve, such ruling or Order;

(ii) if the Closing shall not have occurred by the close of business on December 16, 2020 (the "Outside Date"); provided, however, that the right to terminate this Agreement pursuant to this Section 10.1(b)(ii) shall not be available to any Party whose breach of any of such Party's representations, warranties, covenants, or agreements contained herein results in the failure of the Closing to be consummated by such time; provided, further, that if as of the Outside Date, all of the conditions precedent to the Closing (other than those conditions that by their terms are to be satisfied at the Closing or on the Closing Date) shall have been satisfied as of the Outside Date, then Seller shall be entitled to extend the Outside Date until December 15, 2021, upon written notice to the Buyer, in which case the Outside Date shall be deemed for all purposes to be December 25, 2020

(iii) if the Bankruptcy Court has not entered the Sale Order on or before December 14, 2020; provided, however, if approval of the Sale Order is delayed due to the Bankruptcy Court's unavailability, the next Business Day on which the Bankruptcy Court is available;

(iv) if the Sale Order is vacated; or

(v) if Seller enters into a definitive agreement with respect to an Alternative Transaction because Buyer is not the Successful Bidder at the Auction; provided, however, that if Buyer is the Next Highest Bidder, then Buyer may not terminate this Agreement or withdraw its irrevocable offer unless and until such Alternative Transaction has closed; or

(vi) Seller (A) files any stand-alone plan of reorganization or liquidation that does not contemplate, the implementation or consummation of, the transactions provided for in this Agreement or (B) consummates an Alternative Transaction; or

(c) by Buyer:

(i) in the event of any breach by Seller of any of Seller's agreements, covenants, representations or warranties contained herein that would result in the failure of a condition set forth in Section 7.5 to be satisfied, and the failure of Seller to cure such breach by the earlier of (A) the Outside Date and (B) the date that is 15 days after receipt of the Buyer Termination Notice; provided, however, that (1) Buyer is not in breach of any of Buyer's representations, warranties, covenants or agreements contained herein in a manner that would result in the failure of a condition set forth in Section 8.6 to be satisfied, (2) Buyer notifies Seller in writing (the "Buyer Termination Notice") of Buyer's intention to exercise Buyer's rights under this Section 10.1(c)(i) as a result of the breach, and (3) Buyer specifies in the Buyer Termination Notice the representation, warranty, covenant or agreement contained herein of which Seller is allegedly in breach;

(ii) if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement; or

(iii) if any conditions to the obligations of Buyer set forth in Section 7.5 shall have become incapable of fulfillment other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement; or

(d) by Seller:

(i) except as provided in Section 10.1(d)(iii), in the event of any breach by Buyer of any of Buyer's agreements, covenants, representations or warranties contained herein that would result in the failure of a condition set forth in Section 8.6 to be satisfied, and the failure of Buyer to cure such breach by the earlier of (A) the Outside Date and (B) the date that is 15 days after receipt of the Seller Termination Notice; provided, however, that Seller (1) is not itself in material breach of any of Seller's representations, warranties, covenants or agreements contained herein, notify Buyer in writing (the "Seller Termination Notice") of Seller's intention to exercise Seller's rights under this Section 10.1(d)(i) as a result of the breach, and specify in the Seller Termination Notice the representation, warranty, covenant or agreement contained herein of which Buyer is allegedly in breach;

(ii) if Seller consummates a sale, transfer or other disposition of any portion of the Acquired Assets in a transaction or series of transactions with one or more Persons other than Buyer; or

(iii) if the Sale Order with respect to the transactions contemplated by this Agreement has been entered and is not subject to any stay on enforcement and (A) Seller has provided Buyer with written notice that Seller is prepared to consummate the transactions contemplated by this Agreement, (B) the conditions to Closing in Section 7.5 have been satisfied (or waived by Buyer), other than those conditions that by their nature can only be satisfied at Closing, and (C) the Closing Date does not occur within one (1) Business Day of Seller providing Buyer with such notice.

For the avoidance of doubt, the Parties acknowledge and agree, that in the event that Seller determines, in Seller's reasonable discretion, that the last overbid submitted by Buyer is better than all other Qualified Bids as such Qualified Bids may be amended by an overbid submitted at the Auction, then within two (2)

Business Days following the conclusion of the Auction, Sellers and Buyer shall enter into an amendment to this Agreement to reflect Buyer's last overbid; it being acknowledged and agreed that this Agreement shall not be deemed to have terminated by virtue of Buyer's having submitted the winning bid at the Auction.

Section 10.2 Effect of Termination and Liquidated Damages. If this Agreement is terminated pursuant to Section 10.1(d)(i) or Section 10.1(d)(iii), the Deposit shall be retained by Seller as damages specifically, and the retention thereof shall constitute the sole and exclusive remedy of Seller in the event of such a termination hereunder. If this Agreement is terminated pursuant to any other provision of Article X, other than Section 10.1(d)(i) or Section 10.1(d)(iii), Seller shall promptly (but in any event within two Business Days of such termination) instruct the Escrow Agent to return the Deposit to Buyer by wire transfer of immediately available funds and the return thereof shall constitute the sole and exclusive remedy of Buyer in the event of termination.

ARTICLE XI

GENERAL PROVISIONS

Section 11.1 Notices. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be delivered (a) in person, (b) by a nationally recognized courier for overnight delivery service, or (c) by email or other electronic means, confirmed by telephone or return email (including an automated return receipt), to the persons indicated below. A notice or communication shall be deemed to have been effectively given (i) if in person, upon personal delivery to the Party to whom the notice is directed, (ii) if by nationally recognized courier, one Business Day after delivery to such courier, and (iii) if by email or other electronic means, when sent and confirmed by telephone or return email. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response shall be addressed as follows:

- (a) If to Seller, then to:

Stein Mart, Inc.
1200 Riverplace Blvd
Jacksonville, FL 32207
Attention: Hunt Hawkins, CEO
E-mail: hhawkins@steinmart.com

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

Foley & Lardner LLP
One Independent Drive, Suite 1300
Jacksonville, FL 32202
Attention: Gardner Davis, Esq.
E-mail: gdavis@foley.com

- (b) If to Buyer, then to:

Stein Mart Online, Inc.
1680 Michigan Ave, Suite 700
Miami Beach, FL 33139
Attn: Alex Mehr, alex.mehr@retailcommerceventures.com

Taino Lopez, tai.lopez@retailecommerceventures.com

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

Sheppard Mullin Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, California 90071
E-mail: wchuchawat@sheppardmullin.com
Attention: Will Chuchawat

Section 11.2 Amendment; Waiver. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification, discharge or waiver is sought and such amendment, modification, discharge or waiver is delivered substantially contemporaneously to each other Party. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Neither the waiver by any of the Parties of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. No course of dealing between or among the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights to payment of any Party under or by reason of this Agreement.

Section 11.3 Entire Agreement. This Agreement (including the Schedules and the Exhibits) and the other 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 and contemporaneous agreements, understandings, negotiations, correspondence, undertakings and communications of the Parties or their representatives, oral or written, respecting such subject matter. The representations, warranties, covenants and agreements contained in this Agreement (including the Schedules and the Exhibits) and the other Transaction Documents are intended, among other things, to allocate the economic cost and the risks inherent in the transactions contemplated hereby and thereby, including risks associated with matters as to which the party making such representations and warranties has no knowledge or only incomplete knowledge, and such representations and warranties may be qualified by disclosures contained in the Schedules. Consequently, Persons other than the Parties 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.

Section 11.4 No Presumption as to Drafting. Each of the parties acknowledges that it has been represented by legal counsel in connection with this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement or the Transaction Documents against the drafting party has no application and is expressly waived.

Section 11.5 Assignment. This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Parties (which consent maybe granted or withheld in the sole discretion of such other Party); provided, however, that Buyer shall be permitted, upon prior notice to Seller, to assign all or part of Buyer's rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of Buyer's obligations under this Agreement.

Section 11.6 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 hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

Section 11.7 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement and all claims or causes of action (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; provided, however, that, if the Bankruptcy Case is closed, all Proceedings arising out of or relating to this Agreement shall be heard and determined in the United States District Court for the Middle District of Florida, and the Parties hereby (a) irrevocably and unconditionally submit to the exclusive jurisdiction of the United States District Court for the Middle District of Florida; (b) agree that all claims with respect to any such Proceeding shall be heard and determined in such courts and agrees not to commence any Proceeding relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or other theory) except in such courts; (c) irrevocably and unconditionally waive any objection to the laying of venue of any Proceeding arising out of this Agreement or the transactions contemplated hereby and irrevocably and unconditionally waives the defense of an inconvenient forum; and (d) agree that a final judgment in any such Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. The Parties agree that any violation of this Section 11.7(b) shall constitute a material breach of this Agreement and shall constitute irreparable harm.

(c) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 11.7.

Section 11.8 Counterparts. This Agreement may be executed in any number of counterparts (including via facsimile or other electronic transmission in portable document format (pdf)) with the same effect 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. This Agreement shall become effective when, and only when, each Party shall have received a counterpart hereof signed by the other Party. Delivery of an executed counterpart hereof by means of facsimile or electronic transmission in portable document format (pdf) shall have the same effect as delivery of a physically executed counterpart in person.

Section 11.9 Parties in Interest; No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights, benefits, remedies, obligations, liabilities or claims hereunder upon any Person not a Party or a permitted assignee of a Party.

Section 11.10 Non-Recourse. All claims, obligations, liabilities or causes of action (whether in contract or in tort, in law or in equity or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with or relate in any manner to this Agreement, the negotiation, execution or performance of this Agreement (including any representation or warranty made in connection with or as an inducement to this Agreement) or the transactions contemplated hereby may be made only against (and are those solely of) the Persons that are expressly identified as Parties to this Agreement. No other Person, including any of their Affiliates, directors, officers, employees, incorporators, members, partners, managers, stockholders, agents, attorneys, or representatives of, or any financial advisors or lenders to, any of the foregoing shall have any liabilities (whether in contract or in tort, in law or in equity, or granted by statute) for any claims, causes of action, obligations or liabilities arising under, out of, in connection with, or related in any manner to, this Agreement or based on, in respect of, or by reason of, this Agreement or its negotiation, execution, performance or breach.

Section 11.11 Schedules; Materiality. The inclusion of any matter in any Schedule shall be deemed to be an inclusion for all purposes of this Agreement, to the extent that such disclosure is sufficient to identify the Section to which such disclosure is responsive, but inclusion therein shall not be deemed to constitute an admission, or otherwise imply, that any such matter is material or creates a measure for materiality for purposes of this Agreement. The disclosure of any particular fact or item in any Schedule shall not be deemed an admission as to whether the fact or item is “material” or would constitute a “Material Adverse Effect.”

Section 11.12 Specific Performance. The Parties acknowledge and agree that irreparable injury, for which monetary damages, even if available, would not be an adequate remedy, will occur in the event that any of the provisions of this Agreement are not performed in accordance with the specific terms hereof or are otherwise breached, and (b) Buyer shall be entitled, in addition to any other remedies that may be available, to obtain (without the posting of any bond) specific performance of the terms of this Agreement. If any Proceeding is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

Section 11.13 No Survival. None of the (a) representations and warranties or covenants which require performance prior to the Closing (“Pre-Closing Covenants”), in each case contained in this Agreement, any Transaction Document or in any certificate or schedule delivered pursuant to hereto or thereto shall survive the Closing. In furtherance, not limitation, of the foregoing, the Parties, intending to contractually shorten any otherwise applicable statute of limitations, hereby agree that: (i) the representations and warranties herein are intended solely to facilitate disclosure and to give effect to the closing conditions set forth in Section 7.5 and Section 8.6, (ii) the Pre-Closing Covenants are intended solely to serve as the closing conditions set forth in Section 7.5 and Section 8.6 and (iii) no claim of any kind based on the failure of any representation or warranty to have been true and correct, or based on the failure of any Pre-Closing Covenant to have been performed or complied with, may be brought at any time

after the Closing. All covenants and agreements contained herein that by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall survive the Closing in accordance with their terms.

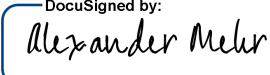
Section 11.14 Publicity. Neither Party nor any of their respective representatives may make any press release or other public disclosure regarding the existence of this Agreement or the other Transaction Documents, its or their contents, or the transactions contemplated by this Agreement or the other Transaction Documents without the written consent of the other Party, in any case, as to the form, content, and timing and manner of distribution or publication of such press release or other public disclosure (which consent may not be unreasonably withheld, conditioned, or delayed); provided that following the Closing, Buyer shall be permitted to make one or more public statements that it has acquired the Acquired Assets and the Assumed Liabilities. Each Party shall hold confidential the terms and provisions of this Agreement and the other Transaction Documents and the terms of the transactions contemplated by this Agreement and the other Transaction Documents. Notwithstanding the foregoing, nothing in this Section 11.14 will prevent either Party or its representatives from making any press release or other disclosure required by Law (including in connection with the Bankruptcy Case or Sale Motion) or the rules of any stock exchange, in which case the Party required to make such press release or other disclosure shall use commercially reasonable efforts to allow the other Party reasonable time to review and comment on such release or disclosure in advance of its issuance.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the Effective Date.

BUYER:

STEIN MART ONLINE, INC.

DocuSigned by:

By: _____
Name: Alex Mehr
Title: Chief Executive Officer

SELLER:

STEIN MART, INC., and each of its affiliated Debtors to the extent such affiliated Debtor owns any of the Acquired Assets

By: _____
Name: D. Hunt Hawkins
Title: Chief Executive Officer

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the Effective Date.

BUYER:

STEIN MART ONLINE, INC.

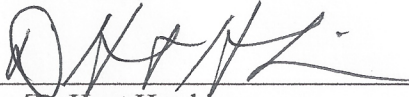
By: _____

Name: []

Title: []

SELLER:

STEIN MART, INC., and each of its affiliated Debtors to the extent such affiliated Debtor owns any of the Acquired Assets

By:  _____

Name: [D. Hunt Hawkins]

Title: [Chief Executive Officer]

Schedule 1.1(a)

Customer Data

Approximately 5.1 million active customers who made a purchase in the last two years*, consisting of:

Opt in Emails:	Approximately 2.2 million
Physical Mailing Addresses:	Approximately 4.2 million
Phone Numbers:	Approximately 3.0 million
Transaction Data for the Foregoing:	3 years**

Approximately 2.1 million active customers who opened an email in the last year***, consisting of:

Opt in Emails:	Approximately 1.9 million
Physical Mailing Addresses:	Approximately 1.4 million
Phone Numbers:	Approximately 1.3 million

There are approximately 1.195 million customers that fall within both groups.

*From September 7, 2018 to September 6, 2020.

**Transaction data will be from February 5, 2017 through early September, 2020.

***Year ending August 23, 2020.

Schedule 1.1(b)(1)

Permitted Encumbrances

Only as of the date hereof and not as of the Closing Date, Company has previously granted TKO and Samsonico limited permission to use Company's trademarks in order to permit TKO and Samsonico to liquidate merchandise ordered by the Company from them prior to bankruptcy which contain Company trademarks for which Company refused to accept delivery.

Schedule 2.1(a)

Intellectual Property

Patents: None

Copyrights: None

Trademarks: See attached

Domain Names: See Attached

Social Media: See Attached

Customer Data: See Schedule 1.1(a).

Trademarks

MARK	GOODS/ SERVICES	SERIAL NO./	DATE FILED	REGIS. NO.	DATE REGIS.	NOTES
	004—Candles	88/692,031	11/14/19			Trademark will lapse as of 11/5/20 due to no use.
	009—Eyewear; eyewear cases	88/692,059	11/14/19			Trademark will lapse as of 11/5/20 due to no use.
	011—Electric candles; battery operated candles	88/692,066	11/14/19			Trademark will lapse as of 11/5/20 due to no use.
	018—Wallets; handbags	88/692,129	11/14/19			Trademark will lapse as of 11/5/20 due to no use.
	020—Pillows; decorative pillows	88/692,365	11/14/19			Trademark will lapse as of 11/5/20 due to no use.
	021--Candle holders; candle plates, trays for domestic purposes; dinnerware; drinkware; vases	88/692,452	11/14/19			Trademark will lapse as of 11/5/20 due to no use.
	024—Quilts; comforters; pillow cases; bed	88/692,582	11/14/19			Trademark will lapse as of 11/5/20 due to no use.

SMRH:4817-1596-5646.8

-1-

blankets;
bedspreads



025--Clothing,
namely, skirts,
dresses, shirts,
pants, headwear,
footwear, jackets,
shorts, sweat
pants, sweat shirts,
sweaters,
swimwear,
scarves, belts,
wraps, lingerie,
sleepwear and
socks; infantwear

88/692,519

11/14/19

Statement of use and first
extension filed 10/12/20



026—Hair
accessories,
namely, ribbons,
bows, clips, hair
bands

88/692,658

11/14/19

Trademark will lapse as of
11/5/20 due to no use.

014—Earrings,
necklaces,
pendants, and
bracelets

74/094,847

9/7/90

1,658,938

10/1/91

BIRCH HILL

025—Ladies
sportswear
coordinates and
separates, namely,
skirts, jackets,

75/351,925

9/4/97

2,308,268

1/18/00

Trademark lapsed on
7/18/20

pants, tops, shirts,
and sweaters

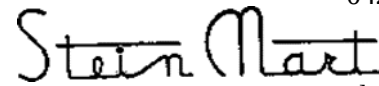
CHARLESTON THREADS	025—Clothing, namely, shirts, sweaters, shorts, pants, coats and hosiery	87/063,299	6/7/16	5,262,356	8/8/17
	025—Clothing, namely, shirts, sweaters, shorts, pants, coats and hosiery	87/063,419	6/7/16	5,262,357	8/8/17
CLEAR WATER ANGLER	025—Clothing, namely, shirts, shorts, water shorts, and fishing vests	87/056,088	6/1/16	5,351,413	12/5/17
CLEARWATER OUTFITTERS	025—Men's clothing, namely, shirts, T- shirts, jackets, vests, anoraks, sweaters, pants, shorts, jeans and hats	76/607,737	8/19/04	3,039,406	1/10/06
FABULOUS FIND	035—Retail department store services	86/337,437	7/15/14	4,903,642	2/23/16

SMRH:4817-1596-5646.8

-3-

ISLAND REPUBLIC	025—Ladies’ sportswear, namely, shorts, pants, dresses, blouses, jackets and knit and woven shirts	75/425,389	1/29/98	2,398,312	10/24/00	Declaration of Continued Use and Renewal Application filed 10/5/20. Post-registration Office Action issued 10/21/20. Response due 4/21/21.
ISLAND REPUBLIC	021—Dinnerware; drinkware	88/675,012	10/31/19			Trademark will lapse as of 11/5/20 due to no use.
ISLAND REPUBLIC	024—Towels	88/675,057	10/31/19			Trademark will lapse as of 11/5/20 due to no use.
ISLAND REPUBLIC	025—Pants; shirts; shorts; swimwear; tops as clothing	88/922,683	5/19/20			Application published for opposition on 9/22/20 for a 30-day period.
PECK & PECK	042—Retail store services in the field of women’s apparel	73/543,778	6/19/85	1,514,032	11/22/88	Grace period expired 5/22/19; awaiting cancellation by USPTO
PECK & PECK	025—Women’s clothing, namely, jackets, pants, skirts, dresses, tops, sweaters and scarves	77/617,284	11/19/08	3,642,900	6/23/09	
SOUTHERN PINES	025—Men’s clothing, namely, sport shirts, dress shirts, sweaters, ties, pants, shorts,	85/787,159	11/26/12	4,649,693	12/2/14	

socks, jackets and
coats



042—Retail store
vices, namely,
ing clothing,
clothing
accessories and
gifts

73/278,736

9/16/80

1,204,955

8/10/82



009—Store gift
certificate in the
form of a plastic
cash
card which is
magnetically-
encoded

75/307,012

6/11/97

2,152,544

4/21/98

Grace period expired
10/21/18; awaiting
cancellation by USPTO



035—retail
department store
services; online
retail store services

86/945,504

3/18/16

5,089,990

11/29/16

STEIN MARTIANS

035--Conducting
and administering
membership
program for
enabling
participants with
access to special
discounts and
access to
membership
shopping events

88/144,730

10/5/18

Application identified as
abandoned by USPTO on
6/8/20

and travel
excursions
and participation
in charitable
endeavors

T. HARRIS	018--small leather goods, namely, wallets	78/782,688	12/29/05	3,500,151	9/9/08	
YOU COULD PAY MORE, BUT YOU'LL HAVE TO GO SOMEWHERE ELSE	042—Retail department store and retail clothing store services	75/052,034	2/1/96	2,027,094	12/31/96	Registration cancelled 5/1/20; awaiting cancellation by USPTO
SAVING IS A BEAUTIFUL THING	035---Retail department store services; On-line retail department store services	87/546,755	7/28/17	5,407,127	2/20/18	

FOREIGN TRADEMARKS

ANDRE OLIVER – EU	025—Clothing	006109491	7/18/07		Application was refused
PANACHE STEIN MART (Mexico)	016	620,243			Trademark not renewed, renewal was due 10/14/17

SMRH:4817-1596-5646.8

-6-

Domain Names

loveatfirstfind.com

mysteinmart.com

steinmart.biz

steinmart.bz

steinmart.cc

steinmart.com

steinmart.net

steinmart.tv

steinmart.us

steinmart.ws

steinmartcareers.com

steinmartcareers.info

steinmartlab.com

steinmartpromos.com

Social Media Accounts

Social Media Platform	Account Name	Approximate Followers (as of 9/8/20)	Link
Facebook	"@steinmart"	527K	https://www.facebook.com/SteinMart/
Instagram	"@steinmart"	30K	https://www.instagram.com/steinmart/?hl=en
Twitter	"@steinmart"	6K	https://twitter.com/steinmart
Pinterest	"@shopsteinmart"	11K	https://www.pinterest.com/shopsteinmart/

Schedule 4.3

Exceptions to Title to Acquired Assets

None.

Schedule 4.5

Legal Proceedings

none

Schedule 4.6

Brokers and Finders

Hilco Streambank

Schedule 4.7(a)

Encumbrances on Intellectual Property

Only as of the date hereof and not as of the Closing Date, Company has previously granted TKO and Samsonico limited permission to use Company's trademarks in order to permit TKO and Samsonico to liquidate merchandise ordered by the Company from them prior to bankruptcy which contain Company trademarks for which Company refused to accept delivery.

Schedule 7.6

Store Closing Trademarks

All Trademarks listed on Schedule 2.1

Schedule 7.6

Store Closing Domains

steinmart.com

mysteinmart.com

steinmartcareers.com

Steinmartlab.com

Steinmartpromos.com

Steinmart.net

Schedule 7.6(b)Seller Subdomains**steinmart.com****Record name****Type****Routing policy**

73128da872142eec8940b5f164154689.steinmart.com

CNAME Simple

@.steinmart.com

TXT Simple

_sip.steinmart.com

SRV Simple

_sipfederationtls.steinmart.com

SRV Simple

a.ns.e.steinmart.com

A Simple

adtrack.steinmart.com

CNAME Simple

adtrackqa.steinmart.com

CNAME Simple

agenda.steinmart.com

A Simple

app-ecom.steinmart.com

CNAME Simple

apple.steinmart.com

TXT Simple

autodiscover.steinmart.com

CNAME Simple

b.ns.e.steinmart.com

A Simple

bounce.info.steinmart.com

NS Simple

bounce.info.steinmart.com

TXT Simple

bsys.steinmart.com

MX Simple

bsys.steinmart.com

TXT Simple

c.ns.e.steinmart.com

A Simple

charity.steinmart.com

A Simple

cmm.steinmart.com

CNAME Simple

collections.steinmart.com

A Simple

contact.steinmart.com

NS Simple

corp.steinmart.com

A Simple

crl.steinmart.com

A Simple

d.ns.e.steinmart.com

A Simple

e.ns.e.steinmart.com

A Simple

e.steinmart.com

NS Simple

email-ecom.steinmart.com

MX Simple

email.steinmart.com	NS	Simple
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emails.steinmart.com	A	Simple
emails.steinmart.com	MX	Simple
emails.steinmart.com	TXT	Simple
employees.steinmart.com	A	Simple
f.ns.e.steinmart.com	A	Simple
familyfoundation.steinmart.com	CNAME	Simple
finds.steinmart.com	CNAME	Simple
ii.steinmart.com	CNAME	Simple
ii1.steinmart.com	CNAME	Simple
ii2.steinmart.com	CNAME	Simple
ii3.steinmart.com	CNAME	Simple
ii4.steinmart.com	CNAME	Simple
ii5.steinmart.com	CNAME	Simple
ii6.steinmart.com	CNAME	Simple
ii7.steinmart.com	CNAME	Simple
ii8.steinmart.com	CNAME	Simple
image-ecom.steinmart.com	CNAME	Simple
info.steinmart.com	NS	Simple

info.steinmart.com	TXT	Simple
ir.steinmart.com	CNAME	Simple
leave.info.steinmart.com	NS	Simple

leave.info.steinmart.com	TXT	Simple
link-ecom.steinmart.com	CNAME	Simple
links.steinmart.com	A	Simple
logon-primary.steinmart.com	A	Weighted
logon-secondary.steinmart.com	A	Weighted
logon.steinmart.com	A	Failover
logon.steinmart.com	A	Failover
lyncdiscover.steinmart.com	CNAME	Simple
lyncweb.steinmart.com	A	Simple

m.steinmart.com	CNAME	Simple
mail.steinmart.com	A	Simple
mail2.steinmart.com	A	Simple
mailgate.steinmart.com	A	Simple
mdm.steinmart.com	A	Simple
members.steinmart.com	NS	Simple

metrics-ecom.steinmart.com	CNAME	Simple
mobile.steinmart.com	A	Simple
mobileiron.steinmart.com	A	Simple
msoid.steinmart.com	CNAME	Simple
mysurvey.steinmart.com	CNAME	Simple
origin-ii.steinmart.com	CNAME	Simple
origin-www.steinmart.com	CNAME	Simple
pages.steinmart.com	A	Simple
pki.steinmart.com	A	Simple
poitemupload-dev.steinmart.com	CNAME	Simple
preferred.steinmart.com	A	Simple
reply.info.steinmart.com	NS	Simple

reply.info.steinmart.com	TXT	Simple
rewards.steinmart.com	TXT	Simple
secure.steinmart.com	CNAME	Simple
sentry.steinmart.com	A	Simple
sentryas.steinmart.com	A	Simple
shop.steinmart.com	A	Simple
sip.steinmart.com	CNAME	Simple
smetrics-ecom.steinmart.com	CNAME	Simple
solodev.steinmart.com	A	Simple
standby.steinmart.com	A	Simple
steinmart.com	A	Weighted
steinmart.com	A	Weighted
steinmart.com	MX	Simple
steinmart.com	NS	Simple

steinmart.com	SOA	Simple
steinmart.com	TXT	Simple

storeplanning.steinmart.com	A	Simple
survey.steinmart.com	CNAME	Simple
surveys.steinmart.com	CNAME	Simple
testweb.steinmart.com	A	Simple
timecard.steinmart.com	CNAME	Simple
timecardtest.steinmart.com	CNAME	Simple
vendors.steinmart.com	A	Simple
view-ecom.steinmart.com	CNAME	Simple

mysteinmart.com**Record name**

mysteinmart.com

Type	Routing policy
NS	Simple

mysteinmart.com	SOA	Simple
mysteinmart.com	TXT	Simple
social.mysteinmart.com	A	Simple
awverify.social.mysteinmart.com	CNAME	Simple
test.mysteinmart.com	CNAME	Simple

steinmartcareers.com**Record name**

steinmartcareers.com
steinmartcareers.com

Type	Routing policy
A	Simple
NS	Simple

steinmartcareers.com	SOA	Simple
www.steinmartcareers.com	A	Simple

Steinmartlab.com**Record name**

steinmartlab.com

Type	Routing policy
NS	Simple

steinmartlab.com	SOA	Simple
steinmartlab.com	TXT	Simple

Steinmartpromos.com**Record name**

steinmartpromos.com

steinmartpromos.com

Type

A

NS

Routing policy

Simple

Simple

steinmartpromos.com

www.steinmartpromos.com

SOA

A

Simple

Simple

Steinmart.net**Record name**

steinmart.net

steinmart.net

steinmart.net

Type

A

MX

NS

Routing policy

Simple

Simple

Simple

steinmart.net

steinmart.net

agenda.steinmart.net

boutique.steinmart.net

mail.steinmart.net

mailgate.steinmart.net

pages.steinmart.net

www.steinmart.net

SOA

TXT

A

A

A

A

A

A

Simple

Simple

Simple

Simple

Simple

Simple

Simple

Simple

EXHIBIT B

BIDDING PROCEDURES

- (i) Bid Deadline: [4 Business Days before hearing on Sale Motion, subject to reasonable adjustment by Debtor to avoid week of Thanksgiving] ____2020 at 5:00 p.m. (ET).¹
- (ii) Qualified Bid: The Debtors will require a qualified bid (a “Qualified Bid”) to meet the following requirements:
 - (1) enclose a proposed purchase agreement (the “Purchase Agreement”) that specifically identifies the Intellectual Property proposed to be purchased, which may be all or a portion of the Intellectual Property, and the proposed consideration, and a blackline against the Stalking Horse Agreement;
 - (2) provides for an initial overbid of cash consideration of at least \$4,221,854, which is inclusive of the Break-Up Fee;
 - (3) subsequent bids in excess of the prior Qualified Bid shall be in cash increments of \$ 100,000 or more (at option of bidder);
 - (4) confirms that the offer shall remain open and irrevocable until the closing of a Sale to the Successful Bidder or the Next Highest Bidder (as defined herein);
 - (5) be accompanied by a certified or bank check or wire transfer in an amount equal to 10% of the purchase price identified in the Purchase Agreement as a minimum good faith deposit (the “Minimum Deposit”), which Minimum Deposit shall be used to fund a portion of the purchase price provided for in the bid;
 - (6) not be conditioned on obtaining financing or the outcome of any due diligence by the bidder; and
 - (7) fully disclose the identity of each entity that will be bidding for the Intellectual Property or otherwise participating in connection with such bid, and the complete terms of any such participation.

In the event of a credit bid, the party submitting the credit bid must agree to add cash to its bid in an amount sufficient to pay the commission and expenses due to Hilco Streambank. The Stalking Horse Agreement is deemed a Qualified Bid.

- (iii) Auction(s). If the Debtors receive more than one Qualified Bid (other than from the Stalking Horse Bidder) for the Intellectual Property (or certain subset of the Intellectual Property), the Auction(s) with respect to

¹ Interested parties wishing to bid on the Intellectual Property should contact David Peress and Richelle Kalnit at Hilco Streambank: dperess@hilcoglobal.com and rkalin@hilcoglobal.com.

the Sale will commence on [two Business days before hearing on Sale Motion, subject to reasonable adjustment by Debtor to avoid week of Thanksgiving] 2020 at 10:00 a.m. or such later time as the Debtors may provide so long as such change is communicated reasonably in advance by the Debtors to all bidders, and other invitees. The Auction will be conducted by video conference, the detail of which will be provided to Qualified Bidders in advance of the Auction.

- (iv) Auction Rules. If one or more Auctions are held, the following rules for the Auction's conduct will be observed:
- (1) only a bidder who has submitted a Qualified Bid by the Bid Deadline (a "Qualified Bidder") will be eligible to participate at the Auction;
 - (2) a minimum Qualified Bid amount for the Intellectual Property may be announced and/or posted prior to the Auction. Such minimum Qualified Bid amounts may be established based upon a variety of factors, including, but not limited to, the highest bids received prior to the Auction;
 - (3) at the Auction, Qualified Bidders will be permitted to increase their bids, and bidding at the Auction will continue until such time as the highest or otherwise best offer is determined in accordance with these Sale Procedures or until such Auction is adjourned by the Debtors, *provided*, the Buyer, as stalking horse purchaser, will be entitled to a credit in the amount of its Break-Up Fee against the increased purchase price for the Acquired Assets;
 - (4) immediately prior to concluding the Auction, the Debtors shall, in consultation with the pre-petition lenders and Committee,
 - a. review each Qualified Bid on the basis of its financial and contractual terms and the factors relevant to the Sale process and the best interests of the Debtors' estates and creditors;
 - b. determine and identify the highest or otherwise best Qualified Bid (the "Successful Bid") and the Qualified Bidder submitting such bid (the "Successful Bidder");
 - c. determine and identify the next highest or otherwise best Qualified Bid after the Successful Bid (the "Next Highest Bid") and the Qualified Bidder submitting such bid (the "Next Highest Bidder"); and
 - d. have the right to reject any and all bids; and
 - (5) within one business day of the completion of the Auction, the Successful Bidder shall complete and execute all agreements, instruments, or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

- (v) Acceptance of Successful Bid. If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid only when
- (1) such bid is declared the Successful Bid on the record at the Auction; and
 - (2) definitive documentation has been executed in respect thereof.

Such acceptance is conditioned upon approval by the Court of the Successful Bid and the entry of an Order approving the Sale and such Successful Bid. If no other Qualified Bids are received, the Stalking Horse Agreement shall be deemed the Successful Bid.

- (vi) Notice of Successful Bid(s). As soon as reasonably practicable following the conclusion of the Auction(s), the Debtors shall file a Notice of Successful Bid(s). The Notice of Successful Bid(s) shall identify the identity of the Successful Bidder(s), the amount of the Successful Bid(s), and shall include a substantially final version of the Purchase Agreement and shall further identify the Next Highest Bidder.

- (vii) Sale Hearing. [to be determined based on Court Schedule] __, 2020

- (viii) Reservation of Rights. The Debtors reserve the right to seek approval of the Sale of portions of the Intellectual Property through separate Purchase Agreements with different purchasers in the event that the combination of such Sales is determined by the Debtors to obtain the highest value for the Intellectual Property. The Debtors further reserve the right as they may reasonably determine, in consultation with the prepetition lenders and Committee, to be in the best interests of their estates to:

- (1) determine which bidders are Qualified Bidders;
- (2) determine which bids are Qualified Bids;
- (3) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal,
- (4) reject any bid that is
 - a. inadequate or insufficient,
 - b. not in conformity with the requirements of the Sale Procedures or the requirements of the Bankruptcy Code or
 - c. contrary to the best interests of the Debtors and their estates;
- (5) remove some or all of the Intellectual Property from the Auction(s);
- (6) waive terms and conditions set forth in these Sale Procedures with respect to all potential bidders;
- (7) impose additional terms and conditions with respect to all potential bidders;
- (8) extend the deadlines set forth herein;

- (9) adjourn or cancel the Auction(s) and/or Sale Hearing in open court without further notice; and
- (10) modify the Sale Procedures as they may determine to be in the best interests of their estates or to withdraw the Motion at any time with or without prejudice.