

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Chapter 11

STEIN MART, INC.¹

Case No. 3:20-bk-2387

STEIN MART BUYING CORP.
STEIN MART HOLDING CORP.,

Jointly Administered with
Case No. 3:20-bk-2388
Case No. 3:20-bk-2389

Debtors.

(Hearing Requested on October 22, 2020)

DEBTORS' MOTION FOR ENTRY OF AN ORDER, PURSUANT TO SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY CODE (I) AUTHORIZING THE SALE OF CERTAIN UNEXPIRED NONRESIDENTIAL REAL PROPERTY LEASES FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (II) APPROVING ASSUMPTION AND ASSIGNMENT OF UNEXPIRED NONRESIDENTIAL REAL PROPERTY LEASES, AND (III) 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), 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing the sale (the “Sale”) of certain unexpired nonresidential real property leases (each a “Lease”) to such entity or entities (each, a “Purchaser”) that submit the highest or otherwise best offer for the Leases as determined by the Debtors in their business judgment pursuant to the solicitation and auction process described below, (ii) approving the

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 principal offices of the Debtors is: 1200 Riverplace Blvd., Jacksonville, FL 32207.

assumption and assignment of the Leases and (iii) 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). 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), 363 and 365, along with Bankruptcy Rules 2002, 6004, 6006 and 9014.

BACKGROUND

4. On August 12, 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 a Committee of Creditors Holding Unsecured Claims (the “Committee”).

6. The Debtors’ cases are being jointly administered under lead Case No. 3:20-bk-2387-JAF pursuant to Bankruptcy Rule 1015 [Docket No. 94].

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 Pleadings* [Docket No. 5] (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. As more fully discussed in the First Day Declaration, the conclusion to liquidate was reached following a lengthy process in which the Debtors considered and explored all reasonable strategic alternatives.

9. Accordingly, on the Petition Date, the Debtors filed the *Debtors’ Emergency Motion for Entry of Interim and Final Orders (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. 10] (the “GOB Motion”), which GOB Motion was amended on August 12, 2020 [Docket No. 19], and which was approved on a final basis on September 17, 2020. [Docket No. 406].

A. The Sale of the Leases

10. As referenced above and more fully described in the GOB Motion and First Day Declaration, the Debtors commenced the Store Closing Sales at all of their retail locations on or about the Petition Date. The Debtors anticipate that the Store Closing Sales at for all locations will be completed by October 31, 2020.

11. The Debtors retained A&G Realty Partners, LLC (“A&G”) as their real estate advisor to market and sell the Debtors’ leasehold interests. *See* Docket No. 365. A&G has advised the Debtors that in order to maximize the value of the Debtors’ leasehold interests, the Sale needs to occur consistent with an open auction process.

12. The Debtors believe that A&G will be able to secure bidders for a number of the Leases in conjunction with the conclusion of the Store Closing Sales. A list of those Leases is attached hereto as **Exhibit B**.

13. To aid in that regard, the Debtors now seek to identify and ultimately approval of the sales pursuant to the sale procedures summarized below (the “**Sale Procedures**”). The Debtors believe it is prudent at this time and in the best interests of their estates and creditors to implement the Sale Procedures and, accordingly, intend to employ the Sale Procedures prior to a hearing on this Motion. The Sale Procedures were developed with A&G and are consistent with the marketing efforts currently being undertaken by A&G and are similar to those that have been employed in other retail liquidations. The Debtors believe that the Sale Procedures will assist them in maximizing the value of their leasehold interests.

14. The Debtors, utilizing the services and expertise of A&G and their other advisors will implement and foster a competitive marketing process for the Leases consistent with the Sale Procedures. Among other things, A&G intends to notify, through an email blast and “teaser”, approximately 1,500 parties that may be interested in the Leases advising of the Sale Procedures. Additionally, A&G will actively communicate with likely interested parties and will post available store leases on its website. A&G will continue to solicit interest as the Debtors reach the end of the Store Closing Sales and the proposed auction date set out in the Sale Procedures.

B. The Proposed Sale Procedures

15. The Debtors propose to sell the Leases through one or more sale transactions pursuant to the terms of an assumption and assignment 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 Leases (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 Leases 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 Leases 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 Leases and conduct the Auction(s) in accordance therewith:

- (a) Bid Deadline. October 9, 2020 at 5:00 p.m. (ET) (the "Bid Deadline").²
- (b) Bid Requirements. Any proposal, solicitation, or offer (a "Bid") for the Lease(s) submitted by a bidder ("Bidder") must (a) be submitted by the Bid Deadline and (b) meet the following requirements in the Debtors' business judgment and in consultation with the prepetition lenders and Official Committee of Unsecured Creditors (the "Committee"):
 - (i) Contain a proposed assumption and assignment agreement (the "Purchase Agreement") that specifically identifies the Lease(s) proposed to be assumed and assigned and the proposed consideration, and a blackline against the form assumption and assignment agreement attached hereto as **Exhibit C** or lease termination agreement attached hereto as **Exhibit D**;
 - (ii) Clearly set forth the purchase price to be paid (the "Purchase Price") and identify separately the cash and non-cash components of the Purchase Price;

² Interested parties wishing to bid on the Leases should contact Mark Wolfson of Foley & Lardner LLP, counsel for the Debtors: mwolfson@foley.com

- (iii) Confirm 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);
- (iv) 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;
- (v) Not be conditioned on obtaining financing or the outcome of any due diligence by the Bidder;
- (vi) Fully disclose the identity of each entity that will be bidding for the Leases or otherwise participating in connection with such bid, and the complete terms of any such participation;
- (vii) Contain a written statement that the Bidder agrees to purchase the Lease(s) “AS IS, WHERE IS, WITH ALL FAULTS”;
- (viii) Include written evidence reasonably acceptable to the Debtors demonstrating appropriate corporate authorization to consummate the proposed Sale transaction;
- (ix) Contain a written statement that the Bidder agrees to be bound by the Bidding Procedures and the Bidding Procedures Order and authorizes the Debtors to provide all documents that comprise the Bid to the prepetition lender and Committee on a confidential basis;
- (x) Contain a written statement that if selected as the Successful Bidder (defined herein) the Bidder shall consummate the purchase of the Lease(s) within 10 business days following entry of the Sale Order; and
- (xi) Accompanied by adequate assurance of future performance information (the “Adequate Assurance Information”), including (A) information about the Bidder’s financial condition, such as federal tax returns for two (2) years, a current financial statement, or bank account statements, (B) information demonstrating (in the Debtors’ reasonable business judgment, in consultation with the Committee) that the Bidder has the financial capacity to consummate the proposed Sale transaction, (C) evidence that the Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, (D) the identity and exact name of the Bidder (including any equity holder or other financial backer if the

Bidder is an entity formed for the purpose of consummating the proposed Sale Transaction), and (E) such additional information regarding the Bidder as the Bidder may elect to include. By submitting a Bid, each Bidder agrees that the Debtors may disseminate their Adequate Assurance Information to the Committee, as well as affected landlords and contract counterparties in the event that the Debtors determine such bid to be a Qualified Bid. The Debtors shall transmit by email, facsimile or overnight delivery such Adequate Assurance Information to any affected Lease Counterparty (defined herein) and their counsel, if known, that requests such information within twenty-four (24) hours of receipt of such request by the Debtors.

The Debtors will review each Bid received from a Bidder to determine, in their sole discretion (in consultation with the prepetition lenders and Committee), whether the Bid meets the above requirements, and if so, whether such Bid shall constitute a (“Qualified Bid”) and such Bidder shall constitute a (“Qualified Bidder”). The Debtors shall notify each Bidder whether such party is a Qualified Bidder by October 12, 2020.

- (c) Auction(s). If the Debtors receive more than one Qualified Bid for all or certain of the Leases, the Debtors will conduct auction(s) (each, an “Auction”) with respect to the Sale of such leases to determine and highest and best Qualified Bid. The Auction shall commence on October 15, 2020 at 10:00 a.m. or such other 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 or teleconference, the detail of which will be provided by the Debtors to Qualified Bidders in advance of the Auction. For the avoidance of doubt, the Debtors may hold multiple Auctions. Only Qualified Bidders, the Prepetition Lenders, the Committee and the Debtors’ landlords and each of their respective legal and financial advisors shall be entitled to attend 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 Qualified Bidder who has submitted a Qualified Bid will be eligible to participate at the Auction; (ii) a minimum Qualified Bid amount for the Leases 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. Reasonable notice of the time and place for the resumption of the Auction will be given to all Qualified Bidders and counsel to the prepetition lenders and Committee; (iv) immediately prior to

concluding the Auction, the Debtors shall, in consultation with the prepetition 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.
- (f) Notice of Successful Bid(s). As soon as reasonably practicable following the conclusion of the Auction(s), but in no event later than one business day following the date the Auction is closed, the Debtors shall file a Notice of Successful Bid(s) with the Court. Additionally, such Notice of Successful Bid(s) shall contain a copy of the proposed order substantially in the form attached hereto as **Exhibit A** along with Exhibit 1 and Exhibit 2 of such proposed order reflecting the 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. In the event that no Notice of Successful Bid(s) is filed on or before October 16, 2020, then there were no Successful Bid(s) and the Debtors will withdraw this Motion.
- (g) **Sale Hearing. October 22, 2020 at 10:30 a.m.**
- (h) Reservation of Rights. The Debtors 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; remove some or all of the Intellectual Property from the Auction(s); (v)

waive terms and conditions set forth in these Sale Procedures with respect to all potential Bidders; (vi) impose additional terms and conditions with respect to all potential Bidders; (vii) extend the deadlines set forth herein; (viii) adjourn or cancel the Auction(s) and/or Sale Hearing in open court without further notice; and (ix) 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.

- (i) Credit Bid. Any counterparty to a Lease proposed to be sold or transferred at Auction (“Lease Counterparty”) shall be deemed a Qualified Bidder. Lease Counterparties may credit bid all or a portion of the applicable cure amount proposed by such Lease Counterparty. If such Lease Counterparty is the Successful Bidder on the applicable Lease, and it is later determined by this Court or agreement by and among the Debtors and the Lease Counterparty that the actual cure amount is a lesser amount, then the Lease Counterparty shall pay the difference in cash prior to the closing of the Sale transaction.

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

C. Assumption and Assignment Procedures

18. Attached hereto as Exhibit E is a proposed Notice of Potential Assumption and Assignment of Unexpired Nonresidential Real Property Leases (the “Assignment Notice”) indicating the Debtors’ intention to assume and assign the Leases. The Assignment Notice contains, to the best of the Debtors’ knowledge, the proposed cure amount (the “Cure Amount”). The Debtors will serve the Assignment Notice on all counterparties to the Leases immediately upon the filing of this Motion.

19. Objections, if any, to the proposed Cure Amount (each, a “Cure Objection”) must be in writing and filed with the Court so that it is received by the Debtors’ no later than October 19, 2020 at 5:00 pm (the “Cure Objection Deadline”). If no timely Cure Objection is filed and served by the Cure Objection Deadline, the proposed Cure Amount will be deemed binding and consented to by the applicable Lease Counterparty. To the extent a Cure Objection is not resolved

prior to the Sale Hearing, the Cure Objection shall be presented to the Court at the Sale Hearing or such later date and time as the Debtors and the applicable Lease Counterparty may agree or the Court may order.

20. Objections, if any, to the assumption and assignment of a Lease to the Successful Bidder(s), other than to the Cure Amount, may be presented at the Sale Hearing. Upon request by a Lease Counterparty, the Debtors shall transmit by email, facsimile or overnight delivery the Adequate Assurance Information of the Bidders to any affected Lease Counterparty and their counsel, if known, that requests such information within twenty-four (24) hours of receipt of such request by the Debtors.

RELIEF REQUESTED

21. By this Motion, the Debtors seek entry of an order (i) authorizing the Sale of certain of the Debtors' Leases set forth on **Exhibit B** hereto 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

22. For the reasons explained below and throughout this Motion, the Debtors' decision to sell the Leases 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 Leases because (i) the Debtors and A&G have begun actively marketing, and will continue to market, the Leases 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 Leases in an expeditious and value-maximizing manner.

A. Sales of the Leases Should Be Approved.

23. 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).

24. 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).

25. 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

26. Here, the Sale of the Leases 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 Leases, 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 Leases 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.

27. There is more than ample business justification to sell the Leases as set forth herein, and as such, an order granting the relief requested is a matter within the discretion of the Court and

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 Acor 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 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).

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.

28. The Debtors are fully liquidating all of their assets. But for the completion of the Store Closing Sales, the Leases are some of the few remaining assets of the Debtors' estates. As 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.

29. Simply put, in the Debtors' business judgment, selling the Leases through the aforementioned Sale process is the best option for maximizing the overall value of these assets for the benefit of all stakeholders. As set forth above, the Debtors intend to complete the Store Closing Sales in the Debtor's remaining locations by October 31, 2020. Therefore, it is critical that the Debtors be able to sell the Leases before that date (or reject them pursuant to the Interim Order Authorizing and Approving Procedures for Rejection of Executory Contracts and Unexpired Leases [Dkt. 198] or the final order once it has been entered, if there are no interested Purchasers) so as to minimize administrative expenses and the payment of post-petition rent for an additional month.

II. The Proposed Sale Procedures Are Fair and Reasonable.

30. The Sale Procedures are designed to maximize the value received for the Leases 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

Leases 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 Leases to market testing, and by permitting prospective purchasers to bid on the Leases, the Debtors shall ensure that the ultimate Sale price is an accurate reflection of the true value of the Leases. Accordingly, the Debtors and all parties in interest can be assured that the consideration received for the Leases 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.

31. The Debtors and A&G will continue to market the Leases in an appropriate and cost-efficient manner given the value of the Leases 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 Leases.

III. The Debtors Shall Prove at the Hearing that the Sale is Proposed in Good Faith.

32. The Debtors shall prove at the Sale Hearing that any Sale is being proposed in good faith and will be the product of good faith, arms’ length negotiations between the Debtors, on the one hand, and the Purchaser(s), on the other. Before proceeding with any Sale, the Debtors will ensure that Purchaser(s) confirm that the Sale of the Leases will not be the product of collusion or bad faith. The Debtors shall prove at the hearing that 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).

33. 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 Leases 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.

34. 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).

35. Numerous potential Qualified Bidders have already received information regarding the Leases and Sale process from A&G. In addition, the Debtors will serve this Motion on all parties that have expressed interest, or the Debtors believe may have an interest, in purchasing the Leases. 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.

36. To summarize, in the Debtors’ informed business judgment, the Debtors will continue to market the Leases, conduct one or more Auctions prior to the Sale Hearing with respect

thereto, and complete the disposition of the Leases in a manner best-tailored to generate value for the Debtors' estates while simultaneously limiting the Debtors' exposure to burdensome and unnecessary administrative expenses. For these reasons, the Debtors submit that the Court should approve the Sale of the Leases to the Purchaser(s) selected by the Debtors pursuant to the Sale Procedures.

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

37. 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).

38. Because the Debtors expect that they will satisfy either the second or fifth (or both) of the subsection, if not others as well, approving the Sale of the Leases 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. Authorization of Assumption and Assignment of the Leases.

39. In connection with the Sale, the Debtors request approval under Section 365 of the Bankruptcy Code to assume and assign the Leases to the Successful Bidder(s). The Debtors further request that the Sale Order provide that the Leases will be transferred to and remain in full force and effect for the benefit of a successful bidder notwithstanding any provisions in the Leases, including those described in Sections 365(b)(2) and (f)(1) and (3) of the Bankruptcy Code that prohibit such assignment.

40. Adequate assurance of future performance depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” *EBG Midtown S. Corp. v. McLaren/Hart Env. Eng’g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 593 (S.D.N.Y. 1992); *In re Rachels Indus., Inc.*, 109 B.R. 797, 803 (Bankr. W.D. Tenn. 1990); *see also In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) (“[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”). Adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding).

41. The Debtors will present facts at the Sale Hearing to show the financial credibility, willingness, and ability of a successful bidder to perform under the Leases. The Sale Hearing thus will afford the Court and other interested parties the opportunity to evaluate the ability of the successful bidder to provide adequate assurance of future performance under the Leases, as required under Bankruptcy Code section 365(b)(1)(C). Further, as set forth above, the Debtors will give notice to all parties to the Leases of their intention to assume and assign the Leases and

what the Debtors believe are the Cure Amounts. Accordingly, the Court should authorize the Debtors to assume and assign the Leases to the Successful Bidder(s).

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h) AND 6006(d)

42. 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). Additionally, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease...is stayed until the expiration of fourteen days after entry of the order unless the Court orders otherwise.” Fed. R. Bankr. P. 6006(d). To maximize the value received and limit the incurrence of administrative rent for the month of November, the Debtors seek to sell the Leases as soon as possible after all closing conditions have been achieved or waived.

43. 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 Rules 6004(h) and 6006(d), to the extent applicable.

RESERVATION OF RIGHTS

44. The Debtors are currently marketing and evaluating the potential sale of the Leases. The Debtors do not have any agreements to assume and assign the Leases. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted is intended or should be construed as: (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors’ rights under the Bankruptcy Code or any other applicable law, including the Debtors’ rights to reject the Leases (iii) a waiver or limitation of the Debtors’ right to assert at a later date that the Leases are not an executory contract, (iv) a concession or evidence that the Leases have not expired, been terminated, or is otherwise currently not in full force and effect; or

(v) a representation that any of the Leases will be assumed and assigned. The Debtors reserve their right to withdraw this Motion.

NOTICE

45. Notice of this Motion has been provided to (i) the Office of the United States Trustee; (ii) counsel for the Committee; (iii) counsel for Wells Fargo and the Gordon Brothers; (iv) counterparties to the Leases; and (viii) 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.

Dated: Jacksonville, Florida
September 25, 2020

Respectfully submitted,
FOLEY & LARDNER LLP

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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

STEIN MART BUYING CORP.
STEIN MART HOLDING CORP.,

Jointly Administered with
Case No. 3:20-bk-2388
Case No. 3:20-bk-2389

Debtors.

**ORDER, PURSUANT TO SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY
CODE (I) AUTHORIZING THE SALE OF CERTAIN UNEXPIRED
NONRESIDENTIAL REAL PROPERTY LEASES FREE AND
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS,
(II) APPROVING ASSUMPTION AND ASSIGNMENT OF UNEXPIRED
NONRESIDENTIAL REAL PROPERTY LEASES, AND
(III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² the above-captioned debtors and debtors and possession (collectively, the “Debtors”) for entry of an order, pursuant to pursuant to 105(a), 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing the Sale of certain Leases, a list of which is attached hereto as **Exhibit 1** free and clear of all liens, claims, encumbrances and interests, (ii) authorizing the assumption and assignment of Leases and (iii) 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

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 principal offices of the Debtors is: 1200 Riverplace Blvd., Jacksonville, FL 32207.

² Capitalized terms not defined herein shall have the meanings provided to them in the Motion.

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 hereby

FOUND AND DETERMINED THAT:

A. 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.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory predicates for the relief sought in the Motion are Bankruptcy Code sections 105, 363 and 365 and Bankruptcy Rules 2002, 6004, 6006 and 9014.

D. 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. The relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and other parties in interest. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief requested in the Motion.

F. The Sale was negotiated and proposed in good faith, from arms'-length bargaining positions, and without collusion. The Purchaser(s) are good-faith purchaser(s) within the meaning of Bankruptcy Code section 363(m) and is entitled to the protection thereof. Neither the Debtors nor the Purchaser(s) has engaged in any conduct that would cause or permit the sale of the Leases to the Purchaser(s) to be avoided under Bankruptcy Code section 363(n).

G. The consideration provided by the Purchaser(s) to the Debtors for the Leases (i) is fair and reasonable, (ii) is the highest or best offer for the Leases, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession.

H. The Debtors are authorized to sell the Leases to the Purchaser(s) free and clear of all liens, claims, interests, and encumbrances of any kind or nature whatsoever, with such liens, claims, interests, and encumbrances transferring and attaching to the proceeds of the Sale with the same validity and priority as such interests had in the Leases immediately prior to the consummation of the Sale, because one or more of the standards set forth in Bankruptcy Code sections 363(f)(1)-(5) have been satisfied. Those holders of liens, claims, interests, and encumbrances who did not object to the Motion or the relief requested therein, or who interposed and then withdrew their objections, are deemed to have consented to the Sale pursuant to Bankruptcy Code section 363(f)(2). Those holders of liens, claims, interests, and encumbrances who did object fall within one or more of the other subsections of Bankruptcy Code section 363(f) and are adequately protected by having their interests, if any, attach to the proceeds of the Sale of the Leases.

I. All the requirements of Bankruptcy Code section 365 have been met with respect to assumption and assignment of the Leases.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. 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. Pursuant to Bankruptcy Code sections 105 and 363 and the terms of the Purchase Agreement(s) listed on **Exhibit 2** attached hereto, the Debtors are hereby authorized to sell, transfer, and convey the Leases to the Purchaser(s).

4. The Leases shall be sold free and clear of all liens, mortgages, leases, or other rights or claims of right to use or occupy, encumbrances, security interests, claims, charges, or other legal or equitable encumbrances and any other matter affecting title (collectively, "**Liens**"), with any Liens in such Leases, or the proceeds thereof, to attach to the proceeds of such sale with the same validity, priority, and effect as they have against the Leases.

5. Pursuant to Bankruptcy Code section 363(b), the Debtors and the Purchaser(s), as well as their officers, employees, and agents, shall be, and hereby are, authorized to take any and all actions and/or execute any and all documents as may be necessary or desirable to consummate the transactions contemplated by the Purchase Agreement. Any actions taken by the Debtors and the Purchaser(s) necessary or desirable to consummate such transaction prior to the entry of this Order are hereby ratified.

6. The Debtors are authorized to (i) assume and assign the Leases to the Purchaser(s). The Purchaser(s) have provided adequate assurance of their respective future performance under the Leases within the meaning of Bankruptcy Code section 365.

7. Upon the assignment of the Leases, the Purchaser(s) shall be deemed to be substituted as party to the Leases.

8. The Cure Amount under the Leases are fixed in the amounts set forth in the schedule attached hereto as **Exhibit 1** and shall be paid to the lease counterparty in a manner consistent with the Purchase Agreement(s). Upon satisfaction of the Cure Amounts, each Lease

counterparty shall be barred from asserting any additional amounts or other claims against the Debtors and their estates.

9. The proceeds of the Sale of the Leases 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].

10. The Court shall retain exclusive jurisdiction to resolve any dispute arising from or relating to the Sales or this Order.

Exhibit 1

**List of Leases
[TO BE SUPPLIED]**

Exhibit 2

**Purchase Agreement
[TO BE SUPPLIED]**

EXHIBIT B

List of Leases

Stein Mart, Inc.
LIST OF LEASES

Store Number	Address	City	State	Cure Amount
1	1656 Hwy. 1 South	Greenville	MS	\$ 3,532.59
4	5055 Shelbyville Road	Louisville	Kentucky	\$ 22,050.35
5	6823 Cantrell Rd.	Little Rock	AR	\$ -
6	5250 I-55 North	Jackson	Mississippi	\$ 82,897.43
10	276 Morell Road	Knoxville	TN	\$ 110,202.24
11	995 State Road 434 N., Suite 100	Altamonte Springs	FL	\$ 7,897.95
12	1555 New Circle Road, N.E.	Lexington	Kentucky	\$ 80,844.34
13	9618 Airline Hwy.	Baton Rouge	LA	\$ 10,694.81
14	5112 S. Harvard Ave.	Tulsa	OK	\$ 14,104.05
16	4399 Roosevelt Blvd.	Jacksonville	FL	\$ 10,637.32
18	664 Montgomery Highway	Vestavia Hills	Alabama	\$ 9,075.37
19	7801 W. Broad Street Rd.	Richmond	VA	\$ 7,944.81
23	4522 Fredericksburg Rd.	San Antonio	TX	\$ 9,207.16
24	999 East Basse Rd.	San Antonio	TX	\$ 21,141.86
25	1400-31 Village Square Blvd.	Tallahassee	Florida	\$ 9,687.06
26	4500 Falls of the Neuse, Suite 110	Raleigh	NC	\$ 46,748.77
28	101 Verdae Blvd.	Greenville	SC	\$ 80,288.27
31	3916 Britton Plaza	Tampa	Florida	\$ 11,408.33
32	827 S. White Station Road	Memphis	Tennessee	\$ 14,012.40
33	1660 Airport Blvd.	Pensacola	Florida	\$ 14,857.41
36	3729 Battleground Ave.	Greensboro	NC	\$ 12,331.52
37	11111-80 San Jose Blvd.	Jacksonville	FL	\$ -
38	9746 Midlothian Turnpike	Richmond	VA	\$ 5,881.15
40	2840 Veterans Memorial Blvd.	Metairie	Louisiana	\$ 37,069.92
41	975 Airport Road	Huntsville	AL	\$ -
42	240 Crossroads Blvd.	Cary	NC	\$ 11,172.33
43	975 Savannah Highway	Charleston	South Carolina	\$ 9,143.21
44	4916 N. May Ave.	Oklahoma City	OK	\$ 8,957.64
45	3818 South 3rd Street	Jacksonville Beach	Florida	\$ -
46	4801 Line Ave.	Shreveport	LA	\$ 11,449.66
47	400 S. Stratford Rd.	Winston-Salem	NC	\$ 16,487.50
48	10416 Centrum Pkwy.	Pineville	NC	\$ 97,652.66
49	4554 Virginia Beach Blvd.	Virginia Beach	VA	\$ 10,370.43
50	7020 Quaker Ave.	Lubbock	TX	\$ 8,102.38
51	9831 Glades Rd.	Boca Raton	FL	\$ 15,171.25
52	33591 U.S. 19 N.	Palm Harbor	Florida	\$ 95,514.86
53	2834 Washington Rd.	Augusta	GA	\$ 10,065.24
56	2640 Fondren Rd.	Houston	TX	\$ 8,364.95
57	13300 S. Cleveland Ave. Ste. 30	Fort Myers	FL	\$ 90,172.43
58	13210 North Dale Mabry Highway	Tampa	Florida	\$ -
60	100 East Stroop Road	Kettering	OH	\$ 7,532.31
62	2692 Madison Road	Cincinnati	Ohio	\$ 14,147.83
63	92 White Bridge Rd.	Nashville	TN	\$ 16,020.40
65	6385 Camp Bowie Blvd.	Fort Worth	TX	\$ 9,923.30
66	19801 Gulf Freeway	Webster	TX	\$ 10,616.46

Stein Mart, Inc.

LIST OF LEASES

68	3315 Bell Street	Amarillo	TX	\$	6,663.43
70	5319-A F.M. 1960 West	Houston	TX	\$	9,809.27
71	1488 W. 86th Street	Indianapolis	IN	\$	7,597.62
73	1309 Johnson Ferry Road	Marietta	Georgia	\$	-
74	11315 Montgomery Road	Cincinnati	Ohio	\$	8,585.87
75	7444 Creedmoor Rd.	Raleigh	NC	\$	7,890.93
76	6535 South Tamiami Trail	Sarasota	Florida	\$	28,755.66
78	14902 Preston Rd.	Dallas	TX	\$	51,676.02
79	3201 Bee Caves Rd. Suite #140	Austin	TX	\$	119,053.82
80	8662 East Shea Blvd.	Scottsdale	AZ	\$	61,246.97
81	1627 Bradley Park Dr., Suite 1	Columbus	GA	\$	7,810.16
82	2125 S. Broadway	Tyler	TX	\$	7,695.12
84	290 Meyerland Plaza	Houston	TX	\$	15,054.91
85	4881 North Stone Avenue	Tucson	AZ	\$	9,218.56
87	43 Meadows Shopping Center	Terre Haute	IN	\$	2,814.53
90	5700 Johnston Street	Lafayette	LA	\$	9,214.12
91	1701 Preston, Suite A	Plano	TX	\$	10,880.32
93	891 N. Val Vista Drive, Suite 102	Gilbert	Arizona	\$	8,415.37
94	4230 Electric Road	Roanoke	Virginia	\$	7,575.93
96	848 Merrimon Avenue	Asheville	North Carolina	\$	6,985.37
97	1813 Matthews Township Pkwy.	Matthews	NC	\$	8,193.75
98	1153 Kingwood Drive	Kingwood	TX	\$	17,098.39
100	7804 Abercorn Street #55	Savannah	GA	\$	32,101.16
102	180 Peachtree East Shopping Cntr	Peachtree City	GA	\$	27,676.37
103	2800 Raeford Road	Fayetteville	NC	\$	65,933.94
104	8181 South Quebec Street	Centennial	CO	\$	13,151.23
105	6325 West Jefferson Blvd.	Fort Wayne	Indiana	\$	8,333.55
108	3615 South Florida Avenue	Lakeland	Florida	\$	-
112	7640 N. MacArthur Blvd.	Irving	Texas	\$	8,571.20
116	3300 Lehigh Street	Allentown	PA	\$	8,531.10
117	12656 Fountain Lake Circle	Stafford	TX	\$	9,271.05
118	2727 Lakewood Village Drive	North Little Rock	AR	\$	9,194.53
119	2530 East Colonial Drive	Orlando	FL	\$	8,726.82
120	1228 Greenbrier Pkwy.	Chesapeake	VA	\$	8,740.69
121	5960 W. Bell Road	Glendale	AZ	\$	10,133.22
122	4436 North Dowlen Road	Beaumont	TX	\$	-
123	6465 East Mockingbird Lane Ste 3	Dallas	TX	\$	34,872.73
124	1747 Fry Road	Katy	TX	\$	8,323.70
125	8811 North Tamiami Trail	Naples	FL	\$	12,719.23
126	4706 North Midkiff Road, No. 1	Midland	TX	\$	9,418.69
127	3211 People Street, Bldg. H	Johnson City	TN	\$	9,735.28
130	3628 W. Dublin-Granville Road	Columbus	OH	\$	90,341.13
132	18134 San Pedro	San Antonio	TX	\$	10,325.05
134	3315 West Central Avenue, Suite	Toledo	Ohio	\$	6,992.24
135	880 South Green River Road	Evansville	IN	\$	3,819.81
136	16950 West Bluemound Road	Brookfield	WI	\$	9,722.58
137	196 Alps Road, Suite 34	Athens	GA	\$	8,610.76

Stein Mart, Inc.

LIST OF LEASES

140	2855 Ridge Road	Rockwall	TX	\$	8,957.94
141	50 Barrett Parkway, Suite 100	Marietta	GA	\$	32,854.79
143	500 North Stephanie Street	Henderson	NV	\$	11,078.29
148	5069 South McCarran Blvd.	Reno	NV	\$	11,531.62
149	1635 Germantown Parkway	Cordova	TN	\$	8,525.37
154	13644 Poway Road	Poway	CA	\$	78,558.91
155	7992 Transit Road	Williamsville	New York	\$	10,582.87
160	1115 South Federal Highway	Pompano Beach	Florida	\$	9,155.23
161	4601 San Dario Street	Laredo	TX	\$	-
167	20601 Torrence Chapel Road	Cornelius	NC	\$	48,716.32
173	25282 Marquerite Parkway	Mission Viejo	California	\$	10,416.93
174	1670 Scenic Highway North	Snellville	GA	\$	81,083.91
175	4840 Forest Drive	Columbia	SC	\$	25,562.65
180	7506 Dr. Phillips Boulevard	Orlando	FL	\$	11,165.24
181	308 South Bryant Avenue	Edmond	OK	\$	8,738.03
182	191 Rice Lake Square	Wheaton	IL	\$	-
183	11437 Kingston Pike	Farragut	TN	\$	54,553.16
184	1624 Laskin Road, Suite 748	Virginia Beach	VA	\$	11,808.82
185	1560 U.S. 41 Bypass	Venice	FL	\$	5,688.38
186	25001 Center Ridge Road	Westlake	Ohio	\$	9,103.55
188	7621 North Kings Highway	Myrtle Beach	SC	\$	34,229.98
190	1945 West Palmetto Street, Suite	Florence	SC	\$	5,042.03
192	3450 Highway 190, Suite 2	Mandeville	LA	\$	8,519.25
194	218 37th Avenue North	St. Petersburg	Florida	\$	31,431.88
198	10930 Foothill Boulevard	Rancho Cucamonga	CA	\$	12,052.66
199	24955 Pico Canyon Road	Stevenson Ranch	CA	\$	45,697.18
201	2020 Gunbarrel Road, Suite 174	Chattanooga	TN	\$	9,662.59
202	1589 Skeet Club Road, Suite 105	High Point	NC	\$	7,211.48
203	1925 East Main Street, Suite B	Spartanburg	SC	\$	7,260.37
204	8319 West Sunrise Blvd.	Plantation	Florida	\$	76,549.42
205	4357 Forsyth Road, Suite 120	Macon	GA	\$	5,129.05
206	5906 South Cooper Street	Arlington	TX	\$	8,630.34
207	2600 McFarland Blvd. East, Suite 5	Tuscaloosa	AL	\$	8,625.17
208	7827 East 91st Street	Tulsa	OK	\$	8,250.37
210	1936 North Placentia Avenue	Fullerton	CA	\$	11,192.13
212	430 William Hilton Parkway, Suite	Hilton Head Island	South Carolina	\$	8,841.16
213	2990 North Center Street	Hickory	NC	\$	8,713.84
214	3070 West Shaw Avenue	Fresno	CA	\$	30,902.97
215	4437 Commons Drive East	Destin	Florida	\$	10,041.82
217	2408-B Texas Avenue South	College Station	TX	\$	6,952.37
219	204 Orland Park Place	Orland Park	IL	\$	7,263.36
220	31781 Temecula Parkway	Temecula	CA	\$	11,988.39
221	934 North Lake Drive	Lexington	SC	\$	7,480.37
222	19075 Interstate Highway 45 Sout	Shenandoah	TX	\$	9,204.66
223	2500 West International Speedwa	Daytona Beach	FL	\$	8,514.28
224	3619 East Main Street	St. Charles	IL	\$	67,230.43
226	115 Red Banks Road	Greenville	NC	\$	4,953.40

Stein Mart, Inc.

LIST OF LEASES

229	1555 South Palm Canyon Drive, St	Palm Springs	CA	\$	12,771.52
230	2508 S.E. Federal Highway	Stuart	FL	\$	9,362.02
232	393 West Esplanade Avenue	Kenner	LA	\$	4,608.15
233	3333 Preston Road, Suite 1500	Frisco	TX	\$	11,043.56
234	1400 Foothill Drive, #130	Salt Lake City	UT	\$	94,887.24
237	7410 Remcon Cir Ste D	El Paso	TX	\$	51,264.37
238	3655 Houston Levee Road	Collierville	TN	\$	8,923.74
240	4100 North Wickam Road, Suite #	Melbourne	FL	\$	7,451.82
243	5800 S. Flamingo Road	Cooper City	Florida	\$	-
246	19041 Beach Boulevard	Huntington Beach	California	\$	12,143.76
247	3501 Oleander Drive, Building 1	Wilmington	NC	\$	8,311.48
249	6275 University Drive, NW, Suite 1	Huntsville	AL	\$	6,224.01
250	581 Romence Road	Portage	MI	\$	41,820.42
255	4740 Commonwealth Ctr. Pkwy.	Midlothian	VA	\$	8,870.56
261	12651 Vance Jackson Road, #125	San Antonio	TX	\$	10,322.65
262	25191 Chamber of Commerce Driv	Bonita Springs	FL	\$	8,530.17
265	1021 Edwards Ferry Road, NE	Leesburg	VA	\$	11,046.26
266	600 Long Point Road	Mt. Pleasant	SC	\$	37,347.62
270	335 East Alessandro Boulevard	Riverside	CA	\$	9,597.69
271	4870 Morse Road	Columbus	OH	\$	8,144.12
272	175 Stonebrook Place	Jackson	TN	\$	8,058.86
273	10801 Zelzah Avenue	Granada Hills	CA	\$	-
275	1011 North State Road 135	Greenwood	IN	\$	7,789.83
276	5026 South Hulen Street	Fort Worth	TX	\$	-
279	3544 Pump Road	Richmond	VA	\$	10,787.56
281	3456 Lithia-Pinecrest Road	Valrico	Florida	\$	8,411.26
283	5341 Ballantyne Commons Parkwa	Charlotte	North Carolina	\$	9,919.07
284	2522 North McMullen Booth Roac	Clearwater	FL	\$	41,224.68
286	11700 U.S. Highway 1	North Palm Beach	Florida	\$	-
288	10915 Baymeadows Road, #26	Jacksonville	FL	\$	9,691.12
289	1225 U.S. Highway 1, Suite 2	Vero Beach	Florida	\$	8,688.91
290	1800 E. Franklin Street, Suite 13	Chapel Hill	NC	\$	8,993.42
291	1600 Kings Highway North, Suite 2	Cherry Hill	NJ	\$	11,228.54
293	60 Quarry Road	Downingtown	PA	\$	13,771.64
294	78945 Highway 111	La Quinta	CA	\$	15,950.37
295	150 Promenade Boulevard	Flowood	MS	\$	10,186.37
296	913 Old York Road	Jenkintown	PA	\$	17,523.32
297	2520 East 146th Street	Carmel	IN	\$	11,857.37
298	1455 Semoran Boulevard, Suite 25	Casselberry	FL	\$	95,321.11
299	1100 Highway 35	Ocean	NJ	\$	19,184.73
301	334 North Congress Avenue	Boynton Beach	FL	\$	11,427.27
302		Lake Zurich		\$	13,153.75
303	7860 Vaughn Road	Montgomery	AL	\$	10,079.15
304	2835 S. Alma School Road	Chandler	AZ	\$	14,700.54
309	13475 Atlantic Boulevard	Jacksonville	FL	\$	33,683.45
312	10570 US Hwy 15/501	Southern Pines	NC	\$	6,355.92
313	71 Towne Drive	Bluffton	South Carolina	\$	10,192.26

Stein Mart, Inc.

LIST OF LEASES

315	3021 South IH 35	Round Rock	TX	\$	13,860.71
316	8050 McKnight Road, Suite 1-B	Pittsburgh	PA	\$	10,571.00
321	6130 Bayfield Road	Concord	NC	\$	8,258.80
322	23949 Chagrin Blvd.	Beachwood	Ohio	\$	16,404.44
323	9610 Manchester Road	St. Louis	Missouri	\$	61,417.37
324	552 North Thompson Lane	Murfreesboro	TN	\$	9,717.82
327	1610 Keller Parkway	Keller	TX	\$	10,027.04
330	3349 Monroe Avenue, Space 42	Rochester	New York	\$	123,862.43
333	2145 Highway 35	Holmdel	NJ	\$	12,629.10
334	13920 Hoard Drive	Noblesville	Indiana	\$	11,891.22
337	1733 NW St. Lucie West Blvd.	Port St. Lucie	FL	\$	12,998.55
338	1018 Andrews Run	Hendersonville	TN	\$	10,109.37
339	21155 Tomball Parkway	Houston	TX	\$	13,567.17
340	16227 North Scottsdale Road	Scottsdale	AZ	\$	13,598.02
341	6290 North Point Pkwy	Alpharetta	GA	\$	100,374.37
342	5425 S. Padre Island Drive, Ste 136	Corpus Christi	TX	\$	8,485.86
343	664B Grapevine Highway	Hurst	TX	\$	7,150.13
344	9656 Quivira Road	Lenexa	KS	\$	93,665.16
345	175 Grandview Blvd., Suite 200	Madison	Mississippi	\$	8,387.87
346	119 North Cattlemen Road	Sarasota	Florida	\$	43,083.98
347	1800 E. Rio Salado Parkway, Ste 14	Tempe	AZ	\$	12,145.95
348	1648 University Blvd. West	Jacksonville	FL	\$	9,057.42
349	4700 Millhaven Road Suite 1252	Monroe	LA	\$	9,140.75
350	2725 East Bidwell Street	Folsom	CA	\$	158,663.63
351	6101 Long Prairie Road, Suite 500	Flower Mound	Texas	\$	40,713.68
353	1000 Turtle Creek Drive, Bldg. G	Hattiesburg	MS	\$	3,723.62
354	2490 South Colorado Blvd.	Denver	CO	\$	10,817.03
355	13742 Jamboree Road	Irvine	CA	\$	27,167.31
356	3630 Peachtree Parkway	Suwanee	GA	\$	82,417.95
357	10990 Sunset Hills Plaza	Sunset Hills	MO	\$	114,599.78
358	13712 West Bell Road	Surprise	Arizona	\$	8,045.28
359	800 E. Expressway 83, Suite 200	McAllen	TX	\$	11,652.05
360	2650 Beach Boulevard, Suite 36	Biloxi	Mississippi	\$	7,288.92
361	6565 S. Fry Road	Katy	TX	\$	-
362	5555 East Broadway Blvd.	Tucson	AZ	\$	15,514.79
364	826 W. Arrow Hwy	San Dimas	CA	\$	13,750.37
366	750 Twentyninth Place Court	Charlottesville	Virginia	\$	59,084.79
367	5225 Settlers Market Blvd., Suite 1	Williamsburg	VA	\$	9,424.82
368	14028 North U.S. Highway 183, Bldg. 1	Austin	Texas	\$	-
369	8140 E. Santa Ana Canyon Road	Anaheim	CA	\$	25,483.21
370	5326 N. Nevada Avenue	Colorado Springs	CO	\$	18,313.94
373	7707 Laguna Boulevard, Ste 100	Elk Grove	CA	\$	14,030.11
374	1511 Route 22 West	Watchung	New Jersey	\$	-
375	5275 Highway 280 South, Suite 11	Birmingham	AL	\$	8,413.85
376	6403 W. 135th Street, Suite E4	Overland Park	KS	\$	20,089.55
377	233 Greenville Highway	Hendersonville	NC	\$	8,555.92
378	2060 North Rainbow Blvd.	Las Vegas	NV	\$	12,905.24

Stein Mart, Inc.

LIST OF LEASES

379	3960 Airport Road	Mobile	Alabama	\$	9,725.02
380	10000 West Sahara Ave., Suite 161	Las Vegas	NV	\$	208,324.32
381	5116 Commons Drive	Rocklin	CA	\$	14,914.17
382	545 Cool Springs Blvd. #100	Franklin	TN	\$	15,718.82
384	20600 Homestead Road	Cupertino	CA	\$	31,808.50
385	3415 Via Montebello	Carlsbad	CA	\$	21,205.94
386	1085 Herndon Avenue	Clovis	CA	\$	12,730.87
387	9500 Montgomery Blvd. NE, Suite	Albuquerque	NM	\$	17,858.21
388	1855 S. Federal Highway, Suite 50	Delray Beach	Florida	\$	254,141.15
389	5095 Wellington Road	Gainesville	Virginia	\$	14,137.11
390	19915 Biscayne Blvd.	Aventura	Florida	\$	303,712.01
392	3944 Peachtree Road, NE	Brookhaven	GA	\$	50,395.59
393	1393 South Commons Drive	Myrtle Beach	SC	\$	12,453.84
394	210 East Jericho Turnpike	Commack	New York	\$	22,828.13
395	12080 Jefferson Ave, Bldg 700, Ste	Newport News	VA	\$	141,560.93
396	42420 Bob Hope Drive	Rancho Mirage	CA	\$	13,133.41
397	550 Camino De Estrella, Unit B	San Clemente	CA	\$	22,752.53
398	4555 E. Cactus Road	Phoenix	Arizona	\$	13,662.37
399	456 North US HWY 27/441	Lady Lake	FL	\$	12,808.25
400	1122 S. Rochester Road	Rochester Hills	MI	\$	119,259.89
401	910 N. University Drive	Coral Springs	Florida	\$	17,321.18
402	3665 Pacific Coast Hwy	Torrance	CA	\$	24,228.89
403	125 W. Dekalb Pike, Suite 140	King of Prussia	PA	\$	194,522.43
404	4221 Concord Pike	Wilmington	Delaware	\$	17,653.17
405	200 Lincoln Square	Arlington	Texas	\$	10,839.66
406	13100 Tamiami Trail E., Unit 104	Naples	FL	\$	11,270.28
408	6514 S. Parker Road	Aurora	CO	\$	13,350.63
409	7967 113th Street	Seminole	FL	\$	9,509.48
410	210 S. Promenade Blvd.	Rogers	AR	\$	10,412.81
411	14200 Lincoln Street	Thornton	CO	\$	15,084.14
413	215 N. Maple Road	Ann Arbor	MI	\$	14,294.17
414	7290 Orchard Lake Road	West Bloomfield	MI	\$	20,535.16
415	1214 Town & Country Crossing Dr	Town and Country	MO	\$	116,807.07
416	2810 Ygnacio Valley Road	Walnut Creek	CA	\$	237,361.51
417	3975 Everhard Road NW	Canton	OH	\$	10,201.11
419	1060 Parkside Main Street	Cary	NC	\$	11,393.68
420	300 Franklin Road, Suite 150A	Brentwood	Tennessee	\$	17,296.32
421	3805 Dallas Highway, Suite 440	Marietta	Georgia	\$	11,426.14
422	7705 Marketplace Drive	Aurora	OH	\$	102,471.74
423	1627 Opelika Road	Auburn	AL	\$	10,210.41
424	700 Eastgate South Drive, Suite 45	Cincinnati	OH	\$	10,519.12
425	2762 N Greenwich Court	Wichita	KS	\$	11,775.99
427	215 S Randall Road	Algonquin	IL	\$	16,397.45
428	1301 WP Ball Blvd	Sanford	FL	\$	14,462.74
429	5600 Carlisle Pike, Suite 500	Mechanicsburg	PA	\$	15,566.10
430	3550 W. University Drive, Suite 30	McKinney	Texas	\$	-
431	94 S Waukegan Road	Deerfield	IL	\$	18,513.92

Stein Mart, Inc.

LIST OF LEASES

432	820 Plainfield Road	Willowbrook	IL	\$	183,917.63
990	1200 Riverplace Boulevard	Jacksonville	FL	\$	277,876.19

EXHIBIT C

Form of Assumption and Assignment Agreement

ASSUMPTION AND ASSIGNMENT AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (the “Agreement”), dated as of _____, 2020, is by and between Stein Mart, Inc. (“Assignor”) and _____ (“Assignee”). For the avoidance of doubt, all provisions of the applicable assigned contract, including any provision limiting future assignment, shall be binding on the applicable Assignee after consummation of the assignment of such contract by the Debtors to the Assignee.

RECITALS

WHEREAS, Assignor, along with its affiliated debtors and debtors in possession, has filed a voluntary petition for relief pursuant to chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the “Bankruptcy Code”), in the United States Bankruptcy Court for the Middle District of Florida (the “Bankruptcy Court”), Case No. 20-2387; and

WHEREAS, Assignor has agreed to assign and Assignee has agreed to assume the real property lease(s) listed on the attached Schedule A (referred to as either the “Assigned Asset(s)” or the “Lease(s)”) with respect to the premises set forth on Schedule A (the “Premises”); and

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto agree as follows:

AGREEMENT

1. Assignment and Assumption.

(a) Assignor hereby sells, transfers, conveys, assigns and sets over to Assignee, its successors and assigns, all of Assignor’s right, title, and interest in and to the Assigned Asset(s).

(b) Assignee hereby assumes and undertakes to pay, perform and discharge all of Assignor’s obligations and duties with respect to the Assigned Asset(s) as of the earlier of (i) entry of an order approving the assignment of the Lease by the Bankruptcy Court; or (ii) November 1, 2020.

2. **Payment of Purchase Price.** Assignee shall, on the date hereof, deliver the purchase price for the Assigned Asset(s) in the amount of _____ (the “Purchase Price”) in immediately available funds wired to the account specified by Assignor. If the assumption and assignment of the Assigned Asset(s) do(es) not occur by _____, 2020, Assignee will additionally reimburse Assignor for all amounts that came due, were required to be paid, and were in fact paid in connection with the Assigned Asset(s) on and after _____, 2020.

3. **Assumption of Liabilities.** In addition to assuming all remaining obligations that exist with respect to the Assigned Asset(s), including, but not limited to, accrued but unbilled adjustments for CAM, real estate taxes and insurance, Assignee shall assume and cure all outstanding liabilities with respect to the Assigned Asset(s).

4. **No Further Liability of Assignor.** From and after the date hereof, Assignor shall have no further obligations and duties with respect to the Assigned Asset(s).

5. **Further Assurances.** At any time and from time to time after the date hereof, at the request of Assignee, and without further consideration, Assignor shall execute and deliver such other instruments of sale, transfer, conveyance, assignment, and confirmation or consents and take such other action as

Assignee may reasonably request as necessary or desirable in order to more effectively transfer, convey, and assign to Assignee Assignor's rights to the Assigned Asset(s).

6. "As Is Where Is" Transaction. Assignee hereby acknowledges and agrees that Assignor makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Assigned Asset(s). Without limiting the foregoing, Assignor hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Assigned Asset(s). Assignee further acknowledges that the Assignee has conducted an independent inspection and investigation of the physical condition of the Assigned Asset(s) and all such other matters relating to or affecting the Assigned Asset(s) as Assignee deemed necessary or appropriate and that in proceeding with its acquisition of the Assigned Asset(s), Assignee is doing so based upon such independent inspections and investigations. Accordingly, Assignee will accept the Assigned Asset(s) "AS IS" and "WHERE IS."

7. Compliance With Law. Assignee hereby agrees to comply with all applicable laws. Assignee agrees to indemnify and hold Assignor harmless for any violation or alleged violation of this section.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to principles of conflicts of law.

9. Jurisdiction. The Parties consent to the exclusive jurisdiction of the United States Bankruptcy Court for the Middle District of Florida with respect to all matters arising under or relating to this Agreement. The Parties hereby irrevocably waive any objection on the grounds of venue, forum non conveniens, or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

10. No Reliance. Each Party represents and warrants that in entering into this Agreement it is relying on its own judgment, belief and knowledge and, as applicable, on that of any attorney it has retained to represent it in this matter. In entering into this Agreement, no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

11. Construction. This Agreement has been drafted through a cooperative effort of both Parties, and neither Party shall be considered the drafter of this Agreement so as to give rise to any presumption of convention regarding construction of this document. All terms of this Agreement were negotiated in good faith and at arm's-length, and this Agreement was prepared and executed without fraud, duress, undue influence, or coercion of any kind exerted by any of the Parties upon the other. The execution and delivery of this Agreement is the free and voluntary act of the Parties.

12. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Agreement may be transmitted by facsimile or by electronic mail, and such transmission will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party.

13. Condition. Assignee's obligations under this Agreement are expressly conditioned upon _____ ("Landlord"), on or before _____, 2020, consenting to the assignment of the Lease(s) to Assignee. This Section 13 shall be applicable, notwithstanding anything in this Agreement to the contrary.

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

[Signatures appear on following page]

ASSIGNOR:
STEIN MART, INC.

By _____
Name _____
Its _____

ASSIGNEE:
[ASSIGNEE]

By _____
Name _____
Its _____

Schedule A

Description of Asset(s)

EXHIBIT D

Form of Lease Termination Agreement

LEASE TERMINATION AGREEMENT

This Lease Termination Agreement (the "Agreement") is made as of this ___ day of _____, 2020 by and between _____ ("Landlord") and Stein Mart, Inc. ("Tenant" or "Debtor").

RECITALS

WHEREAS, Landlord and Tenant entered into a certain lease dated _____ (the "Lease"), covering certain premises located at _____ (the "Premises"), on the terms and conditions set forth therein;

WHEREAS, Tenant, along with its affiliated debtors and debtors in possession, has filed a voluntary petition for relief pursuant to chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court for the Middle District of Florida (the "Bankruptcy Court");

WHEREAS, Landlord has prepetition and postpetition sums due and owing from Tenant. The Parties desire to enter into this Agreement, for among things, Landlord to be restored to possession of the Premises as of the Termination Date and the parties to release the other;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby covenant and agree as follows subject only to an order of the Bankruptcy Court approving this Agreement:

AGREEMENT

1. Recitals. The Recitals are incorporated herein as if set forth at length.
2. Lease Termination. The Lease is terminated effective _____ (the "Termination Date"). Tenant shall file a notice in the Bankruptcy Court rejecting the Lease effective upon the Termination Date.
3. Consideration. Landlord shall pay to Tenant \$_____.
4. Landlord Release of Tenant. For valuable consideration, and the mutual covenants and agreements contained herein, Landlord does hereby fully, forever and irrevocably release, discharge and acquit Tenant, and its respective past and present affiliates, and the respective past and present officers, directors, shareholders, agents, and employees of each and all of the foregoing entities, and its and their respective successors, heirs, and assigns, and any other person or entity now, previously, or hereafter affiliated with any or all of the foregoing entities, of and from any and all rights, claims, demands, obligations liabilities, indebtedness, breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action, debts, sums of money, accounts, compensations, contracts, controversies, promises, damages,

costs, losses and expenses of every type, kind, nature, description or character, and irrespective of how, why, or by reason of what facts, whether heretofore or now existing, or that could, might, or may be claimed to exist, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, claimed or unclaimed, whether based on contract, tort, breach of any duty, or other legal or equitable theory of recovery, each as though fully set forth herein at length, including, without limitation, any and all claims evidenced by the Lease.

5. Tenant Release of Landlord. For valuable consideration, and the mutual covenants and agreements contained herein, Tenant does hereby fully, forever and irrevocably release, discharge and acquit Landlord, and its respective past and present affiliates, and the respective past and present officers, directors, shareholders, agents, property managers, and employees of each and all of the foregoing entities, and its and their respective successors, heirs, and assigns, and any other person or entity now, previously, or hereafter affiliated with any or all of the foregoing entities, of and from any and all rights, claims, demands, obligations liabilities, indebtedness, breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action, debts, sums of money, accounts, compensations, contracts, controversies, promises, damages, costs, losses and expenses of every type, kind, nature, description or character, and irrespective of how, why, or by reason of what facts, whether heretofore or now existing, or that could, might, or may be claimed to exist, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, claimed or unclaimed, whether based on contract, tort, breach of any duty, or other legal or equitable theory of recovery, each as though fully set forth herein at length, including, without limitation, any and all claims evidenced by the Lease.

6. In this connection, the parties hereby agree, represent and warrant that they realize and acknowledge that factual matters now unknown to them may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses, and expenses that are presently unknown, unanticipated, and unsuspected, and the parties further agree, represent and warrant that this Release has been negotiated and agreed upon in light of that realization and that, except as expressly limited above, it nevertheless hereby intends to release, discharge, and acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses, and expenses.

7. Conditions Precedent. As a condition precedent to the effectiveness of this Agreement, each and all of the following shall have occurred no later than the Termination Date:

(a) Tenant has delivered possession of the Premises to Landlord:

- (b) Tenant has delivered to Landlord the keys and access codes to the Premises;
- (c) An order has been entered approving the entirety of this Agreement.

8. Furniture, Fixtures and Equipment (FF&E). Any FF&E remaining at the Premises after the Termination Date is deemed abandoned and the Landlord and their managing agents are free to dispose of the FF&E in their sole and absolute discretion without liability to the Debtor or any entity.

9. Authority to Settle. Each of the parties to this Agreement respectively represents and warrants that each such party has the absolute and unfettered power, right, and authority to enter into this Agreement and settle, compromise and release fully and completely all matters and claims contemplated to be resolved hereby. Each of the parties to this Agreement respectively represents and warrants that each such party owns and controls each of the claims, causes of action, or other matters that are the subject matter of this Agreement and that it has not assigned or transferred to any other person any of such claims, causes of action, or other matters.

10. Entire Agreement. This Agreement, the exhibits hereto and the other items to be delivered as a condition precedent to the effectiveness of this Agreement, contains the entire agreement and understanding concerning the subject matter of the Agreement supersedes and replaces all prior negotiations and proposed settlement agreements, written or oral. Each of the parties to this Agreement respectively represents and warrants that no other party to this Agreement, nor any agent or attorney of any such party, has made any promise, representation or warranty, express or implied, not contained in this Agreement or the exhibits hereto to induce any party to execute this Agreement. Each of the parties to this Agreement further acknowledges that such party is not executing this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement or the exhibits hereto.

11. Advice of Counsel. Each of the parties to this Agreement respectively represents and warrants that each such party has (a) been adequately represented, or has had the opportunity to be represented, by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement, (b) executed this Agreement with the consent and upon the competent advice of such counsel, or that it has had the opportunity to seek such consent and advice, (c) read this Agreement, and understands and assents to all the terms and conditions contained in this Agreement without any reservations; and (d) had, or has had the opportunity to have had, the same explained to it by its own counsel. In entering into this Agreement, no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

12. Attorneys' Fees. Each party to this Agreement agrees that in the event a dispute arises as to the validity, scope, applicability, or enforceability of this Agreement, the prevailing party shall be entitled to recover its costs and attorneys' fees.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which shall constitute one and the same document. Further, each of the parties to this Agreement agrees that scanned signatures of

each party hereto shall be deemed original signatures and shall be binding on each such party whose signature is by scan to the same extent as if it were its original signature.

14. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida, without regard to conflicts of laws principles that would require the application of the law of another jurisdiction.

15. Jurisdiction. The Parties consent to the exclusive jurisdiction of the United States Bankruptcy Court for the Middle District of Florida with respect to all matters arising under or relating to this Agreement. The Parties hereby irrevocably waive any objection on the grounds of venue, forum non conveniens, or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

16. Miscellaneous.

(a) **The headings of the sections of this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. This Agreement and its terms, provisions, covenants and conditions may not be amended, changed, altered, modified, or waived except by an express instrument in writing signed by each and all of the parties hereto.**

(b) This Agreement and each of its provisions are binding upon and shall inure to the benefit of the Tenant's successors and assigns, including, without limitation, a trustee, if any, subsequently appointed under Chapter 7 or 11 of the Bankruptcy Code.

(c) Each of the parties to this Agreement shall take all necessary steps, cooperate, and use reasonable best efforts to obtain and achieve the objectives and fulfill the obligations of this Agreement. Each of the parties hereto shall cooperate with each other and shall execute and deliver any and all additional notices, papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Agreement.

(d) Each of the parties to this Agreement shall pay all of its own legal fees, costs, and any other expenses incurred or to be incurred in connection with the consummation of this Agreement.

(e) The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all parties hereto and their counsel. Because this Agreement was drafted with the participation of all parties hereto and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the parties to this Agreement respectively represents and warrants that each such party was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this

Agreement, and there was no disparity in bargaining power among the parties to this Agreement.

IN WITNESS HEREOF, the parties have duly executed this Agreement as of the date and year first written above.

[LANDLORD]

By: _____
Print Name: _____
Its: _____

[TENANT]

By: _____
Print Name: _____
Its: _____

EXHIBIT E

**Proposed Notice of Potential Assignment and Assumption
of Unexpired Nonresidential Real Property Leases**

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Chapter 11

STEIN MART, INC.⁶

Case No. 3:20-bk-2387

STEIN MART BUYING CORP.
STEIN MART HOLDING CORP.,

Jointly Administered with
Case No. 3:20-bk-2388
Case No. 3:20-bk-2389

Debtors.

**NOTICE OF POTENTIAL ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY UNEXPIRED
NONRESIDENTIAL REAL PROPERTY LEASES**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On September 25, 2020, the above-referenced Debtors filed a *Motion for Entry of an Order Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code (I) Authorizing the Sale of Certain Unexpired Nonresidential Real Property Leases, (II) Approving the Assumption and Assignment of Unexpired Nonresidential Real Property Leases and (III) Granting Related Relief* (the “Motion”).

Pursuant to the Motion, the Debtors may seek to assume and assign the unexpired nonresidential real property leases identified on Exhibit 1 (the “Leases”) attached hereto to a Successful Bidder. Nothing herein shall bind the Debtors and/or any bidder to assume and assign the Leases on Exhibit 1.

The Motion shall be presented for authorization and approval by the Court at a hearing to be held on **October 22, 2020 at 10:30 a.m.** (the “Sale Hearing”) before the Honorable Jerry A. Funk, United States Bankruptcy Judge, of the United States Bankruptcy Court for the Middle District of Florida. Telephonic appearances must be arranged by contacting CourtCall on its website at www.courtcall.com or by telephone at 1-866-582-6878 or 1-888-882-6878. Parties wishing to use CourtCall must register individually with CourtCall prior to the hearing and provide a payment method for the CourtCall charge, which varies. Generally, registration must be completed by 5:00 p.m. EST the day before the hearing. The Sale Hearing may be adjourned or rescheduled without further notice by an announcement of the adjourned date at the Sale Hearing.

⁶ 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 principal offices of the Debtors is: 1200 Riverplace Blvd., Jacksonville, FL 32207.

Demand is hereby made that any objection to the assumption and assignment of the Leases identified on **Exhibit 1** hereto, except for objections to the provision of adequate assurance of future performance under any Lease, including, without limitation, any objection to the amount, if any, determined by the Debtors to be necessary to be paid to cure any existing default under such Lease (the “Cure Amount”) (i) be in writing, (ii) set forth the basis for the objection as well as any cure amount that the objector asserts to be due (in all cases with appropriate documentation in support thereof), and (iii) be filed with the Clerk of the Court, United States Bankruptcy Court for the Middle District of Florida, together with proof of service thereof, and served on the following parties so as to be actually received by **October 19, 2020 at 5:00 p.m.** (the “Objection Deadline”): (a) Foley & Lardner, LLP, counsel for the Debtors (Attn: Gardner Davis, Esq.); (b) Frost Brown Todd LLC (Attn: Ronald E. Gold, Esq.) and GrayRobinson, PA (Attn: Steven J. Solomon, Esq.), counsel for the Official Committee of Unsecured Creditors (Attn: Ronald E. Gold, Esq.); (c) counsel for Wells Fargo Bank, National Association, c/o Smith Hulsey & Busey (Attn: Steven D. Busey, Esq.); (d) counsel for Wells Fargo Bank, National Association, c/o Morgan Lewis & Bockius LLP (Attn: Matthew F. Furlong, Esq); and (e) any persons who have filed a request for notice in the above-captioned chapter 11 cases on or before the Objection Deadline. Any objection to the ability of the Successful Bidder to provide adequate assurance of future performance under such Lease may be presented at the Sale Hearing.

Demand is hereby made that any request for adequate assurance information regarding the Successful Bidder (a “Request for Adequate Assurance”) submitted by a counterparty to a Lease (“Lease Counterparty”) must include an email address, postal address and/or facsimile number to which a response to such request will be sent. Upon receiving a Request for Adequate Assurance, the Debtors shall transmit by email, facsimile or overnight delivery such Adequate Assurance Information to the Lease Counterparty and their counsel, if known, within twenty-four (24) hours of receipt of such request by the Debtors.

If no objection to the proposed assumption and assignment of a Lease is timely received by the Objection Deadline (other than adequate assurance objections which may be presented at the Sale Hearing), then the Debtors will request that the Court order that the assumption and assignment be authorized and the respective Cure Amount set forth in Exhibit 1 hereto shall be binding upon the counterparty to the Lease for all purposes and will constitute a final determination of total Cure Amount required to be paid by the Debtors in connection with such assumption and assignment to the Successful Bidder.

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