

Consultancy Agreement Review Table	
Key terms	Extracts
Payment term	<p>converted into the right to receive the Merger Consideration pursuant to Section 2.1(a)(iii). The Company shall give Parent prompt notice of any demands for appraisal of shares of Company Common Stock received by the Company, withdrawals of such demands and any other instruments served pursuant to Section 262 of the DGCL and shall give Parent the opportunity to participate in all negotiations and proceedings with respect thereto. The Company shall not, without the prior written consent of Parent, make any payment with respect to, or settle or offer to settle, any such demands.</p> <p>Appointment of Exchange Agent. Prior to the Effective Time, Parent shall appoint a bank or trust company reasonably acceptable to the Company to act as exchange agent (the “Exchange Agent”) for the payment of the Merger Consideration and shall enter into an agreement (the “Exchange Agent Agreement”) relating to the Exchange Agent’s responsibilities under this Agreement.</p> <p>Deposit of Merger Consideration. At or prior to the Effective Time, Parent shall deposit, or cause to be deposited, with the Exchange Agent, in trust for the benefit of the holders of Company Common Stock, (i) cash sufficient to pay the aggregate Cash Consideration</p> <p>Surrender of Certificates or Book-Entry Shares. Upon surrender of Certificates or Book-Entry Shares to the Exchange Agent together with the Letter of Transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may customarily be required by the Exchange Agent, the holder of such Certificates or Book-Entry Shares shall be entitled to receive in exchange therefor the Merger Consideration into which the shares represented by such Certificates or Book-Entry Shares have been converted pursuant to this Agreement, together with the Fractional Share Cash Amount and any dividends or other distributions to which such Certificates or Book-Entry Shares become entitled in accordance with Section 2.2(e). In the event of a transfer of ownership of shares of Company Common Stock that is not registered in the transfer or stock records of the Company, any cash to be paid upon, or shares of Parent Common Stock to be issued upon, due surrender of the Certificate or Book-Entry Share formerly representing such shares of Company Common Stock may be paid or issued, as the case may be, to such a transferee if such Certificate or Book-Entry Share is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer or other similar Taxes have been paid or are not applicable. No interest shall be paid or shall accrue on the cash payable upon surrender of any Certificate or Book-Entry Share. Until surrendered as contemplated by this Section 2.2, each Certificate and Book-Entry Share shall be deemed at any time after the Effective Time to represent only the right to receive, upon such surrender, the Merger Consideration into which the shares represented by such Certificates or Book-Entry Shares have been converted pursuant to this Agreement, together with the Fractional Share Cash Amount and any dividends or other distributions to which such Certificates or Book-Entry Shares become entitled in accordance with Section 2.2(e).</p> <p>into shares of Parent Common Stock pursuant to Section 2.1(a)(iii) until such holder shall surrender such share in accordance with this Section 2.2. After the surrender in accordance with this Section 2.2 of a share of Company Common Stock to be converted into Parent Common Stock pursuant to Section 2.1(a)(iii), the holder thereof shall be entitled to receive (in addition to the Merger Consideration and the Fractional Share Cash Amount payable to such holder pursuant to this Article II) any such dividends or other distributions, without any interest thereon, which theretofore had become payable with respect to the Parent Common Stock represented by such share of Company Common Stock.</p> <p>Investment of Exchange Fund. The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent; provided, however, that such investments shall be in (i) obligations of or guaranteed by the United States of America or any agency or instrumentality</p>

thereof and backed by the full faith and credit of the United States of America, (ii) commercial paper obligations rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard Poor's Corporation, respectively, or (iii) certificates of deposit, bank repurchase agreements or banker's acceptances of commercial banks with capital exceeding \$1.0 billion (based on the most recent financial statements of such bank that are then publicly available); provided, further, that no such investment or loss thereon shall affect the amounts payable to holders of Certificates or Book-Entry Shares pursuant to this Article II, and following any losses from any such investment, Parent shall promptly provide additional funds to the Exchange Agent for the benefit of the holders of shares of Company Common Stock at the Effective Time in the amount of such losses, which additional funds will be deemed to be part of the Exchange Fund. Any interest or other income resulting from such investments shall be paid to Parent, upon demand.

**Withholding Rights.** Each of the Surviving Company, Parent and the Exchange Agent (without duplication) shall be entitled to deduct and withhold from amounts otherwise payable pursuant to this Agreement, such amounts as may be required to be deducted or withheld with respect to the making of such payment under applicable Tax Law. Any amounts so deducted, withheld and paid over to the appropriate Taxing Authority shall be treated for all purposes of this Agreement as having been paid to the person in respect of which such deduction or withholding was made.

Each award of performance share rights in respect of shares of Company Common Stock granted under a Company Stock Plan or otherwise that is outstanding or payable as of immediately prior to the Effective Time (each, a "Company PSR Award") shall, as of the Effective Time, be cancelled and converted into the right to receive, within 15 days following the Closing Date, the Merger Consideration (without interest and less any applicable Tax withholding) with respect to each share subject to the Company PSR Award, as determined based on the product of (i) the number of shares of Company Common Stock deemed to be earned under the Company PSR Award based on the greater of (x) the deemed achievement of all relevant performance goals at target level and (y) the actual level of achievement of all relevant performance goals against target as of the Company's last fiscal quarter end preceding the Effective Time and (ii) a fraction, (x) the numerator of which is the number of days within the performance period of such Company PSR Award that have elapsed prior to the Closing Date and (y) the denominator of which is the total number of days within the performance period of such Company PSR Award; provided, that the number of shares of Parent Common Stock otherwise issuable in respect of such Company PSR Award pursuant to this Section 2.3(b) shall be rounded down to the nearest whole number.

Each award of restricted stock units (other than any Company PSR Award) in respect of shares of Company Common Stock granted under a Company Stock Plan or otherwise that is outstanding or payable as of immediately prior to the Effective Time (each, a "Company RSU Award") shall, as of the Effective Time, be converted into a restricted stock unit award (an "Adjusted RSU Award"), on the same substantive terms and conditions as were applicable to the Company RSU Award immediately prior to the Effective Time, in respect of the number of shares of Parent Common Stock, rounded to the nearest whole share, determined by multiplying the number of shares of Company Common Stock subject to the Company RSU Award by the Award Exchange Ratio.

Prior to the Effective Time, the Company Board of Directors and/or the appropriate committee thereof shall take all reasonable actions, including adopting any necessary resolutions or amendments with respect to the Company Employee Stock Purchase Plan (the "ESPP") to effectuate the following: (i) to cause the "Offering Period" (as defined in the ESPP) ongoing as of the date of this Agreement to be the final Offering Period under the ESPP and the options under the ESPP to be exercised on the earlier of (x) the scheduled purchase date for such Offering Period and (y) the date that is seven Business Days prior to the Closing Date (with any participant payroll deductions not applied to the purchase of shares returned to the participant), (ii) to

prohibit participants in the ESPP from increasing their payroll deductions from those in effect on the date of this Agreement and (iii) to terminate the ESPP effective immediately prior to the Closing Date.

Section 5.1(b)(E), there are no outstanding subscriptions, options, warrants, calls, convertible securities, exchangeable securities or other similar rights, agreements or commitments to which the Company or any of its Subsidiaries is a party (A) obligating the Company or any of its Subsidiaries to (1) issue, transfer, exchange, sell or register for sale any shares of capital stock or other equity interests of the Company or any Subsidiary of the Company or securities convertible into or exchangeable for such shares or equity interests, (2) grant, extend or enter into any such subscription, option, warrant, call, convertible securities or other similar right, agreement or arrangement relating to the capital stock or other equity interest of the Company or any Subsidiary of the Company, (3) redeem or otherwise acquire any such shares of capital stock or other equity interests, (4) provide a material amount of funds to, or make any material investment (in the form of a loan, capital contribution or otherwise) in, any Subsidiary or (5) make any payment to any person the value of which is derived from or calculated based on the value of Company Common Stock or Company Preferred Stock, or (B) granting any preemptive or antidilutive or similar rights with respect to any security issued by the Company or its Subsidiaries. No Subsidiary of the Company owns any shares of capital stock of the Company. Neither the Company nor any of its Subsidiaries has outstanding any bonds, debentures, notes or other indebtedness, the holders of which have the right to vote (or which are convertible or exchangeable into or exercisable for securities having the right to vote) with the stockholders of the Company on any matter. There are no voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting or registration of the capital stock or other equity interest of the Company or any of its Subsidiaries. Since July 21, 2014 through the date hereof, the Company has not issued or repurchased any shares of its capital stock (other than in connection with the exercise, settlement or vesting of Company Stock Awards in accordance with their respective terms) or granted any Company Stock Awards. The Company and its Subsidiaries hold all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, clearances, permissions, qualifications and registrations and orders of all applicable Governmental Entities, and all rights under any Company Material Contract with all Governmental Entities, and have filed all tariffs, reports, notices and other documents with all Governmental Entities necessary for the Company and its Subsidiaries to own, lease and operate their properties and assets and to carry on their businesses as they are now being conducted (the "Company Permits") and have paid all fees and assessments due and payable in connection

None of the Company or its Subsidiaries, or to the Company's knowledge, any director, officer, employee or agent of the Company or any of its Subsidiaries has, directly or indirectly, (i) used any funds of the Company or any of its Subsidiaries for material unlawful contributions, material unlawful gifts, material unlawful entertainment or other material unlawful expenses relating to political activity; (ii) made any material unlawful payment to foreign or domestic governmental officials or employees or to foreign or domestic political parties or campaigns from funds of the Company or any of its Subsidiaries; (iii) violated or is in violation of the Foreign Corrupt Practices Act of 1977, as amended, or is in material violation of any similar Law; (iv) established or maintained any material unlawful fund of monies or other assets of the Company or any of its Subsidiaries; (v) made any material fraudulent entry on the books or records of the Company or any of its Subsidiaries; or (vi) made any material unlawful bribe, material unlawful kickback or other material unlawful payment to any person, private or public, regardless of form, whether in money, property or services, to obtain favorable treatment in securing business to obtain special concessions for the Company or any of its Subsidiaries.

Except as has not had and would not reasonably be expected to have, individually or in the

aggregate, a Material Adverse Effect on the Company, each Company Benefit Plan has been established, operated and administered in accordance with its terms and the requirements of all applicable Laws, including ERISA and the Code. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, all contributions required to be made to any Company Benefit Plan by applicable Law or by any plan document or other contractual undertaking, and all premiums due or payable with respect to insurance policies funding any Company Benefit Plan, have been timely made or paid in full or, to the extent not required to be made or paid on or before the date hereof, have been fully reflected on the books and records of the Company.

Except as would not reasonably be expected to result in any material Liability of the Company or any of its Subsidiaries, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event (i) entitle any current or former employee, director, consultant or officer of the Company or any of its Subsidiaries to severance pay, accrued pension benefit or any other payment, (ii) accelerate the time of payment or vesting, or increase the amount of compensation due to any such employee, director, consultant or officer, (iii) trigger any funding obligation under any Company Benefit Plan or impose any restrictions or limitations on the Company's rights to administer, amend or terminate any Company Benefit Plan, or (iv) result in any payment (whether in cash or property or the vesting of property) to any "disqualified individual" (as such term is defined in Treasury Regulation Section 1.280G-1) that could, individually or in combination with any other such payment, constitute an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code). No Company Benefit Plan provides for the gross-up or reimbursement of Taxes under Section 4999 of the Code or otherwise. The Company has made available to Parent all currently existing information applicable to the calculation of "parachute payments" pursuant to Section 280G of the Code in connection with the transactions contemplated by this Agreement, which information is complete and accurate in all material respects and was used for purposes of calculating the cost estimates made available to Parent.

There are no Liens for Taxes on any of the assets of the Company or any of its Subsidiaries other than statutory Liens for Taxes not yet due and payable.

The charges, accruals and reserves for Taxes with respect to the Company and its Subsidiaries reflected on the Company Financial Statements filed with the SEC prior to the date hereof are adequate, in accordance with GAAP, to cover Taxes payable by the Company and its Subsidiaries through the date of such Company Financial Statements.

Section 3.14 Employment and Labor Matters. Neither the Company nor any of its Subsidiaries is or has since August 27, 2011 been, a party to any collective bargaining agreement, labor union contract, or trade union agreement (each, a "Collective Bargaining Agreement"). No employee of the Company or any of its Subsidiaries is represented by a labor organization for purposes of collective bargaining with respect to the Company or any of its Subsidiaries. To the knowledge of the Company, from August 31, 2013 through the date hereof, there have been no material activities or proceedings of any labor or trade union to organize any employees of the Company or any of its Subsidiaries. No Collective Bargaining Agreement is being negotiated by the Company or any of its Subsidiaries. From August 27, 2011 through the date hereof, there has been no strike, lockout, slowdown, or work stoppage against the Company or any of its Subsidiaries pending or, to the Company's knowledge, threatened, that would interfere in any material respect with the respective business activities of the Company or any of its Subsidiaries. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, (i) there is no pending charge or complaint against the Company or any of its Subsidiaries by the National Labor Relations Board or any comparable Governmental Entity, and (ii) none of the Company and its Subsidiaries are a party, or otherwise bound by, any consent decree with, or citation by, any Governmental Entity relating

to employees or employment practices. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, the Company and its Subsidiaries have complied with all laws regarding employment and employment practices (including anti-discrimination), terms and conditions of employment and wages and hours (including classification of employees and equitable pay practices) and other laws in respect of any reduction in force (including notice, information and consultation requirements), and no claims relating to non-compliance with the foregoing are pending or, to the Company's knowledge, threatened. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, there are no outstanding assessments, penalties, fines, Liens, charges, surcharges, or other amounts due or owing by the Company pursuant to any workplace safety and insurance/workers' compensation Laws.

Section 3.17 Insurance. The Company and its Subsidiaries maintain insurance in such amounts and against such risks in all material respects as is customary for the industries in which it and its Subsidiaries operate and as the management of the Company has in good faith determined to be adequate. All material insurance policies maintained by or on behalf of the Company or any of its Subsidiaries as of the date of this Agreement are in full force and effect, all premiums and other payments due on such policies have been paid by the Company or its Subsidiaries and all claims thereunder have been filed in due and timely fashion, except as would not reasonably be expected, individually or in the aggregate, to be material to the Company and its Subsidiaries, taken as a whole. The Company and its Subsidiaries are in compliance in all material respects with the terms and provisions of all material insurance policies maintained by or on behalf of the Company or any of its Subsidiaries as of the date of this Agreement, and neither the Company nor any of its Subsidiaries is in breach or default under, or has taken any action that could permit termination or material modification of, any material insurance policies. To the Company's knowledge, as of the date of this Agreement, (i) there is no threatened termination of, or threatened material premium increase with respect to, any of such material policies other than increases in connection with the Company's annual renewal process and (ii) there is no material claim pending regarding the Company or any of its Subsidiaries under any of such material policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies.

any Contract that (A) is expected to result in the payment of more than \$5,000,000 by the Company and its Subsidiaries in the fiscal year ending August 30, 2014 or the fiscal year ending in August 2015 and

to make distributions or declare or pay dividends in respect of their capital stock, partnership interests, membership interests or other equity interests, as the case may be, (ii) to make loans to the Company or any of its Subsidiaries or

any Contract (other than Contracts for the acquisition of inventory in the ordinary course of business) that involved the payment of more than \$25,000,000 by the Company and its Subsidiaries in the fiscal year ending August 31, 2013 or that is expected to result in the payment of such amount by the Company and its Subsidiaries in the fiscal year ending August 30, 2014; or shares of capital stock or other equity interests of Parent or any Subsidiary of Parent or securities convertible into or exchangeable for such shares or equity interests, (2) grant, extend or enter into any such subscription, option, warrant, call, convertible securities or other similar right, agreement or arrangement relating to the capital stock or other equity interest of Parent or any Subsidiary of Parent, (3) redeem or otherwise acquire any such shares of capital stock or other equity interests of Parent or its Subsidiaries, or (4) make any payment to any person the value of which is derived from or calculated based on the value of Parent Common Stock or Parent Preferred Stock or (B) granting any preemptive or antidilutive or similar rights with respect to any security issued by Parent or its Subsidiaries. As of the date hereof, neither Parent nor any of

its Subsidiaries has outstanding any bonds, debentures, notes or other indebtedness, the holders of which have the right to vote (or which are convertible or exchangeable into or exercisable for securities having the right to vote) with the stockholders of Parent on any matter.

Parent and its Subsidiaries hold all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, clearances, permissions, qualifications and registrations and orders of all applicable Governmental Entities, and all rights under any material contract with all Governmental Entities, and have filed all tariffs, reports, notices and other documents with all Governmental Entities necessary for Parent and its Subsidiaries to own, lease and operate their properties and assets and to carry on their businesses as they are now being conducted (the "Parent Permits") and have paid all fees and assessments due and payable in connection therewith, in each case except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent. All Parent Permits are valid and in full force and effect, are not subject to any administrative or judicial proceeding that could result in any modification, termination or revocation thereof, Parent and its Subsidiaries are in material compliance with the terms and requirements of all Parent Permits, and to Parent's knowledge no suspension or cancellation of any such Parent Permit is threatened, in each case except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent.

None of Parent or its Subsidiaries, or to the Parent's knowledge, any director, officer, employee or agent of Parent or any of its Subsidiaries has, directly or indirectly, (i) used any funds of Parent or any of its Subsidiaries for material unlawful contributions, material unlawful gifts, material unlawful entertainment or other material unlawful expenses relating to political activity; (ii) made any material unlawful payment to foreign or domestic governmental officials or employees or to foreign or domestic political parties or campaigns from funds of Parent or any of its Subsidiaries; (iii) violated or is in violation of the Foreign Corrupt Practices Act of 1977, as amended, or is in material violation of any similar Law;

made any material fraudulent entry on the books or records of Parent or any of its Subsidiaries; or (vi) made any material unlawful bribe, material unlawful kickback or other material unlawful payment to any person, private or public, regardless of form, whether in money, property or services, to obtain favorable treatment in securing business to obtain special concessions for Parent or any of its Subsidiaries.

Assuming the accuracy of the representations and warranties of the Company set forth in this Agreement and performance by the Company of its obligations hereunder, Parent has, or will have at Closing, all funds necessary to consummate the Merger, including the making of all required payments in connection with the Merger, including payment of the Merger Consideration, the payment of any debt required to be repaid, redeemed, retired, cancelled, terminated or otherwise satisfied or discharged in connection with the Merger as of the date hereof (including all Indebtedness of the Company and its Subsidiaries required to be repaid, redeemed, retired, cancelled, terminated or otherwise satisfied or discharged in connection with the Merger, including premiums and fees incurred in connection therewith) and all other amounts to be paid pursuant to this Agreement and associated costs and expenses of the Merger on the Closing Date. In no event shall the receipt or availability of any funds or financing (including the Financing) by or to Parent or any of its Affiliates or any other financing transaction be a condition to any of the obligations of Parent or Merger Sub hereunder, it being understood that nothing in this Section 4.10(h) is intended to limit any condition set forth in Section 6.1 or Section 6.3.

Section 4.11 Solvency. Immediately after giving effect to the transactions contemplated by this Agreement (including any financing in connection with the transactions contemplated hereby) and excluding the effect of any inaccuracy of the representations and warranties contained in Article III, (a) Parent and its Subsidiaries, taken as a whole, will not have incurred debts beyond their ability to pay such debts as they mature or become due, the then present fair saleable value

of the assets of Parent and its Subsidiaries, taken as a whole, will exceed the amount that will be required to pay their probable Liabilities (including the probable amount of all contingent Liabilities) and debts as they become absolute and matured, (b) the assets of Parent and its Subsidiaries, taken as a whole, at a fair valuation, will exceed their probable Liabilities (including the probable amount of all contingent Liabilities) and debts and (c) Parent and its Subsidiaries, taken as a whole, will not have unreasonably small capital to carry on their businesses as presently conducted or as proposed to be conducted.

make, declare or pay any dividend, or make any other distribution on, or directly or indirectly redeem, purchase or otherwise acquire, any shares of its capital stock, or any other securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of certain events) into or exchangeable for any shares of its capital stock (except (1) dividends paid by any of the Subsidiaries of the Company to the Company or any of their wholly owned Subsidiaries, respectively, or (2) the acceptance of shares of Company Common Stock as payment for the exercise price of Company Options or for withholding Taxes incurred in connection with the exercise of Company Options or the vesting or settlement of Company Stock Awards outstanding as of the date hereof or granted after the date hereof in compliance with this Agreement, in each case in accordance with past practice and the terms of the applicable award agreements); provided, that the Company may make, declare and pay one quarterly cash dividend in the first quarterly period of the fiscal year ending August 29, 2015 in an amount per share consistent with the amount for the last quarterly period of the fiscal year ending August 30, 2014 and with a record date consistent with the record date for the first quarterly period of the fiscal year ending August 30, 2014; provided, further, that no quarterly dividend will be paid with respect to the quarter in which the Effective Time occurs unless the Effective Time is after the record date for such quarter;

except (1) as otherwise permitted by this Agreement, (2) for any repayment or prepayment by the Company or any of its Subsidiaries (x) of indebtedness pursuant to either Revolving Credit Facility or (y) required under the terms of the 2015 Notes, or (3) for transactions between the Company and its Subsidiaries or among the Company's Subsidiaries, prepay, redeem, repurchase, defease, cancel or otherwise terminate any indebtedness or guarantees thereof of the Company or any Subsidiary;

(1) except in the ordinary course of business, terminate, materially amend, or waive any material right under, any Company Material Contract or enter into any contract that would constitute a Company Material Contract if it were in effect on the date of this Agreement, or (2) without prior consultation with Parent, enter into any contract expected to result in payment by the Company and its Subsidiaries in excess of \$1,000,000 that (x) will not expire by its terms in 12 months or fewer and (y) cannot be terminated by the Company or any of its Subsidiaries without material penalty upon no more than twelve months' notice, in each case of clauses (1) or (2) other than any such action relating to any Contract that would not require the consent of, or consultation with, Parent under clause (G), (J), (K), (L), (N), (O) or (Q);

except as required by applicable Law or the terms of any Company Benefit Plan set forth on Section 3.9(a) of the Company Disclosure Schedule as in effect on the date of this Agreement, shall not, and shall not permit any of its Subsidiaries to, (1) establish, adopt, amend or terminate any Collective Bargaining Agreement or Company Benefit Plan or commence an enrollment period under any Company Benefit Plan that provides health and welfare benefits without first consulting with Parent, (2) increase in any manner the compensation (including severance, change-in-control and retention compensation) or benefits of any current or former directors, officers, employees, consultants, independent contractors or other service providers of the Company or its Subsidiaries who are individuals, (3) pay or award, or commit to pay or award, any bonuses or incentive compensation, (4) accelerate any rights or benefits, or, other than in the ordinary course of business consistent with past practice, make any determinations or

interpretations with respect to any Company Benefit Plan, or (5) fund any rabbi trust or similar arrangement;

settlements or compromises that (x) involve monetary remedies with a value not in excess of, with respect to any individual litigation, claim, suit, action or proceeding, \$4,000,000 (net of any insurance proceeds and indemnity, contribution and similar payments actually received by the Company or any of its Subsidiaries in respect thereof) or, in the aggregate with respect to all litigation, claims, suits, actions and proceedings (but excluding the amount of any monetary remedies with respect to settlements of the type referred to in clause (2)), \$15,000,000 (net of any insurance proceeds and indemnity, contribution and similar payments actually received by the Company or any of its Subsidiaries in respect thereof), (y) do not impose any material restriction on its business or the business of its Subsidiaries and

conduct its cash management practices (including the collection of receivables and payment of payables), other than in the ordinary course of business consistent with past practice;

make, declare or pay any dividend, or make any other distribution on, or directly or indirectly redeem, purchase or otherwise acquire, any shares of its capital stock, or any other securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of certain events) into or exchangeable for any shares of its capital stock (except (1) dividends paid by any of the Subsidiaries of Parent to Parent or any of their wholly owned Subsidiaries, respectively, or (2) the acceptance of shares of Parent Common Stock as payment for the exercise price of options to purchase shares of Parent Common Stock granted pursuant to the Parent Stock Plans or for withholding Taxes incurred in connection with the exercise of options to purchase shares of Parent Common Stock granted pursuant to the Parent Stock Plans, in each case in accordance with past practice and the terms of the applicable award agreements);

Notwithstanding the foregoing, prior to the time the Company Stockholder Approval is obtained, but not after, if the Company Board of Directors has determined in good faith, after consultation with its financial advisor and outside legal counsel, that (i) a bona fide, unsolicited Company Takeover Proposal that did not result from a knowing or intentional breach of Section 5.3 constitutes a Company Superior Proposal and (ii) the failure to approve or recommend such Company Superior Proposal, or enter into a definitive agreement relating to such Company Superior Proposal, would be inconsistent with the Company Board of Directors' fiduciary duties under applicable Law, the Company Board of Directors may, subject to compliance with this Section 5.3(f), cause the Company to terminate this Agreement in order to enter into a definitive agreement relating to such Company Superior Proposal upon (and subject to) paying the Company Termination Fee in accordance with Section 7.3; provided, however, that prior to so terminating this Agreement, (A) the Company has given Parent at least five Business Days' prior written notice of its intention to take such action, and specifying the reasons therefor, including the terms and conditions of, and the identity of the person making, any such Company Superior Proposal and has contemporaneously provided to Parent a copy of the Company Superior Proposal, a copy of any proposed Company Acquisition Agreements and a copy of any financing commitments relating thereto (or, in each case, if not provided in writing to the Company, a written summary of the terms thereof), (B) the Company has negotiated, and has caused its Representatives to negotiate, in good faith with Parent during such notice period, to the extent Parent wishes to negotiate, to enable Parent to propose revisions to the terms of this Agreement such that it would cause such Company Superior Proposal to no longer constitute a Company Superior Proposal, (C) upon the end of such notice period, the Company Board of Directors shall have considered in good faith any revisions to the terms of this Agreement proposed in writing by Parent, and shall have determined, after consultation with its financial advisor and outside legal counsel, that the Company Superior Proposal would nevertheless continue to constitute a Company Superior Proposal if the revisions proposed by Parent were to



be given effect and that the failure to approve or recommend such Company Superior Proposal, or enter into a definitive agreement relating to such Company Superior Proposal, would be inconsistent with the directors' fiduciary duties under applicable Law, and (D) in the event of any change to any of the financial terms (including the form, amount and timing of payment of consideration) or any other material terms of such Company Superior Proposal, the Company shall, in each case, have delivered to Parent an additional notice consistent with that described in clause (A) above of this proviso and a new notice period under clause (A) of this proviso shall commence (except that the five Business Day notice period referred to in clause (A) above of this proviso shall instead be equal to the longer of (1) two Business Days and (2) the period remaining under the notice period under clause

From and after the Effective Time, the Surviving Company shall, and Parent shall cause the Surviving Company to, indemnify and hold harmless each present and former director and officer of the Company or any of its Subsidiaries (in each case, when acting in such capacity) (collectively, together with their respective heirs, executors and administrators, the "Company Directors and Officers ") against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, damages, amounts paid in settlement or other Liabilities incurred in connection with any actual or threatened claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative (an "Indemnified Action"), arising out of the fact that such person is or was a director or officer of the Company or any of its Subsidiaries (or, at the request or for the benefit of the Company or any of its Subsidiaries, of any other person) at any time at or before the Effective Time, whether pertaining to matters existing or occurring or actions or omissions taken (or alleged to have existed, occurred or been taken) at or after the Effective Time, including the transactions contemplated by this Agreement, in each case to the fullest extent permitted by applicable Law, and the Surviving Company shall, and Parent shall cause the Surviving Company to, also advance expenses to the Company Directors and Officers in connection with any and all such Indemnified Actions as incurred to the fullest extent permitted by applicable Law; provided, that each of the Company Directors and Officers to whom expenses are advanced provides an undertaking to repay such advances if it is

For a period of six years after the Effective Time, the Surviving Company shall, and Parent shall cause the Surviving Company to, cause to be maintained in effect the current policies of directors' and officers' liability insurance maintained by the Company (provided, that the Surviving Company may substitute therefor policies with a substantially comparable insurer of at least the same coverage and amounts containing terms and conditions which are no less advantageous to the insured) with respect to claims arising from facts or events, or actions or omissions, which occurred or are alleged to have occurred at or before the Effective Time; provided, however, that the Surviving Company shall not be obligated to make annual premium payments in respect of any one policy year for such insurance to the extent such premiums exceed 250 % of the annual premiums paid as of the date hereof by the Company for such insurance (the "Premium Cap"), and if such premiums for such insurance would at any time exceed the Premium Cap, then the Surviving Company shall, and Parent shall cause the Surviving Company to, cause to be maintained policies of insurance which, in the Surviving Company's good faith determination, provide the maximum coverage available at an annual premium equal to the Premium Cap. In lieu of the foregoing, Parent, or the Company after prior consultation with Parent, may obtain at or prior to the Effective Time a six-year prepaid "tail" policy under the Company's existing directors' and officers' insurance policy providing coverage no greater than the current policies of directors' and officers' liability insurance maintained by the Company; provided, that the Company shall not purchase such prepaid "tail" policy for a total cost in excess of 300% of the then current annual premium paid by the Company for such insurance (the "Tail Cap") without the prior written consent of Parent; provided, further, that if the total cost for such prepaid "tail" policy exceeds the Tail Cap, then Parent or the Company, after prior consultation

with Parent, may obtain a prepaid “tail” policy with the maximum coverage available for a total cost not to exceed the Tail Cap.

contemplated by the Commitment Letter or the related engagement letter; provided that (x) none of the Company or any of its Subsidiaries shall be required to pay any commitment or other fee or incur any other Liability or obligation in connection with the Financing or any Alternative Financing except for any payment that is conditioned upon, and shall not take effect until, the Effective Time, and (y) no obligations of the Company or any of its Subsidiaries under any certificate, document or instrument delivered pursuant to this Section 5.12 (other than any authorization letters delivered pursuant to clause (xii) above) shall be required to be effective until the Effective Time. The Company will provide to Parent and the Financing Sources such information as may be necessary so that the marketing materials for the Financing are complete and correct in all material respects and do not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in the light of the circumstances under which such statements are made, not materially misleading. Notwithstanding anything in this Section 5.12 to the contrary, in fulfilling its obligations pursuant to this Section 5.12, (i) none of the Company, its Subsidiaries or its Representatives shall be required to (x) pay any commitment or other fee, provide any security or incur any other Liability in connection with any financing prior to the Effective Time, (y) take or permit the taking of any action that would reasonably be expected to conflict with, result in any violation or breach of, or default (with or without lapse of time, or both) under, the Company Organizational Documents or Company Subsidiary Organizational Documents, any applicable Laws or material Contract or (z) pass resolutions or consents or approve or authorize the execution of the Financing or the definitive financing agreements, (ii) any requested cooperation shall not unreasonably interfere with the ongoing operations of the Company and

The Company shall use reasonable best efforts to commence, as soon as reasonably practicable after the receipt of a written request from Parent to do so subsequent to the date of this Agreement (and only upon receipt of such written request), at Parent’s expense, an offer to purchase and/or prepay any and all of its 5.00% Senior Notes due 2021 (the “2021 Notes”), issued pursuant to that certain First Supplemental Indenture, dated as of January 28, 2011, by and among the Company, and U.S. Bank National Association, as trustee, supplementing that certain Indenture, dated as of January 28, 2011, by and among the Company, and U.S. Bank National Association, as trustee (the “Indenture”) on or (if required) after the Closing Date on terms and conditions that satisfy the requirements of Section 1.02(h) of the Indenture (a “Change of Control Offer”); provided, that (A) the Company shall not be required to commence any Change of Control Offer until Parent shall have provided the Company with the necessary offer to purchase, supplemental indenture or other related documents in connection with such Change of Control Offer (collectively, the “Change of Control Offer Documents”) a reasonable period of time in advance of commencing the applicable Change of Control Offer, (B) Parent will consult with the Company regarding the timing and commencement of any Change of Control Offer in light of the regular financial reporting schedule of the Company, the requirements of applicable Law, including SEC rules and regulations, any material non-public information known to the Company and the requirements of the Indenture, and, in each case, allow the Company to alter the Change of Control Offer timing to ensure compliance with applicable Law, including SEC rules and regulations and the Company’s lack of material non-public information and the requirements of the Indenture, (C) Parent shall consult with the Company and afford the Company a reasonable opportunity to review, comment and approve the material terms and conditions of the Change of Control Offer, with such approval not to be unreasonably withheld, conditioned or delayed by the Company, (D) the Company shall not be required to commence any Change of Control Offer prior to the date that is sixty days prior to the first date on which the Company and Parent reasonably expect the Closing may occur, (E) the Company will not be required to pay, purchase

or otherwise retire any Indebtedness prior to the occurrence of the Effective Time, in connection with any Change of Control Offer, (F) the Company may, to the extent allowable under the Indenture, condition the Change of Control Offer on the occurrence of the Closing and (G) in no event shall the Company, any of its Subsidiaries or any of their respective officers, directors or other Representatives, have any obligation to authorize, adopt or execute any supplemental indenture or other agreement that would become effective prior to the Closing. Each Change of Control Offer, if any, shall be conducted in compliance with applicable Law, including SEC rules and regulations, to the extent applicable. None of the 2021 Notes shall be required to be accepted for purchase or purchased prior to the Closing Date. The Company shall, and shall cause its Subsidiaries to, and shall use reasonable best efforts to cause its and its Subsidiaries' Representatives to, provide all cooperation reasonably requested by Parent in connection with any Change of Control Offer; provided, however, that nothing herein shall (x) be deemed an admission that Parent or the Company is required by the terms of the Indenture to make a Change of Control Offer, (y) require such cooperation to the extent it would unreasonably interfere with the operations of the Company and its Subsidiaries, or (z) require the Company or any of its Subsidiaries to pay any fees, incur or reimburse any costs or expenses, or make any payment, incur any other Liability or give any indemnities prior to the occurrence of the Effective Time (except to the extent that Parent promptly reimburses (in the case of ordinary course out-of-pocket costs and expenses) or provides the funding (in all other cases) to the Company or such Subsidiary therefor). Without limiting the foregoing, the Company and its Subsidiaries shall, or shall cause their counsel to, furnish legal opinions in customary form and scope relating to the Company and its Subsidiaries or required by the Indenture in connection with any Change of Control Offer.

With respect to its (i) 5.41% Series 2005-A Senior Notes, Tranche A and (ii) 5.25% Series 2005-A Senior Notes, Tranche B (the senior notes described in clauses (i) and (ii), collectively, the "2015 Notes"), issued pursuant to that certain Note Purchase Agreement, dated as of September 27, 2005, by and among the Company, Family Dollar Stores, Inc., and the Purchasers named therein (the "Note Purchase Agreement"), Parent and the Company shall cooperate to prepare, and the Company shall deliver any notice or other document, required by Section 8.7 of the Note Purchase Agreement; provided, that nothing herein shall (x) require such cooperation to the extent it would unreasonably interfere with the operations of the Company and its Subsidiaries or (y) require the Company or any of its Subsidiaries to pay any fees, incur or reimburse any costs or expenses, or make any payment, incur any other Liability or give any indemnities prior to the occurrence of the Effective Time (except to the extent that Parent promptly reimburses the Company therefor). Without limiting the foregoing, the Company and its Subsidiaries shall, or shall cause their counsel to, furnish legal opinions in customary form and scope relating to the Company and its Subsidiaries or required by the Note Purchase Agreement in connection with the matters contemplated by this Section 5.13(e).

issue one or more notices on the Closing Date pursuant to the Indenture in order to effect the optional redemption or prepayment for all of the outstanding aggregate principal amount of the 2021 Notes in accordance with the terms of the Indenture, and/or (ii) provide any other cooperation reasonably requested by Parent that is reasonably necessary to facilitate the assumption, redemption and/or repayment of the 2021 Notes (including, if elected by Parent, (A) the satisfaction and discharge of such 2021 Notes and/or (B) taking such actions (and using reasonable best efforts to cause the trustee in respect of the 2021 Notes to take such actions) as may be required to make effective provision to secure all of the 2021 Notes equally and ratably with the Financing, in each case, pursuant to the Indenture) effective as of (or at Parent's election, following) the Effective Time; provided, that (x) to the extent that any action described in clause (ii) above can be conditioned on the occurrence of the Closing, it will be so conditioned; and (y) nothing herein shall (i) require such cooperation to the extent it would unreasonably interfere

with the operations of the Company and its Subsidiaries or (ii) require the Company or any of its Subsidiaries to pay any fees, incur or reimburse any costs or expenses, or make any payment, incur any other Liability or give any indemnities prior to the occurrence of the Effective Time (except to the extent that Parent promptly reimburses the Company therefor). Without limiting the foregoing, the Company and its Subsidiaries shall, or shall cause their counsel to, furnish legal opinions in customary form and scope relating to the Company and its Subsidiaries or required by the Indenture in connection with the matters contemplated by this Section 5.13(f); provided, however, that neither the Company nor any of its Subsidiaries shall be required to, or required to cause their counsel to, (i) furnish legal opinions in connection with clause (ii)(A) of this Section 5.13(f) nor (ii) pass any resolutions or consents or approve or

The Company shall, and shall cause its Subsidiaries to, deliver all notices and take all other reasonable actions to cause (i) the repayment in full on the Closing Date (or in the case of any letters of credit, cash collateralization, to the extent that Parent shall not have entered into an alternative arrangement with the issuing bank) of all obligations then outstanding under, (ii) the release on the Closing Date in connection with such repayment of any and all liens, security interests, pledges, or other encumbrances securing such obligations, and (iii) the termination (to the extent provided therein and pursuant to the terms thereof) on the Closing Date (such repayments, releases, and terminations, the “Existing Credit Facility Terminations”) of (x) that certain Amended and Restated 5-year Credit Agreement, dated as of November 13, 2013, by and among Family Dollar Stores, Inc., the lenders party thereto, and Wells Fargo Bank, National Association, as administrative agent (the “5-Year Credit Agreement”) and (y) that certain Amended and Restated 4-year Credit Agreement, dated as of November 13, 2013, by and among Family Dollar Stores, Inc., the lenders party thereto, and Wells Fargo Bank, National Association, as administrative agent (the “4-Year Credit Agreement”, and together with the 5-Year Credit Agreement, the “Credit Agreements”), including using reasonable best efforts to obtain a payoff letter in customary form from the agent under the Credit Agreements; provided, that (A) Parent shall provide all funds required to effect all such repayments and cash collateralization of letters of credit and the Company shall have no obligation to effect any such alternative arrangement for letters of credit and (B) in no event shall this Section 5.13(g) require the Company or any of its Subsidiaries to (x) cause any of the Existing Credit Facility Terminations to be effective until the Closing shall have occurred; or (y) require the Company or any of its Subsidiaries to pay any fees, incur or reimburse any costs or expenses, or make any payment, incur any other Liability or give any indemnities in connection with the Existing Credit Facility Terminations, prior to the occurrence of the Effective Time (except to the extent Parent promptly reimburses (in the case of ordinary course out-of-pocket costs and expenses) or provides the funding (in all other cases) to the Company or such Subsidiary therefor) or incur any liability in connection with the Existing Credit Facility Terminations that is effective prior to the occurrence of the Effective Time

Parent shall reimburse the Company for all reasonable and documented out-of-pocket costs incurred by the Company or any of its Subsidiaries or their Representatives in connection with fulfilling its obligations pursuant to this Section 5.13. Parent shall indemnify and hold harmless the Company, its Subsidiaries and their respective Representatives from and against any and all losses, damages, claims, costs, expenses or other Liabilities suffered or incurred by any of them in connection with any Change of Control Offer, Change of Control Offer Document, notices under Section 5.13(e) or Section 5.13(f), prepayments under the Note Purchase Agreement, Existing Credit Facility Termination and/or any information used in connection therewith (other than any information provided by the Company or its Subsidiaries or their respective Representatives specifically for use in connection therewith), in each case, except to the extent that any such obligations, losses, damages, claims, costs, expenses, awards, judgments and penalties, fees, costs or other liabilities are suffered or incurred as a result of the Company’s or its Subsidiaries or its or their Representatives’ gross negligence, bad faith, willful misconduct or

material breach of this Agreement, as applicable.

If this Agreement is terminated by either Parent or the Company pursuant to Section 7.1(d), the Company shall pay Parent the amount (not to exceed \$90,000,000) of out-of-pocket costs and expenses incurred by Parent in connection with this Agreement and the transactions contemplated hereby, by wire transfer (to an account designated by Parent) in immediately available funds within two Business Days after such termination. If (i) this Agreement is terminated by the Company pursuant to Section 7.1(h), (ii) this Agreement is terminated by Parent pursuant to Section 7.1(g), or (iii) (A) a Pre-Termination Takeover Proposal shall have occurred at any time following the date of this Agreement and prior to the event giving rise to the right to terminate this Agreement and thereafter this Agreement is terminated by Parent or the Company pursuant to Section 7.1(b) or Section 7.1(d) or by Parent pursuant to Section 7.1(f) and (B) either (1) both (x) at any time on or prior to the twelve month anniversary of such termination, the Company or any of its Subsidiaries enters into a definitive agreement with respect to any transaction included within the definition of Company Takeover Proposal (a "Company Takeover Transaction") (whether or not involving the same Company Takeover Proposal as that which was the subject of the Pre-Termination Takeover Proposal Event) and (y) at any time on or prior to the twenty-four month anniversary of the date of the definitive agreement contemplated by clause (x), the Company or any of its Subsidiaries consummates a Company Takeover Transaction (whether or not involving the same party that entered into the definitive agreement contemplated by the foregoing clause (x)) or (2) at any time on or prior to the twelve month anniversary of such termination, the Company or any of its Subsidiaries consummates a Company Takeover Transaction, the Company shall pay Parent the Termination Fee (less any amount previously paid pursuant to the first sentence of this Section 7.3(a) in respect of a termination by either Parent or the Company pursuant to Section 7.1(d)), by wire transfer (to an account designated by Parent) in immediately available funds in the case of clause (i), in accordance with Section 5.3(f), in the case of clause (ii), within two Business Days of such termination, or in the case of clause (iii), upon consummation of the Company Takeover Transaction contemplated by clause "Termination Fee" shall mean a cash amount equal to \$305,000,000. Notwithstanding anything to the contrary in this Agreement, if the full Termination Fee shall become due and payable in accordance with this Section 7.3, from and after such termination and payment of the Termination Fee in full pursuant to and in accordance with this Section 7.3, the Company shall have no further Liability of any kind for any reason in connection with this Agreement or the termination contemplated hereby other than as provided under this Section 7.3, except in the case of fraud or a Willful and Material Breach by the Company of this Agreement (it being understood that, without limiting the foregoing, in the case of fraud or a Willful and Material Breach, any prior payment of the Termination Fee shall be taken into account when determining any remedies). Each of the parties hereto acknowledges that the Termination Fee is not intended to be a penalty, but rather is liquidated damages in a reasonable amount that will compensate Parent in the circumstances in which such Termination Fee is due and payable and which do not involve fraud or Willful and Material Breach, for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision. In no event shall Parent be entitled to payment of the Termination Fee on more than one occasion.

Section 7.3 are an integral part of the transactions contemplated hereby, and that, without these agreements, the Company, Parent and Merger Sub would not enter into this Agreement. Accordingly, if the Company fails to pay in a timely manner any amount due pursuant to Section 7.3(a), then (i) the Company shall reimburse Parent for all costs and expenses (including disbursements and reasonable fees of counsel) incurred in the collection of such overdue amount, including in connection with any related claims, actions or proceedings commenced and (ii) the

Company shall pay to Parent interest on such amount from and including the date payment of such amount was due to but excluding the date of actual payment at the prime rate set forth in The Wall Street Journal in effect on the date such payment was required to be made plus 2%. and the transactions contemplated hereby shall be paid by the party incurring or required to incur such expenses; provided, however, that Parent and the Company shall each pay one-half of all filing fees required under the HSR Act.

“Company Benefit Plan” means each compensatory or employee benefit plan, program, agreement or arrangement, including pension, retirement, profit-sharing, deferred compensation, stock option, change in control, retention, equity or equity-based compensation, stock purchase, employee stock ownership, severance pay, vacation, bonus or other incentive plans, medical, retiree medical, vision, dental or other health plans, life insurance plans, and each other material employee benefit plan or fringe benefit plan, including any “employee benefit plan” as that term is defined in Section 3(3) of ERISA, in each case, whether oral or written, funded or unfunded, or insured or self-insured, maintained by the Company or any Subsidiary, or to which the Company or any Subsidiary contributes or is obligated to contribute or might otherwise have or reasonably be expected to have any Liability.

“Indebtedness” means, with respect to any person, without duplication, as of the date of determination (A) all obligations of such person for borrowed money, including accrued and unpaid interest, and any prepayment fees or penalties, (B) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (C) all obligations of such person issued or assumed as the deferred purchase price of property (including any potential future earn-out, purchase price adjustment, release of “holdback” or similar payment, but excluding obligations of such person incurred in the ordinary course of business consistent with past practice), (D) all lease obligations of such person capitalized on the books and records of such person, (E) all Indebtedness of others secured by a Lien on property or assets owned or acquired by such person, whether or not the Indebtedness secured thereby have been assumed, (F) all obligations of such person under interest rate, currency or commodity derivatives or hedging transactions or similar arrangement (valued at the termination value thereof), (G) usual course of business and consistent with past practice or with respect to Liabilities that are not yet due and payable or, if due, are not delinquent or are being contested in good faith by appropriate proceedings and for which adequate reserves (based on good faith estimates of management) have been set aside for the payment thereof, (C) Liens imposed or promulgated by applicable Law or any Governmental Entity with respect to real property, including zoning, building or similar restrictions, (D) pledges or deposits in connection with workers’ compensation, unemployment insurance, and other social security legislation, (E) Liens relating to intercompany borrowings among a person and its wholly owned subsidiaries, (F) utility easements, minor encroachments, rights of way, imperfections in title, charges, easements, rights of way (whether recorded or unrecorded), restrictions, declarations, covenants, conditions, defects and similar Liens that are imposed by any Governmental Entity having jurisdiction thereon or otherwise are typical for the applicable property type and locality as do not individually or in the aggregate materially interfere with the present occupancy or use of the respective Company Owned Real Property or Company Leased Real Property (in the case of the Company) or owned real property or leased real property of Parent and its Subsidiaries (in the case of Parent) or otherwise materially impair the business operations of the Company and its Subsidiaries (in the case of the Company) or Parent and its Subsidiaries (in the case of Parent), (G) matters disclosed by any existing title insurance policies or title reports, copies of which have been made available to Parent (in the case of the Company) or the Company (in the case of Parent), (H) Liens and obligations arising under the Company Material Contracts or material contracts of Parent and its Subsidiaries, as applicable, other than as a result of breach or default, (I) other Liens being

	<p>contested in good faith in the ordinary course of business or which do not materially interfere with the present occupancy or use of the affected Company Owned Real Property or Company Leased Real Property (in the case of the Company) or the owned real property or leased real property of Parent and its Subsidiaries (in the case of Parent) or otherwise materially interfere with the conduct of or impair the business operations of the Company and its Subsidiaries (in the case of the Company) or Parent and its Subsidiaries (in the case of Parent) and for which adequate reserves (based on good faith estimates of management) have been set aside for payment therefor, (J) purchase money Liens securing rental payments under capital lease arrangements, (K) Liens securing Indebtedness or liabilities that are reflected in the Company Financial Statements or the Parent Financial Statements, as applicable, or that the Company or any of its Subsidiaries is permitted to incur under Section 5.1(b)(G) or Section 5.1(b)(H) or that Parent or its Subsidiaries incurs in the ordinary course of business following the date hereof, and (L) Liens set forth in Section 8.15(b)(xxiv) of the Company Disclosure Schedule or Section 8.15(b)(xxiv) of the Parent Disclosure Schedule.</p> <p>“Tax” or “Taxes” means any and all federal, state, local or foreign taxes, imposts, levies, duties, fees or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, and other taxes of any kind whatsoever, including any and all interest, penalties, additions to tax or additional amounts imposed by any Governmental Entity in connection with respect thereto.</p>
Intellectual Property/Licence to use	<p>“Intellectual Property” means all intellectual property rights existing anywhere in the world in all:</p>
Variation	
Delay event	<p>During the period from the date hereof until the Effective Time, except (i) as may be required by applicable Law, (ii) with the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed), (iii) as may be expressly required by this Agreement or (iv) as set forth in Section 5.1(a) of the Company Disclosure Schedule or Section 5.1(a) of the Parent Disclosure Schedule (as applicable), each of the Company and Parent shall and shall cause each of their respective Subsidiaries to, (x) conduct its business in all material respects in the ordinary course, (y) subject to compliance with the other restrictions in this Section 5.1, use reasonable best efforts to maintain and preserve intact, in all material respects, its business organization, assets, key employees, present lines of business, rights, franchises, permits and business relationships with customers (generally) and suppliers and (z) take no action that is intended to or would reasonably be expected to adversely affect or materially delay the ability of the Company or Parent to perform its covenants and agreements under this Agreement or to consummate the transactions contemplated hereby.</p> <p>During the period from the date hereof until the Effective Time, except (i) as may be required by applicable Law, (ii) with the prior written consent of Parent (which, in the case of clauses (G), (I), (L), (M)(1), (N), (O), (Q), (S), (T), (U), (V), (W) and, to the extent relating to the foregoing clauses, (X), shall not be unreasonably withheld, conditioned or delayed), (iii) as may be expressly required by this Agreement, or (iv) as set forth in Section 5.1(b) of the Company Disclosure Schedule, the Company shall not, and shall not permit any of its Subsidiaries to:</p> <p>During the period from the date hereof until the Effective Time, except (i) as may be required by applicable Law, (ii) with the prior written consent of the Company (which shall not be unreasonably withheld, conditioned or delayed), (iii) as may be expressly required by this Agreement, or (iv) as set forth in Section 5.1(c) of the Parent Disclosure Schedule, Parent and Merger Sub shall not:</p> <p>Notwithstanding anything to the contrary contained in this Section 5.2, no party to this</p>

Agreement nor any of its Subsidiaries shall be required to provide any access, or make available any document, correspondence or information, if doing so would, in such party's and its outside legal counsel reasonable judgment, (i) jeopardize the attorney-client privilege of such party or any of its Subsidiaries or (ii) conflict with any (A) Law applicable to such party or any of its Subsidiaries or the assets, or operation of the business, of such party or any of its Subsidiaries or (B) Contract to which such party or any of its Subsidiaries is a party or by which any of the their assets or properties are bound; provided, however, that in such instances such party shall inform the other party of the general nature of the information being withheld and, upon the other party's request, reasonably cooperate with the other party to provide such information, in whole or in part, in a manner that would not result in any of the outcomes described in the foregoing clauses (i) and (ii). Notwithstanding anything to the contrary contained in this Agreement, without the prior written consent of the other party to this Agreement (which shall not be unreasonably withheld, conditioned or delayed), no party to this Agreement shall have any right to perform invasive or subsurface investigations of the properties or facilities of the other party or any of its Subsidiaries.

the Proxy Statement/Prospectus, or response to SEC comments with respect thereto, will be made by Parent or the Company, as applicable, without the other's prior consent (which shall not be unreasonably withheld, conditioned or delayed) and without providing the other party a reasonable opportunity to review and comment thereon; provided, however, that the Company, in connection with a Company Adverse Recommendation Change, may amend or supplement the Form S-4 and the Proxy Statement/Prospectus to effect such change (it being understood that any such amendment or supplement shall solely contain (i) such Company Adverse Recommendation Change and (ii) a statement of the reasons of the Company Board of Directors for making such Company Adverse Recommendation Change and, in such event, the right of consent set forth in this Section 5.4(a) shall apply only with respect to such information relating to Parent or its business, financial condition or results of operations). Parent or the Company, as applicable, will advise the other promptly after it receives oral or written notice of the time when the Form S-4 has become effective or any supplement or amendment thereto has been filed, the issuance of any stop order, the suspension of the qualification of the shares of Parent Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any oral or written request by the SEC for amendment of the Proxy Statement/Prospectus or the Form S-4 or comments thereon and responses thereto or requests by the SEC for additional information, and will promptly provide the other with copies of any written communication from the SEC or any state securities commission. If at any time prior to the Effective Time any information relating to Parent or the Company, or any of their respective Affiliates, officers or directors, is discovered by Parent or the Company which should be set forth in an amendment or supplement to any of the Form S-4 or the Proxy Statement/Prospectus, so that any of such documents would not include a misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by law, disseminated to the stockholders of the Company.

Stockholders' Meeting is originally scheduled (as set forth in the Proxy Statement/Prospectus) there are insufficient shares of Company Common Stock represented (either in person or by proxy) to constitute a quorum necessary to conduct the business of the Company Stockholders' Meeting or (iii) with the prior written consent of Parent (which shall not be unreasonably withheld, delayed or conditioned). In addition, if at any time following the dissemination of the Proxy Statement/Prospectus, either the Company or Parent reasonably determines in good faith that the Company Stockholder Approval is unlikely to be obtained at the Company Stockholders' Meeting, then on a single occasion and prior to the vote contemplated having been taken, each of



the Company and Parent shall have the right to require a single adjournment or postponement of the Company Stockholders' Meeting; provided, that no such adjournments or postponements shall delay the Company Stockholders' Meeting by more than 45 days from the originally scheduled date. During any such period of adjournment or postponement, the Company shall continue in all respects to comply with its obligations under Section 5.3 and this Section 5.4. taking all reasonable actions necessary to obtain (and cooperating with each other in obtaining) any consent, authorization, Order or approval of, or any exemption by, any third party, including any Governmental Entity (which actions shall include furnishing all information and documentary material required under the HSR Act) required to be obtained or made by Parent, Merger Sub, the Company or any of their respective Subsidiaries in connection with the Merger or the taking of any action contemplated by this Agreement, (iv) defending and seeking to prevent the initiation of all actions, suits and other proceedings by or before any Governmental Entity challenging this Agreement or the consummation of the transactions contemplated hereby, and causing to be lifted or rescinded any Order or other action by any Governmental Authority adversely affecting the ability of the parties to consummate the Merger and (v) the execution and delivery of any reasonable additional instruments necessary to consummate the Merger and to fully carry out the purposes of this Agreement. Additionally, each of Parent, Merger Sub and the Company shall use reasonable best efforts to fulfill all conditions precedent to the Merger and shall not take any action after the date of this Agreement that would reasonably be expected to materially delay the obtaining of, or result in not obtaining, any permission, approval or consent from any such Governmental Entity necessary to be obtained prior to Closing.

Section 5.8 Public Announcements. The Company and Parent agree that the initial press release to be issued with respect to the execution and delivery of this Agreement shall be in a form agreed to by the parties and that the parties shall consult with each other before issuing any press release or making any public announcement with respect to this Agreement and the transactions contemplated hereby and shall not issue any such press release or make any such public announcement without the prior consent of the other party (which shall not be unreasonably withheld, delayed or conditioned); provided, however, that a party may, without the prior consent of the other party (but after prior consultation, to the extent practicable in the circumstances) issue such press release or make such public statement to the extent required by applicable Law or the applicable rules of any stock exchange; provided, further, that in the event of a Company Adverse Recommendation Change made in compliance with Section 5.3, the Company may make a public statement containing (i) such Company Adverse Recommendation Change and (ii) a statement of the reasons of the Company Board of Directors for making such Company Adverse Recommendation Change and, in such event, the right of consent set forth in this Section 5.8 shall apply only with respect to such information relating to Parent or its business, financial condition or results of operations.

Prior to the Closing, Parent shall not, and shall not permit Merger Sub to, agree to or permit any termination, amendment, replacement, supplement or other modification of, or waive any of its material rights under, the Commitment Letter without the Company's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed); provided, that Parent and Merger Sub may, without the Company's prior written consent, (x) enter into any amendment, replacement, supplement or other modification to or waiver of any provision of the Commitment Letter that would not reasonably be expected to prevent, materially delay or materially impede the consummation of the Financing or the Merger; and (y) amend, replace, supplement or otherwise modify the Commitment Letter to add lenders, lead arrangers, book runners, syndication agents or similar entities who had not executed the Commitment Letter as of the date of this Agreement so long as any such addition would not reasonably be expected to prevent, materially delay or materially impede the consummation of the Financing or the Merger (it being understood that any such amendment, replacement, supplement or modification that

provides for the assignment of a portion of the Financing commitments to any additional lenders, lead arrangers, book runners, syndication agents or similar entities and the granting to such persons of approval rights in accordance with the term of the syndication provisions of the Commitment Letter as of the date of this Agreement as are customarily granted to additional agents or arrangers, shall be permitted hereunder and shall be deemed to not prevent, materially delay or materially impede the consummation of the Financing or the Merger). Upon any such amendment, replacement, supplement or modification, the term “Commitment Letter” shall mean the Commitment Letter as so amended, replaced, supplemented or modified. Parent shall promptly deliver to the Company copies of any such amendment, replacement, supplement or other modification or waiver of the Commitment Letter.

The Company shall use reasonable best efforts to commence, as soon as reasonably practicable after the receipt of a written request from Parent to do so subsequent to the date of this Agreement (and only upon receipt of such written request), at Parent’s expense, an offer to purchase and/or prepay any and all of its 5.00% Senior Notes due 2021 (the “2021 Notes”), issued pursuant to that certain First Supplemental Indenture, dated as of January 28, 2011, by and among the Company, and U.S. Bank National Association, as trustee, supplementing that certain Indenture, dated as of January 28, 2011, by and among the Company, and U.S. Bank National Association, as trustee (the “Indenture”) on or (if required) after the Closing Date on terms and conditions that satisfy the requirements of Section 1.02(h) of the Indenture (a “Change of Control Offer”); provided, that (A) the Company shall not be required to commence any Change of Control Offer until Parent shall have provided the Company with the necessary offer to purchase, supplemental indenture or other related documents in connection with such Change of Control Offer (collectively, the “Change of Control Offer Documents”) a reasonable period of time in advance of commencing the applicable Change of Control Offer, (B) Parent will consult with the Company regarding the timing and commencement of any Change of Control Offer in light of the regular financial reporting schedule of the Company, the requirements of applicable Law, including SEC rules and regulations, any material non-public information known to the Company and the requirements of the Indenture, and, in each case, allow the Company to alter the Change of Control Offer timing to ensure compliance with applicable Law, including SEC rules and regulations and the Company’s lack of material non-public information and the requirements of the Indenture, (C) Parent shall consult with the Company and afford the Company a reasonable opportunity to review, comment and approve the material terms and conditions of the Change of Control Offer, with such approval not to be unreasonably withheld, conditioned or delayed by the Company, (D) the Company shall not be required to commence any Change of Control Offer prior to the date that is sixty days prior to the first date on which the Company and Parent reasonably expect the Closing may occur, (E) the Company will not be required to pay, purchase or otherwise retire any Indebtedness prior to the occurrence of the Effective Time, in connection with any Change of Control Offer, (F) the Company may, to the extent allowable under the Indenture, condition the Change of Control Offer on the occurrence of the Closing and (G) in no event shall the Company, any of its Subsidiaries or any of their respective officers, directors or other Representatives, have any obligation to authorize, adopt or execute any supplemental indenture or other agreement that would become effective prior to the Closing. Each Change of Control Offer, if any, shall be

Subject to Section 5.13(a), the Company shall not, without the written consent of Parent (which shall not be unreasonably withheld, conditioned or delayed), waive any condition to any Change of Control Offer other than as agreed in writing between Parent and the Company.

Section 5.14 Transaction Litigation. The Company shall, subject to the preservation of privilege and confidential information, give Parent the opportunity to participate in (but not control) the Company’s defense or settlement of any stockholder litigation against the Company and/or its directors or executive officers relating to the transactions contemplated by this Agreement,

	<p>including the Merger. The Company agrees that it shall not settle or offer to settle any litigation commenced prior to or after the date of this Agreement against the Company or its directors, executive officers or similar persons by any stockholder of the Company relating to this Agreement, the Merger, or any other transaction contemplated hereby without the prior written consent of Parent (which shall not be unreasonably withheld, conditioned or delayed).</p> <p>Agreement to the extent that the party receiving such notice or communication believes there is a reasonable likelihood that the failure to obtain such consent would have a material impact on the timing of the consummation of the Merger or on the Company, the Surviving Company or Parent or (ii) upon receiving any written communication from any Governmental Entity or third party whose consent or approval is required for the satisfaction of one of the conditions to Closing set forth in Article VI that causes such party to believe that there is a reasonable likelihood that any such consent or approval will not be obtained or that the receipt of any such consent or approval will be materially delayed. The Company shall promptly notify Parent of any written notice or other written communication received following the date hereof from any party to any Company Material Contract to the effect that such party has terminated or intends to terminate or otherwise materially adversely modify its relationship with any Company or Company Subsidiary as a result of the transactions contemplated by this Agreement.</p> <p>Merger Sub; provided, however, that after receipt of Company Stockholder Approval, if any such amendment or waiver shall by applicable Law or in accordance with the rules and regulations of the New York Stock Exchange require further approval of the stockholders of the Company, the effectiveness of such amendment or waiver shall be subject to the approval of the stockholders of the Company. Notwithstanding the foregoing, no failure or delay by any party hereto in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right hereunder.</p>
Indemnity	<p>From and after the Effective Time, the Surviving Company shall, and Parent shall cause the Surviving Company to, indemnify and hold harmless each present and former director and officer of the Company or any of its Subsidiaries (in each case, when acting in such capacity) (collectively, together with their respective heirs, executors and administrators, the “Company Directors and Officers”) against any costs or expenses (including reasonable attorneys’ fees), judgments, fines, losses, damages, amounts paid in settlement or other Liabilities incurred in connection with any actual or threatened claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative (an “Indemnified Action”), arising out of the fact that such person is or was a director or officer of the Company or any of its Subsidiaries (or, at the request or for the benefit of the Company or any of its Subsidiaries, of any other person) at any time at or before the Effective Time, whether pertaining to matters existing or occurring or actions or omissions taken (or alleged to have existed, occurred or been taken) at or after the Effective Time, including the transactions contemplated by this Agreement, in each case to the fullest extent permitted by applicable Law, and the Surviving Company shall, and Parent shall cause the Surviving Company to, also advance expenses to the Company Directors and Officers in connection with any and all such Indemnified Actions as incurred to the fullest extent permitted by applicable Law; provided, that each of the Company Directors and Officers to whom expenses are advanced provides an undertaking to repay such advances if it is its Subsidiaries, and (iii) Parent shall reimburse the Company for all reasonable and documented out-of-pocket costs incurred by the Company or any of its Subsidiaries in connection with fulfilling its obligations pursuant to this Section 5.12. Parent shall indemnify and hold harmless the Company and its Subsidiaries (and their respective Representatives) from and against any and all losses, damages, claims, costs or expenses actually suffered or incurred by them in connection with the arrangement of any such financing and any information used in connection therewith (other than to the extent related to information provided by the Company, its Subsidiaries or their respective Representatives), except in the event such loss or damage arises out of or results from</p>

	<p>the gross negligence, willful misconduct, bad faith or intentional breach of its obligations hereunder by the Company or its Subsidiaries.</p> <p>Parent shall reimburse the Company for all reasonable and documented out-of-pocket costs incurred by the Company or any of its Subsidiaries or their Representatives in connection with fulfilling its obligations pursuant to this Section 5.13. Parent shall indemnify and hold harmless the Company, its Subsidiaries and their respective Representatives from and against any and all losses, damages, claims, costs, expenses or other Liabilities suffered or incurred by any of them in connection with any Change of Control Offer, Change of Control Offer Document, notices under Section 5.13(e) or Section 5.13(f), prepayments under the Note Purchase Agreement, Existing Credit Facility Termination and/or any information used in connection therewith (other than any information provided by the Company or its Subsidiaries or their respective Representatives specifically for use in connection therewith), in each case, except to the extent that any such obligations, losses, damages, claims, costs, expenses, awards, judgments and penalties, fees, costs or other liabilities are suffered or incurred as a result of the Company's or its Subsidiaries or its or their Representatives' gross negligence, bad faith, willful misconduct or material breach of this Agreement, as applicable.</p>
Limitation of liability	<p>Section 1.4 Effects of the Merger. The effects of the Merger shall be as provided in this Agreement and in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all of the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Company, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Company, all as provided under the DGCL.</p> <p>The Company has made available to Parent prior to the date of this Agreement a true and complete copy of the Company's certificate of incorporation and bylaws (collectively, the "Company Organizational Documents"), and the certificate of incorporation, bylaws, limited partnership agreement, limited liability company agreement or comparable constituent or organizational documents for each Subsidiary of the Company (collectively, the "Company Subsidiary Organizational Documents"), in each case, as amended through the date hereof. The Company Organizational Documents and the Company Subsidiary Organizational Documents are in full force and effect and neither the Company nor its Subsidiaries is in violation of any of their provisions. Section 3.1(b) of the Company Disclosure Schedule sets forth a true and complete list, as of the date hereof, of all Subsidiaries of the Company and any joint ventures, partnerships or similar arrangements in which the Company or its Subsidiaries has a limited liability, partnership or other equity interest (and the amount and percentage of any such interest). Other than the Company's Subsidiaries, as of the date hereof, there is no person whose financial position, results of operations or cash flows are consolidated in the financial statements of the Company.</p> <p>The execution and delivery by the Company of this Agreement does not, and (assuming the Company Approvals are obtained) the consummation of the transactions contemplated hereby and compliance with the provisions hereof will not (1) result in any loss, or suspension, limitation or impairment of any right of the Company or any of its Subsidiaries to own or use any assets required for the conduct of their business or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation, first offer, first refusal, modification or acceleration of any obligation or to the loss of a benefit under any loan, guarantee of indebtedness or credit agreement, note, bond, mortgage, indenture, lease, agreement, Contract, instrument, permit, concession, franchise, or right binding upon the Company or any of its Subsidiaries or by which or to which any of their respective properties, rights or assets are bound or subject, or result in the creation of any liens, claims, mortgages, encumbrances, pledges, security interests, equities or charges of any kind (each, a "Lien") other than Permitted Liens, in each case, upon any of the properties or assets of the Company or any of its Subsidiaries, except for such losses, suspensions, limitations, impairments, conflicts,</p>

violations, defaults, terminations, cancellation, accelerations, or Liens as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on the Company, (1) conflict with or result in any violation of any provision of the Company Organizational Documents or Company Subsidiary Organizational Documents or (1) conflict with or violate any applicable Laws except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on the Company.

Neither the Company nor any of its Subsidiaries is a party to, nor does it have any commitment to become a party to, any material joint venture, off-balance sheet partnership or any similar Contract (including any Contract relating to any transaction or relationship between or among the Company or one of its Subsidiaries, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or person, on the other hand) or any material “off-balance sheet arrangements” (as defined in Item 303(a) of Regulation S-K of the SEC).

Except as would not reasonably be expected to result in any material Liability of the Company or any of its Subsidiaries, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event (i) entitle any current or former employee, director, consultant or officer of the Company or any of its Subsidiaries to severance pay, accrued pension benefit or any other payment, (ii) accelerate the time of payment or vesting, or increase the amount of compensation due to any such employee, director, consultant or officer, (iii) trigger any funding obligation under any Company Benefit Plan or impose any restrictions or limitations on the Company’s rights to administer, amend or terminate any Company Benefit Plan, or (iv) result in any payment (whether in cash or property or the vesting of property) to any “disqualified individual” (as such term is defined in Treasury Regulation Section 1.280G-1) that could, individually or in combination with any other such payment, constitute an “excess parachute payment” (as defined in Section 280G(b)(1) of the Code). No Company Benefit Plan provides for the gross-up or reimbursement of Taxes under Section 4999 of the Code or otherwise. The Company has made available to Parent all currently existing information applicable to the calculation of “parachute payments” pursuant to Section 280G of the Code in connection with the transactions contemplated by this Agreement, which information is complete and accurate in all material respects and was used for purposes of calculating the cost estimates made available to Parent.

The federal Tax Returns of the Company and its Subsidiaries have been examined through the Tax year ending August 30, 2008. All other Tax Returns of the Company and its Subsidiaries have been examined, or the statute of limitations with respect thereto has expired, through the Tax year ending August 30, 2010. There are currently no effective waivers of any statute of limitations with respect to Taxes or extensions of time with respect to a Tax assessment or deficiency.

Section 3.18 Opinion of Financial Advisor. The Company Board of Directors has received the opinion of Morgan Stanley Co. LLC to the effect that, as of the date of such opinion and subject to the assumptions, limitations, qualifications and other matters considered in the preparation thereof as set forth in such opinion, the Merger Consideration to be received by the holders of shares of the Company Common Stock in the Merger pursuant to this Agreement is fair, from a financial point of view, to such holders. The Company shall, promptly following the execution of this Agreement by all parties, furnish an accurate and complete copy of said opinion to Parent solely for informational purposes. On and subject to the terms of any engagement letter referred to in Section 3.22, the Company has been authorized by Morgan Stanley Co. LLC to permit the inclusion of such opinion in its entirety and references thereto in the Form S-4 and the Proxy Statement/Prospectus.

any material joint venture, partnership or limited liability company agreement or other similar Contract relating to the formation, creation, operation, management or control of any joint

venture, partnership or limited liability company, other than any such Contract solely between the Company and its Subsidiaries or among the Company's Subsidiaries;

any Contract expressly limiting or restricting the ability of the Company or any of its Subsidiaries

The execution and delivery by Parent and Merger Sub of this Agreement does not, and (assuming the Parent Approvals are obtained) the consummation of the transactions contemplated hereby and compliance with the provisions hereof will not (1) result in any loss, or suspension, limitation or impairment of any right of Parent or any of its Subsidiaries to own or use any assets required for the conduct of their business or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation, first offer, first refusal, modification or acceleration of any obligation or to the loss of a benefit under any loan, guarantee of indebtedness or credit agreement, note, bond, mortgage, indenture, lease, agreement, Contract, instrument, permit, concession, franchise or right binding upon Parent or any of its Subsidiaries or by which or to which any of their respective properties, rights or assets are bound or subject, or result in the creation of any Liens other than Permitted Liens, in each case, upon any of the properties or assets of Parent or any of its Subsidiaries except for such losses, suspensions, limitations, impairments, conflicts, violations, defaults, terminations, cancellation, accelerations, or Liens as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on Parent, (1) conflict with or result in any violation of any provision of the charter or bylaws or other equivalent organizational document, of Parent or any of its Subsidiaries or (1) conflict with or violate any applicable Laws except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on Parent.

Neither Party nor any of its Subsidiaries is a party to, nor does it have any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract (including any Contract relating to any transaction or relationship between or among Parent or one of its Subsidiaries, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or person, on the other hand) or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K of the SEC).

Assuming the accuracy of the representations and warranties of the Company set forth in this Agreement and performance by the Company of its obligations hereunder, Parent has, or will have at Closing, all funds necessary to consummate the Merger, including the making of all required payments in connection with the Merger, including payment of the Merger Consideration, the payment of any debt required to be repaid, redeemed, retired, cancelled, terminated or otherwise satisfied or discharged in connection with the Merger as of the date hereof (including all Indebtedness of the Company and its Subsidiaries required to be repaid, redeemed, retired, cancelled, terminated or otherwise satisfied or discharged in connection with the Merger, including premiums and fees incurred in connection therewith) and all other amounts to be paid pursuant to this Agreement and associated costs and expenses of the Merger on the Closing Date. In no event shall the receipt or availability of any funds or financing (including the Financing) by or to Parent or any of its Affiliates or any other financing transaction be a condition to any of the obligations of Parent or Merger Sub hereunder, it being understood that nothing in this Section 4.10(h) is intended to limit any condition set forth in Section 6.1 or Section 6.3.

For purposes of furthering the transactions contemplated hereby, the Company shall afford Parent and its employees, accountants, consultants, legal counsel, financial advisors, financing sources and agents and other representatives reasonable access during normal business hours upon reasonable advance notice to the Company, throughout the period prior to the Effective Time, to its and its Subsidiaries' personnel, properties, contracts, commitments, books and records and any report, schedule or other document filed or received by it pursuant to the requirements of applicable Laws and, during such period, the Company shall, and shall cause its Subsidiaries to, without limitation to the preceding obligations, make available to the other party (i) a copy of

each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of federal securities laws (other than reports or documents that such party is not permitted to disclose under applicable Law), (ii) a copy of all correspondence between such party or any of its Subsidiaries and any party to a Contract with regard to any action, consent, approval or waiver that is required to be taken or obtained with respect to such Contract in connection with the consummation of the Merger or the other transactions contemplated by this Agreement and (iii) all other information concerning its business, properties and personnel as Parent may reasonably request; provided, however, until the condition in Section 6.1(e) is satisfied, the Clean Team Confidentiality Agreement between the Company and Parent, dated as of June 26, 2014 (the “Clean Team Confidentiality Agreement”) shall govern access to “Highly Confidential Information” as defined therein. Notwithstanding anything to the contrary contained in this Section 5.2(a), any document, correspondence or information provided pursuant to this Section 5.2(a) may be redacted to remove references concerning the valuation of the Company and the Merger or other similarly confidential information. All access pursuant to this Section 5.2(a) shall be (A) conducted in such a manner as not to interfere unreasonably with the normal operations of the Company or any of its Subsidiaries and (B) coordinated through the General Counsel of the Company or a designee thereof.

solicit, initiate, knowingly encourage or knowingly facilitate any inquiries regarding, or the making of any proposal or offer that constitutes, or could reasonably be expected to lead to, a Company Takeover Proposal, (2) engage in, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any other person any information in connection with or for the purpose of encouraging or facilitating, a Company Takeover Proposal (other than, solely in response to an unsolicited inquiry, to refer the inquiring person to this Section 5.3 and to limit its conversation or other communication exclusively to such referral), or (3) approve, recommend or enter into, or propose to approve, recommend or enter into, any letter of intent or similar document, agreement, commitment, or agreement in principle (whether written or oral, binding or nonbinding) with respect to a Company Takeover Proposal.

preexisting condition limitations or eligibility waiting periods under such plan to be waived with respect to such Company Employee to the extent such limitation would have been waived or satisfied under the Company Benefit Plan in which such Company Employee participated immediately prior to the Effective Time and (B) credit each Company Employee for an amount equal to any medical, dental or vision expenses incurred by such Company Employee in the Post-Closing Plan year that includes the Closing Date (or, if later, the year in which such Covered Employee is first eligible to participate in such Post-Closing Plan) for purposes of any applicable deductible and annual out-of-pocket expense requirements under any such Post-Closing Plan, subject to the applicable information being provided to Parent in a form that Parent reasonably determines is administratively feasible to take into account under its plans. Such credited expenses shall also count toward any annual or lifetime limits, treatment or visit limits or similar limitations that apply under the terms of the applicable plan. Unused vacation days accrued by Company Employees under the plans and policies of the Company and its Subsidiaries shall carry over to Parent or the Surviving Corporation to the maximum extent permitted by applicable Law, and each Company Employee shall be paid by the Company in cash for any accrued and unused vacation days that Parent and the Company mutually determine are not permitted by applicable Law to be carried over.

Nothing in this Agreement shall confer upon any Company Employee or other service provider any right to continue in the employ or service of Parent, the Surviving Company or any Affiliate of Parent, or shall interfere with or restrict in any way the rights of Parent, the Surviving Company or any of their Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of any Company Employee at any time for any reason whatsoever, with or

without cause. In no event shall the terms of this Agreement be deemed to (i) establish, amend, or modify any Company Benefit Plan or any “employee benefit plan” as defined in Section 3(3) of ERISA, or any other benefit plan, program, agreement or arrangement maintained or sponsored by Parent, Surviving Company, the Company or any of their Subsidiaries (including, after the Closing Date, Company and its Subsidiaries) or Affiliates; or (ii) alter or limit the ability of Parent, the Surviving Company or any of their Subsidiaries (including, after the Closing Date, Company and its Subsidiaries) or Affiliates to amend, modify or terminate any Company Benefit Plan or any other compensation or benefit or employment plan, program, agreement or arrangement after the Closing Date. Notwithstanding any provision in this Agreement to the contrary, nothing in this Section 5.5 shall create any third party beneficiary rights in any Company Employee or current or former service provider of the Company or its Affiliates (or any beneficiaries or dependents thereof).

Parent and the Company shall each keep the other apprised of the status of matters relating to the completion of the Merger and work cooperatively in connection with obtaining all required consents, authorizations, Orders or approvals of, or any exemptions by, any Governmental Entity undertaken pursuant to the provisions of this Section 5.6. In that regard, prior to the Closing, each party shall promptly consult with the other parties to this Agreement with respect to and provide any necessary information and assistance as the other parties may reasonably request with respect to (and, in the case of correspondence, provide the other parties (or their counsel) copies of) all notices, submissions, or filings made by such party with any Governmental Entity or any other information supplied by such party to, or correspondence with, a Governmental Entity in connection with this Agreement and the Merger. Each party to this Agreement shall promptly inform the other parties to this Agreement, and if in writing, furnish the other parties with copies of (or, in the case of oral communications, advise the other parties orally of) any communication from or to any Governmental Entity regarding the Merger, and permit the other parties to review and discuss in advance, and consider in good faith the views of the other parties in connection with, any proposed communication with any such Governmental Entity. Without limiting the foregoing or any of the other provisions of this Section 5.6, the parties agree that, it is Parent’s sole right to devise the strategy for filings, notifications, submissions and communications with or to any antitrust regulatory authority. If any party to this Agreement or any Representative of such parties receives a request for additional information or documentary material from any Governmental Entity with respect to the Merger, then such party will use reasonable best efforts to make, or cause to be made, promptly and after consultation with the other parties to this Agreement, an appropriate response in substantial compliance with such request. No party shall participate in any meeting or teleconference with any Governmental Entity where material issues or any matters relating to timing would likely be discussed in connection with this Agreement and the Merger unless it consults with the other parties in advance and, to the extent not prohibited by such Governmental

Entity, gives the other parties the opportunity to attend and participate thereat. Without limiting the foregoing obligations (other than the fourth sentence of this Section 5.6(b)), each party shall, on a current basis, furnish the other parties with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and any such Governmental Entity with respect to this Agreement and the Merger, and furnish the other parties with such necessary information and reasonable assistance as the other parties may reasonably request in connection with its preparation of necessary filings or submissions of information to any such Governmental Entity; provided, however, that Parent and the Company may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 5.6(b) as “Antitrust Counsel Only Material.” Such materials and the information contained therein shall be given only to the outside antitrust counsel of the recipient and will not be disclosed by such outside counsel to employees, officers



or directors of the recipient unless express permission is obtained in advance from the source of the materials (Parent or the Company, as the case may be) or its legal counsel. Notwithstanding anything to the contrary contained in this Section 5.6, materials provided pursuant to this Section 5.6 may be redacted (i) to remove references concerning the valuation of the Company and the Merger or other similarly confidential information, (ii) as necessary to comply with contractual arrangements, and (iii) as necessary to address reasonable privilege concerns.

Without limiting Section 5.6(a) and notwithstanding anything to the contrary set forth in this Agreement, Parent shall, solely to the extent necessary or advisable to permit the satisfaction of Section 6.1(b) and Section 6.1(e) so as to permit the Closing to occur by the End Date, propose, negotiate, effect and agree to the sale, divestiture, license, holding separate, and other disposition of and restriction on retail stores of Parent and its Subsidiaries (including the Surviving Company and its Subsidiaries) and take such action or actions that would in the aggregate have a similar effect; provided, that

The rights of each Company Indemnified Party hereunder shall be in addition to, and not in limitation of, any other rights such Company Indemnified Party may have under the Company Organizational Documents (or Company Subsidiary Organizational Documents), any other Contract, any Law or otherwise. The provisions of this Section 5.9 shall survive the Effective Time and, notwithstanding anything to the contrary in this Agreement, are intended to be for the benefit of, and shall be enforceable by, each Company Indemnified Party and his or her representatives.

Section 5.10 Control of Operations. Without in any way limiting any party's rights or obligations under this Agreement, the parties understand and agree that (a) nothing contained in this Agreement shall give Parent or the Company, directly or indirectly, the right to control or direct the other party's operations prior to the Effective Time and (b) prior to the Effective Time, each of the Company and Parent shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations.

The Company shall, and shall cause its Subsidiaries and their respective Representatives to, use their reasonable best efforts to provide all cooperation reasonably requested by Parent that is necessary, proper or advisable in connection with any financing by Parent or any of its Affiliates in connection with the Merger. Without limiting the generality of the foregoing, the Company shall, and shall cause its Subsidiaries and their respective Representatives to, use reasonable best efforts to (i) furnish the report of the Company's independent accountants on the most recently available audited consolidated financial statements of the Company and its Subsidiaries and obtain the consent of such accountants to the use of such report in accordance with normal custom and practice and cause such accountants to provide customary comfort letters (including "negative assurance" comfort) to the underwriters, initial purchasers or placement agents, as applicable, in connection with any such financing; (ii) furnish such customary financial statements, schedules or other financial data or information relating to the Company and its Subsidiaries (other than any pro forma financial information which shall be covered by clause (vi)(2) below) reasonably requested by Parent or its Representatives as may be necessary, proper or advisable to consummate the Financing or the Alternative Financing, including financial statements, financial data and other information (x) if Parent has elected to undertake a registered public offering, of the type required by Regulation

requested by Parent that are or may be customary in connection with the Financing or any Alternative Financing to fulfill conditions or obligations under the Commitment Letter; (vi) provide assistance in the preparation of (1) one or more confidential information memoranda, prospectuses, offering memoranda and other marketing and syndication materials reasonably requested by Parent or any of its Affiliates in connection with the Financing or any Alternative Financing and (2) customary pro forma financial statements reflecting the Merger and the Financing; (vii) assist Parent in ensuring that the syndication efforts benefit from the existing

banking relationships of the Company and its Subsidiaries; (viii) permit the reasonable use by Parent and its Affiliates of the Company's and its Subsidiaries' logos for syndication and underwriting, as applicable, of the Financing, provided, that such logos are used solely in a manner that is not intended to nor reasonably likely to harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries and its or their marks; (ix) participate as necessary in a reasonable number of meetings, presentations, customary one-on-one sessions that are requested in advance and road shows with prospective lenders and investors and in drafting sessions and due diligence sessions, as applicable (including the reasonable participation in such meetings by the Company's senior management), in each case, in connection with the Financing or the Alternative Financing; (x) assist in preparing customary rating agency presentations and participating in a reasonable number of sessions with rating agencies in connection with the Financing; (xi) assist in the preparation and negotiation of any necessary pledge or security documents, other definitive financing documents, or other certificates or documents as may be reasonably requested by Parent in connection with the Financing or the Alternative Financing and otherwise facilitate the pledging of, and granting, recording and perfection of security interests in share certificates, securities and other collateral, and obtaining surveys and title insurance as reasonably requested by Parent; (xii) provide authorization letters to the Financing Sources authorizing the distribution of Company information to prospective lenders containing a representation to the Financing Sources that the information provided by the Company for inclusion in the public side versions of such documents, if any, does not include material non-public information about the Company or its Subsidiaries or their respective securities; (xiii) take all actions reasonable necessary to (A) permit prospective financing providers to (i) evaluate the Company's and its Subsidiaries' current assets, cash management and accounting systems, policies and procedures relating thereto for the purpose of establishing collateral arrangements and (ii) conduct customary field examinations, inventory appraisals and, to the extent appropriate, appraisals of Company Owned Real Property and Company Leased Real Property, and (B) establish bank and other accounts and blocked account agreements and lockbox arrangements in connection with the foregoing; (xiv) as long as such information is requested by the Financing Sources in writing at least ten Business Days prior to the Closing Date, provide to the Financing Sources, at least four Business Days prior to the Closing Date, all documentation and other information required by regulatory authorities with respect to the Company under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act of 2001, as amended; and (xv) not commence or effect any offering, placement or arrangement of any debt securities or bank financing competing with the Financing (and not permit any such offering, placement or arrangements to occur on its behalf) (other than any indebtedness of the Company and its Subsidiaries permitted to be incurred or outstanding pursuant to the other provisions of this Agreement) if such issuance, offering, placement or arrangement would reasonably be expected to materially impair the syndication of the Financing or the offering of the securities conducted in compliance with applicable Law, including SEC rules and regulations, to the extent applicable. None of the 2021 Notes shall be required to be accepted for purchase or purchased prior to the Closing Date. The Company shall, and shall cause its Subsidiaries to, and shall use reasonable best efforts to cause its and its Subsidiaries' Representatives to, provide all cooperation reasonably requested by Parent in connection with any Change of Control Offer; provided, however, that nothing herein shall (x) be deemed an admission that Parent or the Company is required by the terms of the Indenture to make a Change of Control Offer, (y) require such cooperation to the extent it would unreasonably interfere with the operations of the Company and its Subsidiaries, or (z) require the Company or any of its Subsidiaries to pay any fees, incur or reimburse any costs or expenses, or make any payment, incur any other Liability or give any indemnities prior to the occurrence of the Effective Time (except to the extent that

Parent promptly reimburses (in the case of ordinary course out-of-pocket costs and expenses) or provides the funding (in all other cases) to the Company or such Subsidiary therefor). Without limiting the foregoing, the Company and its Subsidiaries shall, or shall cause their counsel to, furnish legal opinions in customary form and scope relating to the Company and its Subsidiaries or required by the Indenture in connection with any Change of Control Offer.

With respect to its (i) 5.41% Series 2005-A Senior Notes, Tranche A and (ii) 5.25% Series 2005-A Senior Notes, Tranche B (the senior notes described in clauses (i) and (ii), collectively, the “2015 Notes”), issued pursuant to that certain Note Purchase Agreement, dated as of September 27, 2005, by and among the Company, Family Dollar Stores, Inc., and the Purchasers named therein (the “Note Purchase Agreement”), Parent and the Company shall cooperate to prepare, and the Company shall deliver any notice or other document, required by Section 8.7 of the Note Purchase Agreement; provided, that nothing herein shall (x) require such cooperation to the extent it would unreasonably interfere with the operations of the Company and its Subsidiaries or (y) require the Company or any of its Subsidiaries to pay any fees, incur or reimburse any costs or expenses, or make any payment, incur any other Liability or give any indemnities prior to the occurrence of the Effective Time (except to the extent that Parent promptly reimburses the Company therefor). Without limiting the foregoing, the Company and its Subsidiaries shall, or shall cause their counsel to, furnish legal opinions in customary form and scope relating to the Company and its Subsidiaries or required by the Note Purchase Agreement in connection with the matters contemplated by this Section 5.13(e).

(A) the satisfaction and discharge of such 2021 Notes and/or (B) taking such actions (and using reasonable best efforts to cause the trustee in respect of the 2021 Notes to take such actions) as may be required to make effective provision to secure all of the 2021 Notes equally and ratably with the Financing, in each case, pursuant to the Indenture) effective as of (or at Parent’s election, following) the Effective Time; provided, that (x) to the extent that any action described in clause (ii) above can be conditioned on the occurrence of the Closing, it will be so conditioned; and (y) nothing herein shall (i) require such cooperation to the extent it would unreasonably interfere with the operations of the Company and its Subsidiaries or (ii) require the Company or any of its Subsidiaries to pay any fees, incur or reimburse any costs or expenses, or make any payment, incur any other Liability or give any indemnities prior to the occurrence of the Effective Time (except to the extent that Parent promptly reimburses the Company therefor). Without limiting the foregoing, the Company and its Subsidiaries shall, or shall cause their counsel to, furnish legal opinions in customary form and scope relating to the Company and its Subsidiaries or required by the Indenture in connection with the matters contemplated by this Section 5.13(f); provided, however, that neither the Company nor any of its Subsidiaries shall be required to, or required to cause their counsel to, (i) furnish legal opinions in connection with clause (ii)(A) of this Section 5.13(f) nor (ii) pass any resolutions or consents or approve or

“Termination Fee” shall mean a cash amount equal to \$305,000,000. Notwithstanding anything to the contrary in this Agreement, if the full Termination Fee shall become due and payable in accordance with this Section 7.3, from and after such termination and payment of the Termination Fee in full pursuant to and in accordance with this Section 7.3, the Company shall have no further Liability of any kind for any reason in connection with this Agreement or the termination contemplated hereby other than as provided under this Section 7.3, except in the case of fraud or a Willful and Material Breach by the Company of this Agreement (it being understood that, without limiting the foregoing, in the case of fraud or a Willful and Material Breach, any prior payment of the Termination Fee shall be taken into account when determining any remedies). Each of the parties hereto acknowledges that the Termination Fee is not intended to be a penalty, but rather is liquidated damages in a reasonable amount that will compensate Parent in the circumstances in which such Termination Fee is due and payable and which do not involve fraud or Willful and Material Breach, for the efforts and resources expended and opportunities

foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision. In no event shall Parent be entitled to payment of the Termination Fee on more than one occasion.

The parties' rights in this Section 8.5 are an integral part of the transactions contemplated by this Agreement and each party hereby waives any objections to any remedy referred to in this Section 8.5. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed, or were threatened to be not performed, in accordance with their specific terms or were otherwise breached, and that money damages would not be an adequate remedy, even if available. It is accordingly agreed that, in addition to any other remedy that may be available to it, including monetary damages, each of the parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) (in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative, except, in each case, as may be limited by Section 7.3). In the event any party seeks any remedy referred to in this Section 8.5, such party shall not be required to prove damages or obtain, furnish, provide or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 8.5 and each party waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing, providing or posting of any such bond or similar instrument. In addition, each of the parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party hereto or its successors or assigns, shall be brought and

**Section 8.14 Interpretation.** When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless the context otherwise requires. The word "extent" and the phrase "to the extent" when used in this Agreement shall mean the degree to which a subject or other thing extends, and such word or phrase shall not mean simply "if". All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant thereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. References in this Agreement to specific laws or to specific provisions of laws shall include all rules and regulations promulgated thereunder, and any statute defined or referred to herein or in any agreement or instrument referred to herein shall mean such statute as from time to time amended, modified or supplemented, including by succession of comparable successor statutes. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

**General Definitions.** References in this Agreement to "Subsidiaries" of any party means any corporation, partnership, association, trust or other form of legal entity of which (i) 50% or more

	<p>of the voting power of the outstanding voting securities are on the date hereof directly or indirectly owned by such party or (ii) such party or any Subsidiary of such party is a general partner on the date hereof. References in this Agreement (except as specifically otherwise defined) to “Affiliates” means, as to any person, any other person which, directly or indirectly, controls, or is controlled by, or is under common control with, such person. As used in this definition, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise. References in this Agreement (except as specifically otherwise defined) to “person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity, group (as such term is used in Section 13 of the Exchange Act) or organization, including a Governmental Entity, and any permitted</p>
Insurance	<p>Section 3.9(a) of the Company Disclosure Schedule sets forth a correct and complete list, as of the date hereof, of each material Company Benefit Plan. With respect to each material Company Benefit Plan, to the extent applicable, correct and complete copies of the following have been delivered or made available to Parent by the Company: (i) all plan documents (including all written amendments and attachments thereto and related written agreements or arrangements with third party service providers or administrators) (which, for the avoidance of doubt, with respect to any material Company Benefit Plan for which a form agreement is used, shall consist of a copy of such form and a list of individuals with whom such agreement has been entered into); (ii) written summaries of any material Company Benefit Plan not in writing (including summaries of any material unwritten amendments thereto and related material unwritten agreements or arrangements with third party service providers or administrators); (iii) all related trust documents; (iv) all insurance contracts or other funding arrangements; (v) the most recent annual report (Form 5500) filed with the Internal Revenue Service (the “IRS”); (vi) the most recent determination letter from the IRS for any Company Benefit Plan that is intended to qualify under Section 401(a) of the Code; (vii) the most recent summary plan description and summary of any material modifications thereto; and (viii) all material written communications received from or sent to any Governmental Entity since August 27, 2011. Each Company Benefit Plan that is maintained outside the jurisdiction of the United States (a “Non-US Benefit Plan”) is indicated as such on Section 3.9(a) of the Company Disclosure Schedule.</p> <p>Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, each Company Benefit Plan has been established, operated and administered in accordance with its terms and the requirements of all applicable Laws, including ERISA and the Code. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, all contributions required to be made to any Company Benefit Plan by applicable Law or by any plan document or other contractual undertaking, and all premiums due or payable with respect to insurance policies funding any Company Benefit Plan, have been timely made or paid in full or, to the extent not required to be made or paid on or before the date hereof, have been fully reflected on the books and records of the Company.</p> <p>No Company Benefit Plan provides for any post-employment or post-retirement medical or life insurance benefits for retired, former or current employees or beneficiaries or dependents thereof, except as required by Section 4980B of the Code.</p> <p>Section 3.14 Employment and Labor Matters. Neither the Company nor any of its Subsidiaries is or has since August 27, 2011 been, a party to any collective bargaining agreement, labor union contract, or trade union agreement (each, a “Collective Bargaining Agreement”). No employee of the Company or any of its Subsidiaries is represented by a labor organization for purposes of collective bargaining with respect to the Company or any of its Subsidiaries. To the knowledge of</p>

the Company, from August 31, 2013 through the date hereof, there have been no material activities or proceedings of any labor or trade union to organize any employees of the Company or any of its Subsidiaries. No Collective Bargaining Agreement is being negotiated by the Company or any of its Subsidiaries. From August 27, 2011 through the date hereof, there has been no strike, lockout, slowdown, or work stoppage against the Company or any of its Subsidiaries pending or, to the Company's knowledge, threatened, that would interfere in any material respect with the respective business activities of the Company or any of its Subsidiaries. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, (i) there is no pending charge or complaint against the Company or any of its Subsidiaries by the National Labor Relations Board or any comparable Governmental Entity, and (ii) none of the Company and its Subsidiaries are a party, or otherwise bound by, any consent decree with, or citation by, any Governmental Entity relating to employees or employment practices. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, the Company and its Subsidiaries have complied with all laws regarding employment and employment practices (including anti-discrimination), terms and conditions of employment and wages and hours (including classification of employees and equitable pay practices) and other laws in respect of any reduction in force (including notice, information and consultation requirements), and no claims relating to non-compliance with the foregoing are pending or, to the Company's knowledge, threatened. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, there are no outstanding assessments, penalties, fines, Liens, charges, surcharges, or other amounts due or owing by the Company pursuant to any workplace safety and insurance/workers' compensation Laws.

Section 3.17 Insurance. The Company and its Subsidiaries maintain insurance in such amounts and against such risks in all material respects as is customary for the industries in which it and its Subsidiaries operate and as the management of the Company has in good faith determined to be adequate. All material insurance policies maintained by or on behalf of the Company or any of its Subsidiaries as of the date of this Agreement are in full force and effect, all premiums and other payments due on such policies have been paid by the Company or its Subsidiaries and all claims thereunder have been filed in due and timely fashion, except as would not reasonably be expected, individually or in the aggregate, to be material to the Company and its Subsidiaries, taken as a whole. The Company and its Subsidiaries are in compliance in all material respects with the terms and provisions of all material insurance policies maintained by or on behalf of the Company or any of its Subsidiaries as of the date of this Agreement, and neither the Company nor any of its Subsidiaries is in breach or default under, or has taken any action that could permit termination or material modification of, any material insurance policies. To the Company's knowledge, as of the date of this Agreement, (i) there is no threatened termination of, or threatened material premium increase with respect to, any of such material policies other than increases in connection with the Company's annual renewal process and (ii) there is no material claim pending regarding the Company or any of its Subsidiaries under any of such material policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies.

settlements or compromises that (x) involve monetary remedies with a value not in excess of, with respect to any individual litigation, claim, suit, action or proceeding, \$4,000,000 (net of any insurance proceeds and indemnity, contribution and similar payments actually received by the Company or any of its Subsidiaries in respect thereof) or, in the aggregate with respect to all litigation, claims, suits, actions and proceedings (but excluding the amount of any monetary remedies with respect to settlements of the type referred to in clause (2)), \$15,000,000 (net of any insurance proceeds and indemnity, contribution and similar payments actually received by the

Company or any of its Subsidiaries in respect thereof), (y) do not impose any material restriction on its business or the business of its Subsidiaries and other than in the ordinary course of business consistent with past practice, materially reduce the amount of insurance coverage or fail to renew any material existing insurance policies; under which similarly situated employees of Parent and its Subsidiaries do not receive credit for prior service or (y) that is grandfathered or frozen, either with respect to level of benefits or participation. With respect to any Post-Closing Plan that provides medical, dental or vision insurance benefits, for the plan year in which such Company Employee is first eligible to participate, Parent shall use reasonable best efforts to (A) cause any

For a period of six years after the Effective Time, the Surviving Company shall, and Parent shall cause the Surviving Company to, cause to be maintained in effect the current policies of directors' and officers' liability insurance maintained by the Company (provided, that the Surviving Company may substitute therefor policies with a substantially comparable insurer of at least the same coverage and amounts containing terms and conditions which are no less advantageous to the insured) with respect to claims arising from facts or events, or actions or omissions, which occurred or are alleged to have occurred at or before the Effective Time; provided, however, that the Surviving Company shall not be obligated to make annual premium payments in respect of any one policy year for such insurance to the extent such premiums exceed 250 % of the annual premiums paid as of the date hereof by the Company for such insurance (the "Premium Cap"), and if such premiums for such insurance would at any time exceed the Premium Cap, then the Surviving Company shall, and Parent shall cause the Surviving Company to, cause to be maintained policies of insurance which, in the Surviving Company's good faith determination, provide the maximum coverage available at an annual premium equal to the Premium Cap. In lieu of the foregoing, Parent, or the Company after prior consultation with Parent, may obtain at or prior to the Effective Time a six-year prepaid "tail" policy under the Company's existing directors' and officers' insurance policy providing coverage no greater than the current policies of directors' and officers' liability insurance maintained by the Company; provided, that the Company shall not purchase such prepaid "tail" policy for a total cost in excess of 300% of the then current annual premium paid by the Company for such insurance (the "Tail Cap") without the prior written consent of Parent; provided, further, that if the total cost for such prepaid "tail" policy exceeds the Tail Cap, then Parent or the Company, after prior consultation with Parent, may obtain a prepaid "tail" policy with the maximum coverage available for a total cost not to exceed the Tail Cap.

In the event that Parent, the Surviving Company or any of their respective successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then, and in either such case, proper provision shall be made so that the successors and assigns of Parent and the Surviving Company, as the case may be, shall assume all of the obligations set forth in this Section 5.9. Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to the Company or any of its Subsidiaries or their respective officers, directors and employees, and this Section 5.9 is not prior to, or in substitution for, any such claims under any such policies.

requested by Parent that are or may be customary in connection with the Financing or any Alternative Financing to fulfill conditions or obligations under the Commitment Letter; (vi) provide assistance in the preparation of (1) one or more confidential information memoranda, prospectuses, offering memoranda and other marketing and syndication materials reasonably requested by Parent or any of its Affiliates in connection with the Financing or any Alternative Financing and (2) customary pro forma financial statements reflecting the Merger and the Financing; (vii) assist Parent in ensuring that the syndication efforts benefit from the existing

banking relationships of the Company and its Subsidiaries; (viii) permit the reasonable use by Parent and its Affiliates of the Company's and its Subsidiaries' logos for syndication and underwriting, as applicable, of the Financing, provided, that such logos are used solely in a manner that is not intended to nor reasonably likely to harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries and its or their marks; (ix) participate as necessary in a reasonable number of meetings, presentations, customary one-on-one sessions that are requested in advance and road shows with prospective lenders and investors and in drafting sessions and due diligence sessions, as applicable (including the reasonable participation in such meetings by the Company's senior management), in each case, in connection with the Financing or the Alternative Financing; (x) assist in preparing customary rating agency presentations and participating in a reasonable number of sessions with rating agencies in connection with the Financing; (xi) assist in the preparation and negotiation of any necessary pledge or security documents, other definitive financing documents, or other certificates or documents as may be reasonably requested by Parent in connection with the Financing or the Alternative Financing and otherwise facilitate the pledging of, and granting, recording and perfection of security interests in share certificates, securities and other collateral, and obtaining surveys and title insurance as reasonably requested by Parent; (xii) provide authorization letters to the Financing Sources authorizing the distribution of Company information to prospective lenders containing a representation to the Financing Sources that the information provided by the Company for inclusion in the public side versions of such documents, if any, does not include material non-public information about the Company or its Subsidiaries or their respective securities; (xiii) take all actions reasonable necessary to (A) permit prospective financing providers to (i) evaluate the Company's and its Subsidiaries' current assets, cash management and accounting systems, policies and procedures relating thereto for the purpose of establishing collateral arrangements and (ii) conduct customary field examinations, inventory appraisals and, to the extent appropriate, appraisals of Company Owned Real Property and Company Leased Real Property, and (B) establish bank and other accounts and blocked account agreements and lockbox arrangements in connection with the foregoing; (xiv) as long as such information is requested by the Financing Sources in writing at least ten Business Days prior to the Closing Date, provide to the Financing Sources, at least four Business Days prior to the Closing Date, all documentation and other information required by regulatory authorities with respect to the Company under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act of 2001, as amended; and (xv) not commence or effect any offering, placement or arrangement of any debt securities or bank financing competing with the Financing (and not permit any such offering, placement or arrangements to occur on its behalf) (other than any indebtedness of the Company and its Subsidiaries permitted to be to be incurred or outstanding pursuant to the other provisions of this Agreement) if such issuance, offering, placement or arrangement would reasonably be expected to materially impair the syndication of the Financing or the offering of the securities

"Company Benefit Plan" means each compensatory or employee benefit plan, program, agreement or arrangement, including pension, retirement, profit-sharing, deferred compensation, stock option, change in control, retention, equity or equity-based compensation, stock purchase, employee stock ownership, severance pay, vacation, bonus or other incentive plans, medical, retiree medical, vision, dental or other health plans, life insurance plans, and each other material employee benefit plan or fringe benefit plan, including any "employee benefit plan" as that term is defined in Section 3(3) of ERISA, in each case, whether oral or written, funded or unfunded, or insured or self-insured, maintained by the Company or any Subsidiary, or to which the Company or any Subsidiary contributes or is obligated to contribute or might otherwise have or reasonably be expected to have any Liability.

usual course of business and consistent with past practice or with respect to Liabilities that are not



	<p>yet due and payable or, if due, are not delinquent or are being contested in good faith by appropriate proceedings and for which adequate reserves (based on good faith estimates of management) have been set aside for the payment thereof, (C) Liens imposed or promulgated by applicable Law or any Governmental Entity with respect to real property, including zoning, building or similar restrictions, (D) pledges or deposits in connection with workers' compensation, unemployment insurance, and other social security legislation, (E) Liens relating to intercompany borrowings among a person and its wholly owned subsidiaries, (F) utility easements, minor encroachments, rights of way, imperfections in title, charges, easements, rights of way (whether recorded or unrecorded), restrictions, declarations, covenants, conditions, defects and similar Liens that are imposed by any Governmental Entity having jurisdiction thereon or otherwise are typical for the applicable property type and locality as do not individually or in the aggregate materially interfere with the present occupancy or use of the respective Company Owned Real Property or Company Leased Real Property (in the case of the Company) or owned real property or leased real property of Parent and its Subsidiaries (in the case of Parent) or otherwise materially impair the business operations of the Company and its Subsidiaries (in the case of the Company) or Parent and its Subsidiaries (in the case of Parent), (G) matters disclosed by any existing title insurance policies or title reports, copies of which have been made available to Parent (in the case of the Company) or the Company (in the case of Parent), (H) Liens and obligations arising under the Company Material Contracts or material contracts of Parent and its Subsidiaries, as applicable, other than as a result of breach or default, (I) other Liens being contested in good faith in the ordinary course of business or which do not materially interfere with the present occupancy or use of the affected Company Owned Real Property or Company Leased Real Property (in the case of the Company) or the owned real property or leased real property of Parent and its Subsidiaries (in the case of Parent) or otherwise materially interfere with the conduct of or impair the business operations of the Company and its Subsidiaries (in the case of the Company) or Parent and its Subsidiaries (in the case of Parent) and for which adequate reserves (based on good faith estimates of management) have been set aside for payment therefor, (J) purchase money Liens securing rental payments under capital lease arrangements, (K) Liens securing Indebtedness or liabilities that are reflected in the Company Financial Statements or the Parent Financial Statements, as applicable, or that the Company or any of its Subsidiaries is permitted to incur under Section 5.1(b)(G) or Section 5.1(b)(H) or that Parent or its Subsidiaries incurs in the ordinary course of business following the date hereof, and (L) Liens set forth in Section 8.15(b)(xxiv) of the Company Disclosure Schedule or Section 8.15(b)(xxiv) of the Parent Disclosure Schedule.</p>
Termination	<p>Prior to the Effective Time, the Company Board of Directors and/or the appropriate committee thereof shall take all reasonable actions, including adopting any necessary resolutions or amendments with respect to the Company Employee Stock Purchase Plan (the "ESPP") to effectuate the following: (i) to cause the "Offering Period" (as defined in the ESPP) ongoing as of the date of this Agreement to be the final Offering Period under the ESPP and the options under the ESPP to be exercised on the earlier of (x) the scheduled purchase date for such Offering Period and (y) the date that is seven Business Days prior to the Closing Date (with any participant payroll deductions not applied to the purchase of shares returned to the participant), (ii) to prohibit participants in the ESPP from increasing their payroll deductions from those in effect on the date of this Agreement and (iii) to terminate the ESPP effective immediately prior to the Closing Date.</p> <p>Except as would not reasonably be expected to result in any material Liability of the Company or any of its Subsidiaries, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event (i) entitle any current or former employee, director, consultant or officer of the Company or any of its Subsidiaries to severance</p>

pay, accrued pension benefit or any other payment, (ii) accelerate the time of payment or vesting, or increase the amount of compensation due to any such employee, director, consultant or officer, (iii) trigger any funding obligation under any Company Benefit Plan or impose any restrictions or limitations on the Company's rights to administer, amend or terminate any Company Benefit Plan, or (iv) result in any payment (whether in cash or property or the vesting of property) to any "disqualified individual" (as such term is defined in Treasury Regulation Section 1.280G-1) that could, individually or in combination with any other such payment, constitute an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code). No Company Benefit Plan provides for the gross-up or reimbursement of Taxes under Section 4999 of the Code or otherwise. The Company has made available to Parent all currently existing information applicable to the calculation of "parachute payments" pursuant to Section 280G of the Code in connection with the transactions contemplated by this Agreement, which information is complete and accurate in all material respects and was used for purposes of calculating the cost estimates made available to Parent.

Neither the Company nor any Subsidiary of the Company is in breach of or default in any respect under the terms of any Company Material Contract and, to the knowledge of the Company, no other party to any Company Material Contract is in breach of or default in any respect under the terms of any Company Material Contract and no event has occurred or not occurred through the Company's or any of its Subsidiaries' action or inaction or, to the Company's knowledge, through the action or inaction of any third party, that with notice or the lapse of time or both would constitute a breach of or default under the terms of any Company Material Contract, in each case except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. To the knowledge of the Company, each Company Material Contract (i) is a valid and binding obligation of the Company or the Subsidiary of the Company that is party thereto and of each other party thereto, and (ii) is in full force and effect, subject to the Enforceability Exceptions. There are no disputes pending or, to the Company's knowledge, threatened with respect to any Company Material Contract and neither the Company nor any of its Subsidiaries has received any written notice of the intention of any other party to a Company Material Contract to terminate for default, convenience or otherwise any Company Material Contract, nor to the Company's knowledge, is any such party threatening to do so, in each case except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

Section 3.20 Suppliers. Section 3.20 of the Company Disclosure Schedule sets forth a true, correct and complete list of (a) the top twenty suppliers (the "Top Suppliers") by the aggregate dollar cost of merchandise inventory purchased by the Company and its Subsidiaries during the twelve months ended May 31, 2014 and the corresponding aggregate dollar cost of merchandise inventory purchased from each Top Supplier. Since August 31, 2013, (a) there has been no termination of the business relationship of the Company or its Subsidiaries with any Top Supplier, (b) there has been no material change in the material terms of its business relationship with any Top Supplier adverse to the Company or its Subsidiaries and (c) no Top Supplier has notified the Company or any of its Subsidiaries in writing that it intends to terminate or change the pricing or other terms of its business in any material respect adverse to the Company or its Subsidiaries. Except for letters of credit for outstanding purchase orders, none of the Company or any of its Subsidiaries is required to provide any material bonding or other material financial security arrangements in connection with any transactions with any supplier in the ordinary course of its business.

As of the date of this Agreement, the Commitment Letter has not been amended or modified in any manner, and the respective commitments contained therein have not been, to the knowledge of Parent, terminated, reduced, withdrawn or rescinded in any respect and, to the knowledge of Parent, no such termination, reduction, withdrawal or rescission is contemplated other than in

accordance with the terms thereof.

Assuming the accuracy of the representations and warranties of the Company set forth in this Agreement and performance by the Company of its obligations hereunder, Parent has, or will have at Closing, all funds necessary to consummate the Merger, including the making of all required payments in connection with the Merger, including payment of the Merger Consideration, the payment of any debt required to be repaid, redeemed, retired, cancelled, terminated or otherwise satisfied or discharged in connection with the Merger as of the date hereof (including all Indebtedness of the Company and its Subsidiaries required to be repaid, redeemed, retired, cancelled, terminated or otherwise satisfied or discharged in connection with the Merger, including premiums and fees incurred in connection therewith) and all other amounts to be paid pursuant to this Agreement and associated costs and expenses of the Merger on the Closing Date. In no event shall the receipt or availability of any funds or financing (including the Financing) by or to Parent or any of its Affiliates or any other financing transaction be a condition to any of the obligations of Parent or Merger Sub hereunder, it being understood that nothing in this Section 4.10(h) is intended to limit any condition set forth in Section 6.1 or Section 6.3. except (1) as otherwise permitted by this Agreement, (2) for any repayment or prepayment by the Company or any of its Subsidiaries (x) of indebtedness pursuant to either Revolving Credit Facility or (y) required under the terms of the 2015 Notes, or (3) for transactions between the Company and its Subsidiaries or among the Company's Subsidiaries, prepay, redeem, repurchase, defease, cancel or otherwise terminate any indebtedness or guarantees thereof of the Company or any Subsidiary;

(1) other than in accordance with contracts or agreements in effect on the date hereof, sell, transfer, mortgage, encumber or otherwise dispose of any of its properties or assets having a value in excess of \$10,000,000 individually or \$25,000,000 in the aggregate to any person other than to the Company or a wholly owned Subsidiary of the Company (other than (x) sales of inventory or (y) commodity, purchase, sale or hedging agreements which can be terminated upon 90 days or less notice without penalty, in each case in the ordinary course of business consistent with past practice), or (2) other than in accordance with contracts or agreements in effect on the date hereof, cancel, release or assign any material indebtedness of any such person owed to it or any claims

(1) except in the ordinary course of business, terminate, materially amend, or waive any material right under, any Company Material Contract or enter into any contract that would constitute a Company Material Contract if it were in effect on the date of this Agreement, or (2) without prior consultation with Parent, enter into any contract expected to result in payment by the Company and its Subsidiaries in excess of \$1,000,000 that (x) will not expire by its terms in 12 months or fewer and (y) cannot be terminated by the Company or any of its Subsidiaries without material penalty upon no more than twelve months' notice, in each case of clauses (1) or (2) other than any such action relating to any Contract that would not require the consent of, or consultation with, Parent under clause (G), (J), (K), (L), (N), (O) or (Q);

except as required by applicable Law or the terms of any Company Benefit Plan set forth on Section 3.9(a) of the Company Disclosure Schedule as in effect on the date of this Agreement, shall not, and shall not permit any of its Subsidiaries to, (1) establish, adopt, amend or terminate any Collective Bargaining Agreement or Company Benefit Plan or commence an enrollment period under any Company Benefit Plan that provides health and welfare benefits without first consulting with Parent, (2) increase in any manner the compensation (including severance, change-in-control and retention compensation) or benefits of any current or former directors, officers, employees, consultants, independent contractors or other service providers of the Company or its Subsidiaries who are individuals, (3) pay or award, or commit to pay or award, any bonuses or incentive compensation, (4) accelerate any rights or benefits, or, other than in the ordinary course of business consistent with past practice, make any determinations or

interpretations with respect to any Company Benefit Plan, or (5) fund any rabbi trust or similar arrangement;

(1) with respect to any employee at the level of Senior Vice President, Executive Vice President or above, hire or terminate the employment of (other than for cause) any such employee or (2) with respect to any employee at the level of Vice President, hire or terminate the employment of (other than for cause) any such employee without first consulting with Parent;

amend in a manner that adversely impacts in any material respect the ability to conduct its business, terminate or allow to lapse any material Company Permits;

“Representatives”) to: (A) immediately cease and cause to be terminated any discussions or negotiations with any persons (other than Parent) that may be ongoing with respect to a Company Takeover Proposal and (B) not, directly or indirectly,

The Company shall, and shall cause its controlled Affiliates to, promptly request (to the extent it has not already done so prior to the date of this Agreement) any person that has executed a confidentiality or non-disclosure agreement in connection with any actual or potential Company Takeover Proposal that remains in effect as of the date of this Agreement to return or destroy all confidential information of the Company or its controlled Affiliates in the possession of such person or its Representatives. The Company shall not, and shall cause its controlled Affiliates not to, release any third party from, or waive, amend or modify any provision of, or grant permission under, (1) any standstill provision in any agreement to which the Company or any of its controlled Affiliates is a party or (2) any confidentiality provision in any agreement to which the Company or any of its controlled Affiliates is a party other than, with respect to this clause (2), any waiver, amendment, modification or permission under a confidentiality provision that does not, and would not be reasonably likely to, facilitate, knowingly encourage or relate in any way to a Company Takeover Proposal or a potential Company Takeover Proposal; provided, that if the Company Board of Directors determines in good faith, after consultation with its outside legal counsel that the failure to take such action would be inconsistent with the directors’ fiduciary duties under applicable Law, the Company may waive any such standstill provision solely to the extent necessary to permit a third party to make, on a confidential basis to the Company Board of Directors, a Company Takeover Proposal, conditioned upon such third party agreeing that the Company shall not be prohibited from providing any information to Parent (including regarding any such Company Takeover Proposal) in accordance with, and otherwise complying with, this Section 5.3. Except to the extent otherwise permitted by the proviso in the foregoing sentence, the Company shall, and shall cause its controlled Affiliates to, enforce the confidentiality and standstill provisions of any such agreement, and the Company shall, and shall cause its controlled Affiliates to, immediately take all steps within their power necessary to terminate any waiver that may have been heretofore granted, to any person other than Parent or any of Parent’s Affiliates, under any such provisions. The Company shall not (i) except as provided in Section 3.24, terminate (or permit the termination of), waive or amend the Rights Agreement, (ii) redeem any Rights under the Rights Agreement or (iii) take any action with respect to, or make any determination under, the Rights Agreement that would interfere with Parent consummating the transactions contemplated by this Agreement, in each case without the prior written consent of Parent.

Notwithstanding the foregoing, prior to the time the Company Stockholder Approval is obtained, but not after, if the Company Board of Directors has determined in good faith, after consultation with its financial advisor and outside legal counsel, that (i) a bona fide, unsolicited Company Takeover Proposal that did not result from a knowing or intentional breach of Section 5.3 constitutes a Company Superior Proposal and (ii) the failure to approve or recommend such Company Superior Proposal, or enter into a definitive agreement relating to such Company Superior Proposal, would be inconsistent with the Company Board of Directors’ fiduciary duties under applicable Law, the Company Board of Directors may, subject to compliance with this

Section 5.3(f), cause the Company to terminate this Agreement in order to enter into a definitive agreement relating to such Company Superior Proposal upon (and subject to) paying the Company Termination Fee in accordance with Section 7.3; provided, however, that prior to so terminating this Agreement, (A) the Company has given Parent at least five Business Days' prior written notice of its intention to take such action, and specifying the reasons therefor, including the terms and conditions of, and the identity of the person making, any such Company Superior Proposal and has contemporaneously provided to Parent a copy of the Company Superior Proposal, a copy of any proposed Company Acquisition Agreements and a copy of any financing commitments relating thereto (or, in each case, if not provided in writing to the Company, a written summary of the terms thereof), (B) the Company has negotiated, and has caused its Representatives to negotiate, in good faith with Parent during such notice period, to the extent Parent wishes to negotiate, to enable Parent to propose revisions to the terms of this Agreement such that it would cause such Company Superior Proposal to no longer constitute a

of this proviso immediately prior to the delivery of such additional notice under this clause (D)) during which time the Company shall be required to comply with the requirements of this Section 5.3(f) anew with respect to such additional notice, including clauses (A) through (D) above of this proviso; and provided, further, that the Company has complied in all material respects with its obligations under this Section 5.3. Notwithstanding anything to the contrary contained herein, neither the Company nor any Company Subsidiary shall enter into any Company Acquisition Agreement unless this Agreement has been terminated in accordance with its terms.

Subject to Section 5.3(f), the Company shall take all action necessary in accordance with applicable Laws and the Company Organizational Documents to set a record date for, duly give notice of, convene and, as soon as reasonably practicable after the S-4 is declared effective, hold a meeting of its stockholders for the purpose of obtaining the Company Stockholder Approval (the "Company Stockholders' Meeting"). Except as expressly permitted by Section 5.3, the Company Board of Directors shall not make any Company Adverse Recommendation Change and shall include its recommendation that the Company's stockholders vote in favor of the Merger in the Proxy Statement/Prospectus and shall solicit, and use its reasonable best efforts to obtain, the Company Stockholder Approval at the Company Stockholders' Meeting. For the avoidance of doubt, the Company shall not be required to hold the Company Stockholders' Meeting if this Agreement is validly terminated in accordance with Section 7.1.

From and after the Effective Time, Parent shall, or shall cause the Surviving Company to, honor all accrued and vested benefits under the Company Benefit Plans in accordance with their terms as in effect immediately before the Effective Time and applicable Law as such agreements and arrangements may be modified or terminated in accordance with their terms from time to time. Nothing in this Agreement shall confer upon any Company Employee or other service provider any right to continue in the employ or service of Parent, the Surviving Company or any Affiliate of Parent, or shall interfere with or restrict in any way the rights of Parent, the Surviving Company or any of their Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of any Company Employee at any time for any reason whatsoever, with or without cause. In no event shall the terms of this Agreement be deemed to (i) establish, amend, or modify any Company Benefit Plan or any "employee benefit plan" as defined in Section 3(3) of ERISA, or any other benefit plan, program, agreement or arrangement maintained or sponsored by Parent, Surviving Company, the Company or any of their Subsidiaries (including, after the Closing Date, Company and its Subsidiaries) or Affiliates; or (ii) alter or limit the ability of Parent, the Surviving Company or any of their Subsidiaries (including, after the Closing Date, Company and its Subsidiaries) or Affiliates to amend, modify or terminate any Company Benefit Plan or any other compensation or benefit or employment plan, program, agreement or arrangement after the Closing Date. Notwithstanding any provision in this Agreement to the contrary, nothing in this Section 5.5 shall create any third party beneficiary rights in any

Company Employee or current or former service provider of the Company or its Affiliates (or any beneficiaries or dependents thereof).

If this Agreement is terminated pursuant to Section 7.1, then Parent shall promptly reimburse the Company for any previously unreimbursed, documented reasonable out-of-pocket costs, fees and expenses incurred by the Company in connection with the transactions contemplated by this Section 5.13.

Agreement to the extent that the party receiving such notice or communication believes there is a reasonable likelihood that the failure to obtain such consent would have a material impact on the timing of the consummation of the Merger or on the Company, the Surviving Company or Parent or (ii) upon receiving any written communication from any Governmental Entity or third party whose consent or approval is required for the satisfaction of one of the conditions to Closing set forth in Article VI that causes such party to believe that there is a reasonable likelihood that any such consent or approval will not be obtained or that the receipt of any such consent or approval will be materially delayed. The Company shall promptly notify Parent of any written notice or other written communication received following the date hereof from any party to any Company Material Contract to the effect that such party has terminated or intends to terminate or otherwise materially adversely modify its relationship with any Company or Company Subsidiary as a result of the transactions contemplated by this Agreement.

All waiting periods applicable to the Merger under the HSR Act shall have expired or been terminated.

Section 7.1 Termination or Abandonment. Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated and abandoned at any time prior to the Effective Time, whether before or after any approval of the Merger by the stockholders of the Company: by either the Company or Parent, if the Merger shall not have been consummated on or prior to April 27, 2015 (the "End Date"); provided, however, that if all of the conditions to Closing, other than the conditions set forth in Section 6.1(e), shall have been satisfied or shall be capable of being satisfied at such time and/or the Marketing Period has not expired, the End Date shall automatically be extended to July 27, 2015; and provided, further, that the right to terminate this Agreement pursuant to this

Section 7.2 Effect of Termination. In the event of termination of this Agreement pursuant to Section 7.1, this Agreement shall terminate (except that the Confidentiality Agreement, the Clean Team Confidentiality Agreement and the provisions of Section 5.12(f), Section 5.13(h), Section 5.13(i), Section 7.2, Section 7.3 and Article VIII shall survive any termination), and there shall be no other Liability on the part of the Company, on the one hand, or Parent or Merger Sub, on the other hand, to the other except (i) as provided in Section 5.12(f), Section 5.13(h), Section 5.13(i), and Section 7.3 or (ii)

If this Agreement is terminated by either Parent or the Company pursuant to Section 7.1(d), the Company shall pay Parent the amount (not to exceed \$90,000,000) of out-of-pocket costs and expenses incurred by Parent in connection with this Agreement and the transactions contemplated hereby, by wire transfer (to an account designated by Parent) in immediately available funds within two Business Days after such termination. If (i) this Agreement is terminated by the Company pursuant to Section 7.1(h), (ii) this Agreement is terminated by Parent pursuant to Section 7.1(g), or (iii) (A) a Pre-Termination Takeover Proposal shall have occurred at any time following the date of this Agreement and prior to the event giving rise to the right to terminate this Agreement and thereafter this Agreement is terminated by Parent or the Company pursuant to Section 7.1(b) or Section 7.1(d) or by Parent pursuant to Section 7.1(f) and (B) either (1) both (x) at any time on or prior to the twelve month anniversary of such termination, the Company or any of its Subsidiaries enters into a definitive agreement with respect to any transaction included within the definition of Company Takeover Proposal (a "Company Takeover Transaction") (whether or not involving the same Company Takeover Proposal as that which was the subject of

	<p>the Pre-Termination Takeover Proposal Event) and (y) at any time on or prior to the twenty-four month anniversary of the date of the definitive agreement contemplated by clause (x), the Company or any of its Subsidiaries consummates a Company Takeover Transaction (whether or not involving the same party that entered into the definitive agreement contemplated by the foregoing clause (x)) or (2) at any time on or prior to the twelve month anniversary of such termination, the Company or any of its Subsidiaries consummates a Company Takeover Transaction, the Company shall pay Parent the Termination Fee (less any amount previously paid pursuant to the first sentence of this Section 7.3(a) in respect of a termination by either Parent or the Company pursuant to Section 7.1(d)), by wire transfer (to an account designated by Parent) in immediately available funds in the case of clause (i), in accordance with Section 5.3(f), in the case of clause (ii), within two Business Days of such termination, or in the case of clause (iii), upon consummation of the Company Takeover Transaction contemplated by clause</p>
Subcontracting	
Confidentiality	<p>Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, to the knowledge of the Company, the Company and its Subsidiaries have implemented (i) commercially reasonable measures to protect the confidentiality, integrity and security of the Company's and its Subsidiaries' material Trade Secrets and material IT Assets (and the information and transactions stored or contained therein or transmitted thereby); and (ii) commercially reasonable data backup, data storage, system redundancy and disaster avoidance and recovery procedures, as well as a commercially reasonable business continuity plan. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, to the knowledge of the Company, the IT Assets used by the Company and its Subsidiaries perform the functions necessary to carry on the conduct of their businesses.</p> <p>Except as would not, individually or in the aggregate, reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole, the Company and its Subsidiaries have taken commercially reasonable measures to protect the confidentiality of the material Trade Secrets of the Company and its Subsidiaries and third party confidential information provided to the Company or any Subsidiary that the Company or such Subsidiary is obligated to maintain in confidence. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, the Company and its Subsidiaries comply in all material respects with their internal policies, and procedures, and in all material respects with all legally binding credit card company and other legal requirements, to the extent applicable, relating to privacy, data protection, and the collection, retention, protection and use of personal information collected, used, or held for use by (or on behalf of) the Company</p> <p>(1) cancel or permit to lapse any material Intellectual Property of the Company other than in the ordinary course of business or (2) disclose to any third party, other than representatives of Parent or under a confidentiality agreement, any Trade Secret included in the Intellectual Property of the Company in a way that results in loss of material Trade Secret protection; or</p> <p>For purposes of furthering the transactions contemplated hereby, the Company shall afford Parent and its employees, accountants, consultants, legal counsel, financial advisors, financing sources and agents and other representatives reasonable access during normal business hours upon reasonable advance notice to the Company, throughout the period prior to the Effective Time, to its and its Subsidiaries' personnel, properties, contracts, commitments, books and records and any report, schedule or other document filed or received by it pursuant to the requirements of applicable Laws and, during such period, the Company shall, and shall cause its Subsidiaries to, without limitation to the preceding obligations, make available to the other party (i) a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of federal securities laws (other than reports or documents that such party is not permitted to disclose under applicable Law), (ii) a copy of all</p>

correspondence between such party or any of its Subsidiaries and any party to a Contract with regard to any action, consent, approval or waiver that is required to be taken or obtained with respect to such Contract in connection with the consummation of the Merger or the other transactions contemplated by this Agreement and (iii) all other information concerning its business, properties and personnel as Parent may reasonably request; provided, however, until the condition in Section 6.1(e) is satisfied, the Clean Team Confidentiality Agreement between the Company and Parent, dated as of June 26, 2014 (the “Clean Team Confidentiality Agreement”) shall govern access to “Highly Confidential Information” as defined therein. Notwithstanding anything to the contrary contained in this Section 5.2(a), any document, correspondence or information provided pursuant to this Section 5.2(a) may be redacted to remove references concerning the valuation of the Company and the Merger or other similarly confidential information. All access pursuant to this Section 5.2(a) shall be (A) conducted in such a manner as not to interfere unreasonably with the normal operations of the Company or any of its Subsidiaries and (B) coordinated through the General Counsel of the Company or a designee thereof.

provided, however, that until the condition in Section 6.1(e) is satisfied, the Clean Team Confidentiality Agreement shall govern access to “Highly Confidential Information” as defined therein. Notwithstanding anything to the contrary contained in this Section 5.2(b), any document, correspondence or information provided pursuant to this Section 5.2(b) may be redacted to remove references concerning the valuation of the Company and the Merger or other similarly confidential information. All access pursuant to this Section 5.2(b) shall be (A) conducted in such a manner as not to interfere unreasonably with the normal operations of Parent or any of its Subsidiaries and (B) coordinated through the General Counsel of Parent or a designee thereof.

The parties hereto hereby agree that all information provided to them or their respective officers, directors, employees or representatives in connection with this Agreement and the consummation of the transactions contemplated hereby shall be governed in accordance with the confidentiality agreement, dated as of April 7, 2014, between the Company and Parent (the “Confidentiality Agreement”), which shall continue in full force and effect in accordance with its terms.

The Company shall, and shall cause its controlled Affiliates to, promptly request (to the extent it has not already done so prior to the date of this Agreement) any person that has executed a confidentiality or non-disclosure agreement in connection with any actual or potential Company Takeover Proposal that remains in effect as of the date of this Agreement to return or destroy all confidential information of the Company or its controlled Affiliates in the possession of such person or its Representatives. The Company shall not, and shall cause its controlled Affiliates not to, release any third party from, or waive, amend or modify any provision of, or grant permission under, (1) any standstill provision in any agreement to which the Company or any of its controlled Affiliates is a party or (2) any confidentiality provision in any agreement to which the Company or any of its controlled Affiliates is a party other than, with respect to this clause (2), any waiver, amendment, modification or permission under a confidentiality provision that does not, and would not be reasonably likely to, facilitate, knowingly encourage or relate in any way to a Company Takeover Proposal or a potential Company Takeover Proposal; provided, that if the Company Board of Directors determines in good faith, after consultation with its outside legal counsel that the failure to take such action would be inconsistent with the directors’ fiduciary duties under applicable Law, the Company may waive any such standstill provision solely to the extent necessary to permit a third party to make, on a confidential basis to the Company Board of Directors, a Company Takeover Proposal, conditioned upon such third party agreeing that the Company shall not be prohibited from providing any information to Parent (including regarding any such Company Takeover Proposal) in accordance with, and otherwise complying with, this Section 5.3. Except to the extent otherwise permitted by the proviso in the foregoing sentence, the Company shall, and shall cause its controlled Affiliates to, enforce the confidentiality and



standstill provisions of any such agreement, and the Company shall, and shall cause its controlled Affiliates to, immediately take all steps within their power necessary to terminate any waiver that may have been heretofore granted, to any person other than Parent or any of Parent's Affiliates, under any such provisions. The Company shall not (i) except as provided in Section 3.24, terminate (or permit the termination of), waive or amend the Rights Agreement, (ii) redeem any Rights under the Rights Agreement or (iii) take any action with respect to, or make any determination under, the Rights Agreement that would interfere with Parent consummating the transactions contemplated by this Agreement, in each case without the prior written consent of Parent.

Entity, gives the other parties the opportunity to attend and participate thereat. Without limiting the foregoing obligations (other than the fourth sentence of this Section 5.6(b)), each party shall, on a current basis, furnish the other parties with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and any such Governmental Entity with respect to this Agreement and the Merger, and furnish the other parties with such necessary information and reasonable assistance as the other parties may reasonably request in connection with its preparation of necessary filings or submissions of information to any such Governmental Entity; provided, however, that Parent and the Company may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 5.6(b) as "Antitrust Counsel Only Material." Such materials and the information contained therein shall be given only to the outside antitrust counsel of the recipient and will not be disclosed by such outside counsel to employees, officers or directors of the recipient unless express permission is obtained in advance from the source of the materials (Parent or the Company, as the case may be) or its legal counsel. Notwithstanding anything to the contrary contained in this Section 5.6, materials provided pursuant to this Section 5.6 may be redacted (i) to remove references concerning the valuation of the Company and the Merger or other similarly confidential information, (ii) as necessary to comply with contractual arrangements, and (iii) as necessary to address reasonable privilege concerns.

requested by Parent that are or may be customary in connection with the Financing or any Alternative Financing to fulfill conditions or obligations under the Commitment Letter; (vi) provide assistance in the preparation of (1) one or more confidential information memoranda, prospectuses, offering memoranda and other marketing and syndication materials reasonably requested by Parent or any of its Affiliates in connection with the Financing or any Alternative Financing and (2) customary pro forma financial statements reflecting the Merger and the Financing; (vii) assist Parent in ensuring that the syndication efforts benefit from the existing banking relationships of the Company and its Subsidiaries; (viii) permit the reasonable use by Parent and its Affiliates of the Company's and its Subsidiaries' logos for syndication and underwriting, as applicable, of the Financing, provided, that such logos are used solely in a manner that is not intended to nor reasonably likely to harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries and its or their marks; (ix) participate as necessary in a reasonable number of meetings, presentations, customary one-on-one sessions that are requested in advance and road shows with prospective lenders and investors and in drafting sessions and due diligence sessions, as applicable (including the reasonable participation in such meetings by the Company's senior management), in each case, in connection with the Financing or the Alternative Financing; (x) assist in preparing customary rating agency presentations and participating in a reasonable number of sessions with rating agencies in connection with the Financing; (xi) assist in the preparation and negotiation of any necessary pledge or security documents, other definitive financing documents, or other certificates or documents as may be reasonably requested by Parent in connection with the Financing or the Alternative Financing and otherwise facilitate the pledging of, and granting, recording and perfection of security interests in share certificates, securities and other collateral,

and obtaining surveys and title insurance as reasonably requested by Parent; (xii) provide authorization letters to the Financing Sources authorizing the distribution of Company information to prospective lenders containing a representation to the Financing Sources that the information provided by the Company for inclusion in the public side versions of such documents, if any, does not include material non-public information about the Company or its Subsidiaries or their respective securities; (xiii) take all actions reasonable necessary to (A) permit prospective financing providers to (i) evaluate the Company's and its Subsidiaries' current assets, cash management and accounting systems, policies and procedures relating thereto for the purpose of establishing collateral arrangements and (ii) conduct customary field examinations, inventory appraisals and, to the extent appropriate, appraisals of Company Owned Real Property and Company Leased Real Property, and (B) establish bank and other accounts and blocked account agreements and lockbox arrangements in connection with the foregoing; (xiv) as long as such information is requested by the Financing Sources in writing at least ten Business Days prior to the Closing Date, provide to the Financing Sources, at least four Business Days prior to the Closing Date, all documentation and other information required by regulatory authorities with respect to the Company under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act of 2001, as amended; and (xv) not commence or effect any offering, placement or arrangement of any debt securities or bank financing competing with the Financing (and not permit any such offering, placement or arrangements to occur on its behalf) (other than any indebtedness of the Company and its Subsidiaries permitted to be incurred or outstanding pursuant to the other provisions of this Agreement) if such issuance, offering, placement or arrangement would reasonably be expected to materially impair the syndication of the Financing or the offering of the securities

In connection with any Financing in the form of an underwritten offering of debt securities, the Company shall: (i) as soon as monthly information on the Company's financial performance becomes available to the Company's senior management following the end of any month, provide Parent with such information upon request by Parent (including providing Parent with the following financial metrics (the "Specified Metrics") for such month: (A) no later than five Business Days following the end of any month, comparable store sales, customer transactions and gross revenue and (B) no later than ten Business Days following the end of any month, gross margin); (ii) if so reasonably requested by Parent, authorize the use of such information on a confidential basis in connection with customary due diligence relating to the prospectus or offering memorandum for the Financing and conducting due diligence relating to such prospectus or offering memorandum; and (iii) permit the inclusion in the prospectus or offering memorandum for the Financing of disclosure reflecting such information in customary form for transactions similar to the offering, and provide certifications from an appropriate officer on behalf of the Company regarding the accuracy of such information in customary form for transactions similar to the offering, but only to the extent such inclusion (A) with respect to the Specified Metrics, is determined by Parent to be necessary or desirable in connection with the Financing; or (B) with respect to any other such information, (1) is necessary so that such document does not contain an untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or (2) is reasonably determined by Parent and the Company to be advisable for successful completion of the offering in light of market practice for transactions similar to the offering.

Section 5.14 Transaction Litigation. The Company shall, subject to the preservation of privilege and confidential information, give Parent the opportunity to participate in (but not control) the Company's defense or settlement of any stockholder litigation against the Company and/or its directors or executive officers relating to the transactions contemplated by this Agreement, including the Merger. The Company agrees that it shall not settle or offer to settle any litigation commenced prior to or after the date of this Agreement against the Company or its directors,

	<p>executive officers or similar persons by any stockholder of the Company relating to this Agreement, the Merger, or any other transaction contemplated hereby without the prior written consent of Parent (which shall not be unreasonably withheld, conditioned or delayed).</p> <p>“Acceptable Confidentiality Agreement” means any customary confidentiality agreement that contains provisions that are no less favorable to the Company than those applicable to Parent that are contained in the Confidentiality Agreement (including standstill restrictions).</p> <p>patents and patent applications, including continuations, divisionals, continuations-in-part, reissues or reexaminations and patents issuing thereon (collectively, “Patents”), (B) trademarks, service marks, trade dress, logos, corporate names, trade names and Internet domain names, together with the goodwill associated with any of the foregoing, and all applications and registrations therefor (collectively, “Marks”), (C) copyrights (including such rights in software) and registrations and applications therefor, works of authorship and moral rights (collectively, “Copyrights”), and (D) trade secrets and other proprietary and confidential information, including know-how, inventions (whether or not patentable), processes, technical data and designs, in each case excluding any rights in respect of any of the foregoing that comprise or are protected by Patents (collectively, “Trade Secrets”).</p>
Applicable law and dispute resolution	<p>The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. Each of the Company’s Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. Each of the Company and its Subsidiaries is duly qualified or licensed, and has all necessary governmental approvals, to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such approvals, qualification or licensing necessary, except where the failure to be so duly approved, qualified or licensed and in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.</p> <p>None of the Company or its Subsidiaries, or to the Company’s knowledge, any director, officer, employee or agent of the Company or any of its Subsidiaries has, directly or indirectly, (i) used any funds of the Company or any of its Subsidiaries for material unlawful contributions, material unlawful gifts, material unlawful entertainment or other material unlawful expenses relating to political activity; (ii) made any material unlawful payment to foreign or domestic governmental officials or employees or to foreign or domestic political parties or campaigns from funds of the Company or any of its Subsidiaries; (iii) violated or is in violation of the Foreign Corrupt Practices Act of 1977, as amended, or is in material violation of any similar Law; (iv) established or maintained any material unlawful fund of monies or other assets of the Company or any of its Subsidiaries; (v) made any material fraudulent entry on the books or records of the Company or any of its Subsidiaries; or (vi) made any material unlawful bribe, material unlawful kickback or other material unlawful payment to any person, private or public, regardless of form, whether in money, property or services, to obtain favorable treatment in securing business to obtain special concessions for the Company or any of its Subsidiaries.</p> <p>None of the Company or any of its Subsidiaries has been a “controlled corporation” or a “distributing corporation” in any distribution that was purported or intended to be governed by Section 355 of the Code (or any similar provision of state, local or foreign Law) occurring during the two-year period ending on the date hereof.</p> <p>Entity that, individually or in the aggregate, would be material to the Company and its Subsidiaries, taken as a whole. Since August 27, 2011, the Company has not received any written notice or, to the Company’s knowledge, other communication from the Consumer Product Safety</p>

Commission or any other Governmental Entity of any actual or alleged violation of any applicable Law governing product recalls, product safety, product defects, or the content of product materials or packaging and labeling of products that, individually or in the aggregate, would be material to the Company and its Subsidiaries, taken as a whole.

Each of Parent and Merger Sub is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Virginia and Delaware, respectively, and has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. Each of Parent's Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. Each of Parent and its Subsidiaries is duly qualified or licensed, and has all necessary governmental approvals, to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such approvals, qualification or licensing necessary, except where the failure to be so duly approved, qualified or licensed and in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent.

None of Parent or its Subsidiaries, or to the Parent's knowledge, any director, officer, employee or agent of Parent or any of its Subsidiaries has, directly or indirectly, (i) used any funds of Parent or any of its Subsidiaries for material unlawful contributions, material unlawful gifts, material unlawful entertainment or other material unlawful expenses relating to political activity; (ii) made any material unlawful payment to foreign or domestic governmental officials or employees or to foreign or domestic political parties or campaigns from funds of Parent or any of its Subsidiaries; (iii) violated or is in violation of the Foreign Corrupt Practices Act of 1977, as amended, or is in material violation of any similar Law;

For purposes of furthering the transactions contemplated hereby, the Company shall afford Parent and its employees, accountants, consultants, legal counsel, financial advisors, financing sources and agents and other representatives reasonable access during normal business hours upon reasonable advance notice to the Company, throughout the period prior to the Effective Time, to its and its Subsidiaries' personnel, properties, contracts, commitments, books and records and any report, schedule or other document filed or received by it pursuant to the requirements of applicable Laws and, during such period, the Company shall, and shall cause its Subsidiaries to, without limitation to the preceding obligations, make available to the other party (i) a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of federal securities laws (other than reports or documents that such party is not permitted to disclose under applicable Law), (ii) a copy of all correspondence between such party or any of its Subsidiaries and any party to a Contract with regard to any action, consent, approval or waiver that is required to be taken or obtained with respect to such Contract in connection with the consummation of the Merger or the other transactions contemplated by this Agreement and (iii) all other information concerning its business, properties and personnel as Parent may reasonably request; provided, however, until the condition in Section 6.1(e) is satisfied, the Clean Team Confidentiality Agreement between the Company and Parent, dated as of June 26, 2014 (the "Clean Team Confidentiality Agreement") shall govern access to "Highly Confidential Information" as defined therein. Notwithstanding anything to the contrary contained in this Section 5.2(a), any document, correspondence or information provided pursuant to this Section 5.2(a) may be redacted to remove references concerning the valuation of the Company and the Merger or other similarly confidential information. All access pursuant to this Section 5.2(a) shall be (A) conducted in such a manner as not to interfere unreasonably with the normal operations of the Company or any of its Subsidiaries and (B) coordinated through the General Counsel of the Company or a designee

thereof.

provided, however, that until the condition in Section 6.1(e) is satisfied, the Clean Team Confidentiality Agreement shall govern access to “Highly Confidential Information” as defined therein. Notwithstanding anything to the contrary contained in this Section 5.2(b), any document, correspondence or information provided pursuant to this Section 5.2(b) may be redacted to remove references concerning the valuation of the Company and the Merger or other similarly confidential information. All access pursuant to this Section 5.2(b) shall be (A) conducted in such a manner as not to interfere unreasonably with the normal operations of Parent or any of its Subsidiaries and (B) coordinated through the General Counsel of Parent or a designee thereof.

The parties hereto hereby agree that all information provided to them or their respective officers, directors, employees or representatives in connection with this Agreement and the consummation of the transactions contemplated hereby shall be governed in accordance with the confidentiality agreement, dated as of April 7, 2014, between the Company and Parent (the “Confidentiality Agreement”), which shall continue in full force and effect in accordance with its terms.

**Section 8.4 Governing Law.** This Agreement, and all claims or causes of action (whether at Law, in contract or in tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance hereof, shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

“Governmental Entity” means any federal, state, local or foreign government, any transnational governmental organization or any court of competent jurisdiction, arbitral, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, or any national securities exchange or national quotation system or any SRO.

**Section 3.17 Insurance.** The Company and its Subsidiaries maintain insurance in such amounts and against such risks in all material respects as is customary for the industries in which it and its Subsidiaries operate and as the management of the Company has in good faith determined to be adequate. All material insurance policies maintained by or on behalf of the Company or any of its Subsidiaries as of the date of this Agreement are in full force and effect, all premiums and other payments due on such policies have been paid by the Company or its Subsidiaries and all claims thereunder have been filed in due and timely fashion, except as would not reasonably be expected, individually or in the aggregate, to be material to the Company and its Subsidiaries, taken as a whole. The Company and its Subsidiaries are in compliance in all material respects with the terms and provisions of all material insurance policies maintained by or on behalf of the Company or any of its Subsidiaries as of the date of this Agreement, and neither the Company nor any of its Subsidiaries is in breach or default under, or has taken any action that could permit termination or material modification of, any material insurance policies. To the Company’s knowledge, as of the date of this Agreement, (i) there is no threatened termination of, or threatened material premium increase with respect to, any of such material policies other than increases in connection with the Company’s annual renewal process and (ii) there is no material claim pending regarding the Company or any of its Subsidiaries under any of such material policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies.

Neither the Company nor any Subsidiary of the Company is in breach of or default in any respect under the terms of any Company Material Contract and, to the knowledge of the Company, no other party to any Company Material Contract is in breach of or default in any respect under the terms of any Company Material Contract and no event has occurred or not occurred through the Company’s or any of its Subsidiaries’ action or inaction or, to the Company’s knowledge, through the action or inaction of any third party, that with notice or the lapse of time or both would constitute a breach of or default under the terms of any Company Material Contract, in

	<p>each case except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. To the knowledge of the Company, each Company Material Contract (i) is a valid and binding obligation of the Company or the Subsidiary of the Company that is party thereto and of each other party thereto, and (ii) is in full force and effect, subject to the Enforceability Exceptions. There are no disputes pending or, to the Company's knowledge, threatened with respect to any Company Material Contract and neither the Company nor any of its Subsidiaries has received any written notice of the intention of any other party to a Company Material Contract to terminate for default, convenience or otherwise any Company Material Contract, nor to the Company's knowledge, is any such party threatening to do so, in each case except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.</p> <p>"Liability" means any and all debts, liabilities and obligations, whether fixed, contingent or absolute, matured or unmatured, accrued or not accrued, determined or determinable, secured or unsecured, disputed or undisputed, subordinated or unsubordinated, or otherwise.</p>
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