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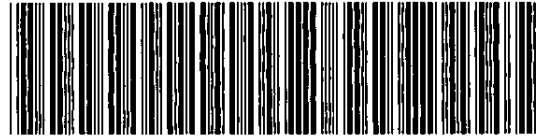
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CORPORATION SERVICE COMPANY

ACCOUNT NO. : I20000000195

REFERENCE : 622731 7273787

AUTHORIZATION :

*[Handwritten signature]*

COST LIMIT : \$ 70.00

ORDER DATE : April 24, 2013

ORDER TIME : 8:44 AM

ORDER NO. : 622731-005

CUSTOMER NO: 7273787

ARTICLES OF MERGER

CHASIN MUSIC GROUP INC.

INTO

GIGIT CORP.

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

       CERTIFIED COPY  
XX        PLAIN STAMPED COPY

CONTACT PERSON: Susie Knight

EXAMINER'S INITIALS: \_\_\_\_\_

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**ARTICLES OF MERGER**  
(Profit Corporations)

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, Florida Statutes.

First: The name and jurisdiction of the surviving corporation:

Name	Jurisdiction	Document Number (If known/applicable)
Gigit Corp.	Delaware	

Second: The name and jurisdiction of each merging corporation:

Name	Jurisdiction	Document Number (If known/applicable)
Chasin Music Group Inc.	Florida	

Third: The Plan of Merger is attached.

Fourth: The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State.

OR : I (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days after merger file date.)

Fifth: Adoption of Merger by surviving corporation - (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the surviving corporation on April 10, 2013

The Plan of Merger was adopted by the board of directors of the surviving corporation on  
and shareholder approval was not required.

Sixth: Adoption of Merger by merging corporation(s) (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the merging corporation(s) on April 18, 2013

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on  
and shareholder approval was not required.

(Attach additional sheets if necessary)

Typed or Printed Name of Individual & Title

John F. Acunto Jr., President

John F. Acunto Jr., President

**AGREEMENT AND PLAN OF MERGER**

**Among**

**212 DB CORP.**

**GIGIT CORP.**

**And**

**CHASIN MUSIC GROUP, INC.**

**Dated as of April 18, 2013**

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## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of April 18, 2013 (this "Agreement"), among 212 DB CORP, a Delaware corporation ("Parent"), GIGIT CORP, a Delaware corporation and a direct wholly-owned subsidiary of Parent ("Merger Sub"), and CHASIN MUSIC GROUP, INC., a Florida corporation (the "Company").

WHEREAS, the parties intend that the Company be merged with and into the Merger Sub (the "Merger") with the Merger Sub surviving the Merger on the terms and subject to the conditions set forth in this Agreement;

WHEREAS the Board of Directors of the Company has (i) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement, (ii) approved this Agreement in accordance with the Business Corporation Act of the State of Florida (the "FBCA"), and (iii) resolved to recommend the adoption of this Agreement by the stockholders of the Company; and

WHEREAS, the Board of Directors of Parent and the Board of Directors of Merger Sub have each approved in accordance with the General Corporation Law of the State of Delaware (the "DGCL"), and the Board of Directors of Merger Sub has declared it advisable for Merger Sub to enter into, this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, and intending to be legally bound hereby, Parent, Merger Sub and the Company hereby agree as follows:

### ARTICLE I - MERGER

**Section 1.1 The Merger.** Upon the terms and subject to the conditions of this Agreement and in accordance with the FBCA and the DGCL, at the Effective Time (as defined in Section 1.2(b)), the Company shall be merged with and into the Merger Sub. As a result of the Merger, the separate corporate existence of the Company shall cease and the Merger Sub shall continue as the surviving corporation of the Merger (the "Surviving Corporation") and a wholly owned subsidiary of Parent.

#### **Section 1.2 Closing: Effective Time.**

(a) The closing of the Merger (the "Closing") shall take place at the offices of Beckman, Lieberman & Barandes, LLP as soon as practicable, but in no event later than the second business day after the satisfaction or waiver of the conditions set forth in Article VII (excluding conditions that, by their terms, cannot be satisfied until the Closing, but subject to the satisfaction or waiver of such conditions). The date on which the Closing actually occurs is hereinafter referred to as the "Closing Date".

(b) At the Closing, the parties hereto shall cause the Merger to be consummated by filing a certificate of merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware, in such form as required by, and executed and filed in accordance with, the relevant provisions of the DGCL (the date and time of the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, or such later time as is specified in the Certificate of Merger and as is agreed to by the parties hereto, being hereinafter referred to as the "Effective Time") and articles of merger with the Secretary of State of the State of Florida, in such form as required by, and executed and filed in accordance with, the relevant provisions of the FBCA, and shall make all other filings or recordings required under the FBCA and the DGCL in connection with the Merger.

**Section 1.3 Effects of the Merger.** The Merger shall have the effects set forth in this Agreement and the applicable provisions of the GGCL and DGCL. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

**Section 1.4 Certificate of Incorporation; By-laws.**

(a) At the Effective Time, the certificate of incorporation of the Merger Sub, a copy of which has been provided to the Company, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with its terms and as provided by law, in each case consistent with the obligations set forth in Section 6.7.

(b) At the Effective Time, and without any further action on the part of the Company and Merger Sub, the by-laws of the Merger Sub, a copy of which has been provided to the Company, shall be the by-laws of the Surviving Corporation until thereafter amended in accordance with their terms, the certificate of incorporation of the Surviving Corporation and as provided by law, in each case consistent with the obligations set forth in Section 6.7.

**Section 1.5 Directors and Officers.** The directors of the Company immediately prior to the Effective Time shall submit their resignations to be effective as of the Effective Time. Immediately after the Effective Time, Parent shall take the necessary action to cause the directors of Merger Sub immediately prior to the Effective Time to be the directors of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and by-laws of the Surviving Corporation. The officers of the Merger Sub immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, each to hold office until the earlier of their death, resignation or removal.

**ARTICLE II - EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE  
CONSTITUENT CORPORATIONS**

**Section 2.1 Effect on Capital Stock.** At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Parent, Merger Sub or the holders of any of

the following securities:

(a) Conversion of Common Stock. Each share of Common Stock of the Company issued and outstanding immediately prior to the Effective Time (each, a "Common Share") other than any Dissenting Shares (as defined in Section 2.1(c)), shall be converted into 0.6997 shares of the common stock of Parent (the "Merger Consideration"), with the Merger Consideration delivered to all holders other than John Acunto consisting of shares of Class C common stock of Parent and the Merger Consideration being delivered to John Acunto, consisting of Class B shares of common stock of the Parent, delivered to the holder thereof upon surrender of such Common Shares in the manner provided in Section 2.3.

(b) Conversion of Merger Sub Common Stock. Each share of capital stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

(c) Shares of Dissenting Stockholders. Notwithstanding anything in this Agreement to the contrary, any Common Shares which are issued and outstanding immediately prior to the Effective Time and are held by a person (a "Dissenting Stockholder") who has not voted in favor of or consented to the adoption of this Agreement and has complied with all the provisions of Section 1323 of the FBCA concerning the right of holders of Common Shares to require appraisal of their Common Shares ("Dissenting Shares") shall not be converted into the right to receive the Merger Consideration, and the holders of such Dissenting Shares shall be entitled to receive payment of the fair value of such Dissenting Shares in accordance with the provisions of Section 1323 of the FBCA; *provided, however*, that if such Dissenting Stockholder withdraws its demand for appraisal or fails to perfect or otherwise waives, withdraws or loses its right of appraisal, in any case pursuant to Section 1323 of the FBCA, its Common Shares shall be deemed to be converted as of the Effective Time into the right to receive the Merger Consideration for each such Common Share in accordance with the provisions of this Agreement. At the Effective Time, any holder of Dissenting Shares shall cease to have any rights with respect thereto, except the rights set forth in Section 1323 of the FBCA and as provided in the previous sentence. The Company shall give Parent prompt notice of any demands for appraisal of Common Shares received by the Company, withdrawals of such demands and any other instruments served pursuant to Section 1323 of the FBCA and shall give Parent the opportunity to direct all negotiations and proceedings with respect thereto. The Company shall not, except with the prior written consent of Parent or as otherwise required by applicable law, make any payment with respect to any such exercise of appraisal rights or offer to settle any such rights.

## **Section 2.2 Surrender of Shares.**

(a) Promptly after the Effective Time (and in any event within fourteen (14) business days thereafter), the Surviving Corporation shall cause to be mailed to each record holder, as of the Effective Time, of (i) an outstanding certificate or certificates which immediately prior to the Effective Time represented Common Shares (the "Certificates") or (ii) Common Shares represented by book entry ("Book-Entry Shares") a form of letter of transmittal (which shall be

in customary form and shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Surviving Corporation or, in the case of Book-Entry Shares, upon adherence to the procedures set forth in the letter of transmittal) and instructions for use in effecting the surrender of the Certificates, or in the case of Book-Entry Shares the surrender of such Shares, for delivery of the Merger Consideration therefor. Upon surrender of a Certificate or of Book-Entry Shares, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may be required pursuant to such instructions, the holder of such Certificate or Book-Entry Shares shall be entitled to receive in exchange therefor the Merger Consideration for each Common Share formerly represented by such Certificate or Book-Entry Shares and such Certificate or book-entry shall then be canceled.

(b) After the Effective Time, the stock transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers of Common Shares that were outstanding prior to the Effective Time. After the Effective Time, Certificates or Book-Entry Shares presented to the Surviving Corporation for transfer shall be canceled and exchanged for the consideration provided for, and in accordance with the procedures set forth in, this Article II.

(c) In the event that any Certificate shall have been lost, stolen or destroyed, upon the holder's compliance with the reasonable replacement requirements established by the Surviving Corporation, including, if necessary, the posting by the holder of a bond in customary amount as indemnity against any claim that may be made against it with respect to the Certificate, the Surviving Corporation will deliver in exchange for the lost, stolen or destroyed Certificate the Merger Consideration payable in respect of the Common Shares formerly represented by such Certificate pursuant to this Article II.

(g) No dividends or other distributions with respect to capital stock of the Surviving Corporation with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificates or Book-Entry Shares.

(h) Notwithstanding anything herein to the contrary, none of the Company, Parent, Merger Sub, the Surviving Corporation or any other person (as defined in Section 9.13 (a)) shall be liable to any former holder of Shares for any amount properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. If any Certificate or Book-Entry Shares shall not have been surrendered prior to such date on which any Merger Consideration payable to the holder of such Certificate or Book-Entry Share pursuant to this Article II would otherwise escheat to or become the property of any Governmental Entity, any such Merger Consideration in respect of such Certificate or Book-Entry Share shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, and any former holder of Shares who has not theretofore complied with this Article II shall thereafter look only to the Surviving Corporation for payment of their claim for Merger Consideration.

**Section 2.4 Adjustments.** Without limiting the other provisions of this Agreement, if at any time during the period between the date of this Agreement and the Effective Time, any change in the number of outstanding Common Shares (or securities convertible or exchangeable into or exercisable for Common Shares) shall occur as a result of a reclassification,

recapitalization, stock split (including a reverse stock split), or combination, exchange or readjustment of shares, merger or any stock dividend or stock distribution with a record date during such period, the Merger Consideration shall be correspondingly adjusted to reflect such change.

### **ARTICLE III - REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company hereby represents and warrants to Parent and Merger Sub that, except as set forth on the disclosure schedule delivered by the Company to Parent and Merger Sub prior to the execution of this Agreement (the "Company Disclosure Schedule"), it being agreed that disclosure of any item in any section of the Company Disclosure Schedule shall also be deemed disclosure with respect to any other section of this Agreement to which the relevance of such item is reasonably apparent:

**Section 3.1 Organization and Qualification: Subsidiaries.** The Company is duly organized, validly existing and in good standing (with respect to jurisdictions that recognize the concept of good standing) under the laws of the jurisdiction of its organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted, except where any such failure to be so organized, existing or in good standing or to have such power or authority would not have a Material Adverse Effect (as defined in this Section 3.1). The Company is duly qualified or licensed to do business in each jurisdiction where the character of its properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except for any such failure to be so qualified or licensed which would not have a Material Adverse Effect. The Company has no subsidiaries.

- (a) "Material Adverse Effect" means any fact, circumstance, event, change, effect or occurrence that, individually or in the aggregate with all other facts, circumstances, events, changes, effects, or occurrences, (a) has or would be reasonably expected to have a material adverse effect on or with respect to the business, operations or financial condition of the Company or (b) would prevent, materially delay or materially impede the ability of the Company to consummate the Merger, *provided, however*, that, in the case of (a) only, a Material Adverse Effect shall not include facts, circumstances, events, changes, effects or occurrences (i) generally affecting the economy or the financial debt, credit or securities markets in the United States or elsewhere, including as a result of changes in geopolitical conditions, (ii) generally affecting any of the industries in which the Company operates, (iii) resulting from the announcement of this Agreement and the transactions contemplated hereby, including any stockholder litigation relating thereto or including any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, partners or employees of the Company due to the announcement and performance of this Agreement or the identity of the parties to this Agreement, or the performance of this Agreement and the transactions contemplated hereby, including compliance with the covenants set forth herein, (iv) resulting from any actions expressly required under this Agreement to obtain any approval or authorization from any Governmental Entity (v) resulting from any actions expressly

required under this Agreement to obtain any approval or authorization under applicable antitrust or competition laws for the consummation of the Merger, (vi) resulting from changes after the date hereof in any applicable laws or applicable accounting regulations or principles or interpretations thereof, *provided* that in the case of this clause (vi) such changes shall not be excluded to the extent that such changes have a materially disproportionate effect on the Company compared with other companies operating in any of the principal industries in which the Company operates, (vii) resulting from any outbreak or escalation of hostilities or war or any act of terrorism, or (viii) resulting from actions of the Company which Parent has expressly requested in writing or to which Parent has expressly consented in writing (it being understood that the facts or occurrences giving rise or contributing to any such failure that are not otherwise excluded from the definition of a "Material Adverse Effect" may be taken into account in determining whether there has been a Material Adverse Effect).

**Section 3.2 Certificate of Incorporation and By-Laws.** The Company has heretofore furnished or otherwise made available to Parent a complete and correct copy of the certificate of incorporation, as amended and restated to date (the "Certificate of Incorporation"), and the by-laws, as amended to date (the "By-Laws"), of the Company as currently in effect. The Certificate of Incorporation of the Company and the By-Laws are in full force and effect, and no other organizational documents are applicable to or binding upon the Company.

**Section 3.3 Capitalization.**

(a) The authorized capital stock of the Company consists of 62,000,000 shares of common stock, par value \$.0001 per share, of which 4,500,000 shares are Class A Common Stock, 7,500,000 are Class B Common Stock and 50,000,000 are Class C Common Stock (collectively, the "Common Stock").

(b) As of the date of this Agreement (the "Capitalization Date"):

- (i) 26,981,550 shares of Common Stock were issued and outstanding; and
- (ii) no shares of Common Stock were held by the Company in its treasury.

(c) In accordance with their terms except as set forth in Section 3.3(a), as of the date of this Agreement:

- (i) there are not outstanding or authorized any (A) shares of capital stock or other voting securities of the Company, (B) securities of the Company convertible into or exchangeable for shares of capital stock or voting securities of the Company or (C) options, warrants or other rights to acquire from the Company, and no obligation of the Company to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of the Company (collectively, "Company Securities"),

- (ii) there are no outstanding obligations of the Company to repurchase, redeem or otherwise acquire any Company Securities, and
- (iii) there are no other options, calls, warrants or other rights, agreements, arrangements or commitments of any character relating to the issued or unissued capital stock of the Company to which the Company is a party.
- (iv) All outstanding Common Shares, and all shares of Common Stock reserved for issuance as noted in Section 3.3(a) if any, when issued in accordance with the respective terms thereof, are or will be duly authorized, validly issued, fully paid and non-assessable and free of any pre-emptive or similar right, purchase option, call or right of first refusal or similar right.
- (v) The Company is not a party to any voting Contract with respect to the voting of any Company Securities. There are no bonds, debentures, notes or other indebtedness of the Company with voting rights (or convertible into, or exchangeable for, securities with voting rights) on any matters on which stockholders of the Company may vote.

#### **Section 3.4 Authority.**

- (a) The Company has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.
- (b) The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the transactions so contemplated (other than receipt of the Company Requisite Vote (as defined herein) and the filing with the Secretary of State of the State of Delaware of the Certificate of Merger (as required by the DGCL) and such filings as are required by the FBCA.
- (c) This Agreement has been duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery hereof by the other parties thereto, constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and any implied covenant of good faith and fair dealing.

- (d) The Board of Directors of the Company has, by resolutions duly adopted at a meeting duly called and held, (a) approved, and declared advisable, this Agreement, (b) determined that the terms of this Agreement are fair to, and in the best interests of, the Company and its stockholders, (c) directed that the Company submit the adoption of this Agreement to a vote at a meeting of the stockholders of the Company as promptly as practicable, (d) recommended that the stockholders of the Company adopt this Agreement at the Stockholders Meeting, and (e) approved this Agreement, the Merger and the other transactions contemplated hereby for purposes of Section 607.0901 of the FBCA pursuant to Section 607.1103 of the FBCA such that the restrictions on business combinations with interested stockholders set forth therein are not applicable to this Agreement. the Merger or the other transactions contemplated hereby, which resolutions have not, subject (in the case of clauses (a), (b) and (d)) to Sections 6.1 and 6.5, been subsequently rescinded, modified or withdrawn in any way.

### **Section 3.5 No Conflict; Required Filings and Consents.**

(a) The execution, delivery and performance of this Agreement by the Company do not and will not, and the consummation by the Company of the Merger and the other transactions contemplated by this Agreement and compliance by the Company with the provisions of this Agreement will not,

- (i) conflict with or violate the Certificate of Incorporation or By-Laws of the Company,
- (ii) conflict with or violate the certificates of incorporation or by-laws of its subsidiaries (or any comparable organizational documents),
- (iii) assuming that all approvals and authorizations contemplated by clauses (i) through (v) of subsection (b) below have been obtained, and all filings described in such clauses have been made, conflict with or violate any law applicable to the Company or any of its subsidiaries or by which its or any of their respective properties are bound ,or
- (iv) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both would become a default) or result in the loss of a benefit under, or give rise to any right of termination, cancellation, amendment or acceleration of, or any other adverse change to, any note, bond, mortgage, franchise, indenture, contract, agreement, lease, license, permit or other instrument or obligation (each, a "Contract") to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries or its or any of its subsidiaries' respective properties are bound, except, in the case of clauses (ii), (iii) and (iv), for any such conflict, violation, breach, default, loss, right or other occurrence which would not have a Material Adverse Effect.

(b) The execution, delivery and performance of this Agreement by the Company and the consummation of the Merger by the Company do not and will not require any consent,



approval, authorization or permit of, action by, filing with or notification to, any governmental or regulatory (including stock exchange) authority, agency, court, commission, tribunal or other governmental body whether U.S. (federal, state or local), foreign or multinational on the part of the Company (each, a "Governmental Entity"), except for

- (i) applicable requirements of the Securities Act of 1933, as amended (the "Securities Act"), of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations promulgated thereunder and state securities, takeover and "blue sky" laws,
- (ii) any applicable requirements of Law in foreign jurisdictions governing antitrust or merger control matters,
- (iii) the filing with the Secretary of State of the State of Delaware of the Certificate of Merger as required by the DGCL,
- (iv) filing of articles of merger with the Secretary of State of Florida as required by Section 607.1109 of the FGCL, and
- (v) other consents, approvals, authorizations, permits, actions, filings or notification, the failure of which to make or obtain would not (A) prevent or materially delay the Company from performing its obligations under this Agreement in any material respect or (B) have a Material Adverse Effect.

### **Section 3.6 Compliance.**

(a) The Company is not in violation of any federal, state, provincial, local or foreign law, rule, regulation, order, judgment or decree ("Law") applicable to the Company or any of its subsidiaries or by which its or any of their respective properties are bound, except for any such violation which would not have a Material Adverse Effect, and

(b) The Company has all permits, licenses, authorizations, exemptions, orders, consents, approvals and franchises ("Licenses") from Governmental Entities required to conduct its businesses as now being conducted, except for any such Licenses the absence of which would not have a Material Adverse Effect. The Company has not received notice of any revocation or modification from any Governmental Entity of any License that is material to the Company.

### **Section 3.7 Financial Statements: Undisclosed Liabilities.**

(a) The Company prepared financial statements of the Company (including any related notes thereto) for the fiscal year ended December 31, 2012 have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company at the respective dates thereof and the consolidated statements of operations, cash flows and changes in shareholders' equity for the periods indicated. The unaudited condensed financial statements of the Company (including any related notes thereto) for all interim periods have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period involved (except as may be indicated in the notes thereto) and fairly

present in all material respects (i) the condensed financial position of the Company as of the respective dates thereof and (ii) the results of operations and cash flows for the periods indicated (subject to normal and recurring period-end adjustments that have not been and are not expected to be material to the Company).

(b) Except (i) as reflected, accrued or reserved against in such financial statements (or as disclosed in the notes thereto); (ii) for liabilities or obligations incurred in the ordinary course of business consistent with past practice since December 31, 2012; (iii) for liabilities or obligations which have been discharged or paid in full prior to the date of this Agreement and (iv) for liabilities or obligations incurred pursuant to the transactions contemplated by this Agreement, the Company has no liabilities, commitments or obligations, asserted or unasserted, known or unknown, absolute or contingent, whether or not accrued, matured or un-matured or otherwise, of a nature required by generally accepted accounting principles to be reflected in a balance sheet or disclosed in the notes thereto, other than those which have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. For the avoidance of doubt, for purposes of this Section 3.7, the term "liabilities" shall not include obligations of the Company to perform under or comply with any Law, action, judgment or contract (in each case, other than an obligation to pay money) but would include such obligation if there has been a default or failure to perform or comply by the Company with any such obligation if such default or failure would, with the giving of notice or passage of time or both, reasonably be expected to result in a monetary obligation.

(d) The Company is not a party to, nor has any commitment to become a party to, any Contract or arrangement (including any Contract or arrangement relating to any transaction or relationship between or among the Company on the one hand, and any affiliate, including any structured finance, special purpose or limited purpose entity or person, on the other hand), where the purpose or intended effect of such Contract or arrangement is to avoid disclosure in the Company's financial statements of any material transaction involving, or material liabilities of, the Company

(c) The books and records of the Company are being maintained in all material respects in accordance with applicable legal and accounting requirements, are complete and correct in all material respects and fairly reflect in all material respects all of the material transactions, items of income and expense and all assets and liabilities of the business of the Company.

### **Section 3.8 Absence of Certain Changes or Events.**

(a) Since December 31, 2012 through the date of this Agreement, except as expressly contemplated by this Agreement, (i) the Company has conducted its business in all material respects in the ordinary course consistent with past practice, and (ii) the Company has not taken any of the actions, which if taken after the date hereof, would have required the consent of Parent pursuant to clauses (ii), (iii), (v), (xi), (xii) or (xiii) of Section 5.1(b) (but only in respect of the foregoing subsections), and

(b) Since December 31, 2012, there has not been any change, event or occurrence

which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.

**Section 3.9 Absence of Litigation.** Except as set forth in Section 3.9 of the Company Disclosure Statement, there are no suits, claims, actions, proceedings, arbitrations, mediations or investigations pending or, to the knowledge of the Company, threatened against the Company other than any such suit, claim, action, proceeding, arbitration, mediation or investigation that would not have a Material Adverse Effect. Neither the Company nor any of its respective properties is or are subject to any order, writ, judgment, injunction, decree or award except for those that would not have a Material Adverse Effect.

### **Section 3.10 Employee Benefit Plans.**

The Company has no Company Plan(s). For purposes of this Agreement, the term "Company Plan" shall mean (i) any "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), but excluding any plan that is a "multiemployer plan," as defined in Section 3(37) of ERISA ("Multiemployer Plan")), (ii) each plan, agreement or arrangement providing for the issuance, award or payment of equity, performance, bonus, retention, change in control, severance or similar compensation or benefits and (iii) each other material benefit or compensation plan, program, agreement or arrangement, vacation or sick pay policy and fringe benefit plan, in each case that is contributed to, sponsored or maintained by the Company for the benefit of any current, former or retired employee, officer, consultant, independent contractor or director of the Company (collectively, the "Company Employees").

### **Section 3.11 Labor and Employment Matters.**

(a) As of the date of this Agreement, (i) the Company is not a party to any collective bargaining agreement with any labor organization or other representative of any Company Employees, nor is any such agreement presently being negotiated by the Company (ii) Company has not recognized any labor organization, nor has any labor organization been elected or certified as the collective bargaining agent of any Company Employees, (iii) no labor organization has advised the Company that such labor organization represents any Company Employees, and no Company Employees are represented in their capacity as an employee by any labor organization, (iv) no written demand for recognition has been made by any labor organization concerning any Company Employees, and (v) the National Labor Relations Board (the "NLRB") has not advised the Company that any labor organization has filed a petition with the NLRB seeking to represent any Company Employees, and, to the knowledge of the Company, no petition concerning representation has been filed with the NLRB concerning any Company Employees.

(b) Except as would not have a Material Adverse Effect, there are no unfair labor practice charges or complaints pending against the Company before the NLRB or any other labor relations tribunal or authority. There are no strikes, work stoppages, slowdowns or lockouts pending or, to the knowledge of the Company, threatened against the Company or its subsidiaries, and, except as would not have a Material Adverse Effect, there are no arbitrations or

material grievances, or other labor disputes pending or, to the knowledge of the Company, threatened in writing against or involving the Company.

**Section 3.12 Insurance.** Except as would not have a Material Adverse Effect, (a) all material insurance policies of the Company are in full force and effect and provide insurance in such amounts and against such risks as the management of the Company reasonably has determined to be prudent, taking into account the market conditions and industries in which the Company operates and is sufficient to comply with applicable law; (b) with respect to all material insurance policies of the Company all premiums have been paid and the Company is not in breach or default, and the Company has not taken any action or failed to take any action which, with notice or the lapse of time, would constitute such a breach or default, or permit termination or modification of, any of such insurance policies; and (c) with respect to all material insurance policies of the Company, no notice of cancellation or termination has been received with respect to any such policies, other than such notices which are received in the ordinary course of business.

**Section 3.13 Properties.**

(a) Except as would not have a Material Adverse Effect, the Company has good title to all the properties and assets reflected in the latest balance sheet as being owned by the Company or acquired after the date thereof that are material to the Company's business (except properties sold or otherwise disposed of since the date thereof in the ordinary course of business consistent with past practice), free and clear of all claims, liens, charges, security interests or encumbrances of any nature whatsoever, except (A) statutory liens securing payments not yet due, (B) such imperfections or irregularities of title, claims, liens, charges, security interests, easements, covenants and other restrictions or encumbrances as do not materially affect the use of the properties or assets subject thereto or affected thereby or otherwise materially impair business operations at such properties and (C) mortgages, or deeds of trust, security interests or other encumbrances on title related to indebtedness reflected on the consolidated financial statements of the Company (the items set forth in clauses (A), (B) and (C) collectively being referred to herein as "Permitted Encumbrances").

(b) Except as would not have a Material Adverse Effect: (i) each lease or license pursuant to which the Company leases or licenses any real property (the "Leases") is valid and binding on the Company and, to the knowledge of the Company, each other party thereto and is in full force and effect; (ii) there is no breach or default under any Lease by the Company or, to the knowledge of the Company, any other party thereto; (iii) no event has occurred that with or without the lapse of time or the giving of notice or both would constitute a breach or default under any Lease by the Company or, to the knowledge of the Company, any other party thereto; and (iv) the Company is either the tenant or licensee named under the Lease has a good and valid leasehold interest in each parcel of real property which is subject to a Lease and is in possession of the properties purported to be leased or licensed thereunder.

(c) The Company does not own any real property.

**Section 3.14 Tax Matters.**

(a) Except as would not have a Material Adverse Effect, (i) all Tax Returns required to be filed by the Company have been properly and timely filed (except those under valid extension) and all such Tax Returns are true and accurate, (ii) all Taxes shown to be due on such Tax Returns have been timely paid, and all other Taxes which are due and payable with respect to the Company and its businesses have been paid or otherwise properly accrued as a liability in the Company's financial statements, (iii) the Company has not received written notice of any claim or proposed assessment or reassessment with respect to, any Taxes, (iv) there are no liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of the Company, (v) the Company (A) has not been a member of an affiliated group filing a consolidated federal income tax return (other than a group the common parent of which was the Company), (B) has no liability for the Taxes of any person (other than the Company,) under Treasury regulation section 1.1502-6 (or any similar provision of state, local or foreign law) as a transferee or successor, by contract or otherwise, or (C) is not a party to or is bound by any Tax sharing, allocation or indemnification agreement or arrangement and (vi) without limiting the foregoing, the Company has (x) collected all Taxes it is required to collect under applicable law and has remitted or is holding and will remit on a timely basis all such Taxes that become due and payable, to the appropriate Governmental Entity and (y) properly withheld and remitted or are holding and will remit on a timely basis all income, social security and similar Taxes and paid all payroll Taxes with respect to all persons properly characterized as employees of the Company for Tax purposes.

(b) Except as would not have a Material Adverse Effect, there is no proceeding, audit, examination or investigation, and to the knowledge of the Company no such matters threatened, by which (i) any Tax Return of the Company is being examined by any taxing authority or (ii) any Tax liability or other Tax item of the Company is being challenged by any taxing authority.

(c) The Company has not been a United States real property holding corporation within the meaning of Section 897(c) (2) of the Code during the applicable period specified in Section 897 of the Code.

(d) None of the assets of the Company (i) are property that is required to be treated as being owned by any other Person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Code, (ii) directly or indirectly secure any debt the interest on which is tax exempt under Section 103(a) of the Code or (iii) are "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(e) The Company has not been nor will be required to include any material adjustment in taxable income for any Tax period (or portion thereof) pursuant to Section 481 of the Code as a result of any change in method of accounting.

(f) Since a date in 2012, the Company has been an S Corporation within the meaning of Subchapter S of the Internal Revenue Code of 1986, as amended.

(g) For purposes of this Agreement:

(i) "Taxes" shall mean any taxes of any kind, including those on or measured by or referred to as income, gross receipts, capital, sales, use, ad valorem, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, value added, property or windfall profits taxes, customs, duties or similar fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any governmental authority, domestic or foreign; and

(ii) "Tax Return" shall mean any return, report or statement required to be filed with any governmental authority with respect to Taxes, including any schedule or attachment thereto or amendment thereof

**Section 3.15 Brokers.** Except as set forth in Section 3.15 of the Company Disclosure Schedule, no broker, finder, financial advisor or investment banker is entitled to any brokerage, finder's, financial advisor's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by and on behalf of the Company.

**Section 3.16 Intellectual Property.**

(a) Except as has not had and would not reasonably be expected to have a Material Adverse Effect:

- i. the Company owns, or is licensed or otherwise possesses legally enforceable rights to use, free and clear of any and all Liens other than Permitted Liens, all Intellectual Property (as defined below) and IT Assets (as defined below) used in and/or necessary for the operation of its business as currently conducted, and
- ii. the consummation of the transactions contemplated by this Agreement will not alter or impair such rights.

(b) There are no pending or, to the knowledge of the Company, threatened claims by any person alleging infringement, misappropriation or other violation of or conflict with any patents, trademarks, trade names, service marks, service names, mark registrations and applications, logos, assumed names, trade dress, Internet domain names, registered and unregistered copyrights, confidential and proprietary information (including trade secrets, know-how and invention rights), mask works, rights of privacy and publicity, patents or applications and registrations therefore (collectively "Intellectual Property") by the Company, and/or the operation of its business that have had or would reasonably be expected to have a Material Adverse Effect

(c) The conduct of the business of the Company does not infringe upon, misappropriate or otherwise violate or conflict with any Intellectual Property rights or any other proprietary right of any person.

(d) As of the date hereof, the Company has not received any material notification that a license under any other person's Intellectual Property is or may be required.

(e) There are no pending or, to the knowledge of the Company, threatened claims against the Company concerning the ownership, validity, registerability or enforceability of any Intellectual Property

(f) As of the date hereof, there are no pending or, to the knowledge of the Company, threatened claims by the Company concerning the ownership, validity, registerability or enforceability of any Intellectual Property.

(g) The Company has not made a claim of, nor, to the knowledge of the Company is any third party engaging in any activity that constitutes, a violation, misappropriation or infringement by others of or a conflict with its rights to or in connection with any Intellectual Property used in the operation of its business which violation, misappropriation, infringement or conflict has had, or would reasonably be expected to have a Material Adverse Effect.

(h) Except as has not had and as would not reasonably be expected to have a Material Adverse Effect:

- i. all Intellectual Property owned by the Company (the "Owned Intellectual Property"), and, to the knowledge of the Company, all Intellectual Property licensed to the Company is (A) valid, subsisting and enforceable, and (B) not subject to any outstanding order, judgment, injunction, decree, ruling or agreement adversely affecting the Company's use thereof or rights thereto, or that would impair the validity or enforceability thereof,
- ii. all patents, registrations and applications included in the Owned Intellectual Property are currently in compliance with any and all formal legal requirements necessary to (A) maintain the validity and enforceability thereof, and (B) record and perfect the Company's and its subsidiaries interest therein and the chain of title thereof,
- iii. the Company has taken commercially reasonable measures to maintain the confidentiality of all confidential information used or held for use in the operation of their respective businesses as currently conducted, and
- iv. the computer programs, code and applications, systems, databases, Internet and intranet websites, hardware, networks and other information technology equipment, and associated documentation (collectively, the "IT Assets") used by the Company in the operation of its business as currently conducted are adequate for, and operate and perform in all material respects in accordance with their documentation and functional specifications as required in connection with, the operation of such business.

**Section 3.17 Hazardous Materials.** There have been no chemicals, substances or materials listed under, governed or regulated by Environmental Laws and Orders (collectively "Hazardous Materials") spilled, released, discharged, emitted or disposed of by the Company except in compliance with Environmental Laws and Orders. There is no

existing contamination at, under or around any part of the premises of the Company that would result in any Material Adverse Effect. The Company has not received any notices, claims, demands, or requests for information from any Governmental or Regulatory Authority or any third party with respect to Hazardous Materials generated, spilled, released, discharged, emitted or disposed of by the Company. True, complete and correct copies of the written reports, and all parts thereof, of all environmental audits or assessments that have been conducted with respect to the Company, either by the Company or any environmental consultant or engineer engaged for such purpose, have been made available to Parent.

### **Section 3.18 Contracts.**

(a) Section 3.18 of the Company Disclosure Schedule sets forth a list of all Material Contracts as of the date of this Agreement. For purposes of this Agreement, "Material Contract" means all Contracts to which the Company is a party or by which the Company, or any of their respective properties or assets is bound, including all amendments, modifications, extensions or renewals, that:

i. contain covenants binding upon the Company that materially restrict the ability of the Company (or which, following the consummation of the Merger, could materially restrict the ability of the Surviving Corporation) to compete in any business or with any person or in any geographic area that, in each case, are material to the Company, except any such Contract that may be canceled without any penalty or other liability to the Company upon notice of 60 days or less;

ii. are a joint venture, partnership, limited liability or other similar agreement or arrangement (excluding information technology Contracts) relating to the formation, creation, operation, management or control of any partnership or joint venture that is material to the business of the Company;

iii. is an indenture, credit agreement, loan agreement, security agreement, guarantee, bond or similar Contract pursuant to which any indebtedness of the Company, in each case in excess of \$100,000, is outstanding or may be incurred, other than any such Contract between or among the Company and any such Contracts entered into in the ordinary course of business which relate to obligations which do not exceed \$100,000;

iv. were entered into after December 31, 2012 or are not yet consummated for the acquisition or disposition, directly or indirectly (by merger or otherwise), of assets or capital stock or other equity interests of another person for aggregate consideration under such Contract in excess of \$100,000 (other than acquisitions or dispositions of assets in the ordinary course of business, including acquisitions and dispositions of inventory and/or equipment);

v. which by its terms calls for aggregate payments by the Company and its subsidiaries under such Contract of more than \$100,000 over the remaining term of such Contract (other than this Agreement, Contracts subject to clause (iv) above, purchase orders for the purchase of inventory and/or equipment in the ordinary course of business or Leases);

vi. with respect to any acquisition and divestiture pursuant to which the Company or any of its subsidiaries has continuing indemnification, "earn-out" or other contingent payment obligations, in each case, that would reasonably be expected to result



in payments in excess of \$100,000;

vii. relates to Intellectual Property which requires payments by or to the Company or any subsidiary of the Company in excess of \$100,000 per annum or is material to the Company; or

viii. is a Related Party Transaction.

(b) Each of the Material Contracts is valid and binding on the Company and, to the knowledge of the Company, each other party thereto and is in full force and effect, except for such failures to be valid and binding or to be in full force and effect that would not have a Material Adverse Effect. There is no default under any Material Contract by the Company and no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder by the Company except as would not have a Material Adverse Effect.

### **Section 3.19 Government Contracts.**

There are no government contracts.

### **Section 3.20 Export and Import Control.**

The activities of Company are not subject to export or import control as of the date of this Agreement.

### **Section 3.21 Company Requisite Vote; Takeover Statutes; Rights Plans.**

(a) Assuming the accuracy of the representations and warranties of Parent and Merger Sub in Section 4.10, the affirmative vote of a majority in voting power of the holders of outstanding shares of Common Stock, voting together as a single class, representing a majority of all the votes then entitled to vote at the Stockholders Meeting, is the only vote of holders of any class of securities of the Company which is required to adopt this Agreement, each holder of shares of Common Stock entitled to vote at the meeting will be entitled to one vote per share (the "Company Requisite Vote").

(b) Assuming the accuracy of the representations and warranties of Parent and Merger Sub set forth in Section 4.10, no "fair price", "moratorium", "control share acquisition" or other similar antitakeover statute or regulation enacted under state or federal laws in the United States or any other jurisdiction applicable to the Company or its subsidiaries is applicable to the Merger or the other transactions contemplated hereby.

**Section 3.22 Related Party Transactions.** Except as set forth in Section 3.24 of the Company Disclosure Schedule, there are no Contracts that are in existence as of the date of this Agreement and under which the Company has any existing or future material liabilities between the Company on the one hand, and, on the other hand, any (a) executive officer or director of the Company or any of such executive officer's or director's immediate family members, (b) owner of more than 5% of the voting power of the Company's outstanding capital stock or (c) to the knowledge of the Company, any "related person" (within the meaning of Item 404 of Regulation S-K under the Securities Act) of any such officer, director or owner (other than the Company)

entered into within the last twelve months and, in each case, that is of the type that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act (a "Related Party Transaction").

**Section 3.23 No Other Information.** The Company acknowledges that Parent and Merger Sub make no representations or warranties as to any matter whatsoever except as expressly set forth in Article IV. The representations and warranties set forth in Article IV are made solely by Parent and Merger Sub, and no representative of Parent and Merger Sub or any affiliate thereof shall have any responsibility or liability related thereto.

#### **ARTICLE IV - REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB**

The Parent hereby represents and warrants to the Company that, except (i) as set forth on the disclosure schedule delivered by the Parent to the Company prior to the execution of this Agreement (the "Parent Disclosure Schedule"), it being agreed that disclosure of any item in any section of the Parent Disclosure Schedule shall also be deemed disclosure with respect to any other section of this Agreement to which the relevance of such item is reasonably apparent:

**Section 4.1 Organization.** Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated and has the requisite corporate power and authority to own, operate or lease its properties and to carry on its business as it is now being conducted, except where the failure to be so organized, existing or in good standing or to have such power or authority would not prevent, materially delay or materially impede the consummation of the transactions contemplated by this Agreement. Parent is the "ultimate parent entity" for purposes of obtaining the approvals of the Governmental Entities contemplated by this Agreement. Neither Parent nor Merger Sub is in violation of its organizational or governing documents.

#### **Section 4.2 Authority.**

(a) Each of Parent and Merger Sub has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby

(b) The execution, delivery and performance of this Agreement by each of Parent and Merger Sub and the consummation by each of Parent and Merger Sub of the transactions contemplated hereby have been duly and validly authorized by all necessary action by the Boards of Directors of Parent and Merger Sub and, has been duly and validly authorized by all necessary action by Parent as the sole stockholder of Merger Sub, and no other corporate (including stockholder) proceedings on the part of Parent or Merger Sub are necessary to authorize this Agreement, to perform their respective obligations hereunder, or to consummate the transactions contemplated hereby (other than the filing with the Secretary of State of the State of Delaware of the Certificate of Merger as required by the DGCL).

(c) This Agreement has been duly and validly executed and delivered by Parent and Merger Sub and, assuming due authorization, execution and delivery hereof by the Company, constitutes

a legal, valid and binding obligation of each of Parent and Merger Sub enforceable against each of Parent and Merger Sub in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and any implied covenant of good faith and fair dealing.

#### **Section 4.3 No Conflict; Required Filings and Consents.**

(a) The execution, delivery and performance by Parent and Merger Sub of this Agreement does not, and the consummation of the transactions contemplated hereby, and the compliance with the provisions of this Agreement will not (i) conflict with or violate the respective certificate of incorporation or by-laws (or similar organizational documents) of Parent or Merger Sub, (ii) assuming that all consents, approvals and authorizations contemplated by clauses (i) through (iii) of subsection (b) below have been obtained and the adequacy of Parent's disclosure in the Merger Consideration Disclosure Schedule, and all filings described in such clauses have been made, conflict with or violate any law applicable to Parent or Merger Sub or by which either of them or any of their respective properties are bound or (iii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both would become a default) or result in the loss of a benefit under, or give rise to any right of termination, cancellation, amendment or acceleration of, any Contracts to which Parent or Merger Sub is a party or by which Parent or Merger Sub or its or any of their respective properties are bound, except, in the case of clauses (ii) and (iii), for any such conflict, violation, breach, default, acceleration, loss, right or other occurrence which would not prevent, materially delay or materially impede the consummation of the transactions contemplated hereby.

(b) The execution, delivery and performance of this Agreement by each of Parent and Merger Sub and the consummation of the transactions contemplated hereby by each of Parent and Merger Sub do not and will not require any consent, approval, authorization or permit of, action by, filing with or notification to, any Governmental Entity, except for (i) the filing with the Secretary of State of the State of Delaware of the Certificate of Merger as required by the DGCL, (ii) filings required under the FBCA, and (iii) other consents, approvals, authorizations, permits, actions, filings or notifications the failure of which to make or obtain would not prevent, materially delay or materially impede the consummation of the transactions contemplated hereby.

**Section 4.4 Absence of Litigation.** There are no suits claims actions proceedings arbitrations mediations or investigations pending or, to the knowledge of Parent, threatened against Parent or any of its subsidiaries, other than any such suit, claim, action, proceeding or investigation that would not prevent, materially delay or materially impede the consummation of the transactions contemplated hereby. Neither Parent nor any of its subsidiaries nor any of their respective properties is or are subject to any order, writ, judgment, injunction, decree or award that would prevent, materially delay or materially impede the consummation of the transactions contemplated hereby.

**Section 4.5 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's, financial advisor's or other fee or commission from the Company in

connection with the transactions contemplated by this Agreement based upon arrangements made by and on behalf of Parent or Merger Sub, whether or not the Merger is consummated.

**Section 4.6 Operations and Ownership of Merger Sub.**

(a) Merger Sub has been formed solely for the purpose of engaging in the transactions contemplated hereby and prior to the Effective Time will have engaged in no other business activities and will have incurred no liabilities or obligations other than as contemplated herein.

(b) As of the date of this Agreement, the authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value \$0.01 per share, 1,000 shares of which are validly issued and outstanding. All of the issued and outstanding capital stock of Merger Sub is, and immediately prior to the Effective Time will be, owned by Parent.

**Section 4.7 Ownership of Shares.** As of the date of this Agreement, none of Parent, Merger Sub or their respective affiliates owns (directly or indirectly, beneficially or of record) any Common Shares and none of Parent, Merger Sub or their respective affiliates holds any rights to acquire or vote any Common Shares except pursuant to this Agreement and the Voting Agreements.

**Section 4.8 Certain Agreements.** Except for (i) the agreement of John Acunto to stay involved in the management of the business of the Surviving Corporation and the Parent following the Merger and to enter into appropriate employment and confidentiality agreements relating thereto, and (ii) the \$6,000,000 equity commitment of a secured lender to Chasin 3D LLC, there are no Contracts between Parent and Merger Sub, on the one hand, and any member of the Company's management or directors, on the other hand, as of the date hereof that relate in any way to the Company or the transactions contemplated by this Agreement. Prior to the Board of Directors of the Company approving this Agreement, the Merger and the other transactions contemplated thereby for purposes of the applicable provisions of the DGCL, neither Parent nor Merger Sub, alone or together with any other person, was at any time, or became, an "interested stockholder" thereunder or has taken any action that would cause the restrictions on business combinations with interested stockholders set forth in Section 203 of the DGCL to be applicable to this Agreement, the Merger, or any transactions contemplated by this Agreement.

**Section 4.9 Vote/Approval Required.** No vote or consent of the holders of any class or series of capital stock of Parent is necessary to approve this Agreement or the Merger or the transactions contemplated hereby. The vote or consent of Parent as the sole stockholder of Merger Sub is the only vote or consent of the holders of any class or series of capital stock of Merger Sub necessary to approve this Agreement or the Merger or the transactions contemplated hereby.

**Section 4.10 No Other Information.** Parent and Merger Sub acknowledge that the Company makes no representations or warranties as to any matter whatsoever except as expressly set forth in Article III. The representations and warranties set forth in Article III are made solely by the Company, and no Representative of the Company shall have any

responsibility or liability related thereto.

**Section 4.11 Access to Information: Disclaimer.** Parent and Merger Sub each acknowledges and agrees that it (a) has had reasonable access to the books and records of the Company and (b) has conducted its own independent investigation of the Company its business and the transactions contemplated hereby, and has not relied on any representation, warranty or other statement by any person on behalf of the Company, other than the representations and warranties of the Company expressly contained in Article III of this Agreement and that all other representations and warranties are specifically disclaimed.

## **ARTICLE V - CONDUCT OF BUSINESS PENDING THE MERGER**

**Section 5.1 Conduct of Business of the Company Pending the Merger.** Between the date of this Agreement and the Effective Time, except (i) as otherwise contemplated by this Agreement, (ii) as set forth in Section 5.1 of the Company Disclosure Schedule, (iii) as required by Law or (iv) unless Parent shall otherwise consent in writing (which consent shall not be unreasonably withheld, delayed or conditioned), (a) the business of the Company shall be conducted in its ordinary course of business consistent with past practice and the Company shall use its commercially reasonable efforts to preserve substantially intact its business organization and material business relationships and to keep available the services of the Company's officers and employees, and (b) without limiting the foregoing, the Company shall not:

(i) amend, waive or otherwise change its certificate of incorporation or by-laws or any similar governing instruments;

(ii) issue, deliver, sell, pledge, dispose of or encumber any shares of capital stock, ownership interests or voting securities, or any options, warrants, convertible securities or other rights of any kind to acquire or receive any shares of capital stock, any other ownership interests or any voting securities (including but not limited to stock appreciation rights, phantom stock or similar instruments), of the Company;

(iii) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock;

(iv) reclassify, combine, split, subdivide, redeem, purchase or otherwise acquire any shares of capital stock of the Company;

(v) make any acquisition of (whether by merger, consolidation or acquisition of stock or substantially all of the assets), or make any investment in any interest in, any corporation, partnership or other business organization or division thereof;

(vi) sell or otherwise dispose of (whether by merger, consolidation or disposition of stock or assets or otherwise) any corporation, partnership or other business organization or division thereof or otherwise encumber or subject to a Lien (other than Permitted Encumbrances) or sell or dispose of any assets, other than (A) sales or dispositions of equipment and/or inventory and other personal property and granting of

Liens in the ordinary course of business or pursuant to existing Contracts or (B) other sales or dispositions of assets in a transaction or together with such other transactions is not material to the Company;

(vii) other than in the ordinary course of business, enter into, amend, terminate, modify or waive, release or assign any material rights under any Material Contract;

(viii) authorize any material new expenditures which are, in the aggregate, in excess of the Company's 2013 operating budget set forth on Section 5.1 of the Company Disclosure Schedule;

(ix) except for borrowings in the ordinary course of business under the Company's existing credit facilities, incur or modify in any material respect in a manner adverse to the Company the terms of any material Indebtedness, or make any loans, advances or capital contributions to any other person (other than a direct or indirect wholly owned subsidiary of the Company), in each case, in excess of \$100,000 other than any commodity, currency, sale or hedging agreements, in each case in the ordinary course of business and which can be terminated on 90 days or less notice without penalty or termination liability;

(x) except as contemplated by Section 6.6 or except to the extent required by applicable law, (A) increase the compensation or fringe benefits of any of its directors, officers or employees (except in the ordinary course of business consistent with past practices with respect to employees who are not directors or officers), or (B) enter into any employment, consulting or severance agreement or arrangement with any of its present or former directors, officers or other employees irrespective of whether or not in the ordinary course of business, except for offers of employment in the ordinary course of business consistent with past practices with employees who are not directors or officers provided such employment is strictly "at will", or (C) establish, adopt, or enter into any Company Plan;

(xi) make any material change in any accounting principles, except as may be appropriate to conform to changes in statutory or regulatory accounting rules or generally accepted accounting principles or regulatory requirements effective after the date of this Agreement with respect thereto;

(xii) other than in the ordinary course of business or as required by applicable law, (A) make any material Tax election or change any method of tax accounting, (B) enter into any settlement or compromise of any material Tax liability, (C) file any amended Tax Return with respect to any material Tax, (D) change any annual Tax accounting period, (E) enter into any closing agreement relating to any material Tax or (F) surrender any right to claim a material Tax refund;

(xiii) except as set forth in Section 5.1 of the Company Disclosure Schedule, settle or compromise any litigation, other than settlements or compromises of litigation where the amount paid does not exceed \$25,000 or, if greater, the total incurred case

reserve amount for such matter, as of the date of this Agreement, maintained by the Company (as set forth in Section 5.1. of the Company Disclosure Schedule): *provided*, that the Company shall not agree to the imposition of any material restriction or other material limitation on its ability to conduct business in connection with any such settlement or compromise;

(xiv) enter into any Related Party Transaction;

(xv) convene any regular or special meeting of the stockholders of the Company other than the Stockholders Meeting;

(xvi) enter into any agreement or understanding or arrangement with respect to the voting or registration of the Common Stock;

(xvii) adopt or enter into a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of such entity;

(xviii) except as set forth in the Company Disclosure Schedule 5.1, shutdown any existing manufacturing facility or corporate headquarters or similar material facility; open (or enter into any lease or purchase of real estate that contemplates the opening of) any new manufacturing facility or corporate headquarters or similar material facility; or

(xix) agree to take any of the actions described in Sections 5.1 (b) (i) through 5.1 (b) (xviii).

**Section 5.2 Conduct of Business of Parent and Merger Sub Pending the Merger.**

Each of Parent and Merger Sub agrees that, between the date of this Agreement and the Effective Time, it shall not take any action that would, or would reasonably be expected to, individually or in the aggregate, prevent, materially delay or materially impede the consummation of the Merger or the other transactions contemplated by this Agreement.

**Section 5.3 No Control of Other Party's Business.** Nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Company's or its subsidiaries' operations prior to the Effective Time, and nothing contained in this Agreement shall give the Company, directly or indirectly, the right to control or direct Parent's or its subsidiaries' operations prior to the Effective Time. 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 and its subsidiaries' respective operations.

**ARTICLE VI - ADDITIONAL AGREEMENTS**

**Section 6.1 Stockholders Meeting.** The Company, acting through its Board of Directors, shall (a) as soon as reasonably practicable following the date of this Agreement, take all action necessary to duly call, give notice of, convene and hold a meeting of its stockholders for the purpose of approving and adopting this Agreement (the "Stockholders Meeting"), and (b)

use its reasonable best efforts to obtain the Company Requisite Vote; *provided* that with respect to the foregoing clause (b) the Board of Directors of the Company may fail to make or may withdraw, modify or change the recommendation of the Board of Directors to stockholders to approve and adopt this Agreement and the Merger (the "Recommendation") and/or may fail to use such efforts if (i) it shall have determined in good faith, after consultation with outside legal counsel to the Company, that such action is required in order for the Board of Directors of the Company to act in a manner consistent with its fiduciary duties under applicable law and (ii) it notifies Parent in writing of its intention to take such action at least three (3) business days prior to taking such action, specifying in reasonable detail the reasons therefor, as it is acknowledged by the parties that the Board of Directors of the Company may have fiduciary duties to consider potentially superior Acquisition Proposals (as defined in Section 6.5). When giving notice of the Stockholders Meeting, the Company shall include in its written materials providing notice of the Stockholders Meeting ("Meeting Notice") text (i) setting forth the requisite notice of appraisal rights contemplated by Section 13 of the FBCA, and (ii) setting forth disclosure that the Merger Shares are being issued without registration (in a transaction intended to be exempt from registration) pursuant to the Securities Act of 1933, as amended and any applicable state securities laws, and are subject to restrictions on subsequent transfer imposed by such laws.

**Section 6.2 Resignation of Directors.** At the Closing, the Company shall deliver to Parent evidence reasonably satisfactory to Parent of the resignation of all directors of the Company and, as specified by Parent reasonably in advance of the Closing, all directors of each subsidiary of the Company, in each case, effective at the Effective Time.

**Section 6.3 Access to Information: Confidentiality.**

(a) From the date hereof to the Effective Time or the earlier termination of this Agreement, the Company shall furnish Parent with all financial, operating and other data and information as Parent, through its officers, employees or authorized representatives, may from time to time reasonably request to facilitate Parent's ability to conduct transition planning and to remain informed regarding material aspects of the business and operations of the Company including monthly and quarterly operating reports in the form currently prepared by the Company), it being acknowledged and agreed by Parent that, as of the date of this Agreement, it has completed to its satisfaction its due diligence and investigation of the Company. The Company shall not be required to provide access to or to disclose information where such access or disclosure would violate or prejudice its rights or the rights of any of its officers, directors or employees, jeopardize any attorney-client privilege or contravene any law, rule, regulation, order, judgment, decree or binding agreement entered into prior to the date of this Agreement; *provided, however*, that in the event that the Company relies on this sentence to withhold access or disclosure, the Company shall, to the extent permitted by law and the protection of such attorney-client privilege, notify Parent of the nature of the withheld information.

(b) Each of Parent and Merger Sub will hold and treat and will cause its officers, employees and other representatives to hold and treat in confidence all documents and information concerning the Company furnished to Parent or Merger Sub in connection with the transactions contemplated by this Agreement. Such undertaking shall remain in effect for a period of 18 months if the Merger is not consummated.



(c) No investigation by any party or its representatives shall affect the representations, warranties, covenants, agreements, rights or remedies of the parties set forth herein.

#### **Section 6.5 Acquisition Proposals.**

(a) Other than as acknowledged in Section 6.1, the Company shall not, nor shall the Company authorize or permit any of its representatives to, (i) directly or indirectly, initiate, solicit or knowingly encourage any inquiries with respect to, or the making of, any Acquisition Proposal, (ii) engage in any negotiations or discussions concerning, or provide access to its properties, books and records or any confidential information or data to any person relating to, an Acquisition Proposal, (iii) approve, endorse or recommend, or propose publicly to approve, endorse or recommend, any Acquisition Proposal or (iv) execute or enter into, any letter of intent, agreement in principle, merger agreement, acquisition agreement or other similar agreement relating to any Acquisition Proposal. For purposes of this Agreement, the term "Acquisition Proposal" shall mean any inquiry, proposal or offer from any person or group of persons (other than Parent, Merger Sub or their respective affiliates) relating to any direct or indirect acquisition or purchase of a business that constitutes 25% or more of the net revenues, net income or assets of the Company and its subsidiaries, taken as a whole, or 25% or more of any class or series of Company Securities, any tender offer or exchange offer that if consummated would result in any Person or group of Persons beneficially owning 25% or more of any class or series of capital stock of the Company, or any merger, reorganization, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company (or any subsidiary or subsidiaries of the Company whose business constitutes 25% or more of the net revenues, net income or assets of the Company and its subsidiaries, taken as a whole.

#### **Section 6.6 Employment and Employee Benefits Matters.**

(a) For purposes of this Section 6.6, the term "Company Employees" shall mean Company Employees who are employed by the Company on a full-time basis at the Effective Time, excluding any employee whose employment is the subject of a collective bargaining agreement (it being understood that to the extent required by any collective bargaining agreement, Parent shall assume and honor all obligations (including severance) arising under such collective bargaining agreements for employees covered by such collective bargaining agreements).

(b) Parent shall cause the Surviving Corporation and each of its subsidiaries (i) following the Effective Time, to provide compensation (including salary, bonus, commission and other cash incentive compensation) to Company Employees, which in the reasonable discretion of Parent is no less favorable in the aggregate than compensation provided to similarly situated employees employed by similarly situated businesses, subject to the right of Parent, the Surviving Corporation and its subsidiaries in their reasonable discretion to review and modify compensation from time to time.

(c) The provisions of this Section 6.6 are solely for the benefit of the parties to this Agreement, and no current or former employee (including any beneficiary or dependent thereof) or any other person shall be regarded for any purpose as a third-party beneficiary of the Agreement and nothing herein shall be construed as an amendment to any Company Plan for any purpose. Nothing contained herein shall preclude the Surviving Corporation or any subsidiary from terminating the employment of any Company Employee at any time and for any reason.

#### **Section 6.7 Directors' and Officers' Indemnification.**

(a) Without limiting any additional rights that any person may have under any indemnification agreement, employment agreement or Company Plan, from the Effective Time through the sixth anniversary of the date on which the Effective Time occurs, to the full extent permitted by applicable law, Parent shall, or shall cause the Surviving Corporation to, indemnify and hold harmless each present (as of the Effective Time) and former officer, director or employee of the Company and its subsidiaries (the "Indemnified Parties"), against all claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements (collectively, "Costs"), incurred in connection with any actual or threatened claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative (each, a "Proceeding") to which an Indemnified Party is or becomes a party or with respect to which an Indemnified Party is or becomes otherwise involved (including as a witness), arising out of or pertaining to the fact that the Indemnified Party is or was an officer, director, employee, fiduciary or agent of the Company or any of its subsidiaries (including any Proceeding arising out of or pertaining to this Agreement and the transactions and actions contemplated hereby), whether such Proceeding is commenced, or any claim or matter therein is asserted or claimed, prior to, at or after the Effective Time. In the event of any such Proceeding (x) each Indemnified Party will be entitled to advancement from Parent or the Surviving Corporation of fees, costs and expenses (including reasonable attorney's fees and disbursements) incurred in connection with and prior to the final disposition of such Proceedings, such fees, costs and expenses (including reasonable attorney's fees and disbursements) to be advanced within ten business days of receipt by Parent from the Indemnified Party of a request therefor; *provided* that any person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such person is not entitled to indemnification, (y) neither Parent nor the Surviving Corporation shall settle, compromise or consent to the entry of any judgment in any Proceeding in which indemnification could be sought by such Indemnified Party (which term for purposes of this clause (y) only shall include only those persons who are officers, directors or employees of the Company as of the date of this Agreement) hereunder, unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liability arising out of such Proceeding or such Indemnified Party otherwise consents, and (z) the Surviving Corporation shall cooperate in the defense of any such matter.

(b) The certificate of incorporation and by-laws of the Surviving Corporation shall contain provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of former or present directors and officers than those in the copies of certificate of incorporation and by-laws of the Merger Sub on the date hereof, which provisions, subject to any intervening change in the DGCL or its interpretation, shall not be amended, repealed or

otherwise modified for a period of six years from the Effective Time in any manner that would adversely affect the rights thereunder of any such individuals.

(c) Parent shall cause the Surviving Corporation to perform and fully honor all Indemnification Agreements between the Company and its respective officers and directors entered into prior to the date hereof, a copy of which have been delivered to Parent.

(f) This covenant is intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties and their respective heirs and legal representatives. The rights to indemnification and advancement and the other rights provided for herein shall not be deemed exclusive of any other rights to which an Indemnified Party is entitled, whether pursuant to law, contract or otherwise.

(g) In the event that the Surviving Corporation or Parent 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 of such consolidation or merger or (ii) transfers or conveys all or a majority of its properties and assets to any person, then, and in each such case, proper provision shall be made so that the successors and assigns of the Surviving Corporation or Parent, as the case may be, shall succeed to the obligations set forth in Section 6.6 and this Section 6.7.

#### **Section 6.8 Regulatory Matters: Reasonable Efforts.**

(a) Approvals. Upon the terms and subject to the conditions set forth in this Agreement and in accordance with applicable Laws, each of the parties to this Agreement will use all reasonable efforts to take or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to ensure that the conditions set forth in Article VII are satisfied and to consummate the transactions contemplated by this Agreement as promptly as practicable.

(b) Cooperation. In the event any claim, action, suit, investigation, legal or administrative proceeding is commenced by any Governmental Entity or any Person (other than the Company, the Parent or any of their subsidiaries) that questions the validity or legality of this Agreement, or the Merger or the other transactions contemplated by this Agreement or claims damages in connection therewith; each of Parent, Merger Sub and the Company shall cooperate in all respects with each other and use its respective best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated by this Agreement, and (ii) Parent and Merger Sub shall defend any action or actions, whether judicial or administrative, in connection with the transactions contemplated by this Agreement.

**Section 6.9 Public Announcements.** Each of the Company, Parent and Merger Sub agrees that no public release or announcement concerning the transactions contemplated hereby shall be issued by any party without the prior written consent of the Company and Parent (which consent shall not be unreasonably withheld or delayed), except as such release or announcement

may be required by law or the rules or regulations of any applicable United States securities exchange or regulatory or governmental body to which the relevant party is subject, wherever situated, in which case the party required to make the release or announcement shall use its commercially reasonable efforts to provide the other party reasonable time to comment on such release or announcement in advance of such issuance, it being understood that the final form and content of any such release or announcement, to the extent so required, shall be at the final discretion of the disclosing party.

**Section 6.10 Certain Transfer Taxes.** Any liability arising out of any real estate transfer Tax with respect to Interests in real property owned directly or indirectly by the Company or any of its subsidiaries immediately prior to the Merger, if applicable and due with respect to the Merger, shall be borne by the Surviving Corporation and expressly shall not be a liability of stockholders of the Company.

**Section 6.11 Obligations of Merger Sub.** Parent shall take all action necessary to cause Merger Sub and the Surviving Corporation to perform their respective obligations under this Agreement.

**Section 6.12 Takeover Statute.** If any "fair price," "moratorium," "business combination," "control share acquisition" or other form of anti-takeover statute or regulation shall become applicable to the Merger or the other transactions contemplated by this Agreement after the date of this Agreement, each of the Company and Parent and the members of their respective Boards of Directors shall grant such approvals and take such actions as are reasonably necessary so that the Merger and the other transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated herein and otherwise act to eliminate or minimize the effects of such statute or regulation on the Merger, and the other transactions contemplated hereby. Nothing in this Section 6.12 shall be construed to permit Parent or Merger Sub to do any act that would constitute a violation or breach of, or as a waiver of any of the Company's rights under, any other provision of this Agreement.

**Section 6.13 Notification of Certain Matters.** The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, upon obtaining knowledge of the occurrence or non-occurrence of any event that, individually or in the aggregate, would make the timely satisfaction of any of the conditions set forth in Article VII impossible or unlikely. The delivery of any notice pursuant to this Section 6.13 shall not cure any breach of any representation or warranty requiring disclosure of such matter or otherwise limit or affect the remedies available hereunder to any party receiving such notice. This Section 6.13 shall not constitute a covenant, obligation or agreement for purposes of Section 7.2(b) or 7.3(b).

**Section 6.14 Stockholder Litigation.** The Company shall give Parent the opportunity to participate in the defense or settlement of any stockholder litigation against the Company and/or its directors arising after the date hereof as a result of the transactions contemplated by this Agreement, and no such settlement in connection therewith shall be agreed to without Parent's prior written consent (such consent not to be unreasonably withheld or delayed).

## **ARTICLE VII - CONDITIONS OF MERGER**

**Section 7.1 Conditions to Obligation of Each Party to Effect the Merger.** The respective obligations of each party to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following conditions:

(a) this Agreement shall have been approved by the stockholders of the Company by the Company Requisite Vote; and

(b) no law, executive order, decree, ruling, injunction, writ, judgment or other order (whether temporary, preliminary or permanent) shall have been enacted, entered, promulgated or enforced by any Governmental Entity located or having jurisdiction within the United States which prohibits, restrains or enjoins the consummation of the Merger.

**Section 7.2 Conditions to Obligations of Parent and Merger Sub.** The obligations of Parent and Merger Sub to effect the Merger shall be further subject to the satisfaction (or waiver by Parent) at or prior to the Effective Time of the following conditions:

(a) the representations and warranties of the Company (i) set forth in Section 3.8(b) shall be true and correct in all respects as of the Effective Time as though made on and as of such date, and (ii) set forth in this Agreement (other than Section 3.8(b)) shall be true and correct in all material respects as of the Effective Time as though made on and as of such date (unless any such representation or warranty is made only as of a specific date, in which event such representation and warranty shall be so true and correct as of such specified date), except, in the case of this clause (ii), where the failure of any such representations and warranties to be so true and correct, in the aggregate, has not had, and would not reasonably be expected to have, a Material Adverse Effect;

(b) the Company shall have performed in all material respects the obligations, and complied in all material respects with the agreements and covenants, required to be performed by, or complied with by, it under this Agreement at or prior to the Effective Time; and

(c) Parent shall have received a certificate of the Chief Executive Officer or the Chief Financial Officer of the Company, certifying that the conditions set forth in Sections 7.2(a) and (c) have been satisfied.

**Section 7.3 Conditions to Obligations of the Company.** The obligation of the Company to effect the Merger shall be further subject to the satisfaction (or waiver by the Company) at or prior to the Effective Time of the following conditions:

(a) the representations and warranties of Parent and Merger Sub set forth in this Agreement shall be true and correct in all material respects, in each case as of the Effective Time as though made on and as of such date (unless any such representation or warranty is made only as of a specific date, in which event such representation and warranty shall be true and correct in all material respects as of such specified date), except in either case where the failure of any such representations and warranties to be true and correct, individually or in the aggregate, would not

reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by this Agreement and would not adversely impact the payment of the Merger Consideration payable hereunder;

(b) each of Parent and Merger Sub shall have performed in all material respects the obligations, and complied in all material respects with the agreements and covenants, required to be performed by or complied with by it under this Agreement at or prior to the Closing Date; and

(c) the Company shall have received certificates of the Chief Executive Officer or the Chief Financial Officer of Parent, certifying that the conditions set forth in Sections 7.3(a) and (b) have been satisfied.

**Section 7.4 Frustration of Closing Conditions.** Neither the Company nor Parent may rely, either as a basis for not consummating the Merger or terminating this Agreement and abandoning the Merger, on the failure of any condition set forth in Section 7.1, 7.2 or 7.3, as the case may be, to be satisfied if such failure was caused by such party's breach in any material respect of any covenant set forth in this Agreement.

#### **ARTICLE VIII - TERMINATION, AMENDMENT AND WAIVER**

**Section 8.1 Termination.** This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time prior to the Effective Time, notwithstanding approval thereof by the stockholders of the Company:

(a) by mutual written consent of Parent, Merger Sub and the Company;

(b) by either Parent or the Company if any required regulatory approval of any Governmental Authority has been denied and such denial has become final and non-appealable or if any court of competent jurisdiction located or having jurisdiction within the United States shall have issued a final order, decree or ruling or taken any other final action restraining, enjoining or otherwise prohibiting the consummation of the Merger and such order, decree, ruling or other action is or shall have become final and nonappealable; *provided* that the party seeking to terminate this Agreement pursuant to this Section 8.1(b) shall have used such efforts as may be required pursuant to Section 6.8 to prevent, oppose and remove such restraint, injunction or other prohibition;

(c) by either Parent or the Company if the Effective Time shall not have occurred on or before the date which is six months from the date hereof (the "Termination Date"); *provided, however,* that the right to terminate this Agreement pursuant to this Section 8.1(c) shall not be available to the party seeking to terminate if any action of such party (or, in the case of Parent, Merger Sub) or the failure of such party (or, in the case of Parent, Merger Sub) to perform any of its obligations under this Agreement required to be performed at or prior to the Effective Time has been the principal cause of, or resulted in, the failure of the Effective Time to occur on or before the Termination Date and such action or failure to perform constitutes a breach of this Agreement, including pursuant to Section 6.8;

(d) by the Company:

(i) if (A) there shall have been a breach of any representation, warranty, covenant or agreement on the part of Parent or Merger Sub contained in this Agreement such that the conditions set forth in Section 7.3(a) or 7.3(b) would not be satisfied and, in either such case, such breach has not been cured by Parent within 30 business days after Parent's receipt of written notice of such breach from the Company or (B) if all the conditions set forth in Sections 7.1 and 7.2 are satisfied (excluding conditions that, by their terms, cannot be satisfied until the Closing, but which would be reasonably capable of being satisfied at Closing) and Parent or Merger Sub fails to effect the Merger and/or satisfy their respective obligations under Article II; *provided* that the Company shall not have the right to terminate this Agreement pursuant to this Section 8.1 (d)(i) if the Company is then in material breach of any of its covenants or agreements contained in this Agreement;

(ii) if the Merger shall not have been consummated on the second business day after all of the conditions set forth in Sections 7.1 have been satisfied and nothing has occurred and no condition exists that would cause any of the conditions set forth in Section 7.2(a) and Section 7.2(b) to fail to be satisfied assuming the Closing were to occur on the date of termination by the Company pursuant to this Section 8.1 (d) (ii); or

(iii) prior to the approval of this Agreement by the stockholders of the Company, in accordance with, and subject to the terms and conditions of, Section 6.5(d);

(e) by Parent:

(i) if there shall have been a breach of any representation, warranty, covenant or agreement on the part of the Company contained in this Agreement such that the conditions set forth in Section 7.2(a) or 7.2(b) would not be satisfied and, in either such case, such breach has not been cured by the Company within 30 business days after the Company's receipt of written notice of such breach from Parent; *provided* that Parent shall not have the right to terminate this Agreement pursuant to this Section 8.1 (e)(i) if Parent or Merger Sub is then in material breach of any of its covenants or agreements contained in this Agreement; or

(ii) if the Board of Directors of the Company (A) shall have failed to make or shall have withdrawn, modified or changed the Recommendation in a manner adverse to Parent or Merger Sub, (B) shall have failed to publicly reaffirm its adoption and recommendation of this Agreement, the Merger or the other transactions contemplated by this Agreement within ten business days of receipt of a written request by Parent to provide such reaffirmation following the public announcement of an Acquisition Proposal or an Acquisition Proposal otherwise becoming publicly known, (C) approves or recommends an Acquisition Proposal other than the Merger, (D) fails to recommend against acceptance of a tender or exchange offer for any outstanding shares of the capital stock of the Company that constitutes an Acquisition Proposal (other than by Parent or any of its affiliates), including, for these purposes, by taking no position with respect to

the acceptance of such tender or exchange offer by its stockholders, within ten (10) business days after commencement, or (E) publicly announces its intention to do any of the foregoing; *provided, however*, that the taking by the Company, its Board of Directors or any of its Representatives of any of the actions permitted by Section 6.5(c)(ii)-(iv) shall be deemed to constitute a withdrawal, modification or change of the Recommendation or otherwise give rise to a right to terminate pursuant to this clause (ii); or

(f) by either Parent or the Company if, upon a vote taken thereon at the Stockholders Meeting or any postponement or adjournment thereof, this Agreement shall not have been adopted by the Company Requisite Vote.

**Section 8.2 Effect of Termination.** (a) In the event of the termination of this Agreement pursuant to Section 8.1, this Agreement shall forthwith become void and of no further force and effect, with no liability or obligation on the part of any party to this Agreement (or any stockholder, director, officer, employee, agent or representative of such party), except as provided in Section 6.4(b), Section 6.9, this Section 8.2, Section 8.3 and Article IX, which shall survive such termination;

(b) In the event that:

(i) this Agreement is terminated by Parent pursuant to Section 8.1 (e) (ii); or

(ii) (A) at any time after the date of this Agreement and prior to the taking of a vote to approve this Agreement at the Stockholders Meeting or any postponement or adjournment thereof an Acquisition Proposal shall have been made directly to the Company's stockholders or any person shall have publicly announced an intention to make an Acquisition Proposal, or an Acquisition Proposal shall have otherwise become publicly known, and in each case such Acquisition Proposal shall have not been withdrawn at least ten business days prior to (x) such taking of a vote to approve this Agreement or (y) the date of termination of this Agreement pursuant to Section 8.1 (e)(i), (B) following the occurrence of an event described in the preceding clause (A), this Agreement is terminated by either Parent or the Company pursuant to Section 8.1(f) or by Parent pursuant to Section 8.1 (e)(i) and (C) within nine months after such termination, the Company shall have entered into an agreement-in-principle or agreement for, or shall have consummated, any Acquisition Proposal (whether or not such Acquisition Proposal was the same Acquisition Proposal referred to in the foregoing clause (A)) (*provided* that for the purpose of this Section 8.2(b)(ii), all references in the definition of the term Acquisition Proposal to "25% or more" will be deemed to be references to "more than 50%");

Then, in any such event, the Company, in lieu of the Parent, shall bear all expenses in connection with the preparation, execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, and promptly reimburse Parent for any such expenses previously paid by Parent.



(c) Each of the Company, Parent and Merger Sub acknowledges that the agreements contained in this Section 8.2 are an integral part of the transactions contemplated by this Agreement. In the event that the Company shall fail to pay the expenses referred to in Section 8.2(b), or promptly reimburse the Parent for any such expenses previously paid by the Parent, the Company shall reimburse the Parent for all reasonable costs and expenses actually incurred or accrued by Parent (including reasonable fees and expenses of counsel) in connection with any action (including the filing of any lawsuit) taken to collect payment of such amounts, together with interest on such unpaid amounts at the prime lending rate prevailing during such period as published in *The Wall Street Journal*, calculated on a daily basis from the date such amounts were required to be paid to the date of actual payment.

(d) Notwithstanding anything to the contrary in this Agreement, including with respect to Sections 7.4 and 9.10, (i) the Company's right to terminate this Agreement in compliance with the provisions of Sections 8.1(d)(i), and (ii) Parent's right to terminate this Agreement pursuant to Section 8.1 (e)(i) or (ii), and its right to reimbursement of expenses pursuant to Section 8.2 (b) shall, in each case, be the sole and exclusive remedy, including on account of punitive damages, of (in the case of clause (i)) the Company against Parent, Merger Sub or any of their respective affiliates, stockholders, directors, officers, employees or agents (collectively "Parent Related Parties") and (in the case of clause (ii)) Parent and Merger Sub against the Company or its affiliates, stockholders, directors, officers, employees or agents (collectively "Company Related Parties"), for any and all loss or damage suffered as a result thereof, and none of Parent, Merger Sub, or any of their respective Parent Related Parties or the Company or any of the Company Related Parties shall have any further liability or obligation of any kind or nature relating to or arising out of this Agreement or the transactions contemplated by this Agreement as a result of such termination. In no event, whether or not this Agreement has been terminated pursuant to any provision hereof, shall Parent, Merger Sub, or the Parent Related Parties, either individually or in the aggregate, be subject to any liability in excess of the payment of expenses undertaking set forth in Section 8.3 for any or all losses or damages relating to or arising this Agreement or the transactions contemplated by this Agreement, including breaches by Parent or Merger Sub of any representations, warranties, covenants or agreements contained in this Agreement, and in no event, whether or not this Agreement has been terminated pursuant to any provision hereof, shall the Company, or the Company Related Parties, either individually or in the aggregate, be subject to any liability in excess of the payment of expenses undertaking set forth in Section 8.2 for any or all losses or damages relating to or arising this Agreement or the transactions contemplated by this Agreement, including breaches by the Company of any representations, warranties, covenants or agreements contained in this Agreement.

**Section 8.3 Expenses.** Except as otherwise specifically provided herein (including, without limitation, Section 8.2(b)), Parent shall bear all expenses in connection with this Agreement and the transactions contemplated hereby.

**Section 8.4 Amendment.** This Agreement may be amended by the parties hereto by action taken by or on behalf of their respective Boards of Directors at any time prior to the Effective Time, whether before or after adoption of this Agreement by the stockholders of the Company; *provided, however*, that, after adoption of this Agreement by the stockholders of the Company, no amendment may be made which by law requires the further approval of the

stockholders of the Company without such further approval. This Agreement may not be amended except by an instrument in writing signed by the parties hereto and specifically referencing this Agreement.

**Section 8.5 Waiver.** At any time prior to the Effective Time, any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) subject to the requirements of applicable law, waive compliance with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby and specifically referencing this Agreement. The failure of any party to assert any rights or remedies shall not constitute a waiver of such rights or remedies.

## **ARTICLE IX - GENERAL PROVISIONS**

**Section 9.1 Non-Survival of Representations, Warranties, Covenants and Agreements.** None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants and agreements, shall survive the Effective Time, except for Section 6.7 and for those other covenants and agreements contained in this Agreement that by their terms apply or are to be performed in whole or in part after the Effective Time.

**Section 9.2 Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by facsimile (with confirmation) mailed by registered or certified mail (postage prepaid, return receipt requested) or delivered by an express courier (with confirmation) to the respective parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Parent or Merger Sub:  
c/o Beckman, Lieberman & Barandes, LLP  
111 John Street, Suite 1710  
New York, NY 10038  
Attn: Robert Barandes, Esq.

(b) if to the Company:  
  
Chasin Music Group, Inc.  
30 West 22<sup>nd</sup> Street, 6<sup>th</sup> Floor  
New York, NY 10010  
Attn: Mark Blake, Esq.

**Section 9.3 Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

**Section 9.4 Entire Agreement; Assignment.** This Agreement (including the Exhibits hereto and the Company Disclosure Schedule and the Parent Disclosure Schedule), and the Confidentiality Agreement constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and thereof. This Agreement shall not be assigned by operation of law or otherwise without the prior written consent of each of the other parties, except that Parent may assign all or any of its rights and obligations hereunder to any direct or indirect wholly-owned subsidiary of Parent after providing written notice thereof to the Company at least five business days prior to such assignment; *provided, however*, that no such assignment shall relieve the assigning party of its obligations hereunder.

**Section 9.5 Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement, other than (a) with respect to the provisions of Section 6.7 which shall inure to the benefit of the persons or entities benefiting therefrom who are intended to be third-party beneficiaries thereof, (b) at and after the Effective Time, the rights of the holders of Common Shares to receive the Merger Consideration in accordance with the terms and conditions of this Agreement and (c) at and after the Effective Time, the rights of the holders of Options, to receive the payments contemplated by the applicable provisions of Section 2.2(a), (b) and (c), in each case, at the Effective Time in accordance with the terms and conditions of this Agreement.

**Section 9.6 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (without giving effect to choice of law principles thereof).

**Section 9.7 Headings.** The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

**Section 9.8 Counterparts.** This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

**Section 9.9 Specific Performance.** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, (a) Parent and Merger Sub shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement by the Company and to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which such party is entitled at law or in equity and (b) the Company shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement by Parent or Merger Sub or to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which such party is entitled at law or in equity. The provisions of this Section 9.9 shall be subject in all respects to Section 8.2(e) hereof as to the amount of any payment required, which Section shall govern the rights and obligations of the parties hereto (and of the Parent Related Parties, and the Company Related Parties) under the circumstances provided therein.

**Section 9.10 Jurisdiction.** Each of the parties hereto (a) consents to submit itself to the personal jurisdiction of the Court of Chancery of the State of Delaware or any court of the United States located in the State of Delaware, in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the Court of Chancery of the State of Delaware or, if under applicable law exclusive jurisdiction is vested in the federal courts, any court of the United States located in the State of Delaware and (d) consents to service of process being made through the notice procedures set forth in Section 9.2. Without limiting other means of service of process permissible under applicable law, each of the Company, Parent and Merger Sub hereby agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses set forth in Section 9.2 shall be effective service of process for any suit or proceeding in connection with this Agreement or the transactions contemplated hereby.

**Section 9.11 Waiver of Jury Trial.** EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 9.12 Interpretation.** When reference is made in this Agreement to a Section, such reference shall be to a 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," "hereby" 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. The word "or" shall

not be exclusive. References to dollars or “\$” are to United States of America dollars. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted.

**Section 9.13 Certain Definitions.** For purposes of this Agreement, the term:

(a) “Affiliate” of a person means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned person;

(b) “Beneficial Owner” with respect to any Common Shares means a person who shall be deemed to be the beneficial owner of such Common Shares (i) which such person or any of its affiliates or associates (as such term is defined in Rule 12b-2 under the Exchange Act) beneficially owns, directly or indirectly, (ii) which such person or any of its affiliates or associates (as such term is defined in Rule 12b-2 of the Exchange Act) has, directly or indirectly, (A) the right to acquire (whether such right is exercisable immediately or subject only to the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of consideration rights, exchange rights, warrants, options or otherwise, or (B) the right to vote pursuant to any agreement, arrangement or understanding or (iii) which are beneficially owned, directly or indirectly, by any other persons with whom such person or any of its affiliates or associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any Common Shares (and the term “Beneficially Owned” shall have a corresponding meaning);

(c) “Business Day” means any day on which banks are not required or authorized by law to close in New York, New York;

(d) “Control” (including the terms “controlled”, “controlled by” and “under common control with”) means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of stock, as trustee or executor, by contract or credit arrangement or otherwise;

(e) “Generally Accepted Accounting Principles” means the generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession in the United States, in each case, as applicable, as of the time of the relevant financial statements referred to herein;

(f) “Indebtedness” means without duplication, (i) any indebtedness for borrowed money, (ii) any indebtedness evidenced by any note, bond, debenture or other debt security, (iii) any obligations under capitalized leases with respect to which the Company or any of its subsidiaries is liable as obligor, guarantor or otherwise, (iv) obligations in respect of outstanding letters of credit against which funds have been drawn, (v) obligations in respect of commodity, currency, sale or hedging agreements, and (vi) obligations to assume, guarantee or endorse, or

otherwise as an accommodation become responsible for (including any “keep well” or similar agreement to maintain the financial statement condition of another person) any of the foregoing types of obligations on behalf of any person other than the Company or any of its subsidiaries; *provided* that Indebtedness shall not include intercompany Indebtedness;

(g) “Knowledge” (i) with respect to the Company means the actual knowledge of any of the persons listed in Section 9.3) of the Company Disclosure Schedule and (ii) with respect to Parent or Merger Sub means the actual knowledge of any of the executive officers of Parent;

(h) “Person” or “Persons” means an individual, corporation, partnership, limited liability company, association, trust, unincorporated organization, other entity or group (as defined in Section 13(d)(3) of the Exchange Act);

(j) “Subsidiary” or “Subsidiaries” of the Company, the Surviving Corporation, Parent or any other person means any significant subsidiary (as defined in Rule 1-02(w) of Regulation S-X) of which the Company, the Surviving Corporation, Parent or such other person, as the case may be (either alone or through or together with any other subsidiary), owns, directly or indirectly, 50% or more of the stock or other equity interests the holder of which is generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

(k) Each of the following terms is defined on the page set forth opposite such term.

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IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

212 DB CORP.

By: 

Name:

Title:

GIGIT CORP.

By: 

Name:

Title:

CHASIN MUSIC GROUP, INC.

By: 

Name:

Title: Chief Executive Officer