



Merger Progress Report

May 20, 2019

CONDITIONS TO THE CLOSING (from Agreement and Plan of Merger)

5.1 **Conditions to the Obligations of the Parties.** The obligations of the Parties to consummate and effect the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by the non-bound Party to the condition:

5.1.1 **Representations and Warranties.** Each Party shall certify, as of the Closing Date, that the representations and warranties stated in this Agreement shall continue be true and correct in all material respects at and as of the Closing, and that each Party has satisfied all applicable conditions to closing.

5.1.2. **Covenants.** The Parties shall have performed and complied in all material respects with all covenants contained in this Agreement required to be performed and complied with by it as of the Closing, including without limitation Section 4.1.

4.1 **Conduct Prior to Closing.** From the date hereof through the Closing, Compass and REALM shall operate in the ordinary course and substantially in accordance with past practice. Without limiting the generality of the foregoing, from the date hereof through the Closing, REALM shall not, without obtaining prior written consent of Compass (a) acquire any material properties or assets, (b) sell, lease, encumber or otherwise dispose of any material properties or assets, (c) propose or adopt any amendments to their articles of incorporation or bylaws, (d) incur, assume or guarantee any indebtedness, (e) make any loans or advances to, or investments in, any other person or entity other than cash management activities and employee expense advances in the ordinary course consistent with past practice, (f) enter into, amend or terminate any material agreement, (g) make any expenditure in excess of amounts specified in REALM's current budget (as made available to Compass), (h) enter into, adopt or amend any Benefits Plan or (i) enter into any contract, agreement or commitment to do any of the foregoing.

5.1.3. **No Injunction or Restraints; Illegality.** No order issued by any court of competent jurisdiction or other governmental authority having jurisdiction over Compass and REALM, and no other legal restraint or prohibition, preventing the consummation of the transactions contemplated hereby shall be in effect; nor shall any proceeding brought by a governmental authority seeking any of the foregoing have been commenced or be pending; nor shall there be any action taken by any governmental authority, or any law, enacted, entered, enforced or deemed applicable to the transactions contemplated hereby, that makes the consummation of the transactions contemplated hereby illegal.

5.1.4. **Governmental Approvals.** All material authorizations, orders, declarations, approvals, notices or consents and filings with governmental authorities required in connection with the consummation of the transactions contemplated hereby shall have been obtained or made, except the Attorney General's written consent is not required to satisfy this Condition of Closing so long as the Parties timely provided the 20-day notice required in Section 1.2 of this Agreement.

The Attorney General sent a letter on May 8, 2019, raising no objections to the proposed merger. Please see attached.

5.1.5. **Delivery of Documents.** Each Party shall have delivered or made available to the other Parties those documents described in Sections 1.4.1 and 1.4.2 hereof, respectively.

1.4.1 Compass Deliveries. Subject to fulfillment or waiver of the conditions set forth in Article V, at the Closing, Compass shall deliver to REALM all of the following:

- (a) A copy of the Compass articles of incorporation, certified by the California Secretary of State within 30 days of the Closing Date;
- (b) A certificate of good standing of Compass issued as of a date no less than 20 days prior to the Closing Date by the California Secretary of State;
- (c) A certificate of good standing of Compass issued as of a date no less than 2 days prior to the Closing Date by the California Franchise Tax Board;
- (d) A certificate of the Secretary of Compass, dated the Closing Date (defined in 1.6 below), in form and substance reasonably satisfactory to REALM, as to (i) no amendments to the Bylaws of Compass; (ii) no amendments to the articles of incorporation of Compass; and (iii) the resolutions of the Board of Directors of Compass authorizing the execution and performance of this Agreement and consummation of the transactions contemplated hereby;
- (e) All consents, waivers, or approvals obtained by Compass with respect to the consummation of the transactions contemplated by this Agreement; and
- (f) All other certificates, agreements and other documents contemplated by Article V.

1.4.2 REALM Deliveries. Subject to fulfillment or waiver of the conditions set forth in Article V, at the Closing, REALM shall deliver to Compass all of the following:

- (a) A copy of the Articles of Incorporation of REALM, certified by the California Secretary of State within 30 days of the Closing Date;
- (b) A certificate of good standing of REALM, issued as of a date no less than 20 days prior to the Closing Date by the California Secretary of State;
- (c) A certificate of good standing of REALM, issued as of a date no less than 2 days prior to the Closing Date by the California Franchise Tax Board;
- (d) An affirmation letter from the United States Internal Revenue Service confirming REALM's 501(c)(3) determination, issued as of a date within 30 days of the Closing Date;
- (e) A certificate of the Secretary of REALM, dated the Closing Date, in form and substance reasonably satisfactory to Compass, as to (i) no amendments to the Bylaws of REALM; (ii) no amendments to the Articles of Incorporation of REALM; and (iii) the resolutions of the Board of Directors of REALM authorizing the execution and performance of this Agreement and consummation of the transactions contemplated hereby;
- (f) All consents, waivers, or approvals obtained by REALM with respect to the consummation of the transactions contemplated by this Agreement; and
- (g) All other certificates, agreements and other documents contemplated by Article V.

5.1.6. **Consents.** REALM shall have delivered or made available to Compass all consents, waivers, or approvals required with respect to the consummation of the transactions contemplated by this Agreement.

5.2 **Additional Conditions to Closing to be Satisfied by REALM.** The obligations of the Parties to consummate and effect the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by the non-bound Party to the condition:

5.2.1 REALM must maintain its Charter for the School in good standing, and provide District confirmation of such good standing. The District's confirmation of good standing shall be dated no earlier than 15 (fifteen) days prior to the Closing Date. Good standing for purposes of this agreement shall include no pending notice of concern, notice of violation, or notice of intent to revoke the Charter for the School.

5.2.2 REALM must provide to Compass a copy of any notice of concern, notice to cure, notice of violation, or notice of intent to revoke the School's Charter within one (1) business day of REALM's receipt of such notice.

5.2.3 REALM must obtain any necessary material revision of its Charter for the School from the District that may be necessary to effectuate this Agreement, and the operation of the School by Compass as the surviving corporation.

REALM submitted the Material Revision to Berkeley USD on Monday, March 11. A Public Hearing was held on Wednesday, April 10 to consider the Material Revision. A second Public Hearing was held on Wednesday, May 8 to consider the Material Revision. The Berkeley USD Board of Education is scheduled to take action on the Material Revision at their Wednesday, May 22 regular meeting. Please see attached BUSD agenda.

5.2.4 REALM must use commercially reasonable efforts to reduce its debts and liabilities, which shall include negotiations with its other creditors. REALM shall reduce its debts and liabilities by a minimum of thirty-percent (30%) of the amount of REALM debt and liabilities existing as of the date of this Agreement.

REALM has been working with CSMC to reduce its debts and liabilities with its creditors. To date, \$275,335.86 (25%) has been reduced through negotiations, with a number of conversations continuing to reduce the debt further.

5.2.5 REALM must maintain, and have maintained, commercially reasonable insurance coverage for all aspects of its operations, including any claims arising from such operations, at all times from the date of its initial commencement of its operations.

5.2.6 Closing certificates of REALM in forms reasonably acceptable to Compass.

5.2.7 Any other documents or items reasonably required by Compass.