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BALTIMORE CITY
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CIVIL DIVISION

ROBERT BRANAGAN, On Behalf of Himself and All Others Similarly Situated, Plaintiff, v. EXCEL TRUST, INC., *et al.*, Defendants.	IN THE CIRCUIT COURT FOR BALTIMORE CITY Case No. 24C15002142

AMENDED COMPLAINT

Plaintiff Robert Branagan ("Plaintiff"), by and through his undersigned counsel, upon knowledge as to himself and upon information and belief as to all other matters, alleges as follows:

NATURE OF THE CASE

1. This shareholder class action arises from the decision by the Board of Directors (the "Board") of Excel Trust, Inc. ("Excel" or the "Company") to enter into a definitive agreement to sell all of Excel's outstanding shares of common stock to Blackstone Property Partners, L.P. ("Blackstone"). The proposed transaction provides inadequate value to shareholders, grants exclusive benefits to the Company's executive officers and directors at the stockholders' expense, and was negotiated and voted on by those executive officers despite their serious conflicts of interest. Indeed, the Company's founder and CEO Gary Sabin ("Sabin") did not even communicate to the Board the initial overtures by private real estate investment entities that launched the sales process of the Company for more than a month after receipt. The Board then let Mr. Sabin and management exclusively negotiate the proposed transaction in a two-party auction, without contacting strategic acquirers, with little oversight, and for the majority of the time without the assistance of a financial advisor. Even more troubling, as detailed below, there

is no indication that the Board was aware of certain exclusive benefits that Sabin and other Company executives had negotiated with Blackstone until the day they voted to approve the proposed transaction

2. Excel is a Maryland corporation that has elected to operate as a real estate investment trust ("REIT"). Excel is based in San Diego, California, and is the general partner of Excel Trust, L.P. ("Partnership"), a Delaware limited partnership through which Excel conducts substantially all of its business. Excel acquires and develops shopping centers in U.S. hubs experiencing strong population and household income growth. It then leases those properties to "anchor" tenants – popular retailers like Wegmans and Target that sell necessity or value-oriented items. Since going public in April 2010, Excel has steadily grown its portfolio of high-quality assets and has consistently performed well.

3. On April 9, 2015, the Board approved the merger of the Company and the Partnership with newly created, corresponding entities owned by Blackstone. Under the terms of the Agreement and Plan of Merger (the "Blackstone Merger Agreement"), Blackstone will acquire all outstanding shares of Excel common stock for $15.85 in cash, for a total of approximately $2 billion including debt (the "Proposed Transaction"). At this price, Excel shareholders will receive only a meager premium of 14.5% relative to the Company's closing price on April 9, 2015, the last trading day before the announcement of the Proposed Transaction, which was also its lowest closing stock price for almost a month.

4. In contrast, the Proposed Transaction provides Company insiders with significant benefits that will not be shared by its outside stockholders. First, the Merger Agreement guarantees Excel executives, including Defendants Sabin, Spencer G. Plumb ("Plumb"), the President and Chief Operating Officer, and Mark T. Burton ("Burton"), the Chief Investment

Officer and Senior Vice President of Acquisitions, who all also serve on the Company's Board, the opportunity to continue their lucrative employment roles at the new post-merger company. Second, Defendants Sabin, Burton, and Plumb were granted exceptionally large awards of restricted stock only a year ago, the majority of which would only vest subject to outstanding financial performance by the Company, which now will all accelerate and vest immediately pursuant to the Blackstone Merger Agreement. Third, holders of common units in the Partnership, which are majority owned by defendants Sabin, Burton, and two other key executives, will have the option of exchanging their Partnership common units ("Partnership Units") for either the merger consideration or newly created 5.50% Series C Preferred Units in the new Blackstone operating partnership.

5. The Company's executives' interests in the Proposed Transaction thus differ markedly from those of Excel's public shareholders. Nevertheless, executives and directors Sabin, Plumb, and Burton negotiated and then voted in favor of the Proposed Transaction in their roles as directors of Excel. These votes violated Excel's Corporate Governance Guidelines, which provide that "Directors are expected to avoid any action, position or interest that conflicts with the interests of the Company or gives the appearance of a conflict. . . . If a director has a personal interest in a matter before the Board, the director will disclose the interest to the Board, excuse himself or herself from discussion on the matter and not vote on the matter."

6. The sale process employed by the Company is alarming. From the beginning, Sabin and management controlled all aspects of the process and consistently kept the Board in the dark. Repeatedly, Sabin waited for weeks to advise the Board of material developments in management's negotiations with Blackstone and its lone rival bidder ("Party A"). Nevertheless, the Board had numerous opportunities to address management's conflicts, directly engage with

the potential acquirers, select and consult external advisors, or otherwise grab hold of the reins of the sale process. However, in each instance, the Board chose to remain disengaged and yield control over all aspects of the merger's negotiation to Sabin and the other conflicted executives. For example, the Board did not even consider the engagement of a financial advisor until March 18, 2015, approximately two months after the Company had first been approached by Party A, one month after the Board had been informed of Party A's overture, and after price negotiations between Sabin and Party A were well underway and the Company had been approached by Blackstone. Then, the Board allowed management to identify and interview a financial advisor, and only retained Morgan Stanley & Co. LLC ("Morgan Stanley") on March 27, 2015, when all price negotiations but for the final bids by Party A and Blackstone had been submitted and less than two weeks before the Board approved the Proposed Transaction. Additionally, the purportedly independent members of the Board – Defendants Bruce G. Blakley ("Blakley"), Burland B. East III ("East"), Robert E. Parsons, Jr. ("Parsons"), and Warren R. Staley ("Staley") – failed to learn, let alone discuss and consider, the full extent of management's conflicts of interest, especially the Partnership Unit conversion feature, until the Board had gathered on April 9, 2015 to rubber stamp the Proposed Transaction that the Excel executives had negotiated.

7. The hurried, uninformed nature of the Board's agreement to the Proposed Transaction is especially problematic in light of provisions in the Merger Agreement that severely restrict the Board members' ability to satisfy their fiduciary duty to maximize shareholder value in a cash-out transaction. The Merger Agreement bars Excel from soliciting competing proposals. In addition, the Board's ability to engage with a competing bidder making an unsolicited proposal is limited by a restrictive fiduciary "out" that allows the conflicted management directors to continue to participate in and influence the process. Further, a

competing acquirer would have to pay Blackstone a $25 million termination fee. A competing offer would also be subject to a matching provision in the Merger Agreement, which allows Blackstone to repeatedly match any offer made by any competing acquirer, putting Blackstone at a strong advantage in any auction by allowing it to win by only matching, not beating, a competing bid.

8. By entering into the Merger Agreement on such terms, the Board members breached their fiduciary duty to maximize shareholder value. Defendants Sabin, Plumb, and Burton further violated their fiduciary duties by seeking to advance their own personal interests through the acceleration of their restricted stock awards and the retention of their positions after the consummation of the Proposed Transaction, at the expense of the public shareholders. Sabin and Burton additionally violated their fiduciary duties by pursuing their personal financial interests through the Partnership Units conversion option, also at the expense of the Company's public stockholders. The outside directors similarly violated their fiduciary duties by assisting, rather than rebuffing, these insiders' selfish efforts, which failed to maximize the value of Excel's public stockholders' equity interests in the Company.

9. In addition, on May 12, 2015, the Company filed a preliminary proxy on Schedule 14A (the "Preliminary Proxy") with the United States Securities and Exchange Commission ("SEC"). As detailed herein, the Preliminary Proxy is materially misleading and incomplete in its description of, among other things, the negotiations of the Proposed Transaction, Morgan Stanley's role in the Proposed Transaction and analysis of the fairness of the Proposed Transaction, and the Individual Defendants' (defined below) conflicts of interest and benefits secured that were not shared with the Company's public shareholders. The Individual

Defendants' approval of the Preliminary Proxy constitutes a violation of their fiduciary duty of candor to the Company's stockholders.

10. Injunctive and other equitable relief is required to protect the interests of Excel's public stockholders by forcing the Board to conduct a full auction of the Company and satisfy their duties to maximize shareholder value and provide complete candor to the Company's public stockholders.

11. Because of the Board's breach of their fiduciary duties, Plaintiff and the Class have been, and will be, damaged, and will not receive the fair value of Excel's assets.

12. Plaintiff and the other members of the Class are immediately threatened by the wrongs complained of herein, and, as to those wrongs for which money damages are inadequate, lack an adequate remedy at law.

13. To the extent the claims for the Individual Defendants' breaches of fiduciary duty and for aiding and abetting the Individual Defendants' failure to maximize stockholder value and to provide full material information concerning the Proposed Transaction cannot be remedied by money damages, Plaintiff has no adequate remedy at law and seeks to enjoin the shareholder vote on the Proposed Transaction to compel the Defendants to carry out their fiduciary duties to maximize shareholder value on a sale of the Company, and provide complete and accurate material information to all Excel shareholders in connection with the Proposed Transaction.

JURISDICTION AND VENUE

14. This Court has jurisdiction over Defendants pursuant to § 6-102 and § 6-103 of the Courts and Judicial Proceedings Article of the Maryland Code Annotated because the Company is incorporated under the laws of the State of Maryland and the causes of action alleged herein arise from Defendants transacting business in Maryland.

15. The damages suffered and sought to be recovered by Plaintiff and the Class are in excess of the jurisdictional minimum of this Court. The exact amount of damages suffered by Plaintiff and the Class cannot be precisely determined at this point.

16. This Court has jurisdiction over the Defendants because each Defendant is either a corporation that conducts business in or maintains operations in Baltimore City or is an individual who has sufficient minimum contacts with Maryland so as to render the exercise of jurisdiction by the Maryland courts permissible under traditional notions of fair play and substantial justice.

17. Venue is proper in this circuit pursuant to § 6-102 of the Courts and Judicial Proceedings Article of the Maryland Code Annotated because Excel is incorporated in the state of Maryland, and there are multiple defendants with no single venue applicable, and thus can be sued for damages in this Court.

PARTIES

18. Plaintiff is the owner of Excel common stock, and has owned Excel common stock continuously since prior to the wrongs complained of herein.

19. Defendant Excel is a Maryland corporation and was incorporated on December 15, 2009. Excel is a publicly traded REIT that targets value-oriented and grocery-anchored shopping centers in increasingly populated neighborhoods across the U.S. Excel's operating portfolio consists of 38 retail properties totaling approximately 7.2 million square feet of gross leasable area, approximately 94.3% of which is leased. Within three years of its formation, the Company surpassed $1 billion in assets. By the end of 2014, its gross asset value was approaching $1.7 billion.

20. Defendant Partnership is a limited partnership organized under Delaware law on December 16, 2009. Excel, its sole general partner and the owner of approximately 98.4% of its 62,132,895 Partnership Units, conducts substantially all of its business through Partnership.

21. Defendant Sabin is Excel's Chief Executive Officer ("CEO") and the Chairman of the Board. He has held these positions since the Company's formation in December 2009 and founded the Company's predecessor entities. Specifically, in January 1989 he created Excel Realty Trust, Inc., for which he served as Chairman, President and CEO until its merger with New Plan Realty Trust, Inc. in September 1998. He stayed on as Director and President of the surviving company – re-named New Plan Excel Realty Trust – until April 1999, when he left with his management team in order to focus his full attention on his role as Chairman, President, and CEO of Excel Legacy Corporation, an entity that they had spun off from Excel Realty Trust six months before the September 1998 merger. Just one month after his exit from New Plan Excel Realty Trust, Sabin caused Excel Legacy Corporation to acquire substantially all of Price Enterprises, Inc. In September 2001, Excel Legacy Corporation formally merged with Price Enterprises to form Price Legacy Corporation. Sabin served as Co-Chairman and CEO of Price Legacy Corporation until his resignation in October 2003. Immediately thereafter, he – assisted by his previous employer's management team – founded Excel Realty Holdings, LLC, for which he continues to serve as Chairman, CEO, and President. Sabin directly holds 180,250 shares of restricted stock and 311,804 shares of common stock. Sabin is the trustee for the Gary B. Sabin Family Trust, dated May 20, 1982, which holds 595,376 shares of common stock and 471,370 Partnership Units. In 2014, Sabin received $3,808,958 in salary and other compensation.

22. Defendant Plumb has served as a director of the Company since Excel completed its initial public offering in April 2010. Plumb has been Excel's President and Chief Operating

Officer since the Company's formation. Plumb has also served as Chief Operating Officer of Excel Realty Holdings since January 2008. Plumb has worked for Sabin, his father-in-law, ever since his college graduation nearly eighteen years ago. Plumb holds 46,262 shares of restricted stock and 85,780 shares of common stock. Plumb received $1,161,732 in salary and other compensation for 2014.

23. Defendant Burton has served as a director of the Company since Excel completed its initial public offering in April 2010. Burton has been Excel's Chief Investment Officer and Senior Vice President ("SVP") of Acquisitions since the Company's formation. Burton's uninterrupted tenure with Sabin dates back to 1983. In October 1995, Burton was promoted to SVP of Acquisitions for Excel Realty Trust; ever since, he has filled that role at every company over which Sabin has presided. Like Sabin and Plumb, Burton remains an officer of Sabin's Excel Realty Holdings. Burton owns 46,262 shares of restricted stock, 83,009 shares of common stock, and 56,564 Partnership Units. Burton received $1,161,202 in total compensation from Excel for 2014.

24. Defendant Blakley has served as a director of the Company and Chairman of the Audit Committee for Excel since the Company went public in 2010. Blakley also serves on Excel's Nominating and Corporate Governance Committee. Blakley directly holds 775 shares of restricted stock and 17,169 shares of common stock. Blakley is also the trustee for the Blakley Family 2001 Trust, dated May 10, 2001, which holds 1,293 shares of common stock.

25. Defendant East has served as a director of the Company and the Chairman of the Nominating and Corporate Governance Committee for Excel since the Company went public in 2010. East also serves on Excel's Audit Committee and Compensation Committee. East owns 775 shares of restricted stock and 17,169 shares of common stock.

26. Defendant Parsons has served as a director of the Company and the Chairman of the Compensation Committee at Excel since the Company went public in 2010. Parsons also serves on Excel's Audit Committee. Parsons owns 775 shares of restricted stock and 39,669 shares of common stock. Parsons serves with Sabin on the National Advisory Council of the Marriott School of Management, the business school of their alma mater, Brigham Young University.

27. Defendant Staley has served as a director of Excel since the Company went public in 2010. He is a member of the Compensation Committee and Nominating and Corporate Governance Committee. Staley owns 775 shares of restricted stock and 17,169 shares of common stock.

28. Defendants Sabin, Plumb, Burton, Blakley, East, Parsons, and Staley are collectively referred to herein as the "Individual Defendants" and, together with Excel and the Partnership, as the "Excel Defendants."

29. Defendant The Blackstone Group L.P. ("Blackstone Group") is a global investment and advisory firm. Blackstone Group is a Delaware limited partnership that is headquartered in New York, New York.

30. Defendant Blackstone is a real estate fund launched by Blackstone Group in 2014. It specializes in real estate, office, industrial, retail, commercial property, and apartment property investments. Blackstone was formed in Delaware on June 30, 2014.

31. Defendant BRE Retail Centers Holdings LP ("BRE Holdings" or "Parent") is a Delaware limited partnership and the parent party to the Merger Agreement. BRE Holdings is a subsidiary of Blackstone.

32. Defendant BRE Retail Centers Corp ("Merger Sub") is a Maryland corporation. It is a subsidiary of BRE Holdings created for the purpose of the Proposed Transaction. The Merger Agreement contemplates that Merger Sub will be the surviving corporation resulting from the merger with Excel.

33. Defendant BRE Retail Centers LP ("Merger Partnership") is a Delaware limited partnership. It, too, is a subsidiary of BRE Holdings created for the purpose of the Proposed Transaction. Per the Merger Agreement, Merger Partnership will be the surviving partnership resulting from the merger with Partnership.

34. Blackstone Group, Blackstone, BRE Holdings, Merger Sub, and Merger Partnership are collectively referred to herein as the "Blackstone Defendants."

INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES

35. By reason of the Individual Defendants' positions with the Company as officers and/or directors, they are in a fiduciary relationship with and owe fiduciary duties directly to the Company's stockholders, including Plaintiff and the other public stockholders of the Company. Specifically, the Board owes Plaintiff and the other public stockholders of the Company a fiduciary duty to maximize stockholder value and of candor.

36. To comply with their fiduciary duties owed to Plaintiff and the other public stockholders of Excel, the Individual Defendants may not take any action that:

(a) adversely affects the value provided to the Company's stockholders;

(b) favors themselves or will discourage or inhibit alternative offers to purchase control of the corporation or its assets;

(c) adversely affects their duty to maximize the value of the Company's stockholders' shares;

(d) violates their duty of candor to the Company's stockholders; and/or

(e) will provide the Individual Defendants with preferential treatment at the expense of or separate from Excel's public stockholders, a personal financial benefit not equally shared by the public stockholders of the corporation, or unjust enrichment at the expense of or to the detriment of the public stockholders of Excel.

37. Plaintiff alleges herein that the Individual Defendants, jointly and severally, in connection with the Proposed Transaction, are violating their fiduciary duties owed directly to the Company's stockholders.

SUBSTANTIVE ALLEGATIONS

Background of the Inside Directors and Excel

38. Sabin and his senior management team at Excel are a tight-knit group with a long history of working together. The members of Sabin's management team – Defendants Plumb and Burton as well as executive officers James Y. Nakagawa ("Nakagawa"), S. Eric Ottesen ("Ottesen"), and Matthew S. Romney – have worked for him, on average, for more than 22 years. His team has steadfastly followed him even as his focus moved from one company to the next. Since 1993, Sabin and his team have directed the operations of four U.S. public companies and served as senior management for a fifth.

39. Sabin's previous tenure as director of a publicly listed company involved his stewardship of Price Legacy Corporation ("Price Legacy"). Price Legacy was the product of a $1.2 billion merger on September 18, 2001 between Price Enterprises, Inc. and Excel Legacy

Corp., the latter of which Sabin and his team had presided over as directors and executive officers. During the next two years, Sabin and his team engineered a recapitalization plan via which Price Legacy converted most of its preferred stock into common shares. Sabin hoped that the changes to Price Legacy's capital structure would enable him to take the company private. When he resigned from Price Legacy in October 2003 in order to pursue a failed take-private bid, his executive management team left with him.

40. Sabin and his team spent the next six years working for Sabin's privately held Excel Realty Holdings, LLC. In that venture, they acquired and developed the four properties that later became Excel's foundational assets. Sabin owned two of the properties in their entirety, and had a majority, controlling interest in the other two, in which Burton, Nakagawa, and Ottesen also had interests. Then, in December 2009, they founded Excel, a Maryland-incorporated REIT focusing on the acquisition and leasing of shopping centers anchored by necessities-based retail outlets in areas experiencing strong population growth. The team organized Partnership as an operating partnership through which Excel, as general partner, would conduct substantially all of its business.

41. In April 2010, Excel raised approximately $210 million through an initial public offering priced at $14.00 per share. Shortly afterward, the Company collectively issued 507,993 shares of common stock and 641,062 Partnership Units to Sabin and the other executive team members who had contributed Excel's foundational assets. Sabin was awarded 471,370 Partnership Units, which are subject to a security agreement relating to a personal loan. Burton, Nakagawa, and Ottesen were each awarded 56,564 Partnership Units. The Company assumed approximately $18.4 million of debt secured by its foundational properties. Additionally, Excel used the proceeds of the offering to repay another $13.1 million in debt, including $1.4 million to

the personal credit facility that Sabin had used to fund his acquisition of the lone undeveloped foundational property.

42. Since going public, Excel has consistently performed well. Excel stood out from its peers due to its attractive dividend yields and high-quality asset portfolio. Indeed, since its initial public offering, Excel has consistently increased its quarterly dividend from $0.16 in 2011 to $0.1625 in April 2012 to $0.17 in April 2013 to $0.175 in January 2014. On February 11, 2015, Excel declared that its next dividend, payable in April 2015, would be $0.18. On January 6, 2014, Moody's Investor Service assigned Excel an investment grade rating of (P)Baa3; it complimented the Company's "high quality property portfolio, sound liquidity, and moderate leverage." One REIT analyst concluded that "on a 'risk-adjusted' basis . . . Excel pays the best 'pound for pound' yield." Capital investors signaled their agreement, enabling Excel to raise approximately $25 million through a shelf registration and $146 million through a follow-on-equity offering just weeks after Partnership's May 7, 2014 issuance of $250 million in corporate bonds.

43. In 2014, Excel achieved even stronger results. On the Company's February 12, 2015 earnings call, Sabin characterized 2014 as a "fantastic year" during which the Company "experienced momentum in almost every aspect of our business." The Company dramatically improved its cost of capital and acquired "over $400 million worth of high quality assets in great markets." Adjusted funds from operations ("AFFO") for the quarter ending December 31, 2014 were $16.5 million, or $0.27 per diluted share, an increase from $11.4 million, or $0.22 per diluted share, for the final quarter of 2013. AFFO for the year were up nearly 20% versus 2013. The Company reported fourth-quarter earnings per share six cents higher than had been expected. Fourth-quarter revenues outpaced analysts' consensus estimate by more than 30%.

44. The positive results affected the market value of Excel shares. After finishing September 2014 at $11.77 per share, the trading price of Excel stock steadily rose, regularly surpassing $14.00 per share throughout 2015. With the Company outperforming consensus estimates of earnings per share and revenues, and consistently paying dividends of $0.175 per share throughout 2014, analysts increasingly viewed Excel with optimism. As of October 2014, Excel's dividend yield of 5.8% was one of the highest in its peer group. One market-watcher set his target price for the Company's stock at $16.00.

45. The Company's stock continued to perform well in 2015. In the three months prior to the announcement of the Proposed Transaction, Excel's trading price hit a new 52-week high five times.

46. Sabin also expressed optimism and confidence in the Company's future prospects. During the February 12, 2015 earnings call, the day after the Company declared an $0.18 per share dividend to be paid on April 15, 2015, Sabin cited an abundance of "attractive growth opportunities . . . [m]any of them within [Excel's] existing portfolio." He described the Company's outlook for 2015 as "very strong." Indeed, the first three months of the new year marked the fifth consecutive quarter for which the Company met or exceeded analyst consensus estimates.

47. While achieving its 2014 gains, Excel departed from some of the Company's historical operating methods. Excel embarked on an acquisition spree in the second half of 2014. In the fourth quarter alone, when it acquired $268 million in properties, the Company recognized more in transaction costs than it had for all of 2013.

48. In March 2014, at the beginning of the same year in which it authorized these substantial expenditures, the Board drastically increased management's compensation. In

addition to hefty salary raises of more than 8% for each of them and non-equity incentive plan compensation that increased by over 37% for each during 2014, Excel's executive officers received strikingly large time- and performance-based restricted stock awards. According to Excel's Definitive Proxy Statement filed on Form DEF 14A on April 2, 2015, these were long-term equity incentive awards covering a three-year period that were granted in part to address retention concerns, and 62% of the awards were subject to performance-based vesting. During the three year period, at the end of each fiscal year, the Company's compensation committee would determine the number of shares to which each executive officer would be entitled that year based on Excel's performance relative to its AFFO growth over the previous year and acquisitions. Plumb, Nakagawa, Burton, and Ottesen each received stock awards equivalent in value to 311.5% of their 2014 salaries. Sabin received stock awards that the Company valued at $2,672,000, or 668% of his $400,000 salary. The stock awards exceeded the Company's 2014 budget for non-cash compensation expenses.

The Sale Process

49. Prior to its April 10, 2015 merger announcement, Excel had never indicated that it intended to conduct a comprehensive review of the Company's market value and strategic opportunities. Indeed, during Excel's February 12, 2015 earnings call, Sabin noted that the Company planned to continue to narrow the gap between its net asset value and stock price via acquisitions and selective dispositions. However, approximately a month earlier, Party A, a joint venture consisting of two private real estate investment entities, had expressed an interest in acquiring the Company, and on February 7, 2015, the Company entered into a confidentiality agreement with Party A so that it could perform due diligence on a potential acquisition.

50. Inexplicably, and despite knowing that Party A was comprised of two private real estate investment entities such that he and his management team would likely be part of any

post-transaction entity, Sabin did not apprise the Board of Party A's interest for several weeks. Indeed, the Board did not meet to discuss how to respond to Party A's expression of interest until February 20, 2015, at which time the Board instructed management to continue discussions with Party A and to advise the Board of any material developments.

51. After four weeks of due diligence and discussions with Excel management, on March 3, 2015, Party A made a non-binding offer to acquire Excel for $14.25 per share in cash. Party A additionally sent Sabin and his management team a draft merger agreement. That evening, Sabin negotiated an increase in the offer to $14.75 per share.

52. One day later, Blackstone contacted Sabin to express its interest in acquiring Excel. Sabin promptly provided Blackstone with a draft confidentiality agreement that the parties executed the next day, enabling Blackstone to begin its due diligence investigation on March 5, 2015.

53. Despite these demonstrable "material developments," Sabin and his management team waited two weeks to inform the Board about the events of March 3-5, 2015. In the intervening period, Sabin and his management team held numerous discussions with Blackstone and Party A about the terms of a potential transaction. A number of these discussions concerned ways to restrict Excel's ability to communicate with potential acquirers other than Blackstone and Party A. They focused on termination fees and limitations on Excel's right to solicit alternative acquisition proposals subsequent to signing a merger agreement. The Board was not involved in these discussions that later dictated the Board's ability to satisfy their fiduciary duties to maximize shareholder value in a sale of control transaction.

54. At a meeting on March 18, 2015, Sabin finally informed the Board of the outstanding offer from Party A and the ongoing negotiations with Blackstone. Excel's

disclosures relating to the Proposed Transaction indicate that the Board did not discuss the propriety of management's extended discussions with Blackstone and Party A or management's failure to promptly report material developments per the Board's express command. Instead, the Board discussed whether it should consider a sale of the Company. Disturbingly, the Board allowed management to participate in this conversation even though Sabin and his team had already been negotiating such a sale for more than two weeks. Seeking legal advice regarding the Board's duties and responsibilities in considering a potential sale of the Company, the Board turned to Ottesen, Sabin's loyal consigliere of nearly twenty years and himself a participant in the Company's discussions with Blackstone and Party A. The Board resolved to engage a financial advisor and handed over the responsibility for finding one to Excel management. The Board continued to abdicate its responsibilities, again merely instructing Excel management to update the Board regarding any material developments. The Board's decision to entirely delegate the process to the conflicted management directors is particularly problematic because the Company's Corporate Governance Guidelines require directors to "avoid any action, position or interest that conflicts with the interests of the Company or gives the appearance of a conflict." In addition, "[i]f a director has a personal interest in a matter before the Board, the director will disclose the interest to the Board, excuse himself or herself from discussion on the matter and not vote on the matter." The management directors' personal interest in the sale of the Company to Blackstone should have caused the non-management directors on the Board to lead the negotiations, not simply stay out of the process in any substantive way and wait for updates.

55. Immediately after the Board meeting, Sabin, Plumb, and other members of Excel management joined their Blackstone counterparts for dinner. Afterward, Excel management, without consulting the Board, directed Latham & Watkins LLP ("Latham & Watkins") to

prepare a merger agreement based on the initial draft sent by Party A. On March 19, 2015, Blackstone made a non-binding offer to acquire Excel for $15.25 per share, in cash. Again, Sabin and his team flouted the Board's explicit instruction to notify the Board of material developments and did not tell the outside directors about Blackstone's initial offer for eight days.

56. During the intervening period, Excel management engaged in substantive negotiations, exchanging draft merger agreements and discussing material terms with Blackstone and Party A. Negotiations with the potential acquirers proceeded on similar tracks; in both instances, discussions primarily concerned the strengthening of deal protections. All the while, the Board waited for management to recommend a financial advisor.

57. On March 26, 2015, Party A increased its bid to $15.30 per share. The next day, Excel management met with the Board to review and discuss the two competing offers. For the first time, the Board discussed potential negotiation strategies. Also for the first time, management updated the Board about its process of interviewing financial advisor candidates. Per management's recommendation, the Board selected Morgan Stanley without interviewing Morgan Stanley or any other potential financial advisor themselves. Morgan Stanley then promptly joined the meeting and answered questions regarding the two existing bids.

58. Significantly, however, the Board engaged Morgan Stanley on severely limited terms that management and its nominee had previously negotiated. Indeed, the Company retained Morgan Stanley for the sole purpose of providing a fairness opinion, and not for assisting the Board or the Company in negotiating a value maximizing transaction for Excel shareholders. Specifically, in its letter to the Board issued just two weeks later, Morgan Stanley explained, "we have not been involved in structuring, planning or negotiating the Merger. In arriving at our opinion, we were not authorized to solicit, and did not solicit, interest from any

party with respect to the acquisition, business combination or other extraordinary transaction, involving the Company, nor did we negotiate with any party regarding the possible acquisition of the Company or certain of its constituent businesses." Thus, Sabin continued to maintain complete control of the merger negotiations.

59. On March 31, 2015, the Board met again and, for the first time, discussed the possibility that Excel executives would continue in their roles at a newly formed entity arising from the merger. Sabin asserted that his team had not discussed the terms of any employment arrangements with either bidder. Even while recognizing that members of Excel management, including directors Sabin, Plumb, and Burton, stood to receive the additional benefit of continued employment, the Board merely cautioned management to avoid discussing employment agreement terms. Considering the clear restrictions in the Company's Corporate Governance Guidelines, the Board's continued laissez faire attitude to permitting now admittedly conflicted members of the Board to continue to conduct the negotiations constitutes a violation of their duty to conduct a process that would ensure a value maximizing transaction for Excel shareholders.

60. In addition, at the March 31, 2015 meeting, Sabin advised the Board that management had recently received revised draft merger agreements from Blackstone and Party A. Sabin reported that these drafts included provisions that, once the merger was signed, restricted Excel's ability to communicate even with parties that make unsolicited acquisition proposals. Moments after receiving this news, the Board, after discussion with management and the advisors that management had chosen, expressly resolved to refrain from contacting any additional potential acquirers. Again, this process that the Board belatedly agreed to after management had already negotiated it fails to satisfy the directors' fiduciary duty to maximize shareholder value.

61. Blackstone and Party A then provided Sabin with their best and final offers within a matter of days. On April 8, 2015, the Board discussed the final offers. The Board relied on management and Latham & Watkins to describe and compare the material terms of the merger agreements. The Board instructed management to finalize the legal documentation for a merger with Blackstone to be reviewed the following day. At the very end of the meeting, for the first time in the entire sale process, Blakley, East, Parsons, and Staley discussed the prospective sale of the company in the absence of Excel management.

62. On April 9, 2015, Excel management reviewed with the Board the material terms of the Blackstone Merger Agreement. For the very first time, the Board discussed the added benefits that the Blackstone Merger Agreement would bestow upon Sabin and his management team. Management acknowledged that, during negotiations, Blackstone had communicated its intention to retain the Excel management team after the merger. The Board additionally noted that the Blackstone Merger Agreement permits owners of Partnership Units – which are predominately held by Sabin, Burton, Nakagawa, and Ottesen – to exchange those securities for preferred units in the surviving partnership. The Board had never previously discussed this provision. The Company has not disclosed whether the option to exchange Partnership Units was included in previous drafts of the Merger Agreement or added to the Merger Agreement subsequent to the April 8, 2015 Board meeting. Notably, Morgan Stanley's fairness opinion that it presented to the Board immediately after the Board's brief discussion of the provision expressly disclaims any analysis of the fairness of the Partnership Unit exchange option to Excel shareholders and its effect on the fairness of the financial consideration being offered in the Proposed Transaction.

The Proposed Transaction

63. On April 9, 2015, the Board unanimously approved the sale of all of the Company's outstanding shares of common stock to Blackstone for $15.85 per share. The total value of the Proposed Transaction is approximately $2 billion, including debt. Under the terms of the Blackstone Merger Agreement, the Company will merge with and into a newly created, surviving Blackstone subsidiary, Merger Sub. The Partnership will similarly merge with and into a newly created, surviving Blackstone-owned partnership, Merger Partnership. The Company announced that it would make its common stock dividend of $0.18 per share payable on April 15, 2015 and pay a final common stock dividend in July 2015, but, under the terms of the Blackstone Merger Agreement, not for any quarter thereafter.

64. In addition, Excel announced that it would provide holders of the Company's 7.00% Series A Cumulative Convertible Perpetual Preferred Stock (the "Series A Preferred Stock") with an option to exercise a special conversion right or to have their stock redeemed at the greater of i) $25 per share plus any accrued and unpaid dividends, or ii) the product of the common stock consideration and the number of common shares issuable if a Series A Preferred Stockholder converted such shares at the conversion rate specified in the fundamental change notice that Excel will provide in connection with the Proposed Transaction. The Company's 8.125% Series B Cumulative Redeemable Preferred Stock (the "Series B Preferred Stock") will be redeemed for $25 per share plus any accrued and unpaid dividends through the consummation of the Proposed Transaction.

65. Holders of the Partnership Units (other than Excel itself) will have the right per Partnership Unit to receive either an amount in cash equal to the Proposed Transaction consideration of $15.85 per share ***or*** one newly created 5.50% Series C Cumulative Preferred Units ("New Partnership Unit") in the surviving Merger Partnership. Under Section 1.7(b) of the

Blackstone Merger Agreement, the exchange of Partnership Units for New Partnership Units will be treated as a tax-deferred transaction. As detailed herein, the Company's executives own the substantial majority of Partnership Units not held directly by the Company.

66. In connection with the announcement of the Proposed Transaction, Sabin stated: "Appetite for high-quality retail real estate is strong with cap rates and REIT stock multiples approaching historic levels and we did not believe the market accurately reflected the value of the assets. This led the Board to conclude it was time to more fully assess the value of our portfolio. After reviewing our options, we were pleased to have a group with Blackstone's reputation step forward with this offer." The Company further disclosed that the Board unanimously approved the Proposed Transaction.

67. The full Excel Board's unanimous approval of the Blackstone Merger Agreement, however, violates the Company's Corporate Governance Guidelines, which require that: "if a director has a personal interest in a matter before the Board, the director will disclose the interest to the Board, excuse himself or herself from discussion on the matter and not vote on the matter." Defendants Sabin, Burton, and Plumb participated in the Board's vote and discussions regarding the Proposed Transaction even though their interest in the merger diverged from those of the public shareholders they are duty-bound to represent. Under Section 1.3(b) of the Blackstone Merger Agreement, all three will retain their highly lucrative employment positions after the consummation of the Proposed Transaction. Indeed, if Blackstone were not to continue employing the management directors for at least 18 months after the Proposed Transaction, under the terms of their employment agreements with Excel, they will together collect over $5 million in additional cash compensation. Additionally, under Section 2.3 of the Blackstone Merger Agreement, the large awards of restricted stock granted to Defendants Sabin, Burton and

Plumb will all accelerate and vest immediately, regardless of whether their conditions have been met, conferring substantial benefits on these directors. Finally, Section 2.4 of the Blackstone Merger Agreement, which allows Partnership Unit holders to exchange their Partnership Units for New Partnership Units – allowing them, unlike the common stockholders, to continue to share in the strong performance of the Company – creates another conflict of interest for Defendants Sabin and Burton, who hold 471,370 and 56,564 Partnership Units, respectively.

68. Despite the clear requirements of Excel's Corporate Governance Guidelines, the Company's purportedly independent directors (Defendants Blakley, East, Parsons, and Staley) permitted Sabin, Burton, and Plumb to participate in the negotiation and approval of the Proposed Transaction when they had personal interests in the transaction divergent from the Company's public stockholders. Indeed, the Board did not take any steps to address or mitigate their colleagues' conflicts of interest, like forming a special committee to negotiate and review the Proposed Transaction, or retaining separate advisors to help protect the interests of Excel's public shareholders. These failures occurred despite the management directors' clear conflicts and the Company's previous disclosure in its Annual Report on Form 10-K for the year ended December 31, 2014, filed with the U.S. Securities and Exchange Commission on March 2, 2014, that conflicts of interest could result in Excel's management acting other than in its stockholders' best interests.

69. The Proposed Transaction benefits Sabin and his management team at the public shareholders' expense. For common stockholders, the Proposed Transaction consideration – $15.85 per share in cash – is inadequate. It reflects a mere 14.5% premium from the Company's trading price on April 9, 2015 – the last day before the merger announcement. Notably, the stock's $13.84 closing price on April 9 was lower than its closing price on any day in the

previous four weeks. Moreover, the $15.85 price was only a 10.5% premium to the common stock's closing price on March 20, 2015, when Defendants were negotiating the Proposed Transaction. In addition, the Proposed Transaction price is only a 9% premium to the Company's consensus net asset value estimate.

The Proposed Transaction Is Impermissibly Locked Up

70. The Blackstone Merger Agreement contains several deal protections that unnecessarily and improperly restrict the Company's ability to attract a better return for its shareholders. First, a "no solicitation" provision impermissibly locks up the Proposed Transaction. Section 6.4(a)(i) of the Merger Agreement prohibits the Company from soliciting third-party interest in proposing competitive offers.

71. Section 6.4(a)(ii) further provides that, after May 9, 2015, Excel cannot "knowingly encourage or facilitate (including by way of furnishing nonpublic information) any inquiries . . . or . . . participate in discussions or negotiations with, or provide any nonpublic information to" any third-party that proactively expressed interest in acquiring the Company. Excel is required to notify the Blackstone Defendants within 48 hours of receiving any alternative offer or request for confidential information, including sharing copies of any written materials provided, and must keep the Blackstone Defendants informed about any changes to any alternative proposal. Excel cannot enter into any confidentiality agreement with more favorable terms than the one it executed with Blackstone, or one that would prevent it from complying with these requirements of the Blackstone Merger Agreement.

72. Section 6.4(b) does provide a fiduciary "out" that allows Excel to provide information pursuant to a confidentiality agreement and participate in negotiations and

discussions in response to a written bona fide Acquisition Proposal[1] if the Board determines in good faith that it either constitutes or could reasonably be expected to result in a Superior Proposal. A Superior Proposal is defined in Section 9.13(v) of the Merger Agreement as:

> "any bona fide written Acquisition Proposal which (i) in the good faith judgment of the Company Board, is reasonably likely to be consummated, and (ii) the Company Board determines in its good faith judgment after consultation with outside legal counsel and outside financial advisors would result, if consummated, in a transaction that is more favorable to the Company's stockholders from a financial point of view (which determination shall take into account (A) legal and regulatory matters, (B) the likelihood and timing of consummation (as compared to the transactions contemplated hereby) and (C) any changes to the terms of this Agreement proposed by Parent and any other information provided by Parent (including pursuant to Section 6.4(c) of this Agreement)) than the Mergers. For purposes of the definition of Superior Proposal, an 'Acquisition Proposal' shall have the meaning

[1] An "Acquisition Proposal" is defined in Section 9.13(a) as "an inquiry, offer or proposal regarding any of the following (other than the Mergers) involving any of the Company or the Partnership or their respective Subsidiaries: (i) any merger, consolidation, share exchange, recapitalization, dissolution, liquidation, business combination or other similar transaction involving the Company or the Partnership; (ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition, directly or indirectly, by merger, consolidation, sale of equity interests, share exchange, joint venture, business combination or otherwise, of 20% or more of the consolidated assets of the Company or the Partnership and their respective Subsidiaries, taken as a whole (as determined on a book–value basis (including indebtedness secured solely by such assets)), in a single transaction or series of related transactions; (iii) any issue, sale or other disposition (including by way of merger, consolidation, sale of equity interests, share exchange, joint venture, business combination or otherwise) securities (or options, rights or warrants to purchase, or securities convertible into, such securities) representing 20% or more of the voting power of the Company or 20% or more of the equity interests or general partner interests in the Partnership; (iv) any tender offer or exchange offer for 20% or more of any class of equity security of the Company or 20% or more of the equity interests or general partner interests in the Partnership or the filing of a registration statement under the Securities Act in connection therewith; (v) any other transaction or series of related transactions pursuant to which any Third Party proposes to acquire control of assets of the Company or the Partnership and their respective Subsidiaries having a fair market value equal to or greater than 20% of the fair market value of all of the assets of the Company or the Partnership and their respective Subsidiaries, taken as a whole, immediately prior to such transaction; or (vi) any public announcement of a proposal, plan or intention to do any of the foregoing or any agreement to engage in any of the foregoing."

assigned to such term herein, except that each reference to '20%' in such definition shall be deemed to be a reference to '50%.'"

73. This language provides no guidance or clarity on what would constitute a Superior Proposal for Excel. It leaves the determination of whether an Acquisition Proposal would "result, if consummated, in a transaction that is more favorable to the Company's stockholders from a financial point of view" entirely within the good faith determination of Excel's Board, which includes three conflicted directors, and whose purportedly independent directors have already demonstrated that they will act at the direction of Sabin and his management team while ignoring their conflicts of interest.

74. Moreover, as the Superior Proposal language requires that the alternative transaction "be more favorable to the Company's stockholders from a financial point of view . . . than the ***Mergers***," which includes the Partnership merger as well as the corporation merger, it appears that for an acquisition offer to constitute a Superior Proposal, the acquirer would have to grant Excel's management the same option to convert their Partnership Units into some preferred series of partnership units in any alternative acquisition vehicle. As there is nothing to prevent the Board from considering management's interests in its determination of whether a competing bid constitutes or could reasonably lead to a Superior Proposal, this allows the Board to reject a potentially superior offer unless Excel management's Partnership Units conversion benefit is part of the offer.

75. In addition, Section 6.4(c) of the Blackstone Merger Agreement provides the Blackstone Defendants with matching rights, further deterring any potential competing bidders. Under this provision, Excel may not terminate the Merger Agreement or effect a change in recommendation upon determining that an Acquisition Proposal is a Superior Proposal unless it notifies and provides Parent with a copy of the Superior Proposal at least three business days

prior to taking such an action. During those three business days, Excel must negotiate with Parent in good faith to "obviate the need" to change its recommendation in support of the Proposed Transaction. Since a Superior Proposal must be "more favorable" than an offer from the Blackstone Defendants, this provision allows the Blackstone Defendants to only match rather than beat a Superior Proposal, potentially depressing the ultimate price that would be available to the Company's stockholders. Furthermore, if a Superior Proposal is matched and a competing bidder then makes an even higher offer, Section 6.4(c) requires Excel to again notify and negotiate with Parent for two business days.

76. In addition, Section 8.1 of the Blackstone Merger Agreement requires Excel to pay a termination fee of $25 million if it decides to terminate the Blackstone Merger Agreement at any time before December 31, 2015. Any acquirer attempting to make a competing proposal would be obligated to compensate for this termination fee in its offer, making the emergence of a Superior Proposal even less likely.

77. The deal protections are especially inappropriate given the specific circumstances of this transaction. Excel deliberately refused to market itself to potential strategic acquirers for whom Excel could provide extra value via a transaction. Indeed, Excel's Board consciously declined to market the Company at all. The Board resigned itself to an exceptionally brief strategic review process dominated by conflicted executives uninterested in adequately investigating whether other parties were willing to pay more than Blackstone's proposed consideration. The Board nevertheless agreed to a merger agreement that locks up the Proposed Transaction and restricts the Board's ability to consider alternative offers while allowing Excel's management to realize benefits that will not be shared with its shareholders.

Incomplete and Misleading Disclosures

78. The Company's disclosures regarding the Individual Defendants' negotiation of, and motivations for, the Proposed Transaction are incomplete and misleading, and deny Excel shareholders the information they need to make an informed decision on the Blackstone Merger Agreement.

79. Excel's Preliminary Proxy Statement carefully avoids addressing numerous issues relating to the extent to which the Board neglected to inform itself about management's conflicts of interests. For example, the Preliminary Proxy's summary of events contains just one reference to the Partnership Unit conversion option: a brief note that the exchange option was mentioned on April 9, 2015, during the Board's first and final discussion of management's divergent interests in the mergers. The Preliminary Proxy fails to disclose when the Partnership Unit conversion option was first discussed and purportedly offered to management by Blackstone; whether management had requested that Party A provide a similar benefit; when the provision was drafted; when the Board received and reviewed drafts of the Blackstone Merger Agreement; and whether the Board was informed of the provision prior to April 9, 2015. The Preliminary Proxy also fails to provide any substantive analysis of what the value of the Partnership Unit conversion option will be to Partnership Unit holders should they elect to exercise their option. Nor does the Preliminary Proxy disclose the contract governing the post-merger New Partnership Units. The preceding information is material to a reasonable Excel stockholder in deciding whether to approve the Proposed Transaction for two reasons. First, it goes to an Excel shareholder's consideration of whether the purportedly independent members of the Board adequately checked the conflicts of the inside directors who were negotiating the Proposed Transaction to ensure that the process was fair and resulted in a value maximizing transaction. Second, Excel shareholders need to have an idea of the value of the Partnership Unit

exchange option to the insiders to determine if it is reasonable for them to approve the Proposed Transaction and whether the transaction consideration is fair in light of the benefits that the insiders are receiving which they will not share.

80. The Preliminary Proxy similarly fails to provide full information relating to management's discussions with Blackstone about future employment. The Company discloses merely that Sabin twice assured the Board that the parties had refrained from discussing the "terms" of employment; in this way, Excel skirts the question of when Blackstone first expressed its intention to retain the Company's management, as well as the existence and nature of any conversations on this topic between Sabin and Party A. This information is similarly material to Excel shareholders to ensure that a fair process was conducted and that transaction consideration was not being subverted to the Company's insiders.

81. Excel's disclosures regarding the Company's retention of Morgan Stanley are also incomplete. The Preliminary Proxy states that, moments before the Board hired Morgan Stanley, "[r]epresentatives of the company's management also discussed with the board management's process of interviewing potential financial advisors." The public filing does not disclose the nature of management's "process", including, for example, whether management interviewed any other candidates and if so whether those candidates were disclosed to the Board, nor does it disclose managements' basis for recommending Morgan Stanley over any other potential candidates or whether the Board was informed of or made any determination as to whether Morgan Stanley had any potential conflicts of interest with management, Party A or Blackstone.

82. The Preliminary Proxy also is misleading concerning the Board's basis for recommending the Proposed Transaction. The Board repeatedly espouses as a basis for approving the Blackstone Merger Agreement that, relative to larger public retail REITs, Excel

traded at a discount to its net asset value ("NAV"), impeding its ability to raise new equity capital. However, Excel successfully raised $146 million via a follow-on-equity offering less than one year ago, and Morgan Stanley's own analysis shows that Excel's trading price relative to its NAV compares favorably to those for Excel's peers. In addition, there is no disclosure of any debate that took place, or dissention, among the members of the Board over the process, whether the Proposed Transaction maximized stockholder value or whether having Excel remain independent was the only way for the Board to fulfill its fiduciary duty to maximize stockholder value.

83. There is also substantial material information missing or inaccurately stated in Morgan Stanley's financial analyses, calling into question the validity of those analyses in the mind of a reasonable Excel shareholder. For instance, Morgan Stanley's selection of precedent transactions included just one deal announced during the past eight years, and predominantly consisted of comparable transactions between 1999 and 2008 before the Great Recession. There is no explanation for the basis of Morgan Stanley's belief that these far removed transactions represent an appropriate comparison to an acquisition in today's investing climate. Additionally, shareholders cannot determine whether Morgan Stanley compared the Proposed Transaction against a reasonable range of premiums paid because Morgan Stanley's analysis of precedent transactions omits premiums paid and acquisition multiples for the preceding transactions. Furthermore, Morgan Stanley calculated premiums for each of the precedent transactions using the 10-day average trading price ending five days prior to the deal's announcement. However, Morgan Stanley then misapplied the preceding premium to Excel's April 8, 2015 stock price as opposed to applying it consistently to Excel's 10-day average trading price ending five days prior to the announcement. Correcting for this misapplication results in an additional $0.06 per share

added to the valuation. This is obviously material to Excel shareholders as it goes directly to the valuation range of the Company.

84. The Preliminary Proxy's explanation of Morgan Stanley's NAV is also incomplete and misleading. Morgan Stanley's analysis was based in part on management's estimates of net operating income, however these projections are not disclosed anywhere in the Preliminary Proxy. The Preliminary Proxy also fails to disclose whether these operating income estimates included general and administrative costs. For this reason, Morgan Stanley's decision to conduct an adjusted NAV analysis subtracting a capitalized value for purportedly "excess general and administrative expense over sector average" is incompletely described. Over the past three years, Excel's general and administrative costs as a percentage of revenue have consistently averaged 14% while its peer group has averaged 8%. However, the fact that Excel has higher general and administrative costs than its peer group does not in and of itself require an adjusted valuation so long as management's forecast of future general and administrative costs is reasonable. The Preliminary Proxy's failure to disclose the Company's projections of net operating income and general and administrative costs makes the Preliminary Proxy's description of Morgan Stanley's adjusted NAV analysis misleading and incomplete.

85. Additionally, Morgan Stanley does not provide any basis for its decision not to forecast Excel's 2016 earnings before interest, taxes, depreciation, and amortization ("EBITDA") even though the data necessary for such a forecast was available, and even though Morgan Stanley examined 2016 estimates for other metrics. Morgan Stanley's unusual additions and omissions consistently depress Morgan Stanley's valuation of the Company, which is information that is material to Excel stockholders.

86. Furthermore, while the Preliminary Proxy discloses that in the two years prior to the rendering of its opinion it provided advisory and financing services to Blackstone and its affiliates, it fails to disclose the amount of fees received by Morgan Stanley from Blackstone during that time period. In fact, Morgan Stanley has historically had a strong and lucrative relationship with Blackstone. Morgan Stanley was the lead banker on Blackstone's $4 billion initial public offering in 2007, and in April 2014, advised Blackstone on its $5.4 billion acquisition of Gates Corporation. This information, and the disclosure of any other engagements of Morgan Stanley by Blackstone and the fees received in connection with these and other engagements, is material because significant business dealings with Blackstone create a potential conflict of interest for Morgan Stanley, affecting whether Excel shareholders should reasonably rely on its fairness opinion.

87. Finally, the Preliminary Proxy provides absolutely no projections from management on the future performance of the Company, including important metrics such as free cash flows, funds from operations ("FFO"), and AFFO, which form the basis of any valuation of a REIT and which were purportedly used in Morgan Stanley's various financial analyses. This is obviously material information for an Excel shareholder determining whether to accept a cash-out offer or remain an investor in the Company.

CLASS ACTION ALLEGATIONS

88. Plaintiff brings this action on his own behalf and as a class action, pursuant to Rule 2-231 of the Maryland Rules of Civil Procedure, on behalf of all holders of common stock of the Company as of April 9, 2015 (the "Class"). Excluded from the Class are Defendants and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants.

89. This action is properly maintainable as a class action.

90. The Class is so numerous that joinder of all members is impracticable. As of March 12, 2015, there were 63,445,970 shares of Excel common stock issued and outstanding.

91. There are questions of law and fact that are common to the Class, including, *inter alia*, the following:

(a) whether the members of the Board breached their fiduciary duties to maximize shareholder value in agreeing to the Proposed Transaction;

(b) whether the members of the Board breached their fiduciary duties to Plaintiff and the Class by entering into a merger agreement that unreasonably restricts the Board's ability to solicit and consider alternative transactional opportunities;

(c) whether members of the Board breached their fiduciary duties by acting in their own financial interests to secure continued employment and other exclusive benefits instead of maximizing shareholder value;

(d) whether the members of the Board breached their fiduciary duty of candor by failing to disclose full and accurate material information in connection with the Proposed Transaction and the value of Excel as a stand-alone entity; and

(e) whether the Class is entitled to injunctive or other equitable relief as a result of Defendants' wrongful conduct.

92. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of

other members of the Class, and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

93. A class action is superior to other available methods for the fair and efficient adjudication of this shareholder action. Indeed, the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants. In addition, Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, relief on behalf of the Class as a whole is appropriate.

COUNT I

Breach of Fiduciary Duty to Maximize Stockholder Value Against the Individual Defendants

94. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein

95. By the acts, transactions and courses of conduct alleged herein, the Individual Defendants have violated their fiduciary duties they owe directly to Plaintiff and the other public stockholders of Excel.

96. The Individual Defendants have breached their fiduciary duties owed to the stockholders of Excel because they agreed to the Proposed Transaction that does not maximize shareholder value and that, instead, promises Defendants Sabin, Plumb, and Burton, as well as the other executive officers of the Company, substantial benefits that will not be shared with the Company's public stockholders.

97. As a result of the actions of the Individual Defendants, Plaintiff and the other members of the Class have suffered and will continue to suffer substantial and irreparable harm.

98. To the extent the inadequacy of the consideration alleged herein cannot be remedied by money damages, Plaintiff seeks to enjoin the shareholder vote on the Proposed Transaction to compel the Individual Defendants to carry out their fiduciary duties to maximize shareholder value on a sale of the Company.

COUNT II

Breach of the Fiduciary Duty of Candor Against the Individual Defendants

99. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein.

100. By the acts, transactions and courses of conduct alleged herein, the Individual Defendants have violated their fiduciary duties of candor owed directly to Plaintiff and the other public stockholders of Excel.

101. The Individual Defendants have breached their fiduciary duties of candor by making incomplete and misleading disclosures, thereby denying Excel shareholders the ability to make an informed decision on the Blackstone Merger Agreement.

102. As a result of the failure by the Individual Defendants to provide full and accurate information concerning the Proposed Transaction, Plaintiff and the other members of the Class have suffered and will continue to suffer substantial and irreparable harm.

103. Accordingly, Plaintiff seeks to enjoin the shareholder vote on the Blackstone Merger Agreement until and unless Defendants make full material disclosures concerning the Proposed Transaction.

COUNT III

Claim For Declaratory Relief Pursuant to Courts and Judicial Proceedings Article of the Annotated Code of Maryland § 3-401, et seq. Against All Defendants

104. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein.

105. Defendants breached their fiduciary duties owed directly to Plaintiff and the Class in connection with the Proposed Transaction, and/or aided and abetted such breaches, and are liable therefore.

106. As a result of Defendants' conduct as herein alleged, Plaintiff and the other members of the Class have suffered and/or will, in the future, suffer damages and harm, including harm for which they have no adequate remedy at law.

107. Pursuant to Courts and Judicial Proceedings Article of the Annotated Code of Maryland § 3-412, Plaintiff demands a declaration that: (a) Excel stockholders should not be asked to vote on the Proposed Transaction, and that such vote should be enjoined; (b) Defendants and each of them have breached their fiduciary duties owed directly to Plaintiff and the Class and/or have aided and abetted such breaches; (c) the Proposed Transaction was entered into in breach of the Individual Defendants' fiduciary duties owed directly to Plaintiff and the Class and was therefore unlawful and unenforceable, and that the Blackstone Merger Agreement and any other agreements that Defendants entered into in connection with, or in furtherance of, the Proposed Transaction should be rescinded and invalidated; and (d) the Proposed Transaction, the Blackstone Merger Agreement and/or related transactions contemplated thereby, should be rescinded and the parties restored to their original position.

COUNT IV

Against the Blackstone Defendants For Aiding and Abetting

108. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein.

109. As alleged herein, the Individual Defendants have breached their fiduciary duties to Plaintiff and the other members of the Class.

110. The Blackstone Defendants have aided and abetted the Individual Defendants in their breaches of fiduciary duty. As participants in the Proposed Transaction, these Defendants

were aware of the Individual Defendants' breaches of fiduciary duties and, in fact, actively and knowingly encouraged and participated in said breaches in order to obtain substantial financial benefits to the detriment of Excel's common stockholders. Specifically, the Blackstone Defendants agreed to the Proposed Transaction's terms to accelerate the vesting of the restricted stock and to provide the Partnership Units conversion option.

111. To the extent the inadequacy of the consideration alleged herein cannot be remedied by money damages, Plaintiff seeks to enjoin the shareholder vote on the Proposed Transaction to compel the Individual Defendants to carry out their fiduciary duties to maximize shareholder value on a sale of the Company.

WHEREFORE, as to Counts I, II, III, and IV Plaintiff demands judgment against Defendants jointly and severally, as follows:

A. Declaring this action to be a class action and certifying Plaintiff as the Class representative and their counsel as Class counsel;

B. Enjoining, preliminarily and permanently, the vote on the Proposed Transaction;

C. Enjoining Defendants and all persons acting in concert with them from consummating the Proposed Transaction until and unless the Board adopts and implements a fair sales process and makes full material disclosures to the Company's shareholders;

D. In the event that the Proposed Transaction is consummated prior to the entry of this Court's final judgment, rescinding and unwinding the Proposed Transaction or awarding Plaintiff and the Class rescissory damages;

E. Directing that Defendants account to Plaintiff and the other members of the Class for all damages caused by them and account for all profits and any special benefits obtained as a result of their breaches of their fiduciary duties owed directly to Plaintiff and the Class;

F. Awarding compensatory damages in favor of Plaintiff and the Class for all losses and damages suffered as a result of the wrongdoing alleged herein by Defendants in an amount in excess of $75,000, together with interest thereon; awarding Plaintiff the costs of this action, including a reasonable allowance for the fees and expenses of Plaintiff's attorneys and experts; and

G. Granting such other and further relief as this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff and the other members of the Class demand a trial by jury for the Counts above as to all issues so triable.

Dated: May 26, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that on this 26th day of May 2015, copies of Plaintiff's Amended Complaint (with a comparison copy) were served *via* email (as agreed by the parties) upon:

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