

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

THE LOVESAC COMPANY
(Exact name of registrant as specified in its charter)

Delaware

*(State or other jurisdiction of
incorporation or organization)*

5712

*(Primary Standard Industrial
Classification Code)*

32-0514958

*(I.R.S. Employer
Identification Number)*

**Two Landmark Square, Suite 300
Stamford, Connecticut 06901
(207) 273-9733**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Shawn Nelson
Chief Executive Officer
The Lovesac Company
Two Landmark Square, Suite 300
Stamford, Connecticut 06901
(207) 273-9733**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public:
As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price⁽¹⁾	Amount of Registration Fee
Common stock, \$0.00001 par value per share ⁽²⁾	\$ 46,000,000	\$ 5,727.00
Underwriter Warrant to Purchase Common Stock ⁽³⁾		
Common Stock Underlying Underwriter Warrant, \$0.0001 par value per share ⁽⁴⁾	3,220,000	400.89

- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1993, as amended (the “Securities Act”).
- (2) Includes the aggregate offering price of additional shares the underwriter has the option to purchase in this offering to cover over-allotments, if any.
- (3) In accordance with Rule 457(g) under the Securities Act, because the shares of the registrant’s common stock underlying the Underwriter Warrant are registered hereby, no separate registration fee is required with respect to the warrants registered hereby.
- (4) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(g) under the Securities Act. We have agreed to issue to Roth Capital Partners, LLC a warrant to purchase up to [●] shares of our common stock, which equates to 7% of the number of shares of our common stock to be issued and sold in this offering (including shares issuable upon exercise of the over-allotment option described herein), exercisable within five (5) years after the effective date of this registration statement. The warrant is exercisable at a price per share equal to 120% of the public offering price. The initial issuance of the Underwriter Warrant and resales of shares of common stock issuable upon exercise of the Underwriter Warrant are registered hereby. See “Underwriting – Underwriter Warrant.”

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state or other jurisdiction where the offer or sale is not permitted.

Subject to completion, dated [●], 2018

PRELIMINARY PROSPECTUS

[●] Shares



The Lovesac Company

Common Stock
\$[●] per share

This is the initial public offering of shares of common stock of The Lovesac Company. We are offering [●] shares of our common stock.

We expect the public offering price to be between \$[●] and \$[●] per share. Currently, no public market exists for our common stock. We plan to apply for listing of our common stock on the Nasdaq Global Market under the symbol "LOVE."

We are an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012 and, as such, have elected to comply with certain reduced public company disclosure standards. See "Prospectus Summary – Implications of Being an Emerging Growth Company." We will also be a "controlled company" under the corporate governance standards for Nasdaq listed companies and would be exempt from certain corporate governance requirements of the rules. See "Risk Factors—Risks Relating to this Offering and Ownership of Our Common Stock".

The offering is being underwritten on a firm commitment basis. We have granted the underwriter an option to buy up to an additional [●] shares of common stock from us to cover over-allotments. The underwriter may exercise this option at any time and from time to time during the 30-day period from the date of this prospectus.

	Per Share	Total	
		No Exercise of Over- Allotment	Full Exercise of Over- Allotment
Public offering price	\$	\$	\$
Underwriting discounts	\$	\$	\$
Proceeds to us, before expenses	\$	\$	\$

We have also agreed to issue to Roth Capital Partners, LLC a warrant to purchase up to [●] shares of our common stock, which equates to 7% of the number of shares of our common stock to be issued and sold in this offering. In addition, we have agreed to reimburse the underwriter for certain expenses. See "Underwriting" on page 86 of this prospectus for additional information.

Investing in our securities involves a high degree of risk. See the section entitled "Risk Factors" starting on page 14 of this prospectus and elsewhere in this prospectus for information that should be considered in connection with an investment in our securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

Delivery of the shares is expected to be made to the purchasers on or about [●], 2018.

Roth Capital Partners

The date of this prospectus is [●], 2018



Customer Profile:

**Household
Income
of \$100K+**

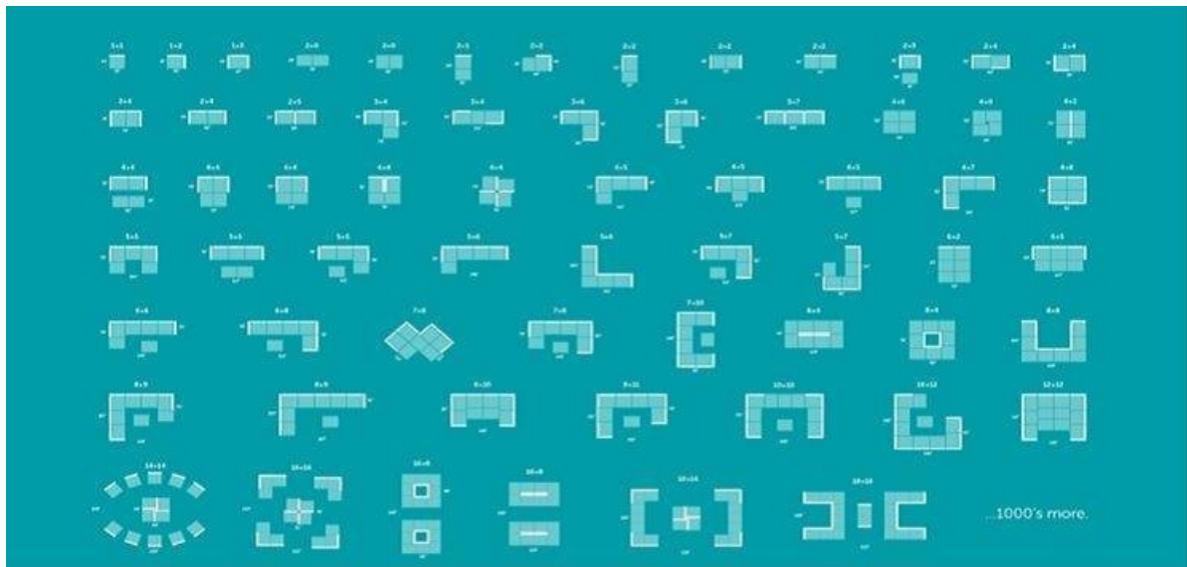
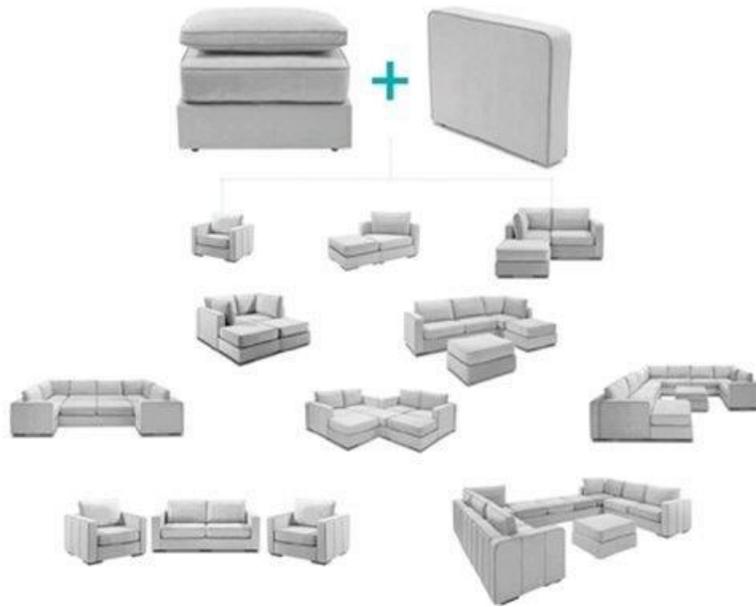
**High Purchasing
Tendencies**

**Age 24-45
Trends Millennials**

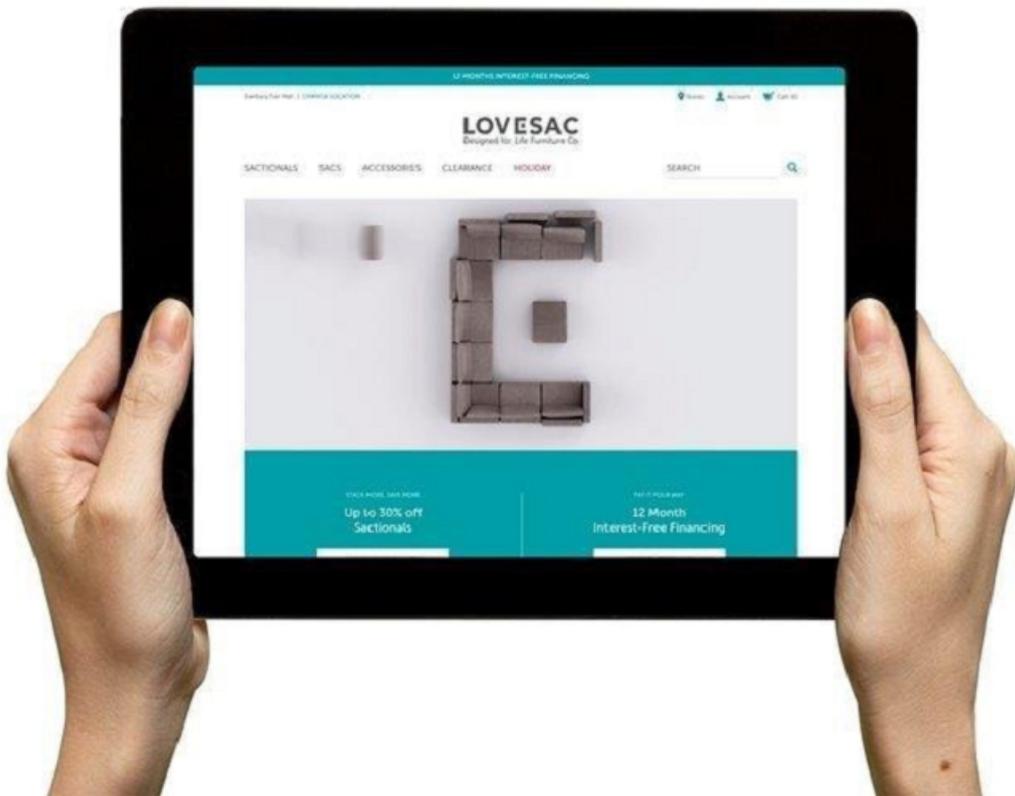
**Have or Plan to
Have Kids**

Married

Sactionals...LOVESAC



One Seat, One Side, Endless Options



Showroom and Online Orders – Overnight Delivery Capability

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You should rely only on the information contained in this prospectus or in any free writing prospectus that we may specifically authorize to be delivered or made available to you. Neither we nor the underwriter have authorized anyone to provide you with any information other than that contained in this prospectus or in any free writing prospectus we may authorize to be delivered or made available to you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus may only be used where it is legal to offer and sell our securities. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of securities. Our business, financial condition, results of operations and prospects may have changed since that date. We are not making an offer of these securities in any jurisdiction where the offer is not permitted.

For investors outside the United States: We and the underwriter have not done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of securities and the distribution of this prospectus outside the United States.

As used in this prospectus, the terms “we”, “us”, “our”, “our Company”, “the Company” and “Lovesac” refer to The Lovesac Company, our wholly-owned subsidiary, Lovesac, LLC, and our predecessor entities, as applicable, unless the context clearly indicates otherwise.

We do not have a calendar year end fiscal year, instead we use a 52 or 53 week fiscal year ending on the Sunday closest to January 31st. Fiscal years are identified in this prospectus according to the calendar year in which they end. For example, references to “fiscal 2018” or “fiscal year 2018” or similar references refer to the fiscal year ended February 4, 2018, “fiscal 2017” or “fiscal year 2017” or similar references refer to the fiscal year ended January 29, 2017, and “fiscal 2016” or “fiscal year 2016” or similar references refer to the fiscal year ended January 31, 2016. Alternatively, references to “2018,” “2017” and “2016” refer to the calendar years ended December 31, 2018, December 31, 2017 and December 31, 2016, respectively.

In this prospectus, unless otherwise specified, all references to “common stock” refer to shares of our common stock.

Trademarks, Trade Names and Service Marks

We own various U.S. federal trademark registrations and applications, certain foreign trademark registrations and applications, and unregistered trademarks, including the following marks referred to in this prospectus: Lovesac®, Lovesoft®, Sactionals®, Durafoam®, SAC® and Designed For Life®. All other trademarks or trade names referred to in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and trade names in this prospectus are referred to without the symbols ® and ™, but such references are not intended to indicate that we or their respective owners will not assert, to the fullest extent possible under applicable law, our or their rights thereto.

Market, Industry and Other Data

Unless otherwise indicated, information contained in this prospectus concerning our industry and the markets in which we operate, including our general expectations and market position, market opportunity and market size, is based on reports from various third-party sources. We believe this information to be reasonable based on the information available to us as of the date of this prospectus. However, we have not independently verified market and industry data from third-party sources. Because this information involves a number of assumptions and limitations, you are cautioned not to give undue weight to such information. The content of the sources, except to the extent specifically set forth in this prospectus, does not constitute a portion of this prospectus and is not incorporated herein.

In addition, projections, assumptions and estimates of our future performance and the future performance of the industry in which we operate are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those discussed under the sections entitled “Cautionary Note Regarding Forward-Looking Statements” and “Risk Factors” in this prospectus. These and other factors could cause results to differ materially from those expressed in the estimates made by third parties and by us.

PROSPECTUS SUMMARY

This summary highlights certain information contained in other parts of this prospectus. Because it is a summary, it does not contain all of the information you should consider before investing in shares of our common stock. You should read the entire prospectus carefully, including "Risk Factors," "Cautionary Note Regarding Forward-Looking Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and the financial statements and related notes included in this prospectus before deciding to invest in our common stock.

Our Business

We are a technology driven, omni-channel company that designs, manufactures and sells unique, high quality furniture comprised of modular couches called Sactionals and premium foam beanbag chairs called Sacs. We market and sell our products through modern and efficient showrooms and, increasingly, through online sales. We believe that our ecommerce centric approach, coupled with our ability to deliver our large upholstered products through nationwide express couriers, are unique to the furniture industry.

The name "Lovesac" was derived from our original innovative product, a premium foam beanbag chair, the Sac. The Sac was developed in 1995 and provided the foundation for the Company. Sales of this product have been increasing, representing \$26.9 million for fiscal 2018, as compared to \$20.1 million for fiscal 2017. We believe that the large size, comfortable foam filling and irreverent branding of our Sacs products have been instrumental in growing a loyal customer base and our positive, fun image.

Our Sactionals product line currently represents a majority of our sales. Sactionals are a couch system that consists of two components, seats and sides, which can be arranged, rearranged and expanded into thousands of configurations easily and without tools. Our Sactional products include a number of patented features relating to its geometry and modularity, coupling mechanisms and other features. Our Sactionals represented 71.3% of our sales for fiscal 2018 (or \$72.6 million) as compared to 70.9% of sales for fiscal 2017 (or \$54.1 million). We believe that these high quality premium priced products enhance our brand image and customer loyalty and expect them to continue to garner a significant share of our sales.

Sacs and Sactionals come in a wide variety of colors and fabrics that allow consumers to customize their purchases in numerous configurations and styles. We provide lifetime warranties on our Sactionals frames and the proprietary foam used in both product lines, and 3-year warranties on our covers. Our Designed for Life trademark reflects our dynamic product line that is built to last and evolve throughout a customer's life. Customers can continually update their Sacs and Sactionals with new covers, additions and configurations to accommodate the changes in their family and housing situations.

We believe that our products complement one another and have generated a loyal customer base, evidenced by our recent estimate that 31.7% of our customers in fiscal 2018 were repeat customers. We believe the strength of our brand is reflected in the number of customers who routinely share their purchases of Lovesac products with their friends through social media, often displaying our logos or company name in their posts. Our customers include celebrities and other influencers who support our brand through postings made on an uncompensated and unsolicited basis. As of February 4, 2018, we had approximately 564,000 followers on Facebook and 175,000 followers on Instagram, representing increases of 92% and 193%, respectively, from the same date in the prior year.

We currently market and sell our products through 66 showrooms at top tier malls and lifestyle centers in 29 states in the U.S. Our modern, efficient showrooms are designed to appeal to millennials and other purchasers looking for comfortable, enduring, premium furniture. They showcase the different sizes of our Sacs, the myriad forms into which our Sactionals can be configured, and the large variety of fabrics that can be used to cover our products. According to Furniture Today, our showrooms generated the highest sales per square foot in the industry in 2016, reflecting our efficient, small-footprint showroom model.

As part of our direct to consumer sales approach, we also sell our products through our fast growing ecommerce platform. We believe our products are uniquely suited to this channel. Our foam based Sacs can be reduced to one-eighth of their normal size and each of our Sactionals components weighs less than 40 pounds upon shipping. With furniture especially suited to ecommerce applications, our sales completed through this channel accounted for 18.5% of our total sales in fiscal 2018, up from 16.1% for fiscal 2017. Our showrooms and other direct marketing efforts work in concert to drive customer conversion in ecommerce.

Despite the increase in sales of both our Sacs and Sactionals, net losses were \$5.5 million for fiscal 2018 and \$6.9 million for fiscal 2017, primarily due to increased spending on showrooms and marketing.

Product Overview

We challenge the notion that a piece of furniture is static by offering a dynamic product line built to last and evolve throughout a customer's life. Our products serve as a set of building blocks that can be rearranged, restyled and re-upholstered with any new setting, mitigating constant changes in fashion and style.

- **Sactionals.** We believe our Sactionals platform is unlike competing products in its adaptability, yet is comparable aesthetically to similarly priced premium couches and sectionals. Our Sactional products include a number of patented features relating to its geometry and modularity, coupling mechanisms and other features. Utilizing only two, standardized pieces, "seats" and "sides," and over 300 high quality, tight-fitting covers that are removable, washable, and changeable, customers can create numerous permutations of a sectional couch with minimal effort. Customization is further enhanced with our specialty-shaped modular offerings, such as our wedge seat and roll arm side. Our custom features and accessories can be added easily and quickly to a Sactional to meet endless design, style and utility preferences, reflecting our Designed for Life philosophy. Sactionals are built to meet the highest durability and structural standards applicable to fixed couches. Sactionals are comprised of standardized units and we guarantee their compatibility over time, a major pillar of their value proposition to the consumer.
- **Sacs.** We believe that our Sacs product line is a category leader in oversized beanbags. The Sac product line offers 6 different sizes ranging from 22 pounds to 95 pounds with capacity to seat 3+ people on the larger model Sacs. Filled with Durafoam, a proprietary blend of shredded foam, Sacs provide serene comfort and guaranteed durability. Their removable covers are machine washable, and may be easily replaced with a wide selection of cover offerings.
- **Accessories.** Our accessories complement our Sacs and Sactionals by increasing their adaptability to meet evolving consumer demands and preferences. Our current product line offers Sactional-specific drink holders, footsac blankets, decorative pillows, fitted seat tables and ottomans in varying styles and finishes, providing our customers with the flexibility to customize their furnishings with decorative and practical add-ons to meet evolving style preferences. We are in the process of developing additional accessories for the tech-savvy consumer.

Sales Channels

Lovesac offers its products through an inventory lean omni-channel platform that provides a seamless and meaningful experience to our customers in showrooms and online. In recent periods, we have increased our focus on providing a platform for the transaction of business online through digital and mobile applications. As consumers increasingly transact via various ecommerce channels, our robust and user-friendly technological platform is well positioned to benefit from this growth. Additionally, our products' compact packaging facilitates production scheduling, lower shipping costs and the outsourcing of our shipping function to nationwide express couriers, allowing us to quickly and cost-effectively deliver online orders.

We leverage our showroom as both a traditional retail channel to purchase our products and an educational center for prospective online customers to learn about and interact with our products in real time. Compared to traditional retailers, our showrooms require significantly less square footage because we need to maintain only a few sample seats, sides and Sacs to demonstrate numerous configurations. Warehouse space is minimized by our ability to stack our inventory for immediate sale. In addition to providing a compelling customer experience, we believe that our showroom model provides a more efficient use of capital and logistical advantages over our competitors.

We have an ongoing working relationship with Costco to operate "roadshows" in Costco's stores, which we refer to as shop in shops, throughout fiscal 2019. Our shop in shops display select Sacs and Sactionals and are staffed similarly to our more traditional showrooms with associates trained to demonstrate and sell the product. Between February 1, 2017 and February 4, 2018, we hosted 100+ roadshows that averaged sales of \$3,800 per day. For fiscal 2018, the Costco shop in shop showrooms represented approximately 5% of sales. Our research found that nearly 2% of our in-store purchasers and 3% of our online visitors cited Costco as their source of awareness for Lovesac, reflecting the efficacy of our shop in shop concept in generating revenue and driving brand awareness.

Current and Target Customers

We believe there is significant overlap in the profiles of our current customers and our target customers. Our target customer earns a household income of at least \$100,000, is between the ages of 24 and 45, is married and currently has or plans to form a household. While we seek to market our products to this target customer broadly, we especially target millennials (who we define as those persons born between 1983 and 2000) because we believe they desire the branding, transparent business practices, innovative solutions and convenience of the on-demand commerce we offer. Millennial heads of household have increasingly become a larger portion of our customer base as represented by a 19% share (based on internal sampling we conducted with one of our products). We believe our culture of innovation, superior product development capabilities and integrated omni-channel infrastructure enable us to offer our customers a value proposition superior to our competitors.

Our Market

Large and Growing Furniture Retailing Industry

We sell our products in the large and highly fragmented furniture retailing industry, which has been rebounding steadily since the global recession. According to Mintel, a market research firm, consumer furniture expenditures are expected to grow to \$127.5 billion in 2021, representing an average annual growth rate of 3.4% between 2016 and 2021. Additionally, Mintel reported that the segment consisting of couches, chairs, and other seating products comprised nearly 30% of all U.S. consumer furniture expenditures in 2015, surpassing the next largest segment, mattresses and sleep equipment, which represented 17% of expenditures.

A Maturing Millennial Population with Favorable Furniture Purchasing Habits

Millennials, our target demographic, have surpassed Baby Boomers (persons generally born between 1946 and 1964) as the largest living generation in the U.S. The millennial population reached 83.1 million people in 2015, representing more than 25% of the U.S. population according to data from the U.S. Census Bureau. Moreover, tech savvy millennials are maturing to an age where their buying power coincides with larger discretionary purchases, including furniture products. Based on a survey conducted by Mintel, 73% of millennials (who Mintel defines as those persons born between 1977 and 1994) purchased furniture between April 2014 and April 2016. According to Mintel, of those purchasing furniture between April 2014 and April 2016, 47% of millennials reported that they had made the purchase online, compared to just 26% for Generation X and 17% for Baby Boomers.

Emergence of Online Sales in the Furniture Industry

According to Mintel, over one-third of furniture consumers have purchased products online, and this number is expected to continue to expand. Driving the market share growth of the online segment are retailers that offer fully supported shopping experiences across their web and mobile platforms. When purchasing their most recent home furnishing product, 30% of consumers made an online purchase using a computer and 9% of consumers made an online purchase using a mobile device, according to data from Mintel. While consumers are now more tech savvy and likely to browse for furniture products online, many consumers still prefer to see and feel products in-store before making their purchasing decision. Omni-channel retailers that offer a comprehensive shopping experience across all channels are well positioned to attract the growing portion of consumers who use multiple channels to browse, compare and purchase furniture products.

Our Competitive Strengths

We believe that the following strengths are central to the power of our brand and business model:

Innovative Business Model

- **Merchandising Strategy.** Nearly all home furnishings retailers, online or offline, rely on an assortment of new offerings each season to drive their business and to refashion their offerings. We have avoided this “merchandising” approach in favor of a product platform-based approach that reduces the need for seasonal introductions, designer collections, or broad in-stock assortments. We optimize our in-stock assortment of covers and accessories by limiting them to those that sell in large quantity and therefore reduce our inventory. We also provide a broad assortment of made-to-order items, that we manufacture after the consumer has purchased and paid for them. This business model yields little to no surplus inventory, less margin erosion due to overstock write-downs, higher than average annual inventory turns, increased focus at the showroom management level, and simplicity at merchandising display execution.
- **Product Platform Approach.** We have essentially two platforms upon which we develop, manufacture and sell our fundamental Sacs and Sactionals products. We market our product platforms as a long term investment that our customers can continually update with new arrangements, coverings and accessories. In turn, these changes and updates provide a recurring revenue source for our business. In addition, our Sactionals platform is an environmentally conscious alternative to fixed couches which tend to be discarded when they go out of style or wear out, a by-product of our Designed for Life approach and an important feature to some consumers.

- **Ecommerce Focus.** We build our business processes, systems, compensation structures, and logistical models with an ecommerce-first approach. We continually innovate to make shopping online easier for our customers, and we use social media to drive increased traffic to our web-based sales applications. From a product standpoint, the open-cell nature of the Durafoam filler in our Sacs allows them to be compressed for shipping to one-eighth of their normal size. To facilitate shipping, Sactionals seat cushions and back pillows are compressed to fit inside an otherwise hollow hardwood upholstered Seat frame.
- **A Culture of Innovation.** From inception, we have focused on developing unique, innovative and proprietary product platforms. We are continuously expanding and introducing new extensions to these platforms to broaden the appeal and grow the addressable market of our product offerings. We continually evaluate new products to complement our Sactionals and Sac lines and are currently developing accessories for the tech-savvy consumer. We have 9 issued U.S. utility patents, 21 issued international utility patents, 10 pending U.S. utility patent applications and 4 pending international utility patent applications. We expect to file U.S. and international patent applications for future innovations. We believe that our patent portfolio, combined with our innovative design approach may deter others from attempting to imitate or replicate our products.
- **Customer Acquisition Cost.** For fiscal 2018, our customer acquisition cost (“CAC”) was \$283.22 per customer. We calculate CAC on an annual basis by dividing our expenses associated with acquiring new customers for a fiscal year by the number of new customers we acquire in that fiscal year. We include premium rent for locations above commercial rates, media costs to new customers, and a portion of showroom merchandising costs in our marketing expenses associated with acquiring new customers when calculating our CAC. We believe that fiscal 2018 is the first fiscal year that our CAC fully reflects the implementation of changes to our operations that began in 2015.

Strong Brand Loyalty

We believe our brand, products, and Designed for Life philosophy encourage people to share their stories and develop a personal relationship with Lovesac and its community. We foster these interactions through active direct engagement using several social media platforms. We believe that our customers are active ambassadors, providing organic public relations, word of mouth advertising, and customer testimonials and endorsements. In addition, our customers have a high repeat purchasing rate and high expected lifetime engagement.

- **Robust customer lifetime value.** Once customers invest in our products, they tend to stay with them, grow with them, and add to them. We believe our customers’ loyalty is an important driver of our customer lifetime value (“CLV”), which we estimate to be \$1,236 per customer. CLV is a fixed estimate of the average gross profit we expect to receive from a customer during his or her purchasing lifetime. We based our CLV on our internal data relating to customers who first purchased from us in fiscal 2015, which we refer to as our 2015 cohort. We chose fiscal 2015 as our base year because we began to make changes to our business and our target customers in fiscal 2015 and believe that the customers in fiscal 2015 more accurately reflect our current and target customer than in years prior to fiscal 2015. We calculated our CLV by dividing the aggregate gross profits through fiscal 2017 attributable to the 2015 cohort (approximately \$35,706,282) by the total number of customers in the 2015 cohort (28,882 customers).
- **High repeat purchasing rates.** We believe our focus on customer interaction and data driven analysis of their behavior and projected needs drives our high repeat customer rates. In fiscal 2018, our repeat customers accounted for 31.7% of all customers. Additionally as of end of fiscal 2018, 7% and 10% of our customers purchased both Sacs and Sactionals in the fiscal 2017 cohort and the fiscal 2016 cohort, respectively. As we attract more customers to the Sactionals product platform, we believe sustained repeat purchasing rates will create opportunities for accelerated growth and will allow us to capitalize on the high lifetime value of our customers.

Omni-Channel Approach

Our distribution strategy allows us to reach customers through three distinct, brand-enhancing channels, which we refer to as our omni-channel approach.

- **Ecommerce.** Through our mobile and ecommerce channel, we believe that we are able to significantly enhance the consumer shopping experience, driving deeper brand engagement and loyalty, while also realizing higher margins that are more favorable than our retail showroom locations. We believe our robust technological capabilities position us well to benefit from the growing consumer preference to transact at home and via mobile devices.
- **Showrooms.** We carefully select the best small-footprint retail locations in high-end malls and lifestyle centers for our showrooms. The architecture and layout of these showrooms is designed to communicate our brand personality and key product features. Our goal is to educate first-time customers, creating an environment where people can touch, feel, read, and understand the technology behind our products. We are updating and remodeling many of our showrooms to reflect our new showroom concept, which emphasizes our unique product platform, and will be the standard for future showrooms. Our new showroom concept, introduced in 2016, utilizes technology in more experiential ways to increase traffic and sales.
- **Shop in shops.** We are expanding the use of lower cost shop in shops to increase the number of locations where customers can experience and purchase our products. We have an ongoing working relationship with Costco to operate shop in shop programs, or “roadshows,” that usually run for 10 days at a time. These shop in shops are staffed similarly to our showrooms with associates trained to demonstrate and sell our products and promote our brand. We also believe our shop in shops provide a low cost alternative to drive brand awareness, in store sales, and ecommerce sales.

Strong Millennial Appeal

We have targeted the millennial generation because we believe they desire branded products, coupled with transparent business practices, innovative solutions and the convenience of on-demand commerce. Additionally, members of the millennial generation, currently the most populous age group in the U.S., are completing their educations, getting married, and starting or expanding their households. The peak ages for home furnishings purchases are 35-54. We believe that home furnishings will thrive as millennials and their children need larger residences and the necessary furnishings for household and family formation. The modularity of our Sactionals and ease of cleaning and replacing covers on Sactionals and Sacs provide our customers who are moving and expanding their households with the ability to evolve their purchases to accommodate the changes in their family and housing situations, offering us a competitive advantage.

Unique Distribution Capability

Due to the unique modularity of our Sactionals products and the shrinkability of our Sacs, we are able to distribute our products through nationwide express carriers and utilize warehouse space and international shipping routes. We believe our Sactionals are the only product in its category that enjoys these logistical advantages.

Seasoned Management Team

Our management team is led by our CEO and founder, Shawn Nelson, who continues to focus on developing new products and intellectual property to drive future growth. Our President and Chief Operating Officer, Jack Krause, has significant experience in and a deep understanding of the complexities in managing high-growth brands. Since joining Lovesac, he has been instrumental in guiding the company from a retail-led business model to an omni-channel direct-marketing driven business model. Our Executive Vice President and Chief Financial Officer, Donna Dellomo, is a Certified Public Accountant and possesses significant experience and knowledge regarding public company accounting and reporting. Prior to joining our Company, for 19 years, Ms. Dellomo served as Vice President and Chief Financial Officer of a publicly traded fragrance retailer with over 290 retail locations and a wholesale distribution network. In addition, we recently hired David Jensen as our Chief Technology/Chief Information Officer to lead our technology team as we evolve into a more marketing-driven digital-first retailer. Prior to joining our Company, Mr. Jensen served as the Senior Director of Information Services at the retailer J. Jill.

Our Growth Strategies

Key drivers of our growth strategy include:

Continue to Build on Our Brand

Despite our loyal following, we believe there is a significant opportunity to increase our brand awareness. Based on our own internal benchmarking study that was concluded in April 2017, we estimate that our brand awareness is less than 1% among all consumers nationally. Before 2017, we invested minimally in advertising. Since then, we have aggressively invested in brand building and direct marketing efforts, including direct mail, 30-second television commercials in select markets and social media. These brand building efforts have resulted in average incremental gross profits 320% greater than the total marketing spend on paid search, social media and affiliate marketing. We also saw significant incremental gross profit as a result of our television advertisements and direct mail starter kits. Incremental gross profit was 76% greater with television advertisements and 111% greater with direct mail starter kits than the marketing spend in these categories. Our focus on building our brand has also led to an increase in our new customer base, which grew by 27.2% in fiscal 2018. We plan to accelerate our ecommerce sales by building awareness via increased digital and social media, including digital videos and direct response television.

Update Showrooms and Add Other Locations

We intend to continue to renovate our current showroom locations, open new showrooms across the country in lifestyle centers, top tier shopping malls, and high street and urban locations, and expand product touch-feel points through the increased use of lower cost shop in shop locations.

- **Showrooms.** We are evolving our model for new showrooms and renovating our existing showrooms to reflect the standards of this new model. Our new showroom concept utilizes technology in more experiential ways to increase traffic and sales, and communicate our brand personality and key product features. The architecture and layout of these showrooms is designed to educate first-time customers, creating a nearly self-service environment where people can touch, feel and understand the technology behind our products. To attract customer traffic, our new model features two giant LED screens embedded in the walls that play videos demonstrating the Sactionals differentiating technology in motion. In addition, in connection with these renovations, we have experienced increased sales and negotiated more favorable lease terms. For fiscal 2018, our renovated showrooms realized sales growth of 14.3% compared to the same period last year while our non-renovated showrooms experienced sales growth of 7.6% compared to fiscal 2017.

In addition, we recently refined our real estate selection strategy for showrooms in shopping centers to include alignment with the demographics of customers located near the prospective center and to seek locations within the center near other furniture retailers to take advantage of furniture-related customer traffic and to provide a comparison shopping experience that we believe favors our products.

- **Shop in shops.** We have an ongoing working relationship with Costco to operate shop in shop showrooms and have been expanding the use of these shop in shop showrooms. At these locations, customers can experience and purchase our products at a lower cost to us than our permanent showrooms.

Increase Sales and Operating Margins

We will seek to improve operating margins by maintaining our premium pricing and increasing sales through our omni-channel distribution approach.

- **Premium Pricing.** Reflecting their durability, functionality and configurability, Lovesac's products are positioned in the premium segment of the market. In fiscal 2018, the average purchase price of first time Sactionals was \$3,789 and our average transaction was \$1,058. Although Sactionals are premium priced, the cost of adding to or changing them over time is lower than purchasing another couch, which we believe motivates our customers to make higher margin initial investments in our products. Further, we believe that as we grow sales, we will be able to spread them over relatively fixed overhead and increase our margins.
- **Omni-Channel Platform.** By leveraging our omni-channel platform, we cost-effectively drive traffic to our ecommerce channel, resulting in increased web-based sales and improved operating margins. We continually seek to improve our ecommerce capabilities to drive sales and take advantage of the lower cost of this channel. Our showrooms and other direct marketing efforts work in concert to drive customer conversion in ecommerce. In addition, our shop in shops provide a low cost alternative to drive brand awareness and both in-store and ecommerce sales.

Summary Risk Factors

Investing in our common stock involves substantial risk, and our business is subject to numerous risks and uncertainties, including those listed in the section entitled "Risk Factors" and elsewhere in this prospectus. These risks include, among other things:

- our ability to sustain recent growth rates, increase sales and achieve profitability;
- our ability to improve our products and develop new products;
- our ability to maintain and grow our brand image and reputation;
- our ability to maintain existing customers and acquire new customers in a cost-effective manner;
- our ability to manage the growth of our operations over time, including the growth of our omni-channel operations;
- our ability to successfully optimize our omni-channel operations and provide a seamless, relevant and reliable omni-channel experience;
- our ability to successfully open and operate new showrooms on a profitable basis;
- our ability to compete and succeed in a highly competitive and evolving industry;
- our ability to adapt to changes in consumer spending and general economic conditions;
- our dependence on a small number of suppliers and international suppliers in developing countries;
- our ability to manage supply chain-related expenses and disruptions in our supply chain;
- our ability to maintain adequate protection of our intellectual property and to avoid violation of the intellectual property rights of others;
- our ability to manage our information technology systems to support our growing business;
- our ability to secure the personal information of our customers and employees and comply with applicable security standards; and
- our failure to maintain adequate internal controls over our financial and management systems.

Recent Reorganization and Securities Issuances

The Company was formed in the State of Delaware on January 3, 2017, in connection with a corporate reorganization with SAC Acquisition LLC, a Delaware limited liability company, the predecessor entity to the Company and current majority shareholder of the Company. Pursuant to the terms of the reorganization, on March 22, 2017, SAC Acquisition LLC assigned and the Company assumed all right, title and interest in and to all assets, including intellectual property, and liabilities of SAC Acquisition LLC in exchange for 15,000,000 shares of common stock.

We raised \$25.5 million through the sale of preferred stock and warrants in multiple offerings in fiscal 2018. In March 2017, we issued an aggregate of 1,000,000 shares of our Series A-1 Preferred Stock at a purchase price of \$10.00 per share for an aggregate purchase price of \$10.0 million and warrants, as amended, to purchase 875,000 shares of our common stock at a price per share equal to the offering price to affiliates of Satori Capital, LLC (“Satori”). The Preferred A-1 Shares accrued dividends at a rate of 8% per annum, and, immediately prior to the closing of this offering, will accrue an additional amount of dividends equal to the amount of dividends that would have accrued and accumulated through and including the one year anniversary of the completion of this offering. Immediately prior to the closing of this offering, the Series A-1 Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, will convert into approximately [●] shares of our common stock.

Beginning in March 2017 and ending in October 2017, we completed an offering of our Series A Preferred Stock and issued an aggregate of 923,000 shares of our Series A Preferred Stock at a purchase price of \$10.00 per share for an aggregate purchase price of \$9.2 million and warrants, as amended, to purchase 584,063 shares of our common stock at a price per share equal to the offering price to various entities and accredited investors, including investment vehicles affiliated with Mistral Capital Management, LLC (“Mistral”). The Preferred A Shares accrued dividends at a rate of 8% per annum, and, immediately prior to the closing of this offering, will accrue an additional amount of dividends equal to the amount of dividends that would have accrued and accumulated through and including the one year anniversary of the completion of this offering. Immediately prior to the closing of this offering, the Series A Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, will convert into approximately [●] shares of our common stock.

Lastly, between October 2017 and December 2017: (i) we issued 400,000 shares of our Series A-2 Preferred Stock at a purchase price of \$10.00 per share for an aggregate purchase price of \$4.0 million and warrants, as amended, to purchase 350,000 shares of our common stock at a price per share equal to the offering price to entities affiliated with Satori; (ii) we issued an aggregate of 11,500 shares of our Series A-2 Preferred Stock at a purchase price of \$10 per share for an aggregate purchase price of \$115,000 and warrants, as amended, to purchase 10,063 shares of our common stock at a price per share equal to the offering price to Shawn Nelson, our founder and Chief Executive Officer, Jack Krause, our President and Chief Operating Officer, and Donna Dellomo, our Executive Vice President and Chief Financial Officer; and (iii) we issued 212,000 shares of our Series A-2 Preferred Stock at a purchase price of \$10.00 per share for an aggregate purchase price of \$2.12 million and warrants, as amended, to purchase 185,500 shares of our common stock at a price per share equal to the offering price to an investment vehicle associated with Mistral. The Preferred A-2 Shares accrued dividends at a rate of 8% per annum, and, immediately prior to the closing of this offering, will accrue an additional amount of dividends equal to the amount of dividends that would have accrued and accumulated through and including the one year anniversary of the completion of this offering. Immediately prior to the closing of this offering, the Series A-2 Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, will convert into approximately [●] shares of our common stock.

Immediately prior to this offering, we intend to (i) convert all of our outstanding shares of preferred stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, into [●] shares of common stock, (ii) effect a 1-for-[●] reverse stock split of our common stock, (iii) file an amended and restated certificate of incorporation, and (iv) adopt amended and restated bylaws. A description of the conversion features of our preferred stock can be found under the heading “Description of Capital Stock – Preferred Stock” and in Notes 7 and 12 to our consolidated financial statements for the fiscal year ended February 4, 2018.

Wells Fargo Credit Facility

On February 6, 2018, we terminated our line of credit with Siena Funding, LLC and replaced it with a four-year, secured revolving credit facility with Wells Fargo Bank, National Association (“Wells Fargo”). The credit facility with Wells Fargo permits borrowings of up to \$25.0 million, subject to borrowing base and availability restrictions. For additional information regarding our line of credit with Wells Fargo, see Note 12, to our consolidated financial statements for the fiscal year ended February 4, 2018.

Corporate Information

The Company’s principal executive office is Two Landmark Square, Suite 300, Stamford, CT 06901. Our telephone number is 888-636-1223. Our Internet address is www.lovesac.com. We do not incorporate the information on or accessible through our website into this prospectus, and you should not consider any information on, or that can be accessed through, our website a part of this prospectus.

Our Equity Sponsor

We have a valuable relationship with our equity sponsor, Mistral, who, through funds and investment vehicles advised by Mistral, has made significant equity investments in us, including a controlling interest in our majority shareholder, SAC Acquisition LLC. We believe that we will continue to benefit from Mistral’s investment experience in the consumer products sector, its expertise in effecting transactions and its support for our near-term and long term strategic initiatives.

Upon completion of this offering, assuming an offering size as set forth in “Summary of the Offering” and an initial public offering price of \$[●] (the midpoint of the estimated price range set forth on the cover page of this prospectus), Mistral, through its controlling interest of SAC Acquisition LLC will control approximately [●]% of our common stock and will therefore be able to control all matters that require approval by our stockholders, including the election and removal of directors, changes to our organizational documents and approval of acquisition offers and other significant corporate transactions. Because Mistral will control more than 50% of the voting power of our outstanding common stock, we will be a “controlled company” under the corporate governance rules for Nasdaq listed companies. We will therefore be permitted to, and we intend to, elect not to comply with certain corporate governance requirements. See “Management-Controlled Company.”

Control by Mistral may give rise to actual or perceived conflicts of interest with holders of our common stock. Mistral’s significant ownership in us and its resulting ability to effectively control us may discourage a third party from making a significant equity investment in us or a transaction involving a change of control, including transactions in which holders of shares of our common stock might otherwise receive a premium for such holders’ shares over the then-current market price. See “Risk Factors- Risks Related to this Offering and Ownership of Our Common Stock” for a summary of the potential conflicts of interest that may arise as a result of our control by Mistral.

Implications of Being an Emerging Growth Company

The Jumpstart Our Business Startups Act (the “JOBS Act”), was enacted in April 2012 with the intention of encouraging capital formation in the United States and reducing the regulatory burden on newly public companies that qualify as “emerging growth companies”. We are an emerging growth company within the meaning of the JOBS Act. As an emerging growth company, we may take advantage of exemptions from various public reporting requirements, including the requirement that our internal control over financial reporting be audited by our independent registered public accounting firm pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 (“SOX”), requirements related to compliance with new or revised accounting standards, requirements related to the disclosure of executive compensation in this prospectus and in our periodic reports and proxy statements, and the requirement that we hold a nonbinding advisory vote on executive compensation and any golden parachute payments. We may take advantage of these exemptions until we are no longer an emerging growth company.

In addition, Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933, as amended, for complying with new or revised accounting standards. As a result, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected to take advantage of this extended transition period.

We will remain an emerging growth company until the earliest to occur of (i) the last day of the fiscal year in which we have \$1.07 billion or more in annual revenue; (ii) the date we qualify as a “large accelerated filer” with at least \$700 million of equity securities held by non-affiliates; (iii) the date on which we have issued, in any three-year period, more than \$1.0 billion in non-convertible debt securities; or (iv) the last day of the fiscal year ending after the fifth anniversary of our initial public offering.

Summary of the Offering

Common stock offered by us	[●] shares
Offering price	[\$●] per share
Common stock outstanding before this offering	[●] shares, as of [●], 2018
Common stock to be outstanding after this offering	[●] shares. If the underwriter's over-allotment option is exercised in full, the total number of shares of common stock outstanding immediately after this offering would be [●].
Over-allotment option	We have granted a 30-day option to the underwriter to purchase up to [●] additional shares of common stock solely to cover over-allotments, if any.
Use of proceeds	We intend to use the net proceeds of this offering for: (i) increased sales and marketing expenses; (ii) product development; (iii) repayment of debt; and (iv) working capital and other general corporate purposes. See "Use of Proceeds" beginning on page 31 of this prospectus.
Risk factors	Investing in our shares of common stock involves a high degree of risk. See "Risk Factors" beginning on page 14 of this prospectus for a discussion of factors you should consider before making a decision to invest in our common stock.
Controlled Company	After the completion of this offering, Mistral and its affiliates will continue to control a majority of our common stock. We will avail ourselves of the controlled company exemption under the corporate governance standards of Nasdaq.
Proposed listing	In connection with this offering, we are applying to list our common stock on the Nasdaq Global Market ("Nasdaq") under the symbol "LOVE."

Immediately prior to this offering, we intend to (i) convert all of our outstanding shares of preferred stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, into [●] shares of common stock, (ii) effect a 1-for-[●] reverse stock split of our common stock, (iii) file an amended and restated certificate of incorporation, and (iv) adopt amended and restated bylaws.

The number of shares of our common stock to be outstanding immediately after the closing of this offering is based on 15,161,250 shares of common stock outstanding as of [●], and, except as otherwise indicated, all information in this prospectus, reflects and assumes the following:

- initial public offering price of \$[●] per share of common stock, the midpoint of the price range on the cover of this prospectus;
- conversion of the 923,000 outstanding shares of Series A Convertible Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, convertible to approximately [●] shares of our common stock;*
- conversion of the 1,000,000 outstanding shares of Series A-1 Convertible Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, convertible to approximately [●] shares of our common stock;*
- conversion of the 623,500 outstanding shares of Series A-2 Convertible Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, convertible to will approximately [●] shares of our common stock;*
- does not reflect the exercise of the outstanding warrants to purchase 2,004,625 shares of our common stock at an exercise price per share equal to the offering price;*
- does not reflect 845,775 unvested restricted stock units and 434,990 shares of common stock reserved for issuance under the Equity Plan; and
- does not reflect the exercise of the underwriter's warrant to purchase up to [●] additional shares of our common stock in this offering.

* A description of the conversion features of our preferred stock and of the exercise prices of our warrants can be found under the heading "Description of Capital Stock – Preferred Stock" and in Notes 7 and 12 to our consolidated financial statements for the fiscal year ended February 4, 2018.

Summary Consolidated Financial and Operating Data

The following tables present our summary consolidated financial and other data as of and for the periods indicated. The summary consolidated statements of operations data and the consolidated statement of cashflow data for the fiscal years ended February 4, 2018, January 29, 2017 and January 31, 2016, and the summary consolidated balance sheet data as of February 4, 2018 are derived from our audited consolidated financial statements included elsewhere in this prospectus. Our historical audited results are not necessarily indicative of the results that should be expected in any future period.

The summarized financial information presented below is derived from and should be read in conjunction with our audited consolidated financial statements including the notes to those financial statements which are included elsewhere in this prospectus along with the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” Our historical results are not necessarily indicative of our future results.

	Fiscal Year Ended		
	February 4, 2018	January 29, 2017	January 31, 2016
(dollars in thousands, except per share data)			
Consolidated Statements of Operations Data:			
Net sales			
Showrooms	\$ 77,837	\$ 62,277	\$ 59,095
Internet	18,859	12,270	10,601
Other	5,114	1,796	4,449
Total net sales	101,810	76,343	74,145
Costs of merchandise sold	44,593	34,646	33,635
Gross profit	57,217	41,697	40,510
Selling, general and administrative expenses	62,255	47,868	47,174
Operating loss	(5,038)	(6,171)	(6,664)
Other			
Other expense	-	-	(86)
Loss on extinguishment of debt	-	-	(557)
Interest expense	(438)	(565)	(1,687)
Income taxes	(26)	(138)	(32)
Net Loss	\$ (5,502)	\$ (6,874)	\$ (8,994)
Net Loss per Common Share:			
Net loss per common share (basic and diluted) ⁽¹⁾	\$ (0.45)	\$ (0.48)	\$ (0.83)
Weighted-average shares used in computing net loss per common share ⁽¹⁾	15,001,748	14,368,216	10,852,433
Pro Forma Net Loss per Common Share (unaudited):			
Pro forma net loss per common share (basic and diluted)	[●]	[●]	-
Pro forma weighted-average shares used in computing pro forma net loss per common share	[●]	[●]	-
Other Financial and Operating Data (unaudited):			
Retail ⁽²⁾			
Comparable showroom sales change ⁽³⁾	19.5%	4%	17%
Showrooms open at end of period	66	60	59
Total showroom square footage at end of period (in thousands)	88	80	74
Total showroom selling square footage at end of period (in thousands) ⁽⁴⁾	62	57	52
Sales per selling square foot ⁽⁵⁾	\$ 1,262	\$ 1,101	\$ 1,065
Capital expenditures ⁽⁶⁾	\$ 6,636	\$ 3,681	\$ 965
EBITDA ⁽⁷⁾⁽⁸⁾	\$ (2,679)	\$ (3,991)	\$ (4,892)
Adjusted EBITDA ⁽⁷⁾⁽⁸⁾	\$ 1,271	\$ (2,861)	\$ (4,555)
Adjusted EBITDA Margin ⁽⁷⁾⁽⁹⁾	1%	(4%)	(6%)
Average Unit Volume ⁽⁷⁾⁽¹⁰⁾	1,235,031	1,072,623	992,024
	As of February 4, 2018	As of January 29, 2017	As of January 31, 2016
(dollars in thousands)			
Balance Sheet data:			
Cash and cash equivalents	\$ 9,176	\$ 879	\$ 209
Working capital ⁽¹¹⁾	12,946	3,350	850
Total assets	41,441	20,720	17,819
Total liabilities	17,802	13,670	15,187
Total stockholders' equity	23,638	7,050	2,632

	Fiscal Year Ended		
	February 4, 2018	January 29, 2017	January 31, 2016
(dollars in thousands)			
Consolidated Statement of Cashflow Data:			
Net cash used in operating activities	\$ (2,740)	\$ (6,477)	\$ (8,872)
Net cash used in investing activities	(6,809)	(3,985)	(1,155)
Net cash provided by financing activities	17,847	11,132	9,872
Net change in cash and cash equivalents	8,297	670	(155)
Cash and cash equivalents at end of period	9,176	879	209
<p>(1) For the calculation of basic and diluted net loss per share, see Note 1 and Note 7 to our audited consolidated financial statements. The weighted average number of common shares used in computing the net loss per common share gives effect to (i) the 1-for-[●] reverse stock split of our common stock that occurred on [●]. The pro forma weighted average number of common shares used in computing pro forma net loss per common share gives effect to (i) the conversion of our outstanding preferred stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, into [●] shares of our common stock, and (ii) the 1-for-[●] reverse stock split of our common stock that occurred on [●].</p> <p>(2) Retail data represents our showrooms exclusive of shop in shop showrooms.</p> <p>(3) Comparable showroom sales are calculated based on showrooms that were open at least fifty-two weeks as of the end of the reporting period. A showroom is not considered a part of the comparable showroom sales base if the square footage of the showroom changed or if the showroom was relocated. If a showroom was closed for any period of time during the measurement period, that showroom is excluded from comparable showroom sales. The change in comparable showroom sales is calculated by comparing the period's comparable showroom sales to the same period in the preceding fiscal year.</p> <p>(4) Selling square footage is retail space at our showrooms used to sell our products. Selling square footage excludes backrooms at showrooms used for storage, office space or similar matters.</p> <p>(5) Retail sales per selling square foot is calculated by dividing total net sales for all showrooms, comparable and non-comparable, by the average selling square footage for the period.</p> <p>(6) Capital expenditures consist primarily of investments in new showrooms and remodeled showrooms.</p> <p>(7) EBITDA, Adjusted EBITDA, Adjusted EBITDA Margin, and Average Unit Volume (collectively, our "Non-GAAP Measures") are supplemental measures of financial performance that are not required by, or presented in accordance with, GAAP. We believe that EBITDA and Adjusted EBITDA are useful measures of operating performance, as they eliminate expenses that are not reflective of the underlying business performance, facilitate a comparison of our operating performance on a consistent basis from period-to-period and provide for a more complete understanding of factors and trends affecting our business. Additionally, EBITDA is frequently used by analysts, investors and other interested parties to evaluate companies in our industry. We use EBITDA and Adjusted EBITDA, alongside other GAAP measures such as gross profit, operating income (loss) and net income (loss), to measure evaluate our operating performance and we believe these measures are useful to investors in evaluating our operating performance.</p> <p>Our Non-GAAP Measures are not GAAP measures of our financial performance or liquidity and should not be considered as alternatives to net income (loss) or net income (loss) per share as a measure of financial performance, cash flows from operating activities as a measure of liquidity, or any other performance measure derived in accordance with GAAP. They should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Additionally, our Non-GAAP Measures are not intended to be measures of free cash flow for management's discretionary use, as they do not consider certain cash requirements such as tax payments and debt service requirements and certain other cash costs that may recur in the future. Our Non-GAAP Measures contain certain other limitations, including the failure to reflect our cash expenditures, cash requirements for working capital needs and cash costs to replace assets being depreciated and amortized. In addition, our Non-GAAP Measures exclude certain non-recurring and other charges.</p> <p>You should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in Our Non-GAAP Measures. Our presentation of Our Non-GAAP Measures should not be construed to imply that our future results will be unaffected by any such adjustments. Management compensates for these limitations by relying primarily on our GAAP results and by using Our Non-GAAP Measures as supplemental information. Our Non-GAAP Measures are not necessarily comparable to other similarly titled captions of other companies due to different methods of calculation.</p>			

- (8) We define EBITDA as net income before interest, taxes, depreciation and amortization. We define Adjusted EBITDA as EBITDA adjusted for the impact of certain non-cash and other items that we do not consider in our evaluation of ongoing operating performance. These items include sponsor fees, equity-based compensation expense, write-offs of property and equipment, deferred rent, financing expenses and certain other charges and gains that we do not believe reflect our underlying business performance. The following provides a reconciliation of net loss to EBITDA and Adjusted EBITDA for the periods presented:

	Fiscal Year Ended		
	February 4, 2018	January 29, 2017	January 31, 2016
(dollars in thousands)			
Net loss	\$ (5,502)	\$ (6,874)	\$ (8,994)
Interest expense	438	565	1,687
Taxes	26	138	32
Depreciation and amortization	2,359	2,180	2,383
EBITDA	<u>(2,679)</u>	<u>(3,991)</u>	<u>(4,892)</u>
Sponsor fees ^(a)	484	400	300
Equity-based compensation expense ^(b)	951	26	37
Write-off of property and equipment ^(c)	197	77	-
Deferred rent ^(d)	360	217	135
Other expenses ^(e)	1,959	410	-
Adjusted EBITDA	<u>\$ 1,271</u>	<u>\$ (2,861)</u>	<u>\$ (4,420)</u>

- (a) Represents management fees charged by our equity sponsors.
- (b) Represents expenses associated with stock options and restricted stock units granted to our management.
- (c) Represents the net loss on the disposal of fixed assets.
- (d) Represents the difference between rent expense recorded and the amount paid by the Company. In accordance with generally accepted accounting principles, the Company records monthly rent expense equal to the total of the payments due over the lease term, divided by the number of months of the lease terms.
- (e) Other expenses in fiscal 2018 are made up of: (1) \$1,072 in fees and costs associated with our fundraising and reorganizing activities including the legal and professional services incurred in connection with such activities; (2) \$182 in travel and logistical costs associated with the offering; (3) \$484 in costs related to the offering and finance fees; and (4) \$221 in accounting fees related to the offering. Other expenses in fiscal 2017 are made up of: (1) \$242 in fees and costs associated with our fundraising and reorganizing activities including the legal and professional services incurred in connection with such activities; (2) \$29 in travel and logistical costs associated with the offering; and (3) \$139 in accounting fees related to the offering.
- (9) Adjusted EBITDA margin means, for any period, the Adjusted EBITDA for that period divided by the net sales for that period.
- (10) Average Unit Volume is calculated by dividing total showroom sales by the number of showrooms open during the period. For showrooms that are not open for the entire period, fractional adjustments are made to the number of showrooms used in the denominator such that it corresponds to the period of associated sales
- (11) Working capital is defined as current assets, less current liabilities.

RISK FACTORS

An investment in the common stock of The Lovesac Company (the “Company,” “Lovesac,” “we,” “us” or “our”) involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information contained in this prospectus, including our financial statements and the related notes thereto, before making a decision to invest in our common stock. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us, or that we currently believe are not material, also may become important factors that affect us and impair our business operations. The occurrence of any of the events or developments discussed in the risk factors below could have a material and adverse impact on our business, results of operations, financial condition and cash flows, and in such case, our future prospects would likely be materially and adversely affected. If any of such events or developments were to happen, the trading price of our common stock could decline. Further, our actual results could differ materially and adversely from those anticipated in our forward-looking statements as a result of certain factors.

Risks Relating to Our Business and Industry

We have historically operated at a loss, and we may never achieve or sustain profitability.

While we have typically experienced revenue growth from period-to-period, the level of growth has at times been inconsistent. We have had to rely on a combination of cash flow from operations and new capital in order to sustain our business. We have historically operated at a loss, which has resulted in an accumulated deficit. Despite the fact that we have raised significant capital in recent periods, there can be no assurance that we will ever achieve profitability. Even if we do, there can be no assurance that we will be able to maintain or increase profitability on a quarterly or annual basis. Failure to do so would continue to have a material adverse effect on our accumulated deficit and could result in a decline in our common stock price.

Our recent growth rates may not be sustainable.

While we have experienced recent growth, maintaining that growth is dependent on a number of factors, including increased traffic to our website and showrooms, our sales conversion rate, and our ability to open new showrooms. We also rely on shop in shops, and there can be no assurance the current retailer with whom we partner will continue to house them or that we will be able to enter into similar arrangements with other retailers, which could hinder our anticipated sales growth. Our business is highly competitive, and there can be no assurance that we will be able to sustain or improve our recent growth rates.

Our ability to raise capital in the future may be limited. Our inability to raise capital when needed could prevent us from growing and could have a material adverse effect on our business, financial condition, operating results and prospects.

If we continue to experience insufficient cash flow from operations to support our operating and capital needs we will be required to raise additional capital through public or private financing or other arrangements. Such financing may not be available on acceptable terms, or at all. We may sell common stock, preferred stock, convertible securities and other equity securities in one or more transactions at prices and in such a manner as we may determine from time to time. If we sell any such equity securities in subsequent transactions, investors may be materially diluted. Debt financing, if available, may involve restrictive covenants and could reduce, among other things, our operational flexibility. If we cannot raise funds on acceptable terms, we may not be able to grow our business or respond to competitive pressures. In addition, debt financings may be blocked by our senior lender that provides an asset-backed revolving credit facility to fund our inventory purchases in advance of customer sales. Our lender has, and any subsequent senior lender likely will have, the right to consent to any new debt financing. There can be no assurance that our lender will provide such consent. Our inability to raise capital when needed could prevent us from growing and have a material adverse effect on our business, financial condition, operating results and prospects.

If we are unable to implement and maintain effective internal control over financial reporting in the future, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock may be adversely affected.

As a public company, we will be required to maintain internal control over financial reporting and to report any material weaknesses in such internal control. Section 404 of SOX requires that we furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting beginning with the fiscal year ending January 2019. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. Our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting until our first annual report required to be filed with the SEC following the later of the date we are deemed to be an “accelerated filer” or a “large accelerated filer,” each as defined in the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or the date we are no longer an “emerging growth company,” as defined in the JOBS Act. If we have a material weakness in our internal control over financial reporting, we may not detect errors on a timely basis and our financial statements may be materially misstated. We are in the process of designing and implementing the internal control over financial reporting required to comply with this obligation, which process will be time-consuming, costly and complicated. If we identify material weaknesses in our internal control over financial reporting, are unable to comply with the requirements of Section 404 of SOX in a timely manner, are unable to assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports, and the market price of our common stock could be adversely affected. In addition, we could become subject to investigations by the stock exchange on which our common stock is listed, the SEC or other regulatory authorities, which could require additional financial and management resources.

If our internal control over financial reporting or our disclosure controls and procedures are not effective, we may not be able to accurately report our financial results, prevent fraud or file our periodic reports in a timely manner, which may cause investors to lose confidence in our reported financial information and may lead to a decline in our stock price.

We rely on financial reporting and data analytics that must be accurate in order to make real-time management decisions, accurately manage our cash position, and maintain adequate inventory levels while conserving adequate cash to fund operations. In the event of a systems failure, a process breakdown, the departure of key management, or fraud, we would be unable to efficiently manage these items and may experience liquidity shortfalls that our revolving credit facility may not be able to accommodate. In such a situation, we also may not be able to accurately report our financial results, prevent fraud or file our periodic reports in a timely manner, which may cause investors to lose confidence in our reported financial information and may lead to a decline in our stock price.

We may be unable to accurately forecast our operating results and growth rate, which may adversely affect our reported results and stock price.

We may not be able to accurately forecast our operating results and growth rate. We use a variety of factors in our forecasting and planning processes, including historical results, recent history and assessments of economic and market conditions. Our growth rates may not be sustainable, and our growth depends on the continued growth of demand for the products we offer. Lower demand caused by changes in customer preferences, a weakening of the economy or other factors may result in decreased revenues or growth. Furthermore, many of our expenses and investments are fixed, and we may not be able to adjust our spending in a timely manner to compensate for any unexpected shortfall in our operating results. Failure to accurately forecast our operating results and growth rate could cause our actual results to be materially lower than anticipated. If our growth rate declines as a result, investors’ perceptions of our business may be adversely affected, and the market price of our common stock could decline.

If we fail to manage our growth effectively, our business, financial condition, operating results and prospects could be harmed.

To manage our anticipated growth effectively, we must continue to implement our operational plans and strategies, improve and expand our corporate infrastructure, information systems, and executive management and expand, train and manage our employee base. As we grow, we will need to find, train, and monitor additional employees and continue to invest in information systems that support key functions such as accounting, human resources, sales analytics, and marketing, all of which strain the time of our executive management team and our resources. If we fail to manage our growth effectively, our business, financial condition, operating results and prospects could be harmed.

Our inability to maintain our brand image, engage new and existing customers and gain market share could have a material adverse effect on our growth strategy and our business, financial condition, operating results and prospects.

Our ability to maintain our brand image and reputation is integral to our business and implementation of our growth strategy. Maintaining, promoting and growing our brand will depend largely on the success of our design, merchandising and marketing efforts and our ability to provide a consistent, high-quality product and customer experience. Our reputation could be jeopardized if we fail to maintain high standards for product quality and integrity and any negative publicity about these types of concerns may reduce demand for our products. While we believe our brand enjoys a loyal customer base, the success of our growth strategy depends, in part, on our ability to keep existing customers engaged and attract new customers to our brand. If we experience damage to our reputation or loss of consumer confidence, we may not be able to retain existing customers or acquire new customers, which could have a material adverse effect on our business, financial condition, operating results and prospects.

If we fail to acquire new customers, or fail to do so in a cost-effective manner, we may not be able to achieve revenue growth or profitability.

To acquire new customers, we must appeal to prospects who have historically used other means of commerce to purchase furniture, such as traditional furniture retailers. To date, we have reached new customers primarily through our showroom presence in various markets, and through social media, digital content, third-party advocates for our brand and products and by word of mouth. Until now, these efforts have allowed us to acquire new customers at what we believe is a reasonable cost and rate. However, there is no guarantee that these methods will continue to be successful or will drive customer acquisition rates necessary for us to achieve revenue growth or profitability.

Our business is highly competitive. Competition presents an ongoing threat to the success of our business.

Our business is rapidly evolving and intensely competitive, and we have many competitors in different industries. We compete with furniture stores, big box retailers, department stores, specialty retailers and online furniture retailers and marketplaces, including the following:

- Ashley Furniture, IKEA, and other regional stores such as Bob's Discount Furniture, Havertys, Raymour & Flanagan and Rooms To Go;
- Costco, JCPenney and Macy's;
- Crate and Barrel, Ethan Allen, Pottery Barn and Restoration Hardware; and
- Amazon, Wayfair, eBay, Joybird, Burrow, Campaign and One Kings Lane.

We expect competition in both retail stores and ecommerce to continue to increase. Our ability to compete successfully depends on many factors both within and beyond our control, including:

- the size and composition of our customer base;
- our selling and marketing efforts;
- the quality, price, reliability and uniqueness of products we offer;
- the convenience of the shopping experience that we provide;
- our ability to distribute our products and manage our operations; and
- our reputation and brand strength.

Many of our current and potential competitors have longer operating histories, greater brand recognition, larger fulfillment infrastructures, greater technological capabilities, faster and less costly shipping, significantly greater financial, marketing and other resources and larger customer bases than we do. These factors may allow our competitors to, among other things, derive greater sales from their existing customer base, acquire customers at lower costs and respond more quickly than we can to new or emerging technologies and changes in consumer habits. These competitors may engage in more extensive research and development efforts, undertake more far-reaching marketing campaigns and adopt more aggressive pricing policies. If we are unable to successfully compete, our business, financial condition, operating results and prospects could be materially adversely affected.

Our business depends on effective marketing and increased customer traffic.

We rely on a variety of marketing strategies to compete for customers and increase sales. If our competitors increase their spending on marketing, if our marketing is less effective than that of our competitors, or if we do not adequately leverage the technology and data analytics needed to generate concise competitive insight, our business, financial condition, operating results and prospects could be adversely affected.

Our increased use of social media poses reputational risks.

As use of social media becomes more prevalent, our susceptibility to risks related to social media increases. The immediacy of social media precludes us from having real-time control over postings made regarding us via social media, whether matters of fact or opinion. Information distributed via social media could result in immediate unfavorable publicity we may not be able to reverse. This unfavorable publicity could result in damage to our reputation and therefore have a material adverse effect on our business, financial condition, operating results and prospects.

Our efforts to launch new products may not be successful.

We plan to expand our product line in the future. We may not be able to develop products which are attractive to our customers, and our costs to develop new products may be significant. It may take longer than we might expect for a product, even if ultimately successful, to achieve attractive sales results. Failure to successfully develop or market new products or delays in the development of new products could have a material adverse effect on our financial condition, results of operations and business.

We rely on the performance of members of management and highly skilled personnel. If we are unable to attract, develop, motivate and retain well-qualified employees, our business could be harmed.

We believe our success has depended, and continues to depend, on the efforts and talents of Shawn Nelson, our founder, member of the Board of Directors and Chief Executive Officer, Andrew Heyer, our Chairman, Jack Krause, our President and Chief Operating Officer, Donna Dellomo, our Executive Vice President and Chief Financial Officer, and other members of our management team. Our future success depends on our continuing ability to attract, develop, motivate and retain highly qualified and skilled employees. The market for such employees in the cities in which we operate is competitive. Qualified individuals are in high demand, and we may incur significant costs to attract and retain them. The loss of any of our key employees, including members of our senior management team, could materially adversely affect our ability to execute our business plan, and we may not be able to find adequate replacements. Our inability to recruit and develop mid-level managers could have similar adverse effects on our ability to execute our business plan.

Some of our officers and other key employees are at-will employees, meaning that they may terminate their employment relationship with us at any time, and their knowledge of our business and industry would be extremely difficult to replace. While others have employment agreements with stated terms, they could still leave our employ. If we do not succeed in retaining and motivating existing employees or attracting well-qualified employees, our business, financial condition, operating results and prospects may be materially adversely affected.

System interruptions that impair customer access to our sites or other performance failures in our technology infrastructure could damage our business, reputation and brand, and substantially harm our business and results of operations.

The satisfactory performance, reliability and availability of our website, transaction processing systems and technology infrastructure are critical to our reputation, and our ability to acquire and retain customers and maintain adequate customer service levels. We currently rely on a variety of third party service providers to support mission critical systems and the efficient flow of merchandise from and between warehouses and showrooms to customers. For example, we rely on common carriers for the delivery of merchandise purchased by customers through our website and in our showrooms, and the systems we employ to communicate delivery schedules and update customers about order tracking interface with the information systems of these common carriers. Our own systems, which are customized versions of ecommerce, customer relationship management, payment processing, and inventory management software technologies deployed by numerous retailers and wholesalers in a variety of industries, must work seamlessly in order for information to flow correctly and update accurately across these systems. Any failure in this regard could result in negative customer experiences, putting our brand and growth at risk.

Through third parties that underwrite customer risk, we offer financing options in order to increase the market demand for our products among customers who may not be able to buy them using cash. The systems of these third parties must work efficiently in order to give customers real-time credit availability. Changes in the risk underwriting or technologies of these third parties may result in lower credit availability to our potential customers and therefore reduced sales. The occurrence of any of the foregoing could substantially harm our business and results of operations.

Unauthorized disclosure of sensitive or confidential information, whether through a breach of our computer system or otherwise, could severely hurt our business.

Certain aspects of our business involve the receipt, storage and transmission of customers' personal information, consumer preferences and payment card information, as well as confidential information about our associates, our suppliers and our Company, some of which is entrusted to third-party service providers and vendors. Despite the security measures we have in place, our facilities and systems, and those of third parties with which we do business, may be vulnerable to security breaches, acts of vandalism and theft, computer viruses, misplaced or lost data, programming and/or human errors, or other similar events.

An electronic security breach in our systems (or in the systems of third parties with which we do business) that results in the unauthorized release of individually identifiable information about customers or other sensitive data could occur and have a material adverse effect on our reputation, lead to substantial financial losses from remedial actions, and lead to a substantial loss of business and other liabilities, including possible punitive damages. In addition, as the regulatory environment relating to retailers and other companies' obligation to protect such sensitive data becomes increasingly rigorous, with new and constantly changing requirements applicable to our business, compliance with those requirements could result in additional costs, and a material failure on our part to comply could subject us to fines, other regulatory sanctions and lawsuits.

Our business is sensitive to economic conditions and consumer spending.

We face numerous business risks relating to macroeconomic factors. Consumer purchases of discretionary items, including our products, generally decline during recessionary periods and other times when disposable income is lower. Factors impacting discretionary consumer spending include general economic conditions, wages and employment, consumer debt, reductions in net worth based on severe market declines, residential real estate and mortgage markets, taxation, volatility of fuel and energy prices, interest rates, consumer confidence, political and economic uncertainty and other macroeconomic factors. Deterioration in economic conditions or increasing unemployment levels may reduce the level of consumer spending and inhibit consumers' use of credit, which may adversely affect our sales. In recessionary periods and other periods where disposable income is adversely affected, we may have to increase the number of promotional sales or otherwise dispose of inventory for which we have previously paid to manufacture, which could further adversely affect our financial performance. It is difficult to predict when or for how long any of these conditions could affect our business and a prolonged economic downturn could have a material adverse effect on our business, financial condition, operating results and prospects.

A substantial portion of our business is dependent on a small number of suppliers. A material disruption at any of our suppliers' manufacturing facilities could prevent us from meeting customer demand, reduce our sales, and/or negatively affect our financial results.

We do not own or operate any manufacturing facilities and therefore depend on third-party suppliers for the manufacturing of all of our products. Moreover, a substantial portion of our business is dependent on a small number of suppliers. Sacs, which represented approximately 26% of our revenues in both fiscal 2018 and 2017, are currently manufactured by a single manufacturer in Texas. Sactionals, which represented approximately 74% of our revenues in both fiscal 2018 and 2017, are manufactured by two suppliers in China and our outdoor Sactionals are manufactured in Vietnam.

Any of our suppliers' manufacturing facilities, or any of the machines within an otherwise operational facility, could cease operations unexpectedly due to a number of events, which could materially and adversely impact our business, operations and financial condition. These events include but are not limited to:

- equipment failure;
- fires, floods, earthquakes, hurricanes, or other catastrophes;
- unscheduled maintenance outages;
- utility and transportation infrastructure disruptions;
- labor difficulties;
- other operational problems;
- war or terrorism;
- political, social or economic instability; or
- financial instability or bankruptcy of any such supplier.

Our reliance on international suppliers increases our risk of supply chain disruption, which could materially increase the cost and reduce or delay the supply of our products, which could adversely affect our business, financial condition, operating results and prospects.

Our current suppliers are located in China, Vietnam and the United States. Our reliance on international suppliers increases our risk of supply chain disruption. Events that could cause disruptions to our supply chain include but are not limited to:

- the imposition of additional trade laws or regulations;
- the imposition of additional duties, tariffs and other charges on imports and exports;
- foreign currency fluctuations;
- theft; and
- restrictions on the transfer of funds.

The occurrence of any of the foregoing could materially increase the cost and reduce or delay the supply of our products, which could adversely affect our business, financial condition, operating results and prospects.

Our reliance on suppliers in developing countries increases our risk with respect to available manufacturing infrastructure, labor and employee relations, political and economic stability, corruption, and regulatory, environmental, health and safety compliance.

Our reliance on suppliers in developing countries increases our risk with respect to infrastructure available to support manufacturing, labor and employee relations, political and economic stability, corruption, and regulatory, environmental, health and safety compliance. Any failure of our suppliers to comply with ethical sourcing standards or labor or other local laws in the country of manufacture, or the divergence of a supplier's labor practices from those generally accepted as ethical in the United States, could disrupt the shipment of products, force us to locate alternative manufacturing sources, reduce demand for our products, damage our reputation and/or expose us to potential liability for their wrongdoings. Any of these events could have a material adverse effect on our reputation, business, financial condition, operating results and prospects.

Most of our products are shipped from our suppliers by ocean vessel. If a disruption occurs in the operation of ports through which our products are imported, we may incur increased costs and suffer delays, which could have a material adverse effect on our business, financial condition, operating results and prospects.

Most of our products are shipped from our suppliers by ocean vessel. If a disruption occurs in the operation of ports through which our products are imported, we may incur increased costs related to air freight or use of alternative ports. Shipping by air is significantly more expensive than shipping by ocean and our margins could be reduced. Shipping to alternative ports could also lead to delays in receipt of our products. We rely on third-party shipping companies to deliver our products to us. Failures by these shipping companies to deliver our products to us or lack of capacity in the shipping industry could lead to delays in receipt of our products or increased expense in the delivery of our products. Any of these developments could have a material adverse effect on our business, financial condition, operating results and prospects.

Increases in the demand for, or the price of, raw materials used to manufacture our products or other fluctuations in sourcing or distribution costs could increase our costs and negatively impact our gross margin.

We believe that we have strong supplier relationships, and we work with our suppliers to manage cost increases. Our gross margin depends, in part, on our ability to mitigate rising costs or shortages of raw materials used to manufacture our products. Raw materials used to manufacture our products are subject to availability constraints and price volatility impacted by a number of factors, including supply and demand for fabrics, weather, government regulations, economic conditions and other unpredictable factors. In addition, our sourcing costs may fluctuate due to labor conditions, transportation or freight costs, energy prices, currency fluctuations or other unpredictable factors. The occurrence of any of the foregoing could increase our costs, delay or reduce the availability of our products and negatively impact our gross margin.

Our inability to manage our inventory levels and products, including with respect to our omni-channel operations, could have a material adverse effect on our business, financial condition, operating results and prospects.

Inventory levels in excess of customer demand may result in lower than planned financial performance. Alternatively, if we underestimate demand for our products, we may experience inventory shortages resulting in missed sales and lost revenues. Either of these events could significantly affect our operating results and brand image and loyalty. Our financial performance may also be impacted by changes in our products and pricing. These changes could have a material adverse effect on our business, financial condition, operating results and prospects.

Our inability to manage the complexities created by our omni-channel operations may have a material adverse effect on our business, financial condition, operating results and prospects.

Our omni-channel operations create additional complexities in our ability to manage inventory levels, as well as certain operational issues, including timely shipping and returns. Accordingly, our success depends to a large degree on continually evolving the processes and technology that enable us to plan and manage inventory levels and fulfill orders, address any related operational issues and further align channels to optimize our omni-channel operations. If we are unable to successfully manage these complexities, it may have a material adverse effect on our business, financial condition, operating results and prospects.

We may be subject to product liability claims if people or property are harmed by the products we sell.

We have not had any significant product liability claims to date. We place a high priority on designing our products to be safe for consumers and safety test our products in third-party laboratories. Still, the products we sell or have manufactured may expose us to product liability claims, litigation and regulatory action relating to personal injury, death and environmental or property damage. Some of our agreements with our suppliers and international manufacturers may not indemnify us from product liability for a particular supplier's or international manufacturer's products, or our suppliers or international manufacturers may not have sufficient resources or insurance to satisfy their indemnity and defense obligations. Although we maintain liability insurance, we cannot be certain that our coverage will be adequate for liabilities actually incurred or that insurance will continue to be available to us on economically reasonable terms, or at all. Any product liability claims asserted against us could, among other things, harm our reputation, damage our brand, cause us to incur significant costs, and have a material adverse effect on our business, results of operations and financial condition.

Our ability to attract customers to our showrooms depends heavily on successfully locating our showrooms in suitable locations. Any impairment of a showroom location, including any decrease in customer traffic, could cause our sales to be lower than expected.

We plan to open new showrooms in high street and urban locations and historically we have favored top tier mall locations near luxury and contemporary retailers that we believe are consistent with our key customers' demographics and shopping preferences. Sales at these showrooms are derived, in part, from the volume of foot traffic in these locations. Showroom locations may become unsuitable due to, and our sales volume and customer traffic generally may be harmed by, among other things:

- economic downturns in a particular area;
- competition from nearby retailers selling similar products;
- changing consumer demographics in a particular market;
- changing preferences of consumers in a particular market;
- the closing or decline in popularity of other businesses located near our store;
- reduced customer foot traffic outside a showroom location; and
- store impairments due to acts of God or terrorism.

Even if a showroom location becomes unsuitable, we will generally be unable to cancel the long term lease associated with such showroom.

We may be unable to successfully open and operate new showrooms, which could have a material adverse effect on our business, financial condition, operating results and prospects.

As of February 4, 2018, we had 66 showrooms, but our growth strategy requires us to increase our showroom base. There can be no assurance that we will succeed in opening additional showrooms. If we are unable to successfully open and operate new showrooms, it could have a material adverse effect on our business, financial condition, operating results and prospects.

Our ability to successfully open and operate new showrooms depends on many factors, including, among other things, our ability to:

- identify new markets where our products and brand image will be accepted or the performance of our showrooms will be successful;
- obtain desired locations, including showroom size and adjacencies, in targeted high street and urban locations and top tier malls;
- negotiate acceptable lease terms, including desired rent and tenant improvement allowances;
- achieve brand awareness, affinity and purchaser intent in new markets;
- hire, train and retain showroom associates and field management;
- assimilate new showroom associates and field management into our corporate culture;
- source and supply sufficient inventory levels;
- successfully integrate new showrooms into our existing operations and information technology systems; and
- have the capital necessary to fund new showrooms.

In addition, our new showrooms may not be immediately profitable, and we may incur significant losses until these showrooms become profitable. Unavailability of desired showroom locations, delays in the acquisition or opening of new showrooms, delays or costs resulting from a decrease in commercial development due to capital restraints, difficulties in staffing and operating new showroom locations or a lack of customer acceptance of showrooms in new market areas may negatively impact our new showroom growth and the costs or the profitability associated with new showrooms. While we are seeking to mitigate some of the risks related to our mall based showrooms by opening high street and lifestyle center-based showrooms and continuing to build our online sales, there can be no assurance that this strategy will be successful or lead to greater sales.

As we expand our showroom base, we may not be able to achieve the showroom sales growth rates that we have achieved in the past, which could cause our share price to decline.

As we expand our showroom base, we may not be able to achieve the showroom sales growth rates that we have achieved historically. If our showroom sales growth rates decline or fail to meet market expectations, the value of our common stock could decline.

In addition, the results of operations of our showroom locations have fluctuated in the past and can be expected to continue to fluctuate in the future. A variety of factors affect showroom sales, including, among others, consumer spending patterns, fashion trends, competition, current economic conditions, pricing, inflation, the timing of the release of new merchandise and promotional events, changes in our product assortment, the success of marketing programs and weather conditions. If we misjudge the market for our products, we may have excess inventory of some of our products and miss opportunities for other products. These factors may cause our showroom sales results in the future to be materially lower than recent periods or our expectations, which could harm our results of operations and result in a decline in the price of our common stock.

We have and will continue to expend significant capital remodeling our existing showrooms, and there is no guarantee that this will result in incremental showroom traffic or sales.

We intend to continue remodeling our existing showroom base to reflect our new showroom design, and we intend to expend significant capital doing so. While preliminary results appear promising, there is no guarantee that the capital spent on these remodeled showrooms will result in increased showroom traffic or increased sales.

Our lease obligations are substantial and expose us to increased risks.

We do not own any of our showrooms. Instead, we rent all of our showroom spaces pursuant to leases. Nearly all of our leases require a fixed annual rent, and many of them require the payment of additional rent if showroom sales exceed a negotiated amount. Most of our leases are “net” leases that require us to pay all costs of insurance, maintenance and utilities, as well as applicable taxes.

Our required payments under these leases are substantial and account for a significant portion of our selling, general and administrative expenses. We expect that any new showrooms we open will also be leased, which will further increase our lease expenses and require significant capital expenditures. Our substantial lease obligations could have significant negative consequences, including, among others:

- increasing our vulnerability to general adverse economic and industry conditions;
- limiting our ability to obtain additional financing;
- requiring a substantial portion of our available cash to pay our rental obligations, reducing cash available for other purposes;
- limiting our flexibility in planning for or reacting to changes in our business or in the industry in which we compete; and
- placing us at a disadvantage with respect to some of our competitors who sell their products exclusively online.

Many of our leases contain relocation clauses that allow the landlord to move the location of our showrooms. Moreover, as our leases expire, we may be unable to negotiate acceptable renewals. If either of these events occur, our business, sales and results of operations may be harmed.

Many of our leases include relocation clauses that allow the landlord to move the location of our showrooms. If any of our showrooms are relocated, there can be no assurance that the new location will experience the same levels of customer traffic or success that the prior location experienced. In addition, as our leases expire, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to close showrooms in desirable locations. We may also be unable to enter into new leases on terms acceptable to us or in desirable locations. If any of the foregoing occur, our business, sales and results of operations may be harmed.

We are required to make substantial lease payments under our leases, and any failure to make these lease payments when due would likely harm our business.

We depend on cash flow from operations to pay our lease expenses and to fulfill our other cash needs. If our business does not generate sufficient cash flow from operating activities, and sufficient funds are not otherwise available to us from other sources, we may not be able to service our substantial lease expenses, which would harm our business.

Moreover, our showroom leases are generally long term and non-cancelable, and we expect future showrooms to be subject to similar long term, non-cancelable leases. If an existing or future showroom is not profitable, and we decide to close it, we may nonetheless be required to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term if we cannot negotiate a mutually acceptable termination payment.

Changes in lease accounting standards may materially and adversely affect us.

The Financial Accounting Standards Board (“FASB”), recently adopted new accounting rules that will apply to annual reporting periods beginning after December 15, 2018, including interim reporting periods within that reporting period. The Company, as an “emerging growth company,” has elected to defer compliance with new or revised financial accounting standards and, as a result, the new accounting rule will apply to annual reporting periods beginning after December 15, 2019, and interim reporting periods within annual reporting periods beginning after December 15, 2020. When the rules are effective, we will be required to capitalize all leases on our balance sheet and account for our showroom leases as assets and liabilities, where we previously accounted for such leases on an “off balance sheet” basis. As a result, a significant amount of lease-related assets and liabilities will be recorded on our balance sheet, and we may be required to make other changes to the recording and classification of our lease-related expenses. These changes will not directly impact our overall financial condition. However, they could cause investors or others to believe that we are highly leveraged and could change the calculations of financial metrics and covenants under our debt facilities and third-party financial models regarding our financial condition.

We depend on our ecommerce business and failure to successfully manage this business and deliver a seamless omni-channel shopping experience to our customers could have an adverse effect on our growth strategy, business, financial condition, operating results and prospects.

Sales through our ecommerce channel account for a significant portion of our revenues. Our business, financial condition, operating results and prospects are dependent on maintaining our ecommerce business. Dependence on our ecommerce business and the continued growth of our direct and retail channels subjects us to certain risks, including:

- the failure to successfully implement new systems, system enhancements and Internet platforms;
- the failure of our technology infrastructure or the computer systems that operate our website and their related support systems, causing, among other things, website downtimes, telecommunications issues or other technical failures;
- the reliance on third-party computer hardware/software providers;
- rapid technological change;
- liability for online content;
- violations of federal, state, foreign or other applicable laws, including those relating to data protection;
- credit card fraud;
- cyber security and vulnerability to electronic break-ins and other similar disruptions; and
- diversion of traffic and sales from our stores.

Our failure to successfully address and respond to these risks and uncertainties could negatively impact sales, increase costs, diminish our growth prospects and damage the reputation of our brand, each of which could have a material adverse effect on our business, financial condition, operating results and prospects.

Our inability to successfully optimize our omni-channel operations and maintain a relevant and reliable omni-channel experience for our customers could have a material adverse effect on our growth strategy and our business, financial condition, operating results and prospects.

Growing our business through our omni-channel operations is key to our growth strategy. Our goal is to offer our customers seamless access to our products across our channels, and our success depends on our ability to anticipate and implement innovations in sales and marketing strategies to appeal to existing and potential customers who increasingly rely on multiple channels, such as ecommerce, to meet their shopping needs. Failure to enhance our technology and marketing efforts to align with our customers’ developing shopping preferences could significantly impair our ability to meet our strategic business and financial goals. If we do not successfully optimize our omni-channel operations, or if they do not achieve their intended objectives, it could have a material adverse effect on our business, financial condition, operating results and prospects.

If we are unable to successfully adapt to consumer shopping preferences or develop and maintain a relevant and reliable omni-channel experience for our customers, our financial performance and brand image could be adversely affected.

We are continuing to grow our omni-channel business model. While we interact with many of our customers through our showrooms, our customers are increasingly using computers, tablets and smartphones to make purchases online and to help them make purchasing decisions when in our showrooms. Our customers also engage with us online through our social media channels, including Facebook and Instagram, by providing feedback and public commentary about aspects of our business. Omni-channel retailing is rapidly evolving. Our success depends, in part, on our ability to anticipate and implement innovations in customer experience and logistics in order to appeal to customers who increasingly rely on multiple channels to meet their shopping needs. If for any reason we are unable to continue to implement our omni-channel initiatives or provide a convenient and consistent experience for our customers across all channels that delivers the products they want, when and where they want them, our financial performance and brand image could be adversely affected.

Purchasers of furniture may choose not to shop online, which could affect the growth of our business.

The online market for furniture is less developed than the online market for apparel, consumer electronics and other consumer products in the United States. While we believe this market is growing, it still accounts for a small percentage of the market as a whole. We are relying on online sales for our continued success and growth. If the online market for furniture does not gain wider acceptance, our growth and business may suffer.

In addition, our success in the online market will depend, in part, on our ability to attract consumers who have historically purchased furniture through traditional retailers. We may have to incur significantly higher and more sustained advertising and promotional expenditures in order to attract additional online consumers to our website and convert them into purchasing customers. Specific factors that could impact consumers' willingness to purchase furniture from us online include:

- concerns about buying products, and in particular larger products, with a limited physical storefront, face-to-face interaction with sales personnel and the ability to physically examine products;
- actual or perceived lack of security of online transactions and concerns regarding the privacy of personal information;
- inconvenience associated with returning or exchanging items purchased online; and
- usability, functionality and features of our website.

If the online shopping experience we provide does not appeal to consumers or meet the expectations of existing customers, we may not acquire new customers at rates consistent with historical periods, and existing customers' buying patterns may not be consistent with historical buying patterns. If either of these events occur, our business, sales and results of operations may be harmed.

Product warranty claims could have a material adverse effect on our business.

We provide a lifetime warranty on most components of our products, which, if deficient, could lead to warranty claims. Currently, we do not maintain a reserve for warranty claims. Material warranty claims could, among other things, harm our reputation and damage our brand, cause us to incur significant repair and/or replacement costs, and material adversely affect our business, financial condition, operating results and prospects.

Significant merchandise returns could harm our business.

We allow our customers to return products, subject to our return policy. While the Company has experienced relatively few product returns, this could change, and, if customer returns are significant, our business, financial condition, operating results and prospects could be harmed. Further, we modify our policies relating to returns from time to time, which may result in customer dissatisfaction or an increase in the number of product returns.

We are subject to risks related to online payment methods.

We accept payment using a variety of methods, including credit card, debit card, PayPal and gift cards. As we offer new payment options to consumers, we may become subject to additional regulations, compliance requirements and fraud. For certain payment methods, including credit and debit cards, we pay interchange and other fees, which may increase over time and increase our operating costs. We are also subject to payment card association operating rules and certification requirements, including the Payment Card Industry Data Security Standard and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply.

As our business changes, we may also be subject to different rules under existing standards, which may require new assessments that involve costs above what we currently pay for compliance. If we fail to comply with the rules or requirements of any provider of a payment method we accept, if the volume of fraud in our transactions limits or terminates our rights to use payment methods we currently accept, or if a data breach occurs relating to our payment systems, we may, among other things, be subject to fines or higher transaction fees and may lose, or have restrictions placed upon, our ability to accept credit card and debit card payments from consumers or our ability to facilitate other types of online payments. If any of these events were to occur, our business, financial condition and operating results could be materially adversely affected.

In addition, we occasionally receive orders placed with fraudulent credit card data. We may suffer losses as a result of orders placed with fraudulent credit card data even if the associated financial institution approved payment of the orders. Under current credit card practices, we may be liable for fraudulent credit card transactions. If we are unable to detect or control credit card fraud, our liability for these transactions could harm our business, financial condition, operating results and prospects.

Government regulation of the Internet and ecommerce is evolving, and unfavorable changes or failure by us to comply with these regulations could substantially harm our business and results of operations.

We are subject to general business regulations and laws as well as regulations and laws specifically governing the Internet and ecommerce. Existing and future regulations and laws could impede the growth of the Internet, ecommerce or mobile commerce. These regulations and laws may involve taxes, tariffs, privacy and data security, anti-spam, content protection, electronic contracts and communications, consumer protection, Internet neutrality and gift cards. It is not clear how existing laws governing issues such as property ownership, sales and other taxes and consumer privacy apply to the Internet as the vast majority of these laws were adopted prior to the advent of the Internet and do not contemplate or address the unique issues raised by the Internet or ecommerce. It is possible that general business regulations and laws, or those specifically governing the Internet or ecommerce, may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices.

Though we seek at all times to be in full compliance with all such laws, we cannot be sure that our practices have complied, comply or will comply fully with all such laws and regulations. Any failure, or perceived failure, by us to comply with any of these laws or regulations could result in damage to our reputation, a loss in business and proceedings or actions against us by governmental entities or others. Any such proceeding or action could damage our reputation and brand, force us to spend significant amounts in defense of these proceedings, distract our management, increase our costs of doing business, decrease the use of our website by consumers and result in the imposition of monetary liability. We may also be contractually liable to indemnify and hold harmless third parties from the costs or consequences of non-compliance with any such laws or regulations.

We may be unable to protect our trademarks or brand image, which could harm our business.

We rely on trademark registrations and common law trademark rights to protect the distinctiveness of our brand. However, there can be no assurance that the actions we have taken to establish and protect our trademarks will be adequate to prevent counterfeiting or infringement of our trademarks by others. We may not be able to claim or assert trademark or unfair competition claims against third parties for any number of reasons, and our trademarks may be found invalid or unenforceable. A judge, jury or other adjudicative body may find that the conduct of competitors does not infringe or violate our trademark rights. Third parties may claim that the use of our trademarks and branding infringe, dilute or otherwise violate the common law or registered marks of that party, or that our sales and marketing efforts constitute unfair competition. Such claims could result in injunctive relief prohibiting the use of our marks, branding and marketing activities, and significant damages, treble damages and attorneys' fees and costs could be awarded as a result of such claims. Moreover, U.S. and foreign trademark offices may refuse to grant existing and future trademark applications and may cancel or partially cancel trademark registrations.

The laws of certain foreign countries may not protect the use of unregistered trademarks to the same extent as do the laws of the United States. As a result, international protection of our brand image may be limited, and our right to use our trademarks outside the United States could be impaired. Other persons or entities may have rights to trademarks that contain portions of our marks or may have registered similar or competing marks for furniture and/or accessories in foreign countries where our products are manufactured. There may also be other prior registrations of trademarks identical or similar to our trademarks in other foreign countries of which we are not aware. Accordingly, it may be possible for others to prevent the manufacture of our branded merchandise in certain foreign countries or the sale or exportation of our branded merchandise from certain foreign countries to the United States. If we were unable to reach a licensing arrangement with these parties, we might be unable to manufacture our products in those countries. Our inability to register our trademarks or purchase or license the right to use the relevant trademarks or logos in these jurisdictions could limit our ability to manufacture our products in less costly markets or penetrate new markets in jurisdictions outside the United States. The occurrence of any of the foregoing could harm our business.

We may not be able to adequately protect our intellectual property rights.

We regard our customer and prospect lists, trademarks, domain names, copyrights, patents and similar intellectual property as critical to our success, and we rely on trademark, copyright and patent law, trade secret protection, agreements and other methods with our employees and others to protect our proprietary rights. We have 9 issued U.S. utility patents, 21 issued international utility patents, 10 pending U.S. utility patent applications and 4 pending international utility patent applications. We expect to file U.S. and international patent applications for future innovations. We might not be able to obtain protection in the United States or internationally for our intellectual property, and we might not be able to obtain effective intellectual property protection in countries in which we may in the future sell products. If we are unable to obtain such protection, our business, financial condition, operating results and prospects may be harmed. Additionally, employees, contractors or consultants may misappropriate or disclose our confidential information or intellectual property and agreements with those persons may not exist, may not cover the information or intellectual property in question, or may not be enforceable, all of which could have an adverse impact on our business, financial condition, operating results and prospects for the future.

The protection of our intellectual property rights may require the expenditure of significant financial, managerial and operational resources. Notwithstanding such expenditures, the steps we take to protect our intellectual property may not adequately protect our rights or prevent third parties from infringing, misappropriating or disclosing confidential information or intellectual property. The validity, enforceability and infringement of our patents, trademarks, trade secrets and other intellectual property rights may be challenged by others in litigation or through administrative process, and we may not prevail in such disputes. Additionally, because the process of obtaining patent and trademark protection is expensive and time-consuming, we may not be able to prosecute all necessary or desirable patent and trademark applications at a reasonable cost or in a timely manner, and such applications may never be granted. Even if such applications issue as patents and trademarks, there can be no assurance that these patents and trademarks will adequately protect our intellectual property, as the legal standards relating to the validity, enforceability and scope of protection of patents, trademarks and other intellectual property rights are uncertain. If we are unable to adequately protect our intellectual property rights, our business, financial condition, operating results and prospects may be harmed.

We also might be required to spend significant resources to monitor and protect our intellectual property rights. We may not be able to discover or determine the extent of any infringement, misappropriation, disclosure or other violation of our intellectual property rights, confidential information or other proprietary rights. We may initiate claims or litigation against others for infringement, misappropriation or violation of our intellectual property rights, confidential information or other proprietary rights or to establish the validity of such rights. Despite our efforts, we may be unable to prevent third parties, former employees, consultants or independent contractors from infringing upon, misappropriating, disclosing or otherwise violating our intellectual property rights, confidential information and other proprietary rights. In addition, initiating claims or litigations against others for infringement, misappropriation, disclosure or violation of our intellectual property rights, confidential information or proprietary rights will be expensive, and may be prohibitively expensive. Any litigation or other dispute resolution mechanism, whether or not it is resolved in our favor, could result in significant expense to us and divert the efforts of our technical and management personnel, which may materially adversely affect our business, financial condition, operating results and prospects.

Our products or marketing activities may be found to infringe or violate the intellectual property rights of others.

Third parties may assert claims or initiate litigation asserting that our products or our marketing activities infringe or violate such third parties' patent, copyright, trademark, trade secret or other intellectual property rights. The asserted claims and/or litigation could include claims against us or our suppliers alleging infringement of intellectual property rights with respect to our products or components of such products.

Regardless of the merit of the claims, if our products are alleged to infringe or violate the intellectual property rights of other parties, we could incur substantial costs and we may have to, among other things:

- obtain licenses to use such intellectual property rights, which may not be available on commercially reasonable terms, or at all;
- redesign our products or change our marketing activities to avoid infringement or other violations of the intellectual property rights of others;
- stop using the subject matter protected by the intellectual property held by others;
- pay significant compensatory and/or enhanced damages, attorneys' fees and costs; and/or
- defend litigation or administrative proceedings which may be costly whether we win or lose, and which could result in a substantial diversion of our time, financial and management resources.

If any of the foregoing occur, our business, financial condition, operating results and prospects could be materially adversely affected.

Risks Relating to this Offering and Ownership of Our Common Stock

Our principal stockholder, SAC Acquisition LLC, will continue to have significant influence over us following the completion of this offering, and its interests could conflict with those of our other stockholders.

Immediately following this offering, our principal stockholder, SAC Acquisition LLC, will own over [●]% of the outstanding shares of our common stock on a fully-diluted basis. SAC Acquisition LLC is controlled by Mistral through ownership interests in SAC Acquisition LLC held by various investment vehicles affiliated with Mistral. Currently, Messrs. Bradley, Heyer and Phoenix are directors of the Company and are also principals of Mistral. As a result, SAC Acquisition LLC and Mistral are able to influence matters requiring approval by our stockholders, including the election of directors and the approval of mergers or other extraordinary transactions. SAC Acquisition LLC and Mistral may have interests that differ from yours and may vote in a way with which you disagree and which may be adverse to your interests. The concentration of ownership may also have the effect of delaying, preventing or deterring a change of control of the Company, could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our Company and might ultimately affect the market price of our common stock.

Holders of our outstanding warrants to purchase common stock will own a significant portion of our common stock following the exercise of such warrants. The exercise of such warrants will significantly dilute the investors participating in this offering.

Holders of our outstanding warrants to purchase common stock will own a significant portion of our common stock following the exercise of such warrants, if any. Assuming the sale of [●] shares of common stock in this Offering and the exercise of all outstanding warrants at the closing of this Offering, holders of our outstanding warrants would hold approximately [●]% of our common stock. During the three-year period following the completion of this offering, holders of our outstanding warrants will have the right to exercise such warrants and purchase shares of our common stock at the price per share paid by investors in this offering. The exercise will dilute investors participating in this offering.

We will be a “controlled company” within the meaning of the Nasdaq rules. As a result, we will qualify for, and may rely on, certain exemptions from corporate governance requirements that provide protection to stockholders of other companies.

After completion of this offering, we will be a “controlled company” within the meaning of the corporate governance standards of Nasdaq. Under these rules, a company of which more than 50% of the voting power is held by an individual, group or another company is a “controlled company” and may elect not to comply with some corporate governance requirements, including:

- the requirement that a majority of our board of directors consist of “independent directors”;
- the requirement that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities;
- the requirement that we have a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities; and
- the requirement for an annual performance evaluation of the compensation and nominating and corporate governance committees.

Following this offering, we intend to rely on some or all of these exemptions. If we so rely, you will not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq.

In addition, Nasdaq has developed listing standards regarding compensation committee independence requirements and the role and disclosure of compensation consultants and other advisers to the compensation committee that, among other things, require:

- compensation committees to be composed of independent directors, as determined pursuant to new independence requirements;
- compensation committees to be explicitly charged with hiring and overseeing compensation consultants, legal counsel and other committee advisers; and
- compensation committees to consider, when engaging compensation consultants, legal counsel or other advisers, independence factors, including factors that examine the relationship between the consultant or advisor’s employer and us.

As a controlled company, we will not be subject to these compensation committee independence requirements.

There has been no prior market for our common stock. An active market may not develop or be sustained, and investors may not be able to resell their shares of common stock at or above the initial public offering price.

There has been no public market for our common stock prior to this offering. The initial public offering price for our common stock will be determined through negotiations between the underwriter and us and may vary from the market price of our common stock following the completion of this offering. An active or liquid market in our common stock may not develop upon completion of this offering or, if it does develop, may not be sustained. As a result, you may not be able to sell the shares of common stock you purchase in this offering at or above the initial public offering price, or if at all.

The market price of our common stock may be volatile or may decline steeply or suddenly regardless of our operating performance, resulting in substantial losses for investors purchasing shares of common stock in this offering.

The initial public offering price for our common stock will be determined through negotiations between the underwriter and the Company. This price may not reflect the market price of our common stock following the completion of this offering. Moreover, the market price of our common stock may be volatile or decline steeply or suddenly, regardless of our operating performance. This could occur for any number of reasons, many of which are beyond our control, including:

- actual or anticipated fluctuations in our customer growth, sales, or other operating results;
- variations between our actual operating results and the expectations of securities analysts, investors, and the financial community;
- any forward-looking financial or operating information we may provide to the public or securities analysts, any changes in this information, or our failure to meet expectations based on this information;
- actions of securities analysts who initiate or maintain coverage of us, changes in financial estimates by any securities analysts who follow our Company, or our failure to meet these estimates or the expectations of investors;
- additional shares of our common stock being sold into the market by us or our existing stockholders, or the anticipation of such sales, including if existing stockholders sell shares into the market when applicable “lock-up” periods end;
- price and volume fluctuations in the overall stock market, including as a result of trends in the economy as a whole;
- announcements by us or our competitors of significant products, acquisitions, strategic partnerships, joint ventures, or capital commitments;
- lawsuits threatened or filed against us;
- developments in new legislation or rulings by judicial or regulatory bodies; and
- other events or factors, including those resulting from war or incidents of terrorism, or responses to these events.

We may be subject to securities litigation, which is expensive and could divert management attention.

The market price of our common stock may be volatile, and in the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management’s attention from other business concerns, which could have a material adverse effect on our business, financial condition, and results of operations.

An active trading market for our common stock may never develop or be sustained and we may be unable to comply with the applicable continued listing requirements or standards of the Nasdaq Global Market and could be delisted.

We have applied to list our common stock on the Nasdaq Global Market under the symbol “LOVE.” In order to maintain that listing, we will be required to satisfy minimum financial and other continued listing requirements and standards, including those regarding minimum stockholders’ equity, minimum share price, and certain corporate governance requirements. There can be no assurance that we will be able to comply with the applicable listing standards. If we cannot comply with the applicable listing standards our common stock may be delisted which could materially adversely affect our trading volume and stock price.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. We do not currently have, and may never obtain, research coverage by securities and industry analysts. If no securities or industry analysts commence coverage of our Company, the trading price for our common stock would be negatively impacted. If we obtain securities or industry analyst coverage and if one or more of the analysts who cover us downgrades our common stock or publishes inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, demand for our common stock could decrease, which could cause our stock price and trading volume to decline.

The requirements of being a public company may strain our resources, result in more litigation, and divert the attention of Company management.

As a public company, we will be subject to the reporting requirements of the Exchange Act, SOX, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of the Nasdaq Global Market, and other applicable securities rules and regulations. Complying with these rules and regulations will increase our legal and financial compliance costs, make some activities more difficult, time-consuming and costly, and increase demand on our systems and resources. For example, in anticipation of becoming a public company, we will need to adopt additional internal controls and disclosure controls and procedures, retain a transfer agent, adopt an insider trading policy and bear all of the internal and external costs of preparing and distributing periodic public reports in compliance with our obligations under the securities laws.

The Exchange Act requires, among other things, that we file annual, quarterly, and current reports with respect to our business and operating results. By disclosing information in this prospectus and in filings required of a public company, our business and financial condition will become more visible, which may result in threatened or actual litigation, including by competitors and other third parties. If those claims are successful, our business could be seriously harmed. Even if the claims do not result in litigation or are resolved in our favor, the time and resources needed to resolve them could divert our management's resources and seriously harm our business.

Our management will have broad discretion over the use of the proceeds we receive in this offering and might not apply the proceeds in ways that increase the value of your investment.

While we intend to use the net proceeds of this offering in the manner set forth in "Use of Proceeds" below, we have broad discretion over the ultimate use of those proceeds. You will be relying on the judgment of Company management regarding the application of those proceeds. You will not have the opportunity to influence our decisions regarding how we use our proceeds from this offering, and we may spend or invest these proceeds in a way with which our stockholders disagree.

If our management fails to use these funds effectively, our business could be seriously harmed. Moreover, Company management may apply our proceeds from this offering in ways that fail to increase, or even decrease, the value of your investment.

Investors in this offering will experience immediate and substantial dilution.

The initial public offering price is expected to be substantially higher than the net tangible book value per share of our common stock immediately following this offering. Therefore, if you purchase common stock in the offering, you will experience immediate and substantial dilution in net tangible book value per share in relation to the price that you paid for your shares. We expect the dilution as a result of the offering to be \$[●] per share, based on an assumed initial offering price of \$[●] per share and our pro forma net tangible book value of \$[●] per share as of [●], 2018. Accordingly, if we were liquidated at our pro forma net tangible book value, you would not receive the full amount of your investment.

We are an "emerging growth company," and any decision on our part to comply only with certain reduced reporting and disclosure requirements applicable to emerging growth companies could make our common stock less attractive to investors.

We are an "emerging growth company" as defined in the JOBS Act, and we could be an emerging growth company for up to five years following the completion of this offering. For as long as we continue to be an emerging growth company, we may choose to take advantage of exemptions from various reporting requirements applicable to other public companies but not to emerging growth companies, including:

- not being required to have our independent registered public accounting firm audit our internal control over financial reporting under Section 404 of SOX;
- reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. Investors may find our common stock less attractive if we choose to rely on any of the exemptions or accommodations afforded to emerging growth companies. If investors find our common stock less attractive because we rely on any of these exemptions or accommodations, there may be a less active trading market for our common stock and the market price of our common stock may be more volatile. The Company has irrevocably elected to take advantage of the extended transition period for new or revised accounting standards.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of our Company more difficult, and limit attempts by our stockholders to replace or remove our current management.

Provisions in our amended and restated certificate of incorporation and our amended and restated bylaws that will be effective immediately prior to the completion of this Offering may have the effect of delaying or preventing a change of control or changes in our management. Our certificate of incorporation and bylaws will include provisions that:

- permit the board of directors to establish the number of directors and fill any vacancies and newly created directorships by the affirmative vote of a majority of the directors or stockholders holding at least 66 2/3% of the issued and outstanding shares of common stock;
- provide that directors may only be removed by the majority of the shares of voting stock then outstanding entitled to vote generally in election of directors;
- require a two-thirds majority of all directors who constitute the Board of Directors or holders at least 75% of the issued and outstanding shares our common stock to adopt, amend or repeal provisions of our bylaws;
- require 66 2/3% of the voting power of all then outstanding shares of capital stock of the Company entitled to vote generally in election of directors to amend, alter or repeal, or adopt any provision inconsistent with certain sections of our certificate of incorporation;
- eliminate the ability of our stockholders to call special meetings of stockholders, except as otherwise provided by the terms of any series of preferred stock;
- restrict the forum for certain litigation against us to Delaware; and
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we will be governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any holder of at least 15% of our capital stock for a period of three years following the date on which the stockholder became a 15% stockholder.

We do not expect to declare any dividends in the foreseeable future.

The continued operation and growth of our business will require substantial cash. Accordingly, we do not anticipate paying any cash dividends to holders of our common stock at any time in the foreseeable future. Any determination to pay future dividends will be at the discretion of our board of directors and will depend upon our results of operations, financial condition, contractual restrictions, indebtedness, restrictions imposed by applicable law and other factors our board of directors deems relevant. Consequently, the only way investors may be able to realize future gain on their investment is to sell their shares of common stock after the price of such shares has appreciated. However, there is no guarantee that investors' shares of common stock will appreciate in value or even maintain the price at which our investors purchased their shares of common stock.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. Forward-looking statements are projections in respect of future events or our future financial performance. In some cases, you can identify forward-looking statements by terms such as “anticipate,” “believe,” “could,” “continue,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “potential,” “should,” “will” and “would” or the negatives of these terms or other comparable terminology.

You should not place undue reliance on forward looking statements. We cannot assure you that the events and circumstances reflected in the forward-looking statements will be achieved or occur. The cautionary statements set forth in this prospectus, including in “Risk Factors” and elsewhere, identify important factors which you should consider in evaluating our forward-looking statements. These factors include, among other things:

- our ability to sustain recent growth rates;
- our ability to manage the growth of our operations over time;
- our ability to maintain, grow and enforce our brand and trademark rights;
- our ability to improve our products and develop new products;
- our ability to obtain, grow and enforce intellectual property related to our business and avoid infringement or other violation of the intellectual property rights of others;
- our ability to successfully open and operate new showrooms;
- our ability to increase our Internet sales; and
- our ability to compete and succeed in a highly competitive and evolving industry.

These risks are not exhaustive. Other sections of this prospectus include additional factors that could harm our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time, and it is not possible for our management to predict all risk factors nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ from those contained in, or implied by, any forward-looking statements.

Although the forward-looking statements in this prospectus are based on our beliefs, assumptions and expectations, taking into account all information currently available to us, we cannot guarantee future transactions, results, performance, achievements or outcomes. No assurance can be made to any investor by anyone that the expectations reflected in our forward-looking statements will be attained, or that deviations from them will not be material and adverse. We undertake no obligation, other than as may be required by law, to re-issue this prospectus or otherwise make public statements updating our forward-looking statements.

USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of common stock by this prospectus will be approximately \$[●] million, assuming the sale by us of [●] shares of our common stock at an assumed public offering price of \$[●] per share and after deducting the underwriting discounts and commissions, and estimated offering expenses payable by us of approximately \$[●].

A \$[●] increase (decrease) in the assumed public offering price of \$[●] per share would increase (decrease) the expected net cash proceeds of the offering to us by approximately \$[●] million, or \$[●] per share, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discount and offering expenses payable by us. Similarly, a \$[●] increase (decrease) in the number of shares of common stock sold in this offering would increase (decrease) the expected net cash proceeds of the offering to use by approximately \$[●] million, or \$[●] per share, assuming that the per share offering price, at the midpoint of the range, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discount and offering expenses payable by us.

The principal purposes of this offering are to increase our capitalization and financial flexibility, and create a public market for our common stock and thereby enable access to the public equity markets for us and our stockholders. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds to us from this offering. However, we currently intend to use the net proceeds from this offering primarily (i) to increase sales and marketing, (ii) for product development, and (iii) for working capital and other general corporate purposes.

The amount and timing of expenditures or for any particular use may vary based on a number of factors, including the amount of cash used in or provided by our operations. Our management will have broad discretion in the application of these proceeds, and investors will be relying on the judgment of our management regarding the application of the proceeds of this offering.

DIVIDEND POLICY

We have never declared nor paid any dividends on our common stock since incorporation and do not anticipate that we will do so in the foreseeable future. All shares of our common stock are entitled to an equal share of any dividends declared and paid. Payment of future dividends, if any, will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in any financing instruments, provisions of applicable law and other factors the board of directors deems relevant.

CAPITALIZATION

The following table describes our capitalization as of February 4, 2018:

- on an actual basis; and
- on a pro forma, as adjusted basis to give effect to the sale of the shares in this offering at the assumed public offering price of \$[●] per share, after deducting underwriting discounts and other estimated offering expenses payable by us, and the conversion of all outstanding Series A Preferred Stock, Series A-1 Preferred Stock and Series A-2 Preferred Stock, in each case along with the aggregate accrued or accumulated and unpaid dividends thereon. A description of the conversion features of our preferred stock can be found under the heading “Description of Capital Stock – Preferred Stock” and in Notes 7 and 12 to our consolidated financial statements for the years ended February 4, 2018 and January 29, 2017.

The pro forma as adjusted information below is illustrative only, and our capitalization following the closing of this offering will be adjusted based on the actual public offering price and other terms of this offering determined at pricing.

You should read the following table in connection with the sections entitled “Selected Consolidated Financial Data,” “Management’s Discussion and Analysis of Financial Condition and Results of Operation,” “Description of Capital Stock” and our financial statements and related notes included elsewhere in this prospectus.

	As of February 4, 2018	
	Actual	Pro Forma As Adjusted ⁽¹⁾
Indebtedness	\$ -	\$
Stockholders’ equity:		
Common Stock, par value \$0.00001 per share; 100,000,0000 shares authorized, 15,161,250 shares issued and outstanding	152	
Preferred Stock, par value \$0.00001 per share; 25,000,000 shares authorized and 2,546,500 shares issued and outstanding, no shares issued and outstanding	26	
Accumulated paid-in capital	79,891,728	
Accumulated deficit	(56,253,453)	
Total stockholders’ equity (deficit)	23,638,453	
Total capitalization	\$ 23,638,858	\$

- (1) A \$[●] increase (decrease) in the assumed public offering price of \$[●] per share would increase (decrease) the pro forma as adjusted capitalization by \$[●], or \$[●] per share, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discount and offering expenses payable by us. Similarly, a \$[●] increase (decrease) in the number of shares of common stock sold in this offering would increase (decrease) the pro forma as adjusted capitalization by approximately \$[●], or \$[●] per share, assuming that the per share offering price, at the midpoint of the price range on the cover of this prospectus, remains the same.

The pro forma information discussed above is to illustrate only and will change based on the actual public offering price, number of shares and other terms of this offering determined in pricing.

The number of shares of our common stock outstanding shown in the pro forma, as adjusted column reflects:

- the conversion to common stock of the 923,000 outstanding shares of Series A Convertible Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, convertible to approximately [●] shares of our common stock;*
- the conversion to common stock of the 1,000,000 outstanding shares of Series A-1 Convertible Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, convertible to approximately [●] shares of our common stock;*
- the conversion to common stock of the 623,500 outstanding shares of Series A-2 Convertible Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, convertible to approximately [●] shares of our common stock;*
- the exclusion of outstanding warrants to purchase 2,004,625 shares of our common stock at an exercise price per share equal to the offering price;*
- the exclusion of 845,775 unvested restricted stock units and 434,990 shares of common stock reserved for issuance under the Equity Plan; and
- the exclusion of [●] shares of common stock issuable upon exercise of the underwriter’s warrant.

* A description of the conversion features of our preferred stock and of the exercise prices of our warrants can be found under the heading “Description of Capital Stock – Preferred Stock” and in Notes 7 and 12 to our consolidated financial statements for the year ended February 4, 2018.

DILUTION

If you invest in our common stock in this offering, your interest will be diluted to the extent of the difference between the public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock upon completion of this offering. Net tangible book value per share represents the amount of our total tangible assets (total assets less intangible assets) less total liabilities, divided by the number of shares of our common stock outstanding.

Our net tangible book value (deficit) as of February 4, 2018 was \$[●] or approximately \$[●] per share of common stock, based upon [●] shares outstanding as of February 4, 2018.

Our pro forma as adjusted net tangible book value (deficit) at February 4, 2018 would have been approximately \$[●] million or \$[●] per share. This represents an immediate increase in pro forma net tangible book value of approximately \$[●] per share to our existing stockholders, and immediate dilution of \$[●] per share to investors purchasing shares in this offering. Pro forma net tangible book value per share represents the amount of our total tangible assets less total liabilities, divided by the total number of shares outstanding as of February 4, 2018, after giving effect to the sale of the shares in this offering at the assumed public offering price of \$[●] per share, the midpoint of the price range on the cover of this prospectus, and after deducting the estimated underwriting discount and offering expenses payable by us.

Dilution in pro forma net tangible book value (deficit) per share represents the difference between the amount per share paid by purchasers of our common stock in this offering and the pro forma net tangible book value per share of our common stock immediately after this offering.

The following table illustrates the per share dilution to investors purchasing shares in the offering:

Assumed initial public offering price per share	\$
Pro forma net tangible book value per share as of February 4, 2018	\$
Increase in pro forma net tangible book value per share attributable to new investors in this offering	
Pro forma as adjusted net tangible book value per share after this offering	
Dilution in net tangible book value per share to new investors in this offering	\$

A \$[●] increase (decrease) in the assumed public offering price of \$[●] per share would increase (decrease) the pro forma net tangible book value by \$[●], or \$[●] per share, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discount and offering expenses payable by us. Similarly, a \$[●] increase (decrease) in the number of shares of common stock sold in this offering would increase (decrease) the pro forma net tangible book value by approximately \$[●], or \$[●] per share, assuming that the assumed per share offering price of \$[●], the midpoint of the price range on the cover of this prospectus, remains the same and after deducting the estimated underwriting discount and offering expenses payable by us.

If the underwriter exercises its over-allotment option in full to purchase an additional [●] shares of our common stock in this offering, the pro forma as adjusted net tangible book value will increase to \$[●] per share, representing an immediate increase to existing stockholders of \$[●] per share and an immediate dilution of \$[●] per share to new investors participating in this offering.

The following table summarizes, on a pro forma as adjusted basis as of February 4, 2018, after giving effect to the conversion of all of our outstanding preferred stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, into shares of our common stock immediately prior to the closing of this offering, the differences between the number of shares of common stock purchased from us, the total consideration paid to us and the average price per share paid by existing stockholders and by new investors purchasing shares of common stock in this offering. The calculation below is based on an assumed initial public offering price of \$[●] per share, the midpoint of the price range on the cover of this prospectus, after deducting estimated underwriting discounts and estimated offering expenses payable by us.

	<u>Shares Purchased</u>		<u>Total Consideration</u>		<u>Weighted-Average Price Per Share</u>
	<u>#</u>	<u>%</u>	<u>\$</u>	<u>%</u>	
Existing stockholders			%	\$	%
New investors purchasing common stock					\$
Total			%	\$	%

Furthermore, we may choose to raise additional capital through the sale of equity or convertible debt securities due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. We may also choose to engage in strategic acquisitions through the issuance of shares of our stock. New investors will experience further dilution if any of our outstanding options or warrants are exercised, new options are issued and exercised under our equity incentive plans or we issue additional shares of common stock, other equity securities or convertible debt securities in the future.

The pro forma information discussed above is illustrative only and will change based on the actual public offering price, number of shares and other terms of this offering determined at pricing.

SELECTED CONSOLIDATED FINANCIAL INFORMATION

The following tables present our summary consolidated financial and other data as of and for the periods indicated. The summary consolidated statements of operations data and the consolidated statement of cash flow data for the fiscal years ended February 4, 2018, January 29, 2017, and January 31, 2016, and the summary consolidated balance sheet data as of February 4, 2018, January 29, 2017, and January 31, 2016 are derived from our audited consolidated financial statements included elsewhere in this prospectus. Our historical audited results are not necessarily indicative of the results that should be expected in any future period.

The summarized financial information presented below is derived from and should be read in conjunction with our audited consolidated financial statements including the notes to those financial statements which are included elsewhere in this prospectus along with the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” Our historical results are not necessarily indicative of our future results

	Fiscal Year Ended		
	February 4, 2018	January 29, 2017	January 31, 2016
(dollars in thousands, except per share data)			
Consolidated Statements of Operations Data:			
Net sales			
Showrooms	\$ 77,837	\$ 62,277	\$ 59,095
Internet	18,859	12,270	10,601
Other	5,114	1,796	4,449
Total net sales	101,810	76,343	74,145
Costs of merchandise sold	44,593	34,646	33,635
Gross profit	57,217	41,697	40,510
Selling, general and administrative expenses	62,255	47,868	47,174
Operating loss	(5,038)	(6,171)	(6,664)
Other			
Other expense	-	-	(86)
Loss on extinguishment of debt	-	-	(557)
Interest expense	(438)	(565)	(1,687)
Income taxes	(26)	(138)	(32)
Net Loss	\$ (5,502)	\$ (6,874)	\$ (8,994)
Net Loss per Common Share:			
Net loss per common share (basic and diluted) ⁽¹⁾	\$ (0.45)	\$ (0.48)	\$ (0.83)
Weighted-average shares used in computing net loss per common share ⁽¹⁾	15,001,748	14,368,216	10,852,433
Pro Forma Net Loss per Common Share (unaudited):			
Pro forma net loss per common share (basic and diluted)	[●]	\$ [●]	-
Pro forma weighted-average shares used in computing pro forma net loss per common share	[●]	[●]	-
Other Financial and Operating Data (unaudited):			
Retail ⁽²⁾			
Comparable showroom sales change ⁽³⁾	19.5%	4%	17%
Showrooms open at end of period	66	60	59
Total showroom square footage at end of period (in thousands)	88	80	74
Total showroom selling square footage at end of period (in thousands) ⁽⁴⁾	62	57	52
Sales per selling square foot ⁽⁵⁾	\$ 1,262	\$ 1,101	\$ 1,065
Capital expenditures ⁽⁶⁾	\$ 6,636	\$ 3,681	\$ 965
EBITDA ⁽⁷⁾⁽⁸⁾	\$ (2,679)	\$ (3,991)	\$ (4,892)
Adjusted EBITDA ⁽⁷⁾⁽⁸⁾	\$ 1,271	\$ (2,861)	\$ (4,555)
Adjusted EBITDA Margin ⁽⁷⁾⁽⁹⁾	1%	(4%)	(6%)
Average Unit Volume ⁽⁷⁾⁽¹⁰⁾	1,235,031	1,072,623	992,024

	As of February 4, 2018	As of January 29, 2017	As of January 31, 2016
(dollars in thousands)			
Balance Sheet data:			
Cash and cash equivalents	\$ 9,176	\$ 879	\$ 209
Working capital ⁽¹¹⁾	12,946	3,350	850
Total assets	41,441	20,720	17,819
Total liabilities	17,802	13,670	15,187
Total stockholders' equity	23,638	7,050	2,632

	Fiscal Year Ended		
	February 4, 2018	January 29, 2017	January 31, 2016

(dollars in thousands)

Consolidated Statement of Cashflow Data:

Net cash used in operating activities	\$ (2,740)	\$ (6,477)	\$ (8,872)
Net cash used in investing activities	(6,809)	(3,985)	(1,155)
Net cash provided by financing activities	17,847	11,132	9,872
Net change in cash and cash equivalents	8,297	670	(155)
Cash and cash equivalents at end of period	9,176	879	209

- (1) For the calculation of basic and diluted net loss per share, see Note 1 and Note 7 to our audited consolidated financial statements. The weighted average number of common shares used in computing the net loss per common share gives effect to (i) the 1-for-[●] reverse stock split of our common stock that occurred on [●]. The pro forma weighted average number of common shares used in computing pro forma net loss per common share gives effect to (i) the conversion of our outstanding preferred stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, into [●] shares of our common stock, and (ii) the 1-for-[●] reverse stock split of our common stock that occurred on [●].
- (2) Retail data represents our showrooms exclusive of shop in shop showrooms.
- (3) Comparable showroom sales are calculated based on showrooms that were open at least fifty-two weeks as of the end of the reporting period. A showroom is not considered a part of the comparable showroom sales base if the square footage of the showroom changed or if the showroom was relocated. If a showroom was closed for any period of time during the measurement period, that showroom is excluded from comparable showroom sales. The change in comparable showroom sales is calculated by comparing the period's comparable showroom sales to the same period in the preceding fiscal year.
- (4) Selling square footage is retail space at our showrooms used to sell our products. Selling square footage excludes backrooms at showrooms used for storage, office space or similar matters.
- (5) Retail sales per selling square foot is calculated by dividing total net sales for all showrooms, comparable and non-comparable, by the average selling square footage for the period.
- (6) Capital expenditures consist primarily of investments in new showrooms and remodeled showrooms.
- (7) EBITDA, Adjusted EBITDA, Adjusted EBITDA Margin, and Average Unit Volume (collectively, our "Non-GAAP Measures") are supplemental measures of financial performance that are not required by, or presented in accordance with, GAAP. We believe that our Non-GAAP Measures are useful measures of operating performance, as they eliminate expenses that are not reflective of the underlying business performance, facilitate a comparison of our operating performance on a consistent basis from period-to-period and provide for a more complete understanding of factors and trends affecting our business. Additionally, EBITDA is frequently used by analysts, investors and other interested parties to evaluate companies in our industry. We use EBITDA and Adjusted EBITDA, alongside other GAAP measures such as gross profit, operating income (loss) and net income (loss), to measure evaluate our operating performance and we believe these measures are useful to investors in evaluating our operating performance.

Our Non-GAAP Measures are not GAAP measures of our financial performance or liquidity and should not be considered as alternatives to net income (loss) or net income (loss) per share as a measure of financial performance, cash flows from operating activities as a measure of liquidity, or any other performance measure derived in accordance with GAAP. They should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Additionally, our Non-GAAP Measures are not intended to be measures of free cash flow for management's discretionary use, as they do not consider certain cash requirements such as tax payments and debt service requirements and certain other cash costs that may recur in the future. Our Non-GAAP Measures contain certain other limitations, including the failure to reflect our cash expenditures, cash requirements for working capital needs and cash costs to replace assets being depreciated and amortized. In addition, our Non-GAAP Measures exclude certain non-recurring and other charges.

You should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in our Non-GAAP Measures. Our presentation of our Non-GAAP Measures should not be construed to imply that our future results will be unaffected by any such adjustments. Management compensates for these limitations by relying primarily on our GAAP results and by using our Non-GAAP Measures as supplemental information. Our Non-GAAP Measures are not necessarily comparable to other similarly titled captions of other companies due to different methods of calculation.

- (8) We define EBITDA as net income before interest, taxes, depreciation and amortization. We define Adjusted EBITDA as EBITDA adjusted for the impact of certain non-cash and other items that we do not consider in our evaluation of ongoing operating performance. These items include sponsor fees, equity-based compensation expense, write-offs of property and equipment, deferred rent, financing expenses and certain other charges and gains that we do not believe reflect our underlying business performance. The following provides a reconciliation of net loss to EBITDA and Adjusted EBITDA for the periods presented:

	Fiscal Year Ended		
	February 4, 2018	January 29, 2017	January 31, 2016
(dollars in thousands)			
Net loss	\$ (5,502)	\$ (6,874)	\$ (8,994)
Interest expense	438	565	1,687
Taxes	26	138	32
Depreciation and amortization	2,359	2,180	2,383
EBITDA	(2,679)	(3,991)	(4,892)
Sponsor fees ^(a)	484	400	300
Equity-based compensation expense ^(b)	951	26	37
Write-off of property and equipment ^(c)	197	77	-
Deferred rent ^(d)	360	217	135
Other expenses ^(e)	1,959	410	-
Adjusted EBITDA	\$ 1,271	\$ (2,861)	\$ (4,420)

- (a) Represents management fees charged by our equity sponsors.
- (b) Represents expenses associated with stock options and restricted stock units granted to our management.
- (c) Represents the net loss on the disposal of fixed assets.
- (d) Represents the difference between rent expense recorded and the amount paid by the Company. In accordance with generally accepted accounting principles, the Company records monthly rent expense equal to the total of the payments due over the lease term, divided by the number of months of the lease terms.
- (e) Other expenses in fiscal 2018 are made up of: (1) \$1,072 in fees and costs associated with our fundraising and reorganizing activities including the legal and professional services incurred in connection with such activities; (2) \$182 in travel and logistical costs associated with the offering; (3) \$484 in costs related to the offering and finance fees; and (4) \$221 in accounting fees related to the offering. Other expenses in fiscal 2017 are made up of: (1) \$242 in fees and costs associated with our fundraising and reorganizing activities including the legal and professional services incurred in connection with such activities; (2) \$29 in travel and logistical costs associated with the offering; and (3) \$139 in accounting fees related to the offering.
- (9) Adjusted EBITDA margin means, for any period, the Adjusted EBITDA for that period divided by the net sales for that period.
- (10) Average Unit Volume is calculated by dividing total showroom sales by the number of showrooms open during the period. For showrooms that are not open for the entire period, fractional adjustments are made to the number of showrooms used in the denominator such that it corresponds to the period of associated sales.
- (11) Working capital is defined as current assets, less current liabilities.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with our consolidated financial statements and related notes thereto included elsewhere in this prospectus, as well as the information presented under "Selected Historical Consolidated Financial and Other Data." The following discussion contains forward-looking statements that reflect our plans, estimates and assumptions. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause such differences are discussed in the sections of this prospectus titled "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements."

We operate on a 52- or 53-week fiscal year that ends on the Sunday closest to January 31st. Each fiscal year generally is comprised of four 13-week fiscal quarters, although in the years with 53 weeks, the fourth quarter represents a 14-week period. Fiscal year 2016, fiscal year 2017 ended on January 31, 2016, January 29, 2017, respectively, and were each comprised of 52 weeks. Fiscal year 2018 ended on February 4, 2018 was comprised of 53 weeks.

Overview

We are a technology driven, omni-channel company that designs, manufactures and sells unique, high quality furniture comprised of modular couches called Sactionals and premium foam beanbag chairs called Sacs. We market and sell our products through modern and efficient showrooms and, increasingly, through online sales. We position our retail locations as showrooms for our brand, while our website acts as a virtual extension of our showrooms. We believe that our ecommerce centric approach, coupled with our ability to deliver our large upholstered products through nationwide express couriers, are unique to the furniture industry. Our technology driven business is fully integrated across our multiple channels of distribution, consisting of our showrooms, including shop in shops, wholesale, and our website.

We currently market and sell our products through 66 showrooms at top tier malls and lifestyle centers. Our modern, efficient showrooms are designed to appeal to millennials and other purchasers looking for comfortable, enduring, premium furniture. They showcase the different sizes of our Sacs, the myriad forms into which our Sactionals can be configured, and the large variety of fabrics that can be used to cover our products.

During fiscal 2019, we plan on opening fifteen new showrooms, closing five lower performing showrooms and remodeling ten showrooms, all of which we expect to fund through operations and borrowings under our credit facility. We estimate the cost of remodeling ten showrooms to be between \$3.5 million and \$4.0 million, and the cost of opening fifteen new showrooms to be between \$5.2 million and \$5.7 million. We plan to open showrooms in new markets without long-term commitments until the profitability of a showroom in that market can be proven.

We are repositioning Lovesac from a "word of mouth" discovery business to a leading home furnishings brand proactively marketed by us. Starting in 2016, we significantly accelerated the transformation of our brand through the following initiatives:

Omni-Channel Approach

Our omni-channel approach leverages multiple channels to engage with and reach our customer base. We cost-effectively drive traffic to our ecommerce channel, in an effort to increase web-based sales and improved operating margins. Our showrooms and other direct marketing efforts work in concert to drive customer conversion in ecommerce. Our shop in shops also provide a low cost alternative to drive brand awareness and in-store and ecommerce sales. We believe this omni-channel approach enables us to strategically deploy our resources to maximize return on invested capital. We have embarked upon a program to update and remodel many of our showrooms which will be the standard for future showrooms. The new concept, introduced in 2016, utilizes technology in more experiential ways to increase traffic and sales.

Unique Distribution Capability

Due to the unique modularity of our Sactionals products and the shrinkability of our Sacs, we are able to distribute our products efficiently through nationwide express couriers. We believe these factors allow us to efficiently utilize warehouse space and international shipping routes. We believe our Sactionals are the only product in its category that enjoys these logistical advantages.

Increase Marketing and Advertising

Prior to 2017, we invested minimally in marketing and advertising. Since then we have begun to invest more heavily in brand building and direct marketing efforts, including direct mail, 30-second television commercials in select markets, and social media. These brand building efforts have resulted in average incremental gross profits 320% greater than the total marketing spend on paid search, social media and affiliate marketing. We also saw significant incremental gross profit as a result of our television and our direct mail starter kit advertising around stores. Incremental gross profit was 76% greater with television advertisements and 111% greater with direct mail than the marketing spend in these categories. Our focus on building brand awareness has also led to an increase in our new customer base, which grew by 27.2% in fiscal 2018. We plan to continue to build awareness via increased digital and social media, including digital videos and direct response television.

Seasoned and Committed Management Team

As a complement to our founder and Chief Executive Officer, Shawn Nelson, we recently strengthened our management team by adding a new President and Chief Operating Officer, Jack Krause, a new Executive Vice President and Chief Financial Officer, Donna Dellomo, and a new Chief Technology Officer, David Jensen, as well other senior leaders in digital marketing, merchandising, finance, and merchandise inventory planning, all of whom bring extensive experience in their respective fields.

Growth Strategy

We intend to increase the number of showrooms we operate, renovate existing showrooms, and increase our investments in brand building and direct marketing efforts. We will seek to increase sales and improve operating margins through our omni-channel distribution approach and premium prices. We will pursue the goals simultaneously and expect to meet costs associated with achieving them through cash generated in our operating activities and borrowings under our credit facility. We believe that these transformative initiatives will allow us to become profitable in the foreseeable future.

Factors Affecting Our Operating Results

While our growth strategy has contributed to our improving operating results, it also presents significant risks and challenges. These strategic initiatives will require substantial expenditures. The timing and magnitude of new showroom openings, existing showroom renovations, and marketing activities may affect our results of operations in future periods.

Other factors that could affect our results of operations in future periods include:

Overall Economic Trends

The industry in which we operate is cyclical. In addition, our revenues are affected by general economic conditions. Purchases of our products are sensitive to a number of factors that influence the levels of consumer spending, including economic conditions, consumer disposable income, housing market conditions, consumer debt, interest rates and consumer confidence.

Seasonality

Our business is seasonal. As a result, our revenues fluctuate from quarter to quarter, which often affects the comparability of our results between periods. Net sales are historically higher in the fourth fiscal quarter due primarily to the impact of the holiday selling season.

Competition

The retail industry is highly competitive and retailers compete based on a variety of factors, including design, quality, price and customer service. Levels of competition and the ability of our competitors to attract customers through competitive pricing or other factors may impact our results of operations.

How We Assess the Performance of Our Business

In assessing the performance of our business, we consider a variety of financial and operating measures, including the following:

Net sales

Net sales reflect our sale of merchandise plus shipping and handling revenue collected from our customers, less returns and discounts. Sales made at Company operated showrooms, including shop in shops, are recognized at the point of sale when payment is tendered and ownership is transferred to the customer, which may occur subsequent to the sale. Sales of merchandise via the internet are recognized upon receipt and verification of payment and shipment of the merchandise to the customer. We expect web-based sales to increase as a percentage of total sales.

Comparable Showroom Sales

Comparable showroom sales are calculated based on showrooms that were open at least fifty-two weeks as of the end of the reporting period. A showroom is not considered a part of the comparable showroom sales base if the square footage of the showroom changed or if the showroom was relocated. If a showroom was closed for any period of time during the measurement period, that showroom is excluded from comparable showroom sales. For fiscal years 2018, 2017 and 2016, 11, 6 and 10 showrooms, respectively were excluded from comparable showroom sales. Comparable showroom sales allow us to evaluate how our showroom base is performing by measuring the change in period-over-period net sales in showrooms that have been open for twelve months or more. While we review comparable showroom sales as one measure of our performance, this measure is less relevant to us than it may be to other retailers due to our fully integrated, omni-channel, go-to-market strategy. As a result, measures that analyze a single channel are less indicative of the performance of our business than they might be for other companies that operate their distribution channels as separate businesses. Further, certain of our competitors and other retailers calculate comparable showroom sales (or similar measures) differently than we do. As a result, the reporting of our comparable showroom sales may not be comparable to sales data made available by other companies.

Customer Lifetime Value and Customer Acquisition Cost

We calculate CAC on an annual basis by dividing our expenses associated with acquiring new customers for a fiscal year by the number of new customers we acquire in that fiscal year. We include premium rent for locations above commercial rates, media costs to new customers, and a portion of showroom merchandising costs in our marketing expenses associated with acquiring new customers when calculating our CAC. We believe that fiscal 2018 is the first fiscal year that our CAC fully reflects the implementation of changes to our operations that began in 2015. For fiscal 2018, our CAC was \$283.22 per customer.

We monitor repeat customer transactions in aggregate and in groups based upon the year in which customers first made a purchase from us, which we refer to as cohorts, as a way to measure our customer's engagement with our products over their lifetime. We also measure each cohort's aggregate gross profits against our CLV, which we estimate to be \$1,236 per customer. CLV is a fixed estimate of the average gross profit we expect to receive from a customer during his or her purchasing lifetime. We based our CLV on our internal data relating to customers who first purchased from us in fiscal 2015, which we refer to as our 2015 cohort. We chose fiscal 2015 as our base year because we began to make changes to our business and our target customers in fiscal 2015 and believe that the customers in fiscal 2015 more accurately reflect our current and target customer than in years prior to fiscal 2015. We calculated our CLV by dividing the aggregate gross profits through fiscal 2017 attributable to the 2015 cohort (approximately \$35,706,282) by the total number of customers in the 2015 cohort (28,882 customers).

Retail Sales Per Selling Square Foot

Retail sales per selling square foot is calculated by dividing total net sales for all showrooms, comparable and non-comparable, by the average selling square footage for the period. Selling square footage is retail space at our showrooms used to sell our products. Selling square footage excludes backrooms at showrooms used for storage, office space or similar matters.

Cost of merchandise sold

Cost of merchandise sold includes the direct cost of sold merchandise; inventory shrinkage; inventory adjustments due to obsolescence, including excess and slow-moving inventory and lower of cost or net realizable value reserves; inbound freight; all freight costs to ship merchandise to our showrooms; design, buying and allocation costs; and all logistics costs associated with shipping product to our customers. Certain of our competitors and other retailers may report gross profit differently than we do, by excluding from gross profit some or all of the costs related to their distribution network and instead including them in selling, general and administrative expenses. As a result, the reporting of our gross profit and profit margin may not be comparable to other companies.

The primary drivers of our cost of merchandise sold are raw materials costs, labor costs in the countries where we source our merchandise, and logistics costs. We expect gross profit to increase to the extent that we successfully grow our net sales and continue to realize scale economics with our manufacturing partners. We review our inventory levels on an ongoing basis in order to identify slow-moving merchandise and use product markdowns to efficiently sell these products. The timing and level of markdowns are driven primarily by customer acceptance of our merchandise.

In addition, we offer financing for our products through a leading third party consumer financing company. Although we do not assume credit risk on these purchases, we do pay fees to these third party lenders, resulting in lower margins on these sales than non-financed sales.

Gross Profit

Gross profit is equal to our net sales less cost of merchandise sold. Gross profit as a percentage of our net sales is referred to as *gross margin*.

Selling, General and Administrative Expenses

Selling, general and administrative expenses include all operating costs not included in cost of merchandise sold. These expenses include all payroll and payroll-related expenses; showroom expenses, including occupancy costs related to showroom operations, such as rent and common area maintenance; occupancy and expenses related to many of our operations at our headquarters, including utilities; and marketing expense, which primarily include digital, social, and traditional marketing initiatives. Selling, general and administrative expenses as a percentage of net sales is usually higher in lower volume quarters and lower in higher volume quarters because a significant portion of the costs are relatively fixed.

Our recent revenue growth has been accompanied by increased selling, general and administrative expenses. The most significant components of these increases are marketing and payroll costs. We expect these expenses, as well as rent expense associated with the opening of new showrooms, to increase as we grow our business.

In connection with our initial public offering, we will incur additional legal, accounting and other expenses that we did not incur as a private company, including costs associated with public company reporting and corporate governance requirements. These requirements include compliance with SOX, the Dodd-Frank Wall Street Reform and Consumer Protection Act, other rules implemented by the SEC and applicable stock exchange rules. We expect these rules and regulations to substantially increase our legal and financial compliance costs, make certain financial reporting and other activities more time-consuming and costly, and require our management and other personnel to devote substantial time to these requirements. In this regard, we may hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge.

Basis of Presentation and Results of Operations

The following discussion contains references to fiscal years 2018, 2017 and 2016, which represent our fiscal years ended February 4, 2018, January 29, 2017 and January 31, 2016, respectively. Our fiscal year ends on the Sunday closest to January 31. Fiscal years 2016 and 2017 were 52 week periods and fiscal 2018 was a 53 week period.

The following table sets forth, for the periods presented, our consolidated statement of operations data as a percentage of total revenues:

	Fiscal Year Ended		
	February 4, 2018	January 29, 2017	January 31, 2016
Statement of Operations Data:			
Net sales	100%	100%	100%
Cost of merchandise sold	44%	45%	45%
Gross margin	56%	55%	55%
Selling, general and administrative expenses	61%	63%	64%
Loss from operations	(5%)	(8%)	(9%)
Interest expense	0%	1%	2%
Other expense	0%	0%	1%
Loss before income taxes	(5%)	(9%)	(12%)
Income tax expense (benefit)	0%	0%	0%
Net loss	(5%)	(9%)	(12%)

Fiscal 2018 Compared to Fiscal 2017

Net sales

Net sales increased \$25.5 million, or 33.4%, to \$101.8 million in fiscal 2018 compared to \$76.3 million in fiscal 2017. The increase in net sales is primarily due to an increase in new customers, which grew by 27.2% in fiscal 2018 as compared to 9.7% in fiscal 2017 and was accompanied by an increase in the total number of units sold by approximately 162,408, which reflects a higher average order volume per customer. We had 66 and 60 showrooms open as of February 4, 2018, and January 29, 2017, respectively. We opened 8 additional showrooms and closed 2 showrooms in fiscal 2018. Showrooms sales increased \$15.6 million, or 25.0%, to \$77.8 million in fiscal 2018 compared to \$62.3 million in fiscal 2017. This increase was due in large part to our comparable showroom sales increase of \$11.6 million, or 19.5%, to \$71.0 million in fiscal 2018 compared to \$59.4 million in fiscal 2017. Retail sales per selling square foot increased \$161, or 14.6%, to \$1,262 in fiscal 2018 compared to \$1,102 in fiscal 2017. Internet sales (sales made directly to customers through our ecommerce channel) increased \$6.6 million, or 53.7%, to \$18.9 million in fiscal 2018 compared to \$12.3 million in fiscal 2017. We believe that the increase in both showroom and Internet sales was due primarily to our customers' favorable reaction to our Sactionals products, the redesign of our showrooms and our increased marketing initiatives. We believe that the increase in showroom sales in fiscal 2018 can also be attributed to the opening of additional showrooms. For fiscal 2018, our renovated showrooms realized sales growth of 14.3% compared to the same period last year while our non-renovated showrooms experienced sales growth of 7.6% compared to the same period last year. Other sales, which include shop in shop sales, increased \$3.3 million, or 184.7%, to \$5.1 million in fiscal 2018 compared to \$1.8 million in fiscal 2017. This increase was due in large part to our increase in the use of shop in shops.

Gross profit

Gross profit increased \$15.5 million, or 37.2%, to \$57.2 million in fiscal 2018 from \$41.7 million in fiscal 2017. Gross margin increased to 56.2% of net sales in fiscal 2018 from 54.6% of net sales in fiscal 2017. The improvement in gross margin percentage of 1.6% was driven primarily by reduced costs of our Sactionals and Sacs products. This margin improvement was partially offset by higher freight costs as a percentage of net sales due to increased selling activities through our ecommerce channel.

Selling, general and administrative expenses

Selling, general and administrative expenses increased \$14.4 million, or 30.1%, to \$62.3 million in fiscal 2018 compared to \$47.9 million in fiscal 2017. The increase in selling, general and administrative expenses was primarily related to an increase in employment costs of \$3.6 million, \$5.8 million of increased marketing costs, \$1.2 million of increased rent associated with our net addition of 6 showrooms, and \$2.8 million of expenses related to costs of preparing for our potential initial public offering.

Selling, general and administrative expenses were 61.1% of net sales in fiscal 2018 compared to 62.7% of net sales in fiscal 2017. The improvement in selling, general and administrative expenses of 1.6% of net sales was driven largely by increased net sales in fiscal 2018 as compared to fiscal 2017.

Interest expense

Interest expense decreased to \$0.4 million in fiscal 2018 compared to \$0.6 million in fiscal 2017. This resulted primarily from our fiscal 2018 financings, which were to pay down borrowings under our revolving credit facility. Through February 4, 2018, we raised \$25.5 million in the form of Series A (\$9.2 million), Series A-1 (\$10.0 million) and Series A-2 (\$6.3 million), which, in aggregate, are convertible to approximately [●] shares of our common stock. As of February 4, 2018, the Series A securities were also accompanied by fair value \$4.6 million of common stock warrants with an exercise price equal to the price per share of this offering; the Series A-1 securities were accompanied by fair value \$7.0 million of common stock warrants with an exercise price equal to the price per share of this offering; and the Series A-2 securities were accompanied by fair value \$4.4 million of common stock warrants with an exercise price equal to the price per share of this offering.

Income tax expense

Income tax expense was less than 0.1% of sales for both fiscal 2018 and fiscal 2017.

Repeat customers

Repeat customers accounted for approximately 31.7% of all customers in fiscal 2018 compared to 32.5% in fiscal 2017. We believe this decrease resulted primarily from our focus on new customer growth in fiscal 2018.

Fiscal 2017 Compared to Fiscal 2016

Net sales

Net sales increased \$2.2 million, or 3.0%, to \$76.3 million in fiscal 2017 compared to \$74.1 million in fiscal 2016. The increase in net sales is primarily due to an increase in the total number of units sold by approximately 80,599, which reflects a higher average order volume per customer. We had 60 and 59 showrooms open at January 29, 2017 and January 31, 2016, respectively. Showrooms sales increased \$3.2 million, or 5.4%, to \$62.3 million in fiscal 2017 compared to \$59.1 million in fiscal 2016. This increase was due in large part to our comparable showroom sales increase of 4.0% in fiscal 2017 compared to fiscal 2016. Retail sales per selling square foot increased \$36, or 3.3%, to \$1,101 in fiscal 2017 compared to \$1,065 in fiscal 2016. Internet sales increased \$1.7 million, or 15.7%, to \$12.3 million in fiscal 2017 compared to \$10.6 million in fiscal 2016. We believe that this increase was due primarily to our customers' favorable reaction to our Sactionals products platform, as well as increased marketing efforts and the greater sophistication of those efforts. Other sales, which include shop in shop sales, decreased \$2.7 million, or 59.6%, to \$1.8 million in fiscal 2017 compared to \$4.5 million for fiscal 2016. This decrease was due in large part to the discontinuation of a sales channel that the Company viewed as cannibalizing Internet sales.

Gross profit

Gross profit increased \$1.2 million, or 2.9%, to \$41.7 million in fiscal 2017 from \$40.5 million in fiscal 2016. The increase in gross profit was primarily the result of increased net sales and improved freight costs.

Gross margin stayed the same at 54.6% of net sales in fiscal 2017 and fiscal 2016. The lack of change was driven primarily by increased product costs for our Sactionals products, partially offset by lower freight costs and improved Sacs costs.

Selling, general and administrative expenses

Selling, general and administrative expenses increased \$0.7 million, or 1.5%, to \$47.9 million for fiscal 2017 compared to \$47.2 million for fiscal 2016. The increase in selling, general and administrative expenses was primarily related to decreased labor costs offset by higher computer expenses and higher rent due to a larger number of showrooms open. Labor costs excluding the increase in severance fees of \$1.1 million, decreased \$2.1 million for fiscal 2017 compared to fiscal 2016 due to our improved in-showroom labor model.

Selling, general and administrative expenses were 62.7% of net sales in fiscal 2017 compared to 63.6% of net sales in fiscal 2016. The improvement in selling, general and administrative expenses was driven largely by increased net sales.

Interest expense

Interest expense decreased \$1.1 million to \$0.6 million in fiscal 2017 compared to \$1.7 million in fiscal 2016. This decrease resulted primarily from our fiscal 2017 financing which resulted in lower borrowings under our revolving line of credit.

Other expense

Other expense decreased \$0.6 million to zero in fiscal 2017 compared to \$0.6 million in fiscal 2016. This decrease resulted primarily from a one-time loss on debt extinguishment that occurred in fiscal 2016.

Income tax expense

Income tax expense was less than 0.1% of sales for both fiscal 2017 and fiscal 2016.

Quarterly Results and Seasonality

The following table sets forth our historical quarterly consolidated statements of income for each of the last eight fiscal quarters for the fiscal quarter ended February 4, 2018. This unaudited quarterly information has been prepared on the same basis as our annual audited financial statements appearing elsewhere in this prospectus and includes all adjustments, consisting of only normal recurring adjustments that we consider necessary to present fairly the financial information for the fiscal quarters presented. The unaudited quarterly data should be read in conjunction with our audited and unaudited consolidated financial statements and the related notes appearing elsewhere in this prospectus.

	Fourteen weeks ended February 4, 2018	Thirteen weeks ended October 29, 2017	Thirteen weeks ended July 30, 2017	Thirteen weeks ended April 30, 2017	Thirteen weeks ended January 29, 2017	Thirteen weeks ended October 30, 2016	Thirteen weeks ended July 31, 2016	Thirteen weeks ended May 1, 2016
Net Sales	\$ 39,041,375	\$ 24,391,450	\$ 20,745,349	\$ 17,632,239	\$ 27,295,589	\$ 18,524,217	\$ 15,852,262	\$ 14,671,373
Cost of Merchandise Sold	16,111,276	10,724,293	9,213,593	8,544,099	11,417,146	8,543,459	7,681,054	7,004,553
Gross Profit	22,930,099	13,667,157	11,531,756	9,088,140	15,878,443	9,980,758	8,171,208	7,666,820
Selling, General and Administrative Expenses	20,383,241	15,729,321	13,866,721	12,275,702	14,528,757	11,511,000	11,432,636	10,395,727
Operating Income (Loss)	2,546,858	(2,062,164)	(2,334,965)	(3,187,562)	1,349,686	(1,530,242)	(3,261,428)	(2,852,051)
Interest Expense	94,210	114,667	79,342	149,746	231,422	21,868	158,266	154,001
Income (Loss) Before Income Taxes	2,452,648	(2,176,831)	(2,414,307)	(3,337,308)	1,118,264	(1,552,110)	(3,419,694)	(2,882,908)
Income Tax Provision	26,000	-	-	-	138,000	-	-	-
Net (Loss) Income	<u>\$ 2,426,648</u>	<u>\$ (2,176,831)</u>	<u>\$ (2,414,307)</u>	<u>\$ (3,337,308)</u>	<u>\$ 980,264</u>	<u>\$ (1,552,110)</u>	<u>\$ (3,382,834)</u>	<u>\$ (2,882,908)</u>

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	Fourteen weeks ended February 4, 2018	Thirteen weeks ended October 29, 2017	Thirteen weeks ended July 30, 2017	Thirteen weeks ended April 30, 2017	Thirteen weeks ended January 29, 2017	Thirteen weeks ended October 30, 2016	Thirteen weeks ended July 31, 2016	Thirteen weeks ended May 1, 2016
Net Sales	100%	100%	100%	100%	100%	100%	100%	100%
Cost of Merchandise Sold	41%	44%	44%	48%	42%	46%	48%	48%
Gross Profit	59%	56%	56%	52%	58%	54%	52%	52%
Selling, General and Administrative Expenses	52%	64%	67%	70%	53%	62%	72%	71%
Operating Income (Loss)	7%	(8%)	(11%)	(18%)	5%	(8%)	(20%)	(19%)
Interest expense	1%	1%	1%	1%	1%	1%	1%	1%
Income (Loss) Before Income Taxes	6%	(9%)	(12%)	(19%)	4%	(9%)	(21%)	(20%)
Income Tax Provision	0%	0%	0%	0%	0%	0%	0%	0%
Net Income (Loss)	6%	(9%)	(12%)	(19%)	4%	(9%)	(21%)	(20%)

Non-GAAP Quarterly Results

	Fourteen weeks ended February 4, 2018	Thirteen weeks ended October 29, 2017	Thirteen weeks ended July 30, 2017	Thirteen weeks ended April 30, 2017	Thirteen weeks ended January 29, 2017	Thirteen weeks ended October 30, 2016	Thirteen weeks ended July 31, 2016	Thirteen weeks ended May 1, 2016
Net Income (Loss)	\$ 2,426,438	\$ (2,176,831)	\$ (2,414,307)	\$ (3,337,308)	\$ 980,264	\$ (1,552,110)	\$ (3,419,694)	\$ (2,882,908)
Interest expense	94,210	114,667	79,342	149,746	231,422	21,868	158,266	154,001
Provision for income taxes	26,000	-	-	-	138,000	-	-	-
Depreciation and amortization	837,543	835,819	338,534	347,108	588,651	715,196	635,696	517,772
Deferred rent	117,900	102,812	72,071	67,046	58,133	60,945	50,167	47,292
Stock based compensation	935,345	15,209	-	-	-	7,308	9,214	9,214
Financing expenses	2,107,853	163,166	238,597	249,457	251,475	12,343	2,293	4,005
Write-off of property and equipment	196,540	-	-	-	-	-	-	-
Sponsor fees	125,000	125,000	125,000	108,888	100,000	100,000	100,000	100,000
Other expenses	1,265,583	205,011	238,597	249,457	391,228	12,343	2,293	4,005
Adjusted EBITDA	\$ 6,024,769	\$ (778,313)	\$ (1,560,763)	\$ (2,415,063)	\$ 2,487,698	\$ (634,450)	\$ (2,464,058)	\$ (2,050,624)

Our business is seasonal and we have historically realized a higher portion of our net sales and net income in the fourth fiscal quarter due primarily to the holiday selling season. Working capital requirements are typically higher in the third fiscal quarter due to inventory built-up in advance of the holiday selling season. During these peak periods we have historically increased our borrowings under our line of credit. As such, results of a period shorter than a full year may not be indicative of results expected for the entire year, and the seasonal nature of our business may affect comparisons between periods.

Liquidity and Capital Resources

General

Our business relies on cash flows from operations, our revolving line of credit and securities issuances as our primary sources of liquidity. Our primary cash needs are for marketing and advertising, inventory, payroll, showroom rent, capital expenditures associated with opening new showrooms and updating existing showrooms, as well as infrastructure and information technology. The most significant components of our working capital are cash and cash equivalents, inventory, accounts receivable, accounts payable and other current liabilities. Our borrowings generally increase in our third fiscal quarter as we prepare for the holiday selling season which is in our fourth fiscal quarter. We believe that cash expected to be generated from operations, and the availability of borrowings under our revolving line of credit or other financing arrangements will be sufficient to meet working capital requirements, anticipated capital expenditures and payments due under our existing revolving line of credit for at least the next 12 months.

Cash Flow Analysis

A summary of operating, investing, and financing activities during the periods indicated are shown in the following table:

	Fiscal Year Ended		
	February 4, 2018	January 29, 2017	January 31, 2016
Used in operating activities	\$ (2,740)	\$ (6,477)	\$ (8,872)
Used in investing activities	(6,809)	(3,985)	(1,155)
Provided by financing activities	17,847	11,132	9,872
Increase (decrease) in cash and cash equivalents	8,297	670	(155)
Cash and cash equivalents at end of period	9,176	879	209

Net Cash (Used in) Provided By Operating Activities

Cash from operating activities consists primarily of net loss adjusted for certain non-cash items, including depreciation, impairment of property and equipment, stock-based compensation, non-cash interest expense and the effect of changes in working capital and other activities.

In fiscal 2018, net cash used by operating activities was \$2.7 million and consisted of changes in operating assets and liabilities of \$1.1 million, a net loss of \$5.5 million, and non-cash items of \$3.9 million. Working capital and other activities consisted primarily of increases in inventory of \$2.2 million, prepaid expenses of \$4.2 million and accounts receivable of \$1.8 million, partially offset by increases in accrued liabilities and accounts payable of \$6.9 million, and other current liabilities of \$0.2 million.

In fiscal 2017, net cash used by operating activities was \$6.5 million and consisted of a changes in operating assets and liabilities of \$2.0 million, a net loss of \$6.9 million, and non-cash items of \$2.4 million. Working capital and other activities consisted primarily of increases in inventory of \$1.0 million, and decreased prepaid expenses of \$0.7 million and accounts receivable of \$0.2 million, partially offset by decreases in accrued liabilities and accounts payable of \$1.5 million, and other current liabilities of \$0.3 million.

For fiscal 2016, net cash used by operating activities was \$8.9 million and consisted of changes in operating assets and liabilities of \$3.6 million, a net loss of \$9.0 million, and non-cash items of \$3.8 million. Working capital and other activities consisted primarily of increases in inventory of \$1.9 million, prepaid expenses of \$1.9 million and accounts receivable of \$0.4 million, partially offset by an increase in accrued liabilities and accounts payable of \$0.3 million, and other current liabilities of \$0.3 million.

Net Cash Used In Investing Activities

Investing activities consist primarily of investment in supply chain and systems infrastructure and capital expenditures related to new showroom openings and the remodeling of existing showrooms.

For fiscal 2018, capital expenditures were \$6.8 million as a result of investments in new and remolded showrooms and intangibles.

For fiscal 2017, capital expenditures were \$3.7 million as a result of investments in new showrooms and remodeled showrooms of approximately \$3.0 million, and investment in supply chain and systems infrastructure of approximately \$0.7 million.

For fiscal 2016, capital expenditures were \$1.0 million as a result of investments in new showrooms and remodeled showrooms of approximately \$0.7 million, and investment in supply chain and systems infrastructure of approximately \$0.3 million.

During fiscal 2019, we plan on opening fifteen new showrooms, closing five lower performing showrooms and remodeling ten showrooms, all of which we expect to fund through operations and borrowings under our credit facility. We estimate the cost of remodeling ten showrooms to be between \$3.5 million and \$4.0 million, and the cost of opening fifteen new showrooms to be between \$5.2 million and \$5.7 million. We expect to meet these costs through cash generated in our operating activities.

Net Cash Provided By (Used In) Financing Activities

Financing activities consist primarily of borrowings and repayments related to the existing revolving line of credit, capital contributions from securities issuances.

For fiscal 2018, net cash provided by financing activities was \$17.8 million, primarily due to an investment in our Series A, Series A-1 and Series A-2 preferred stock, which, upon an initial public offering, will convert into approximately [●] shares of our common stock. The above change is inclusive of net debt pay downs of \$3.3 million.

For fiscal 2017, net cash provided by financing activities was \$11.1 million primarily due to sale of equity for cash in the amount of \$11.3 million, as well as borrowings from our revolving line of credit, net of amounts paid on our revolving line of credit and for deferred financing fees.

For fiscal 2016, net cash provided by financing activities was \$9.9 million primarily due to sale of equity for cash in the amount of \$15.8 million, net of payments to a previous stockholder for equity of \$2.0 million, and payments on both our long term borrowings and the line of credit of approximately \$3.9 million.

Revolving Line of Credit

The Company had a line of credit with Siena Lending Group, LLC (the “Lender”) to borrow up to \$7.0 million, which was to mature on May 14, 2018. The outstanding balance was \$405 as of February 4, 2018 and the Company’s excess borrowing availability under the line of credit was \$3.1 million.

On February 6, 2018, we terminated our line of credit with Siena and replaced it with a four-year, secured revolving credit facility with Wells Fargo Bank, National Association (“Wells Fargo”). The credit facility with Wells Fargo permits borrowings of up to \$25.0 million, subject to borrowing base and availability restrictions. For additional information regarding our line of credit with Wells Fargo, see Note 12, to our consolidated financial statements. As of April 20, 2018, the Company’s borrowing availability under the line of credit with Wells Fargo was \$4.1 million.

Contractual Obligations

We enter into long term contractual obligations and commitments in the normal course of business, primarily debt obligations and non-cancelable operating leases. As of February 4, 2018, our contractual cash obligations over the next several periods were as follows:

	Payments due by period				
	Total	Less than 1 year	1-3 years	3-5 Years	More than 5 Years
Revolving line of credit	\$ 405	\$ 405	\$ -	\$ -	\$ -
Employment agreements	2,223,000	2,223,000	-	-	-
Operating leases	41,804,982	6,392,019	11,432,023	9,782,231	14,198,709
Purchase obligations	-	-	-	-	-
Total	<u>\$ 44,028,387</u>	<u>\$ 8,615,424</u>	<u>\$ 11,432,023</u>	<u>\$ 9,782,231</u>	<u>\$ 14,198,709</u>

Off Balance Sheet Arrangements

We have no material off balance sheet arrangements as of February 4, 2018, except for operating leases and employment agreements entered into in the ordinary course of business.

Critical Accounting Policies and Estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires management to make estimates and assumptions about future events that affect amounts reported in our consolidated financial statements and related notes, as well as the related disclosure of contingent assets and liabilities at the date of the financial statements. Management evaluates its accounting policies, estimates, and judgments on an ongoing basis. Management bases its estimates and judgments on historical experience and various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions and conditions.

Management evaluated the development and selection of its critical accounting policies and estimates and believes that the following involve a higher degree of judgment or complexity and are most significant to reporting our results of operations and financial position, and are therefore discussed as critical. The following critical accounting policies reflect the significant estimates and judgments used in the preparation of our consolidated financial statements. With respect to critical accounting policies, even a relatively minor variance between actual and expected experience can potentially have a materially favorable or unfavorable impact on subsequent results of operations. However, our historical results for the periods presented in the consolidated financial statements have not been materially impacted by such variances. More information on all of our significant accounting policies can be found in Note 1 – *Operations and Significant Accounting Policies* to the Company's audited consolidated financial statements.

Revenue Recognition

Company revenues consist of sales made to consumers at Company operated showrooms, and via the internet and also sales made business to business. Sales made at Company operated showrooms are recognized at the point of sale when payment is tendered and ownership is transferred to the customer. Sales of merchandise via the internet are recognized upon receipt and verification of payment and shipment of the merchandise to the customer. Ownership and risk of loss transfer to the customer upon shipment. Sales made to businesses are recognized at the point of shipment when ownership and the risk of loss transfer to the customer. Customer deposits are recorded for sales made for which ownership has not transferred as a result of payment received for goods upon order but not yet shipped at the end of any fiscal accounting period. These deposits are carried on our balance sheet until delivery is fulfilled which is typically within 3-4 days of order being processed.

The majority of returns are processed in the same period as the sale, therefore reductions for estimated returns are not material for any period presented. No reserves are currently being recorded. The Company will continue to monitor returns and record a reserve when necessary.

Revenue is recognized net of sales tax collected.

Impairment of Long-Lived Assets

The Company's long-lived assets consist of property and equipment, which includes leasehold improvements. Long-lived assets are reviewed for potential impairment at such time that events or changes in circumstances indicate that the carrying amount of an asset might not be recovered. The Company evaluates long-lived assets for impairment at the individual showroom level, which is the lowest level at which individual cash flows can be identified. When evaluating long-lived assets for potential impairment, the Company will first compare the carrying amount of the assets to the individual showroom's estimated future undiscounted cash flows. If the estimated future cash flows are less than the carrying amounts of the assets, an impairment loss calculation is prepared. An impairment loss is measured based upon the excess of the carrying value of the asset over its estimated fair value which is generally based on an estimated future discounted cash flows. If required, an impairment loss is recorded for that portion of the asset's carrying value in excess of fair value. There were no impairments of long-lived assets during fiscal 2018, fiscal 2017 or fiscal 2016.

Advertising and Catalog Costs

The Company capitalizes direct-response advertising costs, which consist primarily of television advertising, postcards, catalogues and their mailing costs, and recognizes expense over the related revenue stream if the following conditions are met (1) the primary purpose of the advertising is to elicit sales to customers who could be shown to have responded specifically to the advertising, and (2) the direct-response advertising results in probable and estimable future benefits.

For the years ended February 4, 2018 and January 29, 2017 the Company capitalized deferred direct-response television, postcard and catalogue costs of approximately \$3,060,029 and \$62,500, respectively. The net balance remaining at February 4, 2018 and January 29, 2017, after amortization, was \$1,348,908 and \$23,417, respectively.

Direct-response advertising costs, which are included in prepaid expenses and other current assets, are amortized commencing the date the catalogs and post cards are mailed and the television commercial airs through the estimated period of time for the Company has determined the related advertising impacts sales. The entire outstanding balance as of February 4, 2018 is expected to be amortized in fiscal 2019.

For the year ended January 31, 2016, the Company capitalized deferred catalog costs of approximately \$250,000. There was no amortization related to these costs in 2016. Direct response advertising costs, which are included in prepaid expenses and other current assets, are amortized commencing with the date the catalogs are mailed to existing customers. The entire outstanding balance was amortized in fiscal 2017.

Advertising costs not associated with direct-response advertising are expensed as incurred. Advertising expenses (including amortization of direct-response advertising) which are included in selling, general and administrative expenses were \$6,213,603 in fiscal 2018 \$2,239,966 in fiscal 2017 and \$2,933,678 in fiscal 2016.

Merchandise Inventories

Merchandise inventories are comprised of finished goods and are carried at the lower of cost or net realizable value. Cost is determined on a weighted-average method basis (first-in, first out). Merchandise inventories consist primarily of foam filled furniture, sectional couches and related accessories. The Company adjusts its inventory for obsolescence based on historical trends, aging reports, specific identification and its estimates of future retail sales prices.

New Accounting Pronouncements

Except as described below, the Company has considered all other recently issued accounting pronouncements and does not believe the adoption of such pronouncements will have a material impact on its financial statements. The Company, as an emerging growth company, has elected to use the extended transition period for complying with new or revised financial accounting standards.

In August 2015, the Financial Accounting Standards Board (“FASB”) issued Accounting Standard Update (“ASU”) No. 2015-14, which defers the effective date of ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606) by one year. ASU 2015-14 is a comprehensive new revenue recognition model requiring a company to recognize revenue to depict the transfer of goods or services to a customer at an amount reflecting the consideration it expects to receive in exchange for those goods or services. As a result, ASU 2015-14 is now effective for fiscal years, and interim periods within those years, beginning after December 15, 2018, which for us is fiscal 2020. Earlier application is permitted. The Company is in the process of determining how this update will impact the Company’s consolidated financial statements and the notes thereto going forward.

In February 2016, FASB issued ASU No. 2016-02, *Leases (Topic 842)* amending lease guidance to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. ASU No. 2016-02 is effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020, with early adoption permitted. Management is currently evaluating the impact ASU No. 2016-02 will have on these consolidated financial statements.

In March 2016, FASB issued ASU No. 2016-09, *Compensation – Stock Compensation (Topic 718)*. ASU 2016-09 simplifies several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. Some of the simplified areas apply only to nonpublic entities. ASU 2016-09 is effective for annual periods beginning after December 15, 2017, and interim periods within annual periods beginning after December 15, 2018. If an entity early adopts ASU 2016-09 in an interim period, any adjustments should be reflected as of the beginning of the fiscal year that includes that interim period. Methods of adoption vary according to each of the amendment provisions. Management has early adopted this standard in fiscal 2018 and applied its provisions as they relate to the restricted stock units, see Note 7 to our consolidated financial statements for the years ended February 4, 2018 and January 29, 2017.

In August 2016, FASB issued ASU 2016-15, *Statement of Cash Flows: Clarification of Certain Cash Receipts and Cash Payments*, which eliminates the diversity in practice related to classification of certain cash receipts and payments in the statement of cash flows, by adding or clarifying guidance on eight specific cash flow issues. ASU 2016-15 is effective for fiscal years beginning after December 15, 2018, and interim periods within fiscal years beginning after December 15, 2019, which for the Company is fiscal 2020. Early adoption is permitted, including adoption in an interim period. The Company has not yet determined the effect of the adoption of ASU 2016-15 on the Company's consolidated financial position and results of operations.

In July 2017, the FASB issued ASU 2017-11, "*Earnings Per Share (Topic 260) Distinguishing Liabilities from Equity (Topic 480) Derivatives and Hedging (Topic 815)*," which addresses the complexity of accounting for certain financial instruments with down round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced on the basis of the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. The amendments in Part I of this Update are effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted for all entities, including adoption in an interim period. The Company early adopted this ASU in fiscal 2018 and applied its provisions which allowed the Company to account for the warrants issued along with the preferred raise in fiscal 2018 as equity versus a liability, see Note 7 to our consolidated financial statements for the years ended February 4, 2018 and January 29, 2017.

Quantitative and Qualitative Disclosure of Market Risks

Interest Rate Risk

We are subject to interest rate risk under our revolving line of credit. All amounts outstanding under the revolving credit line accrue interest at the base rate, which is defined as the greatest of (i) Prime Rate published by The Wall Street Journal, (ii) Federal Funds Rate plus 0.5% or (iii) 3.25%, plus 3% (7.25% at February 4, 2018 and 6.75% at January 29, 2017). If the Federal Funds Rate increases, our payments under the revolving credit line will increase. We do not believe that an increase or decrease in interest rates of 100 basis points would have a material effect on our operating results or financial condition.

Impact of Inflation

Our results of operations and financial condition are presented based on historical cost. While it is difficult to accurately measure the impact of inflation due to the imprecise nature of the estimates required, we believe the effects of inflation, if any, on our results of operations and financial condition have been immaterial. We cannot assure you that our business will not be affected in the future by inflation.

Internal Control Over Financial Reporting

The process of improving our internal controls has required and will continue to require us to expend significant resources to design, implement and maintain a system of internal controls that is adequate to satisfy our reporting obligations as a public company. There can be no assurance that any actions we take will be completely successful. We will continue to evaluate the effectiveness of our disclosure controls and procedures and internal control over financial reporting on an ongoing basis.

We have not begun testing or documenting our internal control procedures in order to comply with the requirements of Section 404 of SOX. Section 404(a) requires annual management assessments of the effectiveness of our internal control over financial reporting and Section 404(b) requires a report by our independent auditors addressing these assessments. We must comply with Section 404(a) immediately and we must comply with Section 404(b) no later than the time we file our annual report for fiscal 2023 with the SEC, assuming we complete this offering in the current period. As part of this process, we may identify specific internal controls as being deficient. We anticipate retaining additional personnel to assist us in complying with our Section 404 obligations. We are currently evaluating whether such personnel will be retained as consultants or as our employees.

BUSINESS

Company Overview

We are a technology driven, omni-channel company that designs, manufactures and sells unique, high quality furniture comprised of modular couches called Sactionals and premium foam beanbag chairs called Sacs. We market and sell our products through modern and efficient showrooms and, increasingly, through online sales. We believe that our ecommerce centric approach, coupled with our ability to deliver our large upholstered products through nationwide express couriers, is unique to the furniture industry.

The name “Lovesac” was derived from our original innovative product, a premium foam beanbag chair, the Sac. The Sac was developed in 1995 and provided the foundation for the Company. Sales of this product have been increasing, representing \$26.9 million for fiscal 2018, as compared to \$20.1 million for fiscal 2017. We believe that the large size, comfortable foam filling and irreverent branding of our Sacs products have been instrumental in growing a loyal customer base and our positive, fun image.

Our Sactionals product line currently represents a majority of our sales. Sactionals are a couch system that consists of two components, seats and sides, which can be arranged, rearranged and expanded into thousands of configurations easily and without tools. Our Sactional products include a number of patented features relating to its geometry and modularity, coupling mechanisms and other features. Our Sactionals represented 71.3% of our sales for fiscal 2018 (or \$72.6 million) as compared to 70.9% of sales for fiscal 2017 (or \$54.1 million). We believe that these high quality premium priced products enhance our brand image and customer loyalty and expect them to continue to garner a significant share of our sales.

Sacs and Sactionals come in a wide variety of colors and fabrics that allow consumers to customize their purchases in numerous configurations and styles. We provide lifetime warranties on our Sactionals frames and the proprietary foam used in both product lines, and 3 year warranties on our covers. Our Designed for Life trademark reflects our dynamic product line that is built to last and evolve throughout a customer’s life. Customers can continually update their Sacs and Sactionals with new covers, additions and configurations to accommodate the changes in their family and housing situations.

We believe that our products complement one another and have generated a loyal customer base, evidenced by our recent estimate that 31.7% of our customers in fiscal 2018 were repeat customers. We believe the strength of our brand is reflected in the number of customers who routinely share their purchases of Lovesac products with their friends through social media, often displaying our logos or company name in their posts. Our customers include celebrities and other influencers who support our brand through postings made on an uncompensated and unsolicited basis. As of February 4, 2018, we had approximately 564,000 followers on Facebook and 175,000 followers on Instagram, representing increases of 92% and 193%, respectively, from the same date in the prior year.

We currently market and sell our products through 66 showrooms at top tier malls and lifestyle centers in 29 states in the U.S. Our modern, efficient showrooms are designed to appeal to millennials and other purchasers looking for comfortable, enduring, premium furniture. They showcase the different sizes of our Sacs, the myriad forms into which our Sactionals can be configured, and the large variety of fabrics that can be used to cover our products. According to Furniture Today, our showrooms generated the highest sales per square foot in the industry in 2016, reflecting our efficient, small-footprint showroom model.

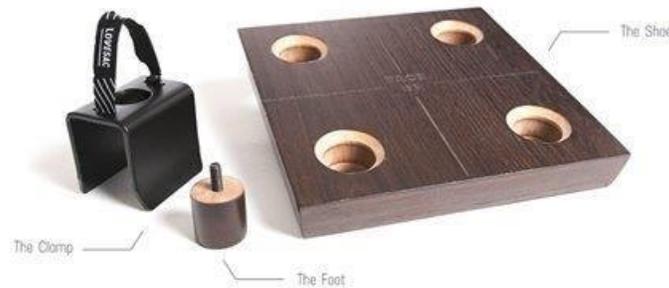
As part of our direct to consumer sales approach, we also sell our products through our fast growing ecommerce platform. We believe our products are uniquely suited to this channel. Our foam based Sacs can be reduced to one-eighth of their normal size and each of our Sactionals components weighs less than 40 pounds upon shipping. With furniture especially suited to ecommerce applications, our sales completed through this channel accounted for 18.5% of our total sales in fiscal 2018, up from 16.0% for fiscal 2017. Our showrooms and other direct marketing efforts work in concert to drive customer conversion in ecommerce.

Product Overview

We challenge the notion that a piece of furniture is static by offering a dynamic product line built to last and evolve throughout a customer's life. Our products serve as a set of building blocks that can be rearranged, restyled and re-upholstered with any new setting, mitigating constant changes in fashion and style. Traditional couches, chairs and sectionals are sold as static products, purchased and used for a current and specific need in the home. As a result, we believe the industry is beholden to the uncertainties of fashion, seasonality, and style, including the accompanying inventory risk.

- **Sactionals.** We believe our Sactionals platform is unlike competing products in its adaptability, yet is comparable aesthetically to similarly priced premium couches and sectionals. Our Sactional products include a number of patented features relating to its geometry and modularity, coupling mechanisms and other features Utilizing only two, standardized pieces, "seats" and "sides," and over 300 high quality, tight-fitting covers that are removable, washable, and changeable, making our Sactionals fully customizable at initial purchase and throughout their product lifecycle providing consumers with thousands of style and layout options with minimal effort. Customization is further enhanced with our specialty-shaped modular offerings, such as our wedge seat and roll arm side. Our custom features and accessories can be added easily and quickly to a Sactional to meet endless design, style and utility preferences, reflecting our Designed for Life philosophy.

Sactionals Patented Modular System



Recent Sactional Platform Innovations



Wedge

Roll Arm Side



- **Sacs.** Our original innovative product, the Sac, is one of the most comfortable premium beanbag chairs. The Sac product line offers 6 different sizes ranging from 22 pounds to 95 pounds with capacity to seat 3+ people on the larger model Sacs. Filled with Durafoam, a blend of shredded foam, Sacs provide serene comfort and durability, guaranteed never to go flat, no matter the amount of use. Its removable cover is machine washable, and may be easily replaced by purchasing one of our 300+ cover offerings. Sacs are manufactured using patented methods that allow for compression of some components of the Sac product, which facilitates shipping and handling of Sacs. This patented method allows us to shrink the Sac to an eighth of its original volume so that it fits inside a duffle bag.



- **Accessories.** Our accessories complement our Sacs and Sactionals by increasing their adaptability to meet evolving consumer demands and preferences. Our current product line offers Sactional-specific drink holders, footsac blankets, decorative pillows, fitted seat tables and ottomans in varying styles and finishes, providing our customers with the flexibility to customize their furnishings with decorative and practical add-ons to meet evolving style preferences. We are in the process of developing additional accessories for the tech-savvy consumer.

Sales Channels

We offer our products through an omni-channel platform that provides a seamless and meaningful experience to our customers online and in-store. Compared to traditional retailers, our showrooms require significantly less square footage because of our need to have only a few in-store sample configurations for display and our ability to stack our inventory for immediate sale. We want our retail showrooms to be technology driven and focused on educating prospective customers about the many benefits of our unique products, enabling us to require just 535 to 1205 square feet for each showroom. The small footprint requirement provides a cost advantage and flexibility in locating our showrooms strategically in A-rated malls and street locations in our target markets. These logistical advantages underlie our broader tech-driven, internet-based business model, where we leverage our showrooms as both a traditional retail channel to purchase our products and an educational center for prospective online customers to learn about and interact with our products in real time.

We currently operate 66 showrooms in 29 states in the U.S., with above average productivity, as measured by average sales per square foot, compared to the general home furnishings industry and mall-based retailers, as measured by Furniture Today in a 2016 study. We averaged sales of \$ 1,262, in fiscal 2018. Our new showroom concept has also demonstrated significant performance improvements.

Through our fast growing mobile and ecommerce channel, we are able to significantly enhance the consumer shopping experience for home furnishings, driving deeper brand engagement and loyalty, while simultaneously driving favorable margin expansion. Our technology capabilities are robust, and we are well positioned to benefit from the growing consumer preference to transact via mobile devices. We leverage our strong social media presence and showroom footprint to drive traffic toward our ecommerce platform, where product testimonials and inspirational stories from our Lovesac community create a more engaging consumer experience for our customers. Additionally, our products' compact packaging facilitates consistent production scheduling, outsourcing of delivery and lower shipping costs, demonstrating our logistical ability to quickly and cost-effectively deliver online orders.

We have also enhanced our sales through the use of shop in shops. We have an ongoing working relationship with Costco to operate shop in shop showrooms that typically average ten days at a time. The shop in shop showrooms display select Sacs and Sactionals and are staffed with associates trained to demonstrate and sell our products. During fiscal 2018, we hosted over 100 shop in shop showrooms that averaged sales of \$3,800 per day. For fiscal 2018, the Costco shop in shop showrooms represented approximately 5% of sales. Our research found that nearly 2% of our in-store purchasers and 3% of desktop visitors cited Costco as their source of awareness for Lovesac, capturing the efficacy of Costco's partnership in generating revenue and driving brand awareness in a cost-effective manner. We continue to explore other shop in shop partnerships and opportunities to promote our products and facilitate customers interacting with our products in the real world.

Customers

- **Target Demographics.** Based on our internal data, our typical customer is 25 to 45 years in age with an annual household income of over \$100,000. We consider this to be an attractive demographic because of its higher than average rates of household formation and furniture purchasing. Members of the millennial demographic, our primary target market, are entering this age group daily. Our customers have different tastes, styles, purchasing goals and budgets when shopping for couches, and our Sactionals platform's modularity addresses this wide array of needs.
- **Robust customer lifetime value.** Once customers invest in our products, they tend to stay with them, grow with them, and add to them. We believe our customers' loyalty is an important driver of our CLV, which we estimate to be \$1,236 per customer. CLV is a fixed estimate of the average gross profit we expect to receive from a customer during his or her purchasing lifetime. We based our CLV on our internal data relating to customers who first purchased from us in fiscal 2015, which we refer to as our 2015 cohort. We chose fiscal 2015 as our base year because we began to make changes to our business and our target customers in fiscal 2015 and believe that the customers in fiscal 2015 more accurately reflect our current and target customer than in years prior to fiscal 2015. We calculated our CLV by dividing the aggregate gross profits through fiscal 2017 attributable to the 2015 cohort (approximately \$35,706,282) by the total number of customers in the 2015 cohort (28,882 customers).

Our Market

Large and Growing Furniture Retailing Industry

We sell our products in the large and highly fragmented furniture retailing industry, which has been rebounding steadily since the global recession. According to Mintel, consumer furniture expenditures are expected to grow to \$127.5 billion in 2021, representing an average annual growth rate of 3.4% between 2016 and 2021. Additionally, Mintel reported that the furniture segment consisting of couches, chairs, and other seating products comprised nearly 30% of all U.S. consumer furniture expenditures in 2015, surpassing the next largest segment, mattresses and sleep equipment, which represented 17% of expenditures.

A Maturing Millennial Population with Favorable Furniture Purchasing Habits

Millennials, our target demographic, have surpassed baby boomers as the largest living generation in the U.S. The millennial population reached 83.1 million people in 2015, representing more than 25% of the U.S. population according to data from the U.S. Census Bureau. Moreover, tech savvy millennials are maturing to an age where their buying power coincides with larger discretionary purchases including furniture products. Based on a survey conducted by Mintel, 73% of millennials (who Mintel defines as those persons born between 1977 and 1994) purchased furniture between April 2014 and April 2016. According to Mintel, of those purchasing furniture between April 2014 and April 2016, 47% of millennials reported that they had made the purchase online, compared to just 26% for Generation X and 17% for Baby Boomers purchasing furniture during the same period.

Emergence of Online Sales in the Furniture Industry

According to Mintel, over one-third of furniture consumers have purchased products online, and this percentage is expected to continue to grow. Driving the market share growth of the online segment are retailers that offer fully supported shopping experiences across their web and mobile platforms. When purchasing their most recent home furnishing product, 30% of consumers made an online purchase using a computer and 9% of consumers made an online purchase using a mobile device according to data from Mintel. While consumers are now more tech savvy and likely to browse for furniture products online, many consumers still prefer to be able to see and feel products in-store before making their purchasing decision. Omni-channel retailers that offer a comprehensive shopping experience across all channels are well positioned to attract the growing portion of consumers who use multiple channels to browse, compare and purchase furniture products.

Connecting with Customers

We take a direct-to-consumer approach to marketing that focuses primarily on digital media and is supported with more traditional marketing tactics, including showrooms to demonstrate the product. We believe that most of our customer interactions involve seeing and researching our products online. The logistical advantages inherent in the packaging and distribution of both Sacs and Sactionals allow us to transact with our customers online or in any one of our various showrooms and deliver anywhere. In either case, we aim to make the overall customer experience the same. Our marketing strategy is to facilitate consumers' ability to see it, touch it, and purchase it.

Brand Awareness – “See It”

Our internal research indicates that our brand currently has low national awareness. A key element of our marketing strategy, therefore, is on building awareness. Sacs and Sactionals are uniquely suited for display using motion photography in various forms (video, gif, sequence shots, etc.) because of their dynamic nature. Sactionals, unlike most other couch solutions, can move, change and rearrange, thereby enhancing our opportunity to drive awareness to the brand through both online and offline efforts.

- **Online marketing.** We have focused our online marketing efforts on those tactics that have proven to generate a positive return on investment. For fiscal 2018, our return on investment for digital marketing was 320%. These online marketing activities include: digital advertising, search engine marketing (“SEM”), earned media, organic social media, paid social media (including targeted Facebook advertising), product placement and influencer marketing that ties back to our website and social media. Each of these approaches is discretely important but we seek for them to work together to drive awareness and lead consumers to consideration and eventually to purchase.

- **Social media.** Our customers are highly engaged in social media, and they actively share stories about their Lovesac product and brand experiences through social media channels. We believe the social media activity around our brand can be viewed as an authentic extension of our culture and value proposition that resonates with the social media generation. Our brand promise of total comfort and transparency is the principle that connects our owner and fan base, which we refer to as our #LovesacFamily. Our followings on all key social media platforms are robust and growing rapidly, with what we believe is a high degree of engagement.

As an example of the opportunity for us to leverage our products' unique attributes online, in 2016 a video of friends jumping onto a Sac at their workplace went viral, becoming one of the top videos (excluding movie trailers) that received the most views within 24 hours of release across the world, achieving approximately 42 million views within the first 24 hours of posting. As of February 4, 2018, the video had been viewed over 202 million times.

- **Offline marketing.** Our offline marketing efforts include: sampling, direct mail, catalog, showroom, model market media mix approaches and pure direct marketing. Many of these overlap with or tie back to our digital marketing efforts. We track, measure and continually optimize each of these efforts to increase efficiency and extend the reach of the brand. While facilitating new customers' discovery of the brand and product is the major focus of our marketing efforts, we also employ some of these same tactics to drive repeat business.

Showroom Footprint – “Touch It”

Furniture is a “considered purchase” due to its big-ticket nature and long term intended use. While Lovesac furniture’s changeability mitigates some of these consequences, it is often the case that consumers wish to touch, try out, or sit on a piece of furniture before they make the investment. Many of our customers first experience Lovesac furniture in the homes of their friends or neighbors. Lovesac showrooms also have proven to be a very effective means to facilitate consumers experiencing our products firsthand. Based on our internal data, customers who have visited our website and a showroom are 59% more likely to purchase online than those customers who have never visited one of our showrooms and have only visited our website. To date, most Lovesac showrooms exist in top tier shopping malls spread across a majority of the United States.



Showroom Locations



New Showroom Concept

Ease of the Buying Experience – “Buy It”

We consider ourselves a technology company selling furniture, and an important part of this is our customers’ buying experience. Whether in a showroom, a shop in shop, or at home, most Lovesac product sale transactions happen over a computer tablet or mobile device. For this reason, all of our policies, procedures and systems continue to evolve toward facilitating and accommodating sales through any channel, whether online, mobile or traditional. We seek for our customers to adopt the product platform, integrate it into their lives, share it with friends via social media or in their homes, and continue to grow with us.

The modularity of our products enables dynamic pricing for the first time in home furnishings. Consumers on a budget can start out with just a few seats and sides, building up to larger and larger configurations over time as their needs and ability to pay allow. In addition, we offer financing for our products through a leading third party consumer financing company. Approximately 41.7% of our sales in fiscal 2016, 43.5% of our sales in fiscal 2017, 39.3% of our sales in fiscal 2018 included some form of third party financing. Although we do not assume credit risk on these purchases, we do pay fees to these third party lenders, resulting in lower margins on these sales than non-financed sales.

Competitive Strengths

Our consumers often cross-shop Lovesac with companies such as Crate and Barrel, Pottery Barn, Arhaus, Restoration Hardware, Ikea, Joybird and Wayfair. We believe that the following strengths are central to the power of our brand and business model:

Innovative Business Model

- **Merchandising Strategy.** Many home furnishings retailers, online or offline, rely on an assortment of new offerings each season to drive their business and to refashion their offerings. We have avoided this “merchandising” approach in favor of a product platform-based approach that reduces the need for seasonal introductions, designer collections, or broad in-stock assortments. We optimize our in-stock assortment of covers and accessories by limiting them to those that sell in large quantity and therefore present lower risk. We also provide a broad assortment of made-to-order items, which we manufacture after the consumer has purchased and paid for them. This business model yields little to no surplus inventory, less margin erosion due to overstock write-downs, higher than average annual inventory turns, increased focus at the showroom management level, and simplicity at merchandising-display execution.
- **Product Platform Approach.** We have two primary platforms upon which we develop, manufacture and sell our fundamental Sacs and Sactionals products. We market our product platforms as a long term investment that our customers can continually update with new arrangements, coverings and accessories. In turn, these changes and updates provide a recurring revenue source for our business. In addition, our Sactionals platform is an environmentally conscious alternative to fixed couches that tend to be discarded when they go out of style or wear out, a by-product of our Designed for Life approach and an important feature to some consumers.
- **Ecommerce Focus.** We build our business processes, systems, compensation structures, and logistical models with an ecommerce-first approach. We continually innovate to make shopping online easier for our customers, and we use social media to drive increased traffic to our web-based sales applications. From a product standpoint, the open-cell nature of the Durafoam filler in our Sacs allows them to be compressed for shipping to one-eighth of their normal size. To facilitate shipping, Sactionals seat cushions and back pillows are compressed to fit inside an otherwise hollow hardwood upholstered Seat frame.
- **A Culture of Innovation.** From inception, we have focused on developing unique, innovative and proprietary product platforms. We are continuously expanding and introducing new extensions to these platforms to broaden the appeal and grow the addressable market of our product offerings. We continually evaluate new products to complement our Sactionals and Sac lines and are currently developing accessories for the tech-savvy consumer. We have 9 issued U.S. utility patents, 21 issued international utility patents, 10 pending U.S. utility patent applications and 4 pending international utility patent applications. We expect to file U.S. and international patent applications for future innovations. We believe that our patent portfolio, combined with our innovative design approach may deter others from attempting to imitate or replicate our products.

Strong Brand Loyalty

We believe our brand, products, and Designed for Life philosophy encourage people to share their stories and develop a personal relationship with Lovesac and its community. We foster these interactions through active direct engagement using all of the most prolific social media platforms. These are products that move, and change, and rearrange. They are soft, and comfortable, and fun to jump on. We believe that all of this causes our customers to uniquely be active ambassadors, providing organic public relations, word of mouth advertising, and customer testimonials and endorsements. In addition, our customers have a high repeat purchasing rate and high expected lifetime engagement.

- **High repeat purchasing rates.** We believe our focus on customer interaction and data driven analysis of their behavior and projected needs, drives our high customer repeat rates. In fiscal 2018, our repeat customers accounted for 31.7% of all customers. We believe that as we attract more customers to our product platforms, high repeat purchasing rates will allow us to capitalize on the high lifetime value of our customers.

- **Robust Customer Lifetime Value.** Once customers invest in our products, they tend to stay with them, grow with them, and add to them. We believe our customers' loyalty is an important driver of our CLV, which we estimate to be \$1,236 per customer. CLV is a fixed estimate of the average gross profit we expect to receive from a customer during his or her purchasing lifetime. We based our CLV on our internal data relating to customers who first purchased from us in fiscal 2015, which we refer to as our 2015 cohort. We chose fiscal 2015 as our base year because we began to make changes to our business and our target customers in fiscal 2015 and believe that the customers in fiscal 2015 more accurately reflect our current and target customers than in years prior to fiscal 2015. We calculated our CLV by dividing the aggregate gross profits through fiscal 2017 attributable to the 2015 cohort (approximately \$35,706,282) by the total number of customer in the 2015 cohort (28,882 customers).

Omni-Channel Approach

Our distribution strategy allows us to reach customers through three distinct, brand-enhancing channel, which we refer to as our omni-channel approach.

- **Ecommerce.** Through our mobile and ecommerce channel, we believe we are able to significantly enhance the consumer shopping experience, driving deeper brand engagement and loyalty, while also realizing margins than our showroom locations. We believe our robust technological capabilities position us well to benefit from the growing consumer preference to transact at home and via mobile devices.
- **Showrooms.** We carefully select the best small-footprint retail locations in high-end malls and lifestyle centers for our showrooms. The architecture and layout of these showrooms is designed to communicate our brand personality and key product features. Our goal is to educate first-time customers, creating an environment where people can touch, feel, read, and understand the technology behind our products. We are updating and remodeling many of our showrooms to reflect our new showroom concept, which emphasizes our unique product platform, and will be the standard for future showrooms. Our new showroom concept, introduced in 2016, utilizes technology in more experiential ways to increase traffic and sales.
- **Shop in shops.** We are expanding the use of lower cost shop in shops to increase the number of locations where customers can experience and purchase our products. We have an ongoing working relationship with Costco to operate shop in shop programs, or "roadshows," that usually run for 10 days at a time. These shop in shops are staffed similarly to our showrooms with associates trained to demonstrate and sell our products and promote our brand. We also believe our shop in shops provide a low cost alternative to drive brand awareness, in store sales, and ecommerce sales.

Strong Millennial Appeal

We have targeted the millennial generation because we believe the desire brand products, coupled with transparent business practices, innovative solutions and the convenience of on-demand commerce. Additionally, members of the millennial generation, currently the most populous age group in the U.S., are completing their educations, getting married, and starting or expanding their households. The peak ages for home furnishings purchases are 35-54. We believe home furnishings will thrive as millennials and their children need larger residences and the necessary furnishings for household and family formation. The modularity of our Sactionals and ease of cleaning and replacing covers on Sactionals and Sacs provide our customers who are moving and expanding their households with the ability to evolve their purchases to accommodate the changes in their family and housing situations, offering us a competitive advantage.

Unique Distribution Capability

Due to the unique modularity of our Sactionals products and the shrinkability of our Sacs, we are able to distribute our products through nationwide express couriers and efficiently utilize warehouse space and international shipping routes. We believe our Sactionals are the only product in its category that enjoys this logistical advantage.

Seasoned and Committed Management Team

Shawn Nelson, our Chief Executive Officer and founder, has worked in almost every area of our Company and continues to focus on developing new products and intellectual property to drive future growth. Shawn has assembled a team of seasoned executives from diverse and relevant backgrounds, with decades of experience working with a wide range of leading global companies.

Jack Krause has served as our President and Chief Operating Officer since joining Lovesac in 2015. His experience with and deep understanding of complexities in managing high-growth brands are evident from his extensive history in consumer marketing and brand management. Since joining the Company, he has been instrumental in guiding the company from a retail-led business model to an omni-channel direct-marketing driven business model.

Donna Dellomo has served as our Executive Vice President and Chief Financial Officer since joining Lovesac in 2017. She is a Certified Public Accountant and has steered Lovesac toward new banking relationships that have the potential to supply the company with cheaper debt financing to support growth opportunities as needed.

In addition, we recently hired David Jensen as our Chief Technology/Chief Information Officer to lead our technology team as we evolve into a more marketing-driven digital-first retailer. Mr. Jensen served as the Senior Director of Information Services at the retailer J. Jill. At J. Jill, Mr. Jensen implemented Oracle retail enterprise resource planning (“ERP”), re-engineered their direct to consumer fulfillment process, upgraded the point of sale system, managed multiple ecommerce sites and led their technology domain SOX and Securities and Exchange Commission (“SEC”) compliance efforts.

Growth Strategies

In order to position Lovesac for future growth, in the last several years we made significant investments in overhead, optimized and integrated our business technologies and processes, and further developed our marketing tactics. In addition, we have refocused our strategy regarding our showrooms, moving to higher end malls and lifestyle centers, to support digital sales, our primary growth channel. We have also altered a number of our lease arrangements to fixed versus variable rent structures. Finally, we have committed to a new showroom design creating a much more interactive, technology driven experience that has resulted in higher traffic levels and conversion than previous showroom models.

These long-term initiatives have required significant amount of management’s attention, which has shifted management’s focus away from short-term sales growth. As a result of these efforts, along with the implementation of the strategies noted below, we believe Lovesac is poised for meaningful sales growth. Our goal is to further improve our leadership in the home furnishings market by pursuing the following key strategies:

Continue to Build on Our Brand

Despite our loyal following, we believe there is a significant opportunity to increase our brand awareness. Based on our own internal study that was concluded in April 2017, we estimate that our brand awareness is less than 1% among all consumers nationally. Before 2017, we invested minimally in advertising. Since then, we have aggressively invested in brand building and direct marketing efforts, including direct mail, 30-second television commercials in select markets and social media. These brand building efforts have resulted in average incremental gross profits 320% greater than the total marketing spend on paid search, social media and affiliate marketing. We also saw significant incremental gross profit as a result of our television advertisements and our direct mail starter kits. Incremental gross profit was 76% greater with television advertisements and 111% greater with direct mail than the marketing spend in these categories. Our focus on building our brand has also led to an increase in our new customer base, which grew by 27.2% in fiscal 2018. We plan to accelerate our ecommerce sales by building awareness via increased digital and social media, including digital videos and direct response television.

Update Showrooms and Add Other Locations

We intend to continue to renovate our current showroom locations, open new showrooms across the country in lifestyle centers, top tier shopping malls, and high street and urban locations, and expand product touch-feel points through the increased use of shop in shop locations. Because of their small size and above average productivity, we believe our approach to our showrooms creates a compelling opportunity to open more showrooms in a wide variety of retail spaces across North America.

- **Showrooms.** In our showrooms, we focus on offering potential customers the opportunity to experience the considerable flexibility they have in selecting fabrics and configurations. We are evolving our model for new showrooms and renovating our existing showrooms to reflect the standards of our new model. Our new showroom concept utilizes technology in more experiential ways to increase traffic and sales, and communicate our brand personality and key product features. To attract customer traffic, our new model features two giant LED screens embedded in the walls that play videos demonstrating the Sactionals technology in motion. The entire architecture and layout of these new showrooms have been redesigned to communicate the brand personality and key product features, with the goal to educate first-time customers and create a self-service environment where people can touch, feel, read, and understand the technology behind our products. LED screens on the walls and iPads in the hands of the staff enhance what we believe is a “virtually merchandised” showroom in a very small footprint. In connection with these renovations, we have experienced increased sales and negotiated more favorable lease terms. In fiscal 2018, our renovated showrooms realized sales growth of 14.3% compared to fiscal 2017 while our non-renovated showrooms experienced sales growth of 7.6% compared to fiscal 2017.
- **Shop in shops.** We have an ongoing working relationship with Costco to operate shop in shop showrooms. We have been expanding the use of these shop in shop showrooms, and plan to seek other partners to operate similar concept showrooms, to increase the number of locations where customers can experience and purchase our products at a lower cost to us than our permanent showrooms.

Increase Sales and Operating Margins

We seek to increase sales and operating margins through our premium pricing strategy and omni-channel platform, which we believe will require relatively small near term increases in fixed overhead.

- **Premium pricing.** Lovesac's products are positioned in the premium couch segment of the furniture market. We market as premium products because of our proprietary foam fillings, higher quality materials and unique modularity requiring a distinct level of manufacturing capability. At our price point, we offer a unique value proposition that combines both beautiful aesthetics and utility to our customers that we believe our competitors cannot offer. Additionally, our high end branding strategy, further enhanced by our unsolicited celebrity endorsements and large social media following, commands premium pricing, as we feel lowering prices may negatively affect perception of our products. In fiscal 2016, our average dollar amount per transaction was \$1,193, with the average dollar amount for first time Sactional purchasers being \$3,782. The difference is explained by our platform approach, where once a customer buys their first couch, the cost of expanding and adding to it over time is much less expensive than the traditional method of purchasing another new couch to replace the old one.
- **Omni-Channel Platform.** By leveraging our omni-channel platform, we cost-effectively drive traffic to our ecommerce channel, resulting in increased web-based sales and improved operating margins. We continually seek to improve our ecommerce capabilities to drive sales and take advantage of the lower cost of this channel. Our showrooms and other direct marketing efforts work in concert to drive customer conversion in ecommerce. In addition, our shop in shops provide a low cost alternative to drive brand awareness and both in-store and ecommerce sales.

Supply Chain and Sourcing

Our products are manufactured in facilities located in Los Angeles, CA, Fort Worth, TX and Jackson County, NC, as well as in facilities located abroad in Shanghai, Hangzhou, Jiaying and Foshan, China and in Ho Chi Minh City, Vietnam. We engage with local third parties for the manufacture of our products in each of those facilities. Lovesac does not own any of the manufacturing facilities where our products are assembled. We believe that our suppliers' facilities are sufficient to meet our current needs. We believe that additional space will be available as needed to accommodate any needed expansion of our operations.

Seasonality

We experience seasonal fluctuations in our sales. A larger percentage of our sales occur in the fourth quarter of our fiscal year, which coincides with Cyber Monday (the first Monday after Thanksgiving, when online retailers typically offer holiday discounts), the holiday season and our related promotional and marketing campaigns. Our fiscal 2018 quarters in sequential order equaled 17.3%, 20.4%, 24.0% and 38.3% of total sales respectively.

Intellectual Property

We own 16 U.S. federal trademark registrations, 19 foreign trademark registrations, a number of U.S. and foreign trademark applications and common law trademark rights. Our registered U.S. trademarks include registrations for the Lovesac®, Lovesoft®, Sactionals®, Durafoam®, SAC® and Designed For Life® trademarks. Our trademarks, if not renewed, are scheduled to expire between 2022 and 2027.

In order to maintain our U.S. trademark registrations, we must continue to use the marks in commerce on the goods and services identified in the registrations, and must make required filings with the U.S. Patent and Trademark Office at intervals specified by applicable statutes and regulations. Failure to comply with these requirements may result in abandonment or cancellation of the registrations.

We have 9 issued U.S. utility patents, 21 issued international utility patents, 10 pending U.S. utility patent applications and 4 pending international utility patent applications that are scheduled to expire between 2022 and 2033. Our Sactional technology patents include our proprietary geometric modular system and segmented bi-coupling technology. We also have multiple patents pending and expect to file patent applications for future innovations.

Information Technology and Systems

We use information systems to support business intelligence and processes across our sales channels. We continue to invest in information systems and technology to enhance the customer experience, drive sales and create operating efficiencies. We utilize third-party providers for customer database and customer campaign management, ensuring efficient maintenance of information in a secure, backed-up environment. We also utilize a proprietary ecommerce platform hosted by a third-party provider and a well-developed proprietary data warehouse for business intelligence.

Specifically, we have adopted cloud computing solutions for our enterprise resource planning. We own, operate, and maintain elements of these systems with a sufficiently sized internal team of engineers and IT professionals, but significant portions of this system are operated by third parties that we do not control and which would require significant resources to replace internally.

We believe that our reliance on top tier cloud-based providers increases efficiency and reduces exposure to data breaches and other common digital threats. We expect this dependence on third parties to continue, in particular for Netsuite, which we use as our ERP system which provides functionality for our point-of-sale, financial reporting, order management and customer relationship management. We continue to innovate and optimize our technology systems as well as continue to make significant investments in our technology infrastructure to maintain and improve all aspects of our operations.

Properties

Our primary offices are located at Two Landmark Square, Suite 300, Stamford, CT 06901, where we occupy 10,541 square feet of office space pursuant to a lease agreement that expires in July 2024. We also lease retail space for our showrooms, in 66 locations throughout the majority of the U.S. states including Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington and Wisconsin.

Competition

Our business is rapidly evolving and intensely competitive. Our competition includes: furniture stores, big box retailers, department stores, specialty retailers and online furniture retailers and marketplaces, including the following:

- Ashley Furniture, IKEA and other regional stores such as Bob's Discount Furniture, Havertys, Raymour & Flanagan and Rooms To Go;
- Costco, JCPenney and Macy's;
- Crate and Barrel, Ethan Allen, Pottery Barn and Restoration Hardware; and
- Amazon, Wayfair, eBay, Joybird, Burrow, Campaign and One Kings Lane.

We believe our combination of proprietary products, brand strength, loyal customer base, omni-channel approach, technological platform, unique consumer experience, logistical advantages and seasoned management team allow us to compete effectively against and differentiate ourselves from the competition.

Employees

As of April 6, 2018, we employed a total of 198 full time and 223 part time employees, and we contracted with 2 independent consultants. All employees and contractors are subject to contractual agreements that specify requirements for confidentiality, ownership of newly developed intellectual property and restrictions on working for competitors as well as other matters.

LEGAL PROCEEDINGS

From time to time we may be involved in claims that arise during the ordinary course of business. Although the results of litigation and claims cannot be predicted with certainty, we do not currently have any pending litigation to which we are a party or to which our property is subject that we believe to be material. Regardless of the outcome, litigation can be costly and time consuming, and it can divert management's attention from important business matters and initiatives, negatively impacting our overall operations.

MANAGEMENT**Directors and Executive Officers**

Each of our directors holds office until the next annual meeting of stockholders and until his or her successor is elected and qualified. Our officers remain in their respective position until termination or resignation.

The following table sets forth the name, age, and position of each of our directors and executive officers:

Name	Age	Title	Date Appointed
Shawn Nelson	41	Chief Executive Officer and Director	February 27, 2017 ⁽¹⁾
Jack Krause	55	President and Chief Operating Officer	February 27, 2017
Donna Dellomo	53	Executive Vice President, Chief Financial Officer and Secretary	February 27, 2017
Andrew Heyer	60	Chairman of the Board of Directors	February 27, 2017 ⁽²⁾
David Yarnell	62	Director	January 3, 2017 ⁽³⁾
William Phoenix	60	Director	January 3, 2017 ⁽⁴⁾
Jared Rubin	38	Director	January 3, 2017 ⁽⁵⁾
Christopher Bradley	40	Director	January 3, 2017 ⁽⁶⁾
John Grafer	48	Director	June 27, 2017

- (1) Mr. Nelson has been a Director of SAC Acquisition, LLC, the predecessor entity of the Company, since May 8, 2008.
- (2) Mr. Heyer has been a Director of SAC Acquisition, LLC, the predecessor entity of the Company, since March 3, 2015.
- (3) Mr. Yarnell has been a Director of SAC Acquisition, LLC, the predecessor entity of the Company, since May 8, 2008.
- (4) Mr. Phoenix has been a Director of SAC Acquisition, LLC, the predecessor entity of the Company, since May 24, 2010.
- (5) Mr. Rubin has been a Director of SAC Acquisition, LLC, the predecessor entity of the Company, since June 30, 2014.
- (6) Mr. Bradley has been a Director of SAC Acquisition, LLC, the predecessor entity of the Company, since May 24, 2010.

Business Experience

The following is a brief account of the education and business experience of each director and executive officer during at least the past five years, indicating each person's business experience, principal occupation during the period, and the name and principal business of the organization by which they were employed.

Shawn Nelson founded Lovesac in 1998 and is currently serving as Chief Executive Officer of the Company and as a member of the Board of Directors. Mr. Nelson is the lead designer of the Company's patented products and leads sourcing, creative, design, public relations, investor relations and culture. In 2005, Mr. Nelson won Richard Branson's "The Rebel Billionaire" on Fox and continues to participate in ongoing TV appearances. Mr. Nelson has a Master's Degree in Strategic Design and Management and is a graduate-level instructor at Parsons, The New School for Design in New York City. Mr. Nelson is also fluent in Mandarin. We believe Mr. Nelson is qualified to serve on our board because of his leadership experience as our founder, his extensive knowledge of our Company and his service as our Chief Executive Officer.

Jack Krause has served as President and Chief Operating Officer of the Company since 2015. From 2012 to 2015, Mr. Krause served as President of Vitamin World, a 425 store specialty chain. From 2011 to 2013, he served as Senior Vice President of Watch Station Global Retail and Skagen, where he led the growth of both businesses. From 2008 to 2010, Mr. Krause served as General Manager and in various executive positions at Sunglass Hut (Luxottica). From 2004 to 2006, Mr. Krause served in roles of increasing responsibility at Bath and Body Works, including Senior Vice-President of Brand Development. Prior to that, he spent 10 years in brand management at Jergens and Marion Consumer Products. Mr. Krause has a Bachelor of Science in Business Administration from Miami University.

Donna Dellomo is currently serving as Executive Vice President and Chief Financial Officer, Treasurer and Secretary of the Company. From January 1998 to January 2017, Ms. Dellomo served as Vice-President and Chief Financial Officer of Perfumania Holdings, a publicly traded company with over 290 retail locations, owned and licensed brands and a wholesale distribution network. Between October 1988 and December 1997, Ms. Dellomo served as Internal Audit Manager, Accounting Manager and Corporate Controller at Cybex International, Inc., a publicly traded company that manufactured and distributed fitness, rehabilitative and health care equipment. Ms. Dellomo is a Certified Public Accountant with focus on audit and tax and is also a member of the Board of Trustees of Molloy College.

Andrew R. Heyer is the Chairman of our Board of Directors. Mr. Heyer is a finance professional with over 35 years of experience investing the consumer and consumer-related products and services industries. He has deployed in excess of \$1 billion of capital over that time frame, and has guided several public and private companies as a member of their boards of directors. Mr. Heyer is the Chief Executive Officer and Founder of Mistral Equity Partners, a private equity fund manager founded in 2007 that invests in the consumer industry. Prior to founding Mistral, Mr. Heyer served as a Founding Managing Partner of Trimaran Capital Partners. Until 1995, Mr. Heyer was a vice chairman of CIBC World Markets Corp. and a co-head of the CIBC Argosy Merchant Banking Funds. Prior to joining CIBC World Markets Corp., Mr. Heyer was a founder and Managing Director of The Argosy Group L.P. Prior to joining Argosy, Mr. Heyer was a Managing Director at Drexel Burnham Lambert Incorporated and, prior to that, he worked at Shearson/American Express. Mr. Heyer has served on the board of directors of Jamba, Inc. [NASDAQ: JMBA] since 2009. From 1993 to 2009 and from 2012 to present, he has served on the board of The Hain Celestial Group [NASDAQ: HAIN], a natural and organic food and products company. Since December 2016, Mr. Heyer has served as a director of FORM Holdings, Inc. [NASDAQ: FH], a diversified holding company. Mr. Heyer also serves on the boards of directors of several private companies, including Worldwise, a pet accessories business, from 2011 to present, and Insomnia Cookies, a retailer of indulgent desserts open primarily in the evening and nighttime, from 2008 to present. Mr. Heyer also served as a director of Las Vegas Sands Corp. [NYSE:LVS], a casino company, from 2006 to 2008, El Pollo Loco Holdings, Inc. [NASDAQ:LOCO], a casual Mexican Restaurant, from 2005 to 2008, and Reddy Ice Holdings, Inc. [OTC:RDDC] a manufacturer of packaged ice products., from 2003 to 2006. Mr. Heyer received his B.Sc. and M.B.A. from the Wharton School of the University of Pennsylvania, graduating magna cum laude. We believe Mr. Heyer is qualified to serve on our board because of his extensive experience in private equity investing in the consumer goods industry and his experience on other private and public company boards.

Christopher Bradley is a member of our Board of Directors. He is a Managing Director at Mistral Equity Partners, which he joined in 2008. Mr. Bradley has over 10 years of experience in identifying acquisition candidates, due diligence experience, including accounting and financial modeling acumen, and a background in deal structuring. Since 2016, he has served as a member of the boards of directors of The Chickery, Inc, a privately held fast casual restaurant chain, and Creminelli Fine Meats, LLC, a privately held premium priced charcuterie wholesaler, and The Beacon Consumer Incubator Fund, a venture capital fund that invests in consumer technology companies, and since January 2017, he has served as a member of the board of directors of The Kitchen Fund, a venture capital fund that invests in early stage restaurants. From 2013 to 2015, Mr. Bradley served on the board of directors of Kriser's All Natural, a retailer of organic pet food and accessories. He has also guided Mistral portfolio companies in an operational role and served on the board of directors of Jamba, Inc. [NASDAQ: JMBA] from 2009 to 2013. Prior to joining Mistral, Mr. Bradley served as an investment banker at Banc of America Securities, a Manager in Burger King's strategy group, and a Manager at PricewaterhouseCoopers management consulting practice. He earned an A.B. from the University of Chicago and an M.B.A. from The Harvard Business School. We believe Mr. Bradley is qualified to serve on our board because of his experience in private equity investing and investment banking, his accounting and financial modeling expertise and his experience on other public company boards.

David Yarnell is a member of our Board of Directors. He is a Managing General Partner at BEV Capital, a consumer-focused venture fund in Stamford, Connecticut which he co-founded in 1997. He has served as a board member at SAC Acquisition LLC since BEV Capital's initial investment in 2005. Mr. Yarnell has over 30 years of experience in the consumer sector helping companies build strategies to grow revenues through brand development, advertising and channel management. He has also helped young companies build needed organizational skills, structures and systems as a foundation for successful growth. Mr. Yarnell has served on numerous boards of directors of public and private companies including Buca di Beppo Restaurants, Travel Holdings and Alloy Media. In addition to his role at BEV Capital, Mr. Yarnell is the Chief Executive Officer of CertaScan, a growing healthcare security IT company. From 2009 to 2013, Mr. Yarnell served as the Chief Executive Officer of Mom365, the nation's largest in-hospital newborn photography company, and from 2008 to 2015, Mr. Yarnell served as an Operating Partner at Falconhead Capital, a middle market consumer-focused private equity firm. Prior to holding these positions, Mr. Yarnell was a Partner at Consumer Venture Partners, the Chief Executive Officer of MEXX, a fashion apparel firm, and, from 1984 to 1991, a consultant at McKinsey in its Consumer Practice and Post Merger Management Groups for clients worldwide. From 1982 to 1984, Mr. Yarnell was in product management at General Mills, and from 1977 to 1982, Mr. Yarnell was a buyer at Abraham & Straus. He has an M.B.A. from Harvard Business School and a B.S. in Mathematics from Tufts University. We believe Mr. Yarnell is qualified to serve on our board because of his experience in venture capital investing in consumer companies, his experience with brand development, advertising and channel management in the consumer industry and his experience on other public and private company boards.

Jared Rubin is a member of our Board of Directors. He is currently a director at Schottenstein Stores Corporation. Since 2013, Mr. Rubin has held executive and board of director positions within the Schottenstein family of companies with a focus in the retail sector, including strategy and financial based roles at American Signature, Inc. and Artisan de Luxe. From 2009 to 2013, Mr. Rubin was a Vice President at Tiger Infrastructure Partners, a private equity investment firm. Mr. Rubin previously served at Lehman Brothers as a member of its private equity investment team within the firm's asset management division and as an investment banker, holding various capital markets, investment banking and proprietary investment roles within the firm. He holds a B.Sc. in Economics from the Wharton School of the University of Pennsylvania. We believe Mr. Rubin is qualified to serve on our board because of his extensive background in the retail, his experience in private equity investment and investment banking and leadership experience as a senior executive and director of retail and consumer product companies.

William P. Phoenix is a member of our Board of Directors. Since 2007, Mr. Phoenix has been a Managing Director at Mistral Equity Partners. He has extensive experience as a provider of all forms of capital to non-investment grade companies. From 2002 to 2007, Mr. Phoenix was a Managing Director of Trimaran Capital Partners, L.L.C.. Mr. Phoenix spent a good portion of his career in various capacities at the Canadian Imperial Bank of Commerce (CIBC), beginning in 1982. He was a Managing Director of CIBC Capital Partners, where he focused on mezzanine transactions and private equity opportunities. While at CIBC, he also had management responsibilities for Acquisition Finance, Mezzanine Finance, and the Loan Workout and Restructuring businesses. Mr. Phoenix has been a member of the Board of Directors of Lovesac since 2010 and Blueport Commerce and Vino Volo since 2012. Mr. Phoenix received his B.A. in Economics from the University of Western Ontario and his M.B.A. from the University of Toronto. He is a graduate of the Leadership New York Program. We believe Mr. Phoenix is qualified to serve on our board because of his extensive background in finance and private equity investment and his experience on other private company boards.

John Grafer is a member of our Board of Directors. Since 2009, Mr. Grafer has been a principal at Satori Capital, LLC, a multi-strategy alternative investment firm founded on the principles of conscious capitalism. Mr. Grafer is a member of Satori's investment committee, a board member of Longhorn Health Solutions, SunTree Snack Foods and Zorch International, a board observer for Aspen Heights, and a former board member of California Products Corporation and FWT. Prior to joining Satori in 2009, Mr. Grafer was senior vice president at Giuliani Partners, a principal investment and consulting firm founded by former New York City Mayor Rudolph W. Giuliani. Prior to joining Giuliani Partners in 2003, Mr. Grafer was a member of the mergers and acquisitions group at Credit Suisse First Boston, a member of the proprietary trading group at J.P. Morgan Chase, and a team member at Ernst & Young, where he earned his C.P.A. Mr. Grafer has also assisted a family office with early stage investments in sustainably managed companies, including Honest Tea. Mr. Grafer is an elected member of the board of directors and executive committee of Americans For Fair Taxation® (FairTax®) and has been a first-round judge for the McCloskey Business Plan competition at the University of Notre Dame. Mr. Grafer received a B.B.A. from the University of Notre Dame and an M.B.A. in finance from the University of Chicago Booth School of Business. We believe Mr. Grafer is qualified to serve on our board because of his substantial experience in private equity investing and investment banking, his accounting expertise and his experience on other company boards.

Family Relationships

There are no family relationships among our directors or officers.

Board Composition

Our board of directors currently consists of seven (7) members and is authorized to have no less than five (5) members nor more than seven (7) members. Each director of the Company serves until the next annual meeting of stockholders and until his successor is elected and duly qualified, or until his earlier death, resignation or removal.

We have no formal policy regarding board diversity. In selecting board candidates, we seek individuals who will further the interests of our stockholders through an established record of professional accomplishment, the ability to contribute positively to our collaborative culture, knowledge of our business and understanding of our prospective markets. We plan to recruit additional independent directors who can bring specific expertise and experience that is relevant to the Company's business and future direction.

Director Independence

Because Mistral will control more than a majority of the total voting power of our common stock following this offering, we will be a “controlled company” within the meaning of the Nasdaq Stock Market Rules and we will be eligible to rely on certain corporate governance exemptions. Under the Nasdaq Stock Market Rules, a “controlled company” may elect not to comply with certain corporate governance requirements, including: (1) the requirement that a majority of our board of directors consist of independent directors; (2) the requirement that our director nominees be selected or recommended for the board’s selection by a majority of the board’s independent directors in a vote in which only independent directors participate or by a nominating committee comprised solely of independent directors, in either case, with a formal written charter or board resolutions, as applicable, addressing the nominations process and such related matters as may be required under the federal securities laws; and (3) the requirement that our compensation committee be composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities. Even as a “controlled company,” we must comply with the rules applicable to audit committees set forth in the Nasdaq Stock Market Rules. If Mistral’s voting power were to fall below 50%, we would cease to be permitted to rely on the controlled company exception and would be required to have a majority independent board and fully independent standing nominating and compensation committees.

Our board of directors has undertaken a review of its composition, the composition of its committees and the independence of each director. Based upon information requested from and provided by each director concerning his background, employment and affiliations, including family relationships, our board of directors has determined that Messrs. [●] do not have any relationships that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is “independent” as that term is defined under the applicable rules and regulations of the SEC and the listing requirements and rules of Nasdaq.

In making this determination, our board of directors considered the current and prior relationships that each non-employee director has with our Company and all other facts and circumstances our board of directors deemed relevant in determining their independence, including their beneficial ownership of our capital stock.

Board Committees

Our board of directors plans to establish an audit committee and a compensation committee. Audit committees generally must be comprised of at least three independent directors; however, as a controlled company, we are permitted to phase-in our compliance as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of listing; and (3) all independent members within one year of listing. Our board of directors may establish other committees to facilitate the management of our business. The functions of the audit and compensation committees are described below. Directors serve on these committees until their resignation or until otherwise determined by our board of directors.

Audit Committee

Our audit committee will assist our board of directors in its oversight of our accounting and financial reporting process and the audits of our financial statements. We will adopt an audit committee charter, which will detail the principal functions of the audit committee, including:

- appointing, approving the compensation of, and assessing the independence of our registered public accounting firm;
- overseeing the work of our registered public accounting firm, including through the receipt and consideration of reports from such firm;
- reviewing and discussing with management and the registered public accounting firm our annual and quarterly financial statements and related disclosures;

- monitoring our internal control over financial reporting, disclosure controls and procedures and code of business conduct and ethics;
- overseeing our internal accounting function;
- discussing our risk management policies;
- establishing policies regarding hiring employees from our registered public accounting firm and procedures for the receipt and retention of accounting-related complaints and concerns;
- meeting independently with our internal accounting staff, registered public accounting firm and management;
- reviewing and approving or ratifying related party transactions; and
- preparing the audit committee reports required by SEC rules.

The board of directors will examine the scope of experience and the nature of each director's background in determining whether a director should be appointed to the audit committee. Each audit committee member must be able to read and understand fundamental financial statements in accordance with applicable requirements, and we plan to designate an "audit committee financial expert" within the meaning of SEC regulations.

Compensation Committee

Our compensation committee will assist our board of directors in the discharge of its responsibilities relating to the compensation of our executive officers. We will adopt a compensation committee charter, which will detail the principal functions of the compensation committee, including:

- reviewing and approving corporate goals and objectives with respect to Chief Executive Officer compensation;
- making recommendations to our board with respect to the compensation of our Chief Executive Officer and our other executive officers;
- overseeing evaluations of our senior executives;
- reviewing and assessing the independence of compensation advisers;
- overseeing and administering our equity incentive plans;
- reviewing and making recommendations to our board with respect to director compensation; and
- preparing the compensation committee reports required by SEC rules.

Compensation Committee Interlocks and Insider Participation

No member of our compensation committee will be or at any time during the past year have been one of our officers or employees. None of our executive officers currently serves or in the past year has served as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Director Nominations

The board of directors as a whole will consider director candidates recommended for nomination by our shareholders during such times as they are seeking proposed nominees to stand for election at the next annual meeting of shareholders (or, if applicable, a special meeting of shareholders). Our shareholders that wish to nominate a director for election to our board of directors should follow the procedures set forth in our bylaws.

We have not formally established any specific, minimum qualifications that must be met or skills that are necessary for directors to possess. In general, in identifying and evaluating nominees for director, our board of directors considers educational background, diversity of professional experience, knowledge of our business, integrity, professional reputation, independence, wisdom, and the ability to represent the best interests of our shareholders.

Board Leadership Structure and Risk Oversight

The board of directors oversees our business and considers the risks associated with our business strategy and decisions.

The board currently implements its risk oversight function as a whole. Each of the board committees will provide risk oversight in respect of its areas of concentration and reports material risks to the board of directors for further consideration.

Code of Business Conduct and Ethics

We plan to adopt a Code of Business Conduct and Ethics (the “Code of Ethics”), that applies to all directors, officers and employees of our Company and its subsidiaries. This Code of Ethics will cover a wide range of business practices and procedures and will be adopted by our Company for the purpose of promoting honest and ethical conduct, full, fair, accurate and timely disclosure in all reports and documents that our Company files under public communication, compliance with all applicable governmental laws, rules and regulations, protection of company assets, and fair dealing practices. Upon the listing of our common stock on Nasdaq, we will post on our website a current copy of the Code of Ethics and all disclosures that are required by law or Nasdaq rules in regard to any amendments to, or waivers from, any provision of the Code of Ethics. We will disclose future amendments or waivers to our code of business conduct and ethics on our website within four business days following the date of the amendment or waiver.

EXECUTIVE COMPENSATION

As an emerging growth company under the JOBS Act we have opted to comply with the executive compensation disclosure rules applicable to “smaller reporting companies,” which require compensation disclosure for our principal executive officer and the two most highly compensated executive officers (other than our principal executive officer) serving as executive officers at the end of the fiscal year. This section describes the executive compensation program in place for our Named Executive Officers for fiscal 2017 and fiscal 2018, who are the individuals who served as our principal executive officer and two most highly compensated executive officers.

The following table summarizes the compensation of our Named Executive Officers during the fiscal years ended February 4, 2018 and January 29, 2017. No other executive officers or directors received annual compensation in excess of \$100,000 during the last two fiscal years.

Summary Compensation Table

Name and Principal Position	Fiscal Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
<i>Shawn Nelson Chief Executive Officer</i>	2018	331,970.69	140,000.00	284,156	0.00	0.00	0.00	0.00	756,126.69
	2017	392,797.67	30,000.00	0.00	0.00	0.00	0.00	0.00	422,767.67
<i>Jack A. Krause President and Chief Operating Officer</i>	2018	332,762.55	140,000.00	284,156	0.00	0.00	0.00	0.00	756,918.55
	2017	325,607.36	0.00	0.00	0.00	0.00	0.00	0.00	325,607.36
<i>Donna L. Dellomo Executive Vice President and Chief Financial Officer⁽¹⁾</i>	2018	325,551.98	130,000.00	129,900	0.00	0.00	0.00	0.00	585,451.98
	2017	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

(1) Began working for the Company on January 30, 2017. See “Employment Arrangements” below for a description of Ms. Dellomo’s compensation arrangement.

Employment Arrangements

We have agreements with certain of our Named Executive Officers, which include provisions regarding post-termination compensation. We do not have a formal severance policy or plan applicable to our executive officers as a group. The following summaries of the employment agreements are qualified in their entirety by reference to the text of the employment agreements, as amended, which were filed as exhibits to the registration statement of which this prospectus is a part.

Shawn Nelson Employment Agreement

On October 26, 2017, Mr. Nelson entered into an amended and restated employment agreement to be the Chief Executive Officer of the Company. The employment agreement has a term commencing on the date thereof and continuing until terminated (i) upon death of the employee, (ii) upon disability, (iii) for cause, (iv) with good reason or without cause, or (v) voluntarily. The employment agreement provides for an annual base salary of \$350,000 per year, subject to annual review. Mr. Nelson is eligible to receive an annual bonus provided that he achieves performance targets determined by the board of directors. If the Company achieves 90% of its annual EBITDA target for the applicable completed fiscal year the annual bonus shall be 45% of his base salary. In the event that the Company achieves 110% of its annual EBITDA target for the applicable completed fiscal year the annual bonus shall be 60% of his base salary. Furthermore, if the Company achieves 120% of its annual EBITDA target for the applicable completed fiscal year the annual bonus shall be 75% of his base salary.

Pursuant to the employment agreement Mr. Nelson was awarded 262,500 restricted stock units (“RSUs”) the terms of which are governed by the Company’s 2017 Equity Incentive Plan and the applicable grant agreement. Half of such RSUs are subject to time-based vesting and half are subject to performance vesting.

Additionally, the agreement indicates that (i) in the event the Company consummates an IPO on or prior to March 31, 2019, (ii) Mr. Nelson remains employed with the Company, and (iii) Jack Krause purchases IPO shares as provided in his employment agreement, then the Company shall make an additional grant of RSUs in an amount which is the lesser of (a) the number of IPO shares purchased by Mr. Krause or (b) the number of RSUs remaining available for grant under the Company’s 2017 Equity Incentive Plan. The employment agreement also contains, among other things, the following material provisions: (i) reimbursement for all reasonable travel and other out-of-pocket expenses incurred in connection with his employment; (ii) paid vacation leave; (iii) health benefits; and (iv) a severance payment equal to eighteen (18) months of base salary upon termination by Mr. Nelson for Good Reason or by the Company without Cause (as defined in the agreement), with restrictive covenants applicable for a corresponding period after termination.

Jack Krause Employment Agreement

On October 26, 2017, Mr. Krause entered into an amended and restated employment agreement to be President and Chief Operating Officer of the Company. The employment agreement has a term commencing on the date thereof and continuing until terminated (i) upon death of the employee, (ii) upon disability, (iii) for cause, (iv) with good reason or without cause, or (v) voluntarily. The employment agreement provides for an annual base salary of \$350,000 per year, subject to annual review. Mr. Krause is eligible to receive an annual bonus provided that he achieves performance targets determined by the board of directors. If the Company achieves 90% of its annual EBITDA target for the applicable completed fiscal year the annual bonus shall be 45% of his base salary. In the event that the Company achieves 110% of its annual EBITDA target for the applicable completed fiscal year the annual bonus shall be 60% of his base salary. Furthermore, if the Company achieves 120% of its annual EBITDA target for the applicable completed fiscal year the annual bonus shall be 75% of his base salary.

Pursuant to the employment agreement, Mr. Krause was awarded 262,500 RSUs the terms of which are governed by the Company’s 2017 Equity Incentive Plan and the applicable grant agreement. Half of such RSUs are subject to time-based vesting and half are subject to performance vesting.

Additionally, the agreement indicates that (i) in the event the Company consummates an IPO on or prior to March 31, 2019, and (ii) Mr. Krause remains employed with the Company, then the Company shall use commercially reasonable efforts to cause the underwriter(s) in such IPO to allocate a number of IPO shares equal to (a) \$50,000 divided by the public offering price per share in the IPO or (b) such lesser number of IPO shares as Mr. Krause may elect upon reasonable prior notice to the Company. Mr. Krause also received a signing bonus payable on the first regular payroll date that was 5 days following the date of the employment agreement, in the amount of \$50,000. The employment agreement also contains, among other things, the following material provisions: (i) reimbursement for all reasonable travel and other out-of-pocket expenses incurred in connection with his employment; (ii) paid vacation leave; (iii) health benefits; and (iv) a severance payment equal to twelve (12) months of base salary upon termination by Mr. Krause for Good Reason or by the Company without Cause (as defined in the agreement), with restrictive covenants applicable for a corresponding period after termination.

Donna L. Dellomo Employment Agreement

On October 26, 2017, Ms. Dellomo entered into an amended and restated employment agreement to be Executive Vice President and Chief Financial Officer of the Company. The employment agreement has a term commencing on the date thereof and continuing until terminated (i) upon death of the employee, (ii) upon disability, (iii) for cause, (iv) with good reason or without cause, or (v) voluntarily. The employment agreement provides for an annual base salary of \$325,000 per year, subject to annual review. Ms. Dellomo is eligible to receive an annual bonus provided that she achieves performance targets determined by the board of directors. If the Company achieves 90% of its annual EBITDA target for the applicable completed fiscal year the annual bonus shall be 35% of her base salary. In the event that the Company achieves 110% of its annual EBITDA target for the applicable completed fiscal year the annual bonus shall be 45% of her base salary. Furthermore, if the Company achieves 120% of its annual EBITDA target for the applicable completed fiscal year the annual bonus shall be 55% of her base salary.

Pursuant to the employment agreement, Ms. Dellomo was awarded 120,000 RSUs the terms of which are governed by the Company's 2017 Equity Incentive Plan and the applicable grant agreement. Half of such RSUs are subject to time-based vesting and half are subject to performance vesting.

The agreement also contains, among other things, the following material provisions: (i) reimbursement for all reasonable travel and other out-of-pocket expenses incurred in connection with her employment; (ii) paid vacation leave; (iii) health benefits; and (iv) a severance payment equal to twelve (12) months of base salary upon termination by Ms. Dellomo for Good Reason or by the Company without Cause (as defined in the agreement), with restrictive covenants applicable for a corresponding period after termination.

2017 Equity Incentive Plan

Our 2017 Equity Incentive Plan (the "Equity Plan"), was approved by our board of directors and our stockholders on August 26, 2017. It is intended to make available incentives that will assist us to attract, retain and motivate employees, including officers, consultants and directors. We may provide these incentives through the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares and units and other cash-based or stock-based awards.

A total of 1,511,530 shares of our common stock are authorized and reserved for issuance under the Equity Plan.

Appropriate adjustments will be made in the number of authorized shares and other numerical limits in the Equity Plan and in outstanding awards to prevent dilution or enlargement of participants' rights in the event of a stock split or other change in our capital structure. Shares subject to awards which expire or are cancelled or forfeited will again become available for issuance under the Equity Plan. The shares available will not be reduced by awards settled in cash or by shares withheld to satisfy tax withholding obligations. Only the net number of shares issued upon the exercise of stock appreciation rights or options exercised by means of a net exercise or by tender of previously owned shares will be deducted from the shares available under the Equity Plan.

The Equity Plan will be generally administered by the compensation committee of our board of directors. Subject to the provisions of the Equity Plan, the compensation committee will determine in its discretion the persons to whom and the times at which awards are granted, the sizes of such awards and all of their terms and conditions. However, the compensation committee may delegate to one or more of our officers the authority to grant awards to persons who are not officers or directors, subject to certain limitations contained in the Equity Plan and award guidelines established by the committee. The compensation committee will have the authority to construe and interpret the terms of the Equity Plan and awards granted under it. The Equity Plan provides, subject to certain limitations, for indemnification by us of any director, officer or employee against all reasonable expenses, including attorneys' fees, incurred in connection with any legal action arising from such person's action or failure to act in administering the Equity Plan.

The Equity Plan will authorize the compensation committee, without further stockholder approval, to provide for the cancellation of stock options or stock appreciation rights with exercise prices in excess of the fair market value of the underlying shares of common stock in exchange for new options or other equity awards with exercise prices equal to the fair market value of the underlying common stock or a cash payment.

Awards may be granted under the Equity Plan to our employees, including officers, directors or consultants or those of any present or future parent or subsidiary corporation or other affiliated entity. All awards will be evidenced by a written agreement between us and the holder of the award and may include any of the following:

- *Stock options.* We may grant nonstatutory stock options or incentive stock options (as described in Section 422 of the Internal Revenue Code), each of which gives its holder the right, during a specified term (not exceeding 10 years) and subject to any specified vesting or other conditions, to purchase a number of shares of our common stock at an exercise price per share determined by the administrator, which may not be less than the fair market value of a share of our common stock on the date of grant.
- *Stock appreciation rights.* A stock appreciation right gives its holder the right, during a specified term (not exceeding 10 years) and subject to any specified vesting or other conditions, to receive the appreciation in the fair market value of our common stock between the date of grant of the award and the date of its exercise. We may pay the appreciation in shares of our common stock or in cash.
- *Restricted stock.* The administrator may grant restricted stock awards either as a bonus or as a purchase right at such price as the administrator determines. Shares of restricted stock remain subject to forfeiture until vested, based on such terms and conditions as the administrator specifies. Holders of restricted stock will have the right to vote the shares and to receive any dividends paid, except that the dividends may be subject to the same vesting conditions as the related shares.
- *Restricted stock units.* Restricted stock units represent rights to receive shares of our common stock (or their value in cash) at a future date without payment of a purchase price, subject to vesting or other conditions specified by the administrator. Holders of restricted stock units have no voting rights or rights to receive cash dividends unless and until shares of common stock are issued in settlement of such awards. However, the administrator may grant restricted stock units that entitle their holders to dividend equivalent rights.
- *Performance shares and performance units.* Performance shares and performance units are awards that will result in a payment to their holder only if specified performance goals are achieved during a specified performance period. Performance share awards are rights whose value is based on the fair market value of shares of our common stock, while performance unit awards are rights denominated in dollars. The administrator establishes the applicable performance goals based on one or more measures of business performance enumerated in the Equity Plan, such as revenue, earnings, gross margin, net income or total stockholder return. To the extent earned, performance share and unit awards may be settled in cash or in shares of our common stock. Holders of performance shares or performance units have no voting rights or rights to receive cash dividends unless and until shares of common stock are issued in settlement of such awards. However, the administrator may grant performance shares that entitle their holders to dividend equivalent rights.

- *Cash-based awards and other stock-based awards.* The administrator may grant cash-based awards that specify a monetary payment or range of payments or other stock-based awards that specify a number or range of shares or units that, in either case, are subject to vesting or other conditions specified by the administrator. Settlement of these awards may be in cash or shares of our common stock, as determined by the administrator. Their holder will have no voting rights or right to receive cash dividends unless and until shares of our common stock are issued pursuant to the award. The administrator may grant dividend equivalent rights with respect to other stock-based awards.

In the event of a change in control as described in the Equity Plan, the acquiring or successor entity may assume or continue all or any awards outstanding under the Equity Plan or substitute substantially equivalent awards. Any awards which are not assumed or continued in connection with a change in control or are not exercised or settled prior to the change in control will terminate effective as of the time of the change in control. The compensation committee may provide for the acceleration of vesting of any or all outstanding awards upon such terms and to such extent as it determines, except that the vesting of all awards held by members of the board of directors who are not employees will automatically be accelerated in full. The Equity Plan also authorizes the compensation committee, in its discretion and without the consent of any participant, to cancel each or any outstanding award denominated in shares upon a change in control in exchange for a payment to the participant with respect to each share subject to the cancelled award of an amount equal to the excess of the consideration to be paid per share of common stock in the change in control transaction over the exercise price per share, if any, under the award.

The Equity Plan will continue in effect until it is terminated by the administrator, provided, however, that all awards will be granted, if at all, within 10 years of its effective date. The administrator may amend, suspend or terminate the Equity Plan at any time, provided that without stockholder approval, the plan cannot be amended to increase the number of shares authorized, change the class of persons eligible to receive incentive stock options, or effect any other change that would require stockholder approval under any applicable law or listing rule.

Outstanding Equity Awards at Fiscal Year-End

SAC Acquisition LLC is our principal shareholder and owns 15,000,000 shares of common stock of the Company and SAC Acquisition LLC has 2,279,677 units outstanding, as of [●]. Certain employees of the Company and its affiliates previously received unit option awards pursuant to the SAC Acquisition LLC 2007 Unit Plan (the “2007 Unit Plan”) and the SAC Acquisition LLC 2010 Unit Plan (the “2010 Unit Plan”). The options are exercisable into common units of SAC Acquisition LLC. The Company did not adopt or assume the 2010 Unit Plan or the 2007 Unit Plan in the reorganization, therefore upon exercise of the outstanding options the holders will receive common units of SAC Acquisition LLC. See Note 7 to our consolidated financial statements for a further discussion of the 2010 Unit Plan. The following table sets forth for each Named Executive Officer certain information concerning the outstanding equity awards as of February 4, 2018.

Unit Option Awards							
Name	Grant Date	Number of securities underlying unexercised options exercisable⁽¹⁾ (#)	Number of securities underlying unexercised options unexercisable (#)	Equity incentive plan awards: Number of securities underlying unexercised unearned options (#)	Option exercise price (\$)	Option expiration date	
Shawn Nelson	05/24/2010	13,503	-	-	23.00	05/24/2020	
	05/24/2010	-	-	9,000	63.08	05/24/2020	
	05/24/2010	-	-	3,000	76.88	05/24/2020	
	06/01/2012	8,185	-	-	26.00	06/01/2022	
	06/01/2012	-	-	999	63.08	06/01/2022	
	06/01/2012	-	-	427	76.88	06/01/2022	
	12/10/2014	4,475	-	-	36.11	12/10/2024	
	12/10/2014	-	-	8,951	36.11	12/10/2024	
Jack Krause	10/26/2017	76,198	-	-	12.75	10/26/2027	
	07/27/2016	-	-	6,363	36.11	07/27/2026	
Donna L. Dellomo	07/27/2016	12,726	-	-	36.11	07/27/2026	
		-	-	-	-	-	

(1) Upon exercise of the options, holders will be entitled to purchase common units of SAC Acquisition LLC.

Stock Awards				
Name	Number of shares or units of stock that have not vested (#)	Market value of shares of units of stock that have not vested (\$)	Equity incentive plan awards: Number of unearned shares, units or other rights that have not vested (#)	Equity incentive plan awards: Market or payout value of unearned shares, units or other rights that have not vested (\$)
Shawn Nelson	-	-	196,875	852,469
Jack Krause	-	-	196,875	852,469
Donna L. Dellomo	-	-	90,000	389,700

Retirement or Similar Benefit Plans

401(k) Plan

Our 401(k) Plan (the “TLC 401(k) Plan”), is designed to provide retirement benefits to all eligible full-time and part-time employees. The TLC 401(k) Plan provides employees with the opportunity to save for retirement on a tax-favored basis. The TLC 401(k) Plan calls for elective deferral contributions, safe harbor matching 100% contributions, not to exceed 4% of their compensation with immediate vesting, and profit sharing contributions. All our employees (both full-time and part-time) (except for union employees and nonresident aliens) are eligible to participate in the TLC 401(k) Plan as of the day of the month they complete one (1) month of service and are over the age of 21.

Resignation, Retirement, Other Termination, or Change in Control Agreements

For a description of the material terms of each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with the resignation, retirement or other termination of a named executive officer, or a change in control of the Company or a change in the named executive officer’s responsibilities following a change in control, see above under the heading “Employment Arrangements.”

Director Compensation

The following table provides information concerning the compensation paid to persons serving as non-employee directors of our Company for the fiscal year ended February 4, 2018 for whom information has not been disclosed above under the heading “Summary Compensation Table.”

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$)	Non-equity Incentive Plan Compensation (\$)	Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
Andrew Heyer	-	-	-	-	-	-	-
David Yarnell	-	-	-	-	-	-	-
William Phoenix	-	-	-	-	-	-	-
Jared Rubin	-	-	-	-	-	-	-
Christopher Bradley	-	-	-	-	-	-	-
John Grafer	-	-	-	-	-	-	-

We currently do not have a formal non-employee director compensation policy. During fiscal 2018, we did not pay cash compensation to any non-employee director for his or her service as a director. We reimburse our non-employee directors for reasonable travel and out-of-pocket expenses incurred in connection with attending board of director and committee meetings.

Our board of directors expects to adopt a non-employee director compensation policy that is designed to enable us to attract and retain, on a long-term basis, highly qualified non-employee directors. Under the policy, each director who is not an employee will be paid cash compensation from and after the completion of this offering, as set forth below:

	Member Annual Fee (\$)	Chairman Additional Annual Fee (\$)
Board of Directors	[•]	[•]
Audit Committee	[•]	[•]
Compensation Committee	[•]	[•]

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth, as of [●], 2018, certain information with respect to the beneficial ownership of our common stock by:

- each stockholder known by us to be the beneficial owner of more than 5% of our common stock,
- each of our current directors and Named Executive Officers, and
- all of our executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to such securities. Except as otherwise indicated, all persons listed below have sole voting and investment power with respect to the shares beneficially owned by them, subject to applicable community property laws. Shares of common stock subject to options or warrants currently exercisable, or exercisable within 60 days, are deemed outstanding for purposes of computing the percentage ownership of the person holding such option or warrants, but are not deemed outstanding for purposes of computing the percentage ownership of any other person.

Except as otherwise noted, the address of each person or entity in the following table is c/o The Lovesac Company, Two Landmark Square, Suite 300, Stamford, Connecticut 06901.

The table below assumes that this offering is consummated with an initial offering price of \$[●] per share, the midpoint of the price range on the cover of this prospectus.

Name and Address of Beneficial Owner	Prior to the Offering		After the Offering	
	Number of Shares of Common Stock	Percentage Of Class	Number of Shares of Common Stock	Percentage Of Class ⁽¹⁾
Shawn Nelson	[●](2)	*	[●](2)(3)	*
Jack A. Krause	[●](4)	*	[●](4)(5)	*
Donna Dellomo	[●](6)	*	[●](6)(7)	*
Andrew Heyer ⁽⁸⁾	[●](9)	[●]	[●]	[●]
David Yarnell	-	*	-	*
William Phoenix	-	*	-	*
Jared Rubin	-	*	-	*
Christopher Bradley	-	*	-	*
John Grafer ⁽¹⁰⁾	[●]	[●]	[●]	[●]
Directors and Officers as a group (9 individuals)				
Beneficial Owners of more than 5% of our common stock:				
SAC Acquisition LLC	15,000,000 ⁽¹¹⁾	[●]	15,000,000	[●]
Entities affiliated with Mistral	[●](12)	[●]	[●](12)	[●]
Entities affiliated with Satori	[●](13)	[●]	[●](14)	[●]

* Represents beneficial ownership of less than one percent (1%).

- (1) Includes [●] shares of common stock issuable upon the conversion of all outstanding preferred stock at the completion of this offering.
- (2) Consists of 101,971 shares of common stock underlying awards of restricted stock units previously granted to Mr. Nelson, [●] shares of common stock issuable upon conversion of the Series A-2 Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, convertible immediately prior to the closing of this Offering, and 4,375 shares of common stock issuable upon exercise of warrants, exercisable within in 60 days of [●].
- (3) Consists of 4,375 shares of common stock issuable upon exercise of warrants, exercisable within in 60 days of [●].
- (4) Consists of 80,048 shares of common stock underlying awards of restricted stock units previously granted to Mr. Krause, [●] shares of common stock issuable upon conversion of the Series A-2 Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, convertible immediately prior to the closing of this Offering, and 1,313 shares of common stock issuable upon exercise of warrants, exercisable within in 60 days of [●].
- (5) Consists of 1,313 shares of common stock issuable upon exercise of warrants, exercisable within in 60 days of [●].
- (6) Consists of 36,923 shares of common stock underlying awards of restricted stock units previously granted to Ms. Dellomo, [●] shares of common stock issuable upon conversion of the Series A-2 Preferred Stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, convertible immediately prior to the closing of this Offering, and 4,375 shares of common stock issuable upon exercise of warrants, exercisable within in 60 days of [●].

- (7) Consists of 4,375 shares of common stock issuable upon exercise of warrants, exercisable within in 60 days of [●].
- (8) Mistral Sac Carry, LLC (“MSC”), an entity controlled by Mr. Heyer, is the manager of Mistral Sac Holdings 2, LLC (“MSH2”), Mistral Sac Holdings 3, LLC (“MSH3”) and Mistral Sac Holdings 4, LLC (“MSH4”). Mistral Sac Holdings, LLC (“MSH” and, together with MSH2, MSH3 and MSH4, the “Investing Vehicles”) is an investment entity indirectly controlled by Mr. Heyer through Mistral Equity Partners, LP (“MEP”), Mistral Equity Partners QP, LP (“MEP QP”) and MEP Co-Invest, LLC (“MEP Co-Invest”). Mistral Equity GP, LLC (“MEP GP” and, together with MEP, MEP QP, and MEP Co-Invest, the “Mistral Fund Entities”) is the general partner of MEP and MEP QP. By reason of the provisions of Rule 16a-1 of the Exchange Act, the Mistral Fund Entities may be deemed to be beneficial owners of certain of the securities that are deemed to be beneficially owned by Mistral Sac Holdings, LLC (“MSH”), MSC may be deemed to be the beneficial owner of any securities that may be deemed to be beneficially owned by MSH2, MSH3 or MSH4, and Mr. Heyer may be deemed to be the beneficial owner of any securities that may be deemed to be beneficially owned by the Investing Vehicles and/or the Mistral Fund Entities. Mr. Heyer may be deemed to have an indirect pecuniary interest (within the meaning of Rule 16a-1 of the Exchange Act) in an indeterminate portion of the securities reported as beneficially owned by the Investing Vehicles, and MEP GP may be deemed to have an indirect pecuniary interest in an indeterminate portion of the securities reported as beneficially owned by MEP and MEP QP. Mr. Heyer’s business address is c/o Mistral Capital Management, LLC, 650 Fifth Avenue, 31st Floor, New York, NY 10019.
- (9) Represents 15,000,000 shares of common stock directly owned by Sac Acquisition LLC, which is indirectly controlled by Mr. Heyer through MSH, MSH2, and the Mistral Fund Entities, and [●] shares of common stock issuable upon conversion of 660,000 shares of Series A Preferred Stock and 212,000 shares of Series A-2 Preferred Stock, in the aggregate and in each case along with the aggregate accrued or accumulated and unpaid dividends thereon, held by the Investing Vehicles, convertible immediately prior to the closing of this Offering, and 598,000 shares of common stock issuable upon exercise of warrants held by the Investing Vehicles, exercisable within in 60 days of [●].
- (10) Mr. Grafer may be deemed to have an indirect pecuniary interest (within the meaning of Rule 16a-1 of the Exchange Act) in an indeterminate portion of the securities reported as beneficially owned by Satori CSO and SCIII and may be deemed to have an indirect pecuniary interest in an indeterminate portion of the securities reported as beneficially owned by Satori CSO and SCIII. Mr. Grafer disclaims beneficial ownership of the securities held by Satori CSO and SCIII.
- (11) These shares have also been included under Mr. Heyer’s name above. See footnotes 8 and 9.
- (12) Includes 598,000 shares of common stock issuable upon exercise of warrants held by the Investing Vehicles, exercisable within in 60 days of [●]. See footnotes 8 and 9.
- (13) Consists of [●] shares of common stock issuable upon conversion of 696,500 shares of Series A-1 Preferred Stock and 280,000 shares of Series A-2 Preferred Stock owned by Satori Capital Strategic Opportunities, LP (“Satori CSO”) and 303,500 shares of Series A-1 Preferred Stock and 120,000 shares of Series A-2 Preferred Stock owned by Satori Capital III, LP (“SCIII”), in each case along with the aggregate accrued or accumulated and unpaid dividends thereon, and 1,225,000 shares of common stock issuable upon exercise of warrants held by Satori CSO and SCIII, exercisable within in 60 days of [●]. Satori Capital Strategic Opportunities GP, LLC (“Satori CSOGP”), is the general partner of Satori CSO and Satori Capital III GP, LLC (“SCIIIIGP”), is the general partner of SCIII. SCGPM, LLC (“SCGPM”) is the manager of Satori CSOGP and SCIIIIGP and may be deemed to share voting and dispositive power with respect to the shares held by Satori CSO and SCIII. SCGPM is wholly owned and controlled by Satori Capital, LLC (“Satori Capital”), which is indirectly owned and controlled by Sunny Vanderbeck and Randy Eisenman through entities that Sunny Vanderbeck or Randy Eisenman own or control. Each of Satori CSOGP, SCIIIIGP, SCGPM, Satori Capital, Mr. Vanderbeck, Mr. Eisenman and each entity through which Mr. Vanderbeck and Mr. Eisenman indirectly owns or controls Satori Capital disclaims beneficial ownership of the securities held by Satori CSO and SCIII. The address for each of these entities is 2501 N. Harwood St., 20th Floor, Dallas, Texas 75201.
- (14) Includes 1,225,000 shares of common stock issuable upon exercise of warrants held by Satori CSO and SCIII, exercisable within in 60 days of [●].

Changes in Control

We are unaware of any contract or other arrangement the operation of which may at a subsequent date result in a change of control of our Company.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following is a description of transactions since [●], to which we have been a party, in which the amount involved exceeds or will exceed \$120,000 and in which any of our directors, executive officers or holders of more than 5% of our capital stock, or an affiliate or immediate family member thereof, had or will have a direct or indirect material interest.

Preferred Stock Financings

In March 2017, we issued an aggregate of 1,000,000 shares of our Series A-1 Preferred Stock at a purchase price of \$10.00 per share for an aggregate purchase price of \$10.0 million and warrants, as amended, to purchase 875,000 shares of our common stock at an exercise price equal to the price per share of our common stock in this offering. Between March 2017 and October 2017, we completed an offering of our Series A Preferred Stock and issued an aggregate of 923,000 shares of our Series A preferred stock at a purchase price of \$10.00 per share for an aggregate purchase price of \$9.2 million and warrants, as amended, to purchase 584,063 shares of our common stock at an exercise price equal to the price per share of our common stock in this offering. Between October 2017 and December 2017, we issued 623,500 shares of our Series A-2 Preferred Stock at a purchase price of \$10.00 per share for an aggregate purchase price of \$6.23 million and warrants, as amended, to purchase 545,563 shares of our common stock at an exercise price equal to the price per share of our common stock in this offering. The following table summarizes purchases of preferred stock by holders of more than five percent of our capital stock and their affiliated entities and our directors.

Name	Series A Preferred Stock	Series A-1 Preferred Stock	Series A-2 Preferred Stock	Aggregate Purchase Price
Shawn Nelson	--	--	5,000	\$ 50,000
Jack A. Krause	--	--	1,500	15,000
Donna Dellomo	--	--	5,000	50,000
Entities affiliated with Satori Capital, LLC ⁽¹⁾⁽²⁾	--	1,000,000	400,000	14,000,000
Entities affiliated with Mistral ⁽³⁾⁽⁴⁾	660,000	--	212,000	8,820,000

- (1) Consists of (a) 696,500 shares of Series A-1 Preferred Stock and 280,000 shares of Series A-2 Preferred Stock owned by Satori Capital Strategic Opportunities, LP (“Satori CSO”) and (b) 303,500 shares of Series A-1 Preferred Stock and 120,000 shares of Series A-2 Preferred Stock owned by Satori Capital III, LLC (“SCIII”). Satori Capital Strategic Opportunities GP, LLC (“Satori CSOGP”), is the general partner of Satori CSO and Satori Capital III GP, LLC (“SCIIIGP”), is the general partner of SCIII. SCGPM, LLC is the manager of Satori CSOGP and SCIIIGP and may be deemed to share voting and dispositive power with respect to the shares held by Satori CSO and SCIII.
- (2) Mr. Grafer, a director of the Company, is also a principal of Satori.
- (3) Consists of 300,000 shares of Series A Preferred Stock held by Mistral Sac Holdings LLC (“MSH”), 360,000 shares of Series A Preferred Stock owned by Mistral Sac Holdings 3, LLC (“MSH3”), and 212,000 shares of Series A-2 Preferred Stock owned by Mistral Sac Holdings 4, LLC (“MSH4”). Mistral Sac Carry, LLC (“MSC”) is the manager of MSH, MSH3 and MSH4. MSC is indirectly controlled by Mr. Heyer through Mistral Equity Partners, LP (“MEP”). By reason of the provisions of Rule 16a-1 of the Exchange Act, the Mistral Fund Entities may be deemed to be beneficial owners of certain of the securities that are deemed to be beneficially owned by MSH, MSH3, MSH4, and Mr. Heyer may be deemed to be the beneficial owner of any securities that may be deemed to be beneficially owned by MSH, MSH3, MSH4 and/or MSC. Mr. Heyer may be deemed to have an indirect pecuniary interest (within the meaning of Rule 16a-1 of the Exchange Act) in an indeterminate portion of the securities reported as beneficially owned by MSH, MSH3 and MSH4 and may be deemed to have an indirect pecuniary interest in an indeterminate portion of the securities reported as beneficially owned by MSC.
- (4) Messrs. Bradley, Heyer and Phoenix, each of whom is a director of the Company, are also principals of Mistral. Mr. Phoenix is also a director of Blueport Commerce, which is owned in part by investment vehicles affiliated with Mistral.

On April 19, 2018, we amended and restated the terms of our preferred stock to, among other things, revise the conversion features of the preferred stock to provide that, immediately prior to the closing of an initial public offering, the preferred stock (i) will accrue an additional amount of dividends equal to the amount of dividends that would have accrued and accumulated through and including the one year anniversary of the completion of the initial public offering, and (ii) will, along with the aggregate accrued or accumulated and unpaid dividends thereon, automatically convert into shares of common stock. Immediately prior to the closing of this offering, all of the shares of preferred stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, will automatically convert into shares of our common stock pursuant to the terms of their respective certificates of designation.

On April 19, 2018, we agreed to amend and restate the warrants issued to our preferred stockholders. As a result, warrant holders will receive additional shares of common stock upon exercise than they would have under the original warrants. The exercise price after completion of the offering will remain at the price per share of common stock in the offering.

Registration Rights Agreement

In connection with the preferred stock financings discussed above we have entered into amended and restated registration rights agreements with each investor in the financing, including entities affiliated with Satori and Mistral. As described in more detail below, the registration rights agreements provide the holders of preferred stock and the common stock warrants issued in connection therewith with piggyback and demand registration rights as to the common stock issuable upon conversion of the preferred stock and exercise of the common stock warrants. See the section titled “Description of Capital Stock-Registration Rights” for additional information.

Monitoring and Management Services Agreements

On May 24, 2010, Sac Acquisition LLC and Mistral Capital Management, LLC, or Mistral, entered into a monitoring and management services agreement, as amended on January 25, 2016, (the “Monitoring Agreement”). The Monitoring Agreement was subsequently assumed by the Company, along with Sac Acquisition LLC’s other liabilities. Certain of our directors are members and principals of Mistral. Pursuant to the terms of the Monitoring Agreement, Mistral agreed to provide certain monitoring and financial advisory services in exchange for an annual fee of \$400,000 (the “Monitoring Fee”) and the reimbursement of reasonable out-of-pocket expenses incurred in connection with the performance of services under the Monitoring Agreement. The Monitoring Agreement provided for customary exculpation and indemnification provisions in favor of Mistral and each of its affiliates and automatically renewed on an annual basis unless terminated by Mistral.

Pursuant to the Monitoring Agreement, Mistral was also entitled to a fee of \$500,000 in connection with the refinancing of the Company’s credit agreement. This fee will be paid at the closing of this offering.

The parties have agreed to amend and restate the Monitoring Agreement effective upon the consummation of this offering (the “A&R Monitoring Agreement”). The A&R Monitoring Agreement will terminate on January 31, 2021. In addition, Mistral has agreed to terminate its right of first offer to act as financial advisor to the Company and, for so long as Mistral is receiving the Monitoring Fee, Mistral has agreed that none of its officers or employees will accept cash director fees from the Company for their service as directors of the Company. The Monitoring Fee will continue at its current rate during the term of the A&R Monitoring Agreement.

For services rendered under the Monitoring Agreement, Mistral received fees totaling \$400,000, \$400,000 and \$300,000 during the fiscal years 2018, 2017 and 2016, respectively.

On March 30, 2017, the Company and Satori Capital, LLC, or Satori, entered into a letter agreement pursuant to which, among other things, Satori would provide certain monitoring and financial advisory services in exchange for an annual fee of \$100,000 and the reimbursement of reasonable out-of-pocket expenses incurred in connection with the performance of services under the agreement. The letter agreement provided for customary exculpation and indemnification provisions in favor of Satori and each of their respective affiliates. Satori’s monitoring and financial advisory services fees will terminate at the same time as the A&R Monitoring Agreement.

Pursuant to Satori’s letter agreement, Satori is entitled to a fee of \$125,000 at the same time that Mistral is entitled to its fee relating to the Company’s credit agreement. This fee will be paid at the same time as Mistral’s fee is paid.

For services rendered to the Company, Satori received fees totaling \$83,888 in fiscal 2018.

Blueport Commerce Agreement

On November 16, 2016, the Company entered into an agreement with Blueport Commerce (“Blueport”). Blueport is owned in part by both an affiliate of Schottenstein Stores Corporation, an indirect investor in Sac Acquisition LLC, and investment vehicles affiliated with Mistral. Certain of our directors are members and principals of Mistral or employees of Schottenstein Stores Corporation. Pursuant to the agreement with Blueport, Blueport evaluated the Company’s ecommerce platform and developed a transition plan to convert to Blueport’s ecommerce platform for furniture retail. Fees under this agreement totaled \$15,235 and \$164,500 in fiscal years 2018 and 2017, respectively. Mr. Phoenix and Mr. Rubin, directors of the Company, are also directors of Blueport.

Employment Agreements

We have entered into employment agreements with certain of our executive officers. See “Executive Compensation-Employment Arrangements.”

Related Party Transactions Policy

In connection with this offering, we will adopt a policy with respect to the review, approval and ratification of related party transactions. Under the policy, the audit committee will be responsible for reviewing and approving related party transactions. The policy will apply to transactions, arrangements and relationships (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships in which the aggregate amount involved will, or may be expected to, exceed \$120,000 with respect to any fiscal year, and where we (or one of our subsidiaries) are a participant and in which a related party has or will have a direct or indirect material interest. In the course of reviewing potential related party transactions, the audit committee will consider the nature of the related party’s interest in the transaction; the presence of standard prices, rates or charges or terms otherwise consistent with arms-length dealings with unrelated third parties; the materiality of the transaction to each party; the reasons for the Company entering into the transaction with the related party; the potential effect of the transaction on the status of a director as an independent, outside or disinterested director or committee member; and any other factors the audit committee may deem relevant.

DESCRIPTION OF CAPITAL STOCK

General

The following description of our capital stock summarizes the most important terms of our capital stock as they are expected to be in effect upon the closing of this offering. The descriptions of our capital stock and certain provisions of our certificate of incorporation, certificates of designation and bylaws are summaries and are qualified by reference to the certificate of incorporation, applicable certificate of designation and bylaws that will be in effect upon the closing of this offering. Copies of these documents will be filed with the SEC as exhibits to our registration statement, of which this prospectus forms a part.

We are authorized to issue 100,000,000 shares of common stock, par value \$.00001 per share, and 25,000,000 shares of preferred stock, par value \$0.00001 per share.

Common Stock

As of [●], 2018, we had 15,161,250 shares of common stock issued and outstanding held by four (4) stockholders of record. Immediately prior to this offering, we intend to (i) convert all of our outstanding shares of preferred stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, into [●] shares of common stock, (ii) effect a 1-for-[●] reverse stock split of our common stock, (iii) file an amended and restated certificate of incorporation, and (iv) adopt amended and restated bylaws.

Voting Rights

The holders of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders, including the election of directors, and do not have cumulative voting rights. Accordingly, the holders of a majority of the outstanding shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they so choose, other than any directors that holders of any preferred stock we may issue may be entitled to elect.

Dividends

Subject to limitations under Delaware law and preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive ratably those dividends, if any, as may be declared by our board of directors out of legally available funds.

Liquidation

In the event of any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of our common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of or provision for all of our debts and other liabilities, subject to the prior rights of any preferred stock then outstanding, including without limitation, the liquidation preference payable to holders of our Preferred A Shares (as defined below).

Rights and Preferences

Holders of common stock have no preemptive or conversion rights or other subscription rights and there are no redemption or sinking funds provisions applicable to the common stock.

Fully Paid and Non-assessable

All outstanding shares of common stock are, and the common stock to be outstanding upon completion of this offering will be, duly authorized, validly issued, fully paid and non-assessable.

Preferred Stock

As of April 6, 2018, we had 2,546,500 shares of preferred stock issued and outstanding. Immediately prior to the closing of this offering, all of these shares of preferred stock, along with the aggregate accrued or accumulated and unpaid dividends thereon, will automatically convert to the greater of (a) the number of shares of common stock to be received using a conversion price per share of 70% of the offering price, or (b) approximately 5,000,000 shares of common stock, prior to the reverse stock split taking effect. Based on an initial public offering price of \$[●] per share of common stock, the midpoint of the price range on the cover of this prospectus, we expect that the preferred stock will convert into [●] shares of our common stock immediately prior to the closing of this offering.

Upon the consummation of this offering, our board of directors will have the authority, without further action by our stockholders, to authorize and issue up to 25,000,000 shares of preferred stock (subject to the effect of a 1-for-[*] reverse stock split) in one or more series and to fix the rights, preferences, privileges and restrictions thereof. These rights, preferences and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and the number of shares constituting, or the designation of, such series, any or all of which may be greater than the rights of common stock. The issuance of any additional preferred stock could adversely affect the voting power of holders of common stock and the likelihood that such holders will receive dividend payments and payments upon our liquidation. In addition, the issuance of any additional preferred stock could have the effect of delaying, deferring or preventing a change in control of our Company or other corporate action. Each of the foregoing could harm the market price of our common stock.

Warrants

We have issued and outstanding three series of common stock warrants: (i) Series A Warrants, as amended, to purchase 588,063 shares of common stock, (ii) Series A-1 Warrants, as amended, to purchase 875,000 shares of common stock, and (iii) Series A-2 Warrants, as amended, to purchase 545,563 shares of common stock, (collectively, the “Warrants”). Upon exercise, the holders of the Warrants can purchase shares of common stock at a price equal to the price per share of our common stock in this offering. For additional information relating to the exercise of the Warrants, see Notes 7 and 12 to our consolidated financial statements for the years ended February 4, 2018 and January 29, 2017.

Each Warrant expires on the earlier of (a) the third (3rd) anniversary of the date of the offering, (b) the fifth (5th) anniversary of the applicable Warrant issue date, or (c) the occurrence of a deemed liquidation of the Company. The Warrants allow for cashless exercise only in the event that the underlying shares are not registered or qualified for resale. The Company may force the holders to exercise their Warrant or the Company may redeem each Warrant for a nominal price if, at any time following the one-year anniversary of the issuance of such Warrant, (i) the Company has been listed on a national securities exchange, (ii) the common stock underlying the warrants have been registered or qualified for resale or the holders otherwise have the ability to trade the underlying common shares without restriction following a cash exercise, (iii) the 30-day volume-weighted daily average price of the Company’s common stock exceeds 200% of the exercise price of the Warrants, as equitably adjusted for any stock splits, dividends or transactions having a similar effect, and (iv) the average daily trading volume is at least 200,000 shares of common stock during the 30-day period prior to the forced exercise or redemption.

The Warrants also include anti-dilution protection provisions, which provide that if any shares of common stock are issued at a price less than then the current exercise price of such Warrant, or if any warrants, options or other securities with the right to acquire or that are convertible into or exchangeable for shares of common stock are issued with an exercise price less than the then current exercise price of such Warrant, then the exercise price of such Warrant will automatically be reduced to the issuance price of such new shares of common stock or the exercise price of such warrants, options or other securities with the right to acquire or that are convertible into or exchangeable for shares of common stock. These anti-dilution provisions do not apply in the case of an issuance of certain excluded securities including certain options and other equity incentive awards to directors and officers. Upon completion of this offering these anti-dilution provisions terminate.

Stockholder Registration Rights

We are party to an amended and restated registration rights agreement which provides that holders of our Preferred A Shares have certain registration rights as to the common stock issuable upon exercise of the Preferred A Shares and the Warrants, as set forth below. This registration rights agreement was entered into in connection with our preferred stock financing in 2017. The registration of shares of our common stock pursuant to the exercise of registration rights described below would enable the holders to sell these shares without restriction under the Securities Act when the applicable registration statement is declared effective. We will pay the registration expenses, other than underwriting discounts and selling commissions, of the shares registered pursuant to the demand, piggyback and Form S-3 registrations described below.

Generally, in an underwritten offering, the managing underwriter, if any, has the right, subject to specified conditions, to limit the number of shares such holders may include and require the holders enter into customary lock-up agreements.

Piggyback Registration Rights

With certain exceptions, in the event that we propose to register any of our securities under the Securities Act following this offering, either for our own account or for the account of other security holders, the Holders will be entitled to certain “piggyback” registration rights, subject to certain marketing and other limitations. As a result, whenever we propose to file a registration statement under the Securities Act, other than with respect to a demand registration or a registration statement on Forms S-4 or S-8, the Holders will be entitled to notice of the registration and have the right, subject to limitations that the underwriter may impose on the number of shares included in the registration, to include their Registrable Securities in the registration.

Demand Registration Rights

We agreed to use reasonable best efforts to qualify and remain qualified to register the offer and sale of securities pursuant to a registration statement on Form S-3 or any similar short-form registration statement or successor form (“Short-Form Registration Statement”), beginning one (1) year after the closing of this offering. When we have qualified to register the offer and sale of securities on a Short-Form Registration Statement, the holders may require us to register all or any portion of their Registrable Securities, in an unlimited number of registrations, pursuant to such Short-Form Registration Statement.

Anti-Takeover Effects of Provisions of Our Certificate of Incorporation, Our Bylaws and Delaware Law

Certain provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws contain, or will contain, provisions that could make the following transactions more difficult: an acquisition of us by means of a tender offer; a proxy contest; or the removal of our incumbent officers and directors. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in our best interest, including transactions which provide for payment of a premium over the market price for our shares.

These provisions, summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of the increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

Authorized but Unissued Shares

Our authorized but unissued shares of common stock and preferred stock will be available for future issuance without stockholder approval. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital and corporate acquisitions. The existence of authorized but unissued shares of common stock and preferred stock could render more difficult or discourage an attempt to obtain control of a majority of our common stock by means of a proxy contest, tender offer, merger or otherwise.

Appointment and Removal of Directors

Our certificate of incorporation and our bylaws will provide that any vacancies resulting from death, resignation, disqualification, removal or other causes and newly created directorships resulting from any increase in the number of directors shall be filled only by the affirmative vote of a majority vote of the directors then in office, unless the board of directors determines such vacancy shall be filled by stockholders. This provision restricting the filling of vacancies will prevent a stockholder from increasing the size of our board of directors and gaining control of our board of directors by filling the resulting vacancies with its own nominees. In addition, our certificate of incorporation and our bylaws provide that a member of our board of directors may be removed with or without cause by the vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the Company entitled to vote generally at an election of directors.

Advance Notice Procedures

Our certificate of incorporation and our bylaws will establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of our stockholders, including proposed nominations of persons for election to the board of directors. Stockholders at an annual meeting will only be able to consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of the board of directors or by a stockholder who was a stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has given our Secretary timely written notice, in proper form, of the stockholder's intention to bring that business before the meeting. Although our bylaws will not give the board of directors the power to approve or disapprove stockholder nominations of candidates or proposals regarding other business to be conducted at a special or annual meeting, our bylaws may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed or may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempting to obtain control of the Company.

Delaware Anti-Takeover Statute

We will be subject to Section 203 of the Delaware General Corporation Law (“DGCL”), which prohibits persons deemed to be “interested stockholders” from engaging in a “business combination” with a publicly held Delaware corporation for three years following the date these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies. Generally, an “interested stockholder” is a person who, together with affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation’s voting stock. Generally, a “business combination” includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the board of directors. A Delaware corporation may “opt out” of these provisions with an express provision in its original certificate of incorporation or an express provision in its certificate of incorporation or bylaws resulting from a stockholders’ amendment approved by at least a majority of the outstanding voting shares. We do not intend to opt out of these provisions. As a result, mergers or other takeover or change in control attempts of us may be discouraged or prevented.

Limitation on Director’s Liability

Our certificate of incorporation and bylaws will require us to indemnify our directors to the fullest extent permitted by the DGCL. The DGCL permits a corporation to limit or eliminate a director’s personal liability to the corporation or the holders of its capital stock for breach of duty. This limitation is generally unavailable for acts or omissions by a director which (i) were in bad faith, (ii) were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (iii) involved a financial profit or other advantage to which such director was not legally entitled. The DGCL also prohibits limitations on director liability for acts or omissions which result in a violation of a statute prohibiting certain dividend declarations, certain payments to stockholders after dissolution and particular types of loans. We intend to adopt these limitation on our directors’ personal liability to the Company and our stockholders to the maximum extent permitted under Delaware law. The effect of these provisions will be to eliminate the rights of our Company and our stockholders (through stockholders’ derivative suits on behalf of our Company) to recover monetary damages against a director for breach of fiduciary duty as a director (including breaches resulting from grossly negligent behavior), except in the situations described above. These provisions will not limit the liability of directors under the federal securities laws of the United States.

Exchange Listing

We have applied to list our stock on the Nasdaq Global Market under the symbol “LOVE.”

Transfer Agent and Registrar

Upon completion of his offering, the transfer agent and registrar for our common stock will be American Stock Transfer & Trust Company, LLC.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, no public market for our common stock existed, and a liquid trading market for our common stock may not develop or be sustained after this offering. Future sales of substantial amounts of our common stock in the public market could adversely affect prevailing market prices of our common stock from time to time and could impair our ability to raise equity capital in the future. Only a limited number of shares of our common stock will be available for sale shortly after this offering due to certain contractual and legal restrictions on resale described below. Sales of substantial amounts of our common stock in the public market after such restrictions lapse, or the anticipation of such sales, could adversely affect the prevailing market price of our common stock and our ability to raise equity capital in the future.

Based upon the number of shares outstanding as of [●], 2018, upon the closing of this offering, we will have outstanding an aggregate of [●] shares of common stock, assuming no exercise of the underwriter's option to purchase additional shares of common stock and no exercise of outstanding preferred stock or warrants. All of the shares sold in this offering will be freely tradable without restrictions or further registration under the Securities Act, unless held by our affiliates, as that term is defined under Rule 144 under the Securities Act ("Rule 144"), or subject to lock-up agreements. The remaining shares of common stock outstanding upon the closing of this offering are restricted securities as defined in Rule 144. Restricted securities may be sold in the U.S. public market only if registered or if they qualify for an exemption from registration, including by reason of Rule 144 or Rule 701 under the Securities Act ("Rule 701"), which rules are summarized below. Subject to the lock-up arrangements described below and the provisions of Rule 144, these restricted securities will be available for sale in the public market after the date of this prospectus.

We may issue shares of common stock from time to time as consideration for future acquisitions, investments or other corporate purposes. In the event that any such acquisition, investment or other transaction is significant, the number of shares of common stock that we may issue may in turn be significant. We may also grant registration rights covering those shares of common stock issued in connection with any such acquisition and investment.

In addition, the shares of common stock reserved for future issuance under the Equity Plan will become eligible for sale in the public market to the extent permitted by the provisions of various vesting schedules, the lock-up agreements, a registration statement under the Securities Act or an exemption from registration, including Rule 144 and Rule 701.

Rule 144

In general, a person who has beneficially owned restricted shares of our common stock for at least six months would be entitled to sell their securities provided that (1) such person is not deemed to have been one of our affiliates at the time of, or at any time during the 90 days preceding, a sale, (2) we have been subject to the Exchange Act periodic reporting requirements for at least 90 days before the sale, and (3) we are current in our Exchange Act reporting at the time of sale.

Persons who have beneficially owned restricted shares of our common stock for at least six months but who are our affiliates at the time of or any time during the 90 days preceding, a sale, would be subject to additional restrictions, by which such person would be entitled to sell within any three-month period only a number of securities that does not exceed the greater of either of the following:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately [●] shares immediately after the closing of this offering based on the number of common shares outstanding as of [●].
- the average weekly trading volume of our common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Such sales by affiliates must also comply with the manner of sale, current public information and notice provisions of Rule 144.

Rule 701

In general, under Rule 701 a person who purchased shares of our common stock pursuant to a written compensatory plan or contract and who is not deemed to have been one of our affiliates during the immediately preceding 90 days may sell these shares in reliance upon Rule 144, but without being required to comply with the notice, manner of sale, public information requirements or volume limitation provisions of Rule 144. Rule 701 also permits affiliates to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required to wait until 90 days after the date of this prospectus before selling such shares pursuant to Rule 701. Further, all Rule 701 shares are subject to lock-up agreements as described below and will only become eligible for sale upon the expiration of the restrictions set forth in those agreements.

Form S-8 Registration Statements

We intend to file with the SEC a registration statement on Form S-8 under the Securities Act to register the offer and sale of shares of our common stock that are issuable pursuant to the Equity Plan. This registration statement will become effective immediately upon filing. Shares covered by these registration statements will then be eligible for sale in the public markets, subject to vesting restrictions, any applicable lock-up agreements described below and Rule 144 limitations applicable to affiliates.

Lock-Up Arrangements

We, all of our directors and executive officers and holders of substantially all of our shares of capital stock and securities exercisable for or convertible into shares of our common stock outstanding immediately upon the closing of this offering, have agreed with the underwriter that, during the period ending on, and including, the 180th day following the date of this prospectus, subject to certain exceptions, we and they will not, directly or indirectly, offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale, or otherwise dispose of or hedge any of our shares of common stock, any options or warrants to purchase shares of our common stock, or any securities convertible into, or exchangeable for or that represent the right to receive shares of our common stock. These agreements are described in the section of this prospectus titled “Underwriting.”

Registration Rights

Upon the closing of this offering, the holders of [●] shares of our common stock issuable upon conversion of outstanding convertible preferred stock and shares of common stock issuable upon the exercise of outstanding warrants, or their transferees, will be entitled to certain rights with respect to the registration of the offer and sale of common stock issuable upon conversion of such shares of common stock under the Securities Act. Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration. See the section titled “Description of Capital Stock-Stockholder Registration Rights” for additional information.

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS OF OUR COMMON STOCK

The following discussion describes the material U.S. federal income tax consequences of the acquisition, ownership and disposition of our common stock acquired in this offering by Non-U.S. Holders (as defined below). This discussion does not address all aspects of U.S. federal income taxes, does not discuss the potential application of the alternative minimum or Medicare contribution tax on net investment income, and does not deal with state, local or non-U.S. tax consequences that may be relevant to Non-U.S. Holders in light of their particular circumstances, nor does it address U.S. federal tax consequences other than income taxes (not addressed, for example, are gift and estate taxes). Rules different from those described below may apply to certain Non-U.S. Holders that are subject to special treatment under the Code, such as financial institutions, insurance companies, tax-exempt organizations, “foreign governments,” international organizations, broker-dealers and traders in securities, U.S. expatriates, “controlled foreign corporations,” “passive foreign investment companies,” corporations that accumulate earnings to avoid U.S. federal income tax, persons that hold our common stock as part of a “straddle,” “conversion transaction,” or other risk reduction strategy, partnerships and other pass-through entities, and investors in such partnerships or pass-through entities (regardless of their places of organization or formation). Such Non-U.S. Holders are urged to consult their own tax advisors to determine the U.S. federal, state, local and other tax consequences that may be relevant to them. Furthermore, the discussion below is based upon the provisions of the Code, and Treasury regulations, rulings and judicial decisions thereunder as of the date hereof, and such authorities may be repealed, revoked or modified, perhaps retroactively, so as to result in U.S. federal income or estate tax consequences different from those discussed below. We have not requested a ruling from the IRS with respect to the statements made and the conclusions reached in the following summary. This discussion assumes that the Non-U.S. Holder holds our common stock as a “capital asset” within the meaning of Section 1221 of the Code (generally, property held for investment).

Persons considering the purchase of our common stock pursuant to this offering should consult their own tax advisors concerning the U.S. federal income consequences of acquiring, owning and disposing of our common stock in light of their particular situations as well as any consequences arising under the laws of any other taxing jurisdiction, including any state, local and non-U.S. tax consequences and any U.S. federal non-income tax consequences.

For the purposes of this discussion, a “Non-U.S. Holder” is, for U.S. federal income tax purposes, a beneficial owner of common stock that is not a U.S. Holder. A “U.S. Holder” means a beneficial owner of our common stock that is for U.S. federal income tax purposes (a) an individual who is a citizen or resident of the United States, (b) a corporation or other entity treated as a corporation created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (c) an estate the income of which is subject to U.S. federal income taxation regardless of its source or (d) a trust if it (1) is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person. Also, partnerships, or other entities that are treated as partnerships for U.S. federal income tax purposes (regardless of their place of organization or formation), are not addressed by this discussion and are, therefore, not considered to be Non-U.S. Holders for the purposes of this discussion. If a partnership, including any entity or arrangement treated as a partnership for U.S. federal income tax purposes, holds shares of our common stock, the U.S. federal income tax treatment of a partner in such partnership will generally depend upon the status of the partner, the activities of the partnership and certain determinations made at the partner level. Such partners and partnerships should consult their own tax advisors regarding the tax consequences of the purchase, ownership and disposition of our common stock.

Distributions

Subject to the discussion below regarding backup withholding and foreign accounts, distributions, if any, made on our common stock to a Non-U.S. Holder of our common stock generally will constitute dividends for U.S. tax purposes to the extent made out of our current or accumulated earnings and profits (as determined under U.S. federal income tax principles) and generally will be subject to withholding tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. To obtain a reduced rate of withholding under a treaty, a Non-U.S. Holder generally will be required to provide us with a properly executed Internal Revenue Service (“IRS”), Form W-8BEN, W-8BEN-E or other appropriate form, certifying the Non-U.S. Holder’s entitlement to benefits under that treaty. This certification must be provided to us or our paying agent prior to the payment of dividends.

In the case of a Non-U.S. Holder that is an entity, Treasury Regulations and the relevant tax treaty provide rules to determine whether, for purposes of determining the applicability of a tax treaty, dividends will be treated as paid to the entity or to those holding an interest in that entity. If a Non-U.S. Holder holds stock through a financial institution or other agent acting on the holder’s behalf, the holder will be required to provide appropriate documentation to such agent. The holder’s agent may then be required to provide certification to us or our paying agent, either directly or through other intermediaries. If you are eligible for a reduced rate of U.S. federal withholding tax under an income tax treaty, you should consult with your own tax advisor to determine if you are able to obtain a refund or credit of any excess amounts withheld by timely filing an appropriate claim for a refund with the IRS.

Withholding tax is generally not imposed on dividends paid to a Non-U.S. Holder that are effectively connected with the Non-U.S. Holder’s conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, are attributable to a permanent establishment that such holder maintains in the United States) if a properly executed IRS Form W-8ECI, stating that the dividends are so connected, is furnished to us (or, if stock is held through a financial institution or other agent, to such agent). In general, such effectively connected dividends will be subject to U.S. federal income tax, on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation for U.S. federal income tax purposes that receives effectively connected dividends may also be subject to an additional “branch profits tax,” which is imposed, under certain circumstances, at a rate of 30% (or such lower rate as may be specified by an applicable treaty) on the corporate Non-U.S. Holder’s effectively connected earnings and profits, subject to certain adjustments.

To the extent distributions on our common stock, if any, exceed our current and accumulated earnings and profits, they will first reduce your adjusted basis in our common stock as a non-taxable return of capital, but not below zero, and then any excess will be treated as gain and taxed in the same manner as gain realized from a sale or other disposition of common stock as described in the next section.

Gain on Disposition of Our Common Stock

Subject to the discussions below regarding backup withholding and foreign accounts, a Non-U.S. Holder generally will not be subject to U.S. federal income tax with respect to gain realized on a sale or other disposition of our common stock unless (a) the gain is effectively connected with a trade or business of such holder in the United States (and, if required by an applicable income tax treaty, is attributable to a permanent establishment that such holder maintains in the United States), (b) the Non-U.S. Holder is a nonresident alien individual and is present in the United States for 183 or more days in the taxable year of the disposition and certain other conditions are met, or (c) we are or have been a “United States real property holding corporation” within the meaning of Code Section 897(c)(2) at any time within the shorter of the five-year period preceding such disposition or such holder’s holding period.

If you are a Non-U.S. Holder described in (a) above, you generally will be required to pay tax on the net gain derived from the sale at regular graduated U.S. federal income tax rates and corporate Non-U.S. Holders described in (a) above may be subject to the additional branch profits tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. If you are an individual Non-U.S. Holder described in (b) above, you will be required to pay a flat 30% tax on the gain derived from the sale, which gain may be offset by U.S. source capital losses (even though you are not considered a resident of the United States). With respect to (c) above, in general, we would be a United States real property holding corporation if interests in U.S. real estate constituted (by fair market value) at least half of our total worldwide real property interests plus business assets. We believe that we are not, and do not anticipate becoming, a United States real property holding corporation; however, there can be no assurance that we will not become a U.S. real property holding corporation in the future. Even if we are treated as a U.S. real property holding corporation, such treatment will not cause gain realized by a Non-U.S. Holder on a disposition of our common stock to be subject to U.S. federal income tax so long as (1) the Non-U.S. Holder owned, directly, indirectly and constructively, no more than five percent of our common stock at all times within the shorter of (i) the five-year period preceding the disposition or (ii) the holder's holding period and (2) our common stock is regularly traded on an established securities market. There can be no assurance that our common stock will qualify as regularly traded on an established securities market.

Information Reporting Requirements and Backup Withholding

Generally, we or certain financial middlemen must report information to the IRS with respect to any dividends we pay on our common stock including the amount of any such dividends, the name and address of the recipient, and the amount, if any, of tax withheld. A similar report is sent to the holder to whom any such dividends are paid. Pursuant to tax treaties or certain other agreements, the IRS may make its reports available to tax authorities in the recipient's country of residence.

Dividends paid by us (or certain financial middlemen) to a Non-U.S. Holder may also be subject to U.S. backup withholding. U.S. backup withholding generally will not apply to a Non-U.S. Holder who provides a properly executed appropriate IRS Form W-8 or otherwise establishes an exemption. Notwithstanding the foregoing, backup withholding may apply if the payor has actual knowledge, or reason to know, that the holder is a U.S. person who is not an exempt recipient.

Under current U.S. federal income tax law, U.S. information reporting and backup withholding requirements generally will apply to the proceeds of a disposition of our common stock effected by or through a U.S. office of any broker, U.S. or non-U.S., unless the holder provides a properly executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or otherwise establishes an exemption. Generally, U.S. information reporting and backup withholding requirements will not apply to a payment of disposition proceeds to a Non-U.S. Holder where the transaction is considered effected outside the United States through a non-U.S. office of a non-U.S. broker. Information reporting and backup withholding requirements may, however, apply to a payment of disposition proceeds if the broker has actual knowledge, or reason to know, that the holder is, in fact, a U.S. person. For information reporting purposes, certain brokers with substantial U.S. ownership or operations will generally be treated in a manner similar to U.S. brokers.

If backup withholding is applied to you, you should consult with your own tax advisor to determine if you are able to obtain a tax refund or credit with respect to the amount withheld.

Foreign Accounts

A U.S. federal withholding tax of 30% may apply to dividends and, for any disposition occurring on or after January 1, 2019, the gross proceeds of a disposition of our common stock paid to a foreign financial institution (as specifically defined by applicable rules), including when the foreign financial institution holds our common stock on behalf of a Non-U.S. Holder, unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity holders of such institution, as well as certain account holders that are foreign entities with U.S. owners). This U.S. federal withholding tax of 30% will also apply to dividends and, for any disposition occurring on or after January 1, 2019, the gross proceeds of a disposition of our common stock paid to a non-financial foreign entity unless such entity provides the withholding agent with either a certification that it does not have any substantial direct or indirect U.S. owners or provides information regarding direct and indirect U.S. owners of the entity. The withholding tax described above will not apply if the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from the rules. An intergovernmental agreement between the U.S. and an applicable foreign country may modify these requirements. Under certain circumstances, a Non-U.S. Holder might be eligible for refunds or credits of such taxes. Holders are encouraged to consult with their own tax advisors regarding the possible implications of this withholding tax on their investment in our common stock.

EACH PROSPECTIVE INVESTOR SHOULD CONSULT HIS, HER OR ITS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF PURCHASING, HOLDING AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAW, AS WELL AS TAX CONSEQUENCES ARISING UNDER ANY STATE, LOCAL, NON-U.S. OR U.S. FEDERAL NON-INCOME TAX LAWS.

UNDERWRITING

We have entered into an underwriting agreement with Roth Capital Partners, LLC, as the underwriter for this offering. Subject to the terms and conditions of the underwriting agreement, we have agreed to sell to the underwriter, and the underwriter has agreed to purchase from us, [●] shares of our common stock.

The underwriting agreement provides that the obligation of the underwriter to purchase the shares of common stock offered by this prospectus is subject to certain conditions. The underwriter is obligated to purchase all of the shares of common stock offered hereby if any of the shares are purchased.

We have granted the underwriter an option to buy up to an additional [●] shares of common stock from us at the public offering price, less the underwriting discounts, to cover over-allotments, if any. The underwriter may exercise this option at any time, in whole or in part, during the 30-day period after the date of this prospectus; however, the underwriter may only exercise the option once.

Discounts, Commissions and Expenses

The underwriter proposes to offer to the shares of common stock purchased pursuant to the underwriting agreement to the public at the public offering price set forth on the cover page of this prospectus and to certain dealers at that price less a concession not in excess of \$[●] per share. After this offering, the public offering price and concession may be changed by the underwriter. No such change shall change the amount of proceeds to be received by us as set forth on the cover page of this prospectus.

In connection with the sale of the common stock to be purchased by the underwriter, the underwriter will be deemed to have received compensation in the form of underwriting discounts. The underwriter's discount will be [●]% of the gross proceeds of this offering, or \$[●] per share of common stock, based on the public offering price per share set forth on the cover page of this prospectus.

We estimate that the total expenses of the offering, excluding the underwriting discount, will be approximately \$[●] and are payable by us. We have also agreed to reimburse Roth Capital Partners, LLC at closing for legal expenses incurred by it in connection with the offering up to a maximum of \$250,000.

The following table shows the underwriting discounts payable to the underwriter by us in connection with this offering (assuming both the exercise and non-exercise of the over-allotment option to purchase additional shares of common stock we have granted to the underwriter):

		Total	
	Per Share	Without Over-allotment	With Over-allotment
Public offering price	\$		
Underwriting discounts paid by us	\$		

Indemnification

Pursuant to the underwriting agreement, we have agreed to indemnify the underwriter against certain liabilities, including liabilities under the Securities Act, or to contribute to payments that the underwriter or such other indemnified parties may be required to make in respect of those liabilities.

Underwriter Warrants

We have agreed to issue to Roth Capital Partners, LLC a warrant initially exercisable for up to [●] shares of common stock ([●] shares if the overallotment option is exercised). The warrant is not included in the securities being sold in this offering. The shares of common stock issuable upon exercise of the warrant are identical to those offered by this prospectus. The warrant is exercisable at a per share price equal to 120% of the initial public offering price per share in this offering. The warrant will be exercisable at any time, and from time to time, in whole or in part, until the fifth anniversary of the effective date of this offering, in compliance with FINRA Rule 5110(f)(2)(G)(i). The warrant and the shares of common stock underlying the warrant have been deemed compensation by FINRA and are therefore subject to a 180 day lock-up. Roth Capital Partners, LLC (or its permitted assignees) will not sell, transfer, assign, pledge or hypothecate the warrant or the securities underlying the warrant, nor will it engage in any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the warrant or the underlying securities for a period of 180 days from the date of effectiveness of the registration statement. The exercise price and number of shares of common stock issuable upon exercise of the warrant will be adjusted in certain circumstances, including in the event of a stock dividend, cash dividend or our recapitalization, reorganization, merger or consolidation.

Lock-Up Agreements

We have agreed not to (i) offer, pledge, issue, sell, contract to sell, purchase, contract to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock; (ii) enter into any swap or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of shares of common stock; or (iii) file any registration statement with the SEC relating to the offering of any shares of our common stock or any securities convertible into or exercisable or exchangeable for shares of our common stock, without the prior written consent of Roth Capital Partners, LLC for a period of 180 days following the date of this prospectus (the "Lock-up Period"). This consent may be given at any time without public notice. These restrictions on future issuances are subject to exceptions for (i) the issuance of shares of our common stock sold in this offering, (ii) the issuance of shares of our common stock upon the exercise of outstanding options or warrants and the vesting of restricted stock awards or units, (iii) the issuance of employee stock options not exercisable during the Lock-up Period and the grant, redemption or forfeiture of restricted stock awards or restricted stock units pursuant to our equity incentive plans or as new employee inducement grants and (iv) the issuance of common stock or warrants to purchase common stock in connection with mergers or acquisitions of securities, businesses, property or other assets, joint ventures, strategic alliances, equipment leasing arrangements or debt financing.

In addition, each of our directors, officers and stockholders has entered into a lock-up agreement with the underwriter. Under the lock-up agreements, the directors, officers and stockholders may not, directly or indirectly, sell, offer to sell, contract to sell, or grant any option for the sale (including any short sale), grant any security interest in, pledge, hypothecate, hedge, establish an open "put equivalent position" (within the meaning of Rule 16a-1(h) under the Exchange Act), or otherwise dispose of, or enter into any transaction which is designed to or could be expected to result in the disposition of, any shares of our common stock or securities convertible into or exchangeable for shares of our common stock, or publicly announce any intention to do any of the foregoing, without the prior written consent of Roth Capital Partners, LLC for a period of 180 days from the closing date of this offering. This consent may be given at any time without public notice. These restrictions on future dispositions by our directors, officers and stockholders are subject to exceptions for (i) one or more bona fide gift transfers of securities to immediate family members who agree to be bound by these restrictions and (ii) transfers of securities to one or more trusts for bona fide estate planning purposes.

Electronic Distribution

This prospectus may be made available in electronic format on websites or through other online services maintained by the underwriter or by its affiliates. In those cases, prospective investors may view offering terms online and prospective investors may be allowed to place orders online. Other than this prospectus in electronic format, the information on the underwriter's website or our website and any information contained in any other websites maintained by the underwriter or by us is not part of this prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or the underwriter in its capacity as underwriter, and should not be relied upon by investors.

Discretionary Accounts

The underwriter does not intend to confirm sales of the shares to any accounts over which they have discretionary authority.

Market Information

We will apply to Nasdaq to list shares of our common stock under the symbol “LOVE.”

Prior to this offering, there has been no public market for shares of our common stock. The initial public offering price will be determined by negotiations between us and the representatives of the underwriter. In addition to prevailing market conditions, the factors to be considered in these negotiations will include:

- the history of, and prospects for, our Company and the industry in which we compete;
- our past and present financial information;
- an assessment of our management; its past and present operations, and the prospects for, and timing of, our future revenues;
- the present state of our development; and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

Price Stabilization, Short Positions and Penalty Bids

In connection with the offering, the underwriter may engage in stabilizing transactions, over-allotment transactions, syndicate covering transactions and penalty bids in accordance with Regulation M under the Exchange Act:

- Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum.
- Over-allotment involves sales by the underwriter of shares in excess of the number of shares the underwriter is obligated to purchase, which creates a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by the underwriter is not greater than the number of shares that they may purchase in the over-allotment option. In a naked short position, the number of shares involved is greater than the number of shares in the over-allotment option. The underwriter may close out any covered short position by either exercising their over-allotment option and/or purchasing shares in the open market.
- Syndicate covering transactions involve purchases of the common stock in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of shares to close out the short position, the underwriter will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option. A naked short position occurs if the underwriter sells more shares than could be covered by the over-allotment option. This position can only be closed out by buying shares in the open market. A naked short position is more likely to be created if the underwriter is concerned that there could be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.
- Penalty bids permit the underwriter to reclaim a selling concession from a syndicate member when the common stock originally sold by the syndicate member is purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

These stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of the common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. These transactions may be discontinued at any time.

In addition, the underwriter may engage in passive market making transactions in our common stock. Passive market making consists of displaying bids on a national securities exchange limited by the prices of independent market makers and effecting purchases limited by those prices in response to order flow. Rule 103 of Regulation M promulgated by the SEC limits the amount of net purchases that each passive market maker may make and the displayed size of each bid. Passive market making may stabilize the market price of our common stock at a level above that which might otherwise prevail in the open market and, if commenced, may be discontinued at any time.

Neither we nor the underwriter make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our shares of common stock. In addition, neither we nor the underwriter make any representation that the underwriter will engage in these transactions or that any transaction, if commenced, will not be discontinued without notice.

Other Relationships

The underwriter and its affiliates may in the future provide various investment banking and other financial services for us and our affiliates for which they may in the future receive customary fees.

Offer Restrictions Outside the United States

Other than in the United States, no action has been taken by us or the underwriter that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

Selling Restrictions

European Economic Area

This prospectus does not constitute an approved prospectus under Directive 2003/71/EC and no such prospectus is intended to be prepared and approved in connection with this offering. Accordingly, in relation to each Member State of the European Economic Area which has implemented Directive 2003/71/EC (each, a “Relevant Member State”) an offer to the public of any shares of common stock which are the subject of the offering contemplated by this prospectus may not be made in that Relevant Member State except that an offer to the public in that Relevant Member State of any shares of common stock may be made at any time under the following exemptions under the Prospectus Directive, if and to the extent that they have been implemented in that Relevant Member State:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (b) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), subject to obtaining the prior consent of the representatives of the underwriter for any such offer; or
- (c) in any other circumstances which do not require any person to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer to the public” in relation to any shares of common stock in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares of common stock to be offered so as to enable an investor to decide to purchase any shares of common stock, as the expression may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression “Prospectus Directive” means Directive 2003/71/EC (and any amendments thereto including the 2010 PD Amending Directive to the extent implemented in each Relevant Member State) and includes any relevant implementing measure in each Relevant Member State and the expression “2010 PD Amending Directive” means Directive 2010/73/EU.

United Kingdom

This prospectus is not an approved prospectus for purposes of the UK Prospectus Rules, as implemented under the EU Prospectus Directive (2003/71/EC), and have not been approved under section 21 of the Financial Services and Markets Act 2000 (as amended) (the “FSMA”) by a person authorized under FSMA. The financial promotions contained in this prospectus are directed at, and this prospectus is only being distributed to, (1) persons who receive this prospectus outside of the United Kingdom, and (2) persons in the United Kingdom who fall within the exemptions under articles 19 (investment professionals) and 49(2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (all such persons together being referred to as “Relevant Persons”). This prospectus must not be acted upon or relied upon by any person who is not a Relevant Person. Any investment or investment activity to which this prospectus relates is available only to Relevant Persons and will be engaged in only with Relevant Persons. This prospectus and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other person that is not a Relevant Person.

The underwriter has represented, warranted and agreed that:

(a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) in connection with the issue or sale of any of the shares of common stock in circumstances in which section 21(1) of the FSMA does not apply to the issuer; and

(b) it has complied with and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares of common stock in, from or otherwise involving the United Kingdom.

Canada

The common stock may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 *Prospectus Exemptions* or subsection 73.3(1) of the *Securities Act* (Ontario), and are permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant*.

Any resale of the common stock must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser’s province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 *Underwriting Conflicts* (NI 33-105), the underwriter is not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Switzerland

The securities will not be offered, directly or indirectly, to the public in Switzerland and this prospectus does not constitute a public offering prospectus as that term is understood pursuant to article 652a or 1156 of the Swiss Federal Code of Obligations.

LEGAL MATTERS

The validity of the securities being offered by this prospectus has been passed upon for us by Duane Morris LLP, New York, New York. Certain legal matters in connection with this offering will be passed upon for the underwriter by DLA Piper LLP (US), Phoenix, Arizona.

EXPERTS

The financial statements as of and for the years ended January 29, 2017 and February 4, 2018, included in this prospectus and in the registration statement have been audited by Marcum LLP, an independent registered public accounting firm, to the extent and period as set forth in their report thereon dated April 20, 2018, appearing elsewhere herein and in the registration statement, in reliance upon such report given on the authority of said firm as experts in auditing and accounting.

The financial statements as of and for the year ended January 31, 2016, included in this prospectus and in the registration statement have been audited by Fiondella, Milone & LaSaracina LLP, an independent registered public accounting firm, to the extent and period as set forth in their report thereon dated April 20, 2018, appearing elsewhere herein and in the registration statement, in reliance upon such report given on the authority of said firm as experts in auditing and accounting.

No expert named in the registration statement of which this prospectus forms a part as having prepared or certified any part thereof (or named as having prepared or certified a report or valuation for use in connection with such registration statement) or counsel named in this prospectus as having given an opinion upon the validity of the securities being offered pursuant to this prospectus or upon other legal matters in connection with the registration or offering of such securities was employed for such purpose on a contingency basis. At the time of such preparation, certification or opinion or at any time thereafter, through the date of effectiveness of such registration statement or that part of such registration statement to which such preparation, certification or opinion relates, no such person had, or is to receive, in connection with the offering, a substantial interest, direct or indirect, in our Company or any of its parents or subsidiaries. Nor was any such person connected with our Company or any of its parents or subsidiaries as a promoter, managing or principal underwriter, voting trustee, director, officer or employee.

WHERE YOU CAN FIND MORE INFORMATION

We will file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission. Such filings are available to the public over the internet at the Securities and Exchange Commission's website at <http://www.sec.gov>.

We have filed with the Securities and Exchange Commission a registration statement on Form S-1 under the Securities Act with respect to the securities offered under this prospectus. This prospectus, which forms a part of that registration statement, does not contain all information included in the registration statement. Certain information is omitted and you should refer to the registration statement and its exhibits.

You may review a copy of the registration statement at the Securities and Exchange Commission's public reference room at 100 F Street, N.E. Washington, D.C. 20549 on official business days during the hours of 10 a.m. to 3 p.m. You may obtain information on the operation of the public reference room by calling the Securities and Exchange Commission at 1-800-SEC-0330. You may also read and copy any materials we file with the Securities and Exchange Commission at the Securities and Exchange Commission's public reference room. Our filings and the registration statement can also be reviewed by accessing the Securities and Exchange Commission's website at <http://www.sec.gov>.

THE LOVESAC COMPANY

FINANCIAL STATEMENTS

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THE LOVESAC COMPANY
CONSOLIDATED FINANCIAL STATEMENTS
FEBRUARY 4, 2018 AND JANUARY 29, 2017

THE LOVESAC COMPANY

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
The Lovesac Company

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of The Lovesac Company (the "Company") as of February 4, 2018 and January 29, 2017, the related consolidated statements of operations, changes in stockholders' equity and cash flows for each of the two years in the period ended February 4, 2018, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of February 4, 2018 and January 29, 2017, and the results of its operations and its cash flows for each of the two years in the period ended February 4, 2018, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2017.

Hartford, Connecticut
April 20, 2018

THE LOVESAC COMPANY
CONSOLIDATED BALANCE SHEETS
AS OF FEBRUARY 4, 2018 AND JANUARY 29, 2017

	2018	2017
Assets		
Current Assets		
Cash and cash equivalents	\$ 9,175,951	\$ 878,696
Trade accounts receivable	2,805,186	1,008,515
Merchandise inventories	11,641,482	9,433,019
Prepaid expenses and other current assets	6,062,946	1,898,226
Total Current Assets	29,685,565	13,218,456
Property and Equipment, Net	11,037,289	6,593,531
Other Assets		
Goodwill	143,562	143,562
Intangible assets, net	526,370	571,817
Deferred financing costs, net	48,149	192,654
Total Other Assets	718,081	908,033
Total Assets	\$ 41,440,935	\$ 20,720,020
Liabilities and Stockholders' Equity		
Current Liabilities		
Accounts payable	\$ 12,695,954	\$ 7,102,029
Accrued expenses	784,340	439,607
Payroll payable	1,454,193	947,174
Customer deposits	909,236	695,398
Sales taxes payable	894,882	489,009
Line of credit	405	-
Note payable	-	194,530
Total Current Liabilities	16,739,010	9,867,747
Deferred rent	1,063,472	703,643
Line of credit	-	3,098,777
Total Liabilities	17,802,482	13,670,167
Stockholders' Equity		
Preferred Stock \$.00001 par value, 25,000,000 shares authorized, 2,546,500 and 300,000 shares issued as of February 4, 2018 and January 29, 2017, respectively/liquidation preference \$26,673,003.	26	3
Common Stock \$.00001 par value, 100,000,000 shares authorized, 15,161,250 and 15,000,000 shares issued as of February 4, 2018 and January 29, 2017, respectively.	152	150
Additional paid-in capital	79,891,728	57,801,355
Accumulated deficit	(56,253,453)	(50,751,655)
Stockholders' Equity	23,638,453	7,049,853
Total liabilities and stockholders' equity	\$ 41,440,935	\$ 20,720,020

The accompanying notes are an integral part of these consolidated financial statements

THE LOVESAC COMPANY
CONSOLIDATED STATEMENTS OF OPERATIONS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

	<u>2018</u>	<u>2017</u>
Net Sales	\$ 101,810,413	\$ 76,343,441
Cost of Merchandise Sold	<u>44,593,261</u>	<u>34,646,212</u>
Gross Profit	57,217,152	41,697,229
Selling, general and administrative expenses	<u>62,254,985</u>	<u>47,868,120</u>
Operating Loss	(5,037,833)	(6,170,891)
Interest expense	<u>(437,965)</u>	<u>(565,557)</u>
Net loss before Taxes	(5,475,798)	(6,736,448)
Provision for income taxes	<u>(26,000)</u>	<u>(138,000)</u>
Net Loss	<u>\$ (5,501,798)</u>	<u>\$ (6,874,448)</u>
Net loss per common share:		
Basic and diluted	<u>\$ (0.45)</u>	<u>\$ (0.48)</u>
Weighted average number of common shares outstanding:		
Basic and diluted	<u>15,001,748</u>	<u>14,368,216</u>

The accompanying notes are an integral part of these consolidated financial statements

THE LOVESAC COMPANY
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

	Common		Preferred		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount			
Balance - January 31, 2016	12,728,493	127	-	\$ -	\$ 46,509,431	\$ (43,877,207)	\$ 2,632,351
Net loss	-	-	-	-	-	(6,874,448)	(6,874,448)
Equity based compensation	-	-	-	-	25,736	-	25,736
Sale of equity	-	-	300,000	-	2,999,997	-	3,000,000
Sale of equity	2,271,507	23	-	-	8,266,191	-	8,266,214
Balance - January 29, 2017	15,000,000	\$ 150	300,000	\$ 3	\$ 57,801,355	\$ (50,751,655)	\$ 7,049,853
Net loss	-	-	-	-	-	(5,501,798)	(5,501,798)
Equity based compensation	-	-	-	-	950,554	-	950,554
Vested restricted stock units	161,250	2	-	3	(2)	-	-
Issuance of preferred stock, net of issuance costs	-	-	2,246,500	23	21,139,821	-	21,139,844
Balance - February 4, 2018	15,161,250	\$ 152	2,546,500	\$ 26	\$ 79,891,728	\$ (56,253,453)	\$ 23,638,453

The accompanying notes are an integral part of these consolidated financial statements

THE LOVESAC COMPANY
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

	<u>2018</u>	<u>2017</u>
Cash Flows from Operating Activities		
Net loss	\$ (5,501,798)	\$ (6,874,448)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization of property and equipment	1,996,191	1,828,901
Amortization of other intangible assets	218,308	281,211
Amortization of deferred financing fees	144,505	70,283
Loss on disposal of property and equipment	196,540	--
Equity based compensation	950,554	25,736
Deferred rent	359,829	216,538
Changes in operating assets and liabilities:		
Accounts receivable	(1,796,671)	180,412
Merchandise inventories	(2,208,463)	(1,045,045)
Prepaid expenses and other current assets	(4,164,720)	689,001
Accounts payable and accrued expenses	6,851,550	(1,533,911)
Customer deposits	213,838	(315,601)
Net Cash Used in Operating Activities	<u>(2,740,337)</u>	<u>(6,476,924)</u>
Cash Flows from Investing Activities		
Purchase of property and equipment	(6,636,489)	(3,680,642)
Payments for intangible assets	(172,861)	(304,765)
Net Cash Used in Investing Activities	<u>(6,809,350)</u>	<u>(3,985,407)</u>
Cash Flows from Financing Activities		
Proceeds from sale of equity net of issuance costs	--	11,266,214
Proceeds from the sale of preferred stock, net of issuance costs	21,139,845	--
Principal borrowing on Note Payable	--	500,000
Principal payments on Note Payable	(194,530)	(305,470)
Net paydowns of the line of credit	(3,098,372)	(78,461)
Payments of deferred financing costs	--	(250,093)
Net Cash Provided by Financing Activities	<u>17,846,943</u>	<u>11,132,190</u>
Net Change in Cash and Cash Equivalents	8,297,256	669,860
Cash and Cash Equivalents - Beginning	<u>878,696</u>	<u>208,836</u>
Cash and Cash Equivalents - End	<u>\$ 9,175,951</u>	<u>\$ 878,696</u>
Supplemental Cash Flow Disclosures		
Cash paid for interest	<u>\$ 173,447</u>	<u>\$ 495,274</u>

The accompanying notes are an integral part of these consolidated financial statements

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 1 – Operations and Significant Accounting Policies

Nature of Operations and Liquidity

The Lovesac Company (the “Company”), a Delaware Corporation, was formed January 3, 2017 by its predecessor SAC Acquisition, LLC (the “LLC”). At which time, stock terms were established and the board of directors were named. On March 22, 2017, all the assets and liabilities of LLC were transferred to the Company in exchange for 15,000,000 common shares, see Note 7. The Company was formed in preparation for additional capital raise opportunities. The Company has retroactively reflected the recapitalization in the fiscal 2017 consolidated balance sheets, statements of operations and the statement of changes in stockholders equity. As of February 1, 2016 and going forward all equity transactions have been reflected under the current equity structure.

The Company headquarters are located in Stamford, Connecticut. The Company designs and sells foam filled furniture, sectional couches, and related accessories throughout the world. In connection therewith the Company operates approximately 66 leased retail showrooms located throughout the United States. In addition the Company operates a retail internet website and does business to business transactions through its wholesale operations.

The Company has incurred significant operating losses and used cash in its operating activities since inception. Operating losses have resulted from inadequate sales levels for the cost structure and expenses as a result of expanding into new markets. The Company continues to enter into new retail showrooms in larger markets in an effort to increase sales levels. There can be no assurance that the anticipated sales levels will be achieved. The Company believes that based on its capital raises subsequent to year end, see Note 10, and its current sales and expense levels in fiscal 2018 to date, the Company will have sufficient working capital to cover operating cash needs through the twelve months period from the financial statement issuance date.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 1 – Operations and Significant Accounting Policies (Continued)

Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

Fiscal Year

The Company's fiscal year is determined on a 52/53 week basis ending on the Sunday closest to January 31st. Hereinafter, the periods from January 30, 2017 through February 4, 2018 and February 1, 2016 through January 29, 2017 are referred to as fiscal 2018 and 2017, respectively. Fiscal 2018 was a 53 week fiscal year and fiscal 2017 was a 52 week fiscal year.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("US GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Estimates and assumptions are reviewed periodically and the effects of the revisions are reflected in the period the change is determined.

RECLASSIFICATION

Certain prior period amounts have been reclassified to conform to current year presentation. The reclassification has no effect on the previously reported net loss.

Revenue Recognition

Company revenues consist of sales made to consumers at Company operated showrooms, and via the internet and also sales made business to business. Sales made at Company operated showrooms are recognized at the point of sale when payment is tendered and ownership is transferred to the customer. Sales of merchandise via the internet are recognized upon receipt and verification of payment and shipment of the merchandise to the customer. Ownership and risk of loss transfer to the customer upon shipment. Sales made to businesses are recognized at the point of shipment when ownership and the risk of loss transfer to the customer. Customer deposits are recorded for sales made for which ownership has not transferred as a result of payment received for goods upon order but not yet shipped at the end of any fiscal accounting period. These deposits are carried on the Company's balance sheet until delivery is fulfilled which is typically within 3-4 days of order being processed.

The majority of returns are being processed in the same period as the sale, therefore reductions for estimated returns are not material for any period presented. No reserves are currently being recorded. The Company will continue to monitor returns and record a reserve when necessary.

The Company has no foreign operations and its sales to foreign countries was less than .05% of total net sales in both fiscal 2018 and 2017.

Revenue is recognized net of sales tax collected.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 1 – Operations and Significant Accounting Policies (Continued)

Cash and Cash Equivalents

The Company considers all highly liquid investments with a maturity at purchase of three months or less to be cash equivalents.

The Company has deposits with financial institutions that maintain Federal Deposit Insurance Corporation “FDIC” deposit insurance up to \$250,000 per depositor. The portion of the deposit in excess of this limit represents a credit risk to the Company. At times the Company maintains depository balances in excess of the insured amounts.

Trade Accounts Receivable

Trade accounts receivable are carried at their estimated realizable amount and do not bear interest. Management determines the allowance for doubtful accounts by regularly evaluating individual customer accounts, considering the customer’s financial condition, and credit history, and general and industry current economic conditions. Trade accounts receivable are reserved for when deemed uncollectible. Recoveries of amounts previously written off are recorded when received. Historically, collection losses have been immaterial as a significant portion of the Company’s receivables are related to individual credit card transactions. As soon as the Company believes a receivable is deemed uncollectible it is written off, therefore management has concluded that an allowance was not necessary at February 4, 2018 and January 29, 2017.

Breakdown of accounts receivable is as follows:

	As of February 4, 2018	As of January 29, 2017
Credit card receivables	\$ 1,230,171	\$ 660,838
Wholesale receivables	974,291	247,389
Other receivables	600,724	100,288
	<u>\$ 2,805,186</u>	<u>\$ 1,008,515</u>

The Company had no customers in fiscal 2018 or 2017 that comprise more than 10% of total net sales. The Company has one wholesale customer that comprised approximately 31% and 25% of wholesale receivables at February 4, 2018 and January 29, 2017, respectively.

Prepaid Expenses and other Current Assets

The Company recognizes payments made for goods and services to be received in the near future as prepaid expenses and other current assets. Prepaid expenses and other current assets consist primarily of payments related to insurance premiums, catalogue costs, deposits and other costs.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 1 – Operations and Significant Accounting Policies (Continued)

Merchandise Inventories

Merchandise inventories are comprised of finished goods and are carried at the lower of cost or net realizable value. Cost is determined on a weighted-average basis (first-in, first out). Merchandise inventories consist primarily of foam filled furniture, sectional couches and related accessories. The Company adjusts its inventory for obsolescence based on historical trends, aging reports, specific identification and its estimates of future retail sales prices.

Gift Certificates and Merchandise Credits

The Company sells gift certificates and issues merchandise credits to its customers in the showrooms and through the website. Revenue associated with gift certificates and merchandise credits is deferred until redemption of the gift certificate and merchandise credits. The Company did not recognize any breakage revenue in fiscal 2018 or fiscal 2017 as the Company continues to honor all outstanding gift certificates.

Property and Equipment, net

Property and equipment are stated at cost less accumulated depreciation and amortization. Office and showroom furniture and equipment, software and vehicles are depreciated using the straight-line method over their estimated useful lives. Leasehold improvements are amortized using the straight-line method over their expected useful lives or lease term, whichever is shorter.

Expenditures for repairs and maintenance are charged to expense as incurred. For assets sold or otherwise disposed of, the cost and related accumulated depreciation or amortization is removed from the accounts, and any resulting gain or loss is reflected in operations for the period. Expenditures for major betterments that extend the useful lives of property and equipment are capitalized.

Goodwill

Goodwill represents the excess of the purchase price over the fair value of the identified net assets of each business acquired. Goodwill and other indefinite-lived intangible assets are tested annually for impairment in the fourth fiscal quarter and in interim periods if certain events occur indicating that the carrying amounts may be impaired. If a qualitative assessment is used and the Company determines that the fair value of a reporting unit or indefinite-lived intangible asset is more likely than not (i.e., a likelihood of more than 50%) less than its carrying amount, a quantitative impairment test will be performed. If goodwill is quantitatively assessed for impairment, a two-step approach is applied.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 1 – Operations and Significant Accounting Policies (Continued)

Goodwill (Continued)

In the first step, the Company compares the fair value of the reporting unit, generally defined as the same level as or one level below an operating segment, to its carrying value. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is considered not impaired and the Company is not required to perform further testing. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then the second step of the impairment test must be performed in order to determine the implied fair value of the reporting unit's goodwill. If the carrying value of a reporting unit's goodwill exceeds its implied fair value, then an impairment loss equal to the difference would be recorded.

There were no impairments during either fiscal 2018 or 2017.

The fair value of the Company's reporting unit is determined by using a discounted cash flow analysis. The determination of fair value requires assumptions and estimates of many critical factors, including among others, the nature and history of the Company, financial and economic conditions affecting the Company, the industry and the general economy, past results, current operations and future prospects, sales of similar businesses or capital stock of publicly held similar businesses, as well as prices, terms and conditions affecting past sales of similar businesses. Forecasts of future operations are based, in part, on operating results and management's expectations as to future market conditions. These types of analyses contain uncertainties because they require management to make assumptions and to apply judgments to estimate industry economic factors and the profitability of future business strategies. However, if actual results are not consistent with the Company's estimates and assumptions, there may be exposure to future impairment losses that could be material.

Patents and Licenses

Patents and licenses are recorded at cost and amortized on a straight line basis over the estimated remaining life of the patent or license. Ongoing maintenance costs are expensed as incurred

Intangible Assets

Intangible assets with finite useful lives, including a vendor relationship, and patents and trade names, are being amortized on a straight-line basis over their estimate lives. Other intangible assets with finite useful lives are reviewed for impairment whenever events or circumstances indicate that the carrying amount of the asset might not be recovered.

If the estimates of the useful lives should change, the Company will amortize the remaining book value over the remaining useful life, or it is deemed to be impaired a write-down of the value of the asset may be required at such time.

There were no impairments during either fiscal 2018 or 2017.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 1 – Operations and Significant Accounting Policies (Continued)

Deferred Financing Costs

The Company's financing costs were deferred and capitalized. These costs were amortized over the life of the related note. The financing costs were treated as debt discounts with the exception of revolving lines of credit. The debt discounts are being amortized over the life of the loans as interest expense. The debt discounts were fully amortized in fiscal 2017. The related amount amortized to interest expense was \$12,844 in fiscal 2017. In 2017, the Company paid \$250,093 to its lender, Siena Lending Group, to renegotiate terms of its credit line. Related amounts amortized to interest expense were \$144,505 in fiscal 2018 and \$57,439 in fiscal 2017.

Impairment of Long-Lived Assets

The Company's long-lived assets consist of property and equipment, which includes leasehold improvements, and other intangible assets. Long-lived assets are reviewed for potential impairment at such time that events or changes in circumstances indicate that the carrying amount of an asset might not be recovered. The Company evaluates property and equipment for impairment at the individual showroom level, which is the lowest level at which individual cash flows can be identified. When evaluating long-lived assets for potential impairment, the Company will first compare the carrying amount of the assets to the future undiscounted cash flows for the respective long-lived asset. If the estimated future cash flows are less than the carrying amounts of the assets, an impairment loss calculation is prepared. An impairment loss is measured based upon the excess of the carrying value of the asset over its estimated fair value which is generally based on an estimated future discounted cash flows. If required, an impairment loss is recorded for that portion of the asset's carrying value in excess of fair value.

There were no impairments of long-lived assets during fiscal 2018 or 2017.

Advertising and Catalog Costs

The Company capitalizes direct response advertising costs, which consist primarily of catalog production and mailing costs, and recognizes expense over the related revenue stream if the following conditions are met (1) the primary purpose of the advertising is to elicit sales to customers who could be shown to have responded specifically to the advertising, and (2) the direct-response advertising results in probable and estimable future benefits.

For the years ended February 4, 2018 and January 29, 2017 the Company capitalized deferred direct-response television, postcard and catalogue costs of approximately \$3,060,029 and \$62,500, respectively. The net balance remaining at February 4, 2018 and January 29, 2017, after amortization, was \$1,348,908 and \$23,417, respectively.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 1 – Operations and Significant Accounting Policies (Continued)

Advertising and Catalog Costs (continued)

Direct-response advertising costs, which are included in prepaid expenses and other current assets, are amortized commencing the date the catalogs and post cards are mailed and the television commercial airs through the estimated period of time for the Company has determined the related advertising impacts sales. The entire outstanding balance as of February 4, 2018 is expected to be amortized in fiscal 2019.

Advertising costs not associated with direct-response advertising are expensed as incurred. Advertising expenses (including amortization of direct-response advertising) which are included in selling, general and administrative expenses were \$6,213,603 in fiscal 2018 and \$2,239,966 in fiscal 2017.

Showroom preopening and closing Costs

Non-capital expenditures incurred in preparation for opening new retail showrooms are expensed as incurred and included in selling, general and administrative expenses.

The Company continually evaluates the profitability of its showrooms. When the Company closes or relocates a showroom, the Company incurs unrecoverable costs, including the net book value of abandoned fixtures and leasehold improvements, lease termination payments, costs to transfer inventory and usable fixtures and other costs of vacating the leased location. Such costs are expensed as incurred and are included in selling, general and administrative expenses. The Company recognized showroom closing costs of approximately \$23,000 in fiscal 2018 and \$89,000 in fiscal 2017 for the closing of two stores in both fiscal 2018 and fiscal 2017.

Product Warranty

Depending on the type of merchandise, the Company offers either a three year limited warranty or a lifetime warranty. The Company's warranties require it to repair or replace defective products at no cost to the customer. At the time product revenue is recognized, the Company will determine if a liability is material for estimated future costs that may be incurred under its warranties. The Company periodically reviews the adequacy of its recorded warranty liability. For both fiscal 2018 and 2017, it was determined that a warranty reserve would be immaterial in nature and a liability was not recorded as expense is less than 1% of sales in both years and there is no indication that warranty expense will increase as a percentage of sales. Warranty expenses were recorded in the period incurred. Product warranty expense was approximately \$423,000 in fiscal 2018 and \$397,000 in fiscal 2017.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 1 – Operations and Significant Accounting Policies (Continued)

Operating leases

Minimum operating lease expenses are recognized on a straight-line basis over the terms of the leases.

Our operating leases could contain provisions for certain incentives. Incentives are deferred and are amortized over the underlying lease term on a straight-line basis as a reduction to rent expense. When the terms or the Company's leases provide for free rent, concessions and/or escalations, the Company establishes a deferred rent liability or asset for the difference of the scheduled rent payments and a straight line rent expense. This liability or asset increases or decreases depending on where the Company is at any given time in the life of the lease.

Fair Value Measurements

The carrying amount of the Company's financial instruments classified as current assets and current liabilities approximate fair values based on the short term nature of the accounts.

Equity Based Compensation

The Company created the 2017 Equity Incentive Plan which provides for Awards in the form of Options, Stock Appreciation Rights, Restricted Stock Awards, Restricted Stock Units, Performance Shares, Performance Units, Cash-Based Awards and Other Stock-Based Awards. As of February 4 2018, there were 1,050,000 shares to be issued under the plan. All awards shall be granted within 10 years from the effective date of the plan. The unit vesting was based on both time and performance. See Note 7 for additional disclosure.

The LLC had incentive option plans for the purchase of 291,491 units. The LLC measured the cost of employee services received in exchange for an award of options based on the grant-date fair value of the options awarded. That cost was recognized as expense over the period the employee is required to provide services, generally the vesting period for that portion of the options awarded that is ultimately expected to vest. The grant-date fair value of the options awarded has been measured using the Black-Scholes valuation model. The value of the equity based compensation related to options is included in paid-in-capital on the accompanying consolidated statements of changes in stockholders' equity. See Note 7 for additional disclosure.

Shipping and Handling

Shipping and handling charges billed to customers are included in revenue. Shipping and handling costs incurred are included in cost of merchandise sold. Shipping and handling costs incurred in fiscal 2018 and 2017 were approximately \$12,740,000 and \$9,661,000, respectively.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 1 – Operations and Significant Accounting Policies (Continued)

Income Taxes

The Company accounts for uncertainty in income taxes using a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement. The Company classifies the liability for unrecognized tax benefits as current to the extent that the Company anticipates payment (or receipt) of cash within one year. Interest and penalties related to uncertain tax positions are recognized in the provision for income taxes. At February 4, 2018 and January 29, 2017, there were no amounts that had been accrued for uncertain tax positions.

Deferred income taxes are provided on temporary differences between the income tax bases of assets and liabilities and the amounts reported in the financial statements and on net operating loss and tax credit carry forwards.

A valuation allowance is provided for that portion of deferred income tax assets not likely to be realized. Deferred income tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

Basic and Diluted Net Loss Per Share

Basic net loss per common share is computed by dividing net loss by the weighted average number of common shares outstanding during the period. As a result of the Company's net loss for both years presented, potentially dilutive securities were excluded from the computation of diluted loss per share, as their effect would be anti-dilutive. At February 4, 2018, potentially dilutive securities include 483,750 unvested restricted stock units and 2,325,136 common stock warrants outstanding, see Note 7. There were no such securities outstanding at January 29, 2017.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 1 – Operations and Significant Accounting Policies (Continued)

Basic and Diluted Net Loss Per Share (continued)

Basic and diluted net loss per common share is computed as follows:

	For the year ended February 4, 2018	For the year ended January 29, 2017
Numerator:		
Net loss - Basic and diluted	\$ (5,501,798)	\$ (6,874,448)
Unpaid dividends accumulated on preferred shares	(1,208,003)	-
Net loss attributable to common shares	<u>(6,709,801)</u>	<u>(6,874,448)</u>
Denominator:		
Weighted average number of common shares for basic and diluted net loss per share	15,001,748	14,368,216
Basic and diluted net loss per share	<u>\$ (0.45)</u>	<u>\$ (0.48)</u>

New Accounting Pronouncements

Except as described below, the Company has considered all other recently issued accounting pronouncements and does not believe the adoption of such pronouncements will have a material impact on its financial statements. The Company, as an emerging growth company, has elected to use the extended transition period for complying with new or revised financial accounting standards.

In August 2015, the Financial Accounting Standards Board (“FASB”) issued Accounting Standard Update (“ASU”) No. 2015-14, which defers the effective date of ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606) by one year. ASU 2015-14 is a comprehensive new revenue recognition model requiring a company to recognize revenue to depict the transfer of goods or services to a customer at an amount reflecting the consideration it expects to receive in exchange for those goods or services. As a result, ASU 2015-14 is now effective for fiscal years, and interim periods within those years, beginning after December 15, 2018, which for the Company is fiscal 2020. Earlier application is permitted. The Company is in the process of determining how this update will impact the Company’s consolidated financial statements and the notes thereto going forward.

THE LOVESAC COMPANY

CONSOLIDATED NOTES TO FINANCIAL STATEMENTS

FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 1 – Operations and Significant Accounting Policies (Continued)

New Accounting Pronouncements (continued)

In February 2016, FASB issued ASU No. 2016-02, *Leases (Topic 842)* amending lease guidance to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. ASU No. 2016-02 is effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020, with early adoption permitted. Management is currently evaluating the impact ASU No. 2016-02 will have on these consolidated financial statements.

In March 2016, FASB issued ASU No. 2016-09, *Compensation – Stock Compensation (Topic 718)*. ASU 2016-09 simplifies several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. Some of the simplified areas apply only to nonpublic entities. ASU 2016-09 is effective for annual periods beginning after December 15, 2017, and interim periods within annual periods beginning after December 15, 2018. Early adoption is permitted in any interim or annual period. If an entity early adopts ASU 2016-09 in an interim period, any adjustments should be reflected as of the beginning of the fiscal year that includes that interim period. Methods of adoption vary according to each of the amendment provisions. Management is currently evaluating the impact ASU No. 2016-09 will have on these consolidated financial statements.

In August 2016, FASB issued ASU 2016-15, *Statement of Cash Flows: Clarification of Certain Cash Receipts and Cash Payments*, which eliminates the diversity in practice related to classification of certain cash receipts and payments in the statement of cash flows, by adding or clarifying guidance on eight specific cash flow issues. ASU 2016-15 is effective for fiscal years beginning after December 15, 2018, and interim periods within fiscal years beginning after December 15, 2019. Early adoption is permitted, including adoption in an interim period. The Company has not yet determined the effect of the adoption of ASU 2016-15 on the Company's consolidated financial position and results of operations.

In July 2017, FASB issued ASU 2017-11, "*Earnings Per Share (Topic 260) Distinguishing Liabilities from Equity (Topic 480) Derivatives and Hedging (Topic 815)*," which addresses the complexity of accounting for certain financial instruments with down round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced on the basis of the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. The amendments in Part I of ASU 2017-11 are effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted for all entities, including adoption in an interim period. The Company early adopted this ASU in fiscal 2018 and applied its provisions which allowed the Company to account for the warrants issued along with the preferred raise in fiscal 2018 as equity versus a liability, see Note 7 to these consolidated financial statements.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 2 – Property and Equipment, Net

Property and equipment as of February 4, 2018 and January 29, 2017 consists of:

	<u>Estimated Life</u>	<u>2018</u>	<u>2017</u>
Office and store furniture, and equipment	5 Years	\$ 3,430,735	\$ 3,100,117
Software	3 Years	2,429,149	2,384,827
Leasehold improvements	Shorter of estimated useful life or lease term	13,859,312	8,651,095
Construction in process	NA	638,373	580,998
		<u>20,357,569</u>	<u>14,717,037</u>
Accumulated depreciation and amortization		(9,320,280)	(8,123,506)
		<u>\$ 11,037,289</u>	<u>\$ 6,593,531</u>

Depreciation expense was \$1,996,191 in fiscal 2018 and \$1,828,901 in fiscal 2017.

Note 3 – Other Intangible Assets, Net

A summary of other intangible assets follows:

		<u>February 4, 2018</u>		
		<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>
Patents	10 Years	\$ 1,056,604	\$ (674,660)	\$ 381,944
Trademarks	3 Years	603,807	(500,763)	103,044
Other intangibles	5 Years	839,738	(798,356)	41,382
Total		<u>\$ 2,500,149</u>	<u>\$ (1,973,779)</u>	<u>\$ 526,370</u>
		<u>January 29, 2017</u>		
	<u>Estimated Life</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>
Patents	10 Years	\$ 933,463	\$ (606,110)	\$ 327,353
Trademarks	3 Years	544,322	(419,481)	124,841
Other Intangibles	5 Years	849,503	(729,880)	119,623
Total		<u>\$ 2,327,288</u>	<u>\$ (1,755,471)</u>	<u>\$ 571,817</u>

Amortization expense on other intangible assets was \$218,308 in fiscal 2018 and \$281,211 in fiscal 2017.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 3 – Other Intangible Assets, Net (Continued)

Expected amortization expense by fiscal year for these other intangible assets follows:

2019	\$	126,378
2020		91,593
2021		59,014
2022		40,493
2023		40,493
Thereafter		168,399
	<u>\$</u>	<u>526,370</u>

Note 4 – Prepaid Expenses and Other Current Assets

A summary of other prepaid and other current assets follows:

	<u>2018</u>	<u>2017</u>
Prepaid insurance	\$ 463,661	\$ 425,632
Prepaid catalogue costs	1,750,204	447,000
Barter credits	307,417	-
Deposits	400,000	350,000
Prepaid rent	1,207,812	161,866
Prepaid inventory	355,053	--
Other	1,578,799	513,728
	<u>\$ 6,062,946</u>	<u>\$ 1,898,226</u>

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 5 – Income Taxes

On December 22, 2017, the Federal government of the United States enacted the U.S. Tax Cuts and Jobs Act (the “Tax Act”) which significantly changed existing U.S. tax laws including a reduction in the federal corporate income tax rate from 35% to 21%, repeal of the corporate alternative minimum tax (“AMT”) and refund certain existing AMT credits over several years, introduction of a capital investment deduction, limitation of the interest deduction, limitation of the use of net operating losses incurred on or after January 1, 2018 to offset future taxable income, limitation of the deduction for compensation paid to certain executive officers and extensive changes to the U.S. international tax system, as well as other changes. These changes generally took effect on January 1, 2018. The U.S. Treasury department is expected to release regulations implementing the Tax Act and the U.S. tax laws may be further amended in the future. The Company’s federal net operating losses that have been incurred prior to December 31, 2017 will continue to have a 20-year carryforward limitation applied and will need to be evaluated for recoverability in the future as such. Net operating losses incurred after December 31, 2017 will have an indefinite life, but usage will be limited to 80% of taxable income in any given year. On December 22, 2017, the SEC issued Staff Accounting Bulletin 118 (“SAB 118”), which provides guidance on accounting for tax effects of the Tax Act. SAB 118 provides a measurement period that should not extend beyond one year from the Tax Act enactment date for companies to complete the accounting under ASC 740.

In accordance with SAB 118, a company must reflect the income tax effects of those aspects of the Act for which the accounting under ASC 740 is complete.

To the extent that a company’s accounting for certain income tax effects of the Tax Act is incomplete but it is able to determine a reasonable estimate, it must record a provisional estimate to be included in the financial statements. If a company cannot determine a provisional estimate to be included in the financial statements, it should continue to apply ASC 740 on the basis of the provision of the tax laws that were in effect immediately before the enactment of the Tax Act. As a result, the consolidated statements of operations reflect a net decrease of \$6,658,540 in deferred tax assets which was offset by a reduction in the Valuation Allowance of \$6,658,540 resulting in no tax impact for the year ended February 4, 2018 from the re-measurement of the Company’s net Federal deferred tax assets to the lower corporate tax rate.

The components of deferred income taxes follow:

	<u>2018</u>	<u>2017</u>
Deferred Income Tax Assets		
Federal net operating loss carryforward	\$ 9,211,499	\$ 12,837,737
State net operating loss carryforward	2,130,112	2,356,321
Intangible assets	318,158	395,573
Customer deposits	237,548	262,334
Deferred rent	277,844	265,445
Accrued vacation	-	66,201
Stock compensation	38,807	-
Property and equipment	985,871	1,136,192
Merchandise inventories	63,415	119,009
Total Deferred Income Tax Assets	<u>13,263,254</u>	<u>17,438,812</u>
Deferred Income Tax Liabilities		
Deferred lease asset	-	(10,895)
Net Deferred Income Tax Before	<u>13,236,254</u>	<u>17,427,917</u>
Valuation Allowance	<u>(13,263,254)</u>	<u>(17,427,917)</u>
Net Deferred Income Tax Asset	<u>\$ --</u>	<u>\$ --</u>

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 5 – Income Taxes (Continued)

The income tax provision (benefit) differs from the amount obtained by applying the statutory Federal income tax rate to pretax income as follows:

	<u>2018</u>	<u>2017</u>
(Benefit) at Federal Statutory rates	\$ (1,861,772)	\$ (2,290,451)
Permanent adjustments	62,491	24,057
State tax, net of Federal benefit	(265,277)	(111,925)
Change in Federal rate from 34% to 21%	6,658,540	--
Federal True-ups	(403,322)	--
Change in valuation allowance	(4,164,660)	2,516,319
Income tax (benefit) provision	<u>\$ 26,000</u>	<u>\$ 138,000</u>

Differences in terms of percentages are as follows:

	<u>2018</u>	<u>2017</u>
(Benefit) at Federal Statutory rates	34.0%	34.0%
Permanent adjustments	(1.1%)	(1.1%)
State tax, net of Federal benefit	4.8%	2.5%
Change in Federal rate from 34% to 21%	(121.6%)	-
Federal True-ups	<u>7.3%</u>	<u>-</u>
Change in valuation allowance	76.1%	(37.5%)
Income tax (benefit) provision	<u>(0.5%)</u>	<u>(2.1%)</u>

At February 4, 2018 and January 29, 2017, the Company had net operating loss carryforwards available for federal income tax purposes of approximately \$43,864,000 and \$40,430,000, respectively, which are scheduled to expire in varying amounts from fiscal 2027 to fiscal 2037. As defined in Section 382 of the Internal Revenue Code, certain ownership changes limit the annual utilization of federal net operating losses. As a result of issuance, sales and other transactions involving the Company's stock, the Company has not experienced an ownership change which could cause such federal net operating losses to be subject to limitation under Section 382. In addition, the Company had approximately \$35,908,000 and \$29,257,000 of state net operating loss carryforwards as of February 4, 2018 and January 29, 2017, respectively.

During fiscal 2018, the Company decreased the valuation by approximately \$4,164,000 and during fiscal 2017, the Company increased the valuation allowance by approximately \$2,516,000.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 6 – Commitments, Contingencies And Related Parties

Operating Lease Commitments

The Company leases its office, warehouse facilities and retail showrooms under operating lease agreements which expire at various dates through November 2027. Monthly payments related to these leases range from \$2,500 to \$24,600. Total rent expense including common area maintenance charges and sales percentage rent was approximately \$11,772,555 in fiscal 2018 and \$10,601,836 in fiscal 2017.

Expected future annual minimum rental payments under these leases follow:

2019	\$ 6,392,019
2020	5,994,525
2121	5,437,498
2022	5,018,610
2023	4,763,621
Thereafter	14,198,709
	<u>\$ 41,804,982</u>

The above disclosure includes lease extensions for various retail showrooms the Company entered into after year end.

Severance Contingency

The Company has various employment agreements with its senior level executives. A number of these agreements have severance provisions, ranging from 6 to 18 months of salary, in the event those employees are terminated without cause. The total amount of exposure to the Company under these agreements was \$2,223,000 at February 4, 2018 if all executives with employment agreements were terminated without cause and the full amount of severance was payable.

Legal Contingency

The Company was a party to a class action case in the state of California regarding a wage dispute. The suit was settled in January 2017 and the payment of \$875,000, which was fully accrued for in fiscal 2016, was made in the same month.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 6 – Commitments, Contingencies And Related Parties (Continued)

Related Parties

Mistral Capital Management, LLC (Mistral), an affiliate of the majority owner of the Company, performs management services for the Company under a contractual agreement. Management fees totaled approximately \$400,000 in fiscal 2018 and in fiscal 2017 and are included in selling, general and administrative expenses. Amounts payable to Mistral as of February 4, 2018 and January 29, 2017 were \$121,103 and \$129,530, respectively and are included in accounts payable in the accompanying balance sheets.

Satori Capital, LLC (Satori), performs management services for the Company under a contractual agreement. Management fees totaled approximately \$83,888 for fiscal 2018 and are included in selling, general and administrative expenses. There was no amounts payable to Satori as of February 4, 2018 or January 29, 2017.

The Company engaged Blueport Commerce (Blueport), a company that investment vehicles affiliated with Mistral have equity in, during fiscal 2017 to evaluate a transition plan to convert to the Blueport Commerce platform. Fees totaled \$15,235 and \$164,500 in fiscals 2018 and 2017, respectively and are included in selling, general and administrative expense. Amounts payable to Blueport as of February 4, 2018 and January 29, 2017 were \$15,235 and \$82,250, respectively and are included in accounts payable in the accompanying balance sheets.

Note 7 – Stockholders’ Equity

Recapitalization

On January 3, 2017, the LLC formed a wholly owned subsidiary, The Lovesac Company, a Delaware Corporation. Subsequent to year end on March 22, 2017, the LLC executed an assignment and assumption agreement with newly formed The Lovesac Company. Sac Acquisition LLC agreed to assign all rights, title and interest in all assets and The Lovesac Company assumed all liabilities that are currently held by The Lovesac Company, in exchange for equity of The Lovesac Company, in the form of 15,000,000 common shares, par value \$.00001. The Company has retroactively reflected the recapitalization in the accompanying consolidated balance sheets, statements of operations and the statement of changes in stockholders’ equity.

The following reconciles the original Sac Acquisition LLC equity structure to the recapitalized The Lovesac Company equity structure:

	Sac Acquisition, LLC										The Lovesac Company					Total Stockholders’ Equity			
	Common Stock		Preferred A		Preferred B		Preferred D		Additional paid-in-capital	Accumulated Deficit	Common Stock		Preferred Stock		Additional paid-in-capital		Accumulated Deficit		
	Units	Amount	Units	Amount	Units	Amount	Units	Amount			Units	Amount	Units	Amount					
Sac Acquisition, LLC Equity, January 29, 2017	436,741	\$ -	449,420	\$ 17,311,643	898,596	\$ 22,792,450	13,670,000	\$ 15,991,215	1,706,200	\$ (50,751,655)	-	\$ -	-	\$ -	-	\$ -	-	\$ -	7,049,853
Effect of exchange of all assets and the assumption of all liabilities of Sac Acquisition, LLC by The Lovesac Company for common stock	(436,741)	-	(449,420)	(17,311,643)	(898,596)	(22,792,450)	(13,670,000)	(15,991,215)	(1,706,200)	50,751,655	15,000,000	150	300,000	3	57,801,355	(50,751,655)	-	-	-
Recapitalized stockholders’ equity in The Lovesac Company	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	15,000,000	\$ 150	300,000	\$ 3	\$ 57,801,355	\$ (50,751,655)	\$ -	\$ -	7,049,853

THE LOVESAC COMPANY

CONSOLIDATED NOTES TO FINANCIAL STATEMENTS

FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 7 – Stockholders’ Equity (Continued)

Preferred Stock

In March 2017, the Company completed a financing transaction with certain existing investors in Sac Acquisition LLC in which the Company converted preferred stock in SAC Acquisition LLC to 300 Series A Preferred Units (preferred stock equivalent of 300,000) and warrants to purchase 218,261 of the Company’s common stock, subject to adjustments in the exercise price as defined below. The units carry an annual dividend of 8% compounded. The units also carry conversion rights dependent upon certain events occurring, as defined in the agreement.

In March, June, September, October and December 2017, the Company completed financing transactions with various investors, including entities affiliated with Mistral. As part of the transactions, the Company received \$5,885,967 (net of issuance costs of \$344,033) in cash in exchange for 623 Series A Preferred units (preferred stock equivalent of 623,000 shares) and warrants to purchase 453,256 shares of common stock, subject to adjustments in the exercise price as defined below. The units carry an annual dividend of 8% compounded. The units also carry conversion rights dependent upon certain events occurring, as defined below. The Series A Preferred Units shall vote with the common stock on an as converted basis.

In April 2017 and May 2017, the Company, completed financing transactions with entities affiliate with Satori Capital, LLC “Satori”. As part of the transactions, the Company received \$9,073,877 in cash (net of issuance costs of \$926,123) in exchange for 1,000 Series A-1 Preferred Units (preferred stock equivalent of 1,000,000 shares) and warrants to purchase 1,018,552 shares of common stock, subject to adjustments in the exercise price as defined below. The units carry an annual dividend of 8% compounded. The units also carry conversion rights dependent upon certain events occurring, as defined below.

In October 2017, the Company completed a financing transaction with entities affiliated with Satori and as part of the transaction the Company received \$3,970,000 in cash (net of issuance costs of \$30,000) in exchange for 400 Series A-2 Preferred Units (preferred stock equivalent of 400,000 shares) and warrants to purchase 407,421 shares of common stock, subject to adjustments in the exercise price as defined below. The units carry an annual dividend of 8% compounded. The units also carry conversion rights dependent upon certain events occurring, as defined below. The Series A-2 Preferred Stock ranks senior to the Company’s common stock and all other classes or series of equity securities established after the initial issue date of the Series A-2 Preferred Stock, in regards to payment of dividends and rights upon liquidation, dissolution and winding-up of the Company. The only exception to this is if any the terms of other classes or series of equity securities expressly provides that it ranks senior to the Series A-2 Preferred Stock.

In November and December 2017, the Company completed financing transactions with executive management and as part of the transactions the Company received \$115,000 in cash (net of issuance costs of \$0) in exchange for 11.5 Series A-2 Preferred Units (preferred stock equivalent of 11,500 shares) and warrants to purchase 11,713 shares of common stock, subject to adjustments in the exercise price as defined below. The units carry an annual dividend of 8% compounded. The units also carry conversion rights dependent upon certain events occurring, as defined below.

In December 2017, the Company completed a financing transaction with Mistral Sac Holdings 4, LLC and as part of the transaction the Company received \$2,095,000 in cash (net of issuance costs of \$25,000) in exchange for 212 Series A-2 Preferred Units (preferred stock equivalent of 212,000 shares) and warrants to purchase 215,933 shares of common stock, subject to adjustments in the exercise price as defined below. The units carry an annual dividend of 8% compounded. The units also carry conversion rights dependent upon certain events occurring, as defined below.

Each holder of the Series A-2 Preferred Stock has voting rights equal to the number of whole shares of common Stock into which the Series A-2 Preferred Stock would be convertible.

THE LOVESAC COMPANY

CONSOLIDATED NOTES TO FINANCIAL STATEMENTS

FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 7 – Stockholders’ Equity (Continued)

The preferred shares converted as follows:

- (1) To the extent not previously converted, the preferred shares will automatically convert into shares of common stock on the first anniversary date of the closing of an initial public offering, as defined, into a number of shares of common stock equal to the quotient obtained by dividing the then current conversion preference of the preferred shares then outstanding, plus accrued but unpaid dividends not then included in the conversion preference, plus, as amended subsequent to the end of the fiscal year, at the closing of an initial public offering, the preferred stock (i) will accrue an additional amount of dividends equal to the amount of dividends that would have accrued and accumulated through and including the one year anniversary of the completion of the initial public offering, and (ii) will, along with the aggregate accrued or accumulated and unpaid dividends thereon, automatically convert into shares of common stock.
- (2) In the event that the Company completes a qualified financing, as defined, with an institutional investor that results in aggregate gross proceeds of at least \$15 million, and prior to an initial public offering, the preferred shareholders will have the right, but not the obligation, to convert its preferred shares into new preferred shares. The new preferred shares conversion is determined based on a valuation equal to seventy percent of the pre-money valuation received by the Company in the financing. Following the qualified financing, the conversion price for the preferred shares not converted shall be adjusted to seventy percent of the qualified financing valuation, as defined.
- (3) In the event that the Company does not complete an initial public offering by March 31, 2019 and the preferred shares have not then previously been converted into new preferred shares in connection with a qualified financing, an investor shall have the right but not the obligation, to convert its preferred shares, prior to the mandatory conversion date, into shares of common stock at a conversion price determined based on a valuation equal to seventy percent of the valuation received by the Company in its then most recent round of qualified financing, as defined. If no such financing has been completed by March 31, 2019, an investor shall have the right, but not the obligation, to convert its preferred shares to common stock at a conversion price based on the offering valuation, as defined.

As further described in Note 12, on April 19, 2018, the Company amended the terms of conversion of the preferred shares.

A summary of preferred stock by series is as follows:

	Series A		Series A-1		Series A-2		Total	
	Share	Amount	Share	Amount	Share	Amount	Share	Amount
Balance, February 1, 2016	-	\$ -	-	\$ -	-	\$ -	-	\$ -
Sale of equity	300,000	3	-	-	-	-	300,000	3
Balance, January 29, 2017	300,000	3	-	-	-	-	300,000	3
Issuance of preferred stock	623,000	6	1,000,000	10	623,500	7	2,246,500	23
Balance, February 4, 2018	923,000	\$ 9	1,000,000	\$ 10	623,500	\$ 7	2,546,500	\$ 26

Accumulated and unpaid dividends are as follows:

	Series A	Series A-1	Series A-2	Total
\$	472,870	\$ 621,205	\$ 113,928	\$ 1,208,003

Liquidation preference is as follows:

	Series A	Series A-1	Series A-2	Total
\$	9,702,870	\$ 10,621,205	\$ 6,348,928	\$ 26,673,003

Common Stock Warrants

In connection with the financing and the conversion above, the Company issued warrants to investors to purchase shares of the Company’s common stock in connection with fund raising activities. Warrants may also be issued to individuals or companies in exchange for services provided for the company. The warrant shall expire on the first to occur of (a) three (3) years from the date of the earlier of (x) a qualified IPO or (y) a qualified financing, whichever comes first, (b) the fifth (5th) anniversary of the date of issuance, or (c) the occurrence of any voluntary or involuntary liquidation, dissolution or winding up of the Company, or a deemed liquidation event.

THE LOVESAC COMPANY

CONSOLIDATED NOTES TO FINANCIAL STATEMENTS

FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 7 – Stockholders’ Equity (Continued)

As of February 4, 2018, the total warrants outstanding allowed the holder to purchase an aggregate total of \$15,979,500 or 2,325,136 of common stock subject to adjustments in the exercise price as defined below. Each warrant expires no later than five years from the date of issuance and is exercisable for \$6.87 per share. The Warrant may be exercised at any time following the date of issuance during the period prior to the Expiration Date. The fair value of each warrant is estimated on the date of grant using a probability-weighted expected return method. Expected volatilities are based on comparable’ companies historical volatility, which management believes represents the most accurate basis for estimating expected future volatility under the current circumstances. The risk-free rate is based on the U.S. Treasury yield in effect at the time of the grant. The fair value of stock was also determined by using a probability-weighted expected return method. There were four scenarios used in the probability-weighted expected return method, each with different assumptions to calculate the fair value of the common stock warrants granted during fiscal 2018. The average probability-weighted assumptions are noted in the following table:

Expected volatility	57.7% - 59.60%
Expected dividend yield	0%
Expected term (in years)	3.5
Risk-free rate	1.7% - 2.0%
Fair value of stock	\$ 4.31
Calculated fair value of warrant	\$ 1.13 - \$1.14

	<u>Average Exercise Price</u>	<u>Number of Warrants</u>	<u>Weighted average remaining contractual life (yrs)</u>
Outstanding at January 29, 2017	\$ -	-	-
Warrants issued	6.87	2,325,136	3.86
Exercised	-	-	-
Expired and canceled	-	-	-
Outstanding at February 4, 2018	<u>\$ 6.87</u>	<u>2,325,136</u>	<u>3.24</u>

In order to prevent dilution of the purchase rights granted under the warrants, the exercise price and the number of warrant shares issuable upon exercise of the warrants shall be subject to adjustment from time to time.

In the event the Company shall at any time after the issue date of the warrants and until the earliest of (i) following the completion of a qualified IPO, two (2) years after the issue date, or (ii) the completion of a qualified financing, issue additional shares of common stock, without consideration or for a consideration per share less than the applicable exercise price in effect immediately prior to such issue, then the exercise price shall be reduced, concurrently with such issue, to the consideration per share received by the Company for such issue or deemed issue of the additional shares of common stock; provided that if such issuance or deemed issuance was without consideration, then the Company shall be deemed to have received an aggregate of \$.00001 of consideration for all such additional shares of common stock issued or deemed to be issued.

The Company early adopted ASU 2017-11, which addresses the accounting for warrants with down round features that result in the strike price being reduced on the basis of the pricing of future equity offerings, which allowed the Company to account for the warrants issued along with the preferred raise in fiscal 2018 as equity versus a liability.

equity incentive plans

The following 2007 and 2010 incentive option plan disclosures relate to the original equity structure for LLC. Going forward, the related expense for these options will be settled in units by LLC whom will charge the Company the related compensation expense on an ongoing basis.

2007 option plan

The LLC created an incentive option plan in 2007 (2007 Stock Plan) that provided for granting up to 47,153 non-qualified option awards, common units, to key employees and directors to purchase membership units of the LLC. The Plan is administered by the Board of Directors.

Unvested options are restricted as to disposition and subject to forfeiture under certain circumstances. Options awarded generally vest ratably over four years and expire after ten years. The total number of options vested and outstanding as of February 4, 2018 and January 29, 2017 was 39,884 and 47,153, respectively. There were no options neither granted, exercised forfeited, nor canceled during fiscal 2018 and 2017, except for the expiration of 7,269 options in fiscal 2018. The weighted average exercise price of these options at January 29, 2017 was \$12.75.

2010 option plan

On May 24, 2010, the Board adopted and the Members of the Company approved the SAC Acquisition LLC 2010 Unit Plan (2010 Unit Plan) that provides for granting up to 244,338 non-qualified option awards to employees, consultants and directors to purchase membership units of the LLC. Options vest over a vesting schedule to be determined by the Board and expire after ten years.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 7 – Stockholders’ Equity (Continued)

The exercise price for options granted under the plans shall not be less than the fair value of the related membership unit at the time the option is granted.

Changes in the 2010 Unit Plan are as follows:

	<u>Number of options outstanding</u>	<u>Weighted average exercise price per unit</u>	<u>Weighted average remaining contractual life (yrs)</u>
Outstanding at January 31, 2016	139,289	\$ 32.25	7.45
Granted	16,520	36.11	9.50
Exercised	-	-	-
Canceled, forfeited or expired	(5,180)	35.62	(7.87)
Outstanding at January 29, 2017	150,629	32.71	6.73
Granted	91,198	12.75	9.73
Exercised	-	-	-
Canceled, forfeited or expired	(26,696)	36.11	(7.33)
Outstanding at February 4, 2018	<u>215,131</u>	<u>24.35</u>	<u>7.29</u>

The total number of options vested as of February 4, 2018 was 181,858.

Option compensation expense related to the 2010 Unit Plan was \$103,807 in fiscal 2018 and \$25,756 in fiscal 2017.

The total unrecognized option compensation cost related to non-vested option awards was \$7,697 as of February 4, 2018 and will be recognized in operations over a weighted average period of 1.29 years.

2017 Equity incentive plan

In October 2017, the Company created the 2017 Equity Incentive Plan which provides for Awards in the form of Options, Stock Appreciation rights, Restricted Stock Awards, Restricted Stock Units, Performance shares, Performance Units, Cash-Based Awards and Other Stock-Based Awards. As of February 4, 2018, there were 1,050,000 shares to be issued under the plan. All awards shall be granted within 10 years from the effective date of the plan. Other than the activity disclosed below relating to restricted stock units, there was no other activity under this equity incentive plan for the years ended February 4, 2018 and January 29, 2017.

In October 2017, the Company granted 645,000 Restricted Stock Units with a fair value of \$2,792,849. As of February 4, 2018 there were 483,750 units outstanding. The unit vesting was based on both time and performance. The time vesting units vest twenty-five percent on January 31, 2018, and twenty-five percent on each of the next three anniversaries of that initial vesting date. The performance vesting units vest annually upon the achievement of certain benchmarks. There were no restricted stock units cancelled, forfeited, or expired during fiscal 2018 and 2017.

A summary of the status of our unvested restricted stock as of February 4, 2018, and changes during the year then ended, is presented below:

	<u>Number of shares</u>	<u>Weighted average grant date fair value</u>
Unvested at beginning of year	-	\$ -
Granted	645,000	4.33
Forfeited	-	-
Vested	161,250	4.33
Unvested at year end	<u>483,750</u>	<u>\$ 4.33</u>

Stock compensation expense related to the above restricted stock units was \$846,747 for fiscal 2018.

The total unrecognized restricted stock unit compensation cost related to non-vested awards was \$1,946,102 as of February 4, 2018 and will be recognized in operations over a weighted average period of 2.6 years.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 8 – Employee Benefit plan

In February 2017, the Company established The Lovesac Company 401(k) Plan (the “Plan”) with Elective Deferrals beginning May 1, 2017. The Plan calls for Elective Deferral Contributions, Safe Harbor Matching Contributions and Profit Sharing Contributions. All employees of the Company will be eligible to participate in the Plan as of the day of the month which is coincident with or next follows the date on which they attain age 21 and complete 1 month of service. Participants will be able to contribute up to 100% of their eligible Compensation to the plan subject to limitations with the IRS. The employer contributions to the Plan for fiscal 2018 were approximately \$156,000.

Note 9 – Financing Arrangements

note payable

In July 2016, the Company entered into a one year note payable arrangement for \$500,000 with American Express Merchant Financing (Amex) that bore interest at 3.5%. Principal and interest payments on this note were done by Amex withholding 6% of the Company’s Amex credit card remittances. The note expired on June 29, 2017 and was paid in full. As of January 29, 2017 the outstanding balance of the note payable was \$194,530.

Credit Line

The Company has a line of credit with Siena Lending Group, LLC (the “Lender”) to borrow up to \$7.0 million, which matures on May 14, 2018. Borrowings are limited to lesser of 75% of inventory or 85% of the net orderly liquidation value of inventory and may be reduced by certain liabilities of the Company. All amounts outstanding shall bear interest at the base rate, which is defined as the greatest of (i) Prime Rate published by The Wall Street Journal, (ii) Federal Funds Rate plus 0.5% or (iii) 3.25%, plus 3% (7.00% at February 4, 2018 and 6.75% January 29, 2017). The line is subject to a monthly unused line fee of .75%. The agreement is secured by the 1st lien on substantially all assets of the Company. The outstanding balance was \$405 as of February 4, 2018 and \$3,098,777 as of January 29, 2017.

The loan agreement calls for certain covenants which includes a timing of the financial statements threshold and a minimum excess availability threshold.

Note 10 – Segment Information

The Company operates within a single reporting segment. The chief operating decision maker of the Company is the Chief Executive Officer and President. The Company’s operating segments are aggregated for financial reporting purposes because they are similar in each of the following areas including economic characteristics, class of consumer, nature of products and distribution method and products are a singular group of products which make up over 95% of total sales.

The Company’s sales by product which are considered one segment are as follows:

	Fiscal year ending	
	February 4, 2018	January 29, 2017
Sactionals	\$ 72,562,546	\$ 54,108,297
Sacs	26,854,616	20,130,485
Other	2,393,251	2,102,277
	\$ 101,810,413	\$ 76,341,059

THE LOVESAC COMPANY

CONSOLIDATED NOTES TO FINANCIAL STATEMENTS

FOR THE YEARS ENDED FEBRUARY 4, 2018 AND JANUARY 29, 2017

Note 11 – Barter Arrangements

In fiscal 2018, the Company entered into a bartering arrangement with Icon International, Inc., a vendor, whereas the Company will provide inventory in exchange for media credits. During fiscal 2018, the Company exchanged \$577,326 of inventory plus the cost of freight for certain media credits. To account for the exchange, the Company recorded the transfer of the inventory asset as a reduction of inventory and an increase to a prepaid media asset of \$534,407 which is included in “Prepaid and other current assets” on the accompanying consolidated balance sheet. The Company has \$307,417 of unused media credits remaining as of February 4, 2018 that are expected to be used over the next twelve months. There were no such arrangements in fiscal 2017.

The Company accounts for barter transactions under ASC Topic No. 845 “Nonmonetary Transactions.” Barter transactions with commercial substance are recorded at the estimated fair value of the products exchanged, unless the products received have a more readily determinable estimated fair value. Revenue associated with barter transactions is recorded at the time of the exchange of the related assets.

Note 12 – Subsequent Events

The Company has evaluated events and transactions subsequent to February 4, 2018 through the date the consolidated financial statements were issued.

On February 6, 2018, the Company terminated its line of credit with Siena and replaced it with a line of credit with Wells Fargo Bank, National Association (“Wells”). The line of credit with Wells allows the Company to borrow up to \$25.0 million and will mature in February 2022. The commitments by the lenders under the Wells line of credit are subject to borrowing base and availability restrictions. Up to \$500,000 of the Credit Facility may be used for the issuance of letters of credit and up to \$2.5 million of the Credit Facility may be used for the making of swing line loans.

The Company may elect that revolving loans bear interest at a rate per annum equal to the base rate plus an applicable margin (1.00% to 1.25%) or the LIBOR rate plus an applicable margin (2.00% to 2.25%). The applicable margin is based on tiers relating to the quarterly average excess availability. The loan agreement calls for certain covenants including a timing of the financial statements threshold and a minimum excess availability threshold.

On April 19, 2018, the Company and the majority holders of each of the Series A Preferred Stock, the Series A-1 Preferred Stock and the Series A-2 Preferred Stock agreed to amend and restate the preferred stock to, among other things, revise the conversion features of the preferred stock to provide that, immediately prior to the closing of an initial public offering, the preferred stock (i) will accrue an additional amount of dividends equal to the amount of dividends that would have accrued and accumulated through and including the one year anniversary of the completion of the initial public offering, and (ii) will, along with the aggregate accrued or accumulated and unpaid dividends thereon, automatically convert into shares of common stock at a price per share equal to the lesser of (a) 70% of the offering price, or (b) the applicable calculation set forth pursuant to the terms of their respective certificates of designation.

On April 19, 2018, the Company and a majority of the holders of the warrants issued along with the preferred stock, agreed to amend and restate the warrants to replace the aggregate dollar value of each warrant with a fixed number of warrant shares. As a result of the conversion to warrant shares, warrant holders will receive additional shares of common stock upon exercise than they would have under the original warrants. The exercise price after completion of the offering will remain at the price per share of common stock in the offering.

On April 19, 2018, the Company granted 461,530 restricted stock units to certain officers and employees of the Company. The vesting of the restricted stock units is based on both time and performance. The time vesting units vest twenty-five percent on May 1, 2018, and twenty-five percent on January 31, 2019, 2020 and 2021. The performance vesting units vest annually upon the achievement of certain benchmarks. Also on April 19, 2018, the board of directors of the Company approved an increase in shares of common stock reserved for issuance under the 2017 equity incentive plan from 1,050,000 to 1,511,530 shares of common stock.

THE LOVESAC COMPANY
CONSOLIDATED FINANCIAL STATEMENTS
JANUARY 31, 2016

THE LOVESAC COMPANY

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Audit Committee of the Board of Directors and Stockholders of
The Lovesac Company
Stamford, Connecticut

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of The Lovesac Company (the "Company") as of January 31, 2016, and the related consolidated statements of operations, stockholders' equity, and cash flows for the year then ended, and the related notes (collectively referred to as the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of January 31, 2016 and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the U.S. Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of the internal controls over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

/s/ Fiondella, Milone & LaSaracina LLP

We have served as the Company's auditor for only the year ended January 31, 2016.

Glastonbury, Connecticut
December 20, 2017, except for Note 10,
As to which the date is April 20, 2018

THE LOVESAC COMPANY
CONSOLIDATED BALANCE SHEET
AS OF JANUARY 31, 2016

	<u>2016</u>
Assets	
Current Assets	
Cash and cash equivalents	\$ 208,836
Trade accounts receivable	1,188,927
Merchandise inventories	8,387,974
Prepaid expenses and other current assets	<u>2,587,227</u>
Total Current Assets	<u>12,372,964</u>
Property and Equipment, Net	<u>4,741,790</u>
Other Assets	
Goodwill	143,562
Other intangible assets, net	548,263
Deferred financing costs, net	<u>12,844</u>
Total Other Assets	<u>704,669</u>
Total Assets	<u>\$ 17,819,423</u>
Liabilities and Stockholders' Equity	
Current Liabilities	
Accounts payable	\$ 7,733,129
Accrued expenses	1,054,969
Payroll payable	1,047,718
Customer deposits	1,010,999
Sales taxes payable	675,914
Note payable	<u>--</u>
Total Current Liabilities	11,522,729
Deferred rent	487,105
Line of credit	<u>3,177,238</u>
Total Liabilities	<u>15,187,072</u>
Stockholders' Equity	
Preferred Stock \$.00001 par value, 25,000,000 shares authorized, 0 shares issued as of January 31, 2016	--
Common Stock \$.00001 par value, 12,728,493 shares issued as of and January 31, 2016	127
Additional paid-in capital	46,509,431
Accumulated deficit	<u>(43,877,207)</u>
Stockholders' Equity	<u>2,632,351</u>
Total liabilities and stockholders' equity	<u>\$ 17,819,423</u>

THE LOVESAC COMPANY
CONSOLIDATED STATEMENTS OF OPERATIONS
FOR THE YEAR ENDED JANUARY 31, 2016

	2016
Net Sales	\$ 74,145,370
Cost of Merchandise Sold	<u>33,635,047</u>
Gross Profit	40,510,323
Selling, general and administrative expenses	<u>47,174,365</u>
Operating Loss	(6,664,042)
Other	
Other expense	(86,343)
Loss on extinguishment of debt	(557,152)
Interest expense	<u>(1,686,686)</u>
Net Loss	<u>\$ (8,994,223)</u>
Net loss per common share:	
Basic and diluted	<u>\$ (0.83)</u>
Weighted average number of common shares outstanding:	
Basic and diluted	<u>10,852,433</u>

The accompanying notes are an integral part of these consolidated financial statements

THE LOVESAC COMPANY
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
FOR THE YEAR ENDED JANUARY 31, 2016

	<u>Common</u>		<u>Preferred</u>		<u>Additional Paid-in Capital</u>	<u>Accumulated Deficit</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>			
Balance - January 26, 2015	9,492,280	\$ 94	-	\$ -	\$ 32,686,562	\$ (34,882,984)	\$ (2,196,328)
Net loss	-	-	-	-	-	(8,994,223)	(8,994,223)
Equity based compensation	-	-	-	-	36,855	-	36,855
Purchase of equity from previous stockholder	(547,351)	(5)	-	-	(1,999,995)	-	(2,000,000)
Sale of equity	3,783,564	38	-	-	15,786,009	-	15,786,047
Balance - January 31, 2016	<u>12,728,493</u>	<u>127</u>	<u>-</u>	<u>-</u>	<u>46,509,431</u>	<u>(43,877,207)</u>	<u>2,632,351</u>

The accompanying notes are an integral part of these consolidated financial statements

THE LOVESAC COMPANY
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE YEAR ENDED JANUARY 31, 2016

	<u>2016</u>
Cash Flows from Operating Activities	
Net loss	\$ (8,994,223)
Adjustments to reconcile net loss to net cash used in operating activities:	
Depreciation and amortization of property and equipment	2,133,667
Amortization of other intangible assets	249,302
Amortization of deferred financing fees	46,046
Loss on disposal of property and equipment	--
Non-cash interest on long-term debt	141,365
Amortization of debt discount	462,807
Loss on extinguishment of debt	557,152
Equity based compensation	36,855
Deferred rent	135,140
Changes in operating assets and liabilities:	
Accounts receivable	(394,956)
Merchandise inventories	(1,943,079)
Prepaid expenses and other current assets	(1,912,217)
Accounts payable and accrued expenses	265,864
Customer deposits	343,911
Net Cash Used in Operating Activities	<u>(8,872,366)</u>
Cash Flows from Investing Activities	
Purchase of property and equipment	(965,174)
Payments for other intangible assets	(189,464)
Net Cash Used in Investing Activities	<u>(1,154,638)</u>
Cash Flows from Financing Activities	
Purchase of equity from stockholder	(2,000,000)
Proceeds from sale of equity net of issuance costs	15,786,053
Principal borrowing on Note Payable	--
Principal payments on Note Payable	--
Principal payments on long-term borrowings	(1,750,000)
Payments for extinguishment of subordinated note payable	(1,955,324)
Net paydowns of the line of credit	(208,358)
Payments of deferred financing costs	--
Net Cash Provided by Financing Activities	<u>9,872,371</u>
Net Change in Cash and Cash Equivalents	(154,633)
Cash and Cash Equivalents - Beginning	<u>363,469</u>
Cash and Cash Equivalents - End	<u>\$ 208,836</u>
Supplemental Cash Flow Disclosures	
Cash paid for interest	<u>\$ 1,036,468</u>

The accompanying notes are an integral part of these consolidated financial statements

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 1 – Operations and Significant Accounting Policies

Nature of Operations and Liquidity

SAC Acquisition, LLC (the Company), d/b/a Lovesac, a Delaware Limited Liability Company, was formed June 8, 2006; its headquarters are located in Stamford, Connecticut. The Company designs and sells foam filled furniture, sectional couches, and related accessories throughout the world. In connection therewith the Company operates approximately 59 leased retail showrooms located throughout the United States. In addition the Company operates a retail internet website and does business to business transactions through its wholesale operations.

On March 6, 2014, the Company formed a wholly owned subsidiary, Lovesac, LLC, to obtain debt financing through a Connecticut themed investment fund with a third party (see note 8). Under the terms of the agreement, the Company's subsidiary was required to meet certain employee residency thresholds in the State of Connecticut. As of January 31, 2016, the financing was repaid in full and no further criteria must be met.

On January 3, 2017, the Company formed a wholly owned subsidiary, The Lovesac Company, a Delaware Corporation. At which time, stock terms were established and the board of directors were named. On March 22, 2017, all the assets and liabilities of the Company were transferred to this wholly owned operating subsidiary for 100% equity, in exchange for 15,000,000 common shares, see Note 8. This subsidiary was formed in preparation for additional capital raise opportunities. We have retroactively reflected the recapitalization in the accompanying consolidated balance sheets, statements of operations and the statement of changes in stockholders equity to the earliest period presented. As of January 26, 2015 and going forward all equity transactions have been reflected as common stock.

The Company has incurred significant operating losses and used cash in its operating activities since inception. Operating losses have resulted from inadequate sales levels for the cost structure and expenses as a result of expanding into new markets. The Company continues to enter into new retail showrooms in larger markets in an effort to increase sales levels. Of course there can be no assurance that the anticipated sales levels will be achieved. The Company believes that based on its capital raises subsequent to year end, see Note 10, and its current sales and expense levels in fiscal 2017 to date, the Company will have sufficient working capital to cover operating cash needs through the twelve months period from the financial statement issuance date.

Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

Fiscal Year

The Company's fiscal year is determined on a 52/53 week basis ending on the Sunday closest to January 3rd. Hereinafter, the period from January 26, 2015 through January 31, 2016 is referred to as fiscal 2016.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 1 – Operations and Significant Accounting Policies (Continued)

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (“US GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Estimates and assumptions are reviewed periodically and the effects of the revisions are reflected in the period the change is determined.

Revenue Recognition

Company revenues consist of sales made to consumers at Company operated showrooms, and via the internet and also sales made businesses to business. Sales made at Company operated showrooms are recognized at the point of sale when payment is tendered and ownership is transferred to the customer. Sales of merchandise via the internet are recognized upon receipt and verification of payment and shipment of the merchandise to the customer. Ownership and risk of loss transfer to the customer upon shipment. Sales made to businesses are recognized at the point of shipment when ownership and the risk of loss transfer to the customer. Customer deposits are recorded for sales made for which ownership has not transferred as a result of payment received for goods upon order but not yet shipped at the end of any fiscal accounting period. These deposits are carried on our balance sheet until delivery is fulfilled which is typically within 4-5 days of order being processed.

Reductions for estimated returns are not material for either period presented therefore no reserves are currently being recorded.

Revenue is recognized net of sales tax collected.

Cash and Cash Equivalents

The Company considers all highly liquid investments with a maturity at purchase of three months or less to be cash equivalents.

The Company has deposits with financial institutions that maintain Federal Deposit Insurance Corporation “FDIC” deposit insurance up to \$250,000 per depositor. The portion of the deposit in excess of this limit represents a credit risk to the Company. At times the Company maintains depository balances in excess of the insured amounts.

Trade Accounts Receivable

Trade accounts receivable are carried at their estimated realizable amount and do not bear interest. Management determines the allowance for doubtful accounts by regularly evaluating individual customer accounts, considering the customer’s financial condition, and credit history, and general and industry current economic conditions. Trade accounts receivable are reserved for when deemed uncollectible. Recoveries of amounts previously reserved are recorded when received. Historically, collection losses have been immaterial; therefore management has concluded that an allowance is not necessary at January 31, 2016.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 1 – Operations and Significant Accounting Policies (Continued)

The Company had no customers in fiscal 2016 that comprise more than 10% of total net sales and no customers comprise more than 10% of total trade receivables. We have no foreign options and our sales to foreign countries were not material in fiscal 2016.

Prepaid Expenses and other Current Assets

The Company recognizes payments made for goods and services to be received in the near future as prepaid expenses and other current assets. Prepaid expenses and other current assets consist primarily of payments related to insurance premiums, catalogue costs, deposits and other costs.

Merchandise Inventories

Merchandise inventories are comprised of finished goods and are carried at the lower of cost or net realizable value. Cost is determined on a weighted-average method (first-in, first out). Merchandise inventories consist primarily of foam filled furniture, sectional couches and related accessories. The Company adjusts its inventory for obsolescence based on historical trends, aging reports, specific identification and its estimates of future retail sales prices.

Gift Certificates and Merchandise Credits

The Company sells gift certificates and issues merchandise credits to its customers in the showrooms and through the websites and product catalogs. Revenue associated with gift certificates and merchandise credits is deferred until either (i) redemption of the gift certificate and merchandise credits or (ii) when the likelihood of redemption is remote and there exists no legal obligation to remit the value of unredeemed gift certificates or merchandise credits to the relevant jurisdictions (breakage).

Property and Equipment, net

Property and equipment are stated at cost less accumulated depreciation and amortization. Office and showroom furniture and equipment, software and vehicles are depreciated using the straight-line method over their estimated useful lives. Leasehold improvements are amortized using the straight-line method over their expected useful lives or lease term, whichever is shorter.

Expenditures for repairs and maintenance are charged to expense as incurred. For assets sold or otherwise disposed of, the cost and related accumulated depreciation or amortization is removed from the accounts, and any resulting gain or loss is reflected in operations for the period. Expenditures for major betterments that extend the useful lives of property and equipment are capitalized.

Goodwill

Goodwill represents the excess of the purchase price over the fair value of the identified net assets of each business acquired. Goodwill and other indefinite-lived intangible assets are tested annually for impairment in the fourth fiscal quarter and in interim periods if certain events occur indicating that the carrying amounts may be impaired. If a qualitative assessment is used and the Company determines that the fair value of a reporting unit or indefinite-lived intangible asset is more likely than not (i.e., a likelihood of more than 50%) less than its carrying amount, a quantitative impairment test will be performed. If goodwill is quantitatively assessed for impairment, a two-step approach is applied.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 1 – Operations and Significant Accounting Policies (Continued)

In the first step, the Company compares the fair value of the reporting unit, generally defined as the same level as or one level below an operating segment, to its carrying value. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is considered not impaired and the Company is not required to perform further testing. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then the second step of the impairment test must be performed in order to determine the implied fair value of the reporting unit's goodwill. If the carrying value of a reporting unit's goodwill exceeds its implied fair value, then an impairment loss equal to the difference would be recorded.

The fair value of the Company's reporting unit is determined by using a discounted cash flow analysis. The determination of fair value requires assumptions and estimates of many critical factors, including among others, the nature and history of the Company, financial and economic conditions affecting the Company, the industry and the general economy, past results, current operations and future prospects, sales of similar businesses or capital stock of publicly held similar businesses, as well as prices, terms and conditions affecting past sales of similar businesses. Forecasts of future operations are based, in part, on operating results and management's expectations as to future market conditions. These types of analyses contain uncertainties because they require management to make assumptions and to apply judgments to estimate industry economic factors and the profitability of future business strategies. However, if actual results are not consistent with our estimates and assumptions, there may be exposure to future impairment losses that could be material.

There was no impairment of goodwill during fiscal 2016.

Other Intangible Assets

Other intangible assets with finite useful lives, including a vendor relationship, and patents and trade names, are being amortized on a straight-line basis over their estimate lives. Other intangible assets with finite useful lives are reviewed for impairment whenever events or circumstances indicate that the carrying amount of the asset might not be recovered.

If the estimates of the useful lives should change, we will amortize the remaining book value over the remaining useful life, or it is deemed to be impaired a write-down of the value of the asset may be required at such time.

There were no impairments during fiscal 2016.

Deferred Financing Costs

Prior to fiscal 2016, the Company's financing costs totaling \$132,500, were deferred and capitalized. These costs were amortized over the life of the related note. In fiscal 2016, the financing costs were treated as debt discounts with the exception of revolving lines of credit. The debt discounts are being amortized over the life of the loans as interest expense. Related interest expense was \$46,046 in fiscal 2016.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 1 – Operations and Significant Accounting Policies (Continued)

Impairment of Long-Lived Assets

The Company's long-lived assets consist of property and equipment, which includes leasehold improvements. Long-lived assets are reviewed for potential impairment at such time that events or changes in circumstances indicate that the carrying amount of an asset might not be recovered. The Company evaluates long-lived assets for impairment at the individual showroom level, which is the lowest level at which individual cash flows can be identified. When evaluating long-lived assets for potential impairment, the Company will first compare the carrying amount of the assets to the individual showroom's estimated future undiscounted cash flows. If the estimated future cash flows are less than the carrying amounts of the assets, an impairment loss calculation is prepared. An impairment loss is measured based upon the excess of the carrying value of the asset over its estimated fair value which is generally based on an estimated future discounted cash flows. If required, an impairment loss is recorded for that portion of the asset's carrying value in excess of fair value. There were no impairments of long-lived assets during fiscal 2016.

Advertising and Catalog Costs

The Company capitalizes direct response advertising costs, which consist primarily of catalog production and mailing costs, and recognizes expense over the related revenue stream if the following conditions are met (1) the primary purpose of the advertising is to elicit sales to customers who could be shown to have responded specifically to the advertising, and (2) the direct-response advertising results in probable and estimable future benefits.

For the year ended January 31, 2016 the Company capitalized deferred catalog costs of approximately \$250,000. There was no amortization related to these costs in 2016. Direct response advertising costs, which are included in prepaid expenses and other current assets, are amortized commencing with the date the catalogs are mailed to existing customers. The entire outstanding balance was amortized in fiscal 2017.

Advertising costs not associated with direct response advertising are expensed as incurred. Advertising expenses which are included in selling, general and administrative expenses were \$2,933,678 in fiscal 2016.

Showroom preopening and closing Costs

Non-capital expenditures incurred in preparation for opening new retail showrooms are expensed as incurred and included in selling, general and administrative expenses.

The Company continually evaluates the profitability of its showrooms. When the Company closes or relocates a showroom, the Company incurs unrecoverable costs, including the net book value of abandoned fixtures and leasehold improvements, lease termination payments, costs to transfer inventory and usable fixtures and other costs of vacating the leased location. Such costs are expensed as incurred and are included in selling, general and administrative expenses. The Company recognized showroom closing costs of approximately \$102,000 in fiscal 2016 for the closing of two stores in fiscal 2016.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 1 – Operations and Significant Accounting Policies (Continued)

Product Warranty

Depending on the type of merchandise, the Company offers either a three year limited warranty or a lifetime warranty. The Company's warranties require it to repair or replace defective products at no cost to the customer. At the time product revenue is recognized, the Company records a liability if material for estimated future costs that may be incurred under its warranties. The Company periodically reviews the adequacy of its recorded warranty liability. For fiscal 2016, it was determined that a warranty reserve would be immaterial in nature and a liability was not recorded. Warranty expenses were recorded in the period incurred. Product warranty expense was approximately \$185,000 in fiscal 2016.

Operating leases

Minimum operating lease expenses are recognized on a straight-line basis over the terms of the leases.

Our operating leases could contain provisions for certain incentives. Incentives are deferred and are amortized over the underlying lease term on a straight-line basis as a reduction to rent expense. When the terms of our leases provide for free rent, concessions and/or escalations, we establish a deferred rent liability or asset for the difference of the scheduled rent payments and a straight line rent expense. This liability or asset increases or decreases depending on where the Company is at any given time in the life of the lease.

Fair Value Measurements

The carrying amount of the Company's financial instruments classified as current assets and current liabilities approximate fair values based on the short term nature of the accounts.

Equity Based Compensation

Sac Acquisition LLC (the "LLC") had incentive option plans for the purchase of 291,491 units. The LLC measures the cost of employee services received in exchange for an award of options based on the grant-date fair value of the options awarded. That cost is recognized as expense over the period the employee is required to provide services, generally the vesting period for that portion of the options awarded that is ultimately expected to vest. The grant-date fair value of the options awarded has been measured using the Black-Scholes valuation model. The value of the equity based compensation related to options is included in paid-in-capital on the accompanying consolidated statements of changes in stockholders' equity. See Note 8 for additional disclosure.

Shipping and Handling

Shipping and handling charges billed to customers are included in revenue. Shipping and handling costs incurred are included in cost of merchandise sold. Shipping and handling costs incurred in fiscal 2016 were approximately \$9,796,000.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 1 – Operations and Significant Accounting Policies (Continued)***Income Taxes***

The Company accounts for uncertainty in income taxes using a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement. The Company classifies the liability for unrecognized tax benefits as current to the extent that the Company anticipates payment (or receipt) of cash within one year. Interest and penalties related to uncertain tax positions are recognized in the provision for income taxes. At January 31, 2016, there were no amounts that had been accrued for uncertain tax positions.

Although the Company is a limited liability company it has elected to be treated as a taxable corporation for income tax reporting purposes. Deferred income taxes are provided on temporary differences between the income tax bases of assets and liabilities and the amounts reported in the financial statements and on net operating loss and tax credit carry forwards.

A valuation allowance is provided for that portion of deferred income tax assets not likely to be realized. Deferred income tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

Basic and Diluted Net Loss Per Share

Basic net loss per common share is computed by dividing net loss by the weighted average number of common shares outstanding during the period. As a result of our net loss, potentially dilutive securities were excluded from the computation of diluted loss per share, as their effect would be anti-dilutive. There were no such securities outstanding at January 31, 2016.

Basic and diluted net loss per common share is computed as follows:

	For the year ended January 31, 2016
Numerator:	
Net loss - Basic and diluted	<u>\$ (8,994,223)</u>
Denominator:	
Weighted average number of common shares for basic and diluted net loss per share	<u>10,852,433</u>
Basic and diluted net loss per share	<u>\$ (0.83)</u>

New Accounting Pronouncements

Except as described below, the Company has considered all other recently issued accounting pronouncements and does not believe the adoption of such pronouncements will have a material impact on its financial statements.

In August 2015, the FASB issued ASU No. 2015-14, which defers the effective date of ASU No. 2014-09, *Revenue from Contracts with Customers (Topic 606)* by one year. ASU 2015-14 is a comprehensive new revenue recognition model requiring a company to recognize revenue to depict the transfer of goods or services to a customer at an amount reflecting the consideration it expects to receive in exchange for those goods or services. As a result, the ASU is now effective for fiscal years, and interim periods within those years, beginning after December 15, 2017, which for us is fiscal 2019. Earlier application is permitted. The Company is in the process of determining how this update will impact the Company's consolidated financial statements and the notes thereto going forward.

In May 2015, the FASB issued ASU No. 2016-08 "*Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net)*." This guidance amends the principal versus agent guidance in the new revenue standard. The amendments retain the guidance that the principal in an arrangement controls a good or service before it is transferred to a customer. The amendments clarify how an entity should identify the unit of accounting for principal versus agent evaluation and how it should apply the control principle to certain types of arrangements, such as service transactions. The amendments also reframe the indicators to focus on evidence that an entity is acting as a principal rather than an agent, revise examples in the new standard and add new examples. The Company has not yet determined the effect of the adoption of this standard on the Company's consolidated financial position and results of operations.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 1 – Operations and Significant Accounting Policies (Continued)

In February 2016, the Financial Accounting Standards Board issued an Accounting Standard Update (“ASU”) No. 2016-02, *Leases (Topic 842)* amending lease guidance to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. The guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018, with early adoption permitted. Management is currently evaluating the impact this ASU will have on these consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, *Compensation – Stock Compensation (Topic 718)*. ASU 2016-09 simplifies several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. Some of the simplified areas apply only to nonpublic entities. ASU 2016-09 is effective for annual periods beginning after December 15, 2017, and interim periods within annual periods beginning after December 15, 2018. Early adoption is permitted in any interim or annual period. If an entity early adopts ASU 2016-09 in an interim period, any adjustments should be reflected as of the beginning of the fiscal year that includes that interim period. Methods of adoption vary according to each of the amendment provisions. Management is currently evaluating the impact this ASU will have on these consolidated financial statements.

In August 2016, FASB issued ASU 2016-15, *Statement of Cash Flows: Clarification of Certain Cash Receipts and Cash Payments*, which eliminates the diversity in practice related to classification of certain cash receipts and payments in the statement of cash flows, by adding or clarifying guidance on eight specific cash flow issues. ASU 2016-15 is effective for fiscal years beginning after December 15, 2018, and interim periods within fiscal years beginning after December 15, 2019. Early adoption is permitted, including adoption in an interim period. The Company has not yet determined the effect of the adoption of ASU 2016-15 on the Company’s consolidated financial position and results of operations.

In July 2017, FASB issued ASU 2017-11, “*Earnings Per Share (Topic 260) Distinguishing Liabilities from Equity (Topic 480) Derivatives and Hedging (Topic 815)*,” which addresses the complexity of accounting for certain financial instruments with down round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced on the basis of the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. The amendments in Part I of ASU 2017-11 are effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted for all entities, including adoption in an interim period. The Company is currently in the process of assessing the impact the adoption of ASU 2017-11 will have on the Company’s financial statements

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 2 – Property and Equipment, net

Property and equipment as of January 31, 2016 consists of:

	<u>Estimated Life</u>	<u>2016</u>
Office and store furniture, and equipment	5 Years	\$ 2,951,178
Software	3 Years	2,213,525
Leasehold improvements	Shorter of estimated useful life or lease term	6,092,698
Vehicles	5 Years	121,809
Construction in process	NA	12,542
		<u>11,391,752</u>
Accumulated depreciation and amortization		<u>(6,649,962)</u>
		<u>\$ 4,741,790</u>

Depreciation expense on other intangible assets was \$2,133,667 in fiscal 2016.

Note 3 – Other Intangible Assets, Net

Expected amortization expense by fiscal year for these other intangible assets follows:

		<u>January 31, 2016</u>		
		<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>
Patents	10 Years	\$ 667,102	\$ (543,810)	\$ 123,292
Trademarks	3 Years	510,231	(350,190)	160,041
Other intangibles	5 Years	845,190	(580,260)	264,930
Total		<u>\$ 2,022,523</u>	<u>\$ (1,474,260)</u>	<u>\$ 548,263</u>

Amortization expense on other intangible assets was \$249,302 in fiscal 2016.

Expected amortization expense by fiscal year for these other intangible assets is as follows:

2017	\$ 286,606
2018	190,057
2019	56,484
2020	6,094
2021	1,716
Thereafter	7,306
	<u>\$ 548,263</u>

Note 4 – Prepaid Expenses and Other Current Assets

	<u>2016</u>
Prepaid Insurance	\$ 440,436
Prepaid Catalogue Costs	399,642
Deposits	504,090
Prepaid Inventory	338,293
Other	904,766
	<u>\$ 2,587,227</u>

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 5 – Income Taxes

Minimum state taxes are included in selling, general and administrative expense, for the fiscal year ended January 31, 2016, was approximately \$32,000.

The components of deferred income taxes follows:

	2016
Deferred Income Tax Assets	
Federal net operating loss carryforward	\$ 10,497,616
State net operating loss carryforward	1,902,538
Intangible assets	362,537
Customer deposits	386,455
Deferred rent	186,196
Accrued legal settlement	334,469
Accrued vacation	188,223
Property and equipment	952,652
Merchandise inventories	111,952
Total Deferred Income Tax Assets	14,922,638
Deferred Income Tax Liabilities	
Prepaid rent	(11,040)
Net Deferred Income Tax Before	
Valuation Allowance	14,911,598
Valuation Allowance	(14,911,598)
Net Deferred Income Tax Asset	\$ --

The income tax provision (benefit) differs from the amount obtained by applying the statutory Federal income tax rate to pretax income as follows:

	2016
(Benefit) at Federal Statutory rates	\$ (3,058,036)
Permanent adjustments	(181,744)
State tax, net of Federal benefit	(204,337)
Change in valuation allowance	3,444,117
Income tax (benefit) provision	\$ -

Differences in terms of percentages are as follows:

	2016
(Benefit) at Federal Statutory rates	34.0%
Permanent adjustments	2.0%
State tax, net of Federal benefit	2.3%
Change in valuation allowance	(38.3%)
Income tax (benefit) provision	0.0%

At January 31, 2016, the Company had net operating loss carryforwards available for federal and state income tax purposes of approximately \$33,100,000 and \$26,000,000, respectively, which are scheduled to expire in varying amounts from fiscal 2017 to fiscal 2036. As defined in Section 382 of the Internal Revenue Code, certain ownership changes limit the annual utilization of federal net operating losses. As a result of issuance, sales and other transactions involving the Company's stock, the Company may have experienced an ownership change which could cause such federal net operating losses to be subject to limitation under Section 382.

During fiscal 2016, the Company increased the valuation allowance by approximately \$3,819,000.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 6 – Commitments, Contingencies And Related Parties

Operating Lease Commitments

The Company leases its office, warehouse facilities and retail showrooms under operating lease agreements which expire at various dates through January 2024. Monthly payments related to these leases range from \$2,500 to \$24,600. Total rent expense including common area maintenance charges and sales percentage rent was approximately \$9,763,358 in fiscal 2016.

Expected future annual minimum rental payments under these leases follow:

2017	\$ 5,691,021
2018	4,872,734
2019	4,018,313
2020	3,655,552
2121	3,074,022
Thereafter	10,004,785
	<u>\$ 31,316,427</u>

The above disclosure includes lease extensions for various retail showrooms the Company entered into after year end.

Legal Contingency

The Company was a party to a class action case in the state of California regarding a wage dispute. As of January 31, 2016, the Company had estimated that the cost of this matter would result in the payment of \$875,000, which was included in selling, general and administrative expense and accrued expenses in the accompanying financial statements. The suit was settled in January 2017 and the payment of \$875,000 was made in the same month.

Related Parties

Mistral Capital Management, LLC (Mistral), an affiliate of the majority owner of the Company, performs management services for the Company under a contractual agreement. Management fees totaled approximately \$300,000 in fiscal 2016 and are included in selling, general and administrative expenses. There were no amounts payable to Mistral as of January 31, 2016.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 7 – Equity Based Compensation

On January 3, 2017, the LLC formed a wholly owned subsidiary, The Lovesac Company, a Delaware Corporation. Subsequent to year end, all the assets and liabilities of the Company were transferred to this wholly owned operating subsidiary in exchange for 100% equity, in the form of 15,000,000 common shares, in the subsidiary. We have reflected the recapitalization in the accompanying consolidated balance sheets, statements of operations and the statement of changes in stockholders' equity. The following incentive option plan disclosures relate to the original equity structure. Going forward, the related expense for these options will be settled by Sac Acquisition, LLC whom will charge the new operating company on an ongoing basis. Further, this plan no longer entitles those individuals holding the options to common stock in the recapitalized company and therefore these options do not relate to the current recapitalized equity presented. The Company's Board of Directors has approved a plan for The Lovesac Company in terms of share based awards of the corporation (See Note 10).

The LLC created an incentive option plan in 2007 (2007 Stock Plan) that provided for granting up to 47,153 non-qualified option awards, common units, to key employees and directors to purchase membership units of the LLC. The Plan is administered by the Board of Directors.

Unvested options are restricted as to disposition and subject to forfeiture under certain circumstances. Options awarded generally vest ratably over four years and expire after ten years. The total number of options vested and outstanding as of January 31, 2016 was 47,153. There were no options neither granted, exercised, forfeited, nor canceled during fiscal 2016. The weighted average exercise price of these options at January 31, 2016 is \$12.75.

On May 24, 2010, the Board adopted and the Members of the Company approved the SAC Acquisition LLC 2010 Unit Plan (2010 Unit Plan) that provides for granting up to 244,338 non-qualified option awards to employees, consultants and directors to purchase membership units of the LLC. Options vest over a vesting schedule to be determined by the Board and expire after ten years.

The exercise price for options granted under the plans shall not be less than the fair value of the related membership unit at the time the option is granted.

Changes in the 2010 Unit Plan are as follows:

	Number of options outstanding	Weighted average exercise price per unit	Weighted average remaining contractual life (yrs)
Outstanding at January 26, 2015	145,446	\$ 30.90	7.61
Granted	25,149	36.11	9.50
Exercised	--	--	--
Canceled, forfeited or expired	(31,306)	30.34	(5.70)
Outstanding at January 31, 2016	<u>139,289</u>	<u>\$ 32.25</u>	<u>7.45</u>

The total number of options vested as of January 31, 2016 was 57,671.

Option compensation expense \$36,855 in fiscal 2016.

The total unrecognized option compensation cost related to non-vested option awards was \$56156 as of January 31, 2016 and will be recognized in operations over a weighted average period of 2.90 years.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 8 – stockholders’ Equity

On January 3, 2017, the LLC formed a wholly owned subsidiary, The Lovesac Company, a Delaware Corporation. Subsequent to year end on March 22, 2017, the Company executed an assignment and assumption agreement with newly formed The Lovesac Company. Sac Acquisition, LLC agreed to assign all rights, title and interest in all assets and assume all liabilities in exchange for equity of The Lovesac Company, in the form of 15,000,000 common shares, par value \$.00001. We have retroactively reflected the recapitalization in the accompanying consolidated balance sheets, statements of operations and the statement of changes in stockholders’ equity.

The following reconciles the original Sac Acquisition, LLC equity structure to the recapitalized The Lovesac Company equity structure:

	Sac Acquisition, LLC								The Lovesac Company					Total Stockholders' Equity					
	Common Stock		Preferred A		Preferred B		Preferred D		Additional paid-in capital	Accumulated Deficit	Common Stock		Preferred Stock		Additional paid-in capital	Accumulated Deficit			
	Units	Amount	Units	Amount	Units	Amount	Units	Amount			Units	Amount	Units		Amount	capital	Deficit		
Sac Acquisition, LLC Equity, January 29, 2017	436,741	\$ -	449,420	\$ 17,311,643	898,596	\$ 22,792,450	13,670,000	\$ 15,991,215	\$ 1,706,200	\$ (50,751,655)	-	\$ -	-	\$ -	-	\$ -	-	\$ -	\$ 7,049,853
Effect of exchange of all assets and the assumption of all liabilities of Sac Acquisition, LLC by The Lovesac Company for common stock	(436,741)	-	(449,420)	(17,311,643)	(898,596)	(22,792,450)	(13,670,000)	(15,991,215)	(1,706,200)	50,751,655	15,000,000	150	300,000	3	57,801,355	(50,751,655)	-	-	-
Recapitalized stockholders' equity in The Lovesac Company	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	15,000,000	\$ 150	300,000	\$ 3	\$ 57,801,355	\$ (50,751,655)	\$ -	\$ 7,049,853	

Note 9 – Financing Arrangements

Credit Line

The Company has a line of credit with Siena Lending Group, LLC (the “Lender”) to borrow up to \$7.0 million, which matures on May 14, 2018. Borrowings are limited to lesser of 75% of inventory or 85% of the net orderly liquidation value of inventory and may be reduced by certain liabilities of the Company. All amounts outstanding shall bear interest at the base rate, which is defined as the greatest of (i) Prime Rate published by The Wall Street Journal, (ii) Federal Funds Rate plus 0.5% or (iii) 3.25%, plus 3% (6.5% January 31, 2016). The line is subject to a monthly unused line fee of .75%. The agreement is secured by the 1st lien on substantially all assets of the Company. The outstanding balance was \$3,177,238 as of January 31, 2016.

The loan agreement calls for certain covenants including, amongst others, a timing of the financial statements threshold, a minimum excess availability threshold, a maximum expenditures threshold, and a minimum tangible net worth ration. The Company was in compliance with all financial covenants and the Lender agreed to the timing of the financial statements.

Subordinated Note Agreement

The Company had a Subordinated Note Agreement with a private investor for \$3,500,000 which bore interest at 8 percent per annum. On January 29, 2016, the subordinated note payable was extinguished and paid in full in conjunction with the equity raises. The aggregate payment consisted of \$1,955,324 principle and \$12,161 accrued interest.

The Company also had recorded a debt discount of \$1,259,650 for warrants which were recorded as a reduction to long-term debt. The debt discount was accreted over the life of the debt up until the extinguishment on January 29, 2016. The Company recognized interest expense of \$462,807 in fiscal 2016 for the amortization of this debt discount. At the time of the extinguishment, the Company wrote-off the remaining debt discount and recorded a loss on extinguishment of debt within the consolidated statement of operations in the amount of \$557,152. There was no outstanding balance on this Subordinated Note Agreement as of January 31, 2016.

In September of 2014 the agreement was amended to add paid in kind interest (“PIK”) at 4% per annum through August 2015, and 6% per annum thereafter through the extinguishment date and was compounded and added to the unpaid principal of the Note on a monthly basis. There was PIK interest of \$141,365 in fiscal 2016.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 10 – Subsequent Events

The Company has evaluated events and transactions subsequent to January 31, 2016 through the date the consolidated financial statements were issued.

In March 2016, April 2016, May 2016, June 2016 and October 2016, the Company completed financing transactions with Mistral SAC Holdings, LLC. As part of the transactions, the Company received \$11.3 million in cash (net of issuance costs of \$33,785) in exchange for 11,300,000 Series D Preferred Units.

On January 3, 2017, the Company formed a wholly owned subsidiary, The Lovesac Company, a Delaware Corporation. At which time, stock terms were established and the board of directors were named. On March 22, 2017, all the assets and liabilities of the Company were transferred to this wholly owned operating subsidiary for 100% equity, in exchange for 15,000,000 common shares. This subsidiary was formed in preparation for additional capital raise opportunities.

In February 2017, The Lovesac Company established The Lovesac Company 401(k) Plan (the "Plan") with Elective Deferrals beginning May 1, 2017. The Plan calls for Elective Deferral Contributions, Safe Harbor Matching Contributions and Profit Sharing Contributions. All employees of The Lovesac Company (except for union employees and nonresident aliens) will be eligible to participate in the Plan as of the day of the month which is coincident with or next follows the date on which they attain age 21 and complete 1 month of service. Participants will be able to contribute up to 100% of their eligible Compensation to the plan.

In March, June, September, October and November 2017, the Company completed financing transactions with various investors, including entities affiliated with Mistral. As part of the transactions, the Company received \$5,160,118 (net of issuance costs of \$344,031) in cash in exchange for 623 Series A Preferred units (preferred stock equivalent of 623,000 shares).

In March 2017, the Company completed a financing transaction with Mistral SAC Holdings, LLC in which the Company converted Preferred Stock in SAC Acquisition, LLC to 300 series A Preferred Units and \$1,500,000 warrants.

In April 2017 and May 2017, the Company completed financing transactions with entities affiliated with Satori Capital, LLC "Satori". As part of the transactions, the Company received \$8,988,471 in cash (net of issuance costs of \$833,253) in exchange for 1,000 Series A-1 Preferred Units (preferred stock equivalent of 1,000,000 shares).

In September 2017, the Company engaged Roth Capital Partners, LLC as the Company's sole book running underwriter with respect to the Company's proposed initial public offering of securities.

In October 2017, the Company completed a financing transaction with entities affiliate with Satori and as part of the transaction the Company received \$3,970,000 in cash (net of issuance costs of \$30,000) in exchange for 400 Series A-2 Preferred Units (preferred stock equivalent of 400,000 shares).

In October 2017, the Board approved The Lovesac Company 2017 Equity Incentive Plan which provides for Awards in the form of Options, Stock Appreciation rights, Restricted Stock Awards, Restricted Stock Units, Performance shares, Performance Units, Cash-Based Awards and Other Stock-Based Awards. There are 1,511,530 shares to be issued under the plan. All awards shall be granted within 10 years from the effective date of the plan.

In November and December 2017, the Company completed financing transactions with certain executive management and as part of the transactions, the Company received \$115,000 in exchange for 11.5 Series A-2 Preferred Units (preferred stock equivalent of 11,500 shares) and warrants.

THE LOVESAC COMPANY
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED JANUARY 31, 2016

Note 10 – Subsequent Events (continued)

On February 6, 2018, the Company terminated its line of credit with Siena and replaced it with a line of credit with Wells Fargo Bank, National Association (“Wells Fargo”). The line of credit with Wells Fargo allows the Company to borrow up to \$25.0 million and will mature in February 2022. The commitments by the lenders under the Wells line of credit are subject to borrowing base and availability restrictions. Up to \$500,000 of the Credit Facility may be used for the issuance of letters of credit and up to \$2.5 million of the Credit Facility may be used for the making of swing line loans.

The Company may elect that revolving loans bear interest at a rate per annum equal to the base rate plus an applicable margin (1.00% to 1.25%) or the LIBOR rate plus an applicable margin (2.00% to 2.25%). The applicable margin is based on tier’s relating to the quarterly average excess availability. The loan agreement calls for certain covenants including a timing of the financial statements threshold and a minimum excess availability threshold.

On April 19, 2018, the Company and the majority holders of each of the Series A Preferred Stock, the Series A-1 Preferred Stock and the Series A-2 Preferred Stock agreed to amend and restate the preferred stock to, among other things, revise the conversion features of the preferred stock to provide that, immediately prior to the closing of an initial public offering, the preferred stock (i) will accrue an additional amount of dividends equal to the amount of dividends that would have accrued and accumulated through and including the one year anniversary of the completion of the initial public offering, and (ii) will, along with the aggregate accrued or accumulated and unpaid dividends thereon, automatically convert into shares of common stock at a price per share equal to the lesser of (a) 70% of the offering price, or (b) the applicable calculation set forth pursuant to the terms of their respective certificates of designation.

On April 19, 2018, the Company and a majority of the holders of the warrants issued along with the preferred stock, agreed to amend and restate the warrants to replace the aggregate dollar value of each warrant with a fixed number of warrant shares. As a result of the conversion to warrant shares, warrant holders will receive additional shares of common stock upon exercise than they would have under the original warrants. The exercise price after completion of the offering will remain at the price per share of common stock in the offering.

On April 19, 2018, the Company granted 461,530 restricted stock units to certain officers and employees of the Company. The vesting of the restricted stock units is based on both time and performance. The time vesting units vest twenty-five percent on May 1, 2018, and twenty-five percent on January 31, 2019, 2020 and 2021. The performance vesting units vest annually upon the achievement of certain benchmarks. Also on April 19, 2018, the board of directors of the Company approved an increase in shares of common stock reserved for issuance under the 2017 equity incentive plan from 1,050,000 to 1,511,530 shares of common stock.

[●] Shares



THE LOVESAC COMPANY
Common Stock

PROSPECTUS
[●], 2018

Roth Capital Partners

No finder, dealer, sales person or other person has been authorized to give any information or to make any representation in connection with this offering other than those contained in this prospectus and, if given or made, such information or representation must not be relied upon as having been authorized by our Company. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any of the securities offered hereby by anyone in any jurisdiction in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of these securities. Our business, financial condition, results of operation and prospects may have changed after the date of this prospectus.

Through and including [●], 2018 (the 25th day after the date of this prospectus), all dealers effecting transactions in our common stock, whether or not participating in our initial public offering, may be required to deliver a prospectus. This delivery requirement is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth all expenses to be paid by the registrant, other than underwriting discounts, in connection with our public offering. All amounts shown are estimates except for the SEC registration fee and the FINRA filing fee:

SEC registration fee	\$
FINRA filing fee	
Exchange listing fee	
Legal fees and expenses	
Accounting fees and expenses	
Transfer agent and registrar fees	
Printing expenses	
Miscellaneous expenses	
Total	<u>\$</u>

Item 14. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes the board of directors of a corporation to grant, and authorizes a court to award, indemnity to officers, directors and other corporate agents.

Our certificate of incorporation contains provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by Delaware law. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for the following:

- any breach of their duty of loyalty to the Company or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- any transaction from which they derived an improper personal benefit.

Any amendment to, or repeal of, these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to that amendment or repeal. If the Delaware General Corporation Law is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the Delaware General Corporation Law.

In addition, our bylaws provide that we will indemnify, to the fullest extent permitted by law, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred. Our bylaws also provide that we must pay the expenses (including attorneys' fees) incurred by a director or officer in defending any proceeding in advance of its final disposition, subject to limited exceptions.

The limitation of liability and indemnification provisions that are included in our certificate of incorporation, bylaws and in indemnification agreements that we have entered into or will enter into with our directors and executive officers may discourage stockholders from bringing a lawsuit against our directors and executive officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against our directors and executive officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and executive officers as required by these indemnification provisions. At present, we are not aware of any pending litigation or proceeding involving any person who is or was one of our directors, officers, employees or other agents or is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, for which indemnification is sought, and we are not aware of any threatened litigation that may result in claims for indemnification.

We have obtained insurance policies under which, subject to the limitations of the policies, coverage is provided to our directors and executive officers against loss arising from claims made by reason of breach of fiduciary duty or other wrongful acts as a director or executive officer, including claims relating to public securities matters, and to us with respect to payments that may be made by us to these directors and executive officers pursuant to our indemnification obligations or otherwise as a matter of law. Some of our non-employee directors may, through their relationships with their employers, be insured or indemnified against liabilities incurred in their capacity as members of our board of directors.

The underwriting agreement to be filed as Exhibit 1.1 to this registration statement will provide for indemnification by the underwriter of us and our officers and directors for liabilities arising under the Securities Act or otherwise.

Item 15. Recent Sales of Unregistered Securities.

Set forth below is information regarding securities sold and issued by us since [●], 2017 that were not registered under the Securities Act, as well as the consideration received by us for such securities and information relating to the section of the Securities Act, or rules of the SEC, under which exemption from registration was claimed.

On March 27, 2017, we completed a bridge financing, pursuant to which we sold to entities affiliated with Satori Capital, LLC, \$10,000,000 of Series A-1 Preferred Stock and five-year warrants, as amended, to purchase 875,000 shares of common stock at an exercise price equal to the price per share of this offering, subject to adjustments.

Between March 2017 and October 2017, we completed a bridge financing, pursuant to which we sold to 31 accredited investors \$9,230,000 of Series A Preferred Stock and five-year warrants, as amended, to purchase 584,063 shares of common stock at an exercise price equal to the price per share of this offering, subject to adjustments.

On October 19, 2017, we completed a private placement, pursuant to which we sold to entities affiliated with Satori Capital, LLC, \$4,000,000 of Series A-2 Preferred Stock and five-year warrants, as amended, to purchase 350,000 shares of common stock at an exercise price equal to the price per share of this offering, subject to adjustments.

In December 2017, we completed a private placement, pursuant to which we sold to Shawn Nelson, our Chief Executive Officer, Jack Krause, our President, and Donna Dellomo, our Chief Financial Officer, and aggregate of \$115,000 of Series A-2 Preferred Stock and five-year warrants, as amended, to purchase an aggregate of 10,063 shares of common stock at an exercise price equal to the price per share of this offering, subject to adjustments.

In December 2017, the Company completed a financing transaction with Mistral Sac Holdings 4, LLC, an investment vehicle affiliated with Mistral. As part of the transaction, the Company received \$2.12 million in cash in exchange for 212,000 shares of Series A-2 Preferred Stock and five-year warrants, as amended, to purchase 185,000 shares of common stock at an exercise price equal to the price per share of this offering, subject to adjustments.

The securities issued in the above described transactions were not registered under the Securities Act of 1933, as amended, or the securities laws of any state, and were offered and sold pursuant to the exemption from registration under the Securities Act of 1933, as amended, provided by Section 4(a)(2) of the Securities Act of 1933, as amended, and Rule 506 of Regulation D thereunder. The recipients of securities in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions was an accredited investor.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits

The following exhibits are filed as part of this Registration Statement:

Exhibit Number	Description of Exhibit
1.1*	Form of Underwriting Agreement
2.1	Assignment and Assumption Agreement
3.1	Certificate of Incorporation, as currently in effect
3.2	Bylaws, as currently in effect
3.3*	Form of Amended and Restated Certificate of Incorporation, to be in effect upon the completion of this offering
3.4*	Form of Amended and Restated Bylaws, to be in effect upon the completion of this offering
3.5*	Amended and Restated Series A Preferred Stock Certificate of Designation
3.6*	Amended and Restated Series A-1 Preferred Stock Certificate of Designation
3.7*	Amended and Restated Series A-2 Preferred Stock Certificate of Designation
4.1*	Specimen stock certificate for common stock
4.2*	Form of Series Amended and Restated A Warrant Agreement
4.3*	Form of Series Amended and Restated A-1 Warrant Agreement
4.4*	Form of Series Amended and Restated A-2 Warrant Agreement
4.5*	Form of Underwriter Warrant
5.1*	Opinion of Duane Morris LLP regarding the legality of the securities being registered
10.1	Wells Fargo Credit Agreement
10.2±	2017 Equity Incentive Plan
10.3*±	Form of Stock Option Agreement
10.4*±	Form of Restricted Stock Units Agreement
10.5	Amended and Restated Registration Rights Agreement
10.6±	Employment Agreement dated October 26, 2017, by and between The Lovesac Company and Shawn Nelson
10.7±	Employment Agreement dated October 26, 2017, by and between The Lovesac Company and Jack Krause
10.8±	Employment Agreement dated October 26, 2017, by and between The Lovesac Company and Donna Dellomo
23.1	Consent of Marcum LLP
23.2	Consent of Fiondella, Milone & LaSaracina LLP
23.3*	Consent of Duane Morris LLP (included in Exhibit 5.1)
24.1	Powers of Attorney (incorporated by reference to the signature page hereto).

* To be filed by amendment

± Indicates a management contract or compensatory plan.

(b) Financial Statement Schedules

See index to financial statements on page F-1. All schedules have been omitted because they are not required or are not applicable.

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

1. That, for purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective
2. That, for the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
3. To provide to the underwriter at the closing specified in the underwriting agreements certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this amendment to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Stamford in the State of Connecticut, United States of America on April 20, 2018.

THE LOVESAC COMPANY

By: /s/ Shawn Nelson
Shawn Nelson
Chief Executive Officer
(Principal Executive Officer)

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Shawn Nelson and Jack A. Krause, joint and severally, as his or her true and lawful attorney in fact and agent with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including pre effective and post effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys in fact and agents full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys in fact and agents, or either of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

/s/ Shawn Nelson April 20, 2018
Shawn Nelson
Chief Executive Officer and Director
(Principal Executive Officer)

/s/ Donna Dellomo April 20, 2018
Donna Dellomo
Executive Vice President and Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

/s/ Jack Krause April 20, 2018
Jack Krause
President and Chief Operating Officer

/s/ Andrew Heyer April 20, 2018
Andrew Heyer
Chairman and Director

/s/ David Yarnell April 20, 2018
David Yarnell
Director

/s/ William Phoenix April 20, 2018
William Phoenix
Director

/s/ Jared Rubin April 20, 2018
Jared Rubin
Director

/s/ Christopher Bradley April 20, 2018
Christopher Bradley
Director

/s/ John Grafer April 20, 2018
John Grafer
Director

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") is made as of March 22, 2017, by and between The Lovesac Company, a Delaware corporation (the "Assignee") and SAC Acquisition LLC, a Delaware limited liability company (the "Assignor").

WHEREAS, Assignor has agreed to assign all of the Assignor's right, title and interest in and to all of Assignor's assets to Assignee (the "Acquired Assets"), and Assignee has agreed to accept such assignment and assume all of Assignor's liabilities ("Assumed Liabilities"), including, but not limited to such assets and liabilities as provided in Exhibit A attached herein (which may be supplemented from time to time), in exchange for the issuance of 15,000,000 shares of Common Stock, par value \$.00001, of Assignee issued to Assignor pursuant to that certain Subscription Agreement, by and between Assignor and Assignee of even date herewith;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption. Effective as of the date first written above, the Assignor hereby sells, contributes, assigns, transfers and conveys (collectively, the "Assignment") to the Assignee all of Assignor's right, title, benefit, privileges and interest in and to, and all of Assignor's burdens, obligations and liabilities in connection with the Acquired Assets and the Assumed Liabilities. Assignee hereby accepts the Assignment and assumes and agrees to observe and perform all of the duties, obligations, terms, provisions and covenants, and to pay and discharge all of the liabilities of the Assignor to be observed, performed, paid or discharged, in connection with the Acquired Assets and the Assumed Liabilities. All contracts hereby contributed and assigned to the Assignee shall be deemed to have been contributed and assigned effective as of the date first written above, except to the extent that any consents are required for such assignment, in which case such contracts shall be deemed to be assigned automatically upon obtaining such consent, but pending such assignment Assignee shall be responsible for all of Assignor's obligations under such contract.

2. Further Assurances. Each of the parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Agreement.

3. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Assignee and the Assignor and their respective legal representatives, successors and assigns.

4. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State.

5 . Amendments; Waivers, Etc. Neither this Agreement nor any term hereof may be amended, changed, waived, discharged or terminated other than by an instrument in writing, signed by the party against which enforcement of such amendment, change, waiver, discharge or termination is sought.

6 . Interpretations. The headings of the sections contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement.

7 . Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, and all of which together shall constitute one and the same instrument.

8 . Modification. This Agreement constitutes the entire understanding of the parties, and supersedes any and all agreements or understandings of any of the parties with respect to the subject matter set forth herein, and may not be modified or otherwise changed orally, but only by a writing signed by the party against whom enforcement of any such waiver, change, modification, extension, or discharge is sought.

9 . Parties in Interest. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective legal representatives, successors, and assigns of the parties.

(Signatures Appear On Next Page)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

ASSIGNEE:

THE LOVESAC COMPANY

By: /s/ Jack Krause

Name: Jack Krause

Title: President

ASSIGNOR:

SAC ACQUISITION LLC

By: /s/ Shawn Nelson

Name: Shawn Nelson

Title: Chief Executive Officer

CERTIFICATE OF INCORPORATION
OF
THE LOVESAC COMPANY

**ARTICLE I
NAME**

The name of the corporation (hereinafter, the “**Corporation**”) is The Lovesac Company.

**ARTICLE II
ADDRESS AND REGISTERED AGENT**

The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, 19801, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE III
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “**DGCL**”).

**ARTICLE IV
CAPITAL STOCK**

Section 1. Authorized Shares. The aggregate number of shares which the Corporation shall have authority to issue is 125,000,000; of which 25,000,000 shares of the par value of \$0.00001 shall be designated Preferred Stock and 100,000,000 shares of the par value of \$0.00001 shall be designated Common Stock.

Section 2. Preferred Stock Designation. The Board is hereby expressly authorized, by resolution or resolutions, to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers (if any) of the shares of such series, and the preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series, to the full extent now or hereafter permitted by the laws of the State of Delaware and the DGCL. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

Section 3. Assessment of Stock. The capital stock of the Corporation, after the amount of the subscription price has been fully paid in, shall not be assessable for any purpose, and no stock issued as fully paid shall ever be assessable or assessed. No stockholder of the Corporation is individually liable for the debts or liabilities of the Corporation.

Section 4. Increase or Decrease in Authorized Capital Stock. The number of authorized shares of Preferred Stock or Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote generally in the election of directors, irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), voting together as a single class, without a separate vote of the holders of the class or classes the number of authorized shares of which are being increased or decreased, unless a vote by any holders of one or more series of Preferred Stock is required by the express terms of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Section 2 of this Article IV.

Section 5. Incorporator. The name and mailing address of the incorporator is as follows:

Miguel de Leon Perez

Duane Morris LLP

1540 Broadway

New York, NY 10036

ARTICLE V DIRECTORS

Section 1. Number of Directors. The members of the governing board of the Corporation are styled as directors. The board of directors of the Corporation shall be elected in such manner as shall be provided in the Bylaws of the Corporation. The number of directors shall be not less than five (5) nor more than seven (7). The number of directors may be changed from time to time within this range in such manner as shall be provided in the Bylaws of the Corporation.

Section 2. Ballot and Nominees. Nominations by stockholders of persons for election to the Board shall be made only in accordance with the procedures set forth in the Bylaws of the Corporation. Elections of directors need not be by written ballot except and to the extent provided in the Bylaws of the Corporation.

Section 3. Removal and Filling of Newly Created Directorships. Subject to the rights of the holders of any series of Preferred Stock then outstanding, any director, or the entire Board, may be removed from office with or without cause, at any time, only by the affirmative vote of the holders of a majority of the shares of voting stock then outstanding. Subject to the rights of the holders of any series of Preferred Stock, newly created directorships resulting from any increase in the number of directors shall be filled by the Board by the affirmative vote of a majority of the directors then in office, or by the stockholders holding at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the issued and outstanding shares of Common Stock that are present or represented at a special meeting of stockholders called for such purpose, voting together as a single class.

Section 4. Election and Vacancies. Directors shall be elected at each annual meeting of stockholders, and each director elected shall hold office until such director's successor has been elected and qualified, subject, however, to earlier death, resignation or removal from office. Except as otherwise provided for or fixed by or pursuant to the provisions of Article IV of this Certificate of Incorporation relating to the rights of the holders of any series of Preferred Stock, any vacancies on the Board resulting from death, resignation, removal or other cause shall be filled by the Board by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board, or by a sole remaining director, or by the stockholders holding at sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the issued and outstanding shares of Common Stock that are present or represented at a special meeting of stockholders called for such purpose, voting together as a single class. A person so elected by the Board of Directors to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been assigned by the Board of Directors and until his or her successor shall be duly elected and qualified.

Section 5. Advance Notice of Nominations. Subject to Article IX of this Certificate of Incorporation, advance notice of nominations for the election of directors shall be given in the manner and to the extent provided in the Bylaws of the Corporation.

Section 6. Classification of Directors. Upon resolution duly adopted by the Board of Directors at any time from and after the filing of this Certificate of Incorporation, and subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, the directors of the Corporation shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The initial assignment of members of the Board of Directors to each such class shall be made by the Board of Directors. The term of office of the initial Class I directors shall expire at the first regularly scheduled annual meeting of the stockholders following the Effective Date, the term of office of the initial Class II directors shall expire at the second annual meeting of the stockholders following the Effective Date and the term of office of the initial Class III directors shall expire at the third annual meeting of the stockholders following the effective date of the Board resolution approving the classification of the Board. At each annual meeting of stockholders, commencing with the first regularly-scheduled annual meeting of stockholders following the effective date of such Board resolution, each of the successors elected to replace the directors of a Class whose term shall have expired at such annual meeting shall be elected to hold office until the third annual meeting next succeeding his or her election and until his or her respective successor shall have been duly elected and qualified. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, if the number of directors that constitutes the Board of Directors is changed, any newly created directorships or decrease in directorships shall be so apportioned by the Board of Directors among the classes as to make all classes as nearly equal in number as is practicable, provided that no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**ARTICLE VI
BYLAWS**

The Board of Directors is authorized to adopt, amend or repeal any and all provisions of the Bylaws of the Corporation by a vote of at least two-thirds of all directors who constitute the Board of Directors, except as and to the extent provided in the Bylaws. Notwithstanding any other provision of this Certificate of Incorporation or the Bylaws of this Corporation (and notwithstanding that some lesser percentage may be specified by law), no provision of the Bylaws of the Corporation shall be amended, modified or repealed by the stockholders of the Corporation, nor shall any provision of the Bylaws of the Corporation inconsistent with any such provision be adopted by the stockholders of the Corporation, unless approved by the affirmative vote of holders of at least seventy-five (75%) of the issued and outstanding shares of Common Stock. Any purported amendment to the Bylaws which would add thereto a matter not expressly covered in the Bylaws prior to such purported amendment shall be deemed to constitute the adoption of a Bylaw provision and not an amendment to the Bylaws.

**ARTICLE VII
MODIFICATION, AMENDMENT OR REPEAL OF DESIGNATED PROVISIONS**

Notwithstanding any other provision of this Certificate of Incorporation, the Bylaws of the Corporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of stock of the Corporation required by law, the affirmative vote (or consent under Article IX, if such consent is then permitted) of at sixty-six and two-thirds percent (66 ²/₃%) of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter or repeal, or adopt any provision as part of this Certificate of Incorporation inconsistent with the purpose and intent of, all or any portion of Articles V, VI, this Article VII, VIII or IX of this Certificate of Incorporation (including, without limitation, any such Article as renumbered as a result of any amendment, alteration, change, repeal or adoption of any other Article).

**ARTICLE VIII
LIABILITY AND INDEMNIFICATION**

To the fullest extent permitted by the DGCL, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. The Corporation shall indemnify, in the manner and to the fullest extent permitted by the DGCL, any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise. The Corporation may indemnify, in the manner and to the fullest extent permitted by the DGCL, any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise. Expenses incurred by any such director, officer, employee or agent in defending any such action, suit or proceeding may be advanced by the Corporation prior to the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director, officer, employee or agent to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified as authorized by the DGCL and this Article VIII. The Corporation may, to the fullest extent permitted by the DGCL, purchase and maintain insurance on behalf of any such director, officer, employee or agent against any liability which may be asserted against such person. To the fullest extent permitted by the DGCL, the indemnification provided herein shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement and, in the manner provided by the DGCL, any such expenses may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding. The indemnification provided herein shall not be deemed to limit the right of the Corporation to indemnify any other person for any such expenses to the fullest extent permitted by the DGCL, nor shall it be deemed exclusive of any other rights to which any person seeking indemnification from the Corporation may be entitled under any agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. No repeal or modification of the foregoing paragraph shall adversely affect any right or protection of a director of the Corporation existing by virtue of the foregoing paragraph at the time of such repeal or modification.

**ARTICLE IX
STOCKHOLDER ACTION**

Section 1. *Action by Consent.* Any election of directors or other action by the stockholders of the Corporation that can be effected at an annual or special meeting of stockholders can be effected by written consent without a meeting so long as such written consent is signed by the holders of at least the number of shares required to approve such action at a duly held annual or special stockholders meeting at which all shares entitled to vote thereon were present and voted.

Section 2. *Special Meetings.* Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to call a special meeting of the holders of such series, special meetings of stockholders of the Corporation may be called only by the Board of Directors, the chairperson of the Board of Directors, the chief executive officer or the president (in the absence of a chief executive officer), and the ability of the stockholders to call a special meeting is hereby specifically denied. The Board of Directors may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

BY-LAWS

of

THE LOVESAC COMPANY

As adopted as of January 3, 2017

**BYLAWS
OF
THE LOVESAC COMPANY
(A DELAWARE CORPORATION)**

**ARTICLE I
OFFICES**

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE II
CORPORATE SEAL**

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

**ARTICLE III
STOCKHOLDERS' MEETINGS**

Section 4. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Company's principal executive office.

Section 5. Annual Meeting.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders; (ii) by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving of notice provided for in the following paragraph, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5.

(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, (ii) such other business must be a proper matter for stockholder action under the DGCL, (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in this Section 5(b)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice, and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 5. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act") and Rule 14a-4(d) thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

(c) Notwithstanding anything in the second sentence of Section 5(b) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 5 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

(d) Only such persons who are nominated in accordance with the procedures set forth in this Section 5 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 5. Except as otherwise provided by law, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(e) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(f) For purposes of this Section 5, "public announcement" shall mean disclosure in a press release reported by the Dow Jones Newswires, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

Section 6. Special Meetings.

(a) Notwithstanding anything provided in the Certificate of Incorporation, special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) a resolution adopted by the majority of the Board of Directors, (ii) the Chairman of Board of Directors, (iii) the Chief Executive Officer, or (iv) the President (in the absence of a Chief Executive Officer), and the the ability of the stockholders to call a special meeting is hereby specifically denied. The Board of Directors may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

(b) If a special meeting is properly called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

Section 7. Notice of Meetings. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of a majority of shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to the vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even split for the purpose of subsection (c) shall be a majority or even split in interest.

Section 12. List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

Section 13. Action Without Meeting.

(a) Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, or by electronic transmission setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

(b) Every written consent or electronic transmission shall bear the date of signature of each stockholder who signs the consent, and no written consent or electronic transmission shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the corporation in the manner herein required, written consents or electronic transmissions signed by a sufficient number of stockholders to take action are delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

(c) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing or by electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take action were delivered to the corporation as provided in Section 228(c) of the DGCL. If the action which is consented to is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

(d) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in the state of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors of the corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

Section 14. Organization.

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV DIRECTORS

Section 15. Number and Term of Office. The authorized number of directors of the corporation shall be fixed by the Board of Directors from time to time. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient.

Section 16. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 17. Term of Directors.

(a) Unless otherwise set forth in the Certificate of Incorporation, directors shall be elected at each annual meeting of stockholders for a term of one year. Each director shall serve until his or her successor is duly elected and qualified or until his or her death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(b) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled to vote.

Section 18. Vacancies. Unless otherwise provided in the Certificate of Incorporation, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director or upon creation of a new directorship resulting from an increase in the number of directors.

Section 19. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 20. Removal. Subject to any limitations imposed by applicable law or the Certificate of Incorporation, the Board of Directors or any director may be removed from office at any time (i) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors or (ii) without cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation, entitled to vote generally at an election of directors.

Section 21. Meetings

(a) **Regular Meetings.** Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, including a voice-messaging system or other system designated to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for a regular meeting of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or any director.

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by U.S. mail, it shall be sent by first class mail, postage prepaid at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 22. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; provided, however, at any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 23. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 24. Fees and Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 25. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. The Board of Directors, subject to the provisions of subsections (a) or (b) of this Bylaw, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 26. Organization. At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or if the President is absent, the most senior Vice President, (if a director) or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

ARTICLE V OFFICERS

Section 27. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, and the Treasurer, all of whom shall be appointed at the annual organizational meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 28. Tenure and Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) Duties of Chairman of the Board of Directors. The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 28.

(c) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. Unless some other officer has been elected Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(d) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(e) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and the Treasurer and any Assistant Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

Section 29. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 30. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 31. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time. The Chief Executive Officer or any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors may remove any officer other than the Chairman of the Board or the President.

**ARTICLE VI
EXECUTION OF CORPORATE INSTRUMENTS AND VOTING
OF SECURITIES OWNED BY THE CORPORATION**

Section 32. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation. All checks and drafts drawn on banks or other depositories on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do. Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 33. Voting of Securities Owned by the Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

**ARTICLE VII
SHARES OF STOCK**

Section 34. Form and Execution of Certificates. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the powers, designations, preferences, and rights, and the limitations or restrictions of the shares authorized to be issued or shall, except as otherwise required by law, set forth on the face or back a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or otherwise required by law or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 35. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

Section 36. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

Section 37. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 38. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

**ARTICLE VIII
OTHER SECURITIES OF THE CORPORATION**

Section 39. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 34), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

**ARTICLE IX
DIVIDENDS**

Section 40. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 41. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

**ARTICLE X
FISCAL YEAR**

Section 42. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors. Until changed by the Board of Directors the fiscal year of the corporation shall end on January 31.

**ARTICLE XI
INDEMNIFICATION**

Section 43. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.

(a) Directors and Executive Officers. The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, “executive officers” shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the fullest extent not prohibited by the DGCL or any other applicable law; provided, however, that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, provided, further, that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law or any other applicable law or (iv) such indemnification is required to be made under subsection (d). In addition, the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid; (ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements); (iii) for any reimbursement of the corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the corporation, as required in each case under the 1934 Act (including any such reimbursements that arise from an accounting restatement of the corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), or the payment to the corporation of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements); and (iv) initiated by such person, including any proceeding (or any part of any proceeding) initiated by such person against the corporation or its directors, officers, employees, agents or other indemnitees, unless (a) the Board authorized the proceeding (or the relevant part of the proceeding) prior to its initiation, (b) the corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the corporation under applicable law, (c) the indemnification is otherwise required to be made under applicable law.

(b) Other Officers, Employees and Other Agents. The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person except executive officers to such officers or other persons as the Board of Directors shall determine.

(c) Expenses. The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer, of the corporation, or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding, provided, however, that, if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 43 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Bylaw, no advance shall be made by the corporation to an executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation, in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of a quorum consisting of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this Bylaw to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an executive officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such executive officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or executive officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or executive officer is not entitled to be indemnified, or to such advancement of expenses, under this Article XI or otherwise shall be on the corporation.

(e) Non Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL, or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

(h) Amendments. Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) Saving Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law. If this Section 43 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under applicable law.

(j) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:

(1) The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(2) The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(3) The term the “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(4) References to a “director,” “executive officer,” “officer,” “employee,” or “agent” of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(5) References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Bylaw.

ARTICLE XII NOTICES

Section 44. Notices.

(a) Notice to Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by United States mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), or as provided for in Section 21 of these Bylaws. If such notice is not delivered personally, it shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice to Person with Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

ARTICLE XIII AMENDMENTS

Section 45. Amendments. The Board of Directors is authorized to adopt, amend or repeal any and all provisions of these Bylaws by a vote of at least two-thirds of all directors who constitute the Board of Directors, except as and to the extent provided in the Bylaws. Notwithstanding any other provision of the Certificate of Incorporation or these Bylaws (and notwithstanding that some lesser percentage may be specified by law), no provision of the Bylaws of the Corporation shall be amended, modified or repealed by the stockholders of the corporation, nor shall any provision of the Bylaws inconsistent with any such provision be adopted by the stockholders of the corporation, unless approved by the affirmative vote of holders of at least seventy-five (75%) of the issued and outstanding shares of common stock. Any purported amendment to the Bylaws which would add thereto a matter not expressly covered in the Bylaws prior to such purported amendment shall be deemed to constitute the adoption of a Bylaw provision and not an amendment to the Bylaws.

CREDIT AGREEMENT

Dated as of February 2, 2018

among

THE LOVESAC COMPANY
as the Lead Borrower

SAC ACQUISITION LLC
as Guarantor

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Agent, L/C Issuer and Swing Line Lender,

and

The Other Lenders Party Hereto

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as
Sole Lead Arranger and Sole Bookrunner

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G Credit Card Notification

CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of February 2, 2018, among The Lovesac Company, a Delaware corporation (the "Lead Borrower," and together with any other Person that becomes party hereto as a borrower after the date hereof, individually a "Borrower" and collectively, the "Borrowers"), SAC Acquisition LLC, a Delaware limited liability company ("Parent," and together with any other Person that becomes a party hereto as a guarantor after the date hereof, individually, a "Guarantor" and collectively, "Guarantors"), each lender from time to time party hereto (individually, a "Lender" and collectively, the "Lenders"), Wells Fargo Bank, National Association, as Agent, L/C Issuer and Swing Line Lender.

The Borrowers have requested that the Lenders provide a revolving credit facility, and the Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to issue Letters of Credit, in each case on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

"Acceptable Document of Title" means, with respect to any Inventory, a tangible, negotiable bill of lading or other Document (as defined in the UCC) that (a) is issued by a common carrier which is not an Affiliate of the Approved Foreign Vendor or any Loan Party which is in actual possession of such Inventory, (b) is issued to the order of a Loan Party or, if so requested by the Agent, to the order of the Agent, (c) names the Agent as a notify party and bears a conspicuous notation on its face of the Agent's security interest therein, (d) is not subject to any Lien (other than in favor of the Agent), and (e) is on terms otherwise reasonably acceptable to the Agent.

"ACH" means automated clearing house transfers. "Accommodation Payment" as defined in Section 10.22(d).

"Account" means "accounts" as defined in the UCC, and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a policy of insurance issued or to be issued, (d) for a secondary obligation incurred or to be incurred, (e) for energy provided or to be provided, (f) for the use or hire of a vessel under a charter or other contract, (g) arising out of the use of a credit or charge card or information contained on or for use with the card, or (h) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term "Account" includes health-care-insurance receivables.

"Acquisition" means, with respect to any Person (a) an investment in, or a purchase of, a Controlling interest in the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit, division or line of business of another Person, (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or of any business unit, division or line of business of another Person, or a Controlling interest in the Equity Interests, of any Person, or (d) any acquisition of any Store locations of any Person, in each case in any transaction or group of transactions which are part of a common plan.

“Act” shall have the meaning provided in Section 10.7. “

Adjusted LIBO Rate” means:

(a) for any Interest Period with respect to any LIBO Borrowing, an interest rate per annum (rounded upwards, if necessary, to the next one one-hundredth (1/100) of one percent (1%)) equal to (i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate; and

(b) for any interest rate calculation with respect to any Base Rate Loan, an interest rate per annum (rounded upwards, if necessary, to the next one one-hundredth (1/100) of one percent (1%)) equal to (i) the LIBO Rate for an Interest Period commencing on the date of such calculation and ending on the date that is thirty (30) days thereafter multiplied by (ii) the Statutory Reserve Rate.

The Adjusted LIBO Rate will be adjusted automatically as of the effective date of any change in the Statutory Reserve Rate.

“Adjustment Date” means the first day of each Fiscal Month, commencing March 1, 2018.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Agent.

“Affiliate” means, with respect to any Person, (a) another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified, (b) any director, officer, managing member, partner, trustee, or beneficiary of that Person, (c) any other Person directly or indirectly holding ten percent (10%) or more of any class of the Equity Interests of that Person, and (d) any other Person ten percent (10%) or more of any class of whose Equity Interests is held directly or indirectly by that Person.

“Agent” means Wells Fargo in its capacity as Agent and collateral agent under any of the Loan Documents, or any successor thereto.

“Agent Parties” shall have the meaning specified in Section 10.02(c).

“Agent Payment Account” means account no. 37235547964503951 of Agent at Wells Fargo, or such other account of Agent as Agent may from time to time designate to Lead Borrower as the Agent Payment Account for purposes of this Agreement and the other Loan Documents.

“Agent’s Office” means the Agent’s address and account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify the Lead Borrower and the Lenders.

“Aggregate Commitments” means the Commitments of all the Lenders. As of the Closing Date, the Aggregate Commitments are \$15,000,000.

“Agreement” means this Credit Agreement.

“Allocable Amount” has the meaning specified in Section 10.22(d).

“Applicable Commitment Fee Percentage” means thirty-seven and one-half basis points (0.375%).

“Applicable Lenders” means the Required Lenders, all affected Lenders, or all Lenders, as the context may require.

“Applicable Margin” means:

(a) From and after the Closing Date until the first Adjustment Date, the percentages set forth in Level I of the pricing grid below; and

(b) From and after the first Adjustment Date and on each Adjustment Date thereafter, the Applicable Margin shall be determined from the following pricing grid based upon the Monthly Average Excess Availability as of the Fiscal Month ended immediately preceding such Adjustment Date; provided, that, (i) notwithstanding anything to the contrary set forth herein, upon the occurrence of an Event of Default, the Agent may, and at the direction of the Required Lenders shall, immediately increase the Applicable Margin to that set forth in Level II (even if the Monthly Average Excess Availability requirements for a different Level have been met) and interest shall accrue at the Default Rate and (ii) if any Borrowing Base Certificate is at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in any Borrowing Base Certificate otherwise proves to be false or incorrect such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest due under this Agreement shall be immediately recalculated at such higher rate for any applicable periods and shall be due and payable on demand.

Level	Monthly Average Excess Availability	LIBOR Margin	Base Rate Margin
I	Greater than 50% of Aggregate Commitments	2.00%	1.00%
II	Less than or equal to 50% of Aggregate Commitments	2.25%	1.25%

“Applicable Percentage” means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s Commitment at such time. If the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Approved Foreign Vendor” means a Foreign Vendor which (a) is located in any country acceptable to the Agent in its Permitted Discretion, (b) has received timely payment or performance of all obligations owed to it by the Loan Parties, (c) has not asserted and has no right to assert any reclamation, repossession, diversion, stoppage in transit, Lien or title retention rights in respect of such Inventory, and (d), if so requested by the Agent, has entered into and is in full compliance with the terms of a Foreign Vendor Agreement (provided, that, as of the date hereof, without limitation of the right of the Agent after the date hereof to make such request, Agent has not requested a Foreign Vendor Agreement from any Foreign Vendor).

“Approved Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender or (d) the same investment advisor or an advisor under common control with such Lender, Affiliate or advisor, as applicable.

“Arranger” means Wells Fargo in its capacity as sole lead arranger and sole book manager.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of Exhibit E or any other form approved by the Agent.

“Audited Financial Statements” means the audited consolidated balance sheet of the Parent Borrower and its Subsidiaries for the Fiscal Year ended January 29, 2017 and the related consolidated statements of income or operations, Shareholders’ Equity and cash flows for such Fiscal Year of the Parent and its Subsidiaries, including the notes thereto.

“Availability Period” means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

“Availability Reserves” means, without duplication of any other Reserves or items to the extent such items are otherwise addressed or excluded through eligibility criteria, such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate (a) to reflect the impediments to the Agent’s ability to realize upon the Collateral, (b) to reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party, or (d) to reflect that a Default or an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent’s Permitted Discretion, but are not limited to, reserves based on: (i) rent; (ii) customs duties, and other costs to release Inventory which is being imported into the United States; (iii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, claims of the PBGC and other Taxes which may have priority over the interests of the Agent in the Collateral; (iv) salaries, wages and benefits due to employees of any Borrower, (v) customer credit liabilities consisting of the aggregate remaining value at such time of (A) outstanding gift certificates and gift cards of the Borrowers entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, (B) outstanding merchandise credits of the Borrowers, and (C) liabilities in connection with frequent shopping programs of the Borrowers, (vi) deposits made by customers with respect to the purchase of goods or the performance of services and layaway obligations of the Borrowers, (vii) reserves for reasonably anticipated changes in the appraised Value of Eligible Inventory between appraisals, (viii) warehousemen’s or bailee’s charges and other Permitted Encumbrances which may have priority over the interests of the Agent in the Collateral, (ix) Cash Management Reserves, and (xi) Bank Products Reserves.

“Bank Products” means any services or facilities provided to any Loan Party by the Agent or any of its Affiliates (but excluding Cash Management Services) including, without limitation, on account of (a) Swap Contracts, (b) merchant services constituting a line of credit, (c) leasing, (d) Factored Receivables, and (e) supply chain finance services including, without limitation, trade payable services and supplier accounts receivable purchases.

“Bank Product Reserves” means such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate to reflect the liabilities and obligations of the Loan Parties with respect to Bank Products then provided or outstanding.

“Base Rate” means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate, as in effect from time to time, plus one-half of one percent (0.50%), (b) the Adjusted LIBO Rate plus one percent (1.00%), or (c) the rate of interest in effect for such day as publicly announced from time to time by Wells Fargo as its “prime rate.” The “prime rate” is a rate set by Wells Fargo based upon various factors including Wells Fargo’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Wells Fargo shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate. “Borrower Materials” has the meaning specified in Section 6.02.

“Borrowers” has the meaning specified in the introductory paragraph hereto.

“Borrowing” means a Committed Borrowing or a Swing Line Borrowing, as the context may require.

“Borrowing Base” means, at any time of calculation, an amount equal to:

(a) ninety percent (90%) multiplied by the Eligible Credit Card Receivables; plus

(b) eighty-five percent (85%) of the Eligible Wholesale Receivables (provided, that, in no event will the aggregate amount of Eligible Wholesale Receivables included in the Borrowing Base at any time exceed twenty percent (20%) of the Loan Cap); plus

(c) eighty-five percent (85%) of the Net Recovery Percentage of Eligible Inventory multiplied by the Cost of such Eligible Inventory for the period from December 16 of each year until October 14 of the immediately following year, which percentage shall increase to ninety percent (90%) of the Net Recovery Percentage for the period from October 15 of each year until December 15 of such year (provided, that, in no event will the aggregate amount of Eligible Inventory consisting of work-in-process that are sac liners and duffels included in the Borrowing Base at any time exceed ten percent (10%) of the amount of Eligible Inventory, excluding such Eligible Inventory consisting of (i) work-in-process and (ii) Eligible In-Transit Inventory); minus

(d) Reserves.

“Borrowing Base Certificate” means a certificate substantially in the form of Exhibit F hereto (with such changes therein as may be required by the Agent to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and complete by a Responsible Officer of the Lead Borrower, which shall include appropriate exhibits, schedules, supporting documentation, and additional reports as reasonably requested by the Agent.

“Business” means the business engaged in by Borrowers on the Closing Date and similar, ancillary or related businesses.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Agent’s Office is located and, if such day relates to any LIBO Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank market.

“Capital Expenditures” means, with respect to any Person for any period, (a) all expenditures made (whether made in the form of cash or other property) or costs incurred for the acquisition or improvement of fixed or capital assets of such Person (excluding normal replacements and maintenance which are properly charged to current operations), in each case that are (or should be) set forth as capital expenditures in a Consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP, and (b) Capital Lease Obligations incurred by a Person during such period.

“Capital Lease Obligations” means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as liabilities on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Collateral Account” means a non-interest bearing account established by one or more of the Loan Parties with Wells Fargo, and in the name of, the Agent (or as the Agent shall otherwise direct) and under the sole and exclusive dominion and control of the Agent, in which deposits are required to be made in accordance with Section 2.03(k) or 8.02(c).

“Cash Collateralize” has the meaning specified in Section 2.03(k). Derivatives of such term have corresponding meanings.

“Cash Equivalents” means (a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than three hundred sixty (360) days from the date of acquisition thereof; provided, that, the full faith and credit of the United States of America is pledged in support thereof; (b) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than one hundred eighty (180) days from the date of acquisition thereof; (c) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than one hundred eighty (180) days from the date of acquisition thereof; (d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than one hundred percent (100%) of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into; (e) Investments, classified in accordance with GAAP as current assets of the Loan Parties, in any money market fund, mutual fund, or other investment companies that are registered under the Investment Company Act of 1940, as amended, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above.

“Cash Management Bank” means each bank with whom Deposit Accounts are maintained in which any funds of any of the Loan Parties from one or more Deposit Accounts are concentrated and with whom a Control Agreement has been, or is required to be, executed in accordance with the terms hereof.

“Cash Management Reserves ” means such reserves as the Agent, from time to time, determines in its Permitted Discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Loan Parties with respect to Cash Management Services then provided or outstanding.

“Cash Management Services” means any cash management services or facilities provided to any Loan Party by the Agent or any of its Affiliates, including, without limitation: (a) ACH transactions, (b) controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) credit or debit cards, (d) credit card processing services, and (e) purchase cards.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

“CERCLIS” means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the United States Environmental Protection Agency.

“CFC” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means an event or series of events by which:

(a) at any time prior to a Qualifying IPO, the Sponsor shall cease to own and control legally and beneficially (free and clear of all Liens), either directly or indirectly, equity securities in Parent representing more than sixty-six and two-thirds (66 2/3%)% of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of the Parent on a fully-diluted basis (and taking into account all such securities that Sponsor has the right to acquire pursuant to any option right (as defined in clause (b) below));

(b) at any time after a Qualifying IPO, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Sponsor, becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of thirty-five percent (35%) or more of the Equity Interests of the Parent entitled to vote for members of the board of directors or equivalent governing body of the Parent on a fully-diluted basis (and taking into account all such Equity Interests that such “person” or “group” has the right to acquire pursuant to any option right); or

(c) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(d) any “change in control” or “sale” or “disposition” or similar event as defined in any document governing Material Indebtedness of any Loan Party; or

(e) the Parent fails at any time to own, directly or indirectly, one hundred percent (100%) of the Equity Interests of each other Loan Party free and clear of all Liens (other than the Liens in favor of the Agent), except where such failure is as a result of a transaction permitted by the Loan Documents.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“Code” means the Internal Revenue Code of 1986, and the regulations promulgated thereunder, as amended and in effect.

“Collateral” means any and all “Collateral” as defined in any applicable Security Document and all other property that is or is intended under the terms of the Security Documents to be subject to Liens in favor of the Agent.

“Collateral Access Agreement” means an agreement reasonably satisfactory in form and substance to the Agent executed by (a) a bailee or other Person in possession of Collateral, and (b) any landlord of Real Estate leased by any Loan Party where books and records or Collateral included in the Borrowing Base is located.

“Collection Account” means any Deposit Account of a Loan Party that at any time receives, or is otherwise established for the purpose of receiving, payments in respect of Credit Card Receivables, Accounts or other proceeds of any Collateral, including, without limitation, the Deposit Accounts designated as Collection Accounts in Schedule 5.21(a).

“Commercial Letter of Credit” means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by a Loan Party in the ordinary course of business of such Loan Party.

“Commercial Letter of Credit Agreement” means the Commercial Letter of Credit Agreement relating to the issuance of a Commercial Letter of Credit in the form from time to time in use by the L/C Issuer.

“Commitment” means, as to each Lender, its obligation to (a) make Committed Loans to the Borrowers pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Committed Borrowing” means a borrowing consisting of simultaneous Committed Loans of the same Type and, in the case of LIBO Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“Committed Increase” has the meaning specified in Section 2.15(a). “Committed Loan” has the meaning specified in Section 2.01.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“Concentration Account” means any Deposit Account of a Loan Party that at any time receives, or is otherwise established for the purpose of receiving, payments from other Collection Accounts, including, without limitation, the Deposit Accounts designated as Concentration Accounts in Schedule 5.21(a).

“Consent” means actual consent given by a Lender from whom such consent is sought; or the passage of seven (7) Business Days from receipt of written notice to a Lender from the Agent of a proposed course of action to be followed by the Agent without such Lender’s giving the Agent written notice of that Lender’s objection to such course of action.

“Consolidated” means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

“Contractual Obligation” means, as to any Person, any provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Control Agreement” means with respect to a Deposit Account or Securities Account established by a Loan Party, an agreement, in form and substance reasonably satisfactory to the Agent, establishing control, pursuant to Section 9-104 of the UCC or other applicable section of the UCC, of such account by the Agent and which provides for such other rights with respect thereto as Agent may reasonably require.

“Controlled Investment Affiliate” means, as to any Person, any other Person which directly or indirectly is in control of, is controlled by, or is under common control with, such Person and is organized by such Person (or any Person controlling or controlled by such Person) primarily for making equity or debt Investments, directly or indirectly, in Holdings or other portfolio companies of such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management or policies of such Person, whether by contract or otherwise.

“Cost” means the lower of cost or market value of Inventory, based upon the Borrowers’ accounting practices, known to the Agent, which practices are in effect on the Closing Date as such calculated cost is determined from invoices received by the Borrowers, the Borrowers’ purchase journals or the Borrowers’ stock ledger. “Cost” does not include inventory capitalization costs or other non-purchase price charges (such as freight) used in the Borrowers’ calculation of cost of goods sold.

“Credit Card Agreements” means all agreements now or hereafter entered into by any Borrower or any Guarantor for the benefit of any Borrower, in each case with any Credit Card Issuer or any Credit Card Processor, including, but not limited to, the agreements set forth on Schedule 5.21(b) hereto.

“Credit Card Issuer” shall mean any person (other than a Borrower or other Loan Party) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., and Novus Services, Inc. and other issuers approved by the Agent.

“Credit Card Processor” shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower’s sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

“Credit Card Notification” means a notification and acknowledgement substantially in the form of Exhibit G, which has been executed on behalf of the applicable Loan Party and delivered to the applicable Credit Card Issuer or Credit Card Processor (with evidence of such delivery received by Agent).

“Credit Card Receivables” means each “payment intangible” (as defined in the UCC) together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Loan Party resulting from charges by a customer of a Loan Party on credit or debit cards issued by such Credit Card Issuer in connection with the sale of goods by a Loan Party, or services performed by a Loan Party, in each case in the ordinary course of its business.

“Credit Extensions” mean each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Credit Party” or “Credit Parties” means (a) individually, (i) each Lender and its Affiliates, (ii) the Agent, (iii) each L/C Issuer, (iv) the Arranger, (v) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, (vi) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (vii) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

“Credit Party Expenses” means, without limitation, (a) all reasonable and documented out-of-pocket expenses actually incurred by the Agent and its Affiliates in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable and documented fees, charges and disbursements of (A) counsel for the Agent (other than, prior to a Default or an Event of Default, allocated costs of in-house counsel), (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examinations, and (E) all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) the syndication of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral, or (D) any workout, restructuring or negotiations in respect of any Obligations, and (iii) all customary fees and charges (as adjusted from time to time) of the Agent with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrowers (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, and (b) with respect to the L/C Issuer, and its Affiliates, all reasonable and documented out-of-pocket expenses actually incurred in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and (c) all reasonable out-of-pocket expenses incurred by the Credit Parties who are not the Agent, the L/C Issuer or any Affiliate of any of them, after the occurrence and during the continuance of an Event of Default, provided that such Credit Parties shall be entitled to reimbursement for no more than one counsel representing all such Credit Parties (absent a conflict of interest in which case the Credit Parties may engage and be reimbursed for additional counsel).

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Margin, if any, applicable to Base Rate Loans, plus (iii) two percent (2%) per annum; provided, however, that with respect to a LIBO Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus two percent (2%) per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Margin for LIBO Rate Loans for Standby Letters of Credit or Commercial Letters of Credit, as applicable, plus two percent (2%) per annum.

“Defaulting Lender” means any Lender that (a) has failed to fund any amounts required to be funded by it under this Agreement within one (1) Business Day of the date that it is required to do so under this Agreement (including the failure to make available to the Agent amounts required pursuant to a Settlement or to make a required payment in connection with a Letter of Credit Disbursement), (b) notified the Borrowers, the Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under this Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under the Agreement or under other agreements generally (as reasonably determined by the Agent) under which it has committed to extend credit, (d) failed, within one (1) Business Day after written request by the Agent, to confirm that it will comply with the terms of the Agreement relating to its obligations to fund any amounts required to be funded by it under the Agreement, (e) otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it under the Agreement within one (1) Business Day of the date that it is required to do so under the Agreement, or (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent or (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian or appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

“Defaulting Lender Rate” means (a) for the first three (3) days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Committed Loans that are Base Rate Loans (inclusive of the Applicable Margin applicable thereto).

“Deposit Account” means each checking, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each Deposit Account shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any Deposit Account.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale, transfer, license or other disposition of (whether in one transaction or in a series of transactions) of any property (including, without limitation, any Equity Interests by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith .

“Disqualified Stock” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature; provided, however, that (i) only the portion of such Equity Interests which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock and (ii) with respect to any Equity Interests issued to any employee or to any plan for the benefit of employees of the Lead Borrower or its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Lead Borrower or one of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, resignation, death or disability and if any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of an Equity Interest that is not Disqualified Stock, such Equity Interests shall not be deemed to be Disqualified Stock. Notwithstanding the preceding sentence, any Equity Interest that would constitute Disqualified Stock solely because the holders thereof have the right to require a Loan Party to repurchase such Equity Interest upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Lead Borrower and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

“Dollars” and “\$” mean lawful money of the United States.

“Drawing Document” means any Letter of Credit or other document presented for purposes of drawing under any Letter of Credit.

“Eligible Assignee” means (a) a Credit Party or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of \$250,000,000; (c) an Approved Fund; (d) any Person to whom a Credit Party assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Credit Party’s rights in and to a material portion of such Credit Party’s portfolio of asset based credit facilities, and (e) any other Person (other than a natural person) approved by (i) the Agent, the L/C Issuer and the Swing Line Lender, and (ii) unless a Default or an Event of Default has occurred and is continuing, the Lead Borrower (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, “Eligible Assignee” shall not include a Loan Party or any of the Loan Parties’ Affiliates or Subsidiaries.

“Eligible Credit Card Receivables” means at the time of any determination thereof, each Credit Card Receivable that satisfies the criteria set forth below at the time of creation and continues to meet the same at the time of such determination, as determined by the Agent in its Permitted Discretion. Without limiting the foregoing, to qualify as an Eligible Credit Card Receivable, such Credit Card Receivable shall indicate no Person other than a Borrower as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Receivable shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Borrower may be obligated to rebate to a customer, a Credit Card Issuer or Credit Card Processor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Credit Card Receivable but not yet applied by the Loan Parties to reduce the amount of such Credit Card Receivable. Except as otherwise agreed by the Agent, any Credit Card Receivable included within any of the following categories shall not constitute an Eligible Credit Card Receivable:

- (a) Credit Card Receivables which do not constitute a “payment intangible” (as defined in the UCC);
- (b) Credit Card Receivables that have been outstanding for more than five (5) Business Days from the date of sale;
- (c) Credit Card Receivables (i) that are not subject to a perfected first-priority security interest in favor of the Agent, or (ii) with respect to which a Borrower does not have good, valid and marketable title thereto, free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents);
- (d) Credit Card Receivables which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback);

(e) Credit Card Receivables as to which the Credit Card Issuer or Credit Card Processor has the right under certain circumstances to require a Loan Party to repurchase the Credit Card Receivables from such Credit Card Issuer or Credit Card Processor;

(f) Credit Card Receivables due from a Credit Card Issuer or Credit Card Processor which is the subject of any bankruptcy or insolvency proceedings;

(g) Credit Card Receivables which are not a valid, legally enforceable obligation of the applicable Credit Card Issuer or Credit Card Processor with respect thereto;

(h) Credit Card Receivables which do not conform to all representations, warranties or other provisions in the Loan Documents relating to Credit Card Receivables; or

(i) Credit Card Receivables which the Agent determines in its Permitted Discretion to be uncertain of collection or which do not meet such other reasonable eligibility criteria for Credit Card Receivables as the Agent may determine.

“Eligible In-Transit Inventory” means, as of any date of determination thereof, without duplication of other Eligible Inventory, In-Transit Inventory:

(a) which has been shipped from a foreign location for receipt by a Borrower, but which has not yet been delivered to such Borrower, which In-Transit Inventory has been in transit for forty-five (45) days or less from the date of shipment of such Inventory;

(b) for which the purchase order is in the name of a Borrower and title and risk of loss has passed to such Borrower;

(c) for which an Acceptable Document of Title has been issued, and in each case as to which the Agent has control (as defined in the UCC) over the documents of title which evidence ownership of the subject Inventory (and including, if requested by the Agent, the receipt by Agent of an executed Freight Forwarder Agreement);

(d) which is insured to the reasonable satisfaction of the Agent (including, without limitation, pursuant to marine cargo insurance);

(e) the Foreign Vendor with respect to such In-Transit Inventory is an Approved Foreign Vendor;

(f) which otherwise would constitute Eligible Inventory;

Provided, that, the Agent may, in its Permitted Discretion, exclude any particular Inventory from the definition of “Eligible In-Transit Inventory” in the event the Agent determines that such Inventory is subject to any Person’s right of reclamation, repudiation, stoppage in transit or any event has occurred or is reasonably anticipated by the Agent to arise which may otherwise adversely impact the ability of the Agent to realize upon such Inventory.

“Eligible Inventory” means, as of the date of determination thereof, without duplication, items of Inventory of a Borrower that are finished goods, merchantable and readily saleable to the public in the ordinary course of such Borrower’s business or work-in-process consisting of sac liners and duffels and in each case deemed by the Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Borrowing Base, and except as otherwise agreed by the Agent, (A) complies with each of the representations and warranties respecting Inventory made by the Borrowers in the Loan Documents, and (B) is not excluded as ineligible by virtue of one or more of the criteria set forth below as determined by the Agent in its Permitted Discretion. Except as otherwise agreed by the Agent, in its Permitted Discretion, the following items of Inventory shall not be included in Eligible Inventory:

- (a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto;
- (b) Inventory that is leased by or is on consignment to a Borrower or which is consigned by a Borrower to a Person which is not a Loan Party;
- (c) Inventory (other than Eligible In-Transit Inventory) that is not located in the United States of America (excluding territories or possessions of the United States);
- (d) Inventory that is not located at a location that is owned or leased by a Borrower, except (i) Inventory located in the United States of America that is in transit between such owned or leased locations, including such Inventory in transit from a distribution center to a retail store, (ii) Eligible In-Transit Inventory or (iii) Inventory on consignment at a location owned and operated by another Person to the extent that the Borrowers have furnished the Agent with (A) any UCC financing statements and other documents that the Agent may determine to be necessary to perfect its security interest in such Inventory at such location or to establish the priority of its security interest with respect thereto, and (B) a Collateral Access Agreement executed by the Person owning and operating any such location on terms reasonably acceptable to the Agent (and in any event including a Collateral Access Agreement by Amalgamate Processing, Inc.);
- (e) Inventory that is located in a distribution center or warehouse leased by a Borrower unless (i) the applicable lessor has delivered to the Agent a Collateral Access Agreement or (ii) a Reserve based on amounts payable with respect to such location has been established by the Agent;
- (f) Inventory that is comprised of goods which (i) are damaged, defective, “seconds,” or otherwise unmerchantable, (ii) are to be returned to the vendor, (iii) are obsolete or slow moving, or custom items, work-in-process, raw materials, or that constitute samples, spare parts, promotional, marketing, labels, bags and other packaging and shipping materials or supplies used or consumed in a Borrower’s business, (iv) are seasonal in nature and which have been packed away for sale in the subsequent season, (v) not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (vi) are bill and hold goods;
- (g) Inventory that is not subject to a perfected first-priority security interest in favor of the Agent;
- (h) Inventory that is not insured in compliance with the provisions of Section 5.10 hereof;
- (i) Inventory that has been sold but not yet delivered or as to which a Borrower has accepted a deposit (except in the case of Inventory as to which a Borrower has accepted a deposit, to the extent that Reserves have been established in respect of such deposit);
- (j) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party from which any Borrower or any of its Subsidiaries has received notice of a dispute in respect of any such agreement; or

(k) Inventory acquired in a Permitted Acquisition or which is not of the type usually sold in the ordinary course of the Borrowers' business, unless and until the Agent has completed or received (i) an appraisal of such Inventory from appraisers satisfactory to the Agent and establishes any Reserves (if applicable) therefor, and otherwise agrees that such Inventory shall be deemed Eligible Inventory, and (ii) such other due diligence as the Agent may require, all of the results of the foregoing to be reasonably satisfactory to the Agent.

"Eligible Wholesale Receivables" means Accounts deemed by the Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Borrowing Base arising from the sale of the Inventory of a Borrower (other than Credit Card Receivables) that satisfies the criteria set forth herein at the time of creation and continues to meet the same at the time of such determination, and in each case is acceptable to the Agent in its Permitted Discretion, and is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (s) below as determined by the Agent in its Permitted Discretion. Without limiting the foregoing, to qualify as an Eligible Wholesale Receivable, an Account shall indicate no Person other than a Borrower as payee or remittance party. In determining the amount to be so included, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Borrower may be obligated to rebate to a customer pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by the Borrowers to reduce the amount of such Eligible Wholesale Receivable. Except as otherwise agreed by the Agent, any Account included within any of the following categories shall not constitute an Eligible Wholesale Receivable:

(a) Accounts that are not evidenced by an invoice;

(b) Accounts that have been outstanding for more than thirty (30) days from the date of sale or for such other period as Agent may determine after the Closing Date, based on the receipt by the Agent of satisfactory reporting of Accounts of Borrowers pursuant to a field examination with respect to the Accounts of Borrowers after the Closing Date;

(c) Accounts due from any account debtor which is obligated on any accounts described in clause (b) above;

(d) Accounts owed by an account debtor and/or its Affiliates that together exceed ten percent (10%) of the amount of all Accounts at any one time (except in the case of Accounts owed by Summit Retail Solutions Inc. for which such percentage shall be higher as of the Closing Date and thereafter, subject to reduction by Agent from time to time upon notice to Lead Borrower), but the portion of the Accounts of an account debtor and/or its Affiliates not in excess of the applicable percentage of the amount of all Accounts that otherwise constitute Eligible Wholesale Receivables shall be deemed Eligible Wholesale Receivables;

(e) Accounts (i) that are not subject to a perfected first-priority security interest in favor of the Agent, or (ii) with respect to which a Borrower does not have good, valid and marketable title thereto, free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents);

(f) Accounts which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted, but only to the extent of such dispute, counterclaim, offset or chargeback;

- (g) Accounts which arise out of any sale made not in the ordinary course of business, made on a basis other than upon credit terms usual to the business of the Borrowers or are not payable in Dollars;
- (h) Accounts which are owed by any account debtor whose principal place of business is not within the continental United States;
- (i) Accounts which are owed by any Affiliate or any employee of a Loan Party;
- (j) Accounts for which all consents, approvals or authorizations of, or registrations or declarations with any Governmental Authority required to be obtained, effected or given in connection with the performance of such Account by the account debtor or in connection with the enforcement of such Account by the Agent have been duly obtained, effected or given and are in full force and effect;
- (k) Accounts due from an account debtor which is the subject of any bankruptcy or insolvency proceeding, has had a trustee or receiver appointed for all or a substantial part of its property, has made an assignment for the benefit of creditors or has suspended its business;
- (l) Accounts due from any Governmental Authority except to the extent that the subject account debtor is the federal government of the United States of America and has complied with the Federal Assignment of Claims Act of 1940 and any similar state legislation;
- (m) Accounts (i) owing from any Person that is also a supplier to or creditor of a Loan Party or any of its Subsidiaries unless such Person has waived any right of setoff in a manner acceptable to the Agent or (ii) representing any manufacturer's or supplier's credits, discounts, incentive plans or similar arrangements entitling a Loan Party or any of its Subsidiaries to discounts on future purchase therefrom;
- (n) Accounts arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis or subject to any right of return, set off or charge back;
- (o) Accounts arising out of sales to account debtors outside the United States unless such Accounts are fully backed by an irrevocable letter of credit on terms, and issued by a financial institution, acceptable to the Agent and such irrevocable letter of credit is in the possession of, and drawable by, the Agent;
- (p) Accounts payable other than in Dollars or that are otherwise on terms other than those normal and customary in the Loan Parties' business;
- (q) Accounts evidenced by a promissory note or other instrument;
- (r) Accounts consisting of amounts due from vendors as rebates or allowances;
- (s) Accounts which are in excess of the credit limit for such account debtor established by the Loan Parties in the ordinary course of business and consistent with past practices;
- (t) Accounts which include extended payment terms (datings) beyond those generally furnished to other account debtors in the ordinary course of business;
- (u) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity; or
- (v) Accounts which the Agent determines in its Permitted Discretion to be unacceptable for borrowing.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense, or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equipment” has the meaning set forth in the UCC.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with any Loan Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 and 4971 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification to the Lead Borrower or any ERISA Affiliate that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination of a Pension Plan or a Multiemployer Plan under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Lead Borrower or any ERISA Affiliate; or (g) the determination that any Pension Plan is considered to be an “at-risk” plan, or that any Multiemployer Plan is considered to be in “endangered” or “critical” status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 or 305 of ERISA.

“Event of Default” has the meaning specified in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.03 hereof.

“Excess Availability” means, as of any date of determination thereof by the Agent, the result of: (a) the Loan Cap, minus (b) the aggregate unpaid balance of Credit Extensions.

“Excluded Accounts” means (a) Deposit Accounts that are specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Loan Party’s salaried employees, (b) Deposit Accounts that are specifically and exclusively used for paying taxes, including sales taxes, (c) Deposit Accounts used for cash collateral pursuant to clauses (c) and (d) of the definition “Permitted Encumbrances”, (d) Deposit Accounts for which the aggregate balance does not exceed \$150,000 at any time outstanding, and (e) Deposit Accounts that are zero balance accounts so that no funds are maintained in such accounts for more than one (1) Business Day.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Taxes” means, with respect to the Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Loan Parties hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which any Loan Party is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Lead Borrower under Section 10.13), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Loan Parties with respect to such withholding tax pursuant to Section 3.01(a), (d) any U.S. federal, state or local backup withholding tax, and (e) any U.S. federal withholding tax imposed under FATCA.

“Executive Order” has the meaning set forth in Section 10.18.

“Existing Credit Agreement” means the Loan and Security Agreement, dated as of May 14, 2014, between Siena Lending Group LLC, as Lender, and SAC Acquisition LLC, as assumed by the Lead Borrower and as amended from time to time prior to the date hereof.

“Extraordinary Receipt” means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments.

“Facility Guaranty” means the Guaranty made by the Guarantors in favor of the Agent and the other Credit Parties, in form reasonably satisfactory to the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

“FATCA” means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

“Factored Receivables” means any Accounts originally owed or owing by a Loan Party to another Person which have been purchased by or factored with Wells Fargo or any of its Affiliates pursuant to a factoring arrangement or otherwise with the Person that sold the goods or rendered the services to the Loan Party which gave rise to such Account.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Wells Fargo on such day on such transactions as determined by the Agent.

“Fee Letter” means the letter agreement, dated of even date herewith, among the Lead Borrower, the Agent and the Arranger.

“Fiscal Month” means any fiscal month of any Fiscal Year, which month shall generally end on the Sunday closest to the last day of each calendar month in accordance with the fiscal accounting calendar of the Loan Parties.

“Fiscal Quarter” means any fiscal quarter of any Fiscal Year, which quarters shall generally end on the Sunday closest to the last day of each of April, July, October and January of such Fiscal Year in accordance with the fiscal accounting calendar of the Loan Parties.

“Fiscal Year” means any period of twelve (12) consecutive months ending on the Sunday closest to January 31 of any calendar year.

“Foreign Asset Control Regulations” has the meaning set forth in [Section 10.18](#).

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than that in which the Lead Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Vendor” means a Person that sells In-Transit Inventory to a Borrower.

“Foreign Vendor Agreement” means an agreement between a Foreign Vendor and the Agent in form and substance satisfactory to the Agent and pursuant to which, among other things, the parties shall agree upon their relative rights with respect to In-Transit Inventory of a Borrower purchased from such Foreign Vendor.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Freight Forwarder Agreement” means an agreement, in form and substance reasonably satisfactory to Agent, among a Borrower, a Freight Forwarder or other carrier, and the Agent, in which the Freight Forwarder acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Agent and agrees, upon notice from the Agent, to hold and dispose of the subject Inventory solely as directed by the Agent and providing for such other rights with respect thereto as Agent may reasonably require.

“Freight Forwarders” means the persons as may be selected by any Borrower who are reasonably acceptable to Agent to handle the receipt of Inventory within the United States of America and/or to clear Inventory through the Bureau of Customs and Border Protection (formerly the Customs Service) or other domestic or foreign export control authorities or otherwise perform part of entry services to process Inventory imported by Borrowers and Guarantors from outside the United States of America; each sometimes being referred to herein individually as a “Freight Forwarder”.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantor” means the Parent and each Subsidiary of the Parent that shall be required to execute and deliver a Facility Guaranty pursuant to Section 6.12.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Increase Effective Date” shall have the meaning provided therefor in Section 2.15.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than sixty (60) days after the date on which such trade account payable was created);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) indebtedness of such Person (i) in respect of any Capital Lease Obligations of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligations, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a capital lease;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person (including, without limitation, Disqualified Stock, or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitees” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Intellectual Property” means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications; (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, customer lists, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

“Intellectual Property Security Agreements” means the Trademark Security Agreement and Patent Security Agreement, each dated as of the Closing Date among the Loan Parties and the Agent, granting a Lien in the Intellectual Property and certain other assets of the Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

“Interest Payment Date” means, (a) as to any LIBO Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a LIBO Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the first day after the end of each month and the Maturity Date.

“Interest Period” means, as to each LIBO Rate Loan, the period commencing on the date such LIBO Rate Loan is disbursed or converted to or continued as a LIBO Rate Loan and ending on the date one, two, or three months thereafter, as selected by the Lead Borrower in its LIBO Rate Loan Notice; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(c) no Interest Period shall extend beyond the Maturity Date; and

(d) notwithstanding the provisions of clause (c), no Interest Period shall have a duration of less than one (1) month, and if any Interest Period applicable to a LIBO Borrowing would be for a shorter period, such Interest Period shall not be available hereunder.

For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Internal Control Event” means a material weakness in, or fraud that involves management or other employees who have a significant role in, the Parent’s and/or its Subsidiaries’ internal controls over financial reporting, in each case as described in the Securities Laws (provided, that, in the case of such a material weakness, if such weakness has been corrected, it shall cease to constitute an Internal Control Event).

“In-Transit Inventory” means Inventory of a Borrower which is in the possession of a common carrier and is in transit from a Foreign Vendor of a Borrower from a location outside of the continental United States to a location of a Borrower that is within the continental United States.

“Inventory” has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

“Inventory Reserves” means such reserves as may be established from time to time by the Agent in its Permitted Discretion with respect to the determination of the salability, at retail, of the Eligible Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon such Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in the Agent’s Permitted Discretion, include (but are not limited to) reserves based on: (a) obsolescence; (b) seasonality; (c) Shrink; (d) imbalance; (e) change in Inventory character; (f) change in Inventory composition; (g) change in Inventory mix; (h) markdowns (both permanent and point of sale); (i) retail markdowns and markups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events; and (j) out-of-date and/or expired Inventory.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition, or (d) any other investment of money or capital in order to obtain a profitable return. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adopted by the International Chamber of Commerce on the date such Letter of Credit is issued.

“Issuer Documents” means with respect to any Letter of Credit, the Letter Credit Application, the Standby Letter of Credit Agreement or Commercial Letter of Credit Agreement, as applicable, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to any such Letter of Credit.

“Joinder” means an agreement, in form satisfactory to the Agent pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Agent may determine.

“Landlord Lien State” means such state(s) in which a landlord’s claim for rent may have priority over the Lien of the Agent in any of the Collateral.

“Laws” means each international, foreign, Federal, state and local statute, treaty, rule, guideline, regulation, ordinance, code and administrative or judicial precedent or authority, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and each applicable administrative order, directed duty, request, license, authorization and permit of, and agreement with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof, or the renewal thereof.

“L/C Issuer” means Wells Fargo in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder (which successor may only be a Lender selected by the Agent in its discretion). The L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the L/C Issuer and/or for such Affiliate to act as an advising, transferring, confirming and/or nominated bank in connection with the issuance or administration of any such Letter of Credit, in which case the term “L/C Issuer” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“L/C Obligations” means, as at any date of determination, the aggregate undrawn amount available to be drawn under all outstanding Letters of Credit. For purposes of computing the amounts available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of any Rule under the ISP or any article of the UCP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lead Borrower” has the meaning assigned to such term in the preamble of this Agreement.

“Lease” means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any space in a structure, land, improvements or premises for any period of time.

“Lender” has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

“Letter of Credit” means each Standby Letter of Credit and each Commercial Letter of Credit issued hereunder.

“Letter of Credit Application” means an application for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Disbursement” means a payment made by the L/C Issuer pursuant to a Letter of Credit.

“Letter of Credit Expiration Date” means the day that is seven (7) days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(l).

“Letter of Credit Indemnified Costs” has the meaning specified in Section 2.03(f). “Letter of Credit Related Person” has the meaning specified in Section 2.03(f).

“Letter of Credit Sublimit” means an amount equal to \$500,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments. A permanent reduction of the Aggregate Commitments shall not require a corresponding pro rata reduction in the Letter of Credit Sublimit; provided, however, that if the Aggregate Commitments are reduced to an amount less than the Letter of Credit Sublimit, then the Letter of Credit Sublimit shall be reduced to an amount equal to (or, at Lead Borrower’s option, less than) the Aggregate Commitments.

“LIBO Borrowing” means a Borrowing comprised of LIBO Rate Loans.

“LIBO Rate” means for any Interest Period with respect to a LIBO Rate Loan, the rate per annum rate which appears on the Reuters Screen LIBOR01 page as of 11:00 a.m., London time, on the second London Business Day preceding the first day of such Interest Period (or if such rate does not appear on the Reuters Screen LIBOR01 Page, then the rate as determined by the Agent from another recognized source or interbank quotation), for a term, and in an amount, comparable to the Interest Period and the amount of the LIBO Rate Loan requested (whether as an initial LIBO Rate Loan or as a continuation of a LIBO Rate Loan or as a conversion of a Base Rate Loan to a LIBO Rate Loan) by Borrowers in accordance with this Agreement (and, if any such rate is below zero, the LIBO Rate shall be deemed to be zero), which determination shall be made by Agent and shall be conclusive in the absence of manifest error. If such rate is not available at such time for any reason, then the “LIBO Rate” for such Interest Period shall be the rate per annum determined by the Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBO Rate Loan being made, continued or converted by Wells Fargo and with a term equivalent to such Interest Period would be offered to Wells Fargo by major banks in the London interbank eurodollar market in which Wells Fargo participates at their request at approximately 11:00 a.m. (London time) two (2) Business Days prior to the commencement of such Interest Period.

“LIBO Rate Loan” means a Committed Loan that bears interest at a rate based on the Adjusted LIBO Rate.

“LIBO Rate Loan Notice” means a notice for a LIBO Borrowing or continuation pursuant to Section 2.02(b), which shall be substantially in the form of Exhibit A.

“Lien” means (a) any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, Synthetic Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing) and (b) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Liquidation” means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable Law as a creditor of the Loan Parties with respect to the realization on the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Agent, of any public, private or “going out of business”, “store closing”, or other similarly themed sale or other disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word “Liquidation” (such as “Liquidate”) are used with like meaning in this Agreement.

“Loan” means an extension of credit by a Lender to the Borrowers under Article II in the form of a Committed Loan or a Swing Line Loan.

“Loan Account” has the meaning assigned to such term in Section 2.11(a).

“Loan Cap” means, at any time of determination, the lesser of (a) the Aggregate Commitments or (b) the Borrowing Base.

“Loan Documents” means this Agreement, each Note, each Issuer Document, the Fee Letter, all Borrowing Base Certificates, the Control Agreements, the Credit Card Notifications, the Security Documents, the Facility Guaranty, each Request for Credit Extension, and any other instrument or agreement now or hereafter executed and delivered in connection herewith, or in connection with any transaction arising out of any Cash Management Services and Bank Products provided by the Agent or any of its Affiliates, each as amended and in effect from time to time; provided that for purposes of the definition of “Material Adverse Effect” and Article VII, “Loan Documents” shall not include agreements relating to Cash Management Services and Bank Products.

“Loan Parties” means, collectively, the Borrowers and the Guarantors.

“London Business Day” means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in London, England.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), or financial condition of any Loan Party and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material impairment of the rights and remedies of the Agent or any Lender under any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then existing events would result in a Material Adverse Effect.

“Material Contract” means, with respect to any Person, each contract to which such Person is a party involving aggregate consideration payable to or by such Person of \$500,000 or more in any Fiscal Year or otherwise material to the business, condition (financial or otherwise), operations, performance, properties or prospects of such Person.

“Material Indebtedness” means Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding \$500,000. For purposes of determining the amount of Material Indebtedness at any time, (a) the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof, (b) undrawn committed or available amounts shall be included, and (c) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included.

“Maturity Date” means February 2, 2022.

“Maximum Rate” has the meaning provided therefor in Section 10.09.

“Monthly Average Excess Availability” means, at any time, the average of the aggregate amount of Excess Availability for the immediately preceding Fiscal Month as calculated by the Agent.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any employee benefit plan of the type described in

Section 4001(a)(3) of ERISA, to which the Lead Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Net Proceeds” means, with respect to any Disposition by any Loan Party or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Agent’s Lien on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan Documents) and (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party or such Subsidiary in connection with such transaction (including, without limitation, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by any Loan Party to third parties (other than Affiliates).

“Net Recovery Percentage” means the fraction, expressed as a percentage (a) the numerator of which is the amount equal to the recovery on the aggregate amount of the applicable category of Eligible Inventory at such time on a “net orderly liquidation value” basis as set forth in the most recent acceptable inventory appraisal received by Agent in accordance with the requirements of this Agreement, net of operating expenses, liquidation expenses and commissions reasonably anticipated in the disposition of such assets and (b) the denominator of which is the original cost of the aggregate amount of the Eligible Inventory subject to such appraisal.

“Non-Consenting Lender” has the meaning provided therefor in Section 10.01.

“Non-Defaulting Lender” means each Lender other than a Defaulting Lender.

“Note” means (a) a promissory note made by the Borrowers in favor of a Lender evidencing Committed Loans made by such Lender, substantially in the form of Exhibit C-1, and (b) the Swing Line Note, as each may be amended, supplemented or modified from time to time.

“NPL” means the National Priorities List under CERCLA.

“Obligations” means (a) all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit (including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral therefor), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees, costs, expenses and indemnities are allowed claims in such proceeding, and (b) any Other Liabilities; provided, that, the Obligations shall not include any Excluded Swap Obligations.

“OFAC” means the U.S. Department of Treasury Office of Foreign Assets Control.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, and (d) in each case, all shareholder or other equity holder agreements, voting trusts and similar arrangements to which such Person is a party or which is applicable to its Equity Interests and all other arrangements relating to the Control or management of such Person.

“Other Liabilities” means (a) any obligation on account of (i) any Cash Management Services furnished to any of the Loan Parties or any of their Subsidiaries and/or (ii) any transaction with the Agent or any of its Affiliates, which arises out of any Bank Product entered into with any Loan Party and any such Person, as each may be amended from time to time.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Outstanding Amount” means (a) with respect to Committed Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Committed Loans and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date.

“Overadvance” means a Credit Extension to the extent that, immediately after its having been made, Excess Availability is less than zero.

“Parent” means SAC Acquisition LLC, a Delaware limited liability company.

“Participant” has the meaning specified in Section 10.06(d).

“Payment Conditions” means with respect to any transaction or payment the following:

(a) as of the date of any such transaction or payment, and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing,

(b) as of the date of any such transaction or payment, and after giving effect thereto, (i) in the case of an Acquisition, Investment or other transaction or payment (other than a Restricted Payment), on a pro forma basis, Excess Availability (using the most recent calculation of the Borrowing Base immediately prior to any such transaction or payment) shall be not less than the greater of fifty percent (50.0%) of the Loan Cap or \$7,500,000, or (ii) in the case of a Restricted Payment, on a pro forma basis, Excess Availability (using the most recent calculation of the Borrowing Base immediately prior to any such transaction or payment) shall be not less than the greater of forty percent (40.0%) of the Loan Cap or \$6,000,000,

(c) receipt by Agent of projections for the nine (9) month period after the date of such transaction or payment showing, on a pro forma basis after giving effect to such transaction or payment, minimum Excess Availability at all times during such period of not less than the applicable amount under clause (b) above, and

(d) Agent shall have received a certificate of a Responsible Officer of Lead Borrower certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby.

“PBGC” means the Pension Benefit Guaranty Corporation. “PCAOB” means the Public Company Accounting Oversight Board.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Lead Borrower or any ERISA Affiliate or to which the Lead Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“Permitted Acquisition” means an Acquisition in which all of the following conditions are satisfied:

(a) such Acquisition shall have been approved by the Board of Directors of the Person (or similar governing body if such Person is not a corporation) which is the subject of such Acquisition and such Person shall not have announced that it will oppose such Acquisition or shall not have commenced any action which alleges that such Acquisition shall violate applicable Law;

(b) the Lead Borrower shall have furnished the Agent with thirty (30) days' (or such shorter period as may be agreed by Agent) prior written notice of such intended Acquisition and shall have furnished the Agent with a current draft of the acquisition documents (and final copies thereof as and when executed), a summary of any due diligence undertaken by the Loan Parties in connection with such Acquisition, appropriate financial statements of the Person which is the subject of such Acquisition, proforma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Loan Parties), and such other information as the Agent may reasonably require, all of which shall be reasonably satisfactory to the Agent;

(c) either (i) the legal structure of the Acquisition shall be acceptable to the Agent in its discretion, or (ii) the Loan Parties shall have provided the Agent with a favorable solvency opinion from an unaffiliated third party valuation firm reasonably satisfactory to the Agent;

(d) after giving effect to the Acquisition, if the Acquisition is an Acquisition of the Equity Interests, a Loan Party shall acquire and own, directly or indirectly, a majority of the Equity Interests in the Person being acquired and shall Control a majority of any voting interests or shall otherwise Control the governance of the Person being acquired;

(e) any assets acquired shall be utilized in, and if the Acquisition involves a merger, consolidation or Acquisition of Equity Interests, the Person which is the subject of such Acquisition shall be engaged in, a business otherwise permitted to be engaged in by a Borrower under this Agreement;

(f) if the Person which is the subject of such Acquisition will be maintained as a Subsidiary of a Loan Party, or if the assets acquired in an acquisition will be transferred to a Subsidiary which is not then a Loan Party, such Subsidiary shall have been joined as a "Borrower" hereunder or as a "Guarantor," as the Agent shall determine, and the Agent shall have received a first priority security interest in such Subsidiary's Equity Interests, Inventory, Accounts and other property of the same nature as constitutes collateral under the Security Documents;

(g) the total consideration paid for all such Acquisitions (whether in cash, tangible property, notes or other property) after the Closing Date shall not exceed in the aggregate the sum of \$1,000,000; and

(h) as of the date of any such Acquisition, and after giving effect thereto, each of the Payment Conditions is satisfied.

"Permitted Discretion" means, as used in this Agreement and the other Loan Documents with reference to the Agent, a determination made in good faith in the exercise of its reasonable business judgment based on how an asset-based lender with similar rights providing a credit facility of the type set forth herein would act in similar circumstances at the time with the information then available to it.

"Permitted Disposition" means any of the following:

(a) Dispositions of inventory in the ordinary course of business;

(b) bulk sales of other Dispositions of the Inventory of a Loan Party not in the ordinary course of business in connection with Store closings, at arm's length, provided, that, (i) such Store closures and related Dispositions of Inventory shall not exceed (A) in any Fiscal Year of the Parent and its Subsidiaries, ten percent (10%) of the number of the Loan Parties' Stores as of the beginning of such Fiscal Year (net of new Store openings) and (B) in the aggregate from and after the Closing Date, fifteen percent (15%) of the number of the Loan Parties' Stores in existence as of the Closing Date (net of new Store openings), (ii) all sales of Inventory in connection with Store closings shall be in accordance with liquidation agreements and with professional liquidators reasonably acceptable to the Agent, and (iii) all Net Proceeds received in connection therewith are applied to the Obligations if then required in accordance with Section 2.05 hereof;

(c) non-exclusive licenses of Intellectual Property of a Loan Party or any of its Subsidiaries in the ordinary course of business;

(d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business; provided, that, if requested by the Agent, the Agent shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Agent;

(e) Dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of a Loan Party, no longer useful or necessary in its business or that of any Subsidiary and is not replaced with similar property having at least equivalent value;

(f) sales, transfers and Dispositions among the Loan Parties (other than to Parent except as permitted as a Permitted Investment) or by any Subsidiary to a Loan Party; and

(g) sales, transfers and Dispositions by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 6.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Law, arising in the ordinary course of business and securing obligations that are not overdue or are being contested in compliance with Section 6.04;

(c) pledges and deposits of cash or Cash Equivalents made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations, other than any Lien imposed by ERISA;

(d) deposits of cash or Cash Equivalents to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) Liens in respect of judgments that would not constitute an Event of Default hereunder;

(f) easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of a Loan Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially interfere with the current use of the real property;

(g) Liens existing on the Closing Date and listed on Schedule 7.01 and any Liens securing Indebtedness that is a Permitted Refinancing of the Indebtedness securing such Liens existing on the Closing Date and listed on such schedule;

(h) Liens on fixed or capital assets acquired by any Loan Party which are permitted under clause (c) of the definition of Permitted Indebtedness so long as (i) such Liens and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition, (ii) the Indebtedness secured thereby does not exceed the cost of acquisition of such fixed or capital assets and (iii) such Liens shall not extend to any other property or assets of the Loan Parties;

(i) Liens in favor of the Agent;

(j) statutory Liens of landlords and lessors in respect of rent not in default;

(k) possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the Closing Date and Permitted Investments, provided that such liens (a) attach only to such Investments and (b) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(m) Liens arising from precautionary UCC filings regarding "true" operating leases or, to the extent permitted under the Loan Documents, the consignment of goods to a Loan Party;

(n) voluntary Liens on property (other than property of the type included in the Borrowing Base) in existence at the time such property is acquired pursuant to a Permitted Acquisition or on such property of a Subsidiary of a Loan Party in existence at the time such Subsidiary is acquired pursuant to a Permitted Acquisition; provided, that, such Liens are not incurred in connection with or in anticipation of such Permitted Acquisition and do not attach to any other assets of any Loan Party or any Subsidiary;

(o) Liens in favor of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods solely to the extent the following conditions are satisfied: (i) such Liens secure obligations that are being contested in good faith by appropriate proceedings, (ii) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (iii) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation.

"Permitted Indebtedness" means each of the following as long as no Default or Event of Default exists or would arise from the incurrence thereof:

(a) Indebtedness outstanding on the Closing Date and listed on Schedule 7.03 and any Permitted Refinancing thereof;

(b) Indebtedness of any Loan Party to any other Loan Party;

(c) purchase money Indebtedness of any Loan Party to finance the acquisition of any personal property consisting solely of fixed or capital assets, including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof, provided, that, (i) the aggregate principal amount of Indebtedness permitted by this clause (c) shall not exceed \$250,000 at any time outstanding and (ii) if requested by the Agent, the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent;

(d) obligations (contingent or otherwise) of any Loan Party or any Subsidiary thereof existing or arising under any Swap Contract, provided, that, (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates, and not for purposes of speculation or taking a “market view;” and (ii) the aggregate Swap Termination Value thereof shall not exceed \$100,000 at any time outstanding;

(e) contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business in connection with the construction or improvement of Stores;

(f) Indebtedness incurred for the construction or acquisition or improvement of, or to finance or to refinance, any Real Estate owned by any Loan Party (including therein any Indebtedness incurred in connection with sale-leaseback transactions permitted hereunder and any Synthetic Lease Obligations), provided, that, (i) all Net Proceeds received in connection with any such Indebtedness are applied to the Obligations, and (ii) the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness and the lessors under any sale-leaseback transaction to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent;

(g) Indebtedness with respect to the deferred purchase price for any Permitted Acquisition, provided, that, such Indebtedness does not require the payment in cash of principal (other than in respect of working capital adjustments) prior to the Maturity Date, has a maturity which extends beyond the Maturity Date, and is subordinated to the Obligations on terms reasonably acceptable to the Agent;

(h) Indebtedness of any Person that becomes a Subsidiary of a Loan Party in a Permitted Acquisition, which Indebtedness is existing at the time such Person becomes a Subsidiary of a Loan Party (other than Indebtedness incurred solely in contemplation of such Person’s becoming a Subsidiary of a Loan Party);

(i) the Obligations; and

(j) Indebtedness not otherwise specifically described herein in an aggregate principal amount not to exceed \$250,000 at any time outstanding.

“Permitted Investments” means each of the following as long as no Default or Event of Default exists or would arise from the making of such Investment:

(a) Investments in cash and Cash Equivalents, provided, that, notwithstanding the foregoing, no Investments in cash or Cash Equivalents or additional Investments in the form of cash or Cash Equivalents in each case shall be permitted, except if no Loans are then outstanding and no Letters of Credit are outstanding which have not been Cash Collateralized if then required to be Cash Collateralized, except, that, notwithstanding that any Loans are outstanding (or such Letters of Credit), a Loan Party may from time to time in the ordinary course of business consistent with its current practices as of the date hereof make deposits of cash or other immediately available funds with proceeds of Revolving Loans in operating demand Deposit Accounts used for disbursements to the extent required to provide funds for amounts drawn or anticipated to be drawn shortly on such accounts and such funds may be held in Cash Equivalents consisting of overnight investments until so drawn (so long as (i) such funds and Cash Equivalents are not held more than two (2) Business Days from the date of the initial deposit thereof) and there may be deposits of cash in Collection Accounts prior to the transfer thereof to the Concentration Account and from the Concentration Account to the Agent Payment Account as provided for herein and (ii) such Investments are pledged to the Agent as additional collateral for the Obligations pursuant to such agreements as may be reasonably required by the Agent);

(b) Investments existing on the Closing Date, and set forth on Schedule 7.02, but not any increase in the amount thereof or any other modification of the terms thereof;

(c) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding on the Closing Date, (ii) additional Investments by any Loan Party and its Subsidiaries in Loan Parties (other than the Parent), (iii) additional Investments by Subsidiaries of the Loan Parties that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) additional Investments by the Loan Parties in Subsidiaries that are not Loan Parties, provided, that, as of the date of any such Investment and after giving effect thereto, (A) the aggregate amount of all such additional Investments subject to this clause (iv) shall not exceed \$250,000 at any time outstanding and (B) each of the Payment Conditions is satisfied and in no event shall any such Investment be made with any asset or property other than cash or Cash Equivalents;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees constituting Permitted Indebtedness;

(f) Investments by any Loan Party in Swap Contracts entered into in the ordinary course of business and for bona fide business (and not speculative purposes) to protect against fluctuations in interest rates in respect of the Obligations;

(g) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(h) advances to officers, directors and employees of the Loan Parties and Subsidiaries in the ordinary course of business in an amount not to exceed \$75,000 to any individual at any time or in an aggregate amount not to exceed \$150,000 at any time outstanding, for travel, entertainment, relocation and similar ordinary business purposes;

(i) Investments constituting Permitted Acquisitions;

(j) capital contributions made by any Loan Party to a Borrower;

(k) other Investments not otherwise specifically described herein provided, that, as of the date of any such Investment and after giving effect thereto, (A) the aggregate amount of all such additional Investments subject to this clause (k) shall not exceed \$250,000 at any time outstanding and (B) each of the Payment Conditions is satisfied and in no event shall any such Investment be made with any asset or property other than cash or Cash Equivalents.

“Permitted Overadvance” means an Overadvance made by the Agent, in its Permitted Discretion, which:

(a) is made to maintain, protect or preserve the Collateral and/or the Credit Parties’ rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties; or

(b) is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation;

(c) is made to pay any other amount chargeable to any Loan Party hereunder; and

(d) together with all other Permitted Overadvances then outstanding, shall not (i) exceed ten percent (10%) of the Borrowing Base at any time or (ii) unless a Liquidation is occurring, remain outstanding for more than forty-five (45) consecutive Business Days, unless in each case, the Required Lenders otherwise agree.

provided that, the foregoing shall not (i) modify or abrogate any of the provisions of Section 2.03 regarding the Lenders’ obligations with respect to Letters of Credit or Section 2.04 regarding the Lenders’ obligations with respect to Swing Line Loans, or (ii) result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder, and further provided that in no event shall the Agent make an Overadvance, if after giving effect thereto, the principal amount of the Credit Extensions would exceed the Aggregate Commitments (as in effect prior to any termination of the Commitments pursuant to Section 2.06 or Section 8.02 hereof).

“Permitted Refinancing” means, with respect to any Person, any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to “Refinance”), the Indebtedness being Refinanced (or previous refinancings thereof constituting a Permitted Refinancing); provided that, (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premiums thereon and underwriting discounts, defeasance costs, fees, commissions and expenses), (b) the weighted average life to maturity of such Permitted Refinancing is greater than or equal to the weighted average life to maturity of the Indebtedness being Refinanced (c) such Permitted Refinancing shall not require any scheduled principal payments due prior to the Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Maturity Date for the Indebtedness being Refinanced, (d) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing shall be subordinated in right of payment to such Obligations on terms at least as favorable to the Credit Parties as those contained in the documentation governing the Indebtedness being Refinanced (e) no Permitted Refinancing shall have direct or indirect obligors who were not also obligors of the Indebtedness being Refinanced, or greater guarantees or security, than the Indebtedness being Refinanced, (f) such Permitted Refinancing shall be otherwise on terms not materially less favorable to the Credit Parties than those contained in the documentation governing the Indebtedness being Refinanced, including, without limitation, with respect to financial and other covenants and events of default, (g) the interest rate applicable to any such Permitted Refinancing shall not exceed the then applicable market interest rate, and (h) at the time thereof, no Default or Event of Default shall have occurred and be continuing.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate, other than a Multiemployer Plan.

“Platform” has the meaning specified in Section 6.02.

“Portal” has the meaning specified in Section 2.02.

“Public Lender” has the meaning specified in Section 6.02.

“Qualifying IPO” means the issuance by Parent of its Securities in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the U.S. Securities and Exchange Commission (or any successor thereto) in accordance with the Securities Act (whether alone or in connection with a secondary public offering).

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Real Estate” means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

“Receivables Reserves” means such Reserves as may be established from time to time by the Agent in the Agent’s Permitted Discretion with respect to the determination of the collectability in the ordinary course of Eligible Wholesale Receivables, including, without limitation, on account of dilution.

“Register” has the meaning specified in Section 10.06(c).

“Registered Public Accounting Firm” has the meaning specified by the Securities Laws and shall be independent of the Parent and its Subsidiaries as prescribed by the Securities Laws.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Reports” has the meaning provided in Section 9.12(b).

“Request for Credit Extension” means (a) with respect to a Committed Borrowing, conversion or continuation of Committed Loans, an electronic notice via the Portal or LIBO Rate Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application and, if required by the L/C Issuer, a Standby Letter of Credit Agreement or Commercial Letter of Credit Agreement, as applicable, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, as of any date of determination, at least two Lenders holding more than fifty percent (50%) of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, at least two Lenders holding in the aggregate more than fifty percent (50%) of the Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition); provided, that, the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Reserves” means all Receivables Reserves, Inventory Reserves and Availability Reserves. To the extent that such Reserve is in respect of amounts that may be payable to third parties, Agent may, at its option, deduct such Reserve from the amount equal to the Aggregate Commitments, at any time that the Aggregate Commitments are less than the amount of the Borrowing Base.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer of a Loan Party or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to such Person’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment. Without limiting the foregoing, “Restricted Payments” with respect to any Person shall also include all payments made by such Person with any proceeds of a dissolution or liquidation of such Person.

“Reuters Screen LIBOR01 Page” means the display page LIBOR01 on the Reuters service or any successor display page, other published source, information vendor or provider that has been designated by the sponsor of Reuters Screen LIBOR01 page.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a Person resident in or determined to be resident in a country, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

“Sanctioned Person” means, at any time, (a) any a Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, or any other Sanctions-related list maintained by any relevant Sanctions authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

“Sanctions” means individually and collectively, respectively, any and all economic, trade, financial or other sanctions laws, regulations or embargoes imposed, administered or enforced from time to time by: (a) the United States of America, including, without limitation, those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty’s Treasury of the United Kingdom, or (e) any other governmental authority in any jurisdiction in which any Loan Party or any of its Subsidiaries is located or doing business.

“Sarbanes-Oxley” means the Sarbanes-Oxley Act of 2002.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Securities Account” has the meaning given to such term in the UCC.

“Securities Laws” means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

“Security Agreement” means the Security Agreement dated as of the Closing Date among the Loan Parties and the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

“Security Documents” means the Security Agreement, the Intellectual Property Security Agreement, the Control Agreements, the Credit Card Notifications, and each other security agreement or other instrument or document executed and delivered to the Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

“Settlement Date” has the meaning provided in Section 2.14(a).

“Shareholders’ Equity” means, as of any date of determination, consolidated shareholders’ equity of the Lead Borrower and its Subsidiaries as of that date determined in accordance with GAAP.

“Shrink” means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

“Solvent” and “Solvency” means, with respect to any Person as of any date of determination, that (a) at fair valuations, the sum of such Person’s debts (including contingent liabilities) is less than all of such Person’s assets, (b) such Person is not engaged or about to engage in a business or transaction for which the remaining assets of such Person are unreasonably small in relation to the business or transaction or for which the property remaining with such Person is an unreasonably small capital, and (c) such Person has not incurred and does not intend to incur, or reasonably believe that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise), and (d) such Person is “solvent” or not “insolvent”, as applicable within the meaning given those terms and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“Sponsor” means, collectively, (a) Mistral SAC Holdings, LLC, (b) Satori Capital, LLC, Satori Capital Strategic Opportunities, LP and Satori Capital III, LP and (c) any Controlled Investment Affiliate of either of the Persons set forth in clauses (a) or (b) of this definition.

“Sponsor Management Agreement” means (a) the Monitoring and Management Agreement, dated as of May 24, 2010, between Parent and Mistral Capital Management, LLC and (b) the letter agreement, dated March 30, 2017, by and among Lead Borrower, Satori Capital, LLC, Satori Capital Strategic Opportunities, LP and Satori Capital III, LP.

“Standard Letter of Credit Practice” means, for the L/C Issuer, any domestic or foreign Law or letter of credit practices applicable in the city in which the L/C Issuer issued the applicable Letter of Credit or, for its branch or correspondent, such Laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (a) which letter of credit practices are of banks that regularly issue letters of credit in the particular city, and (b) which laws or letter of credit practices are required or permitted under ISP or UCP, as chosen in the applicable Letter of Credit.

“Standby Letter of Credit” means any Letter of Credit that is not a Commercial Letter of Credit and that (a) is used in lieu or in support of performance guaranties or performance, surety or similar bonds (excluding appeal bonds) arising in the ordinary course of business, (b) is used in lieu or in support of stay or appeal bonds, (c) supports the payment of insurance premiums for reasonably necessary casualty insurance carried by any of the Loan Parties, or (d) supports payment or performance for identified purchases or exchanges of products or services in the ordinary course of business.

“Standby Letter of Credit Agreement” means the Standby Letter of Credit Agreement relating to the issuance of a Standby Letter of Credit in the form from time to time in use by the L/C Issuer.

“Stated Amount” means at any time the maximum amount for which a Letter of Credit may be honored.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBO Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Store” means any retail store or showroom (which may include any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any Loan Party.

“Subordinated Indebtedness” means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Agent.

“Subordination Provisions” has the meaning specified in Section 8.01(q).

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of a Loan Party.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means Wells Fargo, in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B.

“Swing Line Note” means the promissory note of the Borrowers substantially in the form of Exhibit C-2, payable to the order of the Swing Line Lender, evidencing the Swing Line Loans made by the Swing Line Lender.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$2,500,000 and (b) the Aggregate Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Commitments.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Termination Date” means the earliest to occur of (a) the Maturity Date, (b) the date on which the maturity of the Obligations is accelerated (or deemed accelerated) and the Commitments are irrevocably terminated (or deemed terminated) in accordance with Article VII or (c) the termination of the Commitments in accordance with the provisions of Section 2.06(a) hereof.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Trading with the Enemy Act” has the meaning set forth in Section 10.18.

“Type” means, with respect to a Committed Loan, its character as a Base Rate Loan or a LIBO Rate Loan.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, that, (a) if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; (b) if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York “Uniform Commercial Code” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any subsequent revision thereof adopted by the International Chamber of Commerce on the date such Letter of Credit is issued.

“UFCA” has the meaning specified in Section 10.22(d).

“UFTA” has the meaning specified in Section 10.22(d).

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“Unintentional Overadvance” means an Overadvance which, to the Agent’s knowledge, did not constitute an Overadvance when made but which has become an Overadvance resulting from changed circumstances beyond the control of the Credit Parties, including, without limitation, a reduction in the appraised value of property or assets included in the Borrowing Base, increase in Reserves or misrepresentation by the Loan Parties.

“United States” and “U.S.” mean the United States of America.

“UVTA” has the meaning specified in Section 10.22(d).

“Wells Fargo” means Wells Fargo Bank, National Association and its successors.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in Dollars in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Letters of Credit and Bank Products (other than Swap Contracts) and any other contingent Obligation, including indemnification obligations, providing Cash Collateralization) or other collateral as may be requested by the Agent of all of the Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Swap Contracts) other than (i) unasserted contingent indemnification Obligations, (ii) any Obligations relating to Bank Products (other than Swap Contracts) that, at such time, are allowed by the applicable Bank Product provider to remain outstanding without being required to be repaid or Cash Collateralized or other collateral as may be requested by the Agent, and (iii) any Obligations relating to Swap Contracts that, at such time, are allowed by the applicable provider of such Swap Contracts to remain outstanding without being required to be repaid.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Lead Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Lead Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided, that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Lead Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

1.04 **Rounding**. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 **Times of Day**. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 **Letter of Credit Amounts**. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to be the Stated Amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms of any Issuer Documents related thereto, provides for one or more automatic increases in the Stated Amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum Stated Amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum Stated Amount is in effect at such time.

ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Committed Loans; Reserves.

(a) Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a Committed Loan) to the Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the lesser of (x) the amount of such Lender's Commitment, or (y) such Lender's Applicable Percentage of the Borrowing Base; subject in each case to the following limitations:

(i) after giving effect to any Committed Borrowing, the Total Outstandings shall not exceed the Loan Cap,

(ii) after giving effect to any Committed Borrowing, the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment,

(iii) the Outstanding Amount of all L/C Obligations shall not at any time exceed the Letter of Credit Sublimit

Within the limits of each Lender's Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Committed Loans may be Base Rate Loans or LIBO Rate Loans, as further provided herein.

(b) The Reserves as of the Closing Date are set forth in the Borrowing Base Certificate delivered pursuant to Section 4.01(c) hereof.

(c) The Agent shall have the right, at any time and from time to time after the Closing Date in its Permitted Discretion to establish, modify or eliminate Reserves. Agent will provide notice to Lead Borrower of any new categories of Reserves that may be established after the Closing Date or any changes in the methodology of the calculation of an existing category of Reserves and will be available to consult with Lead Borrower in connection with the basis for such new categories of Reserves to the extent Lead Borrower requests in a reasonably timely manner, provided, that, no such notice shall be required at any time a Default or an Event of Default exists or has occurred and is continuing, or a change solely as a result of mathematical calculations.

2.02 Borrowings, Conversions and Continuations of Committed Loans.

(a) Committed Loans (other than Swing Line Loans) shall be either Base Rate Loans or LIBO Rate Loans as the Lead Borrower may request subject to and in accordance with this Section 2.02. All Swing Line Loans shall be only Base Rate Loans. Subject to the other provisions of this Section 2.02, Committed Borrowings of more than one Type may be incurred at the same time.

(b) Each request for a Committed Borrowing consisting of a Base Rate Loan shall be made by electronic request of the Lead Borrower through Agent's Commercial Electronic Office Portal or through such other electronic portal provided by Agent (the "Portal"). The Borrowers hereby acknowledge and agree that any request made through the Portal shall be deemed made by a Responsible Officer of the Borrowers. Each request for a Committed Borrowing consisting of a LIBO Rate Loan shall be made pursuant to the Lead Borrower's submission of a LIBO Rate Loan Notice, which must be received by the Agent not later than 11:00 a.m. three (3) Business Days prior to the requested date of any Borrowing or continuation of LIBO Rate Loans, provided, that, notwithstanding anything to the contrary contained herein, except as Agent may expressly otherwise agree in writing, the request for the initial Committed Loan or Swing Line Loan shall be received not less than five (5) Business Days prior to the date that such Loan is made. Each LIBO Rate Loan Notice shall specify (i) the requested date of the Borrowing or continuation, as the case may be (which shall be a Business Day), (ii) the principal amount of LIBO Rate Loans to be borrowed or continued (which shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof), and (iii) the duration of the Interest Period with respect thereto. If the Lead Borrower fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. On the requested date of any LIBO Rate Loan, (i) in the event that Base Rate Loans are outstanding in an amount equal to or greater than the requested LIBO Rate Loan, all or a portion of such Base Rate Loans shall be automatically converted to a LIBO Rate Loan in the amount requested by the Lead Borrower, and (ii) if Base Rate Loans are not outstanding in an amount at least equal to the requested LIBO Rate Loan, the Lead Borrower shall make an electronic request via the Portal for additional Base Rate Loans in an such amount, when taken with the outstanding Base Rate Loans (which shall be converted automatically at such time), as is necessary to satisfy the requested LIBO Rate Loan. If the Lead Borrower fails to make such additional request via the Portal as required pursuant to clause (ii) of the foregoing sentence, then the Borrowers shall be responsible for all amounts due pursuant to Section 3.05 hereof arising on account of such failure. If the Lead Borrower fails to give a timely notice with respect to any continuation of a LIBO Rate Loan, then the applicable Committed Loans shall be converted to Base Rate Loans, effective as of the last day of the Interest Period then in effect with respect to the applicable LIBO Rate Loans.

(c) The Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Loans, and if no timely notice of a conversion or continuation is provided by the Lead Borrower, the Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(b). In the case of a Committed Borrowing, each Lender shall make the amount of its Committed Loan available to the Agent in immediately available funds at the Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Agent shall use reasonable efforts to make all funds so received available to the Borrowers in like funds by no later than 4:00 p.m. on the day of receipt by the Agent either by (i) crediting the account of the Lead Borrower on the books of Wells Fargo with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Lead Borrower.

(d) The Agent, without the request of the Lead Borrower, may advance any interest, fee, service charge (including direct wire fees), Credit Party Expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Agent shall advise the Lead Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrowers' obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(d) shall bear interest at the interest rate then and thereafter applicable to Base Rate Loans.

(e) Except as otherwise provided herein, a LIBO Rate Loan may be continued or converted only on the last day of an Interest Period for such LIBO Rate Loan. During the existence of a Default or an Event of Default, no Loans may be requested as, converted to or continued as LIBO Rate Loans without the Consent of the Required Lenders.

(f) The Agent shall promptly notify the Lead Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBO Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Agent shall notify the Lead Borrower and the Lenders of any change in Wells Fargo's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(g) After giving effect to all Committed Borrowings, all conversions of Committed Loans from one Type to the other, and all continuations of Committed Loans as the same Type, there shall not be more than five (5) Interest Periods in effect with respect to LIBO Rate Loans.

(h) The Agent, the Lenders, the Swing Line Lender and the L/C Issuer shall have no obligation to make any Loan or to provide any Letter of Credit if an Overadvance would result. The Agent may, in its Permitted Discretion, make Permitted Overadvances without the consent of the Borrowers, the Lenders, the Swing Line Lender and the L/C Issuer and the Borrowers and each Lender and L/C Issuer shall be bound thereby. Any Permitted Overadvance may constitute a Swing Line Loan. A Permitted Overadvance is for the account of the Borrowers and shall constitute a Base Rate Loan and an Obligation and shall be repaid by the Borrowers in accordance with the provisions of Section 2.05(c). The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The making by the Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Section 2.03 regarding the Lenders' obligations to purchase participations with respect to Letter of Credits or of Section 2.04 regarding the Lenders' obligations to purchase participations with respect to Swing Line Loans. The Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvance(s).

2.03 Letters of Credit.

(a) Subject to the terms and conditions of this Agreement, upon the request of the Lead Borrower made in accordance herewith, and prior to the Maturity Date, the L/C Issuer agrees to issue a requested Letter of Credit for the account of the Loan Parties. By submitting a request to the L/C Issuer for the issuance of a Letter of Credit, the Borrowers shall be deemed to have requested that the L/C Issuer issue the requested Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be irrevocable and shall be made in writing pursuant to a Letter of Credit Application by a Responsible Officer and delivered to the L/C Issuer and the Agent via telefacsimile or other electronic method of transmission reasonably acceptable to the L/C Issuer not later than 11:00 a.m. at least two (2) Business Days (or such other date and time as the Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the requested date of issuance, amendment, renewal, or extension, except that the initial request for the issuance of a Letter of Credit hereunder shall be not less than five (5) Business Days prior to the requested date of issuance. Each such request shall be in form and substance reasonably satisfactory to the L/C Issuer and (i) shall specify (A) the amount of such Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (C) the proposed expiration date of such Letter of Credit, (D) the name and address of the beneficiary of the Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit, and (ii) shall be accompanied by such Issuer Documents as the Agent or the L/C Issuer may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that the L/C Issuer generally requests for Letters of Credit in similar circumstances. The Agent's records of the content of any such request will be conclusive absent manifest error.

(b) The L/C Issuer shall have no obligation to issue a Letter of Credit if, after giving effect to the requested issuance, (i) the Total Outstandings would exceed Loan Cap, (ii) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans would exceed such Lender's Commitment, or (iii) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit;

(c) In the event there is a Defaulting Lender as of the date of any request for the issuance of a Letter of Credit, the L/C Issuer shall not be required to issue or arrange for such Letter of Credit to the extent (i) the Defaulting Lender's participation with respect to such Letter of Credit may not be reallocated pursuant to Section 9.16(b), or (ii) the L/C Issuer has not otherwise entered into arrangements reasonably satisfactory to it and the Borrowers to eliminate the L/C Issuer's risk with respect to the participation in such Letter of Credit of the Defaulting Lender, which arrangements may include the Borrowers cash collateralizing such Defaulting Lender's participation with respect to such Letter of Credit in accordance with Section 9.16(b). Additionally, the L/C Issuer shall have no obligation to issue and/or extend a Letter of Credit if (A) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of Law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit or request that the L/C Issuer refrain from the issuance of letters of credit generally or such Letter of Credit in particular, or (B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally, or (C) if the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless either such Letter of Credit is Cash Collateralized on or prior to the date of issuance of such Letter of Credit (or such later date as to which the Agent may agree) or all the Lenders have approved such expiry date.

(d) Any L/C Issuer (other than Wells Fargo or any of its Affiliates) shall notify the Agent in writing no later than the Business Day immediately following the Business Day on which such L/C Issuer issued any Letter of Credit; provided, that, (i) until the Agent advises any such L/C Issuer that the provisions of Section 4.02 are not satisfied, or (ii) unless the aggregate amount of the Letters of Credit issued in any such week exceeds such amount as shall be agreed by the Agent and such L/C Issuer, such L/C Issuer shall be required to so notify the Agent in writing only once each week of the Letters of Credit issued by such L/C Issuer during the immediately preceding week as well as the daily amounts outstanding for the prior week, such notice to be furnished on such day of the week as the Agent and such L/C Issuer may agree. Each Letter of Credit shall be in form and substance reasonably acceptable to the L/C Issuer, including the requirement that the amounts payable thereunder must be payable in Dollars. If the L/C Issuer makes a payment under a Letter of Credit, the Borrowers shall pay to Agent an amount equal to the applicable Letter of Credit Disbursement on the Business Day such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Committed Loan hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 4.02 hereof) and, initially, shall bear interest at the rate then applicable to Committed Loans that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be a Committed Loan hereunder, the Borrowers' obligation to pay the amount of such Letter of Credit Disbursement to the L/C Issuer shall be automatically converted into an obligation to pay the resulting Committed Loan. Promptly following receipt by the Agent of any payment from the Borrowers pursuant to this paragraph, the Agent shall distribute such payment to the L/C Issuer or, to the extent that the Lenders have made payments pursuant to Section 2.03(e) to reimburse the L/C Issuer, then to such Lenders and the L/C Issuer as their interests may appear.

(e) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.03(d), each Lender agrees to fund its Applicable Percentage of any Committed Loan deemed made pursuant to Section 2.03(d) on the same terms and conditions as if the Borrowers had requested the amount thereof as a Committed Loan and the Agent shall promptly pay to the L/C Issuer the amounts so received by it from the Lenders. By the issuance of a Letter of Credit (or an amendment, renewal, or extension of a Letter of Credit) and without any further action on the part of the L/C Issuer or the Lenders, the L/C Issuer shall be deemed to have granted to each Lender, and each Lender shall be deemed to have purchased, a participation in each Letter of Credit issued by the L/C Issuer, in an amount equal to its Applicable Percentage of such Letter of Credit, and each such Lender agrees to pay to the Agent, for the account of the L/C Issuer, such Lender's Applicable Percentage of any Letter of Credit Disbursement made by the L/C Issuer under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Agent, for the account of the L/C Issuer, such Lender's Applicable Percentage of each Letter of Credit Disbursement made by the L/C Issuer and not reimbursed by Borrowers on the date due as provided in Section 2.03(d), or of any reimbursement payment that is required to be refunded (or that the Agent or the L/C Issuer elects, based upon the advice of counsel, to refund) to the Borrowers for any reason. Each Lender acknowledges and agrees that its obligation to deliver to the Agent, for the account of the L/C Issuer, an amount equal to its respective Applicable Percentage of each Letter of Credit Disbursement pursuant to this Section 2.03(e) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of a Default or Event of Default or the failure to satisfy any condition set forth in Section 4.02 hereof. If any such Lender fails to make available to the Agent the amount of such Lender's Applicable Percentage of a Letter of Credit Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and the Agent (for the account of the L/C Issuer) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(f) Each Borrower agrees to indemnify, defend and hold harmless each Credit Party (including the L/C Issuer and its branches, Affiliates, and correspondents) and each such Person's respective directors, officers, employees, attorneys and agents (each, including the L/C Issuer, a "Letter of Credit Related Person") (to the fullest extent permitted by Law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any such Letter of Credit Related Person (other than Taxes, which shall be governed by Section 3.01) (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of:

(i) any Letter of Credit or any pre-advice of its issuance;

(ii) any transfer, sale, delivery, surrender or endorsement of any Drawing Document at any time(s) held by any such Letter of Credit Related Person in connection with any Letter of Credit;

(iii) any action or proceeding arising out of, or in connection with, any Letter of Credit (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under any Letter of Credit, or for the wrongful dishonor of, or honoring a presentation under, any Letter of Credit;

(iv) any independent undertakings issued by the beneficiary of any Letter of Credit;

(v) any unauthorized instruction or request made to the L/C Issuer in connection with any Letter of Credit or requested Letter of Credit or error in computer or electronic transmission;

(vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated;

(vii) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds or holder of an instrument or document;

(viii) the fraud, forgery or illegal action of parties other than the Letter of Credit Related Person;

(ix) the L/C Issuer's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation; or

(x) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of the Letter of Credit Related Person;

in each case, including that resulting from the Letter of Credit Related Person's own negligence; ~~provided, that~~ such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification under clauses (i) through (x) above to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Letter of Credit Related Person claiming indemnity. The Borrowers hereby agree to pay the Letter of Credit Related Person claiming indemnity on demand from time to time all amounts owing under this Section 2.03(f). If and to the extent that the obligations of the Borrowers under this Section 2.03(f) are unenforceable for any reason, the Borrowers agree to make the maximum contribution to the Letter of Credit Indemnified Costs permissible under applicable Law. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

(g) The liability of the L/C Issuer (or any other Letter of Credit Related Person) under, in connection with or arising out of any Letter of Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by the Borrowers that are caused directly by the L/C Issuer's gross negligence or willful misconduct in (i) honoring a presentation under a Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such Letter of Credit, (ii) failing to honor a presentation under a Letter of Credit that strictly complies with the terms and conditions of such Letter of Credit or (iii) retaining Drawing Documents presented under a Letter of Credit. The L/C Issuer shall be deemed to have acted with due diligence and reasonable care if the L/C Issuer's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement. The Borrowers' aggregate remedies against the L/C Issuer and any Letter of Credit Related Person for wrongfully honoring a presentation under any Letter of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by the Borrowers to the L/C Issuer in respect of the honored presentation in connection with such Letter of Credit under Section 2.03(d), plus interest at the rate then applicable to Base Rate Loans hereunder. The Borrowers shall take action to avoid and mitigate the amount of any damages claimed against the L/C Issuer or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the Letters of Credit. Any claim by the Borrowers under or in connection with any Letter of Credit shall be reduced by an amount equal to the sum of (x) the amount (if any) saved by the Borrowers as a result of the breach or alleged wrongful conduct complained of; and (y) the amount (if any) of the loss that would have been avoided had the Borrowers taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing the L/C Issuer to effect a cure.

(h) The Borrowers shall be responsible for preparing or approving the final text of the Letter of Credit as issued by the L/C Issuer, irrespective of any assistance the L/C Issuer may provide such as drafting or recommending text or by the L/C Issuer's use or refusal to use text submitted by the Borrowers. The Borrowers are solely responsible for the suitability of the Letter of Credit for the Borrowers' purposes. With respect to any Letter of Credit containing an "automatic amendment" to extend the expiration date of such Letter of Credit, the L/C Issuer, in its sole and absolute discretion, may give notice of nonrenewal of such Letter of Credit and, if the Borrowers do not at any time want such Letter of Credit to be renewed, the Borrowers will so notify the Agent and the L/C Issuer at least 15 calendar days before the L/C Issuer is required to notify the beneficiary of such Letter of Credit or any advising bank of such nonrenewal pursuant to the terms of such Letter of Credit.

(i) The Borrowers' reimbursement and payment obligations under this Section 2.03 are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including:

(i) any lack of validity, enforceability or legal effect of any Letter of Credit or this Agreement or any term or provision therein or herein;

(ii) payment against presentation of any draft, demand or claim for payment under any Drawing Document that does not comply in whole or in part with the terms of the applicable Letter of Credit or which proves to be fraudulent, forged or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person or a transferee of such Person purporting to be a successor or transferee of the beneficiary of such Letter of Credit;

(iii) the L/C Issuer or any of its branches or Affiliates being the beneficiary of any Letter of Credit;

(iv) the L/C Issuer or any correspondent honoring a drawing against a Drawing Document up to the amount available under any Letter of Credit even if such Drawing Document claims an amount in excess of the amount available under the Letter of Credit;

(v) the existence of any claim, set-off, defense or other right that the Parent or any of its Subsidiaries may have at any time against any beneficiary, any assignee of proceeds, the L/C Issuer or any other Person;

(vi) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing that might, but for this Section 2.03(i), constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, any Borrower's or any of its Subsidiaries' reimbursement and other payment obligations and liabilities, arising under, or in connection with, any Letter of Credit, whether against the L/C Issuer, the beneficiary or any other Person; or

(vii) the fact that any Default or Event of Default shall have occurred and be continuing;

provided, however, that subject to Section 2.03(g) above, the foregoing shall not release the L/C Issuer from such liability to the Borrowers as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against the L/C Issuer following reimbursement or payment of the obligations and liabilities, including reimbursement and other payment obligations, of the Borrowers to the L/C Issuer arising under, or in connection with, this Section 2.03 or any Letter of Credit.

(j) Without limiting any other provision of this Agreement, the L/C Issuer and each other Letter of Credit Related Person (if applicable) shall not be responsible to the Borrowers for, and the L/C Issuer's rights and remedies against the Borrowers and the obligation of the Borrowers to reimburse the L/C Issuer for each drawing under each Letter of Credit shall not be impaired by:

(i) honor of a presentation under any Letter of Credit that on its face substantially complies with the terms and conditions of such Letter of Credit, even if the Letter of Credit requires strict compliance by the beneficiary;

(ii) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;

(iii) acceptance as a draft of any written or electronic demand or request for payment under a Letter of Credit, even if nonnegotiable or not in the form of a draft or notwithstanding any requirement that such draft, demand or request bear any or adequate reference to the Letter of Credit;

(iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than the L/C Issuer's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the Letter of Credit);

(v) acting upon any instruction or request relative to a Letter of Credit or requested Letter of Credit that the L/C Issuer in good faith believes to have been given by a Person authorized to give such instruction or request;

(vi) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation or any delay in giving or failing to give notice to the Borrowers;

(vii) any acts, omissions or fraud by, or the insolvency of, any beneficiary, any nominated person or entity or any other Person or any breach of contract between any beneficiary and any Borrower or any of the parties to the underlying transaction to which the Letter of Credit relates;

(viii) assertion or waiver of any provision of the ISP or UCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;

(ix) payment to any paying or negotiating bank (designated or permitted by the terms of the applicable Letter of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

(x) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where the L/C Issuer has issued, confirmed, advised or negotiated such Letter of Credit, as the case may be;

(xi) honor of a presentation after the expiration date of any Letter of Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by the L/C Issuer if subsequently the L/C Issuer or any court or other finder of fact determines such presentation should have been honored;

(xii) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or

(xiii) honor of a presentation that is subsequently determined by the L/C Issuer to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons.

(k) Upon the request of the Agent, (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Obligation that remains outstanding, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrowers shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. Sections 2.05 and 8.02(c) set forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 2.03, Section 2.05 and Section 8.02(c), "Cash Collateralize" means to pledge and deposit with or deliver to the Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount equal to one hundred five percent (105%) of the Outstanding Amount of all L/C Obligations (other than L/C Obligations with respect to Letters of Credit denominated in a currency other than Dollars, which L/C Obligations shall be Cash Collateralized in an amount equal to one hundred fifteen percent (115%) of the Outstanding Amount of such L/C Obligations), pursuant to documentation in form and substance satisfactory to the Agent and the L/C Issuer (which documents are hereby Consented to by the Lenders). The Borrowers hereby grant to the Agent a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Wells Fargo. If at any time the Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrowers will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations.

(l) The Borrowers shall pay to the Agent for the account of each Lender in accordance with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Margin for LIBO Rate Loans multiplied by the daily Stated Amount under each such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit). For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of the Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the first day after the end of each month commencing with the first such date to occur after the issuance of such Letter of Credit, and after the Letter of Credit Expiration Date, on demand, and (ii) computed on a monthly basis in arrears. Notwithstanding anything to the contrary contained herein, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate as provided in Section 2.08(b) hereof.

(m) In addition to the Letter of Credit Fees as set forth in Section 2.03(l) above, the Borrowers shall pay immediately upon demand to the Agent for the account of the L/C Issuer as nonrefundable fees, commissions, and charges (it being acknowledged and agreed that any charging of such fees, commissions, and charges to the Loan Account pursuant to the provisions of Section 2.02(d) shall be deemed to constitute a demand for payment thereof for the purposes of this Section 2.03(m)): (i) a fronting fee which shall be imposed by the L/C Issuer upon the issuance of each Letter of Credit of .125% per annum of the face amount thereof, plus (ii) any and all other customary commissions, fees and charges then in effect imposed by, and any and all expenses incurred by, the L/C Issuer, or by any adviser, confirming institution or entity or other nominated person, relating to Letters of Credit, at the time of issuance of any Letter of Credit and upon the occurrence of any other activity with respect to any Letter of Credit (including transfers, assignments of proceeds, amendments, drawings, renewals or cancellations).

(n) Unless otherwise expressly agreed by the L/C Issuer and the Borrowers when a Letter of Credit is issued, (i) the rules of the ISP and the UCP shall apply to each Standby Letter of Credit, and (ii) the rules of the UCP shall apply to each Commercial Letter of Credit.

(o) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(p) In the event of a direct conflict between the provisions of this Section 2.03 and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.03 shall control and govern.

2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender may, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, make loans (each such loan, a "Swing Line Loan") to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Committed Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Commitment; provided, that, after giving effect to any Swing Line Loan, (i) the Total Outstandings shall not exceed Loan Cap, (ii) the aggregate Outstanding Amount of the Committed Loans of any Lender at such time, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations at such time, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans at such time shall not exceed such Lender's Commitment, (iii) the initial request for a Swing Line Loan shall be received by Swing Line Lender not less than five (5) Business Days prior to the date such Swing Line Loan is to be made and (iv) the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest only at the rate applicable to Base Rate Loans. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Swing Line Loan. The Swing Line Lender shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the Swing Line Lender in connection with Swing Line Loans made by it or proposed to be made by it as if the term "Agent" as used in Article IX included the Swing Line Lender with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Swing Line Lender.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Lead Borrower's irrevocable notice to the Swing Line Lender and the Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Agent (by telephone or in writing) that the Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Agent at the request of the Required Lenders prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender may, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrowers at its office by crediting the account of the Lead Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrowers (which hereby irrevocably authorize the Swing Line Lender to so request on their behalf), that each Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Loan Cap and the conditions set forth in Section 4.02. Each Lender shall make an amount equal to its Applicable Percentage of the amount of such outstanding Swing Line Loan available to the Agent in immediately available funds for the account of the Swing Line Lender at the Agent's Office not later than 1:00 p.m. on the day specified by the Swing Line Lender, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrowers in such amount. The Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Committed Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Committed Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or an Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, that, each Lender's obligation to make Committed Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrowers for interest on the Swing Line Loans. Until each Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Prepayments.

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, at any time or from time to time voluntarily prepay Committed Loans in whole or in part without premium or penalty; provided, that, (i) such notice must be received by the Agent not later than 11:00 a.m. (A) three Business Days prior to any date of prepayment of LIBO Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of LIBO Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if LIBO Rate Loans, the Interest Period(s) of such Loans. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a LIBO Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each such prepayment shall be applied to the Committed Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Swing Line Lender (with a copy to the Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the Total Outstandings at any time exceed the Loan Cap as then in effect, the Borrowers shall immediately prepay Loans, Swing Line Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the Loans the Total Outstandings exceed the Loan Cap as then in effect.

(d) The Borrower shall prepay the Loans and Cash Collateralize the L/C Obligations with the proceeds and collections received by the Loan Parties to the extent so required under the provisions of Section 6.13 hereof.

(e) Prepayments made pursuant to Section 2.05(c) and (d) above, first, shall be applied to the Swing Line Loans, second, shall be applied ratably to the outstanding Committed Loans, third, shall be used to Cash Collateralize the remaining L/C Obligations; and, fourth, the amount remaining, if any, after the prepayment in full of all Swing Line Loans and Committed Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full may be retained by the Borrowers for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Lenders, as applicable.

2.06 Termination or Reduction of Commitments

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, terminate the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit or from time to time permanently reduce the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$500,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce (A) the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, and (C) the Swing Line Sublimit if, after giving effect thereto, and to any concurrent payments hereunder, the Outstanding Amount of Swing Line Loans hereunder would exceed the Swing Line Sublimit.

(b) If, after giving effect to any reduction of the Aggregate Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Commitments, such Letter of Credit Sublimit or Swing Line Sublimit shall be automatically reduced by the amount of such excess.

(c) The Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit or the Aggregate Commitments under this Section 2.06. Upon any reduction of the Aggregate Commitments, the Commitment of each Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees (including, without limitation, commitment fees and Letter of Credit Fees) and interest in respect of the Aggregate Commitments accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

2.07 Repayment of Loans.

(a) The Borrower shall repay to the Lenders on the Termination Date the aggregate principal amount of Committed Loans outstanding on such date.

(b) To the extent not previously paid, the Borrower shall repay the outstanding balance of the Swing Line Loans on the Termination Date.

2.08 Interest.

(a) Subject to the provisions of Section 2.08(b) below, (i) each LIBO Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted LIBO Rate for such Interest Period plus the Applicable Margin; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin.

(b) (i) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any other Event of Default exists, then the Agent may, and upon the request of the Required Lenders shall, notify the Lead Borrower that all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate and thereafter such Obligations shall bear interest at the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 **Fees.** In addition to certain fees described in subsections (l) and (m) of Section 2.03:

(a) **Commitment Fee.** The Borrowers shall pay to the Agent for the account of each Lender in accordance with its Applicable Percentage, a commitment fee calculated on a per annum basis equal to the Applicable Commitment Fee Percentage multiplied by the actual daily amount by which the Aggregate Commitments exceed the Total Outstandings. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable monthly in arrears on the first day after the end of each month, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated monthly in arrears.

(b) **Other Fees.** The Borrower shall pay to the Arranger and the Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 **Computation of Interest and Fees.** All computations of fees and interest shall be made on the basis of a three hundred sixty (360) day year (or three hundred sixty-five (365) or three hundred sixty-six (366) days, as the case may be, in the case of Base Rate Loans) and actual days elapsed. Interest shall accrue on each outstanding Loan beginning, and including the day, such Loan is made and until (but not including) the day on which such Loan (or such portion thereof) is paid, provided, that, any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 **Evidence of Debt.**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the "Loan Account") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrowers shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error.

2.12 Payments Generally; Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. Subject to Section 2.14 hereof, the Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent after 2:00 p.m., at the option of the Agent, shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of LIBO Rate Loans (or in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Agent such Lender's share of such Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the Agent, then the applicable Lender and the Borrowers severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Committed Borrowing to the Agent, then the amount so paid shall constitute such Lender's Committed Loan included in such Committed Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Agent.

(ii) Payments by Borrowers; Presumptions by Agent. Unless the Agent shall have received notice from the Lead Borrower prior to the time at which any payment is due to the Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

A notice of the Agent to any Lender or the Lead Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof (subject to the provisions of the last paragraph of Section 4.02 hereof), the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments hereunder are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment hereunder on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment hereunder.

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Lenders. If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Obligations greater than its pro rata share thereof as provided herein (including as in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Obligations of the other Credit Parties, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 8.03, provided, that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than to the Borrowers or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Settlement Amongst Lenders

(a) The amount of each Lender's Applicable Percentage of outstanding Loans (including outstanding Swing Line Loans, shall be computed weekly (or more frequently in the Agent's discretion) and shall be adjusted upward or downward based on all Loans (including Swing Line Loans) and repayments of Loans (including Swing Line Loans) received by the Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Agent.

(b) The Agent shall deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Committed Loans and Swing Line Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Agent shall transfer to each Lender its Applicable Percentage of repayments, and (ii) each Lender shall transfer to the Agent (as provided below) or the Agent shall transfer to each Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Committed Loans made by each Lender shall be equal to such Lender's Applicable Percentage of all Committed Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the Lenders and is received prior to 1:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Lender shall not have so made its transfer to the Agent, such Lender agrees to pay to the Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

2.15 Increase in Commitments.

(a) Committed Increase. The Lead Borrower may from time to time make a written request to Agent for an increase in the Aggregate Commitments by an amount (for all such requests) not exceeding \$10,000,000 (the "Committed Increase"); provided, that, (i) any such Committed Increase shall be in a minimum amount of \$5,000,000, (ii) the amount of the Aggregate Commitments, as the same may be increased pursuant to any Committed Increase, shall not exceed \$25,000,000 at any time, (iii) the Lead Borrower may make a maximum of two (2) such requests, (iv) as of the date of any such Committed Increase, and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing, and (v) as to any such Committed Increase, Borrowers shall have paid a fee to Wells Fargo for its own account in the amount equal to one-half percent (0.50%) of the amount of such Committed Increase. Any such Committed Increase shall be effectuated as soon as reasonably practicable after the request of the Lead Borrower therefor. Any such Committed Increase shall be provided solely by Wells Fargo (or any permitted assignee or Participant of Wells Fargo) and shall otherwise be on the same terms as the existing facility under this Agreement. Upon the effective date of any such Committed Increase (the "Increase Effective Date") (i) the Aggregate Commitments under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Committed Increase, and (ii) Schedule 2.01 shall be deemed modified, without further action, to reflect the revised Commitments and Applicable Percentages of the Lenders.

(b) Conditions to Effectiveness of Committed Increase. As a condition precedent to each Committed Increase, (i) the Lead Borrower shall deliver to the Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such Committed Increase, and (B) in the case of the Borrowers, certifying that, before and after giving effect to such Committed Increase, (1) the representations and warranties contained in Article V and the other Loan Documents are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (2) as of the Increase Effective Date for any such Committed Increase and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing; (iii) the Borrowers shall have paid the fee provided for above to Wells Fargo; (iv) if requested by the Agent, the Borrowers shall deliver to the Agent and the Lenders an opinion or opinions, in form and substance reasonably satisfactory to the Agent, from counsel to the Borrowers reasonably satisfactory to the Agent and dated such date; (v) the Borrowers shall have delivered such other instruments, documents and agreements as the Agent may reasonably have requested; and (vii) as of the date of any such Committed Increase and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing.

(c) Conflicting Provisions. This Section shall supersede any provisions in Sections 2.13 or 10.01 to the contrary.

**ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY;
APPOINTMENT OF LEAD BORROWER**

3.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrowers hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided, that, if the Borrowers shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrowers shall make such deductions and (iii) the Borrowers shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent, each Lender and the L/C Issuer, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Agent, such Lender or the L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Lead Borrower by a Lender or the L/C Issuer (with a copy to the Agent), or by the Agent on its own behalf or on behalf of the Agent, a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrowers to a Governmental Authority, the Lead Borrower shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Lead Borrower (with a copy to the Agent), at the time or times prescribed by applicable law or reasonably requested by the Lead Borrower or the Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. Such delivery shall be provided on the Closing Date and on or before such documentation expires or becomes obsolete or after the occurrence of an event requiring a change in the documentation most recently delivered. In addition, any Lender, if requested by the Lead Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Lead Borrower or the Agent as will enable the Lead Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that any Borrower is resident for tax purposes in the United States, any Foreign Lender shall deliver to the Lead Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Lead Borrower or the Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrowers within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Lead Borrower to determine the withholding or deduction required to be made.

(f) Treatment of Certain Refunds. If the Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which the Borrowers have paid additional amounts pursuant to this Section, it shall pay to the Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrowers under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided, that, the Borrowers, upon the request of the Agent, such Lender or the L/C Issuer, agree to repay the amount paid over to the Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent, such Lender or the L/C Issuer in the event the Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrowers or any other Person.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund LIBO Rate Loans, or to determine or charge interest rates based upon the LIBO Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Lead Borrower through the Agent, any obligation of such Lender to make or continue LIBO Rate Loans or to convert Base Rate Loans to LIBO Rate Loans shall be suspended until such Lender notifies the Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, convert all LIBO Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBO Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBO Rate Loans. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a LIBO Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such LIBO Rate Loan, (b) adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan, or (c) the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Lead Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBO Rate Loans or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs; Reserves on LIBO Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBO Rate) or the L/C Issuer;

(ii) subject any Lender or the L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any LIBO Rate Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the L/C Issuer); or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or LIBO Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBO Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Lead Borrower shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on LIBO Rate Loans. The Borrowers shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each LIBO Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Lead Borrower shall have received at least ten (10) days' prior notice (with a copy to the Agent) of such additional interest from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Lead Borrower; or

(c) any assignment of a LIBO Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Lead Borrower pursuant to Section 10.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each LIBO Rate Loan made by it at the LIBO Rate for such Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such LIBO Rate Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 10.13.

3.07 **Survival.** All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

3.08 Designation of Lead Borrower as Borrowers' Agent

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as such Borrower's agent to obtain Credit Extensions, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement. As the disclosed principal for its agent, each Borrower shall be obligated to each Credit Party on account of Credit Extensions so made as if made directly by the applicable Credit Party to such Borrower, notwithstanding the manner by which such Credit Extensions are recorded on the books and records of the Lead Borrower and of any other Borrower. In addition, each Loan Party other than the Borrowers hereby irrevocably designates and appoints the Lead Borrower as such Loan Party's agent to represent such Loan Party in all respects under this Agreement and the other Loan Documents.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to discharge all Obligations of each of the other Borrowers.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Credit Extension. Neither the Agent nor any other Credit Party shall have any obligation to see to the application of such proceeds therefrom.

**ARTICLE IV
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

4.01 **Conditions of Initial Credit Extension.** The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party or the Lenders, as applicable, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Agent:

- (i) executed counterparts of this Agreement sufficient in number for distribution to the Agent, each Lender and the Lead Borrower;
- (ii) a Note executed by the Borrowers in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Agent may require evidencing (A) the authority of each Loan Party to enter into this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party;

(iv) copies of each Loan Party's Organization Documents and such other documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to so qualify in such jurisdiction could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of DLA Piper LLP (US), counsel to the Loan Parties, addressed to the Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Agent may reasonably request;

(vi) a certificate signed by a Responsible Officer of the Lead Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (C) to the Solvency of the Loan Parties as of the Closing Date after giving effect to the transactions contemplated hereby, and (D) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, or (2) that all such consents, licenses and approvals have been obtained and are in full force and effect;

(vii) evidence that all insurance required to be maintained pursuant to the Loan Documents and all endorsements in favor of the Agent required under the Loan Documents have been obtained and are in effect;

(viii) a payoff letter from Siena Lending Group LLC satisfactory in form and substance to the Agent evidencing that the Existing Credit Agreement has been or concurrently with the Closing Date is being terminated, all obligations thereunder are being paid in full, and all Liens securing obligations under the Existing Credit Agreement have been or concurrently with the Closing Date are being released;

(ix) the Security Documents and certificates evidencing any stock being pledged thereunder, together with undated stock powers executed in blank, each duly executed by the applicable Loan Parties;

(x) all other Loan Documents, each duly executed by the applicable Loan Parties;

(xi) results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances and Liens for which termination statements and releases, satisfactions and discharges of any mortgages, and releases or subordination agreements satisfactory to the Agent are being tendered concurrently with such extension of credit or other arrangements satisfactory to the Agent for the delivery of such termination statements and releases, satisfactions and discharges have been made;

(xii) (A) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Agent, and (B) the Credit Card Notifications and Control Agreements required pursuant to Section 6.13 hereof, and (C) Collateral Access Agreements as required by the Agent (and including a Collateral Access Agreement with Amalgamate Processing, Inc, that also includes its agreement to provide certain services to Agent subject to certain conditions);

(xiii) such other assurances, certificates, documents, consents or opinions as the Agent reasonably may require.

(b) After giving effect to (i) the first funding under the Loans, (ii) any charges to the Loan Account made in connection with the establishment of the credit facility contemplated hereby and (iii) all Letters of Credit to be issued at, or immediately subsequent to, such establishment, Excess Availability shall be not less than \$3,000,000.

(c) The Agent shall have received a Borrowing Base Certificate dated the Closing Date, relating to the month ended on December 31, 2017 and executed by a Responsible Officer of the Lead Borrower.

(d) The Agent shall be reasonably satisfied that any financial statements delivered to it fairly present the business and financial condition of the Loan Parties and that there has been no Material Adverse Effect since the date of the Audited Financial Statements.

(e) There shall not be pending any litigation or other proceeding, the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(f) There shall not have occurred any default of any Material Contract of any Loan Party.

(g) The consummation of the transactions contemplated hereby shall not violate any applicable Law or any Organization Document.

(h) All fees and expenses required to be paid to the Agent or the Arranger on or before the Closing Date shall have been paid in full, and all fees and expenses required to be paid to the Lenders on or before the Closing Date shall have been paid in full.

(i) The Borrowers shall have paid all fees, charges and disbursements of counsel to the Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Closing Date (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Agent).

(j) The Agent and the Lenders shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act in each case, the results of which are satisfactory to the Agent.

(k) No material changes in governmental regulations or policies affecting any Loan Party or any Credit Party shall have occurred prior to the Closing Date.

(l) There shall not have occurred any disruption or material adverse change in the United States financial or capital markets in general that has had, in the reasonable opinion of the Agent, a material adverse effect on the market for loan syndications or adversely affecting the syndication of the Loans.

The Agent shall notify the Lead Borrower and the Lenders of the Closing Date, and such notice shall be conclusive and binding on the Loan Parties.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have Consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be Consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a LIBO Rate Loan Notice requesting only a continuation of LIBO Rate Loans) and each L/C Issuer to issue each Letter of Credit is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in Article V or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects, and (iii) for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01;

(b) No Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof;

(c) The Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension or an updated Borrowing Base Certificate, as applicable, in accordance with the requirements hereof;

(d) No event or circumstance which could reasonably be expected to result in a Material Adverse Effect shall have occurred; and

(e) No Overadvance shall result from such Credit Extension.

Each Request for Credit Extension (other than a LIBO Rate Loan Notice requesting only a continuation of LIBO Rate Loans) submitted by any Borrower shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties but until the Required Lenders otherwise direct the Agent to cease making Loans and issuing Letters of Credit, the Lenders will fund their Applicable Percentage of all Loans and participate in all Swing Line Loans and Letters of Credit whenever made or issued, which are requested by the Lead Borrower and which, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article IV, agreed to by the Agent, provided, however, the making of any such Loans or the issuance of any Letters of Credit shall not be deemed a modification or waiver by any Credit Party of the provisions of this Article IV on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to enter into this Agreement and to make Loans and to issue Letters of Credit hereunder, each Loan Party represents and warrants to the Agent and the other Credit Parties that:

5.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary thereof (a) is a corporation, limited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization, or formation (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization, its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, and its federal employer identification number.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party, has been duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Agent under the Security Documents); or (d) violate any Law.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the perfection or maintenance of the Liens created under the Security Documents (including the first priority nature thereof) or (b) such as have been obtained or made and are in full force and effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all Material Indebtedness and other liabilities, direct or contingent, of the Parent and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited Consolidated balance sheet of the Parent and its Subsidiaries dated October 29, 2017 and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for the Fiscal Quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments. Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(c) To the knowledge of the Lead Borrower, no Internal Control Event exists or has occurred since the date of the Audited Financial Statements that has resulted in or could reasonably be expected to result in a misstatement in any material respect, (i) in any financial information delivered or to be delivered to the Agent or the Lenders, (ii) of the Borrowing Base, (iii) of covenant compliance calculations provided hereunder or (iv) of the assets, liabilities, financial condition or results of operations of the Parent and its Subsidiaries on a Consolidated basis.

(d) The Consolidated forecasted balance sheet and statements of income and cash flows of the Parent and its Subsidiaries delivered pursuant to Section 6.01(d) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Loan Parties' best estimate of its future financial performance.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

5.07 No Default. No Loan Party or any Subsidiary is in default under or with respect to, or party to, any Material Contract or any Material Indebtedness. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens

(a) Each of the Loan Parties and each Subsidiary thereof has good record and marketable title in fee simple to or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of the Loan Parties and each Subsidiary has good and marketable title to, valid leasehold interests in, or valid licenses to use all personal property and assets material to the ordinary conduct of its business.

(b) Schedule 5.08(b)(1) sets forth the address (including street address, county and state) of all Real Estate that is owned by the Loan Parties and each of their Subsidiaries, together with a list of the holders of any mortgage or other Lien thereon as of the Closing Date. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the Real Estate owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances. Schedule 5.08(b)(2) sets forth the address (including street address, county and state) of all Leases of the Loan Parties, together with a list of the lessor and its contact information with respect to each such Lease as of the Closing Date. Each of such Leases is in full force and effect and the Loan Parties are not in default of the terms thereof.

(c) Schedule 7.01 sets forth a complete and accurate list of all Liens (other than Liens in favor of Agent) on the property or assets of each Loan Party and each of its Subsidiaries, showing as of the Closing Date the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Permitted Encumbrances.

(d) Schedule 7.02 sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof.

(e) Schedule 7.03 sets forth a complete and accurate list of all Indebtedness of each Loan Party or any Subsidiary of a Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity thereof.

5.09 Environmental Compliance

(a) Except as specifically disclosed in Schedule 5.09, no Loan Party or any Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) To the knowledge of the Loan Parties, except as otherwise set forth in Schedule 5.09, none of the properties currently or formerly owned or operated by any Loan Party or any Subsidiary thereof is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and never have been any underground or aboveground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any Subsidiary thereof or, to the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or Subsidiary thereof; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof.

(c) Except as otherwise set forth on Schedule 5.09, no Loan Party or any Subsidiary thereof is undertaking, and no Loan Party or any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

5.10 Insurance. The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Closing Date. Each insurance policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

5.11 Taxes. The Loan Parties and their Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, as to which Taxes no Lien has been filed and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect. No Loan Party or any Subsidiary thereof is a party to any tax sharing agreement.

5.12 ERISA Compliance.

(a) The Lead Borrower, each of its ERISA Affiliates, and each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of the Lead Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. The Loan Parties and each ERISA Affiliate have made all required contributions to each Plan subject to Sections 412 or 430 of the Code and to each Multiemployer Plan, and no application for a funding waiver or an extension of any amortization period pursuant to Sections 412 or 430 of the Code has been made with respect to any Plan. No Lien imposed under the Code or ERISA exists or is likely to arise on account of any Plan or Multiemployer Plan.

(b) There are no pending or, to the knowledge of the Lead Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

5.13 Subsidiaries; Equity Interests. The Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except for those created under the Security Documents. Except as set forth in Schedule 5.13, there are no outstanding rights to purchase any Equity Interests in any Subsidiary. The Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part(b) of Schedule 5.13. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and are owned in the amounts specified on Part (c) of Schedule 5.13 free and clear of all Liens except for those created under the Security Documents. The copies of the Organization Documents of each Loan Party and each amendment thereto provided pursuant to Section 4.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

5.14 Margin Regulations; Investment Company Act;

(a) No Loan Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of the Credit Extensions shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any margin stock or for any other purpose that might cause any of the Credit Extensions to be considered a “purpose credit” within the meaning of Regulations T, U, or X issued by the FRB.

(b) None of the Loan Parties, any Person Controlling any Loan Party, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.15 Disclosure. Each Loan Party has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16 Compliance with Laws. Each of the Loan Parties and each Subsidiary is in compliance (A) in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and (B) with Section 10.17 and 10.18.

5.17 Intellectual Property; Licenses, Etc. The Loan Parties and their Subsidiaries own, or possess the right to use, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the knowledge of the Lead Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any Subsidiary infringes upon any rights held by any other Person except as could not reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 5.17, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Lead Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Labor Matters. There are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect. No Loan Party or any of its Subsidiaries has incurred any material liability or obligation under the Worker Adjustment and Retraining Act or similar state Law. All payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party or any of its Subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 5.18, no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement, management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

5.19 Security Documents.

(a) The Security Agreement creates in favor of the Agent, for the benefit of the Secured Parties referred to therein, a legal, valid, continuing and enforceable security interest in the Collateral (as defined in the Security Agreement), the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The financing statements, releases and other filings are in appropriate form and have been or will be filed in the offices specified in Schedule II of the Security Agreement. Upon such filings and/or the obtaining of "control," (as defined in the UCC) the Agent will have a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Collateral that may be perfected by filing, recording or registering a financing statement or similar document (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the UCC) or by obtaining control, under the UCC (in effect on the date this representation is made) in each case prior and superior in right to any other Person.

(b) When the Security Agreement (or a short form thereof) is filed in the United States Patent and Trademark Office and the United States Copyright Office and when financing statements, releases and other filings in appropriate form are filed in the offices specified in Schedule II of the Security Agreement, the Agent shall have a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Loan Parties in the Intellectual Property (as defined in the Security Agreement) in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks, trademark applications and copyrights acquired by the Loan Parties after the Closing Date).

5.20 Solvency. After giving effect to the transactions contemplated by this Agreement, and before and after giving effect to each Credit Extension, the Loan Parties, on a Consolidated basis, are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.

5.21 Deposit Accounts; Credit Card Arrangements.

(a) Annexed hereto as Schedule 5.21(a) is a list of all Deposit Accounts maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each Deposit Account (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository; and (iv) the identification of each Cash Management Bank.

(b) Annexed hereto as Schedule 5.21(b) is a correct and complete list of all of the Credit Card Agreements and all other agreements, documents and instruments existing on the Closing Date between or among any Loan Party, the Credit Card Issuers, the Credit Card Processors and any of their Affiliates. The Credit Card Agreements constitute all of such agreements necessary for each Borrower to operate its business as presently conducted with respect to credit cards and debit cards and no Credit Card Receivables of any Borrower arise from purchases by customers of Inventory with credit cards or debit cards, other than those which are issued by Credit Card Issuers with whom such Borrower has entered into one of the Credit Card Agreements set forth on Schedule 5.21(b) hereto or with whom Borrower has entered into a Credit Card Agreement in accordance with Section 5.21(b) hereof. Each of the Credit Card Agreements constitutes the legal, valid and binding obligations of the Borrower that is party thereto and to the best of each Loan Party's knowledge, the other parties thereto, enforceable in accordance with their respective terms and is in full force and effect. No material default or material event of default, or act, condition or event which after notice or passage of time or both, would constitute a material default or a material event of default under any of the Credit Card Agreements (other than any Credit Card Agreement with a Credit Card Issuer or Credit Card Processor where the sales using the applicable card are less than ten (10%) percent of all such sales in the immediately preceding Fiscal Year) exists or has occurred that would entitle the other party thereto to suspend, withhold or reduce amounts that would otherwise be payable to a Borrower. Each Borrower and the other parties thereto have complied in all material respects with all of the terms and conditions of the Credit Card Agreements (other than any Credit Card Agreement with a Credit Card Issuer or Credit Card Processor where the sales using the applicable card are less than ten (10%) percent of all such sales in the immediately preceding Fiscal Year) to the extent necessary for such Borrower to be entitled to receive all payments thereunder. Borrowers have delivered, or caused to be delivered to Agent, true, correct and complete copies of all of the Credit Card Agreements.

5.22 **Brokers.** No broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

5.23 **Customer and Trade Relations.** There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of any Loan Party with any supplier material to its operations which could reasonably be expected to have a Material Adverse Effect.

5.24 **Material Contracts.** Schedule 5.24 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Agent on or before the Closing Date. The Loan Parties are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract.

5.25 **Casualty.** Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.26 **OFAC/Sanctions.** No Loan Party nor any of its Subsidiaries is in violation of any Sanctions No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with the Anti-corruption Laws. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with the Anti-corruption Laws in all material respects. No proceeds of any Loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any applicable sanction by any Person (including any Credit Party or other individual or entity participating in any transaction).

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which a claim has not been asserted), or any Letter of Credit shall remain outstanding, the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

6.01 Financial Statements. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) as soon as available, but in any event within ninety (90) days after the end of each Fiscal Year of the Parent (commencing with the Fiscal Year ended 2017), a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and unqualified opinion of a Registered Public Accounting Firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) Fiscal Quarters of each Fiscal Year of the Parent (commencing with the Fiscal Quarter ended April 29, 2018), a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Quarter, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Quarter and for the portion of the Parent's Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(d) hereof, (B) the corresponding Fiscal Quarter of the previous Fiscal Year and (C) the corresponding portion of the previous Fiscal Year, all in reasonable detail, such Consolidated statements to be certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations, Shareholders' Equity and cash flows of the Parent and its Subsidiaries as of the end of such Fiscal Quarter in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) as soon as available, but in any event within thirty (30) days after the end of each of the Fiscal Months of each Fiscal Year of the Parent (commencing with the Fiscal Month ended November 30, 2017), or forty-five (45) days after the end of each Fiscal Month that is also the end of a Fiscal Quarter, a consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Month, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Month, and for the portion of the Parent's Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(d) hereof, (B) the corresponding Fiscal Month of the previous Fiscal Year and (C) the corresponding portion of the previous Fiscal Year, all in reasonable detail, such consolidated statements to be certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations, Shareholders' Equity and cash flows of the Parent and its Subsidiaries as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(d) as soon as available, but in any event not later than the end of each Fiscal Year of the Parent, forecasts prepared by management of the Lead Borrower, in form satisfactory to the Agent, of consolidated balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries and Excess Availability and the Borrowing Base, in each case on a monthly basis for the immediately following Fiscal Year (including the Fiscal Year in which the Maturity Date occurs), and as soon as available, any significant revisions to such forecast with respect to such Fiscal Year.

6.02 Certificates; Other Information. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a), 6.01(b) and 6.01(c) (commencing with the delivery of the financial statements for the Fiscal Month ended on February 3, 2018), a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Lead Borrower shall also provide: (i) a statement of reconciliation conforming such financial statements to GAAP and (ii) a copy of management's discussion and analysis with respect to such financial statements;

(b) on the Thursday day of each week (or, if such day is not a Business Day, on the next succeeding Business Day), a Borrowing Base Certificate showing the Borrowing Base as of the close of business as of the immediately preceding Sunday, each Borrowing Base Certificate to be certified as complete and correct by a Responsible Officer of the Lead Borrower;

(c) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by its Registered Public Accounting Firm in connection with the accounts or books of the Loan Parties or any Subsidiary, or any audit of any of them, including, without limitation, specifying any Internal Control Event;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Loan Parties, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or with any national securities exchange, and in any case not otherwise required to be delivered to the Agent pursuant hereto;

(e) the financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(f) as soon as available, but in any event within thirty (30) days after the end of each Fiscal Year of the Loan Parties, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as the Agent, or any Lender through the Agent, may reasonably specify;

(g) promptly after the Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness; and

(h) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a), (b), or (c) or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Lead Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: (i) the Lead Borrower shall deliver paper copies of such documents to the Agent or any Lender that requests the Lead Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender and (ii) the Lead Borrower shall notify the Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Lead Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(b) to the Agent. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that (a) the Agent and/or the Arranger will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties hereby agree that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (i) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," the Loan Parties shall be deemed to have authorized the Agent, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Loan Parties or their securities for purposes of United States Federal and state securities laws (provided, that, to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (iv) the Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

6.03 **Notices.** Promptly notify the Agent of:

- (a) the occurrence of any Default or Event of Default;
- (b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) any breach or non-performance of, or any default under, a Material Contract or with respect to Material Indebtedness of any Loan Party or any Subsidiary thereof;
- (d) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority or the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws;
- (e) the occurrence of any ERISA Event;
- (f) any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;
- (g) any change in any Loan Party's senior executive officers;

(h) the discharge by any Loan Party of its present Registered Public Accounting Firm or any withdrawal or resignation by such Registered Public Accounting Firm;

(i) any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;

(j) the filing of any Lien for unpaid Taxes against any Loan Party;

(k) any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;

(l) any failure by any Loan Party to pay rent or such other amounts due at any distribution centers or warehouses.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action the Lead Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, (b) all lawful claims (including, without limitation, claims of landlords, warehousemen, customs brokers, freight forwarders, consolidators and carriers) which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case, where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (d) no Lien has been filed with respect thereto and (e) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. Nothing contained herein shall be deemed to limit the rights of the Agent with respect to determining Reserves pursuant to this Agreement.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its Intellectual Property, except to the extent such Intellectual Property is no longer used or useful in the conduct of the business of the Loan Parties.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Agent.

(b) Cause fire and extended coverage policies maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgage clause (regarding improvements to Real Estate) and lenders' loss payable clause (regarding personal property), in form and substance reasonably satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(c) Cause commercial general liability policies to be endorsed to name the Agent as an additional insured.

(d) Cause business interruption policies to name the Agent as a loss payee and to be endorsed or amended to include (i) a provision to the effect that none of the Loan Parties, the Agent or any other party shall be a co-insurer and (ii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(e) Cause each such policy referred to in this Section 6.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.

(f) Deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder) together with evidence satisfactory to the Agent of payment of the premium therefor.

(g) Maintain for themselves and their Subsidiaries, a Directors and Officers insurance policy, and a "Blanket Crime" policy including employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property, and computer fraud coverage with responsible companies in such amounts as are customarily carried by business entities engaged in similar businesses similarly situated, and will upon request by the Agent furnish the Agent certificates evidencing renewal of each such policy.

(h) Permit any representatives that are designated by the Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby.

None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

6.08 Compliance with Laws. Comply (a) in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; (ii) such contest effectively suspends enforcement of the contested Laws, and (iii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect, and (b) with Sections 10.17 and 10.18.

6.09 Books and Records; Accountants.

(a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Subsidiary, as the case may be.

(b) At all times retain a Registered Public Accounting Firm which is reasonably satisfactory to the Agent and shall instruct such Registered Public Accounting Firm to cooperate with, and be available to, the Agent or its representatives to discuss the Loan Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such Registered Public Accounting Firm, as may be raised by the Agent.

6.10 Inspection Rights.

(a) Permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and Registered Public Accounting Firm, and permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct evaluations of the Loan Parties' business plan, forecasts and cash flows, all at the expense of the Loan Parties and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Lead Borrower; provided, that, that when a Default or Event of Default exists the Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice.

(b) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations and other evaluations, including, without limitation, of (i) the Lead Borrower's practices in the computation of the Borrowing Base and (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves. The Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to such examinations and evaluations, provided, that, the Agent may conduct, or cause to be conducted, (A) not more than two (2) commercial finance examinations each Fiscal Year at the expense of Borrowers so long as Excess Availability is not less than the greater of thirty-five percent (35.0%) of the Loan Cap or \$5,000,000 at any time during such Fiscal Year, or (B) if Excess Availability is less than the greater of such amounts during such Fiscal Year, not more than three (3) commercial finance examinations in such Fiscal Year at the expense of Borrowers. Notwithstanding the foregoing, the Agent may cause additional commercial finance examinations to be undertaken (i) as it in its Permitted Discretion deems necessary or appropriate, at its own expense or, (ii) if required by Law or if a Default or Event of Default shall have occurred and be continuing, at the expense of the Loan Parties and without advance notice.

(c) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including appraisers) retained by the Agent to conduct appraisals of the Collateral, including, without limitation, the assets included in the Borrowing Base. The Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to such appraisals, provided, that, the Agent may conduct, or cause to be conducted, (A) not more than two (2) inventory appraisals each Fiscal Year at the expense of Borrowers so long as Excess Availability is not less than the greater of thirty-five percent (35.0%) of the Loan Cap or \$5,000,000 at any time during such Fiscal Year, or (B) if Excess Availability is less than the greater of such amounts during such Fiscal Year, not more than three (3) inventory appraisals in such Fiscal Year at the expense of Borrowers. Notwithstanding the foregoing, the Agent may cause additional appraisals to be undertaken (i) as it in its Permitted Discretion deems necessary or appropriate, at its own expense or, (ii) if required by Law or if a Default or Event of Default shall have occurred and be continuing, at the expense of the Loan Parties and without advance notice.

6.11 Use of Proceeds. Use the proceeds of the Credit Extensions (a) to finance the acquisition of working capital assets of the Borrowers, including the purchase of inventory and equipment, in each case in the ordinary course of business, (b) to finance Capital Expenditures of the Borrowers, and (c) for general corporate purposes of the Loan Parties, in each case to the extent expressly permitted under applicable Law and the Loan Documents.

6.12 Additional Loan Parties. Notify the Agent at the time that any Person becomes a Subsidiary, and in each case promptly thereafter (and in any event within fifteen (15) days), cause any such Person (a) which is not a CFC, to (i) become a Loan Party by executing and delivering to the Agent a Joinder to this Agreement or a Joinder to the Facility Guaranty or such other documents as the Agent shall deem appropriate for such purpose, (ii) grant a Lien to the Agent on such Person's assets of the same type that constitute Collateral to secure the Obligations, and (iii) deliver to the Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), and (b) if any Equity Interests or Indebtedness of such Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness (except that, if such Subsidiary is a CFC that is not joined as a Loan Party, the Equity Interests of such Subsidiary to be pledged may be limited to sixty-five percent (65%) of the outstanding voting Equity Interests of such Subsidiary and one hundred percent (100%) of the non-voting Equity Interests of such Subsidiary and such time period may be extended based on local law or practice), in each case in form, content and scope reasonably satisfactory to the Agent. In no event shall compliance with this Section 6.12 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.12 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower or permit the inclusion of any acquired assets in the computation of the Borrowing Base.

6.13 Cash Management.

(a) Each Loan Party shall establish and maintain, at its expense, Deposit Accounts and cash management services of a type and on terms, and with the banks, set forth on Schedule 5.21(a) and, subject to Section 6.13(d) below, such other banks as such Loan Party may hereafter select (such other banks, together with the banks set forth on Schedule 5.21(a), collectively, the “Cash Management Banks” and individually, a “Cash Management Bank”). Each Loan Party shall deliver, or cause to be delivered to Agent, (i) a Control Agreement with respect to each of its Deposit Accounts duly authorized, executed and delivered by each Cash Management Bank where a Deposit Account is maintained, the applicable Loan Party and Agent; provided, that, (A) Loan Parties shall not be required to deliver a Control Agreement with a Cash Management Bank as to any Deposit Account that is an Excluded Account, and (B) Loan Parties shall not be required to deliver a Control Agreement with a Cash Management Bank as to any Deposit Account that is exclusively used for receiving deposits from the Stores (other than any such Deposit Account at Wells Fargo which shall each be subject to a Control Agreement), and (ii) satisfactory evidence that the Credit Card Notifications as duly authorized, executed and delivered by the applicable Loan Party has been delivered to each Credit Card Issuer or Credit Card Processor.

(b) Each such Control Agreement shall provide, among other things, that (i) the Cash Management Bank will comply with any instructions originated by Agent directing the disposition of the funds in such Deposit Account without further consent by the applicable Loan Party, (ii) the Cash Management Bank waives, subordinates, and agrees not to exercise any rights of setoff or recoupment or any other claim against the applicable Deposit Account other than for payment of its service fees and other charges directly related to the administration of such Deposit Account and for returned checks or other items of payment, (iii) with respect to each Collection Account (other than the Concentration Accounts) the Cash Management Bank will transfer each day by wire transfer or other electronic funds transfer all funds in such account to a Concentration Account and with respect to each Concentration Account, the Cash Management Bank will transfer each day by wire transfer or other electronic funds transfer all funds in such account to the Agent Payment Account, provided, that, such Cash Management Bank shall not be required to transfer funds to the Agent Payment Account prior to the date that Agent has received a request for the initial Loan (whether a Committed Loan or Swing Line Loan) or Letter of Credit hereunder. All payments made to the Concentration Accounts, whether in respect of the Accounts, as proceeds of Inventory or other Collateral or otherwise shall be treated as payments to Agent in respect of the Obligations and therefore shall constitute the property of Agent and Lenders to the extent of the then outstanding Obligations. All funds received in the Agent Payment Account shall be applied to the Obligations as provided in accordance with Section 8.03 of this Agreement to the extent then due and payable.

(c) Each Borrower shall direct all Credit Card Processors, Credit Card Issuers and other obligors in respect of any amounts payable to Borrowers to make payment of all such amounts to the Collection Accounts pursuant to a Credit Card Notification which shall have been executed on behalf of such Loan Party and delivered to such Loan Party’s Credit Card Issuers and Credit Card Processors, including, but not limited to, the Credit Card Issuers and Credit Card Processors listed on Schedule 5.21(b). In addition, each Borrower shall deposit, or cause to be deposited, any other all cash, checks, notes, instruments, and other items of payment, in whatever form, that it receives to the Collection Accounts. In the event that, notwithstanding the provisions of this Section 6.13, any Loan Party receives or otherwise has dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party’s other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into a Collection Account or a Concentration Account.

(d) So long as no Event of Default has occurred and is continuing, upon not less than five (5) Business Days' prior written notice to Agent, Loan Parties may amend Schedule 5.21 to add or replace a Deposit Account or Cash Management Bank or Securities Account or securities intermediary and shall upon such addition or replacement provide to Agent an amended Schedule 5.21; provided, that, (i) such prospective Cash Management Bank or securities intermediary, as the case may be, shall be reasonably satisfactory to Agent, and (ii) prior to the time of the opening of such Deposit Account or Securities Account (other than an Excluded Account), the applicable Loan Party and such prospective Cash Management Bank or securities intermediary shall have executed and delivered to Agent a Control Agreement (including any acknowledgement and agreement of the Cash Management Bank or securities intermediary with respect thereto). Each Loan Party shall close any of its Deposit Accounts (and establish replacement Deposit Accounts in accordance with the foregoing sentence) as promptly as practicable and in any event within forty-five (45) days after notice from Agent that the operating performance, funds transfer, or procedures or performance of the Cash Management Bank with respect to Deposit Accounts or Agent's liability under any Control Agreement with such Cash Management Bank is no longer satisfactory in Agent's reasonable judgment.

(e) Each Loan Party shall obtain an authenticated Control Agreement from each issuer of uncertificated securities, securities intermediary, or commodities intermediary issuing or holding any financial assets or commodities to or for any Loan Party, or maintaining a Securities Account for such Loan Party and with respect to any other investment property and no Loan Party will make, acquire, or permit to exist Permitted Investments consisting of cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts unless Agent has received a Control Agreement duly authorized, executed and delivered by the applicable bank or securities intermediary where such cash, Cash Equivalents, Deposit Account or Securities Account are maintained with respect thereto, provided, that, the Loan Parties shall not be required to deliver a Control Agreement with respect to any Excluded Account.

(f) Upon the request of the Agent, the Loan Parties shall cause bank statements and/or other reports to be delivered to the Agent not less often than monthly, accurately setting forth all amounts deposited in each Deposit Account to ensure the proper transfer of funds as set forth above.

6.14 Information Regarding the Collateral.

(a) Furnish to the Agent at least thirty (30) days prior written notice of any change in: (i) any Loan Party's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility); (iii) any Loan Party's organizational structure or jurisdiction of incorporation or formation (provided, that, in no event will any Loan Party change its jurisdiction of organization to a jurisdiction outside of the United States); or (iv) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest (subject as to priority, to Permitted Liens) in all the Collateral for its own benefit and the benefit of the other Credit Parties.

(b) Should any of the information on any of the Schedules hereto become inaccurate or misleading in any material respect as a result of changes after the Closing Date, the Lead Borrower shall advise the Agent in writing of such revisions or updates as may be necessary or appropriate to update or correct the same. From time to time as may be reasonably requested by the Agent, the Lead Borrower shall supplement each Schedule hereto, or any representation herein or in any other Loan Document, with respect to any matter arising after the Closing Date that, if existing or occurring on the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Loan Parties to undertake any actions otherwise prohibited hereunder or fail to undertake any action required hereunder from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default or Event of Default resulting from the matters disclosed therein.

6.15 Physical Inventories. Except as otherwise consented to by the Agent

(a) Cause not less than one (1) full physical inventory in each twelve (12) month period and at the Stores at the end of each Fiscal Quarter consistent with current practices as of the date hereof, conducted by such inventory takers as are satisfactory to the Agent and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be satisfactory to the Agent. The Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Lead Borrower, within five (5) Business Days following the completion of such inventory, shall provide the Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory or cycle counts undertaken by a Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

(b) Permit the Agent, in its Permitted Discretion, if any Default or Event of Default exists, to cause additional such inventories to be taken as the Agent determines (each, at the expense of the Loan Parties).

6.16 Environmental Laws. Except to the extent failure to comply could not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect (a) conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all environmental permits necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Real Estate or to otherwise comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, that, neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

6.17 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any applicable Law, or which the Agent may request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets are acquired by any Loan Party after the Closing Date (other than assets constituting Collateral under the Security Documents that become subject to the perfected first-priority Lien under the Security Documents upon acquisition thereof), notify the Agent thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by the Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 6.17, all at the expense of the Loan Parties. In no event shall compliance with this Section 6.17(b) waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.17(b) if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute Consent to the inclusion of any acquired assets in the computation of the Borrowing Base.

(c) Upon the request of the Agent, use commercially reasonable efforts to cause each of its Freight Forwarders to deliver an agreement (including, without limitation, a Freight Forwarder Agreement) to the Agent covering such matters and in such form as the Agent may reasonably require (provided, that, such agreement shall be required for any In-Transit Inventory the importation of which is being handled by such Freight Forwarder to be Eligible In-Transit Inventory).

(d) Upon the request of the Agent, use commercially reasonable efforts to cause any of its landlords at locations that contain books and records with respect to Collateral (not otherwise available at any owned location of the Loan Parties) or with assets included in the Borrowing Base (other than at a Store) to deliver a Collateral Access Agreement to the Agent in such form as the Agent may reasonably require.

6.18 Compliance with Terms of Leaseholds. Except as otherwise expressly permitted hereunder, and except as could not reasonably be expected to have a Material Adverse Effect, (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Subsidiaries is a party, (b) keep such Leases in full force and effect, (c) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled, (d) notify the Agent of any default by any party with respect to such Leases and cooperate with the Agent in all respects to cure any such default, and (e) cause each of its Subsidiaries to do the foregoing.

6.19 Material Contracts. (a) Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, (b) maintain each such Material Contract in full force and effect, (c) enforce each such Material Contract in accordance with its terms, (d) take all such action to such end as may be from time to time requested by the Agent, (e) upon request of the Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and (f) cause each of its Subsidiaries to do the foregoing.

ARTICLE VII NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (other than contingent indemnification obligations for which a claim has not been asserted), no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under the UCC or any similar Law or statute of any jurisdiction a financing statement that names any Loan Party or any Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances.

7.02 **Investments.** Make any Investments, except Permitted Investments.

7.03 **Indebtedness; Disqualified Stock.** (a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness; (b) issue Disqualified Stock, or (c) issue and sell any other Equity Interests unless (i) such Equity Interests shall be issued solely by the Parent and not by a Subsidiary of a Loan Party (provided, that, a Subsidiary of a Loan Party may issue Equity Interests so long as such Equity Interests are issued to a Loan Party), (ii) such Equity Interests provide that all dividends and other Restricted Payments in respect thereof shall be made solely in additional shares of such Equity Interests, in lieu of cash, and (iii) such Equity Interests shall not be subject to redemption other than redemption at the option of the Loan Party issuing such Equity Interests and in accordance with the limitations contained in this Agreement.

7.04 **Fundamental Changes.** Merge, dissolve, liquidate, consolidate with or into another Person, (or agree to do any of the foregoing), except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) any Subsidiary which is not a Loan Party may merge with (i) a Loan Party, provided, that, the Loan Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries which are not Loan Parties, provided, that, when any wholly-owned Subsidiary is merging with another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person;

(b) any Subsidiary which is a Loan Party may merge into any Subsidiary which is a Loan Party or into a Borrower, provided, that, in any merger involving a Borrower, such Borrower shall be the continuing or surviving Person;

(c) in connection with a Permitted Acquisition, any Subsidiary of a Loan Party may merge with or into or consolidate with any other Person or permit any other Person to merge with or into or consolidate with it; provided, that, (i) the Person surviving such merger shall be a wholly-owned Subsidiary of a Loan Party and such Person shall become a Loan Party in accordance with, and to the extent required by, the provisions of Section 6.12 hereof, and (ii) in the case of any such merger to which any Loan Party is a party, such Loan Party is the surviving Person.

7.05 **Dispositions.** Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions.

7.06 **Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party other than to the Parent;

(b) the Loan Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the Borrowers may make payments to Parent, the proceeds of which are used by Holdings substantially contemporaneously, to make payments to Sponsor in accordance with the Sponsor Management Agreement as in effect on the Closing Date (i) in respect of management fees in an aggregate amount not to exceed \$150,000 in any Fiscal Year, and (ii) in respect of reimbursements of fees and expenses (including any fees and expenses) in accordance with the terms of the Sponsor Management Agreement and indemnification obligations to the extent actually incurred and required or contemplated to be reimbursed pursuant to the Sponsor Management Agreement as in effect on the date hereof; provided, that, (A) the management fees and transaction fees described in clauses (i) and (ii) of this paragraph shall not be paid at any time an Event of Default exists or has occurred and is continuing and (B) all accrued management fees and transaction fees which were not permitted to be paid in cash at such time shall be permitted to be paid in cash once no Event of Default is continuing.

7.07 Prepayments of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, or make any payment in violation of any subordination terms of any Subordinated Indebtedness, except (a) regularly scheduled or mandatory repayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (other than Subordinated Indebtedness), and (ii) Subordinated Indebtedness in accordance with the subordination terms thereof or the applicable subordination agreement relating thereto, (b) voluntary prepayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (but excluding on account of any Subordinated Indebtedness), provided, that, as of the date of any such prepayment, repurchase, redemption or defeasance, and after giving effect thereto, each of the Payment Conditions is satisfied, and (ii) Subordinated Indebtedness in accordance with the subordination terms thereof or the applicable subordination agreement relating thereto, provided, that, as of the date of any such prepayment, repurchase, redemption or defeasance, and after giving effect thereto, each of the Payment Conditions is satisfied, and (c) prepayment of such Indebtedness with the proceeds of the Permitted Refinancing thereof.

7.08 Change in Nature of Business.

(a) In the case of the Parent, engage in any business or activity other than (i) the direct or indirect ownership of all outstanding Equity Interests in the other Loan Parties, (ii) maintaining its corporate existence, (iii) participating in tax, accounting and other administrative activities as the parent of the consolidated group of companies, including the Loan Parties, (iv) the execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder, and (v) activities incidental to the businesses or activities described in clauses (i)(a) through (iv) of this Section 7.08(a).

(b) In the case of each of the Loan Parties, engage in any line of business substantially different from the Business conducted by the Loan Parties and their Subsidiaries on the Closing Date or any business substantially related or incidental thereto.

7.09 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided, that, the foregoing restriction shall not apply to (a) a transaction between or among the Loan Parties, (b) transactions described on Schedule 7.09 hereto, (c) advances for commissions, travel and other similar purposes in the ordinary course of business to directors, officers and employees, (d) the issuance of Equity Interests in Parent to any officer, director, employee or consultant of Parent or any of its Subsidiaries, (e) the payment of reasonable fees and out-of-pocket costs to directors, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of Parent or any of its Subsidiaries, and (f) any issuances of securities of Parent (other than Disqualified Stock and other Equity Interests not permitted hereunder) or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans (in each case in respect of Equity Interests in Parent) of Parent or any of its Subsidiaries.

7.10 **Burdensome Agreements.** Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability of (i) any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) any Subsidiary to Guarantee the Obligations, (iii) any Subsidiary to make or repay loans to a Loan Party, or (iv) the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Agent; provided, that, this clause (iv) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under clauses (c) or (f) of the definition of Permitted Indebtedness solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.11 **Use of Proceeds.** Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose; (b) to make any payments to a Sanctioned Entity or a Sanctioned Person, to finance any investments in a Sanctioned Entity or a Sanctioned Person, to fund any operations of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person; or (c) for purposes other than those permitted under this Agreement.

7.12 **Amendment of Material Documents.** Amend, modify or waive any of a Loan Party's rights under (a) its Organization Documents in a manner materially adverse to the Credit Parties, or (b) any Material Contract or Material Indebtedness (other than on account of any refinancing thereof otherwise permitted hereunder), in each case to the extent that such amendment, modification or waiver would result in a Default or Event of Default under any of the Loan Documents, would be materially adverse to the Credit Parties or otherwise would be reasonably likely to have a Material Adverse Effect.

7.13 **Fiscal Year.** Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP.

7.14 **Deposit Accounts; Credit Card Processors.** Open new Deposit Accounts or Securities Accounts unless the Loan Parties shall have delivered to the Agent appropriate Control Agreements consistent with the provisions of Section 6.13 and otherwise satisfactory to the Agent. No Loan Party shall maintain any Deposit Accounts or Securities Accounts or enter into any agreements with Credit Card Issuers or Credit Card Processors other than as expressly contemplated herein or in Section 6.13 hereof.

7.15 **Excess Availability Covenant.** Permit Excess Availability at any time to be less than the greater of (a) ten percent (10%) of the Loan Cap or (b) \$1,000,000; provided, that, if at any time Excess Availability is less than \$2,500,000, then \$1,000,000 shall be increased to \$1,500,000 for purposes of this Section 7.15(b).

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 **Events of Default.** Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrowers or any other Loan Party fails to pay when and as required to be paid herein, (i) any amount of principal of any Loan or any L/C Obligation, or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. (i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.07, 6.10, 6.11, 6.12, 6.13 or 6.14 or Article VII; or (ii) any Guarantor fails to perform or observe any term, covenant or agreement contained in the Facility Guaranty; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for fifteen (15) days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate), or in completing any request for a Borrowing via the Portal, shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement), or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Loan Party or such Subsidiary as a result thereof is greater than \$100,000; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries institutes, consents to the institution of or declares its intention to institute any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged, undismissed or unstayed for thirty (30) calendar days or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for thirty (30) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding \$250,000 (to the extent not covered by independent third-party insurance as to which the insurer has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of ten (10) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$250,000 or which would reasonably likely result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$250,000 or which would reasonably likely result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party, any Subsidiary thereof or any Governmental Authority contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party, any Subsidiary thereof or any Governmental Authority not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Cessation of Business. Except as otherwise expressly permitted hereunder, any Loan Party shall take any action, or any Loan Party's management or board of directors (or equivalent governing body) shall make a determination, in each case whether or not yet formally approved, to (i) suspend the operation of all or a material portion of its business in the ordinary course, (ii) suspend the payment of any material obligations in the ordinary course or suspend the performance under Material Contracts in the ordinary course, (iii) commence the liquidation of all or a material portion of its assets or Store locations, or (iv) employ an agent or other third party to conduct a program of closings, liquidations, or "going-out-of-business" sales of any material portion of its business; or

(m) Loss of Collateral. There occurs any uninsured loss to any material portion of the Collateral; or

(n) Breach of Contractual Obligation. Any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Contract or fails to observe or perform any other agreement or condition relating to any such Material Contract or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such Material Contract to terminate such Material Contract; or

(o) Indictment. The indictment or institution of any legal process or proceeding against, any Loan Party or any Subsidiary thereof, under any federal, state, municipal, and other criminal statute, rule, regulation, order, or other requirement having the force of law for a felony;

(p) Guaranty. The termination or attempted termination of any Facility Guaranty except as expressly permitted hereunder or under any other Loan Document;

(q) Subordination. (i) The subordination provisions of the documents evidencing or governing any Subordinated Indebtedness, or provisions of any intercreditor agreement entered into by Agent after the date hereof, any such provisions being referred to as the "Intercreditor Provisions", shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Indebtedness; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Intercreditor Provisions, (B) that the Intercreditor Provisions exist for the benefit of the Credit Parties, or (C) in the case of Subordinated Indebtedness, that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Intercreditor Provisions.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

(a) declare the Commitments of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such Commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Obligations (other than Obligations under any Swap Contract) to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(c) require that the Loan Parties Cash Collateralize the L/C Obligations; and

(d) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or applicable Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties; provided, however, that upon the occurrence of any Event of Default with respect to any Loan Party or any Subsidiary thereof under Section 8.01(f), the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Loan Parties to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

Each of the Lenders agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Loan Party or to foreclose any Lien on, or otherwise enforce any security interest in, or other rights to, any of the Collateral.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Agent in the following order:

First, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent;

Second, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them

Third, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances;

Fourth, to the extent that Swing Line Loans have not been refinanced by a Committed Loan, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the Swing Line Loans;

Fifth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Committed Loans and other Obligations, and fees (including Letter of Credit Fees but excluding any Early Termination Fees), ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fifth payable to them;

Sixth, to the extent that Swing Line Loans have not been refinanced by a Committed Loan, to payment to the Swing Line Lender of that portion of the Obligations constituting unpaid principal of the Swing Line Loans;

Seventh, to payment of that portion of the Obligations constituting unpaid principal of the Committed Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to the Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

Ninth, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations, but excluding any Other Liabilities), ratably among the Credit Parties in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to payment of that portion of the Obligations arising from Cash Management Services to the extent secured under the Security Documents, ratably among the Credit Parties in proportion to the respective amounts described in this clause Tenth held by them;

Eleventh, to payment of all other Obligations arising from Bank Products to the extent secured under the Security Documents, ratably among the Credit Parties in proportion to the respective amounts described in this clause Eleventh held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

Subject to Section 2.03(g), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Eighth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE IX THE AGENT

9.01 Appointment and Authority. Each of the Lenders and the Swing Line Lender hereby irrevocably appoints Wells Fargo to act on its behalf as the Agent hereunder and under the other Loan Documents (other than the Swap Contracts) and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent, the Lenders and the L/C Issuer, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions.

9.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though they were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided, that, the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent by the Loan Parties, a Lender or the L/C Issuer. Upon the occurrence of a Default or Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

9.04 Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Agent shall have received written notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent.

9.06 Resignation of Agent.

(a) The Agent may at any time give written notice of its resignation to the Lenders and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Lead Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Lead Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Lead Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent hereunder.

(b) Any resignation by Wells Fargo as Agent pursuant to this Section shall also constitute its resignation as Swing Line Lender and the resignation of Wells Fargo as L/C Issuer. Upon the acceptance of a successor's appointment as Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (ii) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

9.07 Non-Reliance on Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.12, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agent or Documentation Agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as the Agent, a Lender or the L/C Issuer hereunder.

9.09 Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer, the Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer, the Agent and such Credit Parties under Sections 2.03(i) and 2.03(j) as applicable, 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer or to authorize the Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

9.10 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted) and the expiration, termination or Cash Collateralization of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;

(b) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances;

(c) to release any Guarantor from its obligations under the Facility Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Notice of Transfer. The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 10.06.

9.12 Reports and Financial Statements. By signing this Agreement, each Lender:

(a) agrees to furnish the Agent with a summary of all Other Liabilities due or to become due to such Lender. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Agent has received written notice thereof from such Lender;

(b) is deemed to have requested that the Agent furnish such Lender, promptly after they become available, copies of all Borrowing Base Certificates and financial statements required to be delivered by the Lead Borrower hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "Reports");

(c) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy of the Reports, and shall not be liable for any information contained in any Report;

(d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(e) agrees to keep all Reports confidential in accordance with the provisions of Section 10.07 hereof; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Credit Extensions that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

9.13 Agency for Perfection. Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agent and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other applicable Law of the United States can be perfected only by possession. Should any Lender (other than the Agent) obtain possession of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

9.14 Indemnification of Agent. Without limiting the obligations of the Loan Parties hereunder, the Lenders hereby agree to indemnify the Agent, the L/C Issuer and any Related Party, as the case may be, ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent, the L/C Issuer and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent, the L/C Issuer and their Related Parties in connection therewith; provided, that, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, the L/C Issuer's and their Related Parties' gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

9.15 Relation among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

9.16 Defaulting Lenders.

(a) Notwithstanding the provisions of Section 2.14 hereof, the Agent shall not be obligated to transfer to a Defaulting Lender any payments made by the Borrowers to the Agent for the Defaulting Lender's benefit or any proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, the Agent shall transfer any such payments (i) first, to the Swing Line Lender to the extent of any Swing Line Loans that were made by the Swing Line Lender and that were required to be, but were not, paid by the Defaulting Lender, (ii) second, to the L/C Issuer, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, paid by the Defaulting Lender, (iii) third, to each Non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of a Loan (or other funding obligation) was funded by such other Non-Defaulting Lender), (iv) to the Cash Collateral Account, the proceeds of which shall be retained by the Agent and may be made available to be re-advanced to or for the benefit of the Borrowers (upon the request of the Lead Borrower and subject to the conditions set forth in Section 4.02) as if such Defaulting Lender had made its portion of the Loans (or other funding obligations) hereunder, and (v) from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender. Subject to the foregoing, the Agent may hold and, in its discretion, re-lend to the Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by the Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Applicable Percentages in connection therewith) and for the purpose of calculating the fee payable under Section 2.09(a), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero; provided, that the foregoing shall not apply to any of the matters governed by Section 10.01(a) through (c). The provisions of this Section 9.16 shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Lenders, the Agent, the L/C Issuer, and the Borrowers shall have waived, in writing, the application of this Section 9.16 to such Defaulting Lender, or (z) the date on which such Defaulting Lender pays to the Agent all amounts owing by such Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by the Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by the Agent pursuant to Section 9.16(b) shall be released to the Borrowers). The operation of this Section 9.16 shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to the Agent, the L/C Issuer, the Swing Line Lender, or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle the Borrowers, at their option, upon written notice to the Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to the Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Assumption in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than any Other Liabilities, but including (1) all interest, fees (except any Commitment Fees or Letter of Credit Fees not due to such Defaulting Lender in accordance with the terms of this Agreement), and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Applicable Percentage of its participation in the Letters of Credit); provided, that, any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Credit Parties' or the Loan Parties' rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 9.16 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 9.16 shall control and govern.

(b) If any Swing Line Loan or Letter of Credit is outstanding at the time that a Lender becomes a Defaulting Lender then:

(i) such Defaulting Lender's participation interest in any Swing Line Loan or Letter of Credit shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent (x) the Outstanding Amount sum of all Non-Defaulting Lenders' Credit Extensions after giving effect to such reallocation does not exceed the total of all Non-Defaulting Lenders' Commitments and (y) the conditions set forth in Section 4.02 are satisfied at such time;

(ii) if the reallocation described in clause (b)(i) above cannot, or can only partially, be effected, the Borrowers shall within one Business Day following notice by the Agent (x) first, prepay such Defaulting Lender's participation in any outstanding Swing Line Loans (after giving effect to any partial reallocation pursuant to clause (b)(i) above) and (y) second, cash collateralize such Defaulting Lender's participation in Letters of Credit (after giving effect to any partial reallocation pursuant to clause (b)(i) above), pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Agent, for so long as such L/C Obligations are outstanding; provided, that the Borrowers shall not be obligated to cash collateralize any Defaulting Lender's participations in Letters of Credit if such Defaulting Lender is also the L/C Issuer;

(iii) if the Borrowers cash collateralize any portion of such Defaulting Lender's participation in Letters of Credit Exposure pursuant to this Section 9.16(b), the Borrowers shall not be required to pay any Letter of Credit Fees to the Agent for the account of such Defaulting Lender pursuant to Section 2.03 with respect to such cash collateralized portion of such Defaulting Lender's participation in Letters of Credit during the period such participation is cash collateralized;

(iv) to the extent the participation by any Non-Defaulting Lender in the Letters of Credit is reallocated pursuant to this Section 9.16(b), then the Letter of Credit Fees payable to the Non-Defaulting Lenders pursuant to Section 2.03 shall be adjusted in accordance with such reallocation;

(v) to the extent any Defaulting Lender's participation in Letters of Credit is neither cash collateralized nor reallocated pursuant to this Section 9.16(b), then, without prejudice to any rights or remedies of the L/C Issuer or any Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Lender under Section 2.03 with respect to such portion of such participation shall instead be payable to the L/C Issuer until such portion of such Defaulting Lender's participation is cash collateralized or reallocated;

(vi) so long as any Lender is a Defaulting Lender, the Swing Line Lender shall not be required to make any Swing Line Loan and the L/C Issuer shall not be required to issue, amend, or increase any Letter of Credit, in each case, to the extent (x) the Defaulting Lender's Applicable Percentage of such Swing Line Loans or Letter of Credit cannot be reallocated pursuant to this Section 9.16(b) or (y) the Swing Line Lender or the L/C Issuer, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Swing Line Lender or the L/C Issuer, as applicable, and the Borrowers to eliminate the Swing Line Lender's or L/C Issuer's risk with respect to the Defaulting Lender's participation in Swing Line Loans or Letters of Credit; and

(vii) The Agent may release any cash collateral provided by the Borrowers pursuant to this Section 9.16(b) to the L/C Issuer and the L/C Issuer may apply any such cash collateral to the payment of such Defaulting Lender's Applicable Percentage of any Letter of Credit Disbursement that is not reimbursed by the Borrowers pursuant to Section 2.03.

**ARTICLE X
MISCELLANEOUS**

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document (other than Swap Contracts), and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent, with the Consent of the Required Lenders, and the Lead Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Agent, and each such waiver or Consent shall be effective only in the specific instance and for the specific purpose for which given; provided, that, no such amendment, waiver or consent shall:

(a) increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;

(b) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Maturity Date) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of such Lender entitled to such payment, or (ii) any scheduled or mandatory reduction or termination of the Aggregate Commitments hereunder or under any other Loan Document without the written Consent of such Lender;

(c) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan held by such Lender, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, without the written Consent of each Lender entitled to such amount; provided, that, only the Consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate;

(d) as to any Lender, change Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of such Lender;

(e) change any provision of this Section or the definition of "Required Lenders", or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written Consent of each Lender;

(f) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;

(g) except for Permitted Dispositions, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;

(h) except as provided in Section 2.15, increase the Aggregate Commitments without the written Consent of each Lender;

(i) change the definition of the term "Borrowing Base" or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrowers would be increased without the written Consent of each Lender, provided, that, the foregoing shall not limit the Permitted Discretion of the Agent to change, establish or eliminate any Reserves;

(j) modify the definition of Permitted Overadvance so as to increase the amount thereof or, except as provided in such definition, the time period for which a Permitted Overadvance may remain outstanding without the written Consent of each Lender; and

(k) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written Consent of each Lender; and, provided, that, (i) no amendment, waiver or Consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or Consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or Consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of the Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Loan Party.

If any Lender does not Consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the Consent of each Lender and that has been approved by the Required Lenders, the Lead Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided, that, such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Lead Borrower to be made pursuant to this paragraph).

10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except as provided in subsection (b) below, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows:

(i) if to the Loan Parties, the Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Loan Parties, the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided, that, the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided, that, approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, that, in no event shall any Agent Party have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Loan Parties, the Agent, the L/C Issuer and the Swing Line Lender may change its address or telecopier for notices and other communications hereunder, or, solely with respect to communications, may change its telephone number, by notice to the other parties hereto. Each other Lender may change its address or telecopier number for notices and other communications hereunder by notice to the Lead Borrower, the Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Agent, L/C Issuer and Lenders. The Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, all Requests for Credit Extensions) purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties (including, without limitation, pursuant to any Requests for Credit Extensions). All telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay all Credit Party Expenses.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, and reasonable, documented out-of-pocket costs, and related expenses (including the reasonable documented out-of-pocket fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, any bank advising or confirming a Letter of Credit or any other nominated person with respect to a Letter of Credit seeking to be reimbursed or indemnified or compensated, and any third party seeking to enforce the rights of a Borrower, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds, or holder of an instrument or document related to any Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Cash Management Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties’ directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or (B) result from a claim brought by a Borrower or any other Loan Party against an Indemnitee for material breach of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrowers or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (C) result from a dispute that does not involve an act or omission of any Loan Party or its Affiliates and that is solely by an Indemnitee against another Indemnitee and does not involve any Indemnitee in its capacity as, or in fulfilling its role as, an agent or arranger under this Agreement.

(c) Reimbursement by Lenders. Without limiting their obligations under Section 9.14 hereof, to the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, each Lender severally agrees to pay to the Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable on demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Agent and the L/C Issuer, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Agent and, so long as no Default or Event of Default has occurred and is continuing, the Lead Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed and shall be deemed given if the Lead Borrower has not responded to a request for such consent within seven (7) Business Days); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Lead Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) a Default or Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; and

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the assignment of any Commitment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided, that, (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Wells Fargo assigns all of its Commitment and Loans pursuant to subsection (b) above, Wells Fargo may, (i) upon thirty (30) days' notice to the Lead Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Lead Borrower, Wells Fargo may resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Lead Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, that, no failure by the Lead Borrower to appoint any such successor shall affect the resignation of Wells Fargo as L/C Issuer or Swing Line Lender, as the case may be. If Wells Fargo resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans pursuant to Section 2.03(c)). If Wells Fargo resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (A) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (B) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements reasonably satisfactory to Wells Fargo to effectively assume the obligations of Wells Fargo with respect to such Letters of Credit.

10.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, funding sources, attorneys, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party and its obligations, (g) with the consent of the Lead Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof, provided that, in the case of information received from any Loan Party or any Subsidiary after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmaturing or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Lead Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding. Further, the provisions of Sections 3.01, 3.04, 3.05 and 10.04 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (a) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (b) any obligations that may thereafter arise with respect to the Other Liabilities and (c) any Obligations that may thereafter arise under Section 10.04 other than contingent indemnification obligations for which a claim or demand for payment has not been made and other than contingent indemnification obligations in respect of matters or circumstances that are not known to Agent, any Lender or any Loan Party that might result in any loss, cost, damage or expense (including attorneys' fees and legal expenses) for which Agent or any Lender is entitled to indemnification hereunder or under any other Loan Document.

10.12 **Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 **Replacement of Lenders.** If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF, BUT INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE LOAN PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE LOAN PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE LOAN PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) ACTIONS COMMENCED BY LOAN PARTIES. EACH LOAN PARTY AGREES THAT ANY ACTION COMMENCED BY ANY LOAN PARTY ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AS THE AGENT MAY ELECT IN ITS SOLE DISCRETION, AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

10.17 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

10.18 Foreign Asset Control Regulations. Neither of the advance of the Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)). Furthermore, none of the Borrowers or their Affiliates (a) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person" or in any manner violative of any such order.

10.19 Time of the Essence. Time is of the essence of the Loan Documents.

10.20 [Reserved].

10.21 Press Releases. Each Loan Party consents to the publication by the Agent, any Lender or their respective representatives of advertising material, including any "tombstone," press release or comparable advertising, on its website or in other marketing materials of Agent, relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo, trademark or other insignia. The Agent or such Lender shall provide a draft reasonably in advance of any advertising material, "tomb stone" or press release to the Lead Borrower for review and comment prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations and loan syndication and pricing reporting services information necessary and customary for inclusion in league table measurements.

10.22 Additional Waivers.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by Applicable Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party.

(b) The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations after the termination of the Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations after the termination of the Commitments).

(c) To the fullest extent permitted by applicable Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated. Each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

(d) Each Borrower is obligated to repay the Obligations as joint and several obligors under this Agreement. Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA"), Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA") or the applicable section of the Uniform Voidable Transactions Act (the "UVTA"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, Section 5 of the UFCA, or the applicable section of the UVTA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, Section 5 of the UFCA or the applicable section of the UVTA.

10.23 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

10.24 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

10.25 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under the Facility Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.25 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.25, or otherwise under the Facility Guaranty, voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until payment in full of the Obligations. Each Qualified ECP Guarantor intends that this Section 10.25 constitute, and this Section 10.25 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

THE LOVESAC COMPANY

By: /s/ Donna Dellomo
Name: Donna Dellomo
Title: CFO

SAC ACQUISITION LLC

By: /s/ Shawn Nelson
Name: Shawn Nelson
Title: CEO

[Signature Page to Credit Agreement (Lovesac)]

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Agent,
as a Lender, as L/C Issuer and as Swing Line Lender

By: /s/ William Chan
Name: William Chan
Title: Director

[Signature Page to Credit Agreement (Lovesac)]

THE LOVESAC COMPANY
2017 EQUITY INCENTIVE PLAN

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The Lovesac Company 2017 Equity Incentive Plan

1. Establishment, Purpose and Term of Plan

1.1 **Establishment.** The Lovesac Company 2017 Equity Incentive Plan (the "**Plan**") is hereby established effective as of October 26, 2017, the date of its approval by the stockholders of the Company (the "**Effective Date**").

1.2 **Purpose.** The purpose of the Plan is to advance the interests of the Participating Company Group and its stockholders by providing an incentive to attract, retain and reward persons performing services for the Participating Company Group and by motivating such persons to contribute to the growth and profitability of the Participating Company Group. The Plan seeks to achieve this purpose by providing for Awards in the form of Options, Stock Appreciation Rights, Restricted Stock Awards, Restricted Stock Units, Performance Shares, Performance Units, Cash-Based Awards and Other Stock-Based Awards.

1.3 **Term of Plan.** The Plan shall continue in effect until its termination by the Committee; provided, however, that all Awards shall be granted, if at all, within ten (10) years from the Effective Date.

2. Definitions and Construction

2.1 **Definitions.** Whenever used herein, the following terms shall have their respective meanings set forth below:

(a) "**Affiliate**" means (i) a parent entity, other than a Parent Corporation, that directly, or indirectly through one or more intermediary entities, controls the Company or (ii) a subsidiary entity, other than a Subsidiary Corporation, that is controlled by the Company directly or indirectly through one or more intermediary entities. For this purpose, the terms "parent," "subsidiary," "control" and "controlled by" shall have the meanings assigned such terms for the purposes of registration of securities on Form S-8 under the Securities Act.

(b) "**Award**" means any Option, Stock Appreciation Right, Restricted Stock Purchase Right, Restricted Stock Bonus, Restricted Stock Unit, Performance Share, Performance Unit, Cash-Based Award or Other Stock-Based Award granted under the Plan.

(c) "**Award Agreement**" means a written or electronic agreement between the Company and a Participant setting forth the terms, conditions and restrictions applicable to an Award.

(d) "**Board**" means the Board of Directors of the Company.

(e) "**Cash-Based Award**" means an Award denominated in cash and granted pursuant to Section 11.

(f) "**Cashless Exercise**" means a Cashless Exercise as defined in Section 6.3(b)(i).

(g) "**Cause**" means, unless such term or an equivalent term is otherwise defined by the applicable Award Agreement or other written agreement between a Participant and a Participating Company applicable to an Award, any of the following: (i) the Participant's theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or falsification of any Participating Company documents or records; (ii) the Participant's material failure to abide by a Participating Company's code of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct); (iii) the Participant's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of a Participating Company (including, without limitation, the Participant's improper use or disclosure of a Participating Company's confidential or proprietary information); (iv) any intentional act by the Participant which has a material detrimental effect on a Participating Company's reputation or business; (v) the Participant's repeated failure to perform any reasonable assigned duties after written notice from a Participating Company of, and a reasonable opportunity to cure, such failure; (vi) any material breach by the Participant of any employment, service, non-disclosure, non-competition, non-solicitation or other similar agreement between the Participant and a Participating Company, which breach is not cured pursuant to the terms of such agreement; or (vii) the Participant's conviction (including any plea of guilty or *nolo contendere*) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs the Participant's ability to perform his or her duties with a Participating Company.

(h) "**Change in Control**" means the occurrence of any one or a combination of the following:

(i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total Fair Market Value or total combined voting power of the Company's then-outstanding securities entitled to vote generally in the election of Directors; provided, however, that a Change in Control shall not be deemed to have occurred if such degree of beneficial ownership results from any of the following: (A) an acquisition by any person who on the Effective Date is the beneficial owner of more than fifty percent (50%) of such voting power, (B) any acquisition directly from the Company, including, without limitation, pursuant to or in connection with a public offering of securities, (C) any acquisition by the Company, (D) any acquisition by a trustee or other fiduciary under an employee benefit plan of a Participating Company or (E) any acquisition by an entity owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the voting securities of the Company; or

(ii) an Ownership Change Event or series of related Ownership Change Events (collectively, a "**Transaction**") in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding securities entitled to vote generally in the election of Directors or, in the case of an Ownership Change Event described in Section 2.1(ee)(iii), the entity to which the assets of the Company were transferred (the "**Transferee**"), as the case may be; or

(iii) a date specified by the Committee following approval by the stockholders of a plan of complete liquidation or dissolution of the Company;

provided, however, that a Change in Control shall be deemed not to include a transaction described in subsections (i) or (ii) of this Section 2.1(h) in which a majority of the members of the board of directors of the continuing, surviving or successor entity, or parent thereof, immediately after such transaction is comprised of Incumbent Directors.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Committee shall determine whether multiple events described in subsections (i), (ii) and (iii) of this Section 2.1(h) are related and to be treated in the aggregate as a single Change in Control, and its determination shall be final, binding and conclusive.

(i) "**Code**" means the Internal Revenue Code of 1986, as amended, and any applicable regulations and administrative guidelines promulgated thereunder.

(j) "**Committee**" means the Compensation Committee and such other committee or subcommittee of the Board, if any, duly appointed to administer the Plan and having such powers in each instance as shall be specified by the Board. If, at any time, there is no committee of the Board then authorized or properly constituted to administer the Plan, the Board shall exercise all of the powers of the Committee granted herein, and, in any event, the Board may in its discretion exercise any or all of such powers.

(k) "**Company**" means The Lovesac Company, a Delaware corporation, and any successor corporation thereto.

(l) "**Consultant**" means a person engaged to provide consulting or advisory services (other than as an Employee or a Director) to a Participating Company, provided that the identity of such person, the nature of such services or the entity to which such services are provided would not preclude the Company from offering or selling securities to such person pursuant to the Plan in reliance on registration on Form S-8 under the Securities Act.

(m) "**Covered Employee**" means, at any time the Plan is subject to Section 162(m), any Employee who is or may reasonably be expected to become a "covered employee" as defined in Section 162(m), or any successor statute, and who, with respect to a Performance Award, is designated, either as an individual Employee or a member of a class of Employees, by the Committee no later than the earlier of (i) the date that is ninety (90) days after the beginning of the Performance Period, or (ii) the date on which twenty-five percent (25%) of the Performance Period has elapsed, as a "Covered Employee" under this Plan for such applicable Performance Period.

(n) "**Director**" means a member of the Board.

(o) “**Disability**” means, unless such term or an equivalent term is otherwise defined by the applicable Award Agreement or other written agreement between the Participant and a Participating Company applicable to an Award, the permanent and total disability of the Participant, within the meaning of Section 22(e)(3) of the Code.

(p) “**Dividend Equivalent Right**” means the right of a Participant, granted at the discretion of the Committee or as otherwise provided by the Plan, to receive a credit for the account of such Participant in an amount equal to the cash dividends paid on one share of Stock for each share of Stock represented by an Award held by such Participant.

(q) “**Employee**” means any person treated as an employee (including an Officer or a Director who is also treated as an employee) in the records of a Participating Company and, with respect to any Incentive Stock Option granted to such person, who is an employee for purposes of Section 422 of the Code; provided, however, that neither service as a Director nor payment of a Director’s fee shall be sufficient to constitute employment for purposes of the Plan. The Company shall determine in good faith and in the exercise of its discretion whether an individual has become or has ceased to be an Employee and the effective date of such individual’s employment or termination of employment, as the case may be. For purposes of an individual’s rights, if any, under the terms of the Plan as of the time of the Company’s determination of whether or not the individual is an Employee, all such determinations by the Company shall be final, binding and conclusive as to such rights, if any, notwithstanding that the Company or any court of law or governmental agency subsequently makes a contrary determination as to such individual’s status as an Employee.

(r) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

(s) “**Fair Market Value**” means, as of any date, the value of a share of Stock or other property as determined by the Committee, in its discretion, or by the Company, in its discretion, if such determination is expressly allocated to the Company herein, subject to the following:

(i) Except as otherwise determined by the Committee, if, on such date, the Stock is listed or quoted on a national or regional securities exchange or quotation system, the Fair Market Value of a share of Stock shall be the closing price of a share of Stock as quoted on the national or regional securities exchange or quotation system constituting the primary market for the Stock, as reported in *The Wall Street Journal* or such other source as the Company deems reliable. If the relevant date does not fall on a day on which the Stock has traded on such securities exchange or quotation system, the date on which the Fair Market Value shall be established shall be the last day on which the Stock was so traded or quoted prior to the relevant date, or such other appropriate day as shall be determined by the Committee, in its discretion.

(ii) Notwithstanding the foregoing, the Committee may, in its discretion, determine the Fair Market Value of a share of Stock on the basis of the opening, closing, or average of the high and low sale prices of a share of Stock on such date or the preceding trading day, the actual sale price of a share of Stock received by a Participant, any other reasonable basis using actual transactions in the Stock as reported on a national or regional securities exchange or quotation system, or on any other basis consistent with the requirements of Section 409A. The Committee may vary its method of determination of the Fair Market Value as provided in this Section for different purposes under the Plan to the extent consistent with the requirements of Section 409A.

(iii) If, on such date, the Stock is not listed or quoted on a national or regional securities exchange or quotation system, the Fair Market Value of a share of Stock shall be as determined by the Committee in good faith without regard to any restriction other than a restriction which, by its terms, will never lapse, and in a manner consistent with the requirements of Section 409A.

(t) “**Full Value Award**” means any Award settled in Stock, other than (i) an Option, (ii) a Stock Appreciation Right, or (iii) a Restricted Stock Purchase Right or an Other Stock-Based Award under which the Company will receive monetary consideration equal to the Fair Market Value (determined on the effective date of grant) of the shares subject to such Award.

(u) “**Incentive Stock Option**” means an Option intended to be (as set forth in the Award Agreement) and which qualifies as an incentive stock option within the meaning of Section 422(b) of the Code.

(v) “**Incumbent Director**” means a director who either (i) is a member of the Board as of the Effective Date or (ii) is elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but excluding a director who was elected or nominated in connection with an actual or threatened proxy contest relating to the election of directors of the Company).

(w) “**Insider**” means an Officer, a Director or other person whose transactions in Stock are subject to Section 16 of the Exchange Act.

(x) “**Net Exercise**” means a Net Exercise as defined in Section 6.3(b)(iii).

(y) “**Nonemployee Director**” means a Director who is not an Employee.

(z) “**Nonemployee Director Award**” means any Award granted to a Nonemployee Director.

(aa) “**Nonstatutory Stock Option**” means an Option not intended to be (as set forth in the Award Agreement) or which does not qualify as an incentive stock option within the meaning of Section 422(b) of the Code.

(bb) “**Officer**” means any person designated by the Board as an officer of the Company.

(cc) "**Option**" means an Incentive Stock Option or a Nonstatutory Stock Option granted pursuant to the Plan.

(dd) "**Other Stock-Based Award**" means an Award denominated in shares of Stock and granted pursuant to Section 11.

(ee) "**Ownership Change Event**" means the occurrence of any of the following with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of securities of the Company representing more than fifty percent (50%) of the total combined voting power of the Company's then outstanding securities entitled to vote generally in the election of Directors; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company (other than a sale, exchange or transfer to one or more subsidiaries of the Company).

(ff) "**Parent Corporation**" means any present or future "parent corporation" of the Company, as defined in Section 424(e) of the Code.

(gg) "**Participant**" means any eligible person who has been granted one or more Awards.

(hh) "**Participating Company**" means the Company or any Parent Corporation, Subsidiary Corporation or Affiliate.

(ii) "**Participating Company Group**" means, at any point in time, the Company and all other entities collectively which are then Participating Companies.

(jj) "**Performance Award**" means an Award of Performance Shares or Performance Units.

(kk) "**Performance Award Formula**" means, for any Performance Award, a formula or table established by the Committee pursuant to Section 10.3 which provides the basis for computing the value of a Performance Award at one or more levels of attainment of the applicable Performance Goal(s) measured as of the end of the applicable Performance Period.

(ll) "**Performance-Based Compensation**" means compensation under an Award that satisfies the requirements of Section 162(m) for certain performance-based compensation paid to Covered Employees.

(mm) "**Performance Goal**" means a performance goal established by the Committee pursuant to Section 10.3.

(nn) "**Performance Period**" means a period established by the Committee pursuant to Section 10.3 at the end of which one or more Performance Goals are to be measured.

(oo) "**Performance Share**" means a right granted to a Participant pursuant to Section 10 to receive a payment equal to the value of a Performance Share, as determined by the Committee, based upon attainment of applicable Performance Goal(s).

(pp) "**Performance Unit**" means a right granted to a Participant pursuant to Section 10 to receive a payment equal to the value of a Performance Unit, as determined by the Committee, based upon attainment of applicable Performance Goal(s).

(qq) "**Restricted Stock Award**" means an Award of a Restricted Stock Bonus or a Restricted Stock Purchase Right.

(rr) "**Restricted Stock Bonus**" means Stock granted to a Participant pursuant to Section 8.

(ss) "**Restricted Stock Purchase Right**" means a right to purchase Stock granted to a Participant pursuant to Section 8.

(tt) "**Restricted Stock Unit**" means a right granted to a Participant pursuant to Section 9 to receive on a future date or occurrence of a future event a share of Stock or cash in lieu thereof, as determined by the Committee.

(uu) "**Rule 16b-3**" means Rule 16b-3 under the Exchange Act, as amended from time to time, or any successor rule or regulation.

(vv) "**SAR**" or "**Stock Appreciation Right**" means a right granted to a Participant pursuant to Section 7 to receive payment, for each share of Stock subject to such Award, of an amount equal to the excess, if any, of the Fair Market Value of a share of Stock on the date of exercise of the Award over the exercise price thereof.

(ww) "**Section 162(m)**" means Section 162(m) of the Code.

(xx) "**Section 409A**" means Section 409A of the Code.

(yy) "**Section 409A Deferred Compensation**" means compensation provided pursuant to an Award that constitutes nonqualified deferred compensation within the meaning of Section 409A.

(zz) "**Securities Act**" means the Securities Act of 1933, as amended.

(aaa) "**Service**" means a Participant's employment or service with the Participating Company Group, whether as an Employee, a Director or a Consultant. Unless otherwise provided by the Committee, a Participant's Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders Service or a change in the Participating Company for which the Participant renders Service, provided that there is no interruption or termination of the Participant's Service. Furthermore, a Participant's Service shall not be deemed to have been interrupted or terminated if the Participant takes any military leave, sick leave, or other bona fide leave of absence approved by the Company. However, unless otherwise provided by the Committee, if any such leave taken by a Participant exceeds ninety (90) days, then on the ninety-first (91st) day following the commencement of such leave the Participant's Service shall be deemed to have terminated, unless the Participant's right to return to Service is guaranteed by statute or contract. Notwithstanding the foregoing, unless otherwise designated by the Company or required by law, an unpaid leave of absence shall not be treated as Service for purposes of determining vesting under the Participant's Award Agreement. A Participant's Service shall be deemed to have terminated either upon an actual termination of Service or upon the business entity for which the Participant performs Service ceasing to be a Participating Company. Subject to the foregoing, the Company, in its discretion, shall determine whether the Participant's Service has terminated and the effective date of and reason for such termination.

(bbb) "**Stock**" means the common stock of the Company, as adjusted from time to time in accordance with Section 4.3.

(ccc) "**Stock Tender Exercise**" means a Stock Tender Exercise as defined in Section 6.3(b)(ii).

(ddd) "**Subsidiary Corporation**" means any present or future "subsidiary corporation" of the Company, as defined in Section 424(f) of the Code.

(eee) "**Ten Percent Owner**" means a Participant who, at the time an Option is granted to the Participant, owns stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of a Participating Company (other than an Affiliate) within the meaning of Section 422(b)(6) of the Code.

(fff) "**Trading Compliance Policy**" means the written policy of the Company pertaining to the purchase, sale, transfer or other disposition of the Company's equity securities by Directors, Officers, Employees or other service providers who may possess material, nonpublic information regarding the Company or its securities.

(ggg) "**Vesting Conditions**" mean those conditions established in accordance with the Plan prior to the satisfaction of which an Award or shares subject to an Award remain subject to forfeiture or a repurchase option in favor of the Company exercisable for the Participant's monetary purchase price, if any, for such shares upon the Participant's termination of Service or failure of a performance condition to be satisfied.

2.2 Construction. Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

3. Administration.

3.1 Administration by the Committee. The Plan shall be administered by the Committee. All questions of interpretation of the Plan, of any Award Agreement or of any other form of agreement or other document employed by the Company in the administration of the Plan or of any Award shall be determined by the Committee, and such determinations shall be final, binding and conclusive upon all persons having an interest in the Plan or such Award, unless fraudulent or made in bad faith. Any and all actions, decisions and determinations taken or made by the Committee in the exercise of its discretion pursuant to the Plan or Award Agreement or other agreement thereunder (other than determining questions of interpretation pursuant to the preceding sentence) shall be final, binding and conclusive upon all persons having an interest therein. All expenses incurred in connection with the administration of the Plan shall be paid by the Company.

3.2 Authority of Officers. Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, determination or election that is the responsibility of or that is allocated to the Company herein, provided that the Officer has apparent authority with respect to such matter, right, obligation, determination or election. To the extent permitted by applicable law, the Committee may, in its discretion, delegate to a committee comprised of one or more Officers the authority to grant one or more Awards, without further approval of the Committee, to any Employee, other than a person who, at the time of such grant, is an Insider or a Covered Employee, and to exercise such other powers under the Plan as the Committee may determine; provided, however, that (a) the Committee shall fix the maximum number of shares subject to Awards that may be granted by such Officers, (b) each such Award shall be subject to the terms and conditions of the appropriate standard form of Award Agreement approved by the Board or the Committee and shall conform to the provisions of the Plan, and (c) each such Award shall conform to such other limits and guidelines as may be established from time to time by the Committee.

3.3 Administration with Respect to Insiders. With respect to participation by Insiders in the Plan, at any time that any class of equity security of the Company is registered pursuant to Section 12 of the Exchange Act, the Plan shall be administered in compliance with the requirements, if any, of Rule 16b-3.

3.4 Committee Complying with Section 162(m). If the Company is a “publicly held corporation” within the meaning of Section 162(m), the Board may establish a Committee of “outside directors” within the meaning of Section 162(m) to approve the grant of any Award intended to result in the payment of Performance-Based Compensation.

3.5 Powers of the Committee In addition to any other powers set forth in the Plan and subject to the provisions of the Plan, the Committee shall have the full and final power and authority, in its discretion:

- (a) to determine the persons to whom, and the time or times at which, Awards shall be granted and the number of shares of Stock, units or monetary value to be subject to each Award;
- (b) to determine the type of Award granted;
- (c) to determine whether an Award granted to a Covered Employee shall be intended to result in Performance-Based Compensation;
- (d) to determine the Fair Market Value of shares of Stock or other property;

(e) to determine the terms, conditions and restrictions applicable to each Award (which need not be identical) and any shares acquired pursuant thereto, including, without limitation, (i) the exercise or purchase price of shares pursuant to any Award, (ii) the method of payment for shares purchased pursuant to any Award, (iii) the method for satisfaction of any tax withholding obligation arising in connection with any Award, including by the withholding or delivery of shares of Stock, (iv) the timing, terms and conditions of the exercisability or vesting of any Award or any shares acquired pursuant thereto, (v) the Performance Measures, Performance Period, Performance Award Formula and Performance Goals applicable to any Award and the extent to which such Performance Goals have been attained, (vi) the time of expiration of any Award, (vii) the effect of any Participant's termination of Service on any of the foregoing, and (viii) all other terms, conditions and restrictions applicable to any Award or shares acquired pursuant thereto not inconsistent with the terms of the Plan;

(f) to determine whether an Award will be settled in shares of Stock, cash, other property or in any combination thereof;

(g) to approve one or more forms of Award Agreement;

(h) to amend, modify, extend, cancel or renew any Award or to waive any restrictions or conditions applicable to any Award or any shares acquired pursuant thereto, provided that no such amendment or waiver shall accelerate the vesting of any Award unless the power of the Committee to accelerate the vesting of such Award is expressly provided by another provision of the Plan;

(i) to accelerate, continue, extend or defer the exercisability or vesting of any Award or any shares acquired pursuant thereto, including with respect to the period following a Participant's termination of Service;

(j) to prescribe, amend or rescind rules, guidelines and policies relating to the Plan, or to adopt sub-plans or supplements to, or alternative versions of, the Plan, including, without limitation, as the Committee deems necessary or desirable to comply with the laws of, or to accommodate the tax policy, accounting principles or custom of, foreign jurisdictions whose residents may be granted Awards; and

(k) to correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award Agreement and to make all other determinations and take such other actions with respect to the Plan or any Award as the Committee may deem advisable to the extent not inconsistent with the provisions of the Plan or applicable law.

3.6 Option or SAR Repricing. The Committee shall have the authority, without additional approval by the stockholders of the Company, to approve a program providing for either (a) the cancellation of outstanding Options or SARs having exercise prices per share greater than the then Fair Market Value of a share of Stock ("*Underwater Awards*") and the grant in substitution therefor of new Options or SARs covering the same or a different number of shares but with an exercise price per share equal to the Fair Market Value per share on the new grant date, Full Value Awards, or payments in cash, or (b) the amendment of outstanding Underwater Awards to reduce the exercise price thereof to the Fair Market Value per share on the date of amendment.

3.7 Indemnification. In addition to such other rights of indemnification as they may have as members of the Board or the Committee or as officers or employees of the Participating Company Group, to the extent permitted by applicable law, members of the Board or the Committee and any officers or employees of the Participating Company Group to whom authority to act for the Board, the Committee or the Company is delegated shall be indemnified by the Company against all reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any right granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such person is liable for gross negligence, bad faith or intentional misconduct in duties; provided, however, that within sixty (60) days after the institution of such action, suit or proceeding, such person shall offer to the Company, in writing, the opportunity at its own expense to handle and defend the same.

4. Shares Subject to Plan.

4.1 Maximum Number of Shares Issuable. Subject to adjustment as provided in Sections 4.1 and 4.2, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be equal to 1,511,530 shares and shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof.

4.2 Share Counting. If an outstanding Award for any reason expires or is terminated or canceled without having been exercised or settled in full, or if shares of Stock acquired pursuant to an Award subject to forfeiture or repurchase are forfeited or repurchased by the Company for an amount not greater than the Participant's purchase price, the shares of Stock allocable to the terminated portion of such Award or such forfeited or repurchased shares of Stock shall again be available for issuance under the Plan. Shares of Stock shall not be deemed to have been issued pursuant to the Plan with respect to any portion of an Award that is settled in cash or to the extent that shares are withheld or reacquired by the Company in satisfaction of tax withholding obligations pursuant to Section 16.2. Upon payment in shares of Stock pursuant to the exercise of an SAR, the number of shares available for issuance under the Plan shall be reduced only by the number of shares actually issued in such payment. If the exercise price of an Option is paid by tender to the Company, or attestation to the ownership, of shares of Stock owned by the Participant, or by means of a Net Exercise, the number of shares available for issuance under the Plan shall be reduced by the net number of shares for which the Option is exercised.

4.3 Adjustments for Changes in Capital Structure. Subject to any required action by the stockholders of the Company and the requirements of Sections 409A and 424 of the Code to the extent applicable, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting regular, periodic cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate and proportionate adjustments shall be made in the number and kind of shares subject to the Plan and to any outstanding Awards, the Award limits set forth in Section 5.3 and Section 5.4, and in the exercise or purchase price per share under any outstanding Award in order to prevent dilution or enlargement of Participants' rights under the Plan. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." If a majority of the shares which are of the same class as the shares that are subject to outstanding Awards are exchanged for, converted into, or otherwise become (whether or not pursuant to an Ownership Change Event) shares of another corporation (the "**New Shares**"), the Committee may unilaterally amend the outstanding Awards to provide that such Awards are for New Shares. In the event of any such amendment, the number of shares subject to, and the exercise or purchase price per share of, the outstanding Awards shall be adjusted in a fair and equitable manner as determined by the Committee, in its discretion. Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number and the exercise or purchase price per share shall be rounded up to the nearest whole cent. In no event may the exercise or purchase price, if any, under any Award be decreased to an amount less than the par value, if any, of the stock subject to such Award. The Committee in its discretion, may also make such adjustments in the terms of any Award to reflect, or related to, such changes in the capital structure of the Company or distributions as it deems appropriate, including modification of Performance Goals, Performance Award Formulas and Performance Periods. The adjustments determined by the Committee pursuant to this Section shall be final, binding and conclusive.

4.4 Assumption or Substitution of Awards. The Committee may, without affecting the number of shares of Stock reserved or available hereunder, authorize the issuance or assumption of benefits under this Plan in connection with any merger, consolidation, acquisition of property or stock, or reorganization upon such terms and conditions as it may deem appropriate, subject to compliance with Section 409A and any other applicable provisions of the Code.

5. Eligibility, Participation and Award Limitations.

5.1 Persons Eligible for Awards. Awards may be granted only to Employees, Consultants and Directors.

5.2 Participation in the Plan. Awards are granted solely at the discretion of the Committee. Eligible persons may be granted more than one Award. However, eligibility in accordance with this Section shall not entitle any person to be granted an Award, or, having been granted an Award, to be granted an additional Award.

5.3 Incentive Stock Option Limitations.

(a) **Maximum Number of Shares Issuable Pursuant to Incentive Stock Options.** Subject to adjustment as provided in Section 4.3, the maximum aggregate number of shares of Stock that may be issued under the Plan pursuant to the exercise of Incentive Stock Options shall not exceed 1,511,530 shares. The maximum aggregate number of shares of Stock that may be issued under the Plan pursuant to all Awards other than Incentive Stock Options shall be the number of shares determined in accordance with Section 4.1, subject to adjustment as provided in Sections 4.1 and 4.2.

(b) **Persons Eligible.** An Incentive Stock Option may be granted only to a person who, on the effective date of grant, is an Employee of the Company, a Parent Corporation or a Subsidiary Corporation (each being an **"ISO-Qualifying Corporation"**). Any person who is not an Employee of an ISO-Qualifying Corporation on the effective date of the grant of an Option to such person may be granted only a Nonstatutory Stock Option.

(c) **Fair Market Value Limitation.** To the extent that options designated as Incentive Stock Options (granted under all stock plans of the Participating Company Group, including the Plan) become exercisable by a Participant for the first time during any calendar year for stock having a Fair Market Value greater than One Hundred Thousand Dollars (\$100,000), the portion of such options which exceeds such amount shall be treated as Nonstatutory Stock Options. For purposes of this Section, options designated as Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of stock shall be determined as of the time the option with respect to such stock is granted. If the Code is amended to provide for a limitation different from that set forth in this Section, such different limitation shall be deemed incorporated herein effective as of the date and with respect to such Options as required or permitted by such amendment to the Code. If an Option is treated as an Incentive Stock Option in part and as a Nonstatutory Stock Option in part by reason of the limitation set forth in this Section, the Participant may designate which portion of such Option the Participant is exercising. In the absence of such designation, the Participant shall be deemed to have exercised the Incentive Stock Option portion of the Option first. Upon exercise of the Option, shares issued pursuant to each such portion shall be separately identified.

5.4 Nonemployee Director Award Limit. Notwithstanding any other provision of the Plan to the contrary, the aggregate grant date fair value (computed as of the date of grant in accordance with generally accepted accounting principles in the United States) of all Awards granted to any Nonemployee Director during any fiscal year of the Company, taken together with any cash compensation paid to such Nonemployee Director during such fiscal year, shall not exceed \$200,000.

6. Stock Options.

Options shall be evidenced by Award Agreements specifying the number of shares of Stock covered thereby, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

6.1 Exercise Price. The exercise price for each Option shall be established in the discretion of the Committee; provided, however, that (a) the exercise price per share shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the Option and (b) no Incentive Stock Option granted to a Ten Percent Owner shall have an exercise price per share less than one hundred ten percent (110%) of the Fair Market Value of a share of Stock on the effective date of grant of the Option. Notwithstanding the foregoing, an Option (whether an Incentive Stock Option or a Nonstatutory Stock Option) may be granted with an exercise price less than the minimum exercise price set forth above if such Option is granted pursuant to an assumption or substitution for another option in a manner that would qualify under the provisions of Section 409A or Section 424(a) of the Code.

6.2 Exercisability and Term of Options. Options shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such Option; provided, however, that (a) no Option shall be exercisable after the expiration of ten (10) years after the effective date of grant of such Option, (b) no Incentive Stock Option granted to a Ten Percent Owner shall be exercisable after the expiration of five (5) years after the effective date of grant of such Option and (c) no Option granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable until at least six (6) months following the date of grant of such Option (except in the event of such Employee's death, disability or retirement, upon a Change in Control, or as otherwise permitted by the Worker Economic Opportunity Act). Subject to the foregoing, unless otherwise specified by the Committee in the grant of an Option, each Option shall terminate ten (10) years after the effective date of grant of the Option, unless earlier terminated in accordance with its provisions.

6.3 Payment of Exercise Price.

(a) **Forms of Consideration Authorized.** Except as otherwise provided below, payment of the exercise price for the number of shares of Stock being purchased pursuant to any Option shall be made (i) in cash, by check or in cash equivalent; (ii) if permitted by the Committee and subject to the limitations contained in Section 6.3(b), by means of (1) a Cashless Exercise, (2) a Stock Tender Exercise or (3) a Net Exercise; (iii) by such other consideration as may be approved by the Committee from time to time to the extent permitted by applicable law, or (iv) by any combination thereof. The Committee may at any time or from time to time grant Options which do not permit all of the foregoing forms of consideration to be used in payment of the exercise price or which otherwise restrict one or more forms of consideration.

(b) **Limitations on Forms of Consideration.**

(i) **Cashless Exercise.** A "**Cashless Exercise**" means the delivery of a properly executed notice of exercise together with irrevocable instructions to a broker providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System). The Company reserves, at any and all times, the right, in the Company's sole and absolute discretion, to establish, decline to approve or terminate any program or procedures for the exercise of Options by means of a Cashless Exercise, including with respect to one or more Participants specified by the Company notwithstanding that such program or procedures may be available to other Participants.

(ii) **Stock Tender Exercise.** A “*Stock Tender Exercise*” means the delivery of a properly executed exercise notice accompanied by a Participant’s tender to the Company, or attestation to the ownership, in a form acceptable to the Company of whole shares of Stock owned by the Participant having a Fair Market Value that does not exceed the aggregate exercise price for the shares with respect to which the Option is exercised. A Stock Tender Exercise shall not be permitted if it would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company’s stock. If required by the Company, an Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock unless such shares either have been owned by the Participant for a period of time required by the Company (and not used for another option exercise by attestation during such period) or were not acquired, directly or indirectly, from the Company.

(iii) **Net Exercise.** A “*Net Exercise*” means the delivery of a properly executed exercise notice followed by a procedure pursuant to which (1) the Company will reduce the number of shares otherwise issuable to a Participant upon the exercise of an Option by the largest whole number of shares having a Fair Market Value that does not exceed the aggregate exercise price for the shares with respect to which the Option is exercised, and (2) the Participant shall pay to the Company in cash the remaining balance of such aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued.

6.4 Effect of Termination of Service.

(a) **Option Exercisability.** Subject to earlier termination of the Option as otherwise provided by this Plan and unless otherwise provided by the Committee, an Option shall terminate immediately upon the Participant’s termination of Service to the extent that it is then unvested and shall be exercisable after the Participant’s termination of Service to the extent it is then vested only during the applicable time period determined in accordance with this Section and thereafter shall terminate.

(i) **Disability.** If the Participant’s Service terminates because of the Disability of the Participant, the Option, to the extent unexercised and exercisable for vested shares on the date on which the Participant’s Service terminated, may be exercised by the Participant (or the Participant’s guardian or legal representative) at any time prior to the expiration of twelve (12) months (or such longer or shorter period provided by the Award Agreement) after the date on which the Participant’s Service terminated, but in any event no later than the date of expiration of the Option’s term as set forth in the Award Agreement evidencing such Option (the “*Option Expiration Date*”).

(ii) **Death.** If the Participant's Service terminates because of the death of the Participant, the Option, to the extent unexercised and exercisable for vested shares on the date on which the Participant's Service terminated, may be exercised by the Participant's legal representative or other person who acquired the right to exercise the Option by reason of the Participant's death at any time prior to the expiration of twelve (12) months (or such longer or shorter period provided by the Award Agreement) after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date. The Participant's Service shall be deemed to have terminated on account of death if the Participant dies within three (3) months (or such longer or shorter period provided by the Award Agreement) after the Participant's termination of Service.

(iii) **Termination for Cause.** Notwithstanding any other provision of the Plan to the contrary, if the Participant's Service is terminated for Cause or if, following the Participant's termination of Service and during any period in which the Option otherwise would remain exercisable, the Participant engages in any act that would constitute Cause, the Option shall terminate in its entirety and cease to be exercisable immediately upon such termination of Service or act.

(iv) **Other Termination of Service.** If the Participant's Service terminates for any reason, except Disability, death or Cause, the Option, to the extent unexercised and exercisable for vested shares on the date on which the Participant's Service terminated, may be exercised by the Participant at any time prior to the expiration of three (3) months (or such longer or shorter period provided by the Award Agreement) after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

(b) **Extension if Exercise Prevented by Law.** Notwithstanding the foregoing, other than termination of Service for Cause, if the exercise of an Option within the applicable time periods set forth in Section 6.4(a) is prevented by the provisions of Section 14 below, the Option shall remain exercisable until the later of (i) thirty (30) days after the date such exercise first would no longer be prevented by such provisions or (ii) the end of the applicable time period under Section 6.4(a), but in any event no later than the Option Expiration Date.

6.5 Transferability of Options. During the lifetime of the Participant, an Option shall be exercisable only by the Participant or the Participant's guardian or legal representative. An Option shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Notwithstanding the foregoing, to the extent permitted by the Committee, in its discretion, and set forth in the Award Agreement evidencing such Option, an Option shall be assignable or transferable subject to the applicable limitations, if any, described in the General Instructions to Form S-8 under the Securities Act or, in the case of an Incentive Stock Option, only as permitted by applicable regulations under Section 421 of the Code in a manner that does not disqualify such Option as an Incentive Stock Option.

7. Stock Appreciation Rights.

Stock Appreciation Rights shall be evidenced by Award Agreements specifying the number of shares of Stock subject to the Award, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

7.1 Types of SARs Authorized. SARs may be granted in tandem with all or any portion of a related Option (a "*Tandem SAR*") or may be granted independently of any Option (a "*Freestanding SAR*"). A Tandem SAR may only be granted concurrently with the grant of the related Option.

7.2 Exercise Price. The exercise price for each SAR shall be established in the discretion of the Committee; provided, however, that (a) the exercise price per share subject to a Tandem SAR shall be the exercise price per share under the related Option and (b) the exercise price per share subject to a Freestanding SAR shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the SAR. Notwithstanding the foregoing, an SAR may be granted with an exercise price lower than the minimum exercise price set forth above if such SAR is granted pursuant to an assumption or substitution for another stock appreciation right in a manner that would qualify under the provisions of Section 409A of the Code.

7.3 Exercisability and Term of SARs.

(a) **Tandem SARs.** Tandem SARs shall be exercisable only at the time and to the extent, and only to the extent, that the related Option is exercisable, subject to such provisions as the Committee may specify where the Tandem SAR is granted with respect to less than the full number of shares of Stock subject to the related Option. The Committee may, in its discretion, provide in any Award Agreement evidencing a Tandem SAR that such SAR may not be exercised without the advance approval of the Company and, if such approval is not given, then the Option shall nevertheless remain exercisable in accordance with its terms. A Tandem SAR shall terminate and cease to be exercisable no later than the date on which the related Option expires or is terminated or canceled. Upon the exercise of a Tandem SAR with respect to some or all of the shares subject to such SAR, the related Option shall be canceled automatically as to the number of shares with respect to which the Tandem SAR was exercised. Upon the exercise of an Option related to a Tandem SAR as to some or all of the shares subject to such Option, the related Tandem SAR shall be canceled automatically as to the number of shares with respect to which the related Option was exercised.

(b) **Freestanding SARs.** Freestanding SARs shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such SAR; provided, however, that (i) no Freestanding SAR shall be exercisable after the expiration of ten (10) years after the effective date of grant of such SAR and (ii) no Freestanding SAR granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable until at least six (6) months following the date of grant of such SAR (except in the event of such Employee's death, disability or retirement, upon a Change in Control, or as otherwise permitted by the Worker Economic Opportunity Act). Subject to the foregoing, unless otherwise specified by the Committee in the grant of a Freestanding SAR, each Freestanding SAR shall terminate ten (10) years after the effective date of grant of the SAR, unless earlier terminated in accordance with its provisions.

7.4 Exercise of SARs. Upon the exercise (or deemed exercise pursuant to Section 7.5) of an SAR, the Participant (or the Participant's legal representative or other person who acquired the right to exercise the SAR by reason of the Participant's death) shall be entitled to receive payment of an amount for each share with respect to which the SAR is exercised equal to the excess, if any, of the Fair Market Value of a share of Stock on the date of exercise of the SAR over the exercise price. Payment of such amount shall be made (a) in the case of a Tandem SAR, solely in shares of Stock in a lump sum upon the date of exercise of the SAR and (b) in the case of a Freestanding SAR, in cash, shares of Stock, or any combination thereof as determined by the Committee, in a lump sum upon the date of exercise of the SAR. When payment is to be made in shares of Stock, the number of shares to be issued shall be determined on the basis of the Fair Market Value of a share of Stock on the date of exercise of the SAR. For purposes of Section 7, an SAR shall be deemed exercised on the date on which the Company receives notice of exercise from the Participant or as otherwise provided in Section 7.5.

7.5 Deemed Exercise of SARs. If, on the date on which an SAR would otherwise terminate or expire, the SAR by its terms remains exercisable immediately prior to such termination or expiration and, if so exercised, would result in a payment to the holder of such SAR, then any portion of such SAR which has not previously been exercised shall automatically be deemed to be exercised as of such date with respect to such portion.

7.6 Effect of Termination of Service. Subject to earlier termination of the SAR as otherwise provided herein and unless otherwise provided by the Committee, an SAR shall be exercisable after a Participant's termination of Service only to the extent and during the applicable time period determined in accordance with Section 6.4 (treating the SAR as if it were an Option) and thereafter shall terminate.

7.7 Transferability of SARs. During the lifetime of the Participant, an SAR shall be exercisable only by the Participant or the Participant's guardian or legal representative. An SAR shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Notwithstanding the foregoing, to the extent permitted by the Committee, in its discretion, and set forth in the Award Agreement evidencing such Award, a Tandem SAR related to a Nonstatutory Stock Option or a Freestanding SAR shall be assignable or transferable subject to the applicable limitations, if any, described in the General Instructions to Form S-8 under the Securities Act.

8. Restricted Stock Awards.

Restricted Stock Awards shall be evidenced by Award Agreements specifying whether the Award is a Restricted Stock Bonus or a Restricted Stock Purchase Right and the number of shares of Stock subject to the Award, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

8.1 Types of Restricted Stock Awards Authorized. Restricted Stock Awards may be granted in the form of either a Restricted Stock Bonus or a Restricted Stock Purchase Right. Restricted Stock Awards may be granted upon such conditions as the Committee shall determine, including, without limitation, upon the attainment of one or more Performance Goals described in Section 10.4. If either the grant of or satisfaction of Vesting Conditions applicable to a Restricted Stock Award is to be contingent upon the attainment of one or more Performance Goals, the Committee shall follow procedures substantially equivalent to those set forth in Sections 10.3 through 10.5(a).

8.2 Purchase Price. The purchase price for shares of Stock issuable under each Restricted Stock Purchase Right shall be established by the Committee in its discretion. No monetary payment (other than applicable tax withholding) shall be required as a condition of receiving shares of Stock pursuant to a Restricted Stock Bonus, the consideration for which shall be services actually rendered to a Participating Company or for its benefit. Notwithstanding the foregoing, if required by applicable state corporate law, the Participant shall furnish consideration in the form of cash or past services rendered to a Participating Company or for its benefit having a value not less than the par value of the shares of Stock subject to a Restricted Stock Award.

8.3 Purchase Period. A Restricted Stock Purchase Right shall be exercisable within a period established by the Committee, which shall in no event exceed thirty (30) days from the effective date of the grant of the Restricted Stock Purchase Right.

8.4 Payment of Purchase Price. Except as otherwise provided below, payment of the purchase price for the number of shares of Stock being purchased pursuant to any Restricted Stock Purchase Right shall be made (a) in cash, by check or in cash equivalent, (b) by such other consideration as may be approved by the Committee from time to time to the extent permitted by applicable law, or (c) by any combination thereof.

8.5 Vesting and Restrictions on Transfer. Shares issued pursuant to any Restricted Stock Award may (but need not) be made subject to Vesting Conditions based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria, including, without limitation, Performance Goals as described in Section 10.4, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. During any period in which shares acquired pursuant to a Restricted Stock Award remain subject to Vesting Conditions, such shares may not be sold, exchanged, transferred, pledged, assigned or otherwise disposed of other than pursuant to an Ownership Change Event or as provided in Section 8.8. The Committee, in its discretion, may provide in any Award Agreement evidencing a Restricted Stock Award that, if the satisfaction of Vesting Conditions with respect to any shares subject to such Restricted Stock Award would otherwise occur on a day on which the sale of such shares would violate the provisions of the Trading Compliance Policy, then satisfaction of the Vesting Conditions automatically shall be determined on the next trading day on which the sale of such shares would not violate the Trading Compliance Policy. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

8.6 Voting Rights; Dividends and Distributions. Except as provided in this Section, Section 8.5 and any Award Agreement, during any period in which shares acquired pursuant to a Restricted Stock Award remain subject to Vesting Conditions, the Participant shall have all of the rights of a stockholder of the Company holding shares of Stock, including the right to vote such shares and to receive all dividends and other distributions paid with respect to such shares; provided, however, that if so determined by the Committee and provided by the Award Agreement, such dividends and distributions shall be subject to the same Vesting Conditions as the shares subject to the Restricted Stock Award with respect to which such dividends or distributions were paid, and otherwise shall be paid no later than the end of the calendar year in which such dividends or distributions are paid to stockholders (or, if later, the 15th day of the third month following the date such dividends or distributions are paid to stockholders). In the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.3, any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends) to which the Participant is entitled by reason of the Participant's Restricted Stock Award shall be immediately subject to the same Vesting Conditions as the shares subject to the Restricted Stock Award with respect to which such dividends or distributions were paid or adjustments were made.

8.7 Effect of Termination of Service. Unless otherwise provided by the Committee in the Award Agreement evidencing a Restricted Stock Award, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then (a) the Company shall have the option to repurchase for the purchase price paid by the Participant any shares acquired by the Participant pursuant to a Restricted Stock Purchase Right which remain subject to Vesting Conditions as of the date of the Participant's termination of Service and (b) the Participant shall forfeit to the Company any shares acquired by the Participant pursuant to a Restricted Stock Bonus which remain subject to Vesting Conditions as of the date of the Participant's termination of Service. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company.

8.8 Nontransferability of Restricted Stock Award Rights. Rights to acquire shares of Stock pursuant to a Restricted Stock Award shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or the laws of descent and distribution. All rights with respect to a Restricted Stock Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

9. Restricted Stock Units.

Restricted Stock Unit Awards shall be evidenced by Award Agreements specifying the number of Restricted Stock Units subject to the Award, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

9.1 Grant of Restricted Stock Unit Awards. Restricted Stock Unit Awards may be granted upon such conditions as the Committee shall determine, including, without limitation, upon the attainment of one or more Performance Goals described in Section 10.4. If either the grant of a Restricted Stock Unit Award or the Vesting Conditions with respect to such Award is to be contingent upon the attainment of one or more Performance Goals, the Committee shall follow procedures substantially equivalent to those set forth in Sections 10.3 through 10.5(a).

9.2 Purchase Price. No monetary payment (other than applicable tax withholding, if any) shall be required as a condition of receiving a Restricted Stock Unit Award, the consideration for which shall be services actually rendered to a Participating Company or for its benefit. Notwithstanding the foregoing, if required by applicable state corporate law, the Participant shall furnish consideration in the form of cash or past services rendered to a Participating Company or for its benefit having a value not less than the par value of the shares of Stock issued upon settlement of the Restricted Stock Unit Award.

9.3 Vesting. Restricted Stock Unit Awards may (but need not) be made subject to Vesting Conditions based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria, including, without limitation, Performance Goals as described in Section 10.4, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award.

9.4 Voting Rights, Dividend Equivalent Rights and Distributions. Participants shall have no voting rights with respect to shares of Stock represented by Restricted Stock Units until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Restricted Stock Unit Award that the Participant shall be entitled to Dividend Equivalent Rights with respect to the payment of cash dividends on Stock during the period beginning on the date such Award is granted and ending, with respect to each share subject to the Award, on the earlier of the date the Award is settled or the date on which it is terminated. Dividend Equivalent Rights, if any, shall be paid by crediting the Participant with a cash amount or with additional whole Restricted Stock Units as of the date of payment of such cash dividends on Stock, as determined by the Committee. The number of additional Restricted Stock Units (rounded to the nearest whole number), if any, to be credited shall be determined by dividing (a) the amount of cash dividends paid on the dividend payment date with respect to the number of shares of Stock represented by the Restricted Stock Units previously credited to the Participant by (b) the Fair Market Value per share of Stock on such date. If so determined by the Committee and provided by the Award Agreement, such cash amount or additional Restricted Stock Units shall be subject to the same terms and conditions and shall be settled in the same manner and at the same time as the Restricted Stock Units originally subject to the Restricted Stock Unit Award. In the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.3, appropriate adjustments shall be made in the Participant's Restricted Stock Unit Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Vesting Conditions as are applicable to the Award.

9.5 Effect of Termination of Service. Unless otherwise provided by the Committee and set forth in the Award Agreement evidencing a Restricted Stock Unit Award, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then the Participant shall forfeit to the Company any Restricted Stock Units pursuant to the Award which remain subject to Vesting Conditions as of the date of the Participant's termination of Service.

9.6 Settlement of Restricted Stock Unit Awards. The Company shall issue to a Participant on the date on which Restricted Stock Units subject to the Participant's Restricted Stock Unit Award vest or on such other date determined by the Committee in compliance with Section 409A, if applicable, and set forth in the Award Agreement one (1) share of Stock (and/or any other new, substituted or additional securities or other property pursuant to an adjustment described in Section 9.4) for each Restricted Stock Unit then becoming vested or otherwise to be settled on such date, subject to the withholding of applicable taxes, if any. The Committee, in its discretion, may provide in any Award Agreement evidencing a Restricted Stock Unit Award that if the settlement date with respect to any shares issuable upon vesting of Restricted Stock Units would otherwise occur on a day on which the sale of such shares would violate the provisions of the Trading Compliance Policy, then the settlement date shall be deferred until the next trading day on which the sale of such shares would not violate the Trading Compliance Policy but in any event no later than the 15th day of the third calendar month following the year in which such Restricted Stock Units vest. If permitted by the Committee, the Participant may elect, consistent with the requirements of Section 409A, to defer receipt of all or any portion of the shares of Stock or other property otherwise issuable to the Participant pursuant to this Section, and such deferred issuance date(s) and amount(s) elected by the Participant shall be set forth in the Award Agreement. Notwithstanding the foregoing, the Committee, in its discretion, may provide for settlement of any Restricted Stock Unit Award by payment to the Participant in cash of an amount equal to the Fair Market Value on the payment date of the shares of Stock or other property otherwise issuable to the Participant pursuant to this Section.

9.7 Nontransferability of Restricted Stock Unit Awards. The right to receive shares pursuant to a Restricted Stock Unit Award shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to a Restricted Stock Unit Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

10. Performance Awards.

Performance Awards shall be evidenced by Award Agreements in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

10.1 Types of Performance Awards Authorized. Performance Awards may be granted in the form of either Performance Shares or Performance Units. Each Award Agreement evidencing a Performance Award shall specify the number of Performance Shares or Performance Units subject thereto, the Performance Award Formula, the Performance Goal(s) and Performance Period applicable to the Award, and the other terms, conditions and restrictions of the Award.

10.2 Initial Value of Performance Shares and Performance Units. Unless otherwise provided by the Committee in granting a Performance Award, each Performance Share shall have an initial monetary value equal to the Fair Market Value of one (1) share of Stock, subject to adjustment as provided in Section 4.3, on the effective date of grant of the Performance Share, and each Performance Unit shall have an initial monetary value established by the Committee at the time of grant. The final value payable to the Participant in settlement of a Performance Award determined on the basis of the applicable Performance Award Formula will depend on the extent to which Performance Goals established by the Committee are attained within the applicable Performance Period established by the Committee.

10.3 Establishment of Performance Period, Performance Goals and Performance Award Formula. In granting each Performance Award, the Committee shall establish in writing the applicable Performance Period, Performance Award Formula and one or more Performance Goals which, when measured at the end of the Performance Period, shall determine on the basis of the Performance Award Formula the final value of the Performance Award to be paid to the Participant. Unless otherwise permitted in compliance with the requirements under Section 162(m) with respect to each Performance Award intended to result in the payment of Performance-Based Compensation, the Committee shall establish the Performance Goal(s) and Performance Award Formula applicable to each Performance Award no later than the earlier of (a) the date ninety (90) days after the commencement of the applicable Performance Period or (b) the date on which 25% of the Performance Period has elapsed, and, in any event, at a time when the outcome of the Performance Goals remains substantially uncertain. Once established, the Performance Goals and Performance Award Formula applicable to a Performance Award intended to result in the payment of Performance-Based Compensation to a Covered Employee shall not be changed during the Performance Period. The Company shall notify each Participant granted a Performance Award of the terms of such Award, including the Performance Period, Performance Goal(s) and Performance Award Formula.

10.4 Measurement of Performance Goals. Performance Goals shall be established by the Committee on the basis of targets to be attained ("*Performance Targets*") with respect to one or more measures of business or financial performance (each, a "*Performance Measure*"), subject to the following:

(a) **Performance Measures.** Performance Measures shall be calculated in accordance with the Company's financial statements, or, if such measures are not reported in the Company's financial statements, they shall be calculated in accordance with generally accepted accounting principles, a method used generally in the Company's industry, or in accordance with a methodology established by the Committee prior to the grant of the Performance Award. As specified by the Committee, Performance Measures may be calculated with respect to the Company and each Subsidiary Corporation consolidated therewith for financial reporting purposes, one or more Subsidiary Corporations or such division or other business unit of any of them selected by the Committee. Unless otherwise determined by the Committee prior to the grant of the Performance Award, the Performance Measures applicable to the Performance Award shall be calculated prior to the accrual of expense for any Performance Award for the same Performance Period and excluding the effect (whether positive or negative) on the Performance Measures of any change in accounting standards or any unusual or infrequently occurring event or transaction, as determined by the Committee, occurring after the establishment of the Performance Goals applicable to the Performance Award. Each such adjustment, if any, shall be made solely for the purpose of providing a consistent basis from period to period for the calculation of Performance Measures in order to prevent the dilution or enlargement of the Participant's rights with respect to a Performance Award. Performance Measures may be based upon one or more of the following, as determined by the Committee:

- (i) revenue;
- (ii) sales;
- (iii) expenses;
- (iv) operating income;
- (v) gross margin;
- (vi) operating margin;
- (vii) earnings before any one or more of: stock-based compensation expense, interest, taxes, depreciation and amortization;
- (viii) pre-tax profit;
- (ix) net operating income;
- (x) net income;
- (xi) economic value added;
- (xii) free cash flow;
- (xiii) operating cash flow;
- (xiv) balance of cash, cash equivalents and marketable securities;
- (xv) stock price;
- (xvi) earnings per share;
- (xvii) return on stockholder equity;
- (xviii) return on capital;

- (xix) return on assets;
- (xx) return on investment;
- (xxi) total stockholder return;
- (xxii) employee satisfaction;
- (xxiii) employee retention;
- (xxiv) market share;
- (xxv) customer satisfaction;
- (xxvi) product development;
- (xxvii) research and development expenses;
- (xxviii) completion of an identified special project; and
- (xxix) completion of a joint venture or other corporate transaction.

(b) **Performance Targets.** Performance Targets may include a minimum, maximum, target level and intermediate levels of performance, with the final value of a Performance Award determined under the applicable Performance Award Formula by the Performance Target level attained during the applicable Performance Period. A Performance Target may be stated as an absolute value, an increase or decrease in a value, or as a value determined relative to an index, budget or other standard selected by the Committee.

10.5 Settlement of Performance Awards.

(a) **Determination of Final Value.** As soon as practicable following the completion of the Performance Period applicable to a Performance Award, the Committee shall certify in writing the extent to which the applicable Performance Goals have been attained and the resulting final value of the Award earned by the Participant and to be paid upon its settlement in accordance with the applicable Performance Award Formula.

(b) **Discretionary Adjustment of Award Formula.** In its discretion, the Committee may, either at the time it grants a Performance Award or at any time thereafter, provide for the positive or negative adjustment of the Performance Award Formula applicable to a Performance Award granted to any Participant who is not a Covered Employee to reflect such Participant's individual performance in his or her position with the Company or such other factors as the Committee may determine. If permitted under a Covered Employee's Award Agreement, the Committee shall have the discretion, on the basis of such criteria as may be established by the Committee, to reduce some or all of the value of the Performance Award that would otherwise be paid to the Covered Employee upon its settlement notwithstanding the attainment of any Performance Goal and the resulting value of the Performance Award determined in accordance with the Performance Award Formula. No such reduction may result in an increase in the amount payable upon settlement of another Participant's Performance Award that is intended to result in Performance-Based Compensation.

(c) **Effect of Leaves of Absence.** Unless otherwise required by law or a Participant's Award Agreement, payment of the final value, if any, of a Performance Award held by a Participant who has taken in excess of thirty (30) days in unpaid leaves of absence during a Performance Period shall be prorated on the basis of the number of days of the Participant's Service during the Performance Period during which the Participant was not on an unpaid leave of absence.

(d) **Notice to Participants.** As soon as practicable following the Committee's determination and certification in accordance with Sections 10.5(a) and (b), the Company shall notify each Participant of the determination of the Committee.

(e) **Payment in Settlement of Performance Awards.** As soon as practicable following the Committee's determination and certification in accordance with Sections 10.5(a) and (b), but in any event within the Short-Term Deferral Period described in Section 15.1 (except as otherwise provided below or consistent with the requirements of Section 409A), payment shall be made to each eligible Participant (or such Participant's legal representative or other person who acquired the right to receive such payment by reason of the Participant's death) of the final value of the Participant's Performance Award. Payment of such amount shall be made in cash, shares of Stock, or a combination thereof as determined by the Committee. Unless otherwise provided in the Award Agreement evidencing a Performance Award, payment shall be made in a lump sum. If permitted by the Committee, the Participant may elect, consistent with the requirements of Section 409A, to defer receipt of all or any portion of the payment to be made to the Participant pursuant to this Section, and such deferred payment date(s) elected by the Participant shall be set forth in the Award Agreement. If any payment is to be made on a deferred basis, the Committee may, but shall not be obligated to, provide for the payment during the deferral period of Dividend Equivalent Rights or interest.

(f) **Provisions Applicable to Payment in Shares.** If payment is to be made in shares of Stock, the number of such shares shall be determined by dividing the final value of the Performance Award by the Fair Market Value of a share of Stock determined by the method specified in the Award Agreement. Shares of Stock issued in payment of any Performance Award may be fully vested and freely transferable shares or may be shares of Stock subject to Vesting Conditions as provided in Section 8.5. Any shares subject to Vesting Conditions shall be evidenced by an appropriate Award Agreement and shall be subject to the provisions of Sections 8.5 through 8.8 above.

10.6 Voting Rights; Dividend Equivalent Rights and Distributions. Participants shall have no voting rights with respect to shares of Stock represented by Performance Share Awards until the date of the issuance of such shares, if any (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Performance Share Award that the Participant shall be entitled to Dividend Equivalent Rights with respect to the payment of cash dividends on Stock during the period beginning on the date the Award is granted and ending, with respect to each share subject to the Award, on the earlier of the date on which the Performance Shares are settled or the date on which they are forfeited. Such Dividend Equivalent Rights, if any, shall be credited to the Participant either in cash or in the form of additional whole Performance Shares as of the date of payment of such cash dividends on Stock, as determined by the Committee. The number of additional Performance Shares (rounded to the nearest whole number), if any, to be so credited shall be determined by dividing (a) the amount of cash dividends paid on the dividend payment date with respect to the number of shares of Stock represented by the Performance Shares previously credited to the Participant by (b) the Fair Market Value per share of Stock on such date. Dividend Equivalent Rights, if any, shall be accumulated and paid to the extent that the related Performance Shares become nonforfeitable. Settlement of Dividend Equivalent Rights may be made in cash, shares of Stock, or a combination thereof as determined by the Committee, and may be paid on the same basis as settlement of the related Performance Share as provided in Section 10.5. Dividend Equivalent Rights shall not be paid with respect to Performance Units. In the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.3, appropriate adjustments shall be made in the Participant's Performance Share Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Performance Share Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Performance Goals as are applicable to the Award.

10.7 Effect of Termination of Service. Unless otherwise provided by the Committee and set forth in the Award Agreement evidencing a Performance Award, the effect of a Participant's termination of Service on the Performance Award shall be as follows:

(a) **Death or Disability.** If the Participant's Service terminates because of the death or Disability of the Participant before the completion of the Performance Period applicable to the Performance Award, the final value of the Participant's Performance Award shall be determined by the extent to which the applicable Performance Goals have been attained with respect to the entire Performance Period and shall be prorated based on the number of months of the Participant's Service during the Performance Period. Payment shall be made following the end of the Performance Period in any manner permitted by Section 10.5.

(b) **Other Termination of Service.** If the Participant's Service terminates for any reason except death or Disability before the completion of the Performance Period applicable to the Performance Award, such Award shall be forfeited in its entirety; provided, however, that in the event of an involuntary termination of the Participant's Service, the Committee, in its discretion, may waive the automatic forfeiture of all or any portion of any such Award and determine the final value of the Performance Award in the manner provided by Section 10.7(a). Payment of any amount pursuant to this Section shall be made following the end of the Performance Period in any manner permitted by Section 10.5.

10.8 Nontransferability of Performance Awards. Prior to settlement in accordance with the provisions of the Plan, no Performance Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to a Performance Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

11. Cash-Based Awards and Other Stock-Based Awards

Cash-Based Awards and Other Stock-Based Awards shall be evidenced by Award Agreements in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

11.1 Grant of Cash-Based Awards. Subject to the provisions of the Plan, the Committee, at any time and from time to time, may grant Cash-Based Awards to Participants in such amounts and upon such terms and conditions, including the achievement of performance criteria, as the Committee may determine.

11.2 Grant of Other Stock-Based Awards. The Committee may grant other types of equity-based or equity-related Awards not otherwise described by the terms of this Plan (including the grant or offer for sale of unrestricted securities, stock-equivalent units, stock appreciation units, securities or debentures convertible into common stock or other forms determined by the Committee) in such amounts and subject to such terms and conditions as the Committee shall determine. Other Stock-Based Awards may be made available as a form of payment in the settlement of other Awards or as payment in lieu of compensation to which a Participant is otherwise entitled. Other Stock-Based Awards may involve the transfer of actual shares of Stock to Participants, or payment in cash or otherwise of amounts based on the value of Stock and may include, without limitation, Awards designed to comply with or take advantage of the applicable local laws of jurisdictions other than the United States.

11.3 Value of Cash-Based and Other Stock-Based Awards. Each Cash-Based Award shall specify a monetary payment amount or payment range as determined by the Committee. Each Other Stock-Based Award shall be expressed in terms of shares of Stock or units based on such shares of Stock, as determined by the Committee. The Committee may require the satisfaction of such Service requirements, conditions, restrictions or performance criteria, including, without limitation, Performance Goals as described in Section 10.4, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. If the Committee exercises its discretion to establish performance criteria, the final value of Cash-Based Awards or Other Stock-Based Awards that will be paid to the Participant will depend on the extent to which the performance criteria are met. The establishment of performance criteria with respect to the grant or vesting of any Cash-Based Award or Other Stock-Based Award intended to result in Performance-Based Compensation shall follow procedures substantially equivalent to those applicable to Performance Awards set forth in Section 10.

11.4 Payment or Settlement of Cash-Based Awards and Other Stock-Based Awards. Payment or settlement, if any, with respect to a Cash-Based Award or an Other Stock-Based Award shall be made in accordance with the terms of the Award, in cash, shares of Stock or other securities or any combination thereof as the Committee determines. The determination and certification of the final value with respect to any Cash-Based Award or Other Stock-Based Award intended to result in Performance-Based Compensation shall comply with the requirements applicable to Performance Awards set forth in Section 10. To the extent applicable, payment or settlement with respect to each Cash-Based Award and Other Stock-Based Award shall be made in compliance with the requirements of Section 409A.

11.5 Voting Rights; Dividend Equivalent Rights and Distributions. Participants shall have no voting rights with respect to shares of Stock represented by Other Stock-Based Awards until the date of the issuance of such shares of Stock (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), if any, in settlement of such Award. However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Other Stock-Based Award that the Participant shall be entitled to Dividend Equivalent Rights with respect to the payment of cash dividends on Stock during the period beginning on the date such Award is granted and ending, with respect to each share subject to the Award, on the earlier of the date the Award is settled or the date on which it is terminated. Such Dividend Equivalent Rights, if any, shall be paid in accordance with the provisions set forth in Section 9.4. Dividend Equivalent Rights shall not be granted with respect to Cash-Based Awards. In the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.3, appropriate adjustments shall be made in the Participant's Other Stock-Based Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of such Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Vesting Conditions and performance criteria, if any, as are applicable to the Award.

11.6 Effect of Termination of Service. Each Award Agreement evidencing a Cash-Based Award or Other Stock-Based Award shall set forth the extent to which the Participant shall have the right to retain such Award following termination of the Participant's Service. Such provisions shall be determined in the discretion of the Committee, need not be uniform among all Cash-Based Awards or Other Stock-Based Awards, and may reflect distinctions based on the reasons for termination, subject to the requirements of Section 409A, if applicable.

11.7 Nontransferability of Cash-Based Awards and Other Stock-Based Awards. Prior to the payment or settlement of a Cash-Based Award or Other Stock-Based Award, the Award shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. The Committee may impose such additional restrictions on any shares of Stock issued in settlement of Cash-Based Awards and Other Stock-Based Awards as it may deem advisable, including, without limitation, minimum holding period requirements, restrictions under applicable federal securities laws, under the requirements of any stock exchange or market upon which such shares of Stock are then listed and/or traded, or under any state securities laws or foreign law applicable to such shares of Stock.

12. **Standard Forms of Award Agreement.**

12.1 **Award Agreements.** Each Award shall comply with and be subject to the terms and conditions set forth in the appropriate form of Award Agreement approved by the Committee and as amended from time to time. No Award or purported Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement, which execution may be evidenced by electronic means.

12.2 **Authority to Vary Terms.** The Committee shall have the authority from time to time to vary the terms of any standard form of Award Agreement either in connection with the grant or amendment of an individual Award or in connection with the authorization of a new standard form or forms; provided, however, that the terms and conditions of any such new, revised or amended standard form or forms of Award Agreement are not inconsistent with the terms of the Plan.

13. **Change in Control.**

13.1 **Effect of Change in Control on Awards.** In the event of a Change in Control, outstanding Awards shall be subject to the definitive agreement entered into by the Company in connection with the Change in Control. Subject to the requirements and limitations of Section 409A, if applicable, the Committee may provide for any one or more of the following:

(a) **Accelerated Vesting.** In its discretion, the Committee may provide in the grant of any Award or at any other time may take such action as it deems appropriate to provide for acceleration of the exercisability, vesting and/or settlement in connection with a Change in Control of each or any outstanding Award or portion thereof and shares acquired pursuant thereto upon such conditions, including termination of the Participant's Service prior to, upon, or following the Change in Control, and to such extent as the Committee determines.

(b) **Assumption, Continuation or Substitution.** In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the "**Acquiror**"), may, without the consent of any Participant, assume or continue the Company's rights and obligations under each or any Award or portion thereof outstanding immediately prior to the Change in Control or substitute for each or any such outstanding Award or portion thereof a substantially equivalent award with respect to the Acquiror's stock, as applicable. For purposes of this Section, if so determined by the Committee in its discretion, an Award denominated in shares of Stock shall be deemed assumed if, following the Change in Control, the Award confers the right to receive, subject to the terms and conditions of the Plan and the applicable Award Agreement, for each share of Stock subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a share of Stock on the effective date of the Change in Control was entitled (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Stock); provided, however, that if such consideration is not solely common stock of the Acquiror, the Committee may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise or settlement of the Award, for each share of Stock subject to the Award, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by holders of Stock pursuant to the Change in Control. Any Award or portion thereof which is neither assumed or continued by the Acquiror in connection with the Change in Control nor exercised or settled as of the time of consummation of the Change in Control shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control.

(c) **Cash-Out of Outstanding Stock-Based Awards.** The Committee may, in its discretion and without the consent of any Participant, determine that, upon the occurrence of a Change in Control, each or any Award denominated in shares of Stock or portion thereof outstanding immediately prior to the Change in Control and not previously exercised or settled shall be canceled in exchange for a payment with respect to each vested share (and each unvested share, if so determined by the Committee) of Stock subject to such canceled Award in (i) cash, (ii) stock of the Company or of a corporation or other business entity a party to the Change in Control, or (iii) other property which, in any such case, shall be in an amount having a Fair Market Value equal to the Fair Market Value of the consideration to be paid per share of Stock in the Change in Control, reduced (but not below zero) by the exercise or purchase price per share, if any, under such Award. In the event such determination is made by the Committee, an Award having an exercise or purchase price per share equal to or greater than the Fair Market Value of the consideration to be paid per share of Stock in the Change in Control may be canceled without payment of consideration to the holder thereof. Payment pursuant to this Section (reduced by applicable withholding taxes, if any) shall be made to Participants in respect of the vested portions of their canceled Awards as soon as practicable following the date of the Change in Control and in respect of the unvested portions of their canceled Awards in accordance with the vesting schedules applicable to such Awards.

13.2 Effect of Change in Control on Nonemployee Director Awards. Subject to the requirements and limitations of Section 409A, if applicable, including as provided by Section 15.4(f), in the event of a Change in Control, each outstanding Nonemployee Director Award shall become immediately exercisable and vested in full and, except to the extent assumed, continued or substituted for pursuant to Section 13.1(b), shall be settled effective immediately prior to the time of consummation of the Change in Control.

13.3 Federal Excise Tax Under Section 4999 of the Code.

(a) **Excess Parachute Payment.** If any acceleration of vesting pursuant to an Award and any other payment or benefit received or to be received by a Participant would subject the Participant to any excise tax pursuant to Section 4999 of the Code due to the characterization of such acceleration of vesting, payment or benefit as an “excess parachute payment” under Section 280G of the Code, then, provided such election would not subject the Participant to taxation under Section 409A, the Participant may elect to reduce the amount of any acceleration of vesting called for under the Award in order to avoid such characterization.

(b) **Determination by Tax Firm.** To aid the Participant in making any election called for under Section 13.3(a), no later than the date of the occurrence of any event that might reasonably be anticipated to result in an “excess parachute payment” to the Participant as described in Section 13.3(a), the Company shall request a determination in writing by the professional firm engaged by the Company for general tax purposes, or, if the tax firm so engaged by the Company is serving as accountant or auditor for the Acquiror, the Company will appoint a nationally recognized tax firm to make the determinations required by this Section (the “**Tax Firm**”). As soon as practicable thereafter, the Tax Firm shall determine and report to the Company and the Participant the amount of such acceleration of vesting, payments and benefits which would produce the greatest after-tax benefit to the Participant. For the purposes of such determination, the Tax Firm may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Participant shall furnish to the Tax Firm such information and documents as the Tax Firm may reasonably request in order to make its required determination. The Company shall bear all fees and expenses the Tax Firm charges in connection with its services contemplated by this Section.

14. **Compliance with Securities Law.**

The grant of Awards and the issuance of shares of Stock pursuant to any Award shall be subject to compliance with all applicable requirements of federal, state and foreign law with respect to such securities and the requirements of any stock exchange or market system upon which the Stock may then be listed. In addition, no Award may be exercised or shares issued pursuant to an Award unless (a) a registration statement under the Securities Act shall at the time of such exercise or issuance be in effect with respect to the shares issuable pursuant to the Award, or (b) in the opinion of legal counsel to the Company, the shares issuable pursuant to the Award may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company’s legal counsel to be necessary to the lawful issuance and sale of any shares under the Plan shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such requisite authority shall not have been obtained. As a condition to issuance of any Stock, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

15. **Compliance with Section 409A.**

15.1 **Awards Subject to Section 409A.** The Company intends that Awards granted pursuant to the Plan shall either be exempt from or comply with Section 409A, and the Plan shall be so construed. The provisions of this Section 15 shall apply to any Award or portion thereof that constitutes or provides for payment of Section 409A Deferred Compensation. Such Awards may include, without limitation:

(a) A Nonstatutory Stock Option or SAR that includes any feature for the deferral of compensation other than the deferral of recognition of income until the later of (i) the exercise or disposition of the Award or (ii) the time the stock acquired pursuant to the exercise of the Award first becomes substantially vested.

(b) Any Restricted Stock Unit Award, Performance Award, Cash-Based Award or Other Stock-Based Award that either (i) provides by its terms for settlement of all or any portion of the Award at a time or upon an event that will or may occur later than the end of the Short-Term Deferral Period (as defined below) or (ii) permits the Participant granted the Award to elect one or more dates or events upon which the Award will be settled after the end of the Short-Term Deferral Period.

Subject to the provisions of Section 409A, the term "**Short-Term Deferral Period**" means the 2½ month period ending on the later of (i) the 15th day of the third month following the end of the Participant's taxable year in which the right to payment under the applicable portion of the Award is no longer subject to a substantial risk of forfeiture or (ii) the 15th day of the third month following the end of the Company's taxable year in which the right to payment under the applicable portion of the Award is no longer subject to a substantial risk of forfeiture. For this purpose, the term "substantial risk of forfeiture" shall have the meaning provided by Section 409A.

15.2 Deferral and/or Distribution Elections. Except as otherwise permitted or required by Section 409A, the following rules shall apply to any compensation deferral and/or payment elections (each, an "**Election**") that may be permitted or required by the Committee pursuant to an Award providing Section 409A Deferred Compensation:

(a) Elections must be in writing and specify the amount of the payment in settlement of an Award being deferred, as well as the time and form of payment as permitted by this Plan.

(b) Elections shall be made by the end of the Participant's taxable year prior to the year in which services commence for which an Award may be granted to the Participant.

(c) Elections shall continue in effect until a written revocation or change in Election is received by the Company, except that a written revocation or change in Election must be received by the Company prior to the last day for making the Election determined in accordance with paragraph (b) above or as permitted by Section 15.3.

15.3 Subsequent Elections. Except as otherwise permitted or required by Section 409A, any Award providing Section 409A Deferred Compensation which permits a subsequent Election to delay the payment or change the form of payment in settlement of such Award shall comply with the following requirements:

(a) No subsequent Election may take effect until at least twelve (12) months after the date on which the subsequent Election is made.

(b) Each subsequent Election related to a payment in settlement of an Award not described in Section 15.4(a)(ii), 15.4(a)(iii) or 15.4(a)(vi) must result in a delay of the payment for a period of not less than five (5) years from the date on which such payment would otherwise have been made.

(c) No subsequent Election related to a payment pursuant to Section 15.4(a)(iv) shall be made less than twelve (12) months before the date on which such payment would otherwise have been made.

(d) Subsequent Elections shall continue in effect until a written revocation or change in the subsequent Election is received by the Company, except that a written revocation or change in a subsequent Election must be received by the Company prior to the last day for making the subsequent Election determined in accordance with the preceding paragraphs of this Section 15.3.

15.4 Payment of Section 409A Deferred Compensation

(a) **Permissible Payments.** Except as otherwise permitted or required by Section 409A, an Award providing Section 409A Deferred Compensation must provide for payment in settlement of the Award only upon one or more of the following:

(i) The Participant's "separation from service" (as defined by Section 409A);

(ii) The Participant's becoming "disabled" (as defined by Section 409A);

(iii) The Participant's death;

(iv) A time or fixed schedule that is either (i) specified by the Committee upon the grant of an Award and set forth in the Award Agreement evidencing such Award or (ii) specified by the Participant in an Election complying with the requirements of Section 15.2 or 15.3, as applicable;

(v) A change in the ownership or effective control of the Company or in the ownership of a substantial portion of the assets of the Company determined in accordance with Section 409A; or

(vi) The occurrence of an "unforeseeable emergency" (as defined by Section 409A).

(b) **Installment Payments.** It is the intent of this Plan that any right of a Participant to receive installment payments (within the meaning of Section 409A) shall, for all purposes of Section 409A, be treated as a right to a series of separate payments.

(c) **Required Delay in Payment to Specified Employee Pursuant to Separation from Service.** Notwithstanding any provision of the Plan or an Award Agreement to the contrary, except as otherwise permitted by Section 409A, no payment pursuant to Section 15.4(a)(i) in settlement of an Award providing for Section 409A Deferred Compensation may be made to a Participant who is a "specified employee" (as defined by Section 409A) as of the date of the Participant's separation from service before the date (the "**Delayed Payment Date**") that is six (6) months after the date of such Participant's separation from service, or, if earlier, the date of the Participant's death. All such amounts that would, but for this paragraph, become payable prior to the Delayed Payment Date shall be accumulated and paid on the Delayed Payment Date.

(d) **Payment Upon Disability.** All distributions of Section 409A Deferred Compensation payable pursuant to Section 15.4(a)(ii) by reason of a Participant becoming disabled shall be paid in a lump sum or in periodic installments as established by the Participant's Election. If the Participant has made no Election with respect to distributions of Section 409A Deferred Compensation upon becoming disabled, all such distributions shall be paid in a lump sum upon the determination that the Participant has become disabled.

(e) **Payment Upon Death.** If a Participant dies before complete distribution of amounts payable upon settlement of an Award subject to Section 409A, such undistributed amounts shall be distributed to his or her beneficiary under the distribution method for death established by the Participant's Election upon receipt by the Committee of satisfactory notice and confirmation of the Participant's death. If the Participant has made no Election with respect to distributions of Section 409A Deferred Compensation upon death, all such distributions shall be paid in a lump sum upon receipt by the Committee of satisfactory notice and confirmation of the Participant's death.

(f) **Payment Upon Change in Control.** Notwithstanding any provision of the Plan or an Award Agreement to the contrary, to the extent that any amount constituting Section 409A Deferred Compensation would become payable under this Plan by reason of a Change in Control, such amount shall become payable only if the event constituting a Change in Control would also constitute a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company within the meaning of Section 409A. Any Award which constitutes Section 409A Deferred Compensation and which would vest and otherwise become payable upon a Change in Control as a result of the failure of the Acquiror to assume, continue or substitute for such Award in accordance with Section 13.1(b) shall vest to the extent provided by such Award but shall be converted automatically at the effective time of such Change in Control into a right to receive, in cash on the date or dates such award would have been settled in accordance with its then existing settlement schedule (or as required by Section 15.4(c)), an amount or amounts equal in the aggregate to the intrinsic value of the Award at the time of the Change in Control.

(g) **Payment Upon Unforeseeable Emergency.** The Committee shall have the authority to provide in the Award Agreement evidencing any Award providing for Section 409A Deferred Compensation for payment pursuant to Section 15.4(a)(vi) in settlement of all or a portion of such Award in the event that a Participant establishes, to the satisfaction of the Committee, the occurrence of an unforeseeable emergency. In such event, the amount(s) distributed with respect to such unforeseeable emergency cannot exceed the amounts reasonably necessary to satisfy the emergency need plus amounts necessary to pay taxes reasonably anticipated as a result of such distribution(s), after taking into account the extent to which such emergency need is or may be relieved through reimbursement or compensation by insurance or otherwise, by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship) or by cessation of deferrals under the Award. All distributions with respect to an unforeseeable emergency shall be made in a lump sum upon the Committee's determination that an unforeseeable emergency has occurred. The Committee's decision with respect to whether an unforeseeable emergency has occurred and the manner in which, if at all, the payment in settlement of an Award shall be altered or modified, shall be final, conclusive, and not subject to approval or appeal.

(h) **Prohibition of Acceleration of Payments.** Notwithstanding any provision of the Plan or an Award Agreement to the contrary, this Plan does not permit the acceleration of the time or schedule of any payment under an Award providing Section 409A Deferred Compensation, except as permitted by Section 409A.

(i) **No Representation Regarding Section 409A Compliance.** Notwithstanding any other provision of the Plan, the Company makes no representation that Awards shall be exempt from or comply with Section 409A. No Participating Company shall be liable for any tax, penalty or interest imposed on a Participant by Section 409A.

16. Tax Withholding.

16.1 Tax Withholding in General. The Company shall have the right to deduct from any and all payments made under the Plan, or to require the Participant, through payroll withholding, cash payment or otherwise, to make adequate provision for, the federal, state, local and foreign taxes (including social insurance), if any, required by law to be withheld by any Participating Company with respect to an Award or the shares acquired pursuant thereto. The Company shall have no obligation to deliver shares of Stock, to release shares of Stock from an escrow established pursuant to an Award Agreement, or to make any payment in cash under the Plan until the Participating Company Group's tax withholding obligations have been satisfied by the Participant.

16.2 Withholding in or Directed Sale of Shares. The Company shall have the right, but not the obligation, to deduct from the shares of Stock issuable to a Participant upon the exercise or settlement of an Award, or to accept from the Participant the tender of, a number of whole shares of Stock having a Fair Market Value, as determined by the Company, equal to all or any part of the tax withholding obligations of any Participating Company. The Fair Market Value of any shares of Stock withheld or tendered to satisfy any such tax withholding obligations shall not exceed the amount determined by the applicable minimum statutory withholding rates. The Company may require a Participant to direct a broker, upon the vesting, exercise or settlement of an Award, to sell a portion of the shares subject to the Award determined by the Company in its discretion to be sufficient to cover the tax withholding obligations of any Participating Company and to remit an amount equal to such tax withholding obligations to such Participating Company in cash.

17. Amendment, Suspension or Termination of Plan.

The Committee may amend, suspend or terminate the Plan at any time. However, without the approval of the Company's stockholders, there shall be (a) no increase in the maximum aggregate number of shares of Stock that may be issued under the Plan (except by operation of the provisions of Sections **Error! Reference source not found.** and 4.2), (b) no change in the class of persons eligible to receive Incentive Stock Options, and (c) no other amendment of the Plan that would require approval of the Company's stockholders under any applicable law, regulation or rule, including the rules of any stock exchange or quotation system upon which the Stock may then be listed or quoted. No amendment, suspension or termination of the Plan shall affect any then outstanding Award unless expressly provided by the Committee. Except as provided by the next sentence, no amendment, suspension or termination of the Plan may have a materially adverse effect on any then outstanding Award without the consent of the Participant. Notwithstanding any other provision of the Plan or any Award Agreement to the contrary, the Committee may, in its sole and absolute discretion and without the consent of any Participant, amend the Plan or any Award Agreement, to take effect retroactively or otherwise, as it deems necessary or advisable for the purpose of conforming the Plan or such Award Agreement to any present or future law, regulation or rule applicable to the Plan, including, but not limited to, Section 409A.

18. Miscellaneous Provisions.

18.1 Repurchase Rights. Shares issued under the Plan may be subject to one or more repurchase options, or other conditions and restrictions as determined by the Committee in its discretion at the time the Award is granted. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

18.2 Forfeiture Events.

(a) The Committee may specify in an Award Agreement that the Participant's rights, payments, and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include, but shall not be limited to, termination of Service for Cause or any act by a Participant, whether before or after termination of Service, that would constitute Cause for termination of Service, or any accounting restatement due to material noncompliance of the Company with any financial reporting requirements of securities laws as a result of which, and to the extent that, such reduction, cancellation, forfeiture, or recoupment is required by applicable securities laws.

(b) If the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the securities laws, any Participant who knowingly or through gross negligence engaged in the misconduct, or who knowingly or through gross negligence failed to prevent the misconduct, and any Participant who is one of the individuals subject to automatic forfeiture under Section 304 of the Sarbanes-Oxley Act of 2002, shall reimburse the Company for (i) the amount of any payment in settlement of an Award received by such Participant during the twelve- (12-) month period following the first public issuance or filing with the United States Securities and Exchange Commission (whichever first occurred) of the financial document embodying such financial reporting requirement, and (ii) any profits realized by such Participant from the sale of securities of the Company during such twelve- (12-) month period.

18.3 Provision of Information. Each Participant shall be given access to information concerning the Company equivalent to that information generally made available to the Company's common stockholders.

18.4 Rights as Employee, Consultant or Director. No person, even though eligible pursuant to Section 5, shall have a right to be selected as a Participant, or, having been so selected, to be selected again as a Participant. Nothing in the Plan or any Award granted under the Plan shall confer on any Participant a right to remain an Employee, Consultant or Director or interfere with or limit in any way any right of a Participating Company to terminate the Participant's Service at any time. To the extent that an Employee of a Participating Company other than the Company receives an Award under the Plan, that Award shall in no event be understood or interpreted to mean that the Company is the Employee's employer or that the Employee has an employment relationship with the Company.

18.5 Rights as a Stockholder. A Participant shall have no rights as a stockholder with respect to any shares covered by an Award until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such shares are issued, except as provided in Section 4.3 or another provision of the Plan.

18.6 Delivery of Title to Shares. Subject to any governing rules or regulations, the Company shall issue or cause to be issued the shares of Stock acquired pursuant to an Award and shall deliver such shares to or for the benefit of the Participant by means of one or more of the following: (a) by delivering to the Participant evidence of book entry shares of Stock credited to the account of the Participant, (b) by depositing such shares of Stock for the benefit of the Participant with any broker with which the Participant has an account relationship, or (c) by delivering such shares of Stock to the Participant in certificate form.

18.7 Fractional Shares. The Company shall not be required to issue fractional shares upon the exercise or settlement of any Award.

18.8 Retirement and Welfare Plans. Neither Awards made under this Plan nor shares of Stock or cash paid pursuant to such Awards may be included as "compensation" for purposes of computing the benefits payable to any Participant under any Participating Company's retirement plans (both qualified and non-qualified) or welfare benefit plans unless such other plan expressly provides that such compensation shall be taken into account in computing a Participant's benefit.

18.9 Beneficiary Designation. Subject to local laws and procedures, each Participant may file with the Company a written designation of a beneficiary who is to receive any benefit under the Plan to which the Participant is entitled in the event of such Participant's death before he or she receives any or all of such benefit. Each designation will revoke all prior designations by the same Participant, shall be in a form prescribed by the Company, and will be effective only when filed by the Participant in writing with the Company during the Participant's lifetime. If a married Participant designates a beneficiary other than the Participant's spouse, the effectiveness of such designation may be subject to the consent of the Participant's spouse. If a Participant dies without an effective designation of a beneficiary who is living at the time of the Participant's death, the Company will pay any remaining unpaid benefits to the Participant's legal representative.

18.10 **Severability.** If any one or more of the provisions (or any part thereof) of this Plan shall be held invalid, illegal or unenforceable in any respect, such provision shall be modified so as to make it valid, legal and enforceable, and the validity, legality and enforceability of the remaining provisions (or any part thereof) of the Plan shall not in any way be affected or impaired thereby.

18.11 **No Constraint on Corporate Action.** Nothing in this Plan shall be construed to: (a) limit, impair, or otherwise affect the Company's or another Participating Company's right or power to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure, or to merge or consolidate, or dissolve, liquidate, sell, or transfer all or any part of its business or assets; or (b) limit the right or power of the Company or another Participating Company to take any action which such entity deems to be necessary or appropriate.

18.12 **Unfunded Obligation.** Participants shall have the status of general unsecured creditors of the Company. Any amounts payable to Participants pursuant to the Plan shall be considered unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974. No Participating Company shall be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Participant account shall not create or constitute a trust or fiduciary relationship between the Committee or any Participating Company and a Participant, or otherwise create any vested or beneficial interest in any Participant or the Participant's creditors in any assets of any Participating Company. The Participants shall have no claim against any Participating Company for any changes in the value of any assets which may be invested or reinvested by the Company with respect to the Plan.

18.13 **Choice of Law.** Except to the extent governed by applicable federal law, the validity, interpretation, construction and performance of the Plan and each Award Agreement shall be governed by the laws of the State of Delaware, without regard to its conflict of law rules.

IN WITNESS WHEREOF, the undersigned Secretary of the Company certifies that the foregoing sets forth The Lovesac Company 2017 Equity Incentive Plan as duly adopted by the Board on October 26, 2017.

/s/ Donna Dellomo
Donna Dellomo, Secretary

AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

This Amended and Restated Registration Rights Agreement (this “**Agreement**”) is made and entered into as of October 19, 2017, by and among The Lovesac Company, a Delaware corporation (the “**Company**”), the investors set forth on Exhibit A of the Subscription Agreement (the “**A-2 Investors**”) and the investors as set forth on Exhibit A of the A/A-1 Subscription Agreement (as defined below) (the “**A/A-1 Investors**,” collectively with the A-2 Investors, the “**Investors**” and, each individually, an “**Investor**”).

WHEREAS, the Company and the A/A-1 Investors are parties to that certain Subscription Agreement, pursuant to which the A/A-1 Investors purchased shares of Series A Preferred Stock (as defined below) or Series A-1 Preferred Stock (as defined below) of the Company (the “**A/A-1 Subscription Agreement**”);

WHEREAS, in connection with the A/A-1 Subscription Agreement, the A/A-1 Investors entered into that certain Registration Rights Agreement (the “**Original Agreement**”) pursuant to which the A/A-1 Investors were granted certain registration rights;

WHEREAS, the Company and the A-2 Investors are parties to that certain Subscription Agreement, dated October 19, 2017 (the “**Subscription Agreement**”), pursuant to which the Investor is purchasing shares of Series A-2 Preferred Stock (as defined below) of the Company; and

WHEREAS, in connection with the consummation of the transactions contemplated by the Subscription Agreement, and pursuant to the terms of the Subscription Agreement and the A/A-1 Subscription Agreement, the parties hereto desire to amend and restate the Original Agreement in order to grant certain registration rights to the A-2 Investors on the same terms and conditions as the A/A1 Investors, as set forth below.

NOW, THEREFORE, in consideration of the foregoing and the mutual and dependent covenants hereinafter set forth, the parties hereto agree as follows:

1. **Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

“**Agreement**” has the meaning set forth in the preamble.

“**Commission**” means the Securities and Exchange Commission or any other federal agency administering the Securities Act and the Exchange Act at the time.

“**Common Stock**” means the common stock, par value \$0.00001 per share, of the Company and any other shares of stock issued or issuable with respect thereto (whether by way of a change in par value, stock dividend or stock split or in exchange for or upon conversion of such shares or otherwise in connection with a combination of shares, distribution, recapitalization, merger, consolidation, other corporate reorganization or other similar event with respect to the Common Stock).

“**Company**” has the meaning set forth in the preamble and includes the Company’s successors by merger, acquisition, reorganization or otherwise.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Governmental Authority**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Holder**” means the Investor, or any assignee of an Investor holding Series A Preferred Stock, Series A-1 Preferred Stock and/or Series A-2 Preferred Stock.

“**Investor(s)**” has the meaning set forth in the preamble.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Prospectus**” means the prospectus or prospectuses included in any registration statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance on Rule 430A under the Securities Act or any successor rule thereto), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such registration statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus or prospectuses.

“**Registrable Securities**” means (a) the shares of Common Stock beneficially owned by the Investors upon conversion of the Series A Preferred Stock, the Series A-1 Preferred Stock and/or the Series A-2 Preferred Stock or upon exercise of the Warrants, and (b) any shares of Common Stock issued or issuable with respect to any shares described in subsection (a) above by way of a stock dividend or stock split or in exchange for or upon conversion of such shares or otherwise in connection with a combination of shares, distribution, recapitalization, merger, consolidation, other reorganization or other similar event with respect to the Common Stock (it being understood that, for purposes of this Agreement, a Person shall be deemed to be a Holder of Registrable Securities whenever such Person has the right to then acquire or obtain from the Company any Registrable Securities, whether or not such acquisition has actually been effected). As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (i) the Commission has declared a registration statement covering such securities effective and such securities have been disposed of pursuant to such effective registration statement, (ii) such securities are sold under circumstances in which all of the applicable conditions of Rule 144 under the Securities Act are met, or (iii) such securities have ceased to be outstanding.

“**Rule 144**” means Rule 144 under the Securities Act or any successor rule thereto.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Selling Expenses**” means all underwriting discounts and selling commissions applicable to the sale of Registrable Securities.

“**Series A Preferred Stock**” means the Series A Preferred Stock of the Company, issued in connection with the A/A-1 Subscription Agreement.

“**Series A-1 Preferred Stock**” means the Series A-1 Preferred Stock of the Company, issued in connection with the A/A-1 Subscription Agreement.

“**Series A-2 Preferred Stock**” means the Series A-2 Preferred Stock of the Company, issued in connection with the Subscription Agreement.

“**Subscription Agreement**” has the meaning set forth in the recitals.

Capitalized terms used herein without definition shall have the meanings set forth in the Subscription Agreement.

2. Piggyback Registration. If the Company proposes to file an offering statement or registration statement under the Securities Act with respect to an offering for its own account or for the account of any other securityholder(s) of the Company of any class of its equity securities (other than (i) an offering statement or registration statement relating to an initial public offering of the Company on Form 1-A or Form S-1 (or any successor forms) involving a primary offering by the Company and including no securities for the account of other securityholders of the Company, (ii) a registration statement on Form S-8 (or any successor form) or any other registration statement relating solely to employee benefit plans, (iii) a registration statement on Form S-4 (or any successor form) or filed in connection with an exchange offer, or a transaction to which Rule 145 (or any successor provision) under the Securities Act applies, or (iv) an offering of newly issued securities of the Company being made on a pro rata basis solely to the Company's existing shareholders), then the Company shall in each case give written notice of such proposed filing to the Holder as soon as practicable (but no later than thirty (30) days) before the anticipated filing date, and such notice shall offer each Holder the opportunity to register such number of shares of Registrable Securities as such Holder may request. Each Holder desiring to have Registrable Securities included in such registration statement shall so advise the Company in writing within ten (10) business days after the date on which the Company's notice is so given, setting forth the number of shares of Registrable Securities for which registration is requested. If the Company's offering is to be an underwritten offering, the Company shall, subject to the further provisions of this Agreement, use its reasonable best efforts to cause the managing underwriter or underwriters to permit the Holders of the Registrable Securities requested to be included in the registration for such offering to include such Registrable Securities in such offering on the same terms and conditions as any similar securities of the Company included therein. The right of each Holder to registration pursuant to this Section 2 in connection with an underwritten offering by the Company shall, unless the Company otherwise assents, be conditioned upon such Holder's participation as a seller in such underwritten offering and its execution of an underwriting agreement in customary form with the managing underwriter or underwriters selected by the Company. Notwithstanding the foregoing, if the managing underwriter or underwriters of such offering deliver a written opinion to the Company that because the size of the offering that the Company, the Holders and any other Persons or entities intend to make, the success of the offering would be materially and adversely affected by inclusion of the Registrable Securities requested to be included, then the number of shares to be registered and offered for the accounts of the Company and the Holders shall be reduced pro rata on the basis of the number of securities requested by the Company and such Holders to be registered and offered to the extent necessary to reduce the total amount of securities to be included in such offering to the amount recommended by such managing underwriter or underwriters (provided that if securities were also contemplated to be registered and offered for the account of other Persons or entities in addition to the Company and Holders, and the Holders are unable to sell all the securities requested by them to be included in the offering, such securities of such other Persons shall be excluded from the offering).

3. Short-Form Demand Registration. Beginning one (1) year after an initial public offering of the Company (including, without limitation, an initial public offering under Regulation A), the Company shall use its reasonable best efforts to qualify and remain qualified to register the offer and sale of securities under the Securities Act pursuant to a registration statement on Form S-3 or any similar short-form registration form or any successor form. At such time as the Company shall have qualified for the use of a registration statement on Form S-3 or any similar short-form registration form or any successor form thereto, the Holders of Registrable Securities shall have the right to request an unlimited number of registrations under the Securities Act of all or any portion of their Registrable Securities pursuant to a registration statement on Form S-3 or any similar or successor short-form registration statement (each, a "**Short-Form Demand Registration**"). Each request for a Short-Form Demand Registration shall specify the number of Registrable Securities requested to be included in the Short-Form Demand Registration. Upon receipt of any such request, the Company shall promptly (but in no event later than ten (10) business days following receipt thereof) deliver notice of such request to all other Holders of Registrable Securities who shall then have ten (10) business days from the date such notice is given to notify the Company in writing of their desire to be included in such registration. The Company shall prepare and file with the Commission a registration statement on Form S-3 or any successor form thereto covering all of the Registrable Securities that the Holders thereof have requested to be included in such Short-Form Demand Registration within 30 days after the date on which the initial request is given and shall use its reasonable best efforts to cause such registration statement to be declared effective by the Commission as soon as practicable thereafter. Registrable Securities registered pursuant to a Short-Form Demand Registration may be sold or disposed of in any type of offering permitted by Form S-3 or such other applicable form, including, without limitation, pursuant to a delayed or continuous offering, in a spot offering, in an underwritten offering or any in other manner then permitted by the form.

4. Lock-up Agreements. Each Holder of Registrable Securities hereby agrees that, in connection with an underwritten registered offering of the Company in which such Holder participates as a selling stockholder pursuant to this Agreement, unless not required by the managing underwriter or lead placement agent of the registered offering, it will enter into a lockup agreement in customary form and subject to customary exceptions pursuant to which such Holder will agree that it will not, during the period commencing on the date of the final prospectus or offering circular relating to a registered offering and ending on the date specified by the managing underwriter or lead placement agent, not to exceed 90 days from the date of the final prospectus or offering circular relating to the registered offering (unless reasonably requested by the managing underwriter or lead placement agent in order to accommodate regulatory restrictions on (i) the publication or other distribution of research reports, and (ii) analyst recommendations and opinions, pursuant to any applicable the restrictions contained in FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto): (a) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Registrable Securities held immediately prior to the effectiveness of the registration statement or offering statement for the a registered offering; or (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Registrable Securities, whether any such transaction described in clause (a) or (b) above is to be settled by delivery of Registrable Securities or other securities, in cash or otherwise. The foregoing provisions of this Section 4 shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement. The underwriters, placement agents and selling agents, if any, in connection with a registered offering are intended third-party beneficiaries of this Section 4 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Purchaser agrees to execute such agreements as may be reasonably requested by the underwriters, placement agents or selling agents in the a registered offering that are consistent with this Section 4 or that are necessary to give further effect thereto, provided, however, that the obligation of each Purchaser hereunder shall be conditioned on each officer, director and 5% beneficial holder of the Company's Common Stock entering into an agreement in substantially the same form in connection with the a registered offering.

5. Registration Procedures. If and whenever the Holders of Registrable Securities have requested pursuant to Section 2 or Section 3 that any Registrable Securities be registered, the Company shall use its reasonable best efforts to effect the registration of the offer and sale of such Registrable Securities under the Securities Act in accordance with the intended method of disposition thereof, and pursuant thereto the Company shall as soon as reasonably practicable and as applicable:

(a) prepare and file with the Commission a registration statement covering such Registrable Securities and use its reasonable best efforts to cause such registration statement to be declared effective;

(b) prepare and file with the Commission such amendments, post-effective amendments and supplements to such registration statement and the Prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period of not less than twelve (12) months (or, in the case of a firm commitment underwritten offering, ninety (90) days), or if earlier, until all of such Registrable Securities have been disposed of and to comply with the provisions of the Securities Act with respect to the disposition of such Registrable Securities in accordance with the intended methods of disposition set forth in such registration statement;

(c) as soon as reasonably practicable before filing such registration statement, Prospectus or amendments or supplements thereto with the Commission, furnish to the Holder of such Registrable Securities copies of such documents proposed to be filed, which documents shall be subject to the review, comment and approval of such Holder's counsel;

(d) notify each selling Holder of Registrable Securities, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any Prospectus forming a part of such registration statement has been filed with the Commission;

(e) furnish to each selling Holder of Registrable Securities such number of copies of the Prospectus included in such registration statement (including each preliminary Prospectus) and any supplement thereto (in each case including all exhibits and documents incorporated by reference therein), and such other documents as such Holder may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller;

(f) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or "blue sky" laws of such jurisdictions as any selling Holder reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such Holders to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Holders; provided, that the Company shall not be required to qualify generally to do business, subject itself to general taxation or consent to general service of process in any jurisdiction where it would not otherwise be required to do so;

(g) notify the Holders of Registrable Securities promptly of any request by the Commission for the amending or supplementing of such registration statement or Prospectus or for additional information;

(h) cooperate with the Holders of the Registrable Securities to facilitate the timely preparation and delivery of certificates representing the Registrable Securities to be sold pursuant to such registration statement or Rule 144 free of any restrictive legends and representing such number of shares of Common Stock and registered in such names as the Holders of the Registrable Securities may reasonably request a reasonable period of time prior to sales of Registrable Securities pursuant to such registration statement or Rule 144;

(i) take no direct or indirect action prohibited by Regulation M under the Exchange Act; provided, that, to the extent that any prohibition is applicable to the Company, the Company will take all reasonable action to make any such prohibition inapplicable;

(j) otherwise use its reasonable best efforts to take all other steps necessary to effect the registration of such Registrable Securities contemplated hereby; and

(k) in connection with an underwritten offering, the Company will enter into such customary agreements (including underwriting and lock-up agreements in customary form) and take all such other customary actions as the Holders of such Registrable Securities or the managing underwriter of such offering reasonably request in order to facilitate the intended disposition of the Registrable Securities.

6. Expenses. All expenses (other than Selling Expenses of the Holders and other expenses of the Holders specified in the last sentence of this Section 6) incurred by the Company in complying with its obligations pursuant to this Agreement and in connection with the registration and disposition of Registrable Securities shall be paid by the Company, including, without limitation, all (i) registration and filing fees (including, without limitation, any fees relating to filings required to be made with, or the listing of any Registrable Securities on, any securities exchange or over-the-counter trading market on which the Registrable Securities are listed or quoted); (ii) underwriting expenses (other than fees, commissions or discounts); (iii) expenses of any audits incident to or required by any such registration; (iv) fees and expenses of complying with securities and "blue sky" laws (including, without limitation, fees and disbursements of counsel for the Company in connection with "blue sky" qualifications or exemptions of the Registrable Securities); (v) printing expenses; (vi) messenger, telephone and delivery expenses; (vii) fees and expenses of the Company's counsel and accountants; (viii) Financial Industry Regulatory Authority, Inc. filing fees (if any); and (ix) reasonable fees and expenses of counsel for the Major Investor (as defined in the Subscription Agreement). In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties) and the expense of any annual audits. All Selling Expenses relating to the offer and sale of Registrable Securities registered under the Securities Act by a Holder pursuant to this Agreement shall be borne and paid by such Holder. In addition, each Holder of Registrable Securities shall be responsible for paying any stock transfer taxes applicable to the sale of Registrable Securities by such Holder, and the fees and disbursements of counsel, if any, retained by such Holder (except for the reasonable fees and disbursements of counsel for the Major Investor required to be paid by the Company pursuant to this Section 6).

7. Indemnification. (a) The Company shall indemnify and hold harmless, to the fullest extent permitted by law, each Holder of Registrable Securities, such Holder's officers, directors, managers, members, partners, stockholders and Affiliates, each underwriter, broker or other Person acting on behalf of such Holder of Registrable Securities and each "controlling person" (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), if any, who controls any of the foregoing Persons, against all losses, claims, actions, damages, liabilities and expenses, joint or several, to which any of the foregoing Persons may become subject under the Securities Act or otherwise, insofar as such losses, claims, actions, damages, liabilities or expenses arise out of or are based upon any untrue or alleged untrue statement of a material fact contained in any registration statement, Prospectus, preliminary Prospectus, free writing prospectus (as defined in Rule 405 under the Securities Act or any successor rule thereto), information statement, offering circular, test-the-waters materials or other offering materials or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading; and shall reimburse such Persons for any legal or other expenses reasonably incurred by any of them in connection with investigating or defending any such loss, claim, action, damage or liability, except insofar as the same are caused by or contained in any information furnished in writing to the Company by such Holder expressly for use therein. This indemnity shall be in addition to any liability the Company may otherwise have.

(b) In connection with any registration in which a Holder of Registrable Securities is participating, each such Holder shall furnish to the Company in writing such information as the Company reasonably requests for use in connection with any such registration statement or Prospectus and, to the extent permitted by law, shall indemnify and hold harmless, the Company, each director of the Company, each officer of the Company who shall sign such registration statement, each underwriter, broker or other Person acting on behalf of the Holders of Registrable Securities and each "controlling person" (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act) who controls any of the foregoing Persons against any losses, claims, actions, damages, liabilities or expenses resulting from any untrue or alleged untrue statement of material fact contained in the registration statement, Prospectus, preliminary Prospectus, free writing prospectus (as defined in Rule 405 under the Securities Act or any successor rule thereto), information statement or offering circular or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, but only to the extent that such untrue statement or omission is contained in any information so furnished in writing by such Holder; provided, that the obligation to indemnify shall be several, not joint and several, for each Holder and shall not exceed an amount equal to the net proceeds (after underwriting fees, commissions or discounts) actually received by such Holder from the sale of Registrable Securities pursuant to such registration statement. This indemnity shall be in addition to any liability the selling Holder may otherwise have.

(c) Promptly after receipt by an indemnified party of notice of the commencement of any action involving a claim referred to in this Section 7, such indemnified party shall, if a claim in respect thereof is made against an indemnifying party, give written notice to the latter of the commencement of such action. The failure of any indemnified party to notify an indemnifying party of any such action shall not (unless such failure shall have a material adverse effect on the indemnifying party) relieve the indemnifying party from any liability in respect of such action that it may have to such indemnified party hereunder. In case any such action is brought against an indemnified party, the indemnifying party shall be entitled to participate in and to assume the defense of the claims in any such action that are subject or potentially subject to indemnification hereunder, jointly with any other indemnifying party similarly notified to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after written notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be responsible for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof; provided, that, if (i) any indemnified party shall have reasonably concluded that there may be one or more legal or equitable defenses available to such indemnified party which are additional to or conflict with those available to the indemnifying party, or that such claim or litigation involves or could have an effect upon matters beyond the scope of the indemnity provided hereunder, or (ii) such action seeks an injunction or equitable relief against any indemnified party or involves actual or alleged criminal activity, the indemnifying party shall not have the right to assume the defense of such action on behalf of such indemnified party without such indemnified party's prior written consent (but, without such consent, shall have the right to participate therein with counsel of its choice) and such indemnifying party shall reimburse such indemnified party and any "controlling person" of such indemnified party for that portion of the fees and expenses of any counsel retained by the indemnified party which is reasonably related to the matters covered by the indemnity provided hereunder. If the indemnifying party is not entitled to, or elects not to, assume the defense of a claim, it shall not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. In such instance, the conflicting indemnified parties shall have a right to retain one separate counsel, chosen by the Holders of a majority of the Registrable Securities included in the registration, at the expense of the indemnifying party.

(d) If the indemnification provided for hereunder is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, claim, damage, liability or action referred to herein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amounts paid or payable by such indemnified party as a result of such loss, claim, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions which resulted in such loss, claim, damage, liability or action as well as any other relevant equitable considerations; provided, that the maximum amount of liability in respect of such contribution shall be limited, in the case of each Holder of Registrable Securities, to an amount equal to the net proceeds (after underwriting fees, commissions or discounts) actually received by such seller from the sale of Registrable Securities effected pursuant to such registration. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties agree that it would not be just and equitable if contribution pursuant hereto were determined by pro rata allocation or by any other method or allocation which does not take account of the equitable considerations referred to herein. No Person guilty or liable of fraudulent misrepresentation within the meaning of Section 11(f) of the Securities Act shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

8. Participation in Underwritten Registrations. No Person may participate in any registration hereunder which is underwritten unless such Person (a) agrees to sell such Person's securities on the basis provided in any underwriting arrangements on customary terms approved by the Person or Persons entitled hereunder to approve such arrangements and (b) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents in customary form reasonably required under the terms of such underwriting arrangements.

9. Rule 144 Compliance. With a view to making available to the Holders of Registrable Securities the benefits of Rule 144 and any other rule or regulation of the Commission that may at any time permit a Holder to sell securities of the Company to the public without registration, the Company shall:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the Registration Date;

(b) use reasonable best efforts to file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act, at any time after the Registration Date; and

(c) furnish to any Holder so long as the Holder owns Registrable Securities, promptly upon request, a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and of the Securities Act and the Exchange Act, a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed or furnished by the Company as such Holder may reasonably request in connection with the sale of Registrable Securities without registration.

10. Termination. This Agreement shall terminate and be of no further force or effect when there shall no longer be any Registrable Securities outstanding; provided, that the provisions of Section 6 and Section 7 shall survive any such termination.

11. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated in the Subscription Agreement.

12. Entire Agreement. This Agreement, together with the Subscription Agreement and other Transaction Documents (as defined in the Subscription Agreement), constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. Notwithstanding the foregoing, in the event of any conflict between the terms and provisions of this Agreement and those of the Subscription Agreement or any other Transaction Document with respect to or relating to the registration rights provided for herein, the terms and conditions of this Agreement shall control.

13. Successor and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. The Company may assign this Agreement at any time in connection with a sale or acquisition of the Company, whether by merger, consolidation, sale of all or substantially all of the Company's assets, or similar transaction, without the consent of the Investor; provided, that the successor or acquiring Person agrees in writing to assume all of the Company's rights and obligations under this Agreement.

14. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement; provided, however, the parties hereto hereby acknowledge that the Persons set forth in Section 7 are express third-party beneficiaries of the obligations of the parties hereto set forth in Section 7.

15. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

16. Amendment, Modification and Waiver. The provisions of this Agreement may only be amended, modified, supplemented or waived with the prior written consent of the Company and the Holders of a majority of the then outstanding Registrable Shares; provided, however, that any amendment that would affect any Holder of Registrable Securities then outstanding (solely in such Holder's capacity as a Holder of Registrable Securities and not otherwise) in a disproportionately material or adverse manner shall be effected only with the prior written consent of such Holder. No waiver by any party or parties shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, 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 a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

18. Remedies. Each Holder of Registrable Securities, in addition to being entitled to exercise all rights granted by law, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. The Company acknowledges that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and the Company hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

19. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction). Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States or the courts of the State of Delaware, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

20. Waiver of Jury Trial. Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby. Each party to this Agreement certifies and acknowledges that (a) no representative of any other party has represented, expressly or otherwise, that such other party would not seek to enforce the foregoing waiver in the event of a legal action, (b) such party has considered the implications of this waiver, (c) such party makes this waiver voluntarily, and (d) such party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 20.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

22. No Conflicting Rights. As of the date of this Agreement, the Company has not granted registration rights to any Person other than the registration rights provided for by this Agreement to the Holders. The Company shall not (a) grant any registration rights to third parties which are more favorable than or inconsistent with the rights granted hereunder, or (b) enter into any agreement, take any action, or permit any change to occur, with respect to its securities that violates or subordinates the rights expressly granted to the Holders of Registrable Securities in this Agreement. The Company agrees that in no event will the Company effect, or permit to be effected, an initial public offering of the Company's business through any parent or subsidiary of the Company or any other entity other than the Company.

23. Further Assurances. Each of the parties to this Agreement shall, and shall cause their affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and to give effect to the transactions contemplated hereby.

[SIGNATURE PAGE FOLLOWS]

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

COMPANY

The Lovesac Company

By: /s/ Shawn Nelson
Name: Shawn Nelson
Title: Chief Executive Officer

INVESTORS

The Investors have executed a Subscription Booklet with the Company which provides, among other things, that by executing the Subscription Booklet, each Investor is deemed to have executed this Registration Rights Agreement in all respects.

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT, dated as of October 26, 2017, between The Lovesac Company, a Delaware corporation (the “Company”) and Shawn Nelson (the “Executive”).

WHEREAS, the Company is in the business of manufacturing, distributing and selling furniture in the retail market;

WHEREAS, the Company wishes to assure itself of the management services of the Executive for the period provided in this Agreement, and the Executive desires to serve in the employ of the Company for such period and upon the terms and conditions hereinafter provided; and

WHEREAS, the Company and Executive desire to memorialize the terms and conditions of the Executive’s employment by a written agreement.

IT IS THEREFORE AGREED AS FOLLOWS:

1. Employment Duties and Acceptance.

1.1 Employment by the Company. The Company shall employ the Executive, for itself and its subsidiaries and affiliates, for the Term (as herein defined), to render exclusive and full-time services in the capacity of Chief Executive Officer of the Company. At all times while the Executive is employed by the Company, the Executive shall be nominated for election, and if so elected shall continue to serve, as a member of the Board of Directors of the Company (the “Board”).

1.2 Duties/Authority. The Executive shall have such responsibilities, powers and duties substantially consistent with those he currently provides to the Company and customarily assigned to individuals serving in such position at comparable companies or as may be reasonably required by the conduct of the business of the Company. The Executive will report to the Company’s Board. The Executive shall devote a majority of Executive’s working time and efforts to the business and affairs of the Company. Executive shall not, without the prior approval of the Company, whether for compensation or otherwise, directly or indirectly, alone or as a member of any partnership or other organization, be actively engaged in or concerned with any other business duties or personal pursuits which are in conflict with Executive’s duties under this Agreement. The Executive’s reasonable participation in charitable organizations shall not be considered a violation of this provision.

1.3 Acceptance of Employment by the Executive. The Executive accepts such employment and shall render the services described above. Subject to appointment by the Board as such, the Executive may also serve during all or any part of the Term as an officer of any other entity controlled by the Company, and as a director of the Company and of any other entity controlled by the Company, in each case without any compensation therefor other than that specified in this Agreement.

1.4 Place of Employment. The Executive's principal place of employment shall be at the Company's headquarters, subject to such reasonable travel as the rendering of the services hereunder may require.

2. Term of Employment. The stated term of employment under this Agreement (the "Term") shall commence on the date hereof and shall continue until terminated in accordance with Section 4 of this Agreement.

3. Compensation.

3.1 Salary. As compensation for all services to be rendered pursuant to this Agreement, the Company shall pay the Executive during the Term a salary of \$325,000 per annum (the "Base Salary"), payable not less frequently than monthly, less such deductions as shall be required to be withheld by applicable rules and regulations. The Base Salary shall not preclude raises, stock options, incentive bonus plans and other compensation or incentives, as set forth herein or, should the Board, in its sole and absolute discretion, so determine to provide such additional compensation or incentives to the Executive. The Executive shall recommend a Base Salary amount to the Board (or a compensation committee thereof) each year, and the Board (or a compensation committee thereof) shall review the Executive's compensation and salary at least once per year (it being understood that the Board is under no obligation to increase the Executive's Base Salary).

3.2 Annual Bonus.

(a) The Company shall pay the Executive during the Term an annual bonus of up to 40% (except as otherwise provided below in this paragraph) of the Base Salary ("Annual Bonus"), provided that Executive achieves performance targets determined by the Board (or a compensation committee thereof). In the event that the Company achieves at least 90% of its annual EBITDA target for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 35% of the Base Salary. In the event that the Company achieves at least 110% of its annual EBITDA target for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 45% of the Base Salary. In the event that the Company achieves at least 120% of its annual EBITDA target for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 55% of the Base Salary.

(b) The Executive must remain employed through the bonus payment date to receive any Annual Bonus. The Annual Bonus will be determined by the Board after receipt of the Company's audited financials for the applicable year.

3.3 Incentive Compensation.

(a) The Executive shall be awarded 120,000 restricted stock units ("RSUs") on or about the date hereof, the terms of which shall be governed by the Company's 2017 Equity Incentive Plan and the applicable grant agreement. Half of such RSUs shall be subject to time-based vesting and half of such RSUs shall be subject to performance vesting.

(b) Concurrently with the execution of this Agreement, the Company and Executive are entering into grant notices with respect to the issuance of options by Sac Acquisition LLC under its 2010 Unit Plan and the cancellation of options previously issued to the Executive pursuant to the Sac Acquisition LLC 2007 Incentive Option Plan.

3.4 Participation in Employee Benefit Plans. The Executive shall be permitted during the Term, if and to the extent eligible, to participate on the same terms in any group life, hospitalization or disability insurance plan, health program, retirement savings plan or similar benefit plan of the Company that is available generally to other senior executives and managers of the Company and its subsidiaries. The Board may determine to offer the Executive participation in stock, phantom stock or profit based bonus or similar plans, to the extent applicable, and may provide the Executive with additional fringe benefits.

3.5 Expenses. Subject to policies applicable to senior executives of the Company generally, as may from time to time be established by the Board, the Company shall pay or reimburse the Executive for reasonable travel, entertainment and other business expenses actually incurred or paid by the Executive during the Term in the performance of the Executive's services under this Agreement, and which expenses are consistent with the Company's policies in effect from time to time with respect to such travel, entertainment and other business expenses, upon presentation of expense statements or vouchers or such other supporting information as it may require.

3.6 Vacation. The Executive shall be entitled to four (4) weeks of paid vacation annually, on the terms set forth in the Company's vacation policy.

3.7 IPO-Related Grant. In the event that (a) the Company consummates an initial public offering of its common stock (an "IPO") on or prior to March 31, 2019, (b) the Executive remains employed by the Company at the time of such IPO, and (c) Jack Krause purchases IPO shares as provided in his employment agreement, then the Company shall promptly make an additional grant of RSUs in an amount equal to the lesser of (i) the number of IPO shares purchased by Mr. Krause or (ii) the number of RSUs remaining available for grant under the Company's 2017 Equity Incentive Plan. The terms of such RSUs shall be governed by the Company's 2017 Equity Incentive Plan and the applicable grant agreement, and will be subject to vesting as determined by the Board.

4. Termination.

4.1 Termination upon Death. If the Executive dies during the Term, this Agreement shall terminate.

4.2 Termination upon Disability. If during the Term the Executive becomes physically or mentally disabled, whether totally or partially, so that the Executive is unable substantially to perform Executive's services hereunder (as determined, in good faith, by a physician selected by the Board and reasonably acceptable to the Executive or the Executive's legal representative, which agreement as to acceptability will not be unreasonably delayed or withheld) for (a) a period of three consecutive months, or (b) for shorter periods aggregating three months during any six month period, the Company may at any time after the last day of the three consecutive months of disability or the day on which the shorter periods of disability equal an aggregate of three months, by written notice to the Executive, terminate the Term of the Executive's employment hereunder. Nothing in this Section 4.2 shall be deemed to extend the Term.

4.3 Termination for Cause. The Company may at any time by written notice to the Executive terminate the Term of the Executive's employment hereunder for Cause and the Executive shall have no right to receive any compensation or benefit hereunder on and after the effective date of such notice except for the payment or provision, as applicable, of (i) the portion of the Base Salary for periods prior to the effective date of termination accrued but unpaid (if any), (ii) all unreimbursed expenses for which Executive is otherwise entitled to reimbursement pursuant to Section 3.5 (if any), and (iii) other payments, entitlements or benefits (if any), in accordance with terms of the applicable plans, programs, arrangements or other agreements of the Company or any affiliate thereof (other than any severance plan or policy) as to which the Executive held rights to such payments, entitlements or benefits, whether as a participant, beneficiary or otherwise, on the date of termination ("Other Benefits"). For purposes hereof, the term "Cause" shall mean; (a) conviction of the Executive for any crime constituting a felony in the jurisdiction in which committed, or for any other criminal act against the Company or its subsidiaries involving dishonesty or willful misconduct intended to injure the Company or its subsidiaries (whether or not a felony and whether or not criminal proceedings are initiated); (b) failure or refusal of the Executive in any material respect to perform the duties of Executive's employment or to follow the lawful and proper directives of the Company's Chief Executive Officer, *provided* such duties or directives are consistent with this Agreement and such failure or refusal continues uncured for a period of thirty (30) days after written notice thereof specifying the nature of such failure or refusal and requesting that it be cured is given by the Company to the Executive; (c) breach by the Executive of the provisions of Sections 5.1, 5.2, 5.3, 5.4, or 5.5; or (d) any willful or intentional act of the Executive committed for the purpose, or having the reasonably foreseeable effect, of injuring the Company, its subsidiaries or their business or reputation or of improperly or unlawfully converting for the Executive's own personal benefit any property of the Company or the subsidiaries.

4.4 Termination with Good Reason or without Cause. During the Term, (1) the Executive may terminate Executive's employment with the Company at any time with Good Reason (as defined below), and (2) the Company may terminate the Executive's employment without Cause, upon ten (10) days' written notice to the other party thereto. In either such case, *provided* the Executive has not breached and does not breach the provisions of Sections 5.1, 5.2, 5.3, 5.4, or 5.5 and the Executive has entered into and not revoked a general release of claims without additional post-termination restrictions included therein in form reasonably satisfactory to the Company so that it becomes effective within sixty (60) days after Executive's termination of employment, the Executive shall continue to receive for a period of 18 months from the Executive's date of termination (i) Executive's Base Salary as in effect on the date of such notice, payable in accordance with the Company's payroll schedule, (ii) coverage in the Company's group health plan under COBRA, if elected, at the subsidized employee rate, (iii) the payment or provision of Other Benefits, and (iv) coverage under the term life insurance policy (or be reimbursed for the premiums therefor) and the Company's directors' and officers' liability indemnification and insurance coverage. If the severance benefits hereunder are considered "deferred compensation" subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and the period to consider and revoke the release spans two tax years, the severance will begin to be paid in the second tax year even if the release becomes effective in the earlier tax year. For purposes of this Agreement, "Good Reason" means (a) the assignment to the Executive of duties and responsibilities not commensurate with Executive's position with the Company, (b) the failure of the Company to provide compensation and benefits to the Executive as required herein, (c) a reduction in the Executive's Base Salary without Executive's consent, or (d) the failure of the Company to adhere in any substantial manner to any of its other covenants herein, provided that any of the foregoing continues for a period of twenty (20) days after written notice thereof, specifying the nature thereof and requesting that it be cured, is given by the Executive to the Company. No severance will be paid for a "Good Reason" termination unless Executive terminates employment within 60 days after the first occurrence of the condition and the Company has not cured such condition within 30 days after written notice thereof (which notice shall state that such condition constitutes Good Reason) from the Executive.

4.5 Voluntary Termination. The Executive may terminate Executive's employment with the Company at any time in Executive's sole and absolute discretion upon giving at least sixty (60) days advance written notice to such effect to the Company (a "Voluntary Termination"). In the event the Executive's employment is terminated during the Term by the Executive's Voluntary Termination (other than termination by the Executive for Good Reason), then the Executive shall be entitled only to receive Executive's Base Salary payable through the date of such Voluntary Termination.

4.6 Compensation Upon Disability. In the event of termination of this Agreement by reason of disability as set forth in Section 4.2 hereof, the Company shall pay to the Executive (a) the Executive's Base Salary on the date of termination for four (4) months, payable in accordance with the provisions of Section 3.1 hereof and (b) all benefits from the Company and its employee benefit plans earned and accrued as of such termination date.

5. Confidentiality, Intellectual Property, Noncompete, Nonsolicitation, and Non-Disparagement

5.1 Nondisclosure and Nonuse of Confidential Information. The Executive will not disclose or use at any time during or after the Term any Confidential Information (as defined below) of which the Executive is or becomes aware, whether or not such information is developed by him, except to the extent that such disclosure or use is directly related to and required by the Executive's performance of duties assigned to the Executive pursuant to this Agreement. Under all circumstances and at all times, the Executive will take all appropriate steps to safeguard Confidential Information in Executive's possession and to protect it against disclosure, misuse, espionage, loss and theft. For purposes hereof, "Confidential Information" means information that is not generally known to the public and that was or is used, developed or obtained by the Company or its subsidiaries in connection with their business. It shall not include information (a) required to be disclosed by court or administrative order, (b) lawfully obtainable from other sources or which is in the public domain through no fault of the Executive; or (c) the disclosure of which is consented to in writing by the Company.

5.2 Ownership of Intellectual Property. In the event that the Executive as part of Executive's activities on behalf of the Company generates, authors or contributes to any invention, design, new development, device, product, method of process (whether or not patentable or reduced to practice or comprising Confidential Information), any copyrightable work (whether or not comprising Confidential Information) or any other form of Confidential Information relating directly or indirectly to the business of the Company as now or hereinafter conducted (collectively, "Intellectual Property"), the Executive acknowledges that such Intellectual Property is the sole and exclusive property of the Company and hereby assigns all right title and interest in and to such Intellectual Property to the Company. Any copyrightable work prepared in whole or in part by the Executive during the Term will be deemed "a work made for hire" under Section 201(b) of the Copyright Act of 1976, as amended, and the Company will own all of the rights comprised in the copyright therein. The Executive will promptly and fully disclose all Intellectual Property and will cooperate with the Company to protect the Company's interests in and rights to such Intellectual Property (including providing reasonable assistance in securing patent protection and copyright registrations and executing all documents as reasonably requested by the Company, whether such requests occur prior to or after termination of Executive's employment hereunder).

5.3 Delivery of Materials upon Termination of Employment. As requested by the Company, from time to time and upon the termination of the Executive's employment with the Company for any reason, the Executive will promptly deliver to the Company all copies and embodiments, in whatever form or medium, of all Confidential Information or Intellectual Property in the Executive's possession or within Executive's control (including written records, notes, photographs, manuals, notebooks, documentation, program listings, flow charts, magnetic media, disks, diskettes, tapes and all other materials containing any Confidential Information or Intellectual Property) irrespective of the location or form of such material and, if requested by the Company, will provide the Company with written confirmation that all such materials have been delivered to the Company. Executive shall be permitted to retain a copy of this Agreement and other documents concerning Executive's entitlement to compensation to enforce the terms of this Agreement or any other rights afforded by law to Executive.

5.4 Noncompetition. The Executive acknowledges that during Executive's employment with the Company, he will become familiar with trade secrets and other Confidential Information concerning the Company, its subsidiaries and their respective predecessors, and that Executive's services will be of special, unique and extraordinary value to the Company. In addition, the Executive hereby agrees that at any time during the Term, and after termination of employment, for the duration of the Noncompetition Period (as defined below), the Executive will not directly or indirectly own, manage, control, participate in, consult with, render services for or in any manner engage in any business competing with the businesses of the Company or its subsidiaries as such businesses exist or are in process or being planned as of the termination of employment, within any county in which the Company or its subsidiaries have operating locations, leases, options to lease or acquire property, or definitive plans known to the Executive at the time of termination to engage in such businesses. The "Noncompetition Period" shall be 18 months following the termination of employment. It shall not be considered a violation of this Section 5.4 for the Executive to be a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

5.5 Nonsolicitation. The Executive hereby agrees that (a) during the Term and for a period of 18 months after the termination of employment (the “Nonsolicitation Period”) the Executive will not, directly or indirectly through another entity, actively induce or attempt to induce any employee of the Company or its subsidiaries to leave the employ of the Company or its subsidiaries, or in any way interfere with the relationship between the Company or its subsidiaries and any employee thereof or otherwise employ or receive the services of any individual who was an employee of the Company or its subsidiaries at any time during such Nonsolicitation Period or within the three-month period prior thereto and (b) during the Nonsolicitation Period, the Executive will not induce or attempt to induce any customer, supplier, client, insurer, reinsurer, broker, licensee or other business relation of the Company or its subsidiaries to cease doing business with the Company or its subsidiaries.

5.6 Enforcement of Noncompete and Nonsolicitation. If, at the enforcement of Sections 5.4 or 5.5, a court holds that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope or area reasonable under such circumstances will be substituted for the stated duration, scope or area and that the court will be permitted to revise the restrictions contained in Sections 5.4 or 5.5 to cover the maximum duration, scope and area permitted by law.

5.7 Equitable Relief. The Executive acknowledges that (a) the covenants contained herein are reasonable, (b) the Executive’s services are unique, and (c) a breach or threatened breach by him of any of Executive’s covenants and agreements with the Company contained in Sections 5.1, 5.2, 5.3, 5.4, or 5.5 could cause irreparable harm to the Company for which they would have no adequate remedy at law. Accordingly, and in addition to any remedies which the Company may have at law, in the event of an actual or threatened breach by the Executive of Executive’s covenants and agreements contained in Sections 5.1, 5.2, 5.3, 5.4, or 5.5, the Company shall have the absolute right to apply to any court of competent jurisdiction for such injunctive or other equitable relief as such court may deem necessary or appropriate in the circumstances.

5.8 Non-Disparagement. During the time that Executive is employed by the Company and thereafter, without limitation of time, Executive shall not at any time make, publish or communicate to any person or entity, including, but not limited to, the customers or suppliers of the Company or any of its affiliates, any Disparaging (as defined below) remarks, comments or statements concerning Company, any other equity holders of the Company, or any affiliates of any of the foregoing. The Company shall instruct its Directors and Officers not to make any Disparaging comments or statements concerning Executive. “Disparaging” remarks, comments or statements are those that impugn the character, honesty, integrity, morality, business acumen or abilities of the individual or entity being disparaged.

5.9 Nothing in this agreement prohibits or restricts the parties from contacting, assisting, responding to, providing truthful testimony to or filing charges with any regulatory organization, authority or agency (e.g., the EEOC, IRS, SEC or FINRA), or from complying with any court or administrative order or subpoena, or from providing any other disclosure required by law.

6. Other Provisions.

6.1 Notices. Any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally, via facsimile or other electronic means, sent by overnight delivery service with delivery signature required, or sent with return receipt requested by certified, registered, or express mail, postage prepaid to the parties at the following addresses or at such other addresses as shall be specified by the parties by like notice, and shall be deemed given when so delivered personally, upon confirmation of receipt when delivered via facsimile or other electronic means, or if mailed, two days after the date of mailing, as follows:

if to the Company, at:

The Lovesac Company
2 Landmark Square, Suite 300
Stamford, CT 06901
Attention: Chairman of the Board of Directors

Copy to:

Mistral Capital Management, LLC
650 Fifth Ave., 31st Floor
New York, New York, 10019
Attention: William Phoenix

and

Satori Capital
2501 N. Harwood St., 20th Floor
Dallas, TX 75201
Attention: John Grafer

if to the Executive, to the Executive at:

Shawn Nelson
3 Purdy Lane
Darien, CT 06820

Each of the foregoing shall be entitled to specify a different address by giving notice as aforesaid to each of the other persons or entities listed above.

6.2 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement among the parties and supersedes and nullifies any prior understandings, agreements or representations by or among the parties, written or oral, that may have related in any way to the subject matter hereof including, without limitation, any prior employment agreement or separation agreement.

6.3 Waivers and Amendments. This Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions hereof may be waived, only by a written instrument signed by the parties making specific reference to this Agreement, or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

6.4 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with and subject to, the laws of the State of New York applicable to agreements made and to be performed entirely within such state.

6.5 Acknowledgments. The Executive acknowledges that the Executive has read this entire Agreement, has had the opportunity to consult with an attorney, and fully understands the terms of this Agreement. The Executive is satisfied with the terms of this Agreement and agrees that its terms are binding upon the Executive and the Executive's heirs, assigns, executors, administrators, and legal representatives.

6.6 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs and permitted assigns. No rights or obligations of the Executive under this Agreement may be assigned or transferred by the Executive other than Executive's right to compensation and benefits hereunder, which may be transferred by will or operation of law subject to the limitations of this Agreement. No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company except that such rights or obligations may be assigned or transferred pursuant to a merger or consolidation or amalgamation or scheme of arrangement in which the Company is not the continuing entity, or the sale or liquidation of all or substantially all of the assets of the Company, provided that the assignee or transferee is the successor to all or substantially all of the assets of the Company and such assignee or transferee assumes by operation of law or in writing duly executed by the assignee or transferee all of the liabilities, obligations and duties of the Company, as contained in this Agreement, either contractually or as a matter of law, as if no such assignment or transfer had taken place. Failure of the Company to obtain such express assumption and agreement at or prior to the effectiveness of any such assignment, merger, consolidation, amalgamation or scheme of arrangement shall be a breach of this Agreement and shall entitle the Executive to such compensation and benefits from the Company in the same amount and on the same terms to which the Executive would be entitled hereunder if the Company had terminated Executive's employment without Cause.

6.7 Counterparts. This Agreement may be executed in two or more counterparts (which may be effectively delivered by facsimile or other electronic means), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6.8 Headings. The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement

6.9 Severability. If any term, provision, covenant or restriction of this Agreement, or any part thereof, is held by a court of competent jurisdiction of any foreign, federal, state, county or local government or any other governmental, regulatory or administrative agency or authority to be invalid, void, unenforceable or against public policy for any reason, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

6.10 Section 409A.

(i) If the Company determines in good faith that any provision of this Agreement would cause the Executive to incur an additional tax, penalty, or interest under Section 409A of the Code and the applicable guidance thereunder ("Section 409A"), the Company and the Executive shall use reasonable efforts to reform such provision, if possible, in a mutually agreeable fashion to maintain to the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A or causing the imposition of such additional tax, penalty, or interest under Section 409A. The preceding provision, however, shall not be construed as a guarantee by the Company of any particular tax effect to the Executive under this Agreement.

(ii) "Termination of employment," or words of similar import, as used in this Agreement means, for purposes of any payments under this Agreement that are payments of deferred compensation subject to Section 409A, the Executive's "separation from service" as defined in Section 409A. For purposes of Section 409A, the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

(iii) With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (1) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (2) the reimbursement of an eligible expense shall be made no later than the end of the year after the year in which such expense was incurred; and (3) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

(iv) If a payment obligation under this Agreement or other compensation arrangement arises on account of Executive's separation from service while the Executive is a "specified employee" (as defined under Section 409A and determined in good faith by the Compensation Committee), any payment of "deferred compensation" (as defined under Treasury Regulation Section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation Sections 1.409A-1(b)(3) through (b)(12)) that is scheduled to be paid within six (6) months after such separation from service shall accrue without interest and shall be paid within 15 days after the end of the six-month period beginning on the date of such separation from service or, if earlier, within 15 days after the appointment of the personal representative or executor of the Executive's estate following his death.

6.11 Attorneys Fees. The prevailing party in any litigation between the Company and the Executive concerning the parties' employment relationship and/or any claim arising from this Agreement shall be entitled to an award of the reasonable legal fees and disbursements incurred by such party.

signature page follows

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

The Lovesac Company

By: /s/ Jack A. Krause

Name: Jack A. Krause

Title: President and Chief Operating Officer

EXECUTIVE:

/s/ Shawn Nelson

Name: Shawn Nelson

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT, dated as of October 26, 2017, between The Lovesac Company, a Delaware corporation (the "Company") and Jack A. Krause (the "Executive").

WHEREAS, the Company is in the business of manufacturing, distributing and selling furniture in the retail market;

WHEREAS, the Company wishes to assure itself of the management services of the Executive for the period provided in this Agreement, and the Executive desires to serve in the employ of the Company for such period and upon the terms and conditions hereinafter provided; and

WHEREAS, the Company and Executive desire to memorialize the terms and conditions of the Executive's employment by a written agreement.

IT IS THEREFORE AGREED AS FOLLOWS:

1. Employment Duties and Acceptance.

1.1 Employment by the Company. The Company shall employ the Executive, for itself and its subsidiaries and affiliates, for the Term (as herein defined), to render exclusive and full-time services in the capacity of President and Chief Marketing Officer of the Company.

1.2 Duties/Authority. The Executive shall have such responsibilities, powers and duties substantially consistent with those he currently provides to the Company and customarily assigned to individuals serving in such position at comparable companies or as may be reasonably required by the conduct of the business of the Company. The Executive will report to the Chief Executive Officer of the Company. The Executive shall devote substantially all of Executive's working time and efforts to the business and affairs of the Company. Executive shall not, without the prior approval of the Company, whether for compensation or otherwise, directly or indirectly, alone or as a member of any partnership or other organization, be actively engaged in or concerned with any other business duties or personal pursuits which interfere with the performance of Executive's responsibilities under this Agreement. The Executive's reasonable participation in charitable organizations (subject to prior approval by the Company's board of directors (the "Board")) shall not be considered a violation of this provision.

1.3 Acceptance of Employment by the Executive. The Executive accepts such employment and shall render the services described above. Subject to appointment by the Board as such, the Executive may also serve during all or any part of the Term as an officer of any other entity controlled by the Company, and as a director of the Company and of any other entity controlled by the Company, in each case without any compensation therefor other than that specified in this Agreement.

1.4 Place of Employment. The Executive's principal place of employment shall be at the Company's headquarters, subject to such reasonable travel as the rendering of the services hereunder may require.

2. Term of Employment. The stated term of employment under this Agreement (the "Term") shall commence on the date hereof and shall continue until terminated in accordance with Section 4 of this Agreement.

3. Compensation.

3.1 Salary. As compensation for all services to be rendered pursuant to this Agreement, the Company shall pay the Executive during the Term a salary of \$350,000 per annum (the "Base Salary"), payable not less frequently than monthly, less such deductions as shall be required to be withheld by applicable rules and regulations. The Base Salary shall not preclude raises, stock options, incentive bonus plans and other compensation or incentives, as set forth herein or, should the Board, in its sole and absolute discretion, so determine to provide such additional compensation or incentives to the Executive. The Executive shall recommend a Base Salary amount to the Board (or a compensation committee thereof) each year, and the Board (or a compensation committee thereof) shall review the Executive's compensation and salary at least once per year (it being understood that the Board is under no obligation to increase the Executive's Base Salary).

3.2 Annual Bonus.

(a) The Company shall pay the Executive during the Term an annual bonus of up to 50% (except as otherwise provided below in this paragraph) of the Base Salary ("Annual Bonus"), provided that Executive achieves performance targets determined by the Board (or a compensation committee thereof). In the event that the Company achieves at least 90% of its annual EBITDA target for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 45% of the Base Salary. In the event that the Company achieves at least 110% of its annual EBITDA target for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 60% of the Base Salary. In the event that the Company achieves at least 120% of its annual EBITDA target for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 75% of the Base Salary.

(b) The Executive must remain employed through the bonus payment date to receive any Annual Bonus. The Annual Bonus will be determined by the Board after receipt of the Company's audited financials for the applicable year.

3.3 Incentive Compensation.

(a) The Executive shall be awarded 262,500 restricted stock units ("RSUs") on or about the date hereof, the terms of which shall be governed by the Company's 2017 Equity Incentive Plan and the applicable grant agreement. Half of such RSUs shall be subject to time-based vesting and half of such RSUs shall be subject to performance vesting.

3.4 Participation in Employee Benefit Plans. The Executive shall be permitted during the Term, if and to the extent eligible, to participate on the same terms in any group life, hospitalization or disability insurance plan, health program, retirement savings plan or similar benefit plan of the Company that is available generally to other senior executives and managers of the Company and its subsidiaries. The Board may determine to offer the Executive participation in stock, phantom stock or profit based bonus or similar plans, to the extent applicable, and may provide the Executive with additional fringe benefits.

3.5 Expenses. Subject to policies applicable to senior executives of the Company generally, as may from time to time be established by the Board, the Company shall pay or reimburse the Executive for reasonable travel, entertainment and other business expenses actually incurred or paid by the Executive during the Term in the performance of the Executive's services under this Agreement, and which expenses are consistent with the Company's policies in effect from time to time with respect to such travel, entertainment and other business expenses, upon presentation of expense statements or vouchers or such other supporting information as it may require.

3.6 Vacation. The Executive shall be entitled to four (4) weeks of paid vacation annually, on the terms set forth in the Company's vacation policy.

3.7 Signing Bonus. The Executive shall receive a signing bonus, payable on the first regular payroll date that is at least 5 days following the date hereof, in the amount of \$50,000, subject to tax withholding.

3.8 IPO Allocation. In the event that (a) the Company consummates an initial public offering of its common stock (an "IPO") on or prior to March 31, 2019, and (b) the Executive remains employed by the Company at the time of such IPO, the Company shall use its commercially reasonable efforts to cause the underwriter(s) in such IPO to allocate a number of IPO shares equal to (i) \$50,000 *divided by* the public offering price per share in the IPO or (ii) such lesser number of IPO shares as the Executive may elect upon reasonable prior notice to the Company. The purchase price per share for such IPO shares allocated to the Executive shall equal the public offering price per share in the IPO, and the closing of any purchase by the Executive of IPO shares shall occur concurrently with the closing of the IPO.

4. Termination.

4.1 Termination upon Death. If the Executive dies during the Term, this Agreement shall terminate.

4.2 Termination upon Disability. If during the Term the Executive becomes physically or mentally disabled, whether totally or partially, so that the Executive is unable substantially to perform Executive's services hereunder (as determined, in good faith, by a physician selected by the Board and reasonably acceptable to the Executive or the Executive's legal representative, which agreement as to acceptability will not be unreasonably delayed or withheld) for (a) a period of three consecutive months, or (b) for shorter periods aggregating three months during any six month period, the Company may at any time after the last day of the three consecutive months of disability or the day on which the shorter periods of disability equal an aggregate of three months, by written notice to the Executive, terminate the Term of the Executive's employment hereunder. Nothing in this Section 4.2 shall be deemed to extend the Term.

4.3 Termination for Cause. The Company may at any time by written notice to the Executive terminate the Term of the Executive's employment hereunder for Cause and the Executive shall have no right to receive any compensation or benefit hereunder on and after the effective date of such notice except for the payment or provision, as applicable, of (i) the portion of the Base Salary for periods prior to the effective date of termination accrued but unpaid (if any), (ii) all unreimbursed expenses for which Executive is otherwise entitled to reimbursement pursuant to Section 3.5 (if any), and (iii) other payments, entitlements or benefits (if any), in accordance with terms of the applicable plans, programs, arrangements or other agreements of the Company or any affiliate thereof (other than any severance plan or policy) as to which the Executive held rights to such payments, entitlements or benefits, whether as a participant, beneficiary or otherwise, on the date of termination ("Other Benefits"). For purposes hereof, the term "Cause" shall mean; (a) conviction of the Executive for any crime constituting a felony in the jurisdiction in which committed, or for any other criminal act against the Company or its subsidiaries involving dishonesty or willful misconduct intended to injure the Company or its subsidiaries (whether or not a felony and whether or not criminal proceedings are initiated); (b) failure or refusal of the Executive in any material respect to perform the duties of Executive's employment or to follow the lawful and proper directives of the Company's Chief Executive Officer, *provided* such duties or directives are consistent with this Agreement and such failure or refusal continues uncured for a period of thirty (30) days after written notice thereof specifying the nature of such failure or refusal and requesting that it be cured is given by the Company to the Executive; (c) breach by the Executive of the provisions of Sections 5.1, 5.2, 5.3, 5.4, or 5.5; or (d) any willful or intentional act of the Executive committed for the purpose, or having the reasonably foreseeable effect, of injuring the Company, its subsidiaries or their business or reputation or of improperly or unlawfully converting for the Executive's own personal benefit any property of the Company or the subsidiaries.

4.4 Termination with Good Reason or without Cause. During the Term, (1) the Executive may terminate Executive's employment with the Company at any time with Good Reason (as defined below), and (2) the Company may terminate the Executive's employment without Cause, upon ten (10) days' written notice to the other party thereto. In either such case, *provided* the Executive has not breached and does not breach the provisions of Sections 5.1, 5.2, 5.3, 5.4, or 5.5 and the Executive has entered into and not revoked a general release of claims without additional post-termination restrictions included therein in form reasonably satisfactory to the Company so that it becomes effective within sixty (60) days after Executive's termination of employment, the Executive shall continue to receive for a period of 12 months from the Executive's date of termination (i) Executive's Base Salary as in effect on the date of such notice, payable in accordance with the Company's payroll schedule, (ii) coverage in the Company's group health plan under COBRA, if elected, at the subsidized employee rate, (iii) the payment or provision of Other Benefits, and (iv) coverage under the term life insurance policy (or be reimbursed for the premiums therefor) and the Company's directors' and officers' liability indemnification and insurance coverage. If the severance benefits hereunder are considered "deferred compensation" subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and the period to consider and revoke the release spans two tax years, the severance will begin to be paid in the second tax year even if the release becomes effective in the earlier tax year. For purposes of this Agreement, "Good Reason" means (a) the assignment to the Executive of duties and responsibilities not commensurate with Executive's position with the Company, (b) the failure of the Company to provide compensation and benefits to the Executive as required herein, (c) a reduction in the Executive's Base Salary without Executive's consent, or (d) the failure of the Company to adhere in any substantial manner to any of its other covenants herein, provided that any of the foregoing continues for a period of twenty (20) days after written notice thereof, specifying the nature thereof and requesting that it be cured, is given by the Executive to the Company. No severance will be paid for a "Good Reason" termination unless Executive terminates employment within 60 days after the first occurrence of the condition and the Company has not cured such condition within 30 days after written notice thereof (which notice shall state that such condition constitutes Good Reason) from the Executive.

4.5 Voluntary Termination. The Executive may terminate Executive's employment with the Company at any time in Executive's sole and absolute discretion upon giving at least sixty (60) days advance written notice to such effect to the Company (a "Voluntary Termination"). In the event the Executive's employment is terminated during the Term by the Executive's Voluntary Termination (other than termination by the Executive for Good Reason), then the Executive shall be entitled only to receive Executive's Base Salary payable through the date of such Voluntary Termination.

4.6 Compensation Upon Disability. In the event of termination of this Agreement by reason of disability as set forth in Section 4.2 hereof, the Company shall pay to the Executive (a) the Executive's Base Salary on the date of termination for four (4) months, payable in accordance with the provisions of Section 3.1 hereof and (b) all benefits from the Company and its employee benefit plans earned and accrued as of such termination date.

5. Confidentiality, Intellectual Property, Noncompete, Nonsolicitation, and Non-Disparagement

5.1 Nondisclosure and Nonuse of Confidential Information. The Executive will not disclose or use at any time during or after the Term any Confidential Information (as defined below) of which the Executive is or becomes aware, whether or not such information is developed by him, except to the extent that such disclosure or use is directly related to and required by the Executive's performance of duties assigned to the Executive pursuant to this Agreement. Under all circumstances and at all times, the Executive will take all appropriate steps to safeguard Confidential Information in Executive's possession and to protect it against disclosure, misuse, espionage, loss and theft. For purposes hereof, "Confidential Information" means information that is not generally known to the public and that was or is used, developed or obtained by the Company or its subsidiaries in connection with their business. It shall not include information (a) required to be disclosed by court or administrative order, (b) lawfully obtainable from other sources or which is in the public domain through no fault of the Executive; or (c) the disclosure of which is consented to in writing by the Company.

5.2 Ownership of Intellectual Property. In the event that the Executive as part of Executive's activities on behalf of the Company generates, authors or contributes to any invention, design, new development, device, product, method of process (whether or not patentable or reduced to practice or comprising Confidential Information), any copyrightable work (whether or not comprising Confidential Information) or any other form of Confidential Information relating directly or indirectly to the business of the Company as now or hereinafter conducted (collectively, "Intellectual Property"), the Executive acknowledges that such Intellectual Property is the sole and exclusive property of the Company and hereby assigns all right title and interest in and to such Intellectual Property to the Company. Any copyrightable work prepared in whole or in part by the Executive during the Term will be deemed "a work made for hire" under Section 201(b) of the Copyright Act of 1976, as amended, and the Company will own all of the rights comprised in the copyright therein. The Executive will promptly and fully disclose all Intellectual Property and will cooperate with the Company to protect the Company's interests in and rights to such Intellectual Property (including providing reasonable assistance in securing patent protection and copyright registrations and executing all documents as reasonably requested by the Company, whether such requests occur prior to or after termination of Executive's employment hereunder).

5.3 Delivery of Materials upon Termination of Employment. As requested by the Company, from time to time and upon the termination of the Executive's employment with the Company for any reason, the Executive will promptly deliver to the Company all copies and embodiments, in whatever form or medium, of all Confidential Information or Intellectual Property in the Executive's possession or within Executive's control (including written records, notes, photographs, manuals, notebooks, documentation, program listings, flow charts, magnetic media, disks, diskettes, tapes and all other materials containing any Confidential Information or Intellectual Property) irrespective of the location or form of such material and, if requested by the Company, will provide the Company with written confirmation that all such materials have been delivered to the Company. Executive shall be permitted to retain a copy of this Agreement and other documents concerning Executive's entitlement to compensation to enforce the terms of this Agreement or any other rights afforded by law to Executive.

5.4 Noncompetition. The Executive acknowledges that during Executive's employment with the Company, he will become familiar with trade secrets and other Confidential Information concerning the Company, its subsidiaries and their respective predecessors, and that Executive's services will be of special, unique and extraordinary value to the Company. In addition, the Executive hereby agrees that at any time during the Term, and after termination of employment, for the duration of the Noncompetition Period (as defined below), the Executive will not directly or indirectly own, manage, control, participate in, consult with, render services for or in any manner engage in any business competing with the businesses of the Company or its subsidiaries as such businesses exist or are in process or being planned as of the termination of employment, within any county in which the Company or its subsidiaries have operating locations, leases, options to lease or acquire property, or definitive plans known to the Executive at the time of termination to engage in such businesses. The "Noncompetition Period" shall be 12 months following the termination of employment. It shall not be considered a violation of this Section 5.4 for the Executive to be a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

5.5 Nonsolicitation. The Executive hereby agrees that (a) during the Term and for a period of 12 months after the termination of employment (the “Nonsolicitation Period”) the Executive will not, directly or indirectly through another entity, actively induce or attempt to induce any employee of the Company or its subsidiaries to leave the employ of the Company or its subsidiaries, or in any way interfere with the relationship between the Company or its subsidiaries and any employee thereof or otherwise employ or receive the services of any individual who was an employee of the Company or its subsidiaries at any time during such Nonsolicitation Period or within the three-month period prior thereto and (b) during the Nonsolicitation Period, the Executive will not induce or attempt to induce any customer, supplier, client, insurer, reinsurer, broker, licensee or other business relation of the Company or its subsidiaries to cease doing business with the Company or its subsidiaries.

5.6 Enforcement of Noncompete and Nonsolicitation. If, at the enforcement of Sections 5.4 or 5.5, a court holds that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope or area reasonable under such circumstances will be substituted for the stated duration, scope or area and that the court will be permitted to revise the restrictions contained in Sections 5.4 or 5.5 to cover the maximum duration, scope and area permitted by law.

5.7 Equitable Relief. The Executive acknowledges that (a) the covenants contained herein are reasonable, (b) the Executive’s services are unique, and (c) a breach or threatened breach by him of any of Executive’s covenants and agreements with the Company contained in Sections 5.1, 5.2, 5.3, 5.4, or 5.5 could cause irreparable harm to the Company for which they would have no adequate remedy at law. Accordingly, and in addition to any remedies which the Company may have at law, in the event of an actual or threatened breach by the Executive of Executive’s covenants and agreements contained in Sections 5.1, 5.2, 5.3, 5.4, or 5.5, the Company shall have the absolute right to apply to any court of competent jurisdiction for such injunctive or other equitable relief as such court may deem necessary or appropriate in the circumstances.

5.8 Non-Disparagement. During the time that Executive is employed by the Company and thereafter, without limitation of time, Executive shall not at any time make, publish or communicate to any person or entity, including, but not limited to, the customers or suppliers of the Company or any of its affiliates, any Disparaging (as defined below) remarks, comments or statements concerning Company, any other equity holders of the Company, or any affiliates of any of the foregoing. The Company shall instruct its Directors and Officers not to make any Disparaging comments or statements concerning Executive. “Disparaging” remarks, comments or statements are those that impugn the character, honesty, integrity, morality, business acumen or abilities of the individual or entity being disparaged.

5.9 Nothing in this agreement prohibits or restricts the parties from contacting, assisting, responding to, providing truthful testimony to or filing charges with any regulatory organization, authority or agency (e.g., the EEOC, IRS, SEC or FINRA), or from complying with any court or administrative order or subpoena, or from providing any other disclosure required by law.

6. Other Provisions.

6.1 Notices. Any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally, via facsimile or other electronic means, sent by overnight delivery service with delivery signature required, or sent with return receipt requested by certified, registered, or express mail, postage prepaid to the parties at the following addresses or at such other addresses as shall be specified by the parties by like notice, and shall be deemed given when so delivered personally, upon confirmation of receipt when delivered via facsimile or other electronic means, or if mailed, two days after the date of mailing, as follows:

if to the Company, at:

The Lovesac Company
2 Landmark Square, Suite 300
Stamford, CT 06901
Attention: Chairman of the Board of Directors

Copy to:

Mistral Capital Management, LLC
650 Fifth Ave., 31st Floor
New York, New York, 10019
Attention: William Phoenix

and

Satori Capital
2501 N. Harwood St., 20th Floor
Dallas, TX 75201
Attention: John Grafer

if to the Executive, to the Executive at:

Jack A. Krause
8 Landing Road
Huntington, NY 11743

Each of the foregoing shall be entitled to specify a different address by giving notice as aforesaid to each of the other persons or entities listed above.

6.2 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement among the parties and supersedes and nullifies any prior understandings, agreements or representations by or among the parties, written or oral, that may have related in any way to the subject matter hereof including, without limitation, any prior employment agreement or separation agreement.

6.3 Waivers and Amendments. This Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions hereof may be waived, only by a written instrument signed by the parties making specific reference to this Agreement, or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

6.4 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with and subject to, the laws of the State of New York applicable to agreements made and to be performed entirely within such state.

6.5 Acknowledgments. The Executive acknowledges that the Executive has read this entire Agreement, has had the opportunity to consult with an attorney, and fully understands the terms of this Agreement. The Executive is satisfied with the terms of this Agreement and agrees that its terms are binding upon the Executive and the Executive's heirs, assigns, executors, administrators, and legal representatives.

6.6 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs and permitted assigns. No rights or obligations of the Executive under this Agreement may be assigned or transferred by the Executive other than Executive's right to compensation and benefits hereunder, which may be transferred by will or operation of law subject to the limitations of this Agreement. No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company except that such rights or obligations may be assigned or transferred pursuant to a merger or consolidation or amalgamation or scheme of arrangement in which the Company is not the continuing entity, or the sale or liquidation of all or substantially all of the assets of the Company, provided that the assignee or transferee is the successor to all or substantially all of the assets of the Company and such assignee or transferee assumes by operation of law or in writing duly executed by the assignee or transferee all of the liabilities, obligations and duties of the Company, as contained in this Agreement, either contractually or as a matter of law, as if no such assignment or transfer had taken place. Failure of the Company to obtain such express assumption and agreement at or prior to the effectiveness of any such assignment, merger, consolidation, amalgamation or scheme of arrangement shall be a breach of this Agreement and shall entitle the Executive to such compensation and benefits from the Company in the same amount and on the same terms to which the Executive would be entitled hereunder if the Company had terminated Executive's employment without Cause.

6.7 Counterparts. This Agreement may be executed in two or more counterparts (which may be effectively delivered by facsimile or other electronic means), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6.8 Headings. The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement

6.9 Severability. If any term, provision, covenant or restriction of this Agreement, or any part thereof, is held by a court of competent jurisdiction of any foreign, federal, state, county or local government or any other governmental, regulatory or administrative agency or authority to be invalid, void, unenforceable or against public policy for any reason, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

6.10 Section 409A.

(i) If the Company determines in good faith that any provision of this Agreement would cause the Executive to incur an additional tax, penalty, or interest under Section 409A of the Code and the applicable guidance thereunder ("Section 409A"), the Company and the Executive shall use reasonable efforts to reform such provision, if possible, in a mutually agreeable fashion to maintain to the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A or causing the imposition of such additional tax, penalty, or interest under Section 409A. The preceding provision, however, shall not be construed as a guarantee by the Company of any particular tax effect to the Executive under this Agreement.

(ii) "Termination of employment," or words of similar import, as used in this Agreement means, for purposes of any payments under this Agreement that are payments of deferred compensation subject to Section 409A, the Executive's "separation from service" as defined in Section 409A. For purposes of Section 409A, the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

(iii) With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (1) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (2) the reimbursement of an eligible expense shall be made no later than the end of the year after the year in which such expense was incurred; and (3) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

(iv) If a payment obligation under this Agreement or other compensation arrangement arises on account of Executive's separation from service while the Executive is a "specified employee" (as defined under Section 409A and determined in good faith by the Compensation Committee), any payment of "deferred compensation" (as defined under Treasury Regulation Section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation Sections 1.409A-1(b)(3) through (b)(12)) that is scheduled to be paid within six (6) months after such separation from service shall accrue without interest and shall be paid within 15 days after the end of the six-month period beginning on the date of such separation from service or, if earlier, within 15 days after the appointment of the personal representative or executor of the Executive's estate following his death.

6.11 Attorneys Fees. The prevailing party in any litigation between the Company and the Executive concerning the parties' employment relationship and/or any claim arising from this Agreement shall be entitled to an award of the reasonable legal fees and disbursements incurred by such party.

signature page follows

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

The Lovesac Company

By: /s/ Shawn Nelson

Name: Shawn Nelson

Title: Chief Executive Officer

EXECUTIVE:

/s/ Jack A. Krause

Name: Jack A. Krause

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT, dated as of October 26, 2017, between The Lovesac Company, a Delaware corporation (the "Company") and Donna Dellomo (the "Executive").

WHEREAS, the Company is in the business of manufacturing, distributing and selling furniture in the retail market;

WHEREAS, the Company wishes to assure itself of the management services of the Executive for the period provided in this Agreement, and the Executive desires to serve in the employ of the Company for such period and upon the terms and conditions hereinafter provided; and

WHEREAS, the Company and Executive desire to memorialize the terms and conditions of the Executive's employment by a written agreement.

IT IS THEREFORE AGREED AS FOLLOWS:

1. Employment Duties and Acceptance.

1.1 Employment by the Company. The Company shall employ the Executive, for itself and its subsidiaries and affiliates, for the Term (as herein defined), to render exclusive and full-time services in the capacity of Chief Financial Officer of the Company.

1.2 Duties/Authority. The Executive shall have such responsibilities, powers and duties substantially consistent with those he currently provides to the Company and customarily assigned to individuals serving in such position at comparable companies or as may be reasonably required by the conduct of the business of the Company. The Executive will report to the President of the Company. The Executive shall devote substantially all of Executive's working time and efforts to the business and affairs of the Company. Executive shall not, without the prior approval of the Company, whether for compensation or otherwise, directly or indirectly, alone or as a member of any partnership or other organization, be actively engaged in or concerned with any other business duties or personal pursuits which interfere with the performance of Executive's responsibilities under this Agreement. The Executive's reasonable participation in charitable organizations (subject to prior approval by the Company's board of directors (the "Board")) shall not be considered a violation of this provision.

1.3 Acceptance of Employment by the Executive. The Executive accepts such employment and shall render the services described above. Subject to appointment by the Board as such, the Executive may also serve during all or any part of the Term as an officer of any other entity controlled by the Company, and as a director of the Company and of any other entity controlled by the Company, in each case without any compensation therefor other than that specified in this Agreement.

1.4 Place of Employment. The Executive's principal place of employment shall be at the Company's headquarters, subject to such reasonable travel as the rendering of the services hereunder may require.

2. Term of Employment. The stated term of employment under this Agreement (the "Term") shall commence on the date hereof and shall continue until terminated in accordance with Section 4 of this Agreement.

3. Compensation.

3.1 Salary. As compensation for all services to be rendered pursuant to this Agreement, the Company shall pay the Executive during the Term a salary of \$325,000 per annum (the "Base Salary"), payable not less frequently than monthly, less such deductions as shall be required to be withheld by applicable rules and regulations. The Base Salary shall not preclude raises, stock options, incentive bonus plans and other compensation or incentives, as set forth herein or, should the Board, in its sole and absolute discretion, so determine to provide such additional compensation or incentives to the Executive. The Executive shall recommend a Base Salary amount to the Board (or a compensation committee thereof) each year, and the Board (or a compensation committee thereof) shall review the Executive's compensation and salary at least once per year (it being understood that the Board is under no obligation to increase the Executive's Base Salary).

3.2 Annual Bonus.

(a) The Company shall pay the Executive during the Term an annual bonus of up to 40% (except as otherwise provided below in this paragraph) of the Base Salary ("Annual Bonus"), provided that Executive achieves performance targets determined by the Board (or a compensation committee thereof). In the event that the Company achieves at least 90% of its annual EBITDA target for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 35% of the Base Salary. In the event that the Company achieves at least 110% of its annual EBITDA target for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 45% of the Base Salary. In the event that the Company achieves at least 120% of its annual EBITDA target for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 55% of the Base Salary.

(b) The Executive must remain employed through the bonus payment date to receive any Annual Bonus. The Annual Bonus will be determined by the Board after receipt of the Company's audited financials for the applicable year.

3.3 Incentive Compensation.

(a) The Executive shall be awarded 120,000 restricted stock units ("RSUs") on or about the date hereof, the terms of which shall be governed by the Company's 2017 Equity Incentive Plan and the applicable grant agreement. Half of such RSUs shall be subject to time-based vesting and half of such RSUs shall be subject to performance vesting.

3.4 Participation in Employee Benefit Plans. The Executive shall be permitted during the Term, if and to the extent eligible, to participate on the same terms in any group life, hospitalization or disability insurance plan, health program, retirement savings plan or similar benefit plan of the Company that is available generally to other senior executives and managers of the Company and its subsidiaries. The Board may determine to offer the Executive participation in stock, phantom stock or profit based bonus or similar plans, to the extent applicable, and may provide the Executive with additional fringe benefits.

3.5 Expenses. Subject to policies applicable to senior executives of the Company generally, as may from time to time be established by the Board, the Company shall pay or reimburse the Executive for reasonable travel, entertainment and other business expenses actually incurred or paid by the Executive during the Term in the performance of the Executive's services under this Agreement, and which expenses are consistent with the Company's policies in effect from time to time with respect to such travel, entertainment and other business expenses, upon presentation of expense statements or vouchers or such other supporting information as it may require.

3.6 Vacation. The Executive shall be entitled to four (4) weeks of paid vacation annually, on the terms set forth in the Company's vacation policy.

4. Termination.

4.1 Termination upon Death. If the Executive dies during the Term, this Agreement shall terminate.

4.2 Termination upon Disability. If during the Term the Executive becomes physically or mentally disabled, whether totally or partially, so that the Executive is unable substantially to perform Executive's services hereunder (as determined, in good faith, by a physician selected by the Board and reasonably acceptable to the Executive or the Executive's legal representative, which agreement as to acceptability will not be unreasonably delayed or withheld) for (a) a period of three consecutive months, or (b) for shorter periods aggregating three months during any six month period, the Company may at any time after the last day of the three consecutive months of disability or the day on which the shorter periods of disability equal an aggregate of three months, by written notice to the Executive, terminate the Term of the Executive's employment hereunder. Nothing in this Section 4.2 shall be deemed to extend the Term.

4.3 Termination for Cause. The Company may at any time by written notice to the Executive terminate the Term of the Executive's employment hereunder for Cause and the Executive shall have no right to receive any compensation or benefit hereunder on and after the effective date of such notice except for the payment or provision, as applicable, of (i) the portion of the Base Salary for periods prior to the effective date of termination accrued but unpaid (if any), (ii) all unreimbursed expenses for which Executive is otherwise entitled to reimbursement pursuant to Section 3.5 (if any), and (iii) other payments, entitlements or benefits (if any), in accordance with terms of the applicable plans, programs, arrangements or other agreements of the Company or any affiliate thereof (other than any severance plan or policy) as to which the Executive held rights to such payments, entitlements or benefits, whether as a participant, beneficiary or otherwise, on the date of termination ("Other Benefits"). For purposes hereof, the term "Cause" shall mean; (a) conviction of the Executive for any crime constituting a felony in the jurisdiction in which committed, or for any other criminal act against the Company or its subsidiaries involving dishonesty or willful misconduct intended to injure the Company or its subsidiaries (whether or not a felony and whether or not criminal proceedings are initiated); (b) failure or refusal of the Executive in any material respect to perform the duties of Executive's employment or to follow the lawful and proper directives of the Company's Chief Executive Officer, *provided* such duties or directives are consistent with this Agreement and such failure or refusal continues uncured for a period of thirty (30) days after written notice thereof specifying the nature of such failure or refusal and requesting that it be cured is given by the Company to the Executive; (c) breach by the Executive of the provisions of Sections 5.1, 5.2, 5.3, 5.4, or 5.5; or (d) any willful or intentional act of the Executive committed for the purpose, or having the reasonably foreseeable effect, of injuring the Company, its subsidiaries or their business or reputation or of improperly or unlawfully converting for the Executive's own personal benefit any property of the Company or the subsidiaries.

4.4 Termination with Good Reason or without Cause. During the Term, (1) the Executive may terminate Executive's employment with the Company at any time with Good Reason (as defined below), and (2) the Company may terminate the Executive's employment without Cause, upon ten (10) days' written notice to the other party thereto. In either such case, *provided* the Executive has not breached and does not breach the provisions of Sections 5.1, 5.2, 5.3, 5.4, or 5.5 and the Executive has entered into and not revoked a general release of claims without additional post-termination restrictions included therein in form reasonably satisfactory to the Company so that it becomes effective within sixty (60) days after Executive's termination of employment, the Executive shall continue to receive for a period of 12 months from the Executive's date of termination (i) Executive's Base Salary as in effect on the date of such notice, payable in accordance with the Company's payroll schedule, (ii) coverage in the Company's group health plan under COBRA, if elected, at the subsidized employee rate, (iii) the payment or provision of Other Benefits, and (iv) coverage under the term life insurance policy (or be reimbursed for the premiums therefor) and the Company's directors' and officers' liability indemnification and insurance coverage. If the severance benefits hereunder are considered "deferred compensation" subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and the period to consider and revoke the release spans two tax years, the severance will begin to be paid in the second tax year even if the release becomes effective in the earlier tax year. For purposes of this Agreement, "Good Reason" means (a) the assignment to the Executive of duties and responsibilities not commensurate with Executive's position with the Company, (b) the failure of the Company to provide compensation and benefits to the Executive as required herein, (c) a reduction in the Executive's Base Salary without Executive's consent, or (d) the failure of the Company to adhere in any substantial manner to any of its other covenants herein, provided that any of the foregoing continues for a period of twenty (20) days after written notice thereof, specifying the nature thereof and requesting that it be cured, is given by the Executive to the Company. No severance will be paid for a "Good Reason" termination unless Executive terminates employment within 60 days after the first occurrence of the condition and the Company has not cured such condition within 30 days after written notice thereof (which notice shall state that such condition constitutes Good Reason) from the Executive.

4.5 Voluntary Termination. The Executive may terminate Executive's employment with the Company at any time in Executive's sole and absolute discretion upon giving at least sixty (60) days advance written notice to such effect to the Company (a "Voluntary Termination"). In the event the Executive's employment is terminated during the Term by the Executive's Voluntary Termination (other than termination by the Executive for Good Reason), then the Executive shall be entitled only to receive Executive's Base Salary payable through the date of such Voluntary Termination.

4.6 Compensation Upon Disability. In the event of termination of this Agreement by reason of disability as set forth in Section 4.2 hereof, the Company shall pay to the Executive (a) the Executive's Base Salary on the date of termination for four (4) months, payable in accordance with the provisions of Section 3.1 hereof and (b) all benefits from the Company and its employee benefit plans earned and accrued as of such termination date.

5. Confidentiality, Intellectual Property, Noncompete, Nonsolicitation, and Non-Disparagement

5.1 Nondisclosure and Nonuse of Confidential Information. The Executive will not disclose or use at any time during or after the Term any Confidential Information (as defined below) of which the Executive is or becomes aware, whether or not such information is developed by him, except to the extent that such disclosure or use is directly related to and required by the Executive's performance of duties assigned to the Executive pursuant to this Agreement. Under all circumstances and at all times, the Executive will take all appropriate steps to safeguard Confidential Information in Executive's possession and to protect it against disclosure, misuse, espionage, loss and theft. For purposes hereof, "Confidential Information" means information that is not generally known to the public and that was or is used, developed or obtained by the Company or its subsidiaries in connection with their business. It shall not include information (a) required to be disclosed by court or administrative order, (b) lawfully obtainable from other sources or which is in the public domain through no fault of the Executive; or (c) the disclosure of which is consented to in writing by the Company.

5.2 Ownership of Intellectual Property. In the event that the Executive as part of Executive's activities on behalf of the Company generates, authors or contributes to any invention, design, new development, device, product, method of process (whether or not patentable or reduced to practice or comprising Confidential Information), any copyrightable work (whether or not comprising Confidential Information) or any other form of Confidential Information relating directly or indirectly to the business of the Company as now or hereinafter conducted (collectively, "Intellectual Property"), the Executive acknowledges that such Intellectual Property is the sole and exclusive property of the Company and hereby assigns all right title and interest in and to such Intellectual Property to the Company. Any copyrightable work prepared in whole or in part by the Executive during the Term will be deemed "a work made for hire" under Section 201(b) of the Copyright Act of 1976, as amended, and the Company will own all of the rights comprised in the copyright therein. The Executive will promptly and fully disclose all Intellectual Property and will cooperate with the Company to protect the Company' interests in and rights to such Intellectual Property (including providing reasonable assistance in securing patent protection and copyright registrations and executing all documents as reasonably requested by the Company, whether such requests occur prior to or after termination of Executive's employment hereunder).

5.3 Delivery of Materials upon Termination of Employment. As requested by the Company, from time to time and upon the termination of the Executive's employment with the Company for any reason, the Executive will promptly deliver to the Company all copies and embodiments, in whatever form or medium, of all Confidential Information or Intellectual Property in the Executive's possession or within Executive's control (including written records, notes, photographs, manuals, notebooks, documentation, program listings, flow charts, magnetic media, disks, diskettes, tapes and all other materials containing any Confidential Information or Intellectual Property) irrespective of the location or form of such material and, if requested by the Company, will provide the Company with written confirmation that all such materials have been delivered to the Company. Executive shall be permitted to retain a copy of this Agreement and other documents concerning Executive's entitlement to compensation to enforce the terms of this Agreement or any other rights afforded by law to Executive.

5.4 Noncompetition. The Executive acknowledges that during Executive's employment with the Company, he will become familiar with trade secrets and other Confidential Information concerning the Company, its subsidiaries and their respective predecessors, and that Executive's services will be of special, unique and extraordinary value to the Company. In addition, the Executive hereby agrees that at any time during the Term, and after termination of employment, for the duration of the Noncompetition Period (as defined below), the Executive will not directly or indirectly own, manage, control, participate in, consult with, render services for or in any manner engage in any business competing with the businesses of the Company or its subsidiaries as such businesses exist or are in process or being planned as of the termination of employment, within any county in which the Company or its subsidiaries have operating locations, leases, options to lease or acquire property, or definitive plans known to the Executive at the time of termination to engage in such businesses. The "Noncompetition Period" shall be 12 months following the termination of employment. It shall not be considered a violation of this Section 5.4 for the Executive to be a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

5.5 Nonsolicitation. The Executive hereby agrees that (a) during the Term and for a period of 12 months after the termination of employment (the "Nonsolicitation Period") the Executive will not, directly or indirectly through another entity, actively induce or attempt to induce any employee of the Company or its subsidiaries to leave the employ of the Company or its subsidiaries, or in any way interfere with the relationship between the Company or its subsidiaries and any employee thereof or otherwise employ or receive the services of any individual who was an employee of the Company or its subsidiaries at any time during such Nonsolicitation Period or within the three-month period prior thereto and (b) during the Nonsolicitation Period, the Executive will not induce or attempt to induce any customer, supplier, client, insurer, reinsurer, broker, licensee or other business relation of the Company or its subsidiaries to cease doing business with the Company or its subsidiaries.

5.6 Enforcement of Noncompete and Nonsolicitation. If, at the enforcement of Sections 5.4 or 5.5, a court holds that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope or area reasonable under such circumstances will be substituted for the stated duration, scope or area and that the court will be permitted to revise the restrictions contained in Sections 5.4 or 5.5 to cover the maximum duration, scope and area permitted by law.

5.7 Equitable Relief. The Executive acknowledges that (a) the covenants contained herein are reasonable, (b) the Executive's services are unique, and (c) a breach or threatened breach by him of any of Executive's covenants and agreements with the Company contained in Sections 5.1, 5.2, 5.3, 5.4, or 5.5 could cause irreparable harm to the Company for which they would have no adequate remedy at law. Accordingly, and in addition to any remedies which the Company may have at law, in the event of an actual or threatened breach by the Executive of Executive's covenants and agreements contained in Sections 5.1, 5.2, 5.3, 5.4, or 5.5, the Company shall have the absolute right to apply to any court of competent jurisdiction for such injunctive or other equitable relief as such court may deem necessary or appropriate in the circumstances.

5.8 Non-Disparagement. During the time that Executive is employed by the Company and thereafter, without limitation of time, Executive shall not at any time make, publish or communicate to any person or entity, including, but not limited to, the customers or suppliers of the Company or any of its affiliates, any Disparaging (as defined below) remarks, comments or statements concerning Company, any other equity holders of the Company, or any affiliates of any of the foregoing. The Company shall instruct its Directors and Officers not to make any Disparaging comments or statements concerning Executive. "Disparaging" remarks, comments or statements are those that impugn the character, honesty, integrity, morality, business acumen or abilities of the individual or entity being disparaged.

5.9 Nothing in this agreement prohibits or restricts the parties from contacting, assisting, responding to, providing truthful testimony to or filing charges with any regulatory organization, authority or agency (e.g., the EEOC, IRS, SEC or FINRA), or from complying with any court or administrative order or subpoena, or from providing any other disclosure required by law.

6. Other Provisions.

6.1 Notices. Any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally, via facsimile or other electronic means, sent by overnight delivery service with delivery signature required, or sent with return receipt requested by certified, registered, or express mail, postage prepaid to the parties at the following addresses or at such other addresses as shall be specified by the parties by like notice, and shall be deemed given when so delivered personally, upon confirmation of receipt when delivered via facsimile or other electronic means, or if mailed, two days after the date of mailing, as follows:

if to the Company, at:

The Lovesac Company
2 Landmark Square, Suite 300
Stamford, CT 06901
Attention: Chairman of the Board of Directors

Copy to:

Mistral Capital Management, LLC
650 Fifth Ave., 31st Floor
New York, New York, 10019
Attention: William Phoenix

and

Satori Capital
2501 N. Harwood St., 20th Floor
Dallas, TX 75201
Attention: John Grafer

if to the Executive, to the Executive at:

Donna Dellomo

Each of the foregoing shall be entitled to specify a different address by giving notice as aforesaid to each of the other persons or entities listed above.

6.2 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement among the parties and supersedes and nullifies any prior understandings, agreements or representations by or among the parties, written or oral, that may have related in any way to the subject matter hereof including, without limitation, any prior employment agreement or separation agreement.

6.3 Waivers and Amendments. This Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions hereof may be waived, only by a written instrument signed by the parties making specific reference to this Agreement, or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

6.4 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with and subject to, the laws of the State of New York applicable to agreements made and to be performed entirely within such state.

6.5 Acknowledgments. The Executive acknowledges that the Executive has read this entire Agreement, has had the opportunity to consult with an attorney, and fully understands the terms of this Agreement. The Executive is satisfied with the terms of this Agreement and agrees that its terms are binding upon the Executive and the Executive's heirs, assigns, executors, administrators, and legal representatives.

6.6 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs and permitted assigns. No rights or obligations of the Executive under this Agreement may be assigned or transferred by the Executive other than Executive's right to compensation and benefits hereunder, which may be transferred by will or operation of law subject to the limitations of this Agreement. No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company except that such rights or obligations may be assigned or transferred pursuant to a merger or consolidation or amalgamation or scheme of arrangement in which the Company is not the continuing entity, or the sale or liquidation of all or substantially all of the assets of the Company, provided that the assignee or transferee is the successor to all or substantially all of the assets of the Company and such assignee or transferee assumes by operation of law or in writing duly executed by the assignee or transferee all of the liabilities, obligations and duties of the Company, as contained in this Agreement, either contractually or as a matter of law, as if no such assignment or transfer had taken place. Failure of the Company to obtain such express assumption and agreement at or prior to the effectiveness of any such assignment, merger, consolidation, amalgamation or scheme of arrangement shall be a breach of this Agreement and shall entitle the Executive to such compensation and benefits from the Company in the same amount and on the same terms to which the Executive would be entitled hereunder if the Company had terminated Executive's employment without Cause.

6.7 Counterparts. This Agreement may be executed in two or more counterparts (which may be effectively delivered by facsimile or other electronic means), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6.8 Headings. The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement

6.9 Severability. If any term, provision, covenant or restriction of this Agreement, or any part thereof, is held by a court of competent jurisdiction of any foreign, federal, state, county or local government or any other governmental, regulatory or administrative agency or authority to be invalid, void, unenforceable or against public policy for any reason, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

6.10 Section 409A.

(i) If the Company determines in good faith that any provision of this Agreement would cause the Executive to incur an additional tax, penalty, or interest under Section 409A of the Code and the applicable guidance thereunder ("Section 409A"), the Company and the Executive shall use reasonable efforts to reform such provision, if possible, in a mutually agreeable fashion to maintain to the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A or causing the imposition of such additional tax, penalty, or interest under Section 409A. The preceding provision, however, shall not be construed as a guarantee by the Company of any particular tax effect to the Executive under this Agreement.

(ii) "Termination of employment," or words of similar import, as used in this Agreement means, for purposes of any payments under this Agreement that are payments of deferred compensation subject to Section 409A, the Executive's "separation from service" as defined in Section 409A. For purposes of Section 409A, the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

(iii) With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (1) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (2) the reimbursement of an eligible expense shall be made no later than the end of the year after the year in which such expense was incurred; and (3) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

(iv) If a payment obligation under this Agreement or other compensation arrangement arises on account of Executive's separation from service while the Executive is a "specified employee" (as defined under Section 409A and determined in good faith by the Compensation Committee), any payment of "deferred compensation" (as defined under Treasury Regulation Section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation Sections 1.409A-1(b)(3) through (b)(12)) that is scheduled to be paid within six (6) months after such separation from service shall accrue without interest and shall be paid within 15 days after the end of the six-month period beginning on the date of such separation from service or, if earlier, within 15 days after the appointment of the personal representative or executor of the Executive's estate following his death.

6.11 Attorneys Fees. The prevailing party in any litigation between the Company and the Executive concerning the parties' employment relationship and/or any claim arising from this Agreement shall be entitled to an award of the reasonable legal fees and disbursements incurred by such party.

signature page follows

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

The Lovesac Company

By: /s/ Shawn Nelson

Name: Shawn Nelson

Title: Chief Executive Officer

EXECUTIVE:

/s/ Donna Dellomo

Name: Donna Dellomo

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the inclusion in this Registration Statement of The Lovesac Company on Form S-1 of our report dated April 20, 2018, with respect to our audits of the consolidated financial statements of The Lovesac Company as of February 4, 2018 and January 29, 2017 and for the fiscal years then ended, which report appears in the Prospectus, which is part of this Registration Statement. We also consent to the reference to our Firm under the heading "Experts" in such Prospectus.

/s/ Marcum llp

Marcum llp
Hartford, CT
April 20, 2018

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement on Form S-1 of our report dated December 20, 2017, except for Note 7, as to which is dated April 20, 2018, relating to the financial statements of The Lovesac Company, appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to us under the heading "Experts" in such Prospectus.

/s/ Fiondella, Milone & LaSaracina LLP

Glastonbury, Connecticut

April 20, 2018