

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): October 2, 2019

THE LOVESAC COMPANY
(Exact Name of Registrant as Specified in Charter)

**Delaware
(State or Other Jurisdiction
of Incorporation)**

**001-38555
(Commission
File Number)**

**32-0514958
(I.R.S. Employer
Identification No.)**

**Two Landmark Square, Suite 300
Stamford, Connecticut
(Address of Principal Executive Offices, and Zip Code)**

**(207) 273-9733
Registrant's Telephone Number, Including Area Code**

(Former Name or Former Address, if Changed Since Last Report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.00001 per share	LOVE	The NASDAQ Stock Market LLC

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions *see* General Instruction A.2. below):

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communication pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

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 pursuant to Section 13(a) of the Exchange Act.

Item 5.02 **Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

(e)

Amendment to Shawn Nelson Employment Agreement

On October 2, 2019, The Lovesac Company (the “Company”) and Shawn Nelson entered into a First Amendment to Employment Agreement (the “Nelson Amendment”) that amends Mr. Nelson’s amended and restated employment agreement, dated October 26, 2017. The Nelson Amendment, amends, among other things, the terms upon which Mr. Nelson is eligible to receive an annual bonus. The Nelson Amendment provides that Mr. Nelson shall receive an annual bonus of up to 75% of his base salary, provided that he achieves performance targets determined by the Board of Directors (the “Board”) (or the Compensation Committee). In the event that the Company achieves at least 90% of all of its annual performance targets for the applicable completed fiscal year, the annual bonus in respect of such fiscal year shall be 20% of his base salary. In the event that the Company achieves at least 100% of all of its annual performance targets for the applicable completed fiscal year, the annual bonus in respect of such fiscal year shall be 60% of his base salary. In the event that the Company achieves at least 110% of all of its annual performance targets for the applicable completed fiscal year, the annual bonus in respect of such fiscal year shall be 75% of his base salary. Performance between 90% and 110% of the applicable performance targets will be interpolated relative to the next threshold on a linear basis and, in the case of multiple performance targets, by determining the average percentage achieved for the performance targets.

The foregoing summary of the amendment is qualified in its entirety by reference to the letter agreement, which is attached to this Current Report as Exhibit 10.1 and which is incorporated by reference into this Item 5.02.

Amendment to Jack Krause Employment Agreement

On October 2, 2019, the Company and Jack Krause entered into a First Amendment to Employment Agreement (the “Krause Amendment”) that amends Mr. Krause’s amended and restated employment agreement, dated October 26, 2017. The Krause Amendment, amends, among other things, the terms upon which Mr. Krause is eligible to receive an annual bonus. The Krause Amendment provides that Mr. Krause shall receive an annual bonus of up to 75% of his base salary, provided that he achieves performance targets determined by the Board (or the Compensation Committee). In the event that the Company achieves at least 90% of all of its annual performance targets for the applicable completed fiscal year, the annual bonus in respect of such fiscal year shall be 20% of his base salary. In the event that the Company achieves at least 100% of all of its annual performance targets for the applicable completed fiscal year, the annual bonus in respect of such fiscal year shall be 60% of his base salary. In the event that the Company achieves at least 110% of all of its annual performance targets for the applicable completed fiscal year, the annual bonus in respect of such fiscal year shall be 75% of his base salary. Performance between 90% and 110% of the applicable performance targets will be interpolated relative to the next threshold on a linear basis and, in the case of multiple performance targets, by determining the average percentage achieved for the performance targets.

The foregoing summary of the amendment is qualified in its entirety by reference to the letter agreement, which is attached to this Current Report as Exhibit 10.2 and which is incorporated by reference into this Item 5.02.

Amendment to Donna Dellomo Employment Agreement

On October 2, 2019, the Company and Donna Dellomo entered into a First Amendment to Employment Agreement (the “Dellomo Amendment”) that amends Ms. Dellomo’s amended and restated employment agreement, dated October 26, 2017. The Dellomo Amendment, amends, among other things, the terms upon which Ms. Dellomo is eligible to receive an annual bonus. The Dellomo Amendment provides that Ms. Dellomo shall receive an annual bonus of up to 60% of her base salary, provided that she achieves performance targets determined by the Board (or the Compensation Committee). In the event that the Company achieves at least 90% of all of its annual performance targets for the applicable completed fiscal year, the annual bonus in respect of such fiscal year shall be 15% of her base salary. In the event that the Company achieves at least 100% of all of its annual performance targets for the applicable completed fiscal year, the annual bonus in respect of such fiscal year shall be 50% of her base salary. In the event that the Company achieves at least 110% of all of its annual performance targets for the applicable completed fiscal year, the annual bonus in respect of such fiscal year shall be 60% of her base salary. Performance between 90% and 110% of the applicable performance targets will be interpolated relative to the next threshold on a linear basis and, in the case of multiple performance targets, by determining the average percentage achieved for the performance targets.

The foregoing summary of the amendment is qualified in its entirety by reference to the letter agreement, which is attached to this Current Report as Exhibit 10.3 and which is incorporated by reference into this Item 5.02.

Non-Employee Director Compensation Policy

On October 2, 2019, at the recommendation of the Compensation Committee of the Board, the Board approved the granting of 6,490 restricted stock units (“RSUs”) to each of the non-employee directors in accordance with a Restricted Stock Units Agreement (“Grant Agreement”) pursuant to the Company’s Amended and Restated 2017 Equity Incentive (the “2017 Plan”).

Unless the RSUs are forfeited pursuant to the 2017 Plan or the Grant Agreement, (i) 3,245 shall vest on the first anniversary of the grant date, and (ii) 3,245 which shall vest 50% on the first anniversary of the date of the grant and 50% on the second anniversary of the date of the grant. Each RSU represents the right to receive one share of the Company’s common stock upon vesting of the RSU.

The foregoing description of the Grant Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Grant Agreement, the form of which is filed as Exhibit 10.4 to this Current Report on Form 8-K and incorporated herein by reference.

Additionally, on October 2, 2019, at the recommendation of the Compensation Committee of the Board, the Board approved providing cash compensation of \$40,000 per year to non-employee directors Shirely Romig and Walter McLallen, to be effective June 5, 2019. Mr. McLallen will also receive \$10,000 per year as chair of the Audit Committee of the Board.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
10.1	<u>First Amendment to Employment Agreement, by and between The Lovesac Company and Shawn Nelson</u>
10.2	<u>First Amendment to Employment Agreement, by and between The Lovesac Company and Jack Krause</u>
10.3	<u>First Amendment to Employment Agreement, by and between The Lovesac Company and Donna Dellomo</u>
10.4	<u>Form of Restricted Stock Units Agreement (Non-Employee Director)</u>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

THE LOVESAC COMPANY

Date: October 4, 2019

By: /s/ Donna Dellomo
Name: Donna Dellomo
Title: Executive Vice President and
Chief Financial Officer

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

This First Amendment to Employment Agreement (this “Amendment”) is entered into by and between The Lovesac Company, a Delaware corporation (the “Company”), and Shawn Nelson (the “Executive”), effective as of June 5, 2019 (the “Effective Date”).

RECITALS

WHEREAS, Executive and the Company previously entered into that certain Employment Agreement effective as of October 26, 2017 (the “Employment Agreement”); and

WHEREAS, Executive and the Company wish to amend the Employment Agreement to memorialize certain agreements between them regarding Executive’s employment relationship.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Annual Bonus.** Section 3.2 of the Employment Agreement is hereby amended and restated as follows:

3.2 **Annual Bonus.**

(a) Beginning with fiscal year 2020, the Company shall pay Executive during the Term an annual bonus of up to 75% of the Base Salary (“Annual Bonus”), provided that Executive achieves performance targets determined by the Board (or a compensation committee thereof) and as adjusted to take into account the aggregate cash bonuses payable or paid to the chief executive officer, chief operating officer and chief financial officer in respect of the applicable fiscal year. In the event that the Company achieves at least 90% of all of its annual performance targets for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 20% of the Base Salary. In the event that the Company achieves at least 100% of all of its annual performance targets 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 110% of all of its annual performance targets for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 75% of the Base Salary. Performance between 90% and 110% of the applicable performance targets will be interpolated relative to the next threshold on a linear basis and, in the case of multiple performance targets, by determining the average percentage achieved for the performance targets.

(b) The Executive must remain employed through the bonus payment date to receive any Annual Bonus, provided, however, that in the event of termination of the Executive's employment by the Company, for any reason other than for Cause (as defined below), and the performance targets are achieved in accordance with Section 3.2(a), Annual Bonuses shall be awarded *pro rata* based on the proportion of such fiscal year served by the Executive. The Executive shall not be entitled to any such *pro rata* Annual Bonuses in any fiscal year occurring after the fiscal year in which the Executive was terminated. The Annual Bonus will be determined by the Board after receipt of the Company's audited financials for the applicable year.

2. **Incentive Compensation.** Section 3.3 of the Employment Agreement is hereby deleted in its entirety.
3. **IPO-Related Grant.** Section 3.7 of the Employment Agreement is hereby deleted in its entirety.
4. **Termination with Good Reason or without Cause.** Clause (ii) of Section 4.4 of the Employment Agreement is hereby amended and restated as follows:

(ii) coverage under the Company's group health plan under COBRA, if elected, paid for by the Company (or be reimbursed for the premiums therefor),
5. **Entire Agreement.** The Employment Agreement, as amended by this Amendment, and the Company's 2017 Equity Incentive Plan, including any equity grant documents under such plan, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof, and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, to the extent they relate in any way to the subject matter hereof or thereof. In the event of an inconsistency between the terms of this Amendment and the Employment Agreement, the terms of this Amendment will control. Except as modified hereby, all terms and conditions of the Employment Agreement will remain in full force and effect and likewise apply to this Amendment.
6. **Governing Law.** This Amendment 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.
7. **Counterparts; Facsimile Signatures.** This Amendment may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures to this Amendment may be transmitted by e-mail in pdf or similar format or facsimile and such transmissions shall be deemed an original.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

THE LOVESAC COMPANY

By: /s/ Jack Krause
Name: Jack Krause
Title: President

SHAWN NELSON

/s/ Shawn Nelson

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

This First Amendment to Employment Agreement (this “Amendment”) is entered into by and between The Lovesac Company, a Delaware corporation (the “Company”), and Jack A. Krause (the “Executive”), effective as of June 5, 2019 (the “Effective Date”).

RECITALS

WHEREAS, Executive and the Company previously entered into that certain Employment Agreement effective as of October 26, 2017 (the “Employment Agreement”); and

WHEREAS, Executive and the Company wish to amend the Employment Agreement to memorialize certain agreements between them regarding Executive’s employment relationship.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Annual Bonus.** Section 3.2 of the Employment Agreement is hereby amended and restated as follows:

3.2 **Annual Bonus.**

(a) Beginning with fiscal year 2020, the Company shall pay Executive during the Term an annual bonus of up to 75% of the Base Salary (“Annual Bonus”), provided that Executive achieves performance targets determined by the Board (or a compensation committee thereof) and as adjusted to take into account the aggregate cash bonuses payable or paid to the chief executive officer, chief operating officer and chief financial officer in respect of the applicable fiscal year. In the event that the Company achieves at least 90% of all of its annual performance targets for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 20% of the Base Salary. In the event that the Company achieves at least 100% of all of its annual performance targets 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 110% of all of its annual performance targets for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 75% of the Base Salary. Performance between 90% and 110% of the applicable performance targets will be interpolated relative to the next threshold on a linear basis and, in the case of multiple performance targets, by determining the average percentage achieved for the performance targets.

(b) The Executive must remain employed through the bonus payment date to receive any Annual Bonus, provided, however, that in the event of termination of the Executive's employment by the Company, for any reason other than for Cause (as defined below), and the performance targets are achieved in accordance with Section 3.2(a), Annual Bonuses shall be awarded *pro rata* based on the proportion of such fiscal year served by the Executive. The Executive shall not be entitled to any such *pro rata* Annual Bonuses in any fiscal year occurring after the fiscal year in which the Executive was terminated. The Annual Bonus will be determined by the Board after receipt of the Company's audited financials for the applicable year.

2. **Incentive Compensation.** Section 3.3 of the Employment Agreement is hereby deleted in its entirety.
3. **Signing Bonus.** Section 3.7 of the Employment Agreement is hereby deleted in its entirety.
4. **IPO Allocation.** Section 3.8 of the Employment Agreement is hereby deleted in its entirety.
5. **Termination with Good Reason or without Cause.** Clause (ii) of Section 4.4 of the Employment Agreement is hereby amended and restated as follows:

(ii) coverage under the Company's group health plan under COBRA, if elected, paid for by the Company (or be reimbursed for the premiums therefor),
6. **Entire Agreement.** The Employment Agreement, as amended by this Amendment, and the Company's 2017 Equity Incentive Plan, including any equity grant documents under such plan, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof, and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, to the extent they relate in any way to the subject matter hereof or thereof. In the event of an inconsistency between the terms of this Amendment and the Employment Agreement, the terms of this Amendment will control. Except as modified hereby, all terms and conditions of the Employment Agreement will remain in full force and effect and likewise apply to this Amendment.
7. **Governing Law.** This Amendment 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.
8. **Counterparts; Facsimile Signatures.** This Amendment may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures to this Amendment may be transmitted by e-mail in pdf or similar format or facsimile and such transmissions shall be deemed an original.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

THE LOVESAC COMPANY

By: /s/ Shawn Nelson
Name: Shawn Nelson
Title: Chief Executive Officer

JACK A. KRAUSE

/s/ Jack A. Krause

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

This First Amendment to Employment Agreement (this “Amendment”) is entered into by and between The Lovesac Company, a Delaware corporation (the “Company”), and Donna Dellomo (the “Executive”), effective as of June 5, 2019 (the “Effective Date”).

RECITALS

WHEREAS, Executive and the Company previously entered into that certain Employment Agreement effective as of October 26, 2017 (the “Employment Agreement”); and

WHEREAS, Executive and the Company wish to amend the Employment Agreement to memorialize certain agreements between them regarding Executive’s employment relationship.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Annual Bonus.** Section 3.2 of the Employment Agreement is hereby amended and restated as follows:

3.2 **Annual Bonus.**

(a) Beginning with fiscal year 2020, the Company shall pay Executive during the Term an annual bonus of up to 60% of the Base Salary (“Annual Bonus”), provided that Executive achieves performance targets determined by the Board (or a compensation committee thereof) and as adjusted to take into account the aggregate cash bonuses payable or paid to the chief executive officer, chief operating officer and chief financial officer in respect of the applicable fiscal year. In the event that the Company achieves at least 90% of all of its annual performance targets for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 15% of the Base Salary. In the event that the Company achieves at least 100% of all of its annual performance targets for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 50% of the Base Salary. In the event that the Company achieves at least 110% of all of its annual performance targets for the applicable completed fiscal year, the Annual Bonus in respect of such fiscal year shall be 60% of the Base Salary. Performance between 90% and 110% of the applicable performance targets will be interpolated relative to the next threshold on a linear basis and, in the case of multiple performance targets, by determining the average percentage achieved for the performance targets.

(b) The Executive must remain employed through the bonus payment date to receive any Annual Bonus, provided, however, that in the event of termination of the Executive's employment by the Company, for any reason other than for Cause (as defined below), and the performance targets are achieved in accordance with Section 3.2(a), Annual Bonuses shall be awarded *pro rata* based on the proportion of such fiscal year served by the Executive. The Executive shall not be entitled to any such *pro rata* Annual Bonuses in any fiscal year occurring after the fiscal year in which the Executive was terminated. The Annual Bonus will be determined by the Board after receipt of the Company's audited financials for the applicable year.

2. **Incentive Compensation.** Section 3.3 of the Employment Agreement is hereby deleted in its entirety.
3. **Termination with Good Reason or without Cause.** Clause (ii) of Section 4.4 of the Employment Agreement is hereby amended and restated as follows:

(ii) coverage under the Company's group health plan under COBRA, if elected, paid for by the Company (or be reimbursed for the premiums therefor),
4. **Entire Agreement.** The Employment Agreement, as amended by this Amendment, and the Company's 2017 Equity Incentive Plan, including any equity grant documents under such plan, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof, and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, to the extent they relate in any way to the subject matter hereof or thereof. In the event of an inconsistency between the terms of this Amendment and the Employment Agreement, the terms of this Amendment will control. Except as modified hereby, all terms and conditions of the Employment Agreement will remain in full force and effect and likewise apply to this Amendment.
5. **Governing Law.** This Amendment 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. **Counterparts; Facsimile Signatures.** This Amendment may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures to this Amendment may be transmitted by e-mail in pdf or similar format or facsimile and such transmissions shall be deemed an original.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

THE LOVESAC COMPANY

By: /s/ Shawn Nelson
Name: Shawn Nelson
Title: Chief Executive Officer

DONNA DELLOMO

/s/ Donna Dellomo

THE LOVESAC COMPANY
RESTRICTED STOCK UNITS AGREEMENT
(For Non-Employee Directors)

The Lovesac Company has granted to the Participant named in the *Notice of Grant of Restricted Stock Units* (the "**Grant Notice**") to which this Restricted Stock Units Agreement (the "**Agreement**") is attached an Award consisting of Restricted Stock Units (each a "**Unit**") subject to the terms and conditions set forth in the Grant Notice and this Agreement. The Award has been granted pursuant to and shall in all respects be subject to the terms and conditions of The Lovesac Company 2017 Equity Incentive Plan (the "**Plan**"), as amended to the Date of Grant, the provisions of which are incorporated herein by reference. By signing the Grant Notice, the Participant: (a) acknowledges receipt of and represents that the Participant has read and is familiar with the Grant Notice, this Agreement, the Plan and a prospectus for the Plan prepared in connection with the registration with the Securities and Exchange Commission of the shares issuable pursuant to the Award (the "**Plan Prospectus**"), (b) accepts the Award subject to all of the terms and conditions of the Grant Notice, this Agreement and the Plan and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Grant Notice, this Agreement or the Plan.

1. Definitions and Construction.

1.1 **Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Grant Notice or the Plan.

1.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. 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.

2. Administration.

All questions of interpretation concerning the Grant Notice, this Agreement, the Plan or any other form of agreement or other document employed by the Company in the administration of the Plan or the Award shall be determined by the Committee. All such determinations by the Committee shall be final, binding and conclusive upon all persons having an interest in the 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 the Award 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 in the Award. Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Company herein, provided the Officer has apparent authority with respect to such matter, right, obligation, or election.

3. The Award.

3.1 **Grant of Units.** On the Date of Grant, the Participant shall acquire, subject to the provisions of this Agreement, the Total Number of Units set forth in the Grant Notice, subject to adjustment as provided in Section 9. Each Unit represents a right to receive on a date determined in accordance with the Grant Notice and this Agreement one (1) share of Stock.

3.2 **No Monetary Payment Required.** The Participant is not required to make any monetary payment (other than applicable tax withholding, if any) as a condition to receiving the Units or shares of Stock issued upon settlement of the Units, the consideration for which shall be past services actually rendered or future services to be rendered to a Participating Company or for its benefit. Notwithstanding the foregoing, if required by applicable 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 Units.

4. Vesting of Units.

Units acquired pursuant to this Agreement shall become Vested Units as provided in the Grant Notice. For purposes of determining the number of Vested Units following an Ownership Change Event, credited Service shall include all Service with any corporation which is a Participating Company at the time the Service is rendered, whether or not such corporation is a Participating Company both before and after the Ownership Change Event.

5. Company Reacquisition Right.

5.1 **Grant of Company Reacquisition Right.** In the event that the Participant's Service terminates for any reason or no reason, with or without cause, the Participant shall forfeit and the Company shall automatically reacquire all Units which are not, as of the time of such termination, Vested Units ("*Unvested Units*"), and the Participant shall not be entitled to any payment therefor (the "*Company Reacquisition Right*").

5.2 **Ownership Change Event, Non-Cash Dividends, Distributions and Adjustments.** Upon the occurrence of an Ownership Change Event, a dividend or distribution to the stockholders of the Company paid in shares of Stock or other property, or any other adjustment upon a change in the capital structure of the Company as described in Section 9, any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends paid on Stock pursuant to the Company's dividend policy) to which the Participant is entitled by reason of the Participant's ownership of Unvested Units shall be immediately subject to the Company Reacquisition Right and included in the terms "Units" and "Unvested Units" for all purposes of the Company Reacquisition Right with the same force and effect as the Unvested Units immediately prior to the Ownership Change Event, dividend, distribution or adjustment, as the case may be. For purposes of determining the number of Vested Units following an Ownership Change Event, dividend, distribution or adjustment, credited Service shall include all Service with any corporation which is a Participating Company at the time the Service is rendered, whether or not such corporation is a Participating Company both before and after any such event.

6. Settlement of the Award.

6.1 Issuance of Shares of Stock. Subject to the provisions of Section 6.3, the Company shall issue to the Participant on the Settlement Date with respect to each Vested Unit to be settled on such date one (1) share of Stock. The Settlement Date with respect to a Unit shall be the date on which such Unit becomes a Vested Unit as provided by the Grant Notice or such later date as provided in a Superseding Agreement (an "**Original Settlement Date**"); provided, however, that if the tax withholding obligations of a Participating Company, if any, will not be satisfied by the share withholding method described in Section 7.3 and the Original Settlement Date would occur on a date on which a sale by the Participant of the shares to be issued in settlement of the Vested Units would violate the Trading Compliance Policy of the Company, then the Settlement Date for such Vested Units shall be deferred until the next day on which the sale of such shares would not violate the Trading Compliance Policy, but in any event on or before the 15th day of the third calendar month following calendar year of the Original Settlement Date. Shares of Stock issued in settlement of Units shall not be subject to any restriction on transfer other than any such restriction as may be required pursuant to Section 6.3, Section 7 or the Company's Trading Compliance Policy.

6.2 Beneficial Ownership of Shares; Certificate Registration. The Participant hereby authorizes the Company, in its sole discretion, to deposit any or all shares acquired by the Participant pursuant to the settlement of the Award with the Company's transfer agent, including any successor transfer agent, to be held in book entry form, or to deposit such shares for the benefit of the Participant with any broker with which the Participant has an account relationship of which the Company has notice. Except as provided by the foregoing, a certificate for the shares acquired by the Participant shall be registered in the name of the Participant, or, if applicable, in the names of the heirs of the Participant.

6.3 Restrictions on Grant of the Award and Issuance of Shares. The grant of the Award and issuance of shares of Stock upon settlement of the Award shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. No shares of Stock may be issued hereunder if the issuance of such shares would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Stock may then be listed. 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 of any shares subject to the Award shall relieve the Company of any liability in respect of the failure to issue such shares as to which such requisite authority shall not have been obtained. As a condition to the settlement of the Award, 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.

6.4 Fractional Shares. The Company shall not be required to issue fractional shares upon the settlement of the Award.

7. Tax Withholding.

7.1 In General. At the time the Grant Notice is executed, or at any time thereafter as requested by a Participating Company, the Participant hereby authorizes withholding from payroll and any other amounts payable to the Participant, and otherwise agrees to make adequate provision for, any sums required to satisfy the federal, state, local and foreign tax (including any social insurance) withholding obligations of the Participating Company, if any, which arise in connection with the Award, the vesting of Units or the issuance of shares of Stock in settlement thereof. The Company shall have no obligation to deliver shares of Stock until the tax withholding obligations of the Participating Company have been satisfied by the Participant.

7.2 Assignment of Sale Proceeds. Subject to compliance with applicable law and the Company's Trading Compliance Policy, if permitted by the Company, the Participant may satisfy the Participating Company's tax withholding obligations in accordance with procedures established by the Company providing for delivery by the Participant to the Company or a broker approved by the Company of properly executed instructions, in a form approved by the Company, providing for the assignment to the Company of the proceeds of a sale with respect to some or all of the shares being acquired upon settlement of Units.

7.3 Withholding in Shares. The Company shall have the right, but not the obligation, to require the Participant to satisfy all or any portion of a Participating Company's tax withholding obligations by deducting from the shares of Stock otherwise deliverable to the Participant in settlement of the Award a number of whole shares having a fair market value, as determined by the Company as of the date on which the tax withholding obligations arise, not in excess of the amount of such tax withholding obligations determined by the applicable minimum statutory withholding rates if required to avoid liability classification of the Award under generally accepted accounting principles in the United States.

8. Effect of Change in Control

In the event of a Change in Control, the Award shall be subject to the definitive agreement entered into by the Company in connection with the Change in Control. Except to the extent that the Committee determines to cash out the Award in accordance with Section 13 of the Plan, the surviving, continuing, successor, or purchasing entity or parent thereof, as the case may be (the "**Acquiror**"), may, without the consent of the Participant, assume or continue in full force and effect the Company's rights and obligations under all or any portion of the outstanding Units or substitute for all or any portion of the outstanding Units substantially equivalent rights with respect to the Acquiror's stock. For purposes of this Section, a Unit shall be deemed assumed if, following the Change in Control, the Unit confers the right to receive, subject to the terms and conditions of the Plan and this Agreement, 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 settlement of the Unit 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. The Award shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control to the extent that Units subject to the Award are neither assumed or continued by the Acquiror in connection with the Change in Control nor settled as of the time of the Change in Control.

9. Adjustments for Changes in Capital Structure.

Subject to any required action by the stockholders of the Company and the requirements of Section 409A 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 (other than regular, periodic cash dividends paid on Stock pursuant to the Company's dividend policy) that has a material effect on the Fair Market Value of shares of Stock, appropriate and proportionate adjustments shall be made in the number of Units subject to the Award and/or the number and kind of shares or other property to be issued in settlement of the Award, in order to prevent dilution or enlargement of the Participant's rights under the Award. 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." Any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends paid on Stock pursuant to the Company's dividend policy) to which the Participant is entitled by reason of ownership of Units acquired pursuant to this Award will be immediately subject to the provisions of this Award on the same basis as all Units originally acquired hereunder. Any fractional Unit or share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number. Such adjustments shall be determined by the Committee, and its determination shall be final, binding and conclusive.

10. Rights as a Stockholder, Director, Employee or Consultant

The Participant shall have no rights as a stockholder with respect to any shares which may be issued in settlement of this 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 the shares are issued, except as provided in Section 9. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between a Participating Company and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Agreement shall confer upon the Participant any right to continue in the Service of a Participating Company or interfere in any way with any right of the Participating Company Group to terminate the Participant's Service at any time.

11. Legends.

The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates representing shares of stock issued pursuant to this Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to this Award in the possession of the Participant in order to carry out the provisions of this Section.

12. Compliance with Section 409A.

It is intended that any election, payment or benefit which is made or provided pursuant to or in connection with this Award that may result in Section 409A Deferred Compensation shall comply in all respects with the applicable requirements of Section 409A (including applicable regulations or other administrative guidance thereunder, as determined by the Committee in good faith) to avoid the unfavorable tax consequences provided therein for non-compliance. In connection with effecting such compliance with Section 409A, the following shall apply:

12.1 Separation from Service; Required Delay in Payment to Specified Employee. Notwithstanding anything set forth herein to the contrary, no amount payable pursuant to this Agreement on account of the Participant's termination of Service which constitutes a "deferral of compensation" within the meaning of the Treasury Regulations issued pursuant to Section 409A of the Code (the "**Section 409A Regulations**") shall be paid unless and until the Participant has incurred a "separation from service" within the meaning of the Section 409A Regulations. Furthermore, to the extent that the Participant is a "specified employee" within the meaning of the Section 409A Regulations as of the date of the Participant's separation from service, and only to the extent necessary to avoid the imposition of taxes under Section 409A, no amount that constitutes a deferral of compensation which is payable on account of the Participant's separation from service shall be paid to the Participant before the date (the "**Delayed Payment Date**") which is first day of the seventh month after the date of the Participant's separation from service or, if earlier, the date of the Participant's death following such separation from service. All such amounts that would, but for this Section, become payable prior to the Delayed Payment Date will be accumulated and paid on the Delayed Payment Date.

12.2 Other Changes in Time of Payment. Neither the Participant nor the Company shall take any action to accelerate or delay the payment of any benefits under this Agreement in any manner which would not be in compliance with the Section 409A Regulations.

12.3 Amendments to Comply with Section 409A; Indemnification. Notwithstanding any other provision of this Agreement to the contrary, the Company is authorized to amend this Agreement, to void or amend any election made by the Participant under this Agreement and/or to delay the payment of any monies and/or provision of any benefits in such manner as may be determined by the Company, in its discretion, to be necessary or appropriate to comply with the Section 409A Regulations without prior notice to or consent of the Participant. The Participant hereby releases and holds harmless the Company, its directors, officers and stockholders from any and all claims that may arise from or relate to any tax liability, penalties, interest, costs, fees or other liability incurred by the Participant in connection with the Award, including as a result of the application of Section 409A.

12.4 Advice of Independent Tax Advisor. The Company has not obtained a tax ruling or other confirmation from the Internal Revenue Service with regard to the application of Section 409A to the Award, and the Company does not represent or warrant that this Agreement will avoid adverse tax consequences to the Participant, including as a result of the application of Section 409A to the Award. The Participant hereby acknowledges that he or she has been advised to seek the advice of his or her own independent tax advisor prior to entering into this Agreement and is not relying upon any representations of the Company or any of its agents as to the effect of or the advisability of entering into this Agreement.

13. Miscellaneous Provisions.

13.1 Termination or Amendment. The Committee may terminate or amend the Plan or this Agreement at any time; provided, however, that except as provided in Section 8 in connection with a Change in Control, no such termination or amendment may have a materially adverse effect on the Participant's rights under this Agreement without the consent of the Participant unless such termination or amendment is necessary to comply with applicable law or government regulation, including, but not limited to, Section 409A. No amendment or addition to this Agreement shall be effective unless in writing.

13.2 Nontransferability of the Award. Prior to the issuance of shares of Stock on the applicable Settlement Date, neither this Award nor any Units subject to this 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 the Award shall be exercisable during the Participant's lifetime only by the Participant or the Participant's guardian or legal representative.

13.3 Further Instruments. The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

13.4 Binding Effect. This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer set forth herein, be binding upon the Participant and the Participant's heirs, executors, administrators, successors and assigns.

13.5 Delivery of Documents and Notices. Any document relating to participation in the Plan or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Participant by a Participating Company, or upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the other party at the address of such party set forth in the Grant Notice or at such other address as such party may designate in writing from time to time to the other party.

(a) **Description of Electronic Delivery and Signature.** The Plan documents, which may include but do not necessarily include: the Plan, the Grant Notice, this Agreement, the Plan Prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to the Participant electronically. In addition, if permitted by the Company, the Participant may deliver electronically the Grant Notice to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the Internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company. Any and all such documents and notices may be electronically signed.

(b) **Consent to Electronic Delivery and Signature.** The Participant acknowledges that the Participant has read Section 13.5(a) of this Agreement and consents to the electronic delivery of the Plan documents and, if permitted by the Company, the delivery of the Grant Notice, as described in Section 13.5(a). The Participant agrees that any and all such documents requiring a signature may be electronically signed and that such electronic signature shall have the same effect as handwritten signature for the purposes of validity, enforceability and admissibility. The Participant acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Company by telephone or in writing. The Participant further acknowledges that the Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Participant understands that the Participant must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents described in Section 13.5(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents described in Section 13.5(a).

13.6 Integrated Agreement. The Grant Notice, this Agreement and the Plan, together with the Superseding Agreement, if any, shall constitute the entire understanding and agreement of the Participant and the Participating Company Group with respect to the subject matter contained herein or therein and supersede any prior agreements, understandings, restrictions, representations, or warranties among the Participant and the Participating Company Group with respect to such subject matter. To the extent contemplated herein or therein, the provisions of the Grant Notice, this Agreement and the Plan shall survive any settlement of the Award and shall remain in full force and effect.

13.7 Applicable Law. This Agreement shall be governed by the laws of the State of Delaware as such laws are applied to agreements between Delaware residents entered into and to be performed entirely within the State of Delaware.

13.8 Counterparts. The Grant Notice may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.