United States
Securities and Exchange Commission
Washington, D.C. 20549

Form 10-K

☒ Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended December 31, 2014

Or

☐ Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from to

Commission File Number: 001-36666

Wayfair Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

36-4791999
(I.R.S. Employer Identification Number)

4 Copley Place, 7th Floor, Boston, MA
(Address of principal executive offices)

02116
(Zip Code)

(617) 532-6100
(Registrant's telephone number, including area code)

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

<table>
<thead>
<tr>
<th>Title of each class</th>
<th>Name of each exchange on which registered</th>
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<tbody>
<tr>
<td>Class A Common Stock, $0.001 par value</td>
<td>The New York Stock Exchange</td>
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</tbody>
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Securities registered pursuant to Section 12(g) of the Act:
None.
The aggregate market value of the voting and non-voting common equity held by non-affiliates as of December 31, 2014 computed by reference to the closing sale price of $19.85 per share as reported on the New York Stock Exchange on that date was $1,651 million. The registrant has provided this information as of December 31, 2014 because its common equity was not publicly traded as of the last business day of its most recently completed second fiscal quarter.

As of February 28, 2015, there were 37,199,841 shares of the registrant's Class A common stock, par value $0.001 per share, and 46,192,680 shares of the registrant's Class B common stock, par value $0.001 per share, outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Certain sections of the registrant's definitive Proxy Statement for the 2015 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission pursuant to Rule 14A not later than 120 days after end of this fiscal year covered by this Form 10-K are incorporated by reference into Part III of this Form 10-K.
### WAYFAIR INC.
#### Annual Report on Form 10-K
#### For the Fiscal Year Ended December 31, 2014

**TABLE OF CONTENTS**

<table>
<thead>
<tr>
<th>SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>PART I</td>
<td></td>
</tr>
<tr>
<td>Item 1. Business</td>
<td>2</td>
</tr>
<tr>
<td>Item 1A. Risk Factors</td>
<td>8</td>
</tr>
<tr>
<td>Item 1B. Unresolved Staff Comments</td>
<td>33</td>
</tr>
<tr>
<td>Item 2. Properties</td>
<td>33</td>
</tr>
<tr>
<td>Item 3. Legal Proceedings</td>
<td>34</td>
</tr>
<tr>
<td>Item 4. Mine Safety Disclosures</td>
<td>34</td>
</tr>
<tr>
<td>PART II</td>
<td></td>
</tr>
<tr>
<td>Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</td>
<td>35</td>
</tr>
<tr>
<td>Item 6. Selected Consolidated Financial Data</td>
<td>37</td>
</tr>
<tr>
<td>Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations</td>
<td>40</td>
</tr>
<tr>
<td>Item 7A. Quantitative and Qualitative Disclosures About Market Risk</td>
<td>61</td>
</tr>
<tr>
<td>Item 8. Financial Statements and Supplementary Data</td>
<td>62</td>
</tr>
<tr>
<td>Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</td>
<td>93</td>
</tr>
<tr>
<td>Item 9A. Controls and Procedures</td>
<td>93</td>
</tr>
<tr>
<td>Item 9B. Other Information</td>
<td>93</td>
</tr>
<tr>
<td>PART III</td>
<td></td>
</tr>
<tr>
<td>Item 10. Directors, Executive Officers and Corporate Governance</td>
<td>94</td>
</tr>
<tr>
<td>Item 11. Executive Compensation</td>
<td>94</td>
</tr>
<tr>
<td>Item 13. Certain Relationships and Related Transactions, and Director Independence</td>
<td>94</td>
</tr>
<tr>
<td>Item 14. Principal Accounting Fees and Services</td>
<td>94</td>
</tr>
<tr>
<td>PART IV</td>
<td></td>
</tr>
<tr>
<td>ITEM 15. Exhibits and Financial Statement Schedules</td>
<td>95</td>
</tr>
<tr>
<td>SIGNATURES</td>
<td>96</td>
</tr>
<tr>
<td>EXHIBIT INDEX</td>
<td>98</td>
</tr>
</tbody>
</table>
SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements. All statements other than statements of historical fact contained in this Annual Report on Form 10-K, including statements regarding our future results of operations and financial position, business strategy and plans and objectives of management for future operations, are forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "target," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions. The forward-looking statements in this Annual Report on Form 10-K are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this Annual Report on Form 10-K and are subject to a number of risks, uncertainties and assumptions described in the "Risk Factors" section and elsewhere in this Annual Report on Form 10-K. Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Except as required by applicable law, we undertake no obligation to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events or otherwise.
PART I

Item 1. Business.

Overview

Wayfair is one of the world’s largest online destinations for the home. Through our e-commerce business model, we offer visually inspired browsing, compelling merchandising, easy product discovery and attractive prices for over seven million products from over 7,000 suppliers across five distinct brands: Wayfair.com, Joss & Main, AllModern, DwellStudio and Birch Lane.

The typical Wayfair customer is a 35 to 65 year old woman with an annual household income of $60,000 to $175,000, who we consider to be a mass market consumer and who we believe is underserved by traditional brick and mortar and other online retailers of home goods. Because each of our customers has a different taste, style, purchasing goal and budget when shopping for her home, we have built one of the largest online selections of furniture, home furnishings, décor and goods. We are able to offer this vast selection of products while holding minimal inventory because we typically ship products directly from our suppliers to our customers. This supplier direct fulfillment network is a key component of our custom-built technology and operational platform, which also includes extensive supplier integrations, a proprietary transportation delivery network and superior customer service.

We founded our company in May 2002 and have since delivered over 15 million orders. From 2002 through 2011, the Company was bootstrapped by our co-founders and operated as hundreds of niche websites, such as bedroomfurniture.com and allbarstools.com. In 2006, we launched AllModern. In late 2011, we made the strategic decision to close and permanently redirect over 240 of our niche websites into Wayfair.com to create a one-stop shop for furniture, home furnishings, décor and goods and to build brand awareness, drive customer loyalty and increase repeat purchasing. We also changed our name from CSN Stores LLC to Wayfair LLC. In connection with our initial public offering, we formed Wayfair Inc. to be a holding company with no material assets other than 100% of the equity interests in Wayfair LLC.

Our co-founders are lifetime tech innovators who have worked together in the commercial internet sector since 1995 and have created a company culture deeply rooted in technology. Our technology and data focus facilitates critical e-commerce capabilities such as tailored shopping experiences across our five brands, consumer targeting and personalization, and "anytime, anywhere" shopping across our websites, mobile-optimized websites and mobile applications, which we collectively refer to as our sites.

Our Industry

The home goods market is large and characterized by specific consumer trends, structural challenges and market dynamics that are shaping the future of our industry.

Addressable Market Size and Growth

The home goods market is large, global and growing. We believe the mass market for home goods represents the largest addressable opportunity within the home goods sector and that the mass market consumer is underserved due to structural limitations of brick and mortar and other online retailers. In 2014, women represented 73% of our customers. According to a data released by the U.S. Census Bureau, there are 158 million women in the United States, of which 63 million are between the ages of 35 and 65. We believe these women control an outsized share of spending, particularly spending related to furniture, home furnishings, décor and goods. In addition, we believe there are approximately 70 million millennials (which we define as individuals currently between the ages of 19 to 32) in the United States, many of whom are accustomed to purchasing goods online. As millennials age, start new families and move into new homes, we expect online sales of home goods to increase. In addition, we believe the online home goods market will further grow as older generations of consumers become
increasingly comfortable purchasing online. Additionally, mobile commerce is growing rapidly and is just beginning in home goods. The proliferation of smartphones and tablets has made mobile commerce one of the fastest growing online channels. Since consumers have access to their mobile devices virtually anytime and anywhere, they have the opportunity to browse, discover and shop throughout the day.

**Why Home is Different**

**Home is Shopped Differently than Other Retail Verticals:** Homes are personal expressions of self and identity, which is why many consumers seek uniqueness, crave originality and enjoy the feeling created by home design, furniture and décor. Consumers shopping for home goods often cannot articulate what they are looking for other than to describe a feeling or visual image that they want to capture in their home. In addition, while consumers typically know the names of big box and specialty retailers that offer various home products, we believe they rarely know the names of the product brands or suppliers. We believe traditional search-based sites that rely on directed product search (e.g., "running sneakers") or brand name search (e.g., "Samsung 32-inch LCD television") have difficulty serving customers shopping for home products in this more emotional, visual and inspirational manner.

**Home Shoppers Desire Uniqueness, which Requires Vast Selection:** In the mass market for home goods, consumers with different tastes, styles, purchasing goals and budgets require a broad selection of products and choices. This need for selection applies across many home categories, including furniture, décor, lighting, kitchen, bed & bath, outdoor, home improvement and baby & kids, each of which has dozens of sub-categories with hundreds to tens of thousands of products. Brick and mortar home goods retailers must balance a consumer's desire for uniqueness, which requires massive selection, with the challenges of high inventory carrying costs and limited showroom and storage space.

**Time Consuming and Inconvenient for Consumers to Shop across Brick and Mortar Home Retailers:** To browse a vast selection of products across highly-fragmented brick and mortar retailers, consumers must shop multiple stores. For example, if a nearby furniture retailer has 20 bedroom sets on its showroom floor, a consumer may feel she must visit multiple stores to see a wide enough selection to make an informed purchase decision that satisfies her style and budget needs. We believe the lack of an easy-to-browse, one-stop shopping experience with massive selection has led to dissatisfaction with brick and mortar home goods shopping. In contrast, Wayfair.com offers over 1,000 bedroom sets across many styles and prices, which mitigates the need for a consumer to visit multiple stores to find the perfect item at a price she can afford.

**Difficult to Browse, Value Shop and Price Compare:** Mass market home goods shoppers frequently seek a wide variety of information from disparate online and offline sources to research home goods products. Because this information is not easily comparable, it is difficult for consumers to make informed home décor and design-related decisions. In addition, consumers may struggle to mix and match different home goods items they are considering buying from multiple traditional brick and mortar retailers.

**Challenging Logistics for Consumers and Retailers:** Logistics, fulfillment and customer service for home goods products are challenging given the various categories, shapes, sizes, weights and price points in the home market. Given the personal nature and high touch physical characteristics of home goods products, many consumers seek first-rate customer service so they are not burdened with managing delivery, shipping and return logistics on their own. However, we believe big box retailers that serve the mass market for home goods are often unable or unwilling to provide this level of service. In addition, many regional retailers do not ship nationally, which we believe is because they lack the required scalable technology, operations and distribution infrastructure.
Our Solution

Key Benefits for Our Customers

We offer our consumers vast selection, easy access and value, inspirational content, personalized and mobile shopping experiences and superior customer service to help them find the perfect item at a price they can afford.

**Broad Selection and Choice:** We offer one of the largest online selections of furniture, home furnishings, décor and goods with over seven million products from over 7,000 suppliers.

**Easy Access and Value:** We offer consumers a one-stop shop with home goods pricing designed to be on par with big box retailers and a merchandising experience designed to be on par with specialty retailers.

**Inspirational Photography and Editorial Content:** To inspire customers, we produce beautiful imagery and highly-tailored editorial content both in house and through third parties.

**Personalized and Mobile Shopping Experiences:** We use personalization, based on past browsing, shopping patterns and personal preferences, to create a more engaging consumer experience. Our investment in mobile allows us to deliver value, convenience and inspiration to consumers anytime and anywhere.

**Superior Customer Service:** Our customer service organization has over 600 representatives who help consumers navigate our sites, answer questions and help complete orders. This team helps us build trust with consumers, build our brand awareness, enhance our reputation and drive sales.

Key Benefits for Our Suppliers

Through our technology platform, we offer our suppliers a cost-effective channel, the ability to leverage our technological expertise, a real-time view of our demand and proven logistics capabilities to help sell their products.

**Cost-Effective Access to Our Large Customer Base:** We sell products from over 7,000 suppliers, many of which are small, family-run operations without well-known product brands and without easy retail access to a large customer base. We provide our suppliers with access to our customer base of 3.2 million active customers, enabling them to increase their sales and access the growing e-commerce market.

**Ability to Leverage Our Technological Expertise to Drive Sales:** Our technology platform is designed to allow suppliers to easily provide us with their full product selection. Through our technology platform, we believe many of our suppliers have increased their sales, which has strengthened their loyalty to us.

**Real-Time View of Demand and Inventory Needs via Data and Analytics:** We offer our suppliers a real-time view of our demand and inventory needs via powerful data and analytics.

**Proven Logistics Capabilities:** Our logistics infrastructure allows us to ship directly from our suppliers to our customers. This supplier direct fulfillment network is a key component of our custom-built and seamlessly integrated technology and operational platform.

Our Strengths

We believe we have achieved our market leading position through the following key strengths:

- our large scale drives powerful network effects;
superior logistics infrastructure and supplier direct fulfillment network require minimal inventory and capital expenditures;

trusted brand with rapidly growing awareness;

personalized shopping experiences and differentiated use of data, analytics and technology drive high customer repeat rates;

powerful and custom-built technology platform;

well-positioned to benefit from platform shift to mobile; and

proven and operationally disciplined management team.

Our Growth Strategy

Our goal is to further improve our leadership in the home goods market by pursuing the following key strategies:

• continue building leading retail home brands;
• acquire more customers;
• continue to invest in the consumer experience;
• increase repeat purchasing through merchandising, data, analytics and technology;
• add new suppliers and deepen relationships with our existing suppliers;
• continue to invest in our technology and operational platform, including our mobile platform;
• expand internationally; and
• opportunistically pursue strategic acquisitions.

Brands

Each of our customers has a different taste, style, purchasing goal and budget when shopping for her home. To help her find the right products for her home, we offer five distinct brands: Wayfair.com, Joss & Main, AllModern, DwellStudio and Birch Lane. Each brand has a unique identity that offers a tailored shopping experience and rich product selection to a different target audience.

Wayfair.com: Wayfair.com is our flagship mass market brand that focuses on offering the largest selection of home furnishings and décor, from low- to high-end and across all styles.

Joss & Main: Joss & Main is our online flash sales site that combines inspiring home design with significant savings.

AllModern: AllModern is an online destination for original design for modern home enthusiasts.

DwellStudio: DwellStudio is an online design studio for modern, fashion-forward home furnishings.

Birch Lane: Birch Lane is a new destination for classic style and timeless home designs.

In addition to our five brands, we also generate net revenue through two other sources:

Retail Partners: A portion of our net revenue is generated online by retail partners. These relationships allow consumers to purchase Wayfair products through the retail partners’ sites.
Wayfair Media Solutions: Wayfair helps selected manufacturers, retailers and other advertisers market to our large consumer audience.

Technology

We have custom-built our proprietary technology and operational platform to deliver the best experience for both our customers and suppliers. Our success has been built on a culture of data-driven decision-making, operational discipline and an unwavering focus on the customer. We employ over 300 engineers and data scientists and believe we are able to attract and retain some of the best technological minds. Our engineering department is organized into four operating groups that have built a full set of technology solutions specific for the home goods market:

**Storefront:** A large set of tools and systems with which our customers directly interact. Our storefront team develops an experience specifically tuned for shopping the home goods category.

**Operations:** A majority of the software we have written is designed to deliver the reliable and consistent experience consumers desire, but is not consumer facing.

**Infrastructure:** We have developed a variety of tools and systems that enable us to move quickly and efficiently as we scale our organization. Our infrastructure group supports a variety of proprietary, purchased as well as open source systems. Our infrastructure group is primarily focused on the tools, processes, systems and platforms that provide the technical infrastructure that drives our business.

**Corporate IT:** In addition to developing a large amount of software that is specific to our business, we run systems common across multiple industries.

Competition

The market for online home goods and furniture is highly competitive, fragmented and rapidly changing. While we are primarily focused on the mass market, we compete across all segments of the home goods market. Our competition includes furniture stores, big box retailers, department stores, specialty retailers and online retailers and marketplaces:

- **Furniture Stores:** Ashley Furniture, Bob's Discount Furniture, Havertys, Raymour & Flanigan and Rooms To Go;
- **Big Box Retailers:** Bed Bath & Beyond, Home Depot, IKEA, Lowe's, Target and Walmart;
- **Department Stores:** JCPenney and Macy's;
- **Specialty Retailers:** Crate and Barrel, Ethan Allen, HomeGoods, Pottery Barn and Restoration Hardware; and
- **Online Retailers and Marketplaces:** Amazon and eBay.

We believe that the primary competitive factors in the mass market are vast selection, visually inspiring browsing, compelling merchandising, ease of product discovery, price, convenience, reliability, speed of fulfillment and customer service. We believe our technological and operational expertise allows us to provide our customers with a vast selection of goods, attractive price points, reliable and timely fulfillment, plus superior customer service, and that the combination of these capabilities is what provides us with a sustainable competitive advantage.

Sales and Marketing

Our sales and marketing efforts bring new and repeat customers to our sites and help us acquire their email addresses through various paid and non-paid advertising methods. Our paid advertising efforts include search engine marketing, display advertising, paid social media, catalog and television...
Our non-paid advertising efforts include search engine optimization, non-paid social media, mobile "push" notifications and email. Upon acquiring a customer or a potential customer's email address, we seek to increase their engagement with our sites and drive repeat purchases. This effort to increase engagement and repeat purchasing is primarily accomplished via unpaid mobile "push" notifications and email marketing efforts. We rigorously manage our paid marketing efforts, to ensure that each new spending initiative is cost-effective with a measurable return on investment within a short period of time.

**Employees**

As of December 31, 2014, we had 2,353 full-time equivalent employees. Additionally, we rely on independent contractors and temporary personnel to supplement our workforce, primarily in our fulfillment centers. None of our employees is represented by a labor union or covered by a collective bargaining agreement. We consider our relationship with our employees to be good.

**Intellectual Property**

Our intellectual property, including any trademarks, copyrights, domain names, patents, trade dress, trade secrets and proprietary technologies, is an important part of our business. To protect our intellectual property, we rely on a combination of laws and regulations, as well as contractual restrictions. We pursue the registration of our trademarks, including "Wayfair" and certain variations thereon, copyrights and domain names in the United States and certain foreign locations. We also rely on the protection of laws regarding unregistered copyrights for our proprietary software and certain other content we create. We will continue to evaluate the merits applying for copyright registrations in the future. We have an issued patent regarding our proprietary technology and we are evaluating additional patent applications. We expect to consider filing patent applications for future technology inventions. We also rely on trade secret laws to protect our proprietary technology and other intellectual property. To further protect our intellectual property, we enter into confidentiality and assignment of invention assignment agreements with employees and certain contractors and confidentiality agreements with other third parties, such as suppliers.

**Company Information**

We began operating as Smart Tech Toys, Inc., a Massachusetts corporation, in May 2002 and changed our name to CSN Stores, Inc. in February 2003. In March 2008, we formed, and contributed all of the assets and liabilities of CSN Stores, Inc. to, a subsidiary, CSN Stores LLC, and we continued operating our business through this Delaware limited liability company. In late 2011, we changed the name of CSN Stores, Inc. to SK Retail, Inc. and changed our name from CSN Stores LLC to Wayfair LLC. In connection with our initial public offering, we completed an internal restructuring, as a result of which Wayfair Inc. was formed to be a holding company with no material assets other than 100% of the equity interests in Wayfair LLC and SK Retail, Inc. The holders of the equity interests in Wayfair LLC held the same ownership interests in Wayfair Inc. as they did in Wayfair LLC immediately prior to the internal restructuring. SK Retail, Inc. was the only holder of equity interest in Wayfair LLC with operations. Accordingly the historical financial statements of SK Retail, Inc. have been combined with the historical financial statements of Wayfair LLC for the periods presented. In addition, all of our outstanding common units and incentive units of Wayfair LLC were exchanged for shares of common stock or incentive units for common stock, and then were converted into shares of Class B common stock or incentive units for Class B common stock. In addition, all of outstanding preferred units were exchanged for shares of Series A and Series B convertible preferred stock. Immediately prior to the completion of the IPO, all of our outstanding shares of Series A and Series B convertible preferred stock converted into shares of Class B common stock.
Our executive offices are located at 4 Copley Place, 7th Floor, Boston, MA 02116, and our telephone number is (617) 532-6100. Our corporate website address is Wayfair.com. The information contained in, or accessible through, our website does not constitute part of this Annual Report on Form 10-K.

Available Information

We encourage investors to use our investor relations website, investor.wayfair.com, to find information about us. We promptly make available on this website, free of charge, the reports that we file or furnish with the Securities and Exchange Commission ("SEC"), and corporate governance information (including our Code of Business Conduct and Ethics). We file annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy and information statements and amendments to reports filed or furnished pursuant to Sections 13 (a), 14 and 15(d) of the Exchange Act. All material we file with the SEC is publicly available at the SEC’s Public Reference Room at 100 F Street NE, Washington, DC 20549. You may obtain information on the operation of the SEC's Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains a website at www.sec.gov that contains reports, proxy and information statements and other information regarding Wayfair and other issuers that file electronically with the SEC. Our website and the information contained therein or connected thereto are not a part of, or incorporated into, this Annual Report on Form 10-K.

Item 1A. Risk Factors.

RISK FACTORS

Our operations and financial results are subject to various risks and uncertainties, including those described below. We caution you that the following important factors, among others, could cause our actual results to differ materially from those expressed in forward-looking statements made by us or on our behalf in filings with the SEC, press releases, communications with investors and oral statements. Any or all of our forward-looking statements in this Annual Report on Form 10-K and in any other public statements we make may turn out to be wrong. They can be affected by inaccurate assumptions we might make or by known or unknown risks and uncertainties. Many factors mentioned in the discussion below will be important in determining future results. Consequently, no forward-looking statement can be guaranteed. Actual future results may differ materially from those anticipated in forward-looking statements. We undertake no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise. You are advised, however, to consult any further disclosure we make in our reports filed with the SEC.

Risks Related to Our Business and Industry

Our recent growth rates may not be sustainable or indicative of our future growth.

In late 2011, we closed and permanently redirected over 240 of our niche websites into Wayfair.com. Additionally, we launched Joss & Main. In 2013, we acquired DwellStudio, and in 2014, we launched Birch Lane. Because we launched most of our brands recently, we have a limited amount of information regarding the purchasing patterns of our customers on these websites. We depend heavily on this information to plan and forecast our business, including anticipated customer acquisition costs, net revenue per active customer and other key performance metrics. If our assumptions prove to be wrong, we may spend more than we anticipate to acquire and retain customers or may generate less net revenue per active customer than anticipated, any of which could have a negative impact on our business and results of operations. In addition, our historical growth rates may not be sustainable or indicative of future growth.
We believe that our continued revenue growth will depend upon, among other factors, our ability to:

- build our brands and launch new brands;
- acquire more customers;
- develop new features to enhance the consumer experience on our websites, mobile-optimized websites and mobile applications, which we collectively refer to as our sites;
- increase the frequency with which new and repeat customers purchase products on our sites through merchandising, data, analytics and technology;
- add new suppliers and deepen our relationships with our existing suppliers;
- enhance the systems our consumers use to interact with our sites and invest in our infrastructure platform;
- expand internationally; and
- pursue strategic acquisitions.

We cannot assure you we will be able to achieve any of the foregoing. Our customer base may not continue to grow or may decline as a result of increased competition and the maturation of our business. Failure to continue our revenue growth rates could have a material adverse effect on our financial condition and results of operations. You should not rely on our historical rate of revenue growth as an indication of our future performance.

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

To manage our growth effectively, we must continue to implement our operational plans and strategies, improve and expand our infrastructure of people and information systems and expand, train and manage our employee base. We have rapidly increased employee headcount since our inception to support the growth in our business. The number of our employees increased from 1,558 full-time equivalents as of December 31, 2013 to 2,353 full-time equivalents as of December 31, 2014. To support continued growth, we must effectively integrate, develop and motivate a large number of new employees. We face significant competition for personnel, particularly in the Boston, Massachusetts area where our headquarters are located. Failure to manage our hiring needs effectively or successfully integrate our new hires may have a material adverse effect on our business, financial condition and operating results.

Additionally, the growth of our business places significant demands on our management and other employees. For example, we typically launch hundreds of promotional events across thousands of products each month on Wayfair.com, in addition to hundreds of promotional events—or "Daily Events"—on Joss & Main in which we promote thousands of products via emails, "push" notifications and personalized displays. These events require us to produce updates of our sites and emails to our customers on a daily basis with different products, photos and text. The growth of our business may require significant additional resources to meet these daily requirements, which may not scale in a cost-effective manner or may negatively affect the quality of our sites and customer experience. We are also required to manage relationships with a growing number of suppliers, customers and other third parties. Our information technology systems and our internal controls and procedures may not be adequate to support future growth of our supplier base. If we are unable to manage the growth of our organization effectively, our business, financial condition and operating results may be materially adversely affected.
If we fail to acquire new customers, or fail to do so in a cost-effective manner, we may not be able to increase net revenue per active customer or achieve profitability.

Our success depends on our ability to acquire customers in a cost-effective manner. In order to expand our customer base, we must appeal to and acquire customers who have historically used other means of commerce to purchase home goods and may prefer alternatives to our offerings, such as traditional brick and mortar retailers, the websites of our competitors or our suppliers' own websites. We have made significant investments related to customer acquisition and expect to continue to spend significant amounts to acquire additional customers. For example, we have continued to expand our national U.S. television branding and advertising campaigns. Such campaigns are expensive and may not result in the cost-effective acquisition of customers. We cannot assure you that the net profit from new customers we acquire will ultimately exceed the cost of acquiring those customers. If we fail to deliver a quality shopping experience, or if consumers do not perceive the products we offer to be of high value and quality, we may not be able to acquire new customers. If we are unable to acquire new customers who purchase products in numbers sufficient to grow our business, we may not be able to generate the scale necessary to drive beneficial network effects with our suppliers, our net revenue may decrease, and our business, financial condition and operating results may be materially adversely affected.

We believe that many of our new customers originate from word-of-mouth and other non-paid referrals from existing customers. Therefore we must ensure that our existing customers remain loyal to us in order to continue receiving those referrals. If our efforts to satisfy our existing customers are not successful, we may not be able to acquire new customers in sufficient numbers to continue to grow our business, or we may be required to incur significantly higher marketing expenses in order to acquire new customers.

We also utilize paid and non-paid advertising. Our paid advertising includes search engine marketing, display advertising, paid social media and television advertisements. Our non-paid advertising efforts include search engine optimization, non-paid social media, mobile "push" notifications and email. We obtain a significant amount of traffic via search engines and, therefore, rely on search engines such as Google, Bing and Yahoo!. Search engines frequently update and change the logic that determines the placement and display of results of a user's search, such that the purchased or algorithmic placement of links to our sites can be negatively affected. Moreover, a search engine could, for competitive or other purposes, alter its search algorithms or results, causing our sites to place lower in search query results. A major search engine could change its algorithms in a manner that negatively affects our paid or non-paid search ranking, and competitive dynamics could impact the effectiveness of search engine marketing or search engine optimization. We also obtain a significant amount of traffic via social networking websites or other channels used by our current and prospective customers. As e-commerce and social networking continue to rapidly evolve, we must continue to establish relationships with these channels and may be unable to develop or maintain these relationships on acceptable terms. If we are unable to cost-effectively drive traffic to our sites, our ability to acquire new customers and our financial condition would suffer.

Our success depends in part on our ability to increase our net revenue per active customer. If our efforts to increase customer loyalty and repeat purchasing as well as maintain high levels of customer engagement and average order values of our customers are not successful, our growth prospects and revenue will be materially adversely affected.

Our ability to grow our business depends on our ability to retain our existing customer base and generate increased revenue and repeat purchases from this customer base, and maintain high levels of
customer engagement. To do this, we must continue to provide our customers and potential customers with a unified, convenient, efficient and differentiated shopping experience by:

- providing imagery, tools and technology that attract customers who historically would have bought elsewhere;
- maintaining a high-quality and diverse portfolio of products;
- managing over 7,000 suppliers to deliver products on time and without damage; and
- continuing to invest in our mobile platforms.

If we fail to increase net revenue per active customer, generate repeat purchases or maintain high levels of customer engagement and average order value, our growth prospects, operating results and financial condition could be materially adversely affected.

**Our business depends on our ability to build and maintain strong brands. We may not be able to maintain and enhance our existing brands if we receive unfavorable customer complaints, negative publicity or otherwise fail to live up to consumers' expectations, which could materially adversely affect our business, results of operations and growth prospects.**

We currently offer five distinct brands to our customers, but we have a limited operating history with most of these brands. Maintaining and enhancing these brands are critical to expanding our base of customers and suppliers. However, a significant portion of our customers’ brand experience depends on third parties outside of our control, including suppliers and logistics providers such as FedEx, UPS and the U.S. Postal Service. If these third parties do not meet our or our customers’ expectations, our brand may suffer irreparable damage. In addition, maintaining and enhancing these brands may require us to make substantial investments, and these investments may not be successful. If we fail to promote and maintain our brands, or if we incur excessive expenses in this effort, our business, operating results and financial condition may be materially adversely affected. We anticipate that, as our market becomes increasingly competitive, maintaining and enhancing our brands may become increasingly difficult and expensive. Maintaining and enhancing our brands will depend largely on our ability to provide high quality products to our customers and a reliable, trustworthy and profitable sales channel to our suppliers, which we may not do successfully.

Customer complaints or negative publicity about our sites, products, product delivery times, customer data handling and security practices or customer support, especially on blogs, social media websites and our sites, could rapidly and severely diminish consumer use of our sites and consumer and supplier confidence in us and result in harm to our brands.

**Our efforts to launch new brands and expand our existing brand portfolio internationally may not be successful.**

Our business success depends to some extent on our ability to expand our customer offerings by launching new brands and expanding our existing brand portfolio into new geographies. For example, in 2014 we launched Birch Lane in the United States and Canada, and we launched our Joss & Main brand in the United Kingdom, France and Germany. Launching new brands or expanding our existing brand portfolio internationally requires significant upfront investments, including investments in marketing, information technology and additional personnel. Expanding our brands internationally is particularly challenging because it requires us to gain country-specific knowledge about consumers and regional competitors, construct home goods catalogs specific to the country, build local logistics capabilities and customize portions of our technology for local markets. We may not be able to generate satisfactory revenue from these efforts to offset these upfront costs. Any lack of market acceptance of our efforts to launch new brands or expand our existing brand portfolio could have a material adverse effect on our business, prospects, financial condition and results of operations.
Expansion of our international operations will require management attention and resources, involves additional risks, and may be unsuccessful, which could harm our future business development and existing domestic operations.

We believe international expansion represents a significant growth opportunity for us. Today, we deliver products to customers in a number of countries, including the United States, the United Kingdom, Canada, Australia, Germany, France, Austria, Ireland and New Zealand. We plan to expand into other international markets in order to grow our business, which will require significant management attention and resources. For example, we have made and will continue to make significant investments in information technology, logistics, supplier relationships, merchandising and marketing in the foreign jurisdictions in which we operate or plan to operate. We have limited experience in selling our products to conform to different local cultures, standards and regulations, and the products we offer may not appeal to customers in the same manner, if at all, in other geographies. We may have to compete with local companies which understand the local market better than we do and/or may have greater brand recognition than we do. In addition, to deliver satisfactory performance for customers in international locations, it may be necessary to locate physical facilities, such as consolidation centers, in foreign markets, and we may have to invest in these facilities before we can determine whether or not our foreign operations are successful. We have limited experience establishing such facilities internationally and therefore may decide not to continue with the expansion of operations. We may not be successful in expanding into additional international markets or in generating net revenue from foreign operations. Furthermore, different privacy, censorship, liability, intellectual property and other laws and regulations in foreign countries may cause our business, financial condition and operating results to be materially adversely affected.

Our future results could be materially adversely affected by a number of factors inherent in international operations, including:

- localization of our product offerings, including translation into foreign languages and adaptation for local practices;
- the need to vary our practices in ways with which we have limited or no experience or which are less profitable or carry more risk to us;
- unexpected changes in regulatory requirements, taxes, trade laws, tariffs, export quotas, custom duties or other trade restrictions;
- differing labor regulations where labor laws may be more advantageous to employees as compared to the United States;
- more stringent regulations relating to data privacy and security, including the use of commercial and personal information, particularly in the European Union;
- changes in a specific country’s or region’s political or economic conditions;
- the rising cost of labor in the foreign countries in which our suppliers operate, resulting in increases in our costs of doing business internationally;
- challenges inherent in efficiently managing an increased number of employees over large geographic distances, including the need to implement appropriate systems, policies, benefits and compliance programs and maintain our corporate culture across geographies;
- risks resulting from changes in currency exchange rates;
- limitations on our ability to reinvest earnings from operations in one country to fund the capital needs of our operations in other countries;
- different or lesser intellectual property protection;
exposure to liabilities under anti-corruption and anti-money laundering laws, including the U.S. Foreign Corrupt Practices Act and similar laws and regulations in other jurisdictions;

import/export controls; and

logistics and sourcing.

Operating internationally requires significant management attention and financial resources. We cannot be certain that the investment and additional resources required to establish and expand our international operations will produce desired levels of net revenue or profitability. If we invest substantial time and resources to establish and expand our international operations and are unable to do so successfully and in a timely manner, our business, financial condition and operating results may be materially adversely affected.

We have a history of losses and expect to have increasing operating losses and negative cash flow as we continue to expand our business.

We have a history of losses, and we accumulated $306.2 million in common members’ deficit as Wayfair LLC and an additional $58.1 million loss as Wayfair Inc. through December 31, 2014. We expect our operating losses and negative cash flow to continue in the near-term as we increase investment in our business. Because the market for purchasing home goods online is rapidly evolving and has not yet reached widespread adoption, it is difficult for us to predict our future operating results. As a result, our losses may be larger than anticipated, and we may never achieve profitability. We expect our operating expenses to increase over the next several years as we increase our advertising budget, hire additional personnel and continue to develop features on our sites. In particular, we intend to continue to invest substantial resources in marketing to acquire new customers. In addition, as we grow as a newly public company, we have and will continue to incur additional significant legal, accounting and other expenses that we did not previously incur as a private company. Furthermore, if our future growth and operating performance fail to meet investor or analyst expectations, or if we have future negative cash flow or losses resulting from our investment in acquiring new customers, our financial condition and stock price could 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 sites, transaction processing systems and technology infrastructure are critical to our reputation and our ability to acquire and retain customers, as well as maintain adequate customer service levels.

We currently utilize two third-party data center hosting facilities. If the main facility where substantially all of our computer and communications hardware is located fails, or if we suffer an interruption or degradation of services at our main facility, we could lose customer data and miss order fulfillment deadlines, which could harm our business. Our systems and operations are vulnerable to damage or interruption from fire, flood, power loss, telecommunications failure, terrorist attacks, cyber-attacks, data loss, acts of war, break-ins, earthquake and similar events. In the event of a failure of our main facility, the failover to our back-up facility could take substantial time, during which time our sites could be completely shut down. Our back-up facility is designed to support transaction volume at a level slightly above our average daily sales, but is not adequate to support spikes in demand. The back-up facility may not process effectively during time of higher traffic to our sites and may process transactions more slowly and may not support all of our sites' functionality.

We use complex proprietary software in our technology infrastructure, which we seek to continually update and improve. We may not always be successful in executing these upgrades and improvements,
and the operation of our systems may be subject to failure. In particular, we have in the past and may in the future experience slowdowns or interruptions in some or all of our sites when we are updating them, and new technologies or infrastructures may not be fully integrated with existing systems on a timely basis, or at all. Additionally, if we expand our use of third-party services, including cloud-based services, our technology infrastructure may be subject to increased risk of slowdown or interruption as a result of integration with such services and/or failures by such third-parties, which are out of our control. Our net revenue depends on the number of visitors who shop on our sites and the volume of orders we can handle. Unavailability of our sites or reduced order fulfillment performance would reduce the volume of goods sold and could also materially adversely affect consumer perception of our brand. We may experience periodic system interruptions from time to time. In addition, continued growth in our transaction volume, as well as surges in online traffic and orders associated with promotional activities or seasonal trends in our business, place additional demands on our technology platform and could cause or exacerbate slowdowns or interruptions. If there is a substantial increase in the volume of traffic on our sites or the number of orders placed by customers, we will be required to further expand and upgrade our technology, transaction processing systems and network infrastructure. There can be no assurance that we will be able to accurately project the rate or timing of increases, if any, in the use of our sites or expand and upgrade our systems and infrastructure to accommodate such increases on a timely basis. In order to remain competitive, we must continue to enhance and improve the responsiveness, functionality and features of our sites, which is particularly challenging given the rapid rate at which new technologies, customer preferences and expectations and industry standards and practices are evolving in the e-commerce industry. Accordingly, we redesign and enhance various functions on our sites on a regular basis, and we may experience instability and performance issues as a result of these changes.

Any slowdown or failure of our sites and the underlying technology infrastructure could harm our business, reputation and our ability to acquire, retain and serve our customers, which could materially adversely affect our results of operations. Our disaster recovery plan may be inadequate, and our business interruption insurance may not be sufficient to compensate us for the losses that could occur.

**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. Our competition includes: furniture stores, big box retailers, department stores, specialty retailers, and online retailers and marketplaces, including:

- **Furniture Stores:** Ashley Furniture, Bob's Discount Furniture, Havertys, Raymour & Flanagan and Rooms To Go;
- **Big Box Retailers:** Bed, Bath & Beyond, Home Depot, IKEA, Lowe's, Target and Walmart;
- **Department Stores:** JCPenney and Macy's;
- **Specialty Retailers:** Crate and Barrel, Ethan Allen, HomeGoods, Pottery Barn and Restoration Hardware; and
- **Online Retailers and Online Marketplaces:** Amazon and eBay.

We expect competition in e-commerce generally to continue to increase. We believe that our ability to compete successfully depends upon many factors both within and beyond our control, including:

- the size and composition of our customer base;
- the number of suppliers and products we feature on our sites;
- our selling and marketing efforts;
- the quality, price and reliability of products offered either by us;
• 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 competitors have, and potential competitors may have, longer operating histories, greater brand recognition, larger fulfillment infrastructures, greater technical 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 derive greater net revenue and profits from their existing customer base, acquire customers at lower costs or 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, which may allow them to build larger customer bases or generate net revenue from their customer bases more effectively than we do.

**Purchasers of home goods may not choose to shop online, which would prevent us from growing our business.**

The online market for home goods in the United States is less developed than the online market for apparel, consumer electronics and other consumer products in the United States and, we believe, only accounts for a small portion of the market as a whole. If the online market for home goods does not gain acceptance, our business may suffer. Our success will depend, in part, on our ability to attract consumers who have historically purchased home goods through traditional retailers. Furthermore, we may have to incur significantly higher and more sustained advertising and promotional expenditures in order to attract additional online consumers to our sites and convert them into purchasing customers. Specific factors that could impact consumers' willingness to purchase home goods from us include:

- concerns about buying products, and in particular larger products, without a physical storefront, face-to-face interaction with sales personnel and the ability to physically examine products;
- delivery time associated with online orders;
- actual or perceived lack of security of online transactions and concerns regarding the privacy of personal information;
- delayed shipments or shipments of incorrect or damaged products;
- inconvenience associated with returning or exchanging items purchased online; and
- usability, functionality and features of our sites.

If the 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 and levels may be less than historical rates.

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

Some of the products we sell or have manufactured for us may expose us to product liability claims and litigation or regulatory action relating to personal injury, death or 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.
Risks associated with the suppliers from whom our products are sourced could materially adversely affect our financial performance as well as our reputation and brand.

We depend on our ability to provide our customers with a wide range of products from qualified suppliers in a timely and efficient manner. Political and economic instability, the financial stability of suppliers, suppliers' ability to meet our standards, labor problems experienced by suppliers, the availability of raw materials, merchandise quality issues, currency exchange rates, transport availability and cost, transport security, inflation, and other factors relating to the suppliers are beyond our control.

Our agreements with most of our suppliers do not provide for the long-term availability of merchandise or the continuation of particular pricing practices, nor do they restrict such suppliers from selling products to other buyers. There can be no assurance that our current suppliers will continue to seek to sell us products on current terms or that we will be able to establish new or otherwise extend current supply relationships to ensure product acquisitions in a timely and efficient manner and on acceptable commercial terms. Our ability to develop and maintain relationships with reputable suppliers and offer high quality merchandise to our customers is critical to our success. If we are unable to develop and maintain relationships with suppliers that would allow us to offer a sufficient amount and variety of quality merchandise on acceptable commercial terms, our ability to satisfy our customers' needs, and therefore our long-term growth prospects, would be materially adversely affected.

We also are unable to predict whether any of the countries in which our suppliers' products are currently manufactured or may be manufactured in the future will be subject to trade restrictions imposed by the U.S. or foreign governments or the likelihood, type or effect of any such restrictions. Any event causing a disruption or delay of imports from suppliers with international manufacturing operations, including the imposition of additional import restrictions, restrictions on the transfer of funds or increased tariffs or quotas, could increase the cost or reduce the supply of merchandise available to our customers and materially adversely affect our financial performance as well as our reputation and brand. Furthermore, some or all of our suppliers' foreign operations may be adversely affected by political and financial instability, resulting in the disruption of trade from exporting countries, restrictions on the transfer of funds or other trade disruptions.

In addition, our business with foreign suppliers, particularly with respect to our international sites, may be affected by changes in the value of the U.S. dollar relative to other foreign currencies. For example, any movement by any other foreign currency against the U.S. dollar may result in higher costs to us for those goods. Declines in foreign currencies and currency exchange rates might negatively affect the profitability and business prospects of one or more of our foreign suppliers. This, in turn, might cause such foreign suppliers to demand higher prices for merchandise in their effort to offset any lost profits associated with any currency devaluation, delay merchandise shipments, or discontinue selling to us altogether, any of which could ultimately reduce our sales or increase our costs.

We may be unable to source additional or strengthen our relationships with suppliers.

As of December 31, 2014, we had relationships with over 7,000 suppliers. Our agreements with suppliers are generally terminable at will by either party upon short notice. If we do not maintain our existing relationships or build new relationships with suppliers on acceptable commercial terms, we may not be able to maintain a broad selection of merchandise, and our business and prospects would suffer severely.

In order to attract quality suppliers to our platform, we must:

- demonstrate our ability to help our suppliers increase their sales;
- offer suppliers a high quality, cost-effective fulfillment process; and
continue to provide suppliers a dynamic and real-time view of our demand and inventory needs via powerful data and analytics capabilities.

If we are unable to provide our suppliers with a compelling return on investment and an ability to increase their sales, we may be unable to maintain and/or expand our supplier network, which would negatively impact our business.

We depend on our suppliers to perform certain services regarding the products that we offer.

As part of offering our suppliers’ products for sale on our sites, these suppliers generally agree to conduct a number of traditional retail operations with respect to their respective products, including maintaining inventory and preparing merchandise for shipment to our customers. We may be unable to ensure that these suppliers will continue to perform these services to our or our customers' satisfaction in a manner that provides our customer with a unified brand experience or on commercially reasonable terms. If our customers become dissatisfied with the services provided by our suppliers, our business, reputation and brands could suffer.

We depend on our relationships with other third parties, including our retail partners, and changes in our relationships with these parties could adversely impact our revenue and profits.

In the years ending December 31, 2014 and 2013, approximately 16% and 26%, respectively, of our net revenue was generated from other operations, consisting primarily of revenue generated online by third parties, which we refer to as our retail partners. Our relationships with our retail partners allow consumers to purchase products offered by us through their websites and mobile applications. Because our agreements with our retail partners are generally terminable at will, we may be unable to maintain these relationships, and our results of operations could fluctuate significantly from period to period depending on the performance of our retail partners and their willingness to continue to offer and/or promote our products. Our agreements with our retail partners may also restrict our ability to market certain products, and not all of our suppliers may permit us to market through all of our retail partners' sites. Because some of our retail partners are competitors or potential competitors in the home goods market, some or all of our retail partners may in the future determine they no longer wish to do business with us or may decide to take other actions that could harm our business. We may also determine that we no longer want to do business with them. Because we do business with a small number of retail partners, if any one of our contracts with our retailer partners were to terminate, our revenue from our retail partners may decline and our relationships with our suppliers may be adversely affected.

Because we rely on FedEx, UPS and the U.S. Postal Service to deliver most of the small parcel products we offer on our sites, we are subject to shipping delays or disruptions caused by inclement weather, natural disasters, labor activism, health epidemics or bioterrorism. In addition, because we rely on national and regional major transportation companies for the delivery of some of our other products, we are also subject to risks of breakage or other damage during delivery by any of these third parties. We also use and rely on other services from third parties, such as our telecommunications services, and those services may be subject to outages and interruptions that are not within our control. For example, failures by our telecommunications providers have in the past and may in the future interrupt our ability to provide phone support to our customers. If these products are not delivered in a timely fashion or are damaged during the delivery process, or if we are not able to provide adequate customer support, our customers could become dissatisfied and cease buying products through our sites, which would adversely affect our operating results.
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 were a private company for 12 years prior to our initial public offering in October 2014 and, as such, have not historically had the internal control and financial reporting requirements that are required of a publicly-traded company. Commencing in 2015 we are required to comply with the requirements of The Sarbanes-Oxley Act of 2002, which requires that we maintain effective internal control over financial reporting and disclosure controls and procedures. In particular, we must perform system and process evaluation, document our controls and perform testing of our key control over financial reporting to allow management and our independent public accounting firm to report on the effectiveness of our internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act. Our testing, or the subsequent testing by our independent public accounting firm, may reveal deficiencies in our internal control over financial reporting that are deemed to be material weaknesses. If we are not able to comply with the requirements of Section 404 in a timely manner, or if we or our accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock would likely decline and we could be subject to lawsuits, sanctions or investigations by regulatory authorities, which would require additional financial and management resources.

We continue to invest in more robust technology and in more resources in order to manage those reporting requirements. Implementing the appropriate changes to our internal controls may distract our officers and employees, result in substantial costs if we implement new processes or modify our existing processes and require significant time to complete. Any difficulties or delays in implementing these controls could impact our ability to timely report our financial results. In addition, we currently rely on a manual process in some areas which increases our exposure to human error or intervention in reporting our financial results. For these reasons, we may encounter difficulties in the timely and accurate reporting of our financial results, which would impact our ability to provide our investors with information in a timely manner. As a result, our investors could lose confidence in our reported financial information, and our stock price could decline.

In addition, any such changes do not guarantee that we will be effective in maintaining the adequacy of our internal controls, and any failure to maintain that adequacy could prevent us from accurately reporting our financial results.

We may be unable to accurately forecast net revenue and appropriately plan our expenses in the future.

Net revenue and operating results are difficult to forecast because they generally depend on the volume, timing and type of the orders we receive, all of which are uncertain. We base our expense levels and investment plans on our estimates of total net revenue and gross margins and have not historically relied on a formalized forecasting and budgeting process. In addition, we have been operating as five distinct brands for a short period of time, and we cannot be sure the same growth rates, trends and other key performance metrics are meaningful predictors of future growth. Our business is affected by general economic and business conditions in the United States, and we anticipate that it will be increasingly affected by conditions in international markets. In addition, we experience seasonal trends in our business, and our mix of product offerings is highly variable from day-to-day and quarter-to-quarter. This variability makes it difficult to predict sales and could result in significant fluctuations in our net revenue from period-to-period. A significant portion of our expenses is fixed, and as a result, we may be unable to adjust our spending in a timely manner to compensate for any unexpected shortfall in net revenue. Any failure to accurately predict net revenue or gross margins could cause our operating results to be lower than expected, which could materially adversely affect our financial condition and stock price.
Our ability to raise capital in the future may be limited, and our failure to raise capital when needed could prevent us from growing.

In the future, we could be required to raise capital through public or private financing or other arrangements. Such financing may not be available on acceptable terms, or at all, and our failure to raise capital when needed could harm our business. We may sell Class A common stock, convertible securities and other equity securities in one or more transactions at prices and in a manner as we may determine from time to time. If we sell any such securities in subsequent transactions, investors may be materially diluted. New investors in such subsequent transactions could gain rights, preferences and privileges senior to those of holders of our Class A common stock. Debt financing, if available, may involve restrictive covenants and could reduce our operational flexibility or profitability. If we cannot raise funds on acceptable terms, we may not be able to grow our business or respond to competitive pressures.

Our business may be adversely affected if we are unable to provide our customers a cost-effective shopping platform that is able to respond and adapt to rapid changes in technology.

The number of people who access the Internet through devices other than personal computers, including mobile phones, smartphones, handheld computers such as notebooks and tablets, video game consoles, and television set-top devices, has increased dramatically in the past few years. The smaller screen size, functionality, and memory associated with some alternative devices may make the use of our sites and purchasing our products more difficult. The versions of our sites developed for these devices may not be compelling to consumers. In addition, it is time consuming and costly to keep pace with rapidly changing and continuously evolving technology. We launched our mobile applications for Joss & Main in 2012, and in 2014 we launched the Wayfair.com mobile application. In addition, all of our sites in North America and a majority of our international sites are mobile-optimized. Because we have only recently launched a majority of our mobile-optimized sites and a mobile application for Wayfair.com, and cannot be certain that they will be successful.

As new mobile devices and platforms are released, it is difficult to predict the problems we may encounter in developing applications for alternative devices and platforms, and we may need to devote significant resources to the creation, support and maintenance of such applications. If we are unable to attract consumers to our websites through these devices or are slow to develop a version of our websites that is more compatible with alternative devices or a mobile application, we may fail to capture a significant share of consumers in the home goods market, which could adversely affect our business.

Further, we continually upgrade existing technologies and business applications, and we may be required to implement new technologies or business applications in the future. The implementation of upgrades and changes requires significant investments. Our results of operations may be affected by the timing, effectiveness and costs associated with the successful implementation of any upgrades or changes to our systems and infrastructure. In the event that it is more difficult for our customers to buy products from us on their mobile devices, or if our customers choose not to buy products from us on their mobile devices or to use mobile products that do not offer access to our websites, our customer growth could be harmed and our business, financial condition and operating results may be materially adversely affected.

Significant merchandise returns could harm our business.

We allow our customers to return products, subject to our return policy. If merchandise returns are significant, our business, prospects, financial condition and results of operations 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. Many of our products are large and
require special handling and delivery. From time to time our products are damaged in transit, which can increase return rates and harm our brand.

**Uncertainties in global economic conditions and their impact on consumer spending patterns, particularly in the home goods segment, could adversely impact our operating results.**

Consumers may view a substantial portion of the products we offer as discretionary items rather than necessities. As a result, our results of operations are sensitive to changes in macro-economic conditions that impact consumer spending, including discretionary spending. Some of the factors adversely affecting consumer spending include levels of unemployment, consumer debt levels, changes in net worth based on market changes and uncertainty, home foreclosures and changes in home values, fluctuating interest rates, credit availability, government actions, fluctuating fuel and other energy costs, which in recent months have been particularly volatile, fluctuating commodity prices and general uncertainty regarding the overall future economic environment. Consumer purchases of discretionary items, including our merchandise, generally decline during periods when disposable income is adversely affected or there is economic uncertainty. Adverse economic changes in any of the regions in which we sell our products could reduce consumer confidence and could negatively affect net revenue and have a material adverse effect on our operating results.

**Our business relies heavily on email and other messaging services, and any restrictions on the sending of emails or messages or an inability to timely deliver such communications could materially adversely affect our net revenue and business.**

Our business is highly dependent upon email and other messaging services for promoting our sites and products. Daily promotions offered through emails and other messages sent by us, or on our behalf by our vendors, generate a significant portion of our revenue. We provide daily emails and "push" communications to customers and other visitors informing them of what is available for purchase on our sites that day, and we believe these messages are an important part of our customer experience and help generate a substantial portion of our net revenue. If we are unable to successfully deliver emails or other messages to our subscribers, or if subscribers decline to open our emails or other messages, our net revenue and profitability would be materially adversely affected. Changes in how webmail applications organize and prioritize email may reduce the number of subscribers opening our emails. For example, in 2013 Google Inc.’s Gmail service added a feature that organizes incoming emails into categories (for example, primary, social and promotions). Such categorization or similar inbox organizational features may result in our emails being delivered in a less prominent location in a subscriber's inbox or viewed as "spam" by our subscribers and may reduce the likelihood of that subscriber opening our emails. Actions by third parties to block, impose restrictions on or charge for the delivery of emails or other messages could also adversely impact our business. From time to time, Internet service providers or other third parties may block bulk email transmissions or otherwise experience technical difficulties that result in our inability to successfully deliver emails or other messages to third parties. Changes in the laws or regulations that limit our ability to send such communications or impose additional requirements upon us in connection with sending such communications would also materially adversely impact our business. Our use of email and other messaging services to send communications about our sites or other matters may also result in legal claims against us, which may cause us increased expenses, and if successful might result in fines and orders with costly reporting and compliance obligations or might limit or prohibit our ability to send emails or other messages. We also rely on social networking messaging services to send communications and to encourage customers to send communications. Changes to the terms of these social networking services to limit promotional communications, any restrictions that would limit our ability or our customers' ability to send communications through their services, disruptions or downtime experienced by these social networking services or decline in the use of or engagement with social networking
services by customers and potential customers could materially adversely affect our business, financial condition and operating results.

We are subject to risks related to online payment methods.

We accept payments using a variety of methods, including credit card, debit card, PayPal and gift cards. As we offer new payment options to consumers, we may be 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 raise our operating costs and lower profitability. 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 face restrictions placed upon, our ability to accept credit card and debit card payments from consumers or 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.

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 and results of operations.

Government regulation of the Internet and e-commerce 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 e-commerce. Existing and future regulations and laws could impede the growth of the Internet, e-commerce 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 e-commerce. It is possible that general business regulations and laws, or those specifically governing the Internet or e-commerce, 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. 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 hurt our reputation, 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 sites by consumers and suppliers and may 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. In addition, it is possible that governments of one or more countries may seek to censor content available on our sites or may even attempt to completely block access to our sites. Adverse legal or regulatory developments could substantially harm our
business. In particular, in the event that we are restricted, in whole or in part, from operating in one or more countries, our ability to retain or increase our customer base may be adversely affected, and we may not be able to maintain or grow our net revenue and expand our business as anticipated.

**Failure to comply with federal, state and international laws and regulations relating to privacy, data protection and consumer protection, or the expansion of current or the enactment of new laws or regulations relating to privacy, data protection and consumer protection, could adversely affect our business and our financial condition.**

A variety of federal, state and international laws and regulations govern the collection, use, retention, sharing and security of consumer data. Laws and regulations relating to privacy, data protection and consumer protection are evolving and subject to potentially differing interpretations. These requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another or may conflict with other rules or our practices. As a result, our practices may not have complied or may not comply in the future with all such laws, regulations, requirements and obligations. Any failure, or perceived failure, by us to comply with our posted privacy policies or with any federal, state or international privacy or consumer protection-related laws, regulations, industry self-regulatory principles, industry standards or codes of conduct, regulatory guidance, orders to which we may be subject or other legal obligations relating to privacy or consumer protection could adversely affect our reputation, brand and business, and may result in claims, proceedings or actions against us by governmental entities or others or other liabilities or require us to change our operations and/or cease using certain data sets. Any such claim, proceeding or action could hurt our reputation, brand and business, force us to incur significant expenses in defense of such proceedings, distract our management, increase our costs of doing business, result in a loss of customers and suppliers and may result in the imposition of monetary penalties. We may also be contractually required to indemnify and hold harmless third parties from the costs or consequences of non-compliance with any laws, regulations or other legal obligations relating to privacy or consumer protection or any inadvertent or unauthorized use or disclosure of data that we store or handle as part of operating our business.

Federal, state and international governmental authorities continue to evaluate the privacy implications inherent in the use of third-party "cookies" and other methods of online tracking for behavioral advertising and other purposes. U.S. and foreign governments have enacted, have considered or are considering legislation or regulations that could significantly restrict the ability of companies and individuals to engage in these activities, such as by regulating the level of consumer notice and consent required before a company can employ cookies or other electronic tracking tools or the use of data gathered with such tools. Additionally, some providers of consumer devices and web browsers have implemented, or announced plans to implement, means to make it easier for Internet users to prevent the placement of cookies or to block other tracking technologies, which could if widely adopted result in the use of third-party cookies and other methods of online tracking becoming significantly less effective. The regulation of the use of these cookies and other current online tracking and advertising practices or a loss in our ability to make effective use of services that employ such technologies could increase our costs of operations and limit our ability to acquire new customers on cost-effective terms and consequently, materially adversely affect our business, financial condition and operating results.

Foreign data protection, privacy and other laws and regulations are often more restrictive than those in the United States. The European Union, for example, traditionally has imposed stricter obligations under its laws and regulations relating to privacy, data protection and consumer protection than the United States. Individual EU member countries have discretion with respect to their interpretation and implementation of these laws and the penalties for breach and have their own regulators with differing attitudes towards enforcement, which results in varying privacy standards and enforcement risk from country to country. Legislation and regulation in the European Union and some EU member states require companies to give specific types of notice and in some cases seek consent.
In the majority of EU member countries, consent must be obtained prior to setting cookies or other tracking technologies. Outside of the European Union, there are many countries with data protections laws, and new countries are adopting data protection legislation with increasing frequency. Many of these laws may require consent from consumers for the use of data for various purposes, including marketing, which may reduce our ability to market our products. There is no harmonized approach to these laws and regulations globally. Consequently, we increase our risk of non-compliance with applicable foreign data protection laws and regulations as we continue our international expansion. We may need to change and limit the way we use consumer information in operating our business and may have difficulty maintaining a single operating model that is compliant. Compliance with such laws and regulations will result in additional costs and may necessitate changes to our business practices and divergent operating models, which may adversely affect our business and financial condition.

In addition, various federal, state and foreign legislative and regulatory bodies, or self-regulatory organizations, may expand current laws or regulations, enact new laws or regulations or issue revised rules or guidance regarding privacy, data protection and consumer protection. For example, the European Union is considering revisions to its current privacy laws. Any such changes may force us to incur substantial costs or require us to change our business practices. This could compromise our ability to pursue our growth strategy effectively and may adversely affect our ability to acquire customers or otherwise harm our business, financial condition and operating results.

Our failure or the failure of third-party service providers to protect our sites, networks and systems against security breaches, or otherwise to protect our confidential information, could damage our reputation and brand and substantially harm our business and operating results.

We collect, maintain, transmit and store data about our customers, suppliers and others, including credit card information and personally identifiable information, as well as other confidential and proprietary information. We also employ third-party service providers that store, process and transmit proprietary, personal and confidential information on our behalf. We rely on encryption and authentication technology licensed from third parties in an effort to securely transmit confidential and sensitive information, including credit card numbers. Advances in computer capabilities, new technological discoveries or other developments may result in the whole or partial failure of this technology to protect transaction data or other confidential and sensitive information from being breached or compromised. Our security measures, and those of our third-party service providers, may not detect or prevent all attempts to hack our systems, denial-of-service attacks, viruses, malicious software, break-ins, phishing attacks, social engineering, security breaches or other attacks and similar disruptions that may jeopardize the security of information stored in or transmitted by our sites, networks and systems or that we or our third-party service providers otherwise maintain, including payment card systems which may subject us to fines or higher transaction fees or limit or terminate our access to certain payment methods. We and our service providers may not anticipate or prevent all types of attacks until after they have already been launched, and techniques used to obtain unauthorized access to or sabotage systems change frequently and may not be known until launched against us or our third-party service providers. In addition, security breaches can also occur as a result of non-technical issues, including intentional or inadvertent breaches by our employees or by persons with whom we have commercial relationships.

Breaches of our security measures or those of our third-party service providers or cyber security incidents could result in unauthorized access to our sites, networks and systems; unauthorized access to and misappropriation of consumer information, including consumers' personally identifiable information, or other confidential or proprietary information of ourselves or third parties; viruses, worms, spyware or other malware being served from our sites, networks or systems; deletion or modification of content or the display of unauthorized content on our sites; interruption, disruption or
malfunction of operations; costs relating to breach remediation, deployment of additional personnel and protection technologies, response to governmental investigations and media inquiries and coverage; engagement of third party experts and consultants; litigation, regulatory action and other potential liabilities. If any of these breaches of security occur, our reputation and brand could be damaged, our business may suffer, we could be required to expend significant capital and other resources to alleviate problems caused by such breaches and we could be exposed to a risk of loss, litigation or regulatory action and possible liability. Actual or anticipated attacks may cause us to incur increasing costs, including costs to deploy additional personnel and protection technologies, train employees and engage third-party experts and consultants. In addition, any party who is able to illicitly obtain a subscriber's password could access the subscriber's transaction data or personal information. Any compromise or breach of our security measures, or those of our third-party service providers, could violate applicable privacy, data security and other laws, and cause significant legal and financial exposure, adverse publicity and a loss of confidence in our security measures, which could have an material adverse effect on our business, financial condition and operating results. Although we maintain privacy, data breach and network security 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. We may need to devote significant resources to protect against security breaches or to address problems caused by breaches, diverting resources from the growth and expansion of our business.

Changes in tax treatment of companies engaged in e-commerce may adversely affect the commercial use of our sites and our financial results.

Due to the global nature of the Internet, it is possible that various states or foreign countries might attempt to impose additional or new regulation on our business or levy additional or new sales, income or other taxes relating to our activities. Tax authorities at the international, federal, state and local levels are currently reviewing the appropriate treatment of companies engaged in e-commerce. New or revised international, federal, state or local tax regulations may subject us or our customers to additional sales, income and other taxes. For example, Congress is considering legislation, the "Marketplace Fairness Act," that would require companies engaged in e-commerce to collect sales taxes on Internet revenue. We cannot predict the effect of current attempts to impose sales, income or other taxes on e-commerce. New or revised taxes and, in particular, sales taxes, VAT and similar taxes would likely increase the cost of doing business online and decrease the attractiveness of selling products over the Internet. New taxes could also create significant increases in internal costs necessary to capture data and collect and remit taxes. Any of these events could have a material adverse effect on our business, financial condition and operating results.

Taxing authorities may successfully assert that we should have collected or in the future should collect sales and use, commercial activity, VAT or similar taxes, and we could be subject to liability with respect to past or future sales, which could adversely affect our operating results.

We do not collect sales and use, commercial activity, VAT or similar taxes in all jurisdictions in which we have sales, based on our belief that such taxes are not applicable. Sales and use, VAT and similar tax laws and rates vary greatly by jurisdiction. Several states have presented us with tax assessments, alleging that we are required to collect and remit sales or other similar taxes. The aggregate amount of claims from these states, not including taxes allegedly owed for periods subsequent to such assessments or interest and penalties after the date we last received such assessments, is approximately $11.7 million. While we do not believe that we are obligated to collect and remit such taxes and intend to vigorously defend our position, we cannot be sure of the outcome of our discussions and/or appeals with these states. In the event of an adverse outcome, we could face assessments for additional time periods since the last assessments we received, plus any additional interest and penalties. We also expect additional jurisdictions may make similar assessments in the future. As a result, we may be required to collect such taxes in additional jurisdictions in the future. Such tax assessments, penalties and interest or future requirements may materially adversely affect our business, financial condition and operating results.
We may experience fluctuations in our tax obligations and effective tax rate, which could materially adversely affect our operating results.

We are subject to taxes in the United States and numerous international jurisdictions. We record tax expense based on current tax payments and our estimates of future tax payments, which may include reserves for estimates of probable settlements of international and domestic tax audits. At any one time, multiple tax years may be subject to audit by various taxing jurisdictions. The results of these audits and negotiations with taxing authorities may affect the ultimate settlement of these issues. As a result, we expect that throughout the year there could be ongoing variability in our quarterly tax rates as taxable events occur and exposures are re-evaluated. Further, our effective tax rate in a given financial statement period may be materially impacted by changes in tax laws, changes in the mix and level of earnings by taxing jurisdiction, changes to existing accounting rules or regulations or by changes to our ownership or capital structures. Fluctuations in our tax obligations and effective tax rate could materially adversely affect our results of business, financial condition and operating results.

We may expend substantial funds in connection with the tax liabilities that arise upon the settlement of restricted stock units.

We may expend substantial funds to satisfy minimum statutory tax withholding and remittance obligations when we settle a portion of our restricted stock units, or RSUs, that were granted prior to our initial public offering. Our RSUs vest upon the satisfaction of both a service condition, which is typically satisfied over a period of five years, and an event condition, which was satisfied upon the closing of our initial public offering on October 7, 2014. On the settlement dates for our RSUs, we currently plan to withhold shares and remit income taxes on behalf of the holders of our RSUs at the applicable minimum statutory rates based on the then current value of the underlying shares of our common stock, which we refer to as a net settlement. In connection with these net settlements, we will withhold and remit the tax liabilities on behalf of the RSU holders to the relevant tax authorities in cash. For example, from the closing of our IPO through December 31, 2014, our tax obligation was approximately $28.0 million in the aggregate.

In order to fund the tax withholding and remittance obligations on behalf of our RSU holders, we expect to use a portion of our cash and cash equivalent balances. Alternatively, we may choose to borrow funds or use a combination of cash and borrowed funds to satisfy these obligations.

We expect to pursue acquisitions, which could have a material adverse effect on our business, as could the integration of the businesses following acquisition.

As part of our business strategy, we may acquire other companies or businesses. Since our inception, we have made two acquisitions, the remainder of the stake of our Australian joint venture in 2011 and DwellStudio in 2013. Acquisitions involve numerous risks, any of which could harm our business, including: difficulties in integrating the technologies, operations, existing contracts and personnel of an acquired company; difficulties in supporting and transitioning suppliers, if any, of an acquired company; diversion of financial and management resources from existing operations or alternative acquisition opportunities; failure to realize the anticipated benefits or synergies of a transaction; failure to identify all of the problems, liabilities or other shortcomings or challenges of an acquired company or technology, including issues related to intellectual property, regulatory compliance practices, revenue recognition or other accounting practices or employee or customer issues; risks of entering new markets in which we have limited or no experience; potential loss of key employees, customers and suppliers from either our current business or an acquired company's business; inability to generate sufficient net revenue to offset acquisition costs; additional costs or equity dilution associated with funding the acquisition; and possible write-offs or impairment charges relating to acquired businesses.

25
We may also pursue acquisitions in businesses that are complementary to our business but otherwise new to our organization. Pursuing complementary business opportunities would require significant time and resources that may divert management's attention from other business activities. In addition, any complementary businesses we acquire may expose us to additional laws, regulations and risks, including the risk that we may incur ongoing operating expenses in such businesses in excess of revenue, which could harm our results of operations and financial condition. The financial profile of any such new businesses may be different than our current financial profile, which could also materially adversely affect our financial condition.

**We rely on the performance of members of management and highly skilled personnel, and 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 Niraj Shah, one of our co-founders, co-chairman of the board of directors and our Chief Executive Officer, Steven Conine, one our co-founders, co-chairman of the board of directors and Chief Technology 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, particularly mid-level managers, engineers and merchandising and technology personnel. The market for such positions in the Boston area and other cities in which we operate is competitive. Qualified individuals are in high demand, and we may incur significant costs to attract them. In addition, the loss of any of our senior management or key employees or our inability to recruit and develop mid-level managers could materially adversely affect our ability to execute our business plan, and we may not be able to find adequate replacements. All of our officers and other U.S. 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. If we do not succeed in attracting well-qualified employees or retaining and motivating existing employees, our business, financial condition and operating results may be materially adversely affected.

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

We regard our subscriber list, trademarks, domain names, copyrights, patent, trade dress, trade secrets, proprietary technology 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 might not be able to obtain broad protection in the United States or internationally for all of our intellectual property, and we might not be able to obtain effective intellectual property protection in every country in which we sell products. The protection of our intellectual property rights may require the expenditure of significant financial, managerial and operational resources. Moreover, the steps we take to protect our intellectual property may not adequately protect our rights or prevent third parties from infringing or misappropriating our proprietary rights, and we may not be able to broadly enforce all of our trademarks. Any of our patents, marks or other intellectual property rights may be challenged by others or invalidated through administrative process or litigation. Our patent and trademark applications may never be granted. Additionally, the process of obtaining patent protection is expensive and time-consuming, and we may not be able to prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Even if issued, there can be no assurance that these patents will adequately protect our intellectual property, as the legal standards relating to the validity, enforceability and scope of protection of patent and other intellectual property rights are uncertain. We also cannot be certain that others will not independently develop or otherwise acquire equivalent or superior technology or intellectual property rights.

We 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.
We have been, and may again be, accused of infringing intellectual property rights of third parties.

The e-commerce industry is characterized by vigorous protection and pursuit of intellectual property rights, which has resulted in protracted and expensive litigation for many companies. We are subject to claims and litigation by third parties that we infringe their intellectual property rights, and we expect additional claims and litigation with respect to infringement to occur in the future. The costs of supporting such litigation and disputes are considerable, and there can be no assurances that favorable outcomes will be obtained. As our business expands and the number of competitors in our market increases and overlaps occur, we expect that infringement claims may increase in number and significance. Any claims or proceedings against us, whether meritorious or not, could be time-consuming, result in considerable litigation costs, require significant amounts of management time or result in the diversion of significant operational resources, any of which could materially adversely affect our business, financial condition and operating results.

Legal claims regarding intellectual property rights are subject to inherent uncertainties due to the oftentimes complex issues involved, and we cannot be certain that we will be successful in defending ourselves against such claims. In addition, some of our larger competitors have extensive portfolios of issued patents. Many potential litigants, including patent holding companies, have the ability to dedicate substantially greater resources to enforce their intellectual property rights and to defend claims that may be brought against them. Furthermore, a successful claimant could secure a judgment that requires us to pay substantial damages or prevents us from conducting our business as we have historically done or may desire to do in the future. We might also be required to seek a license and pay royalties for the use of such intellectual property, which may not be available on commercially acceptable terms, or at all. Alternatively, we may be required to develop non-infringing technology or intellectual property, which could require significant effort and expense and may ultimately not be successful.

We have received in the past, and we may receive in the future, communications alleging that certain items posted on or sold through our sites violate third-party copyrights, designs, marks and trade names or other intellectual property rights or other proprietary rights. Brand and content owners and other proprietary rights owners have actively asserted their purported rights against online companies, including Wayfair. In addition to litigation from rights owners, we may be subject to regulatory, civil or criminal proceedings and penalties if governmental authorities believe we have aided and abetted in the sale of counterfeit or infringing products.

Such claims, whether or not meritorious, may result in the expenditure of significant financial, managerial and operational resources, injunctions against us or the payment of damages by us. We may need to obtain licenses from third parties who allege that we have violated their rights, but such licenses may not be available on terms acceptable to us, or at all. These risks have been amplified by the increase in third parties whose sole or primary business is to assert such claims.
The inability to acquire, use or maintain our marks and domain names for our sites could substantially harm our business and operating results.

We currently are the registrant of marks for our brands in numerous jurisdictions and are the registrant of the Internet domain name for the websites of Wayfair.com and our other sites, as well as various related domain names. However, we have not registered our marks or domain names in all major international jurisdictions. Domain names generally are regulated by Internet regulatory bodies. If we do not have or cannot obtain on reasonable terms the ability to use our marks in a particular country, or to use or register our domain name, we could be forced either to incur significant additional expenses to market our products within that country, including the development of a new brand and the creation of new promotional materials and packaging, or to elect not to sell products in that country. Either result could materially adversely affect our business, financial condition and operating results.

Furthermore, the regulations governing domain names and laws protecting marks and similar proprietary rights could change in ways that block or interfere with our ability to use relevant domains or our current brand. Also, we might not be able to prevent third parties from registering, using or retaining domain names that interfere with our consumer communications or infringe or otherwise decrease the value of our marks, domain names and other proprietary rights. Regulatory bodies also may establish additional generic or country-code top-level domains or may allow modifications of the requirements for registering, holding or using domain names. As a result, we might not be able to register, use or maintain the domain names that utilize the name Wayfair or our other brands in all of the countries in which we currently or intend to conduct business.

Our use of open source software may pose particular risks to our proprietary software and systems.

We use open source software in our software and systems and will use open source software in the future. The licenses applicable to open source software may require that the source code subject to the license be made available to the public and that any modifications or derivative works to certain open source software continue to be licensed under open source licenses. From time to time, we may face claims from third parties claiming infringement of their intellectual property rights, or demanding the release or license of the open source software or derivative works that we developed using such software (which could include our proprietary source code) or otherwise seeking to enforce the terms of the applicable open source license. These claims could result in litigation and could require us to purchase a costly license, publicly release the affected portions of our source code, be limited in or cease using the implicated software unless and until we can re-engineer such software to avoid infringement or change the use of the implicated open source software. In addition to risks related to license requirements, use of certain open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties, indemnities or other contractual protections with respect to the software (for example, non-infringement or functionality). Our use of open source software may also present additional security risks because the source code for open source software is publicly available, which may make it easier for hackers and other third parties to determine how to breach our sites and systems that rely on open source software. Any of these risks could be difficult to eliminate or manage, and, if not addressed, could have a material adverse effect on our business, financial condition and operating results.
Risks Related to Ownership of our Class A Common Stock

Although we do not intend to rely on "controlled company" exemptions from certain corporate governance requirements under the New York Stock Exchange, or NYSE, rules, if we use these exemptions in the future, you will not have the same protections afforded to stockholders of companies that are subject to such requirements.

Our co-founders control a majority of the voting power of our outstanding common stock. As a result, we qualify as a "controlled company" within the meaning of the corporate governance standards of the NYSE. Under these rules, a listed 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 certain corporate governance requirements, including:

- the requirement that a majority of the board of directors consist of independent directors as defined under the listing rules of the NYSE;
- 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;
- 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; and
- the requirement for an annual performance evaluation of the nominating and corporate governance and compensation committees.

To the extent we still qualify, we may choose to take advantage of any of these exemptions in the future. As a result, in the future, we may not have a majority of independent directors and we may not have independent director oversight of decisions regarding executive compensation and director nominations.

The dual class structure of our common stock has the effect of concentrating voting control with our co-founders, which will limit your ability to influence corporate matters.

Our Class B common stock has ten votes per share, and our Class A common stock, which is the stock that is publicly traded, has one vote per share. Following the IPO, our Class B common stock was held primarily by our co-founders, other executive officers, directors and their affiliates. Due to optional conversions of Class B common stock into Class A common stock following the IPO, our Class B common stock is held primarily by our co-founders and their affiliates. As of December 31, 2014, our co-founders and their affiliates own shares representing approximately 49.2% of the economic interest and 82.1% of the voting power of our outstanding capital stock. This concentrated control limits your ability to influence corporate matters for the foreseeable future. For example, these stockholders will be able to control elections of directors, amendments of our certificate of incorporation or bylaws, increases to the number of shares available for issuance under our equity incentive plans or adoption of new equity incentive plans and approval of any merger or sale of assets for the foreseeable future. This control may materially adversely affect the market price of our Class A common stock. Additionally, holders of our Class B common stock are also entitled to a separate vote in the event we seek to amend our certificate of incorporation to increase or decrease the par value of a class of our common stock or in a manner that alters or changes the powers, preferences or special rights of the Class B common stock in a manner that affects its holders adversely.
Future transfers by holders of Class B common stock will generally result in those shares converting on a 1:1 basis to Class A common stock, which will have the effect, over time, of increasing the relative voting power of those holders of Class B common stock who retain their shares in the long-term, which may include our executive officers.

Our stock price may be volatile or may decline regardless of our operating performance.

The market price of our Class A common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- actual or anticipated fluctuations in our results of operations;
- the financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
- failure of securities analysts to initiate or maintain coverage of our company, changes in financial estimates or ratings by any securities analysts who follow our company or our failure to meet these estimates or the expectations of investors;
- announcements by us or our competitors of significant technical innovations, acquisitions, strategic partnerships, joint ventures, operating results or capital commitments;
- changes in operating performance and stock market valuations of other technology or retail companies generally, or those in our industry in particular;
- price and volume fluctuations in the overall stock market, including as a result of trends in the economy as a whole;
- changes in our board of directors or management;
- sales of large blocks of our Class A common stock, including sales by our executive officers, directors and significant stockholders;
- lawsuits threatened or filed against us;
- changes in laws or regulations applicable to our business;
- the expiration of contractual lock-up agreements;
- changes in our capital structure, such as future issuances of debt or equity securities;
- short sales, hedging and other derivative transactions involving our capital stock;
- general economic conditions in the United States and abroad;
- other events or factors, including those resulting from war, incidents of terrorism or responses to these events; and
- the other factors described in the sections titled "Risk Factors" and "Special Note Regarding Forward-Looking Statements."

In addition, stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many technology companies, including e-commerce companies. Stock prices of many technology companies, including e-commerce companies, have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies. In the past, stockholders have instituted securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business and materially adversely affect our business, financial condition and operating results.
Substantial sales of shares of our Class A common stock could cause the market price of our Class A common stock to decline.

Sales of a substantial number of shares of our Class A common stock in the public market, or the perception that these sales might occur, could depress the market price of our Class A common stock and could impair our ability to raise capital through the sale of additional equity securities. We are unable to predict the effect that such sales may have on the prevailing market price of our Class A common stock.

All of our executive officers, directors, holders of substantially all of our outstanding capital stock and substantially all of our stock options and restricted stock units are subject to lock-up agreements that restrict their ability to transfer shares of our capital stock until March 31, 2015, which is 180 days from the date of our initial public offering. Subject to certain exceptions, the lock-up agreements limit the number of shares of capital stock that may be sold during that 180-day lock-up period. Subject to certain limitations, approximately 70.9 million shares of common stock will become eligible for sale upon expiration of the 180-day lock-up period.

In addition, as of December 31, 2014, there were 449,046 shares of common stock subject to outstanding options. We have registered all of the shares of Class A common stock issuable upon conversion of the shares of Class B common stock issuable upon exercise of outstanding options, and upon exercise of settlement of any options or other equity incentives we may grant in the future, for public resale under the Securities Act of 1933, as amended, or the Securities Act. Accordingly, these shares are able to be freely sold in the public market upon issuance as permitted by any applicable vesting requirements, subject to the lock-up agreements described above. The shares of Class A common stock issuable upon conversion of these shares will become eligible for sale in the public market to the extent such options are exercised, subject to the lock-up agreements described above and compliance with applicable securities laws.

If securities or industry analysts do not publish research or reports about our business, or publish negative reports about our business, our share price and trading volume could decline.

The trading market for our Class A common stock depends in part on the research and reports that securities or industry analysts publish about us or our business, our market and our competitors. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our shares or change their opinion of our shares, our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

Our management has broad discretion over our existing cash resources and might not use such funds in ways that increase the value of your investment.

Our management generally has broad discretion over the use of our cash resources, and you will be relying on the judgment of our management regarding the application of these resources. Our management might not apply these resources in ways that increase the value of your investment.

The requirements of being a public company may strain our resources, divert management’s attention and affect our ability to attract and retain additional executive management and qualified board members.

As a newly public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of the NYSE and other applicable securities rules and regulations. Compliance with these rules and regulations will continue to increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and increase demand on our systems and resources, particularly since, after December 31, 2014, we are no longer an "emerging growth company." The
Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and results of operations. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. In order to maintain and, if required, improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns, which could materially adversely affect our business and results of operations. We will need to hire additional employees or engage outside consultants to comply with these requirements, which will increase our costs and expenses.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time-consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us, and our business may be materially adversely affected.

As a result of disclosure of information required of a public company, our business and financial condition will become more visible, which we believe may result in threatened or actual litigation, including by competitors and other third parties. If such claims are successful, our business and results of operations could be materially adversely affected, and even if the claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert the resources of our management and materially adversely affect our business, financial condition and operating results.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of our company more difficult, limit attempts by our stockholders to replace or remove our current management and limit the market price of our Class A common stock.

Provisions in our certificate of incorporation and bylaws may have the effect of delaying or preventing a change of control or changes in our management. Our certificate of incorporation and bylaws include provisions that:

- permit the board of directors to establish the number of directors and fill any vacancies and newly created directorships;
- when the outstanding shares of our Class B common stock represent less than 10% of the then outstanding shares of Class A common stock and Class B common stock, provide that our board of directors will be classified into three classes with staggered, three year terms and that directors may only be removed for cause;
- require super-majority voting to amend some provisions in our certificate of incorporation and bylaws;
- authorize the issuance of "blank check" preferred stock that our board of directors could use to implement a stockholder rights plan;
- eliminate the ability of our stockholders to call special meetings of stockholders;
Table of Contents

• when the outstanding shares of our Class B common stock represent less than 10% of the then outstanding shares of Class A common stock and Class B common stock, prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;

• provide that the board of directors is expressly authorized to make, alter or repeal our bylaws;

• restrict the forum for certain litigation against us to Delaware;

• reflect the dual class structure of our common stock, as discussed above; 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 are 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.

Our certificate of incorporation also provides that the Court of Chancery of the State of Delaware will be the exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our certificate of incorporation provides that the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our certificate of incorporation or our bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. Alternatively, if a court were to find the choice of forum provision contained in our certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could materially adversely affect our business and financial condition.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

Our corporate headquarters are in Boston, MA, where we currently occupy approximately 275,000 square feet of office space pursuant to a lease that expires in June 2024. We also occupy additional office space in two locations near our headquarters. We also lease approximately 795,000 square feet of fulfillment center space in Hebron, KY and Ogden, UT. This fulfillment center space is expected to expand by at least an additional 180,000 square feet in 2015. We lease additional office space in Ogden, UT, Orem, UT and New York, NY, a photography studio in Framingham, MA and retail space in New York, NY for DwellStudio. Our European headquarters are located in Galway, Ireland, where we currently lease approximately 6,200 square feet of office space. We also lease additional office space in Sydney, Australia, London, England and Berlin, Germany for our international operations.
Item 3. 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, as it can divert management's attention from important business matters and initiatives, negatively impacting our overall operations. In addition, we may also find ourselves at greater risk to outside party claims as we increase our operations in jurisdictions where the laws with respect to the potential liability of online retailers are uncertain, unfavorable, or unclear.

Item 4. Mine Safety Disclosures.

Not applicable.
PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Certain Information Regarding the Trading of Our Common Stock

Our Class A common stock began trading on the New York Stock Exchange under the symbol "W" on October 2, 2014. Prior to that time, there was no public market for our Class A common stock. As a result, we have not set forth quarterly information for the two most recent fiscal years. From October 2, 2014, until December 31, 2014 shares of our Class A common stock have traded as high as $39.43 and as low as $16.74.

There is no public market for our Class B common stock.

Holders of Our Common Stock

As of February 28, 2015, there were 29 holders of record of shares of our Class A common stock and 684 holders of record of shares of our Class B common stock. The actual number of stockholders is greater than this numbers of record holders, and includes stockholders who are beneficial owners, whose shares are held of record by banks, brokers, and other financial institutions.

Dividends

We do not expect to pay any dividends on our Class A common stock or Class B common stock in the foreseeable future. Any future determination to pay dividends will be at the sole discretion of our board of directors, subject to applicable laws. Our board of directors may take into account general and economic conditions, our financial condition and operating results, our available cash and current and anticipated cash needs, our capital requirements, contractual, legal, tax and regulatory restrictions, and implications on the payment of dividends by us to our stockholders or by our subsidiaries to us and such other factors as our board of directors may deem relevant.

Prior to our initial public offering and related internal restructuring, we operated as a limited liability company and made tax distributions to our then-current stockholders to the extent we have had taxable net income attributable to them. In March 2014 and October 2014, we distributed cash dividends to our Series A preferred stockholders in the aggregate amount of $39.5 million as further described in note 10, "Stockholders' Equity (Deficit)" to the consolidated financial statements included in Item 8 of Part II of this Annual Report on Form 10-K.

Securities Authorized For Issuance Under Equity Compensation Plans

Information regarding our equity compensation plans and securities authorized for issuance thereunder is set forth under Part III, Item 12 below.

Recent Sales of Unregistered Securities

During the period from January 1, 2014 to December 31, 2014, we issued 1,384,468 shares, net of shares withheld to satisfy statutory minimum tax withholding obligations, of Class B common stock upon the vesting of outstanding restricted stock units. The issuance of these securities were pursuant to written compensatory plans or arrangements with our employees, consultants, advisors and directors in reliance on the exemption provided by Rule 701 promulgated under the Securities Act, relative to transactions by an issuer not involving any public offering, to the extent an exemption from registration was required.
Use of Proceeds from Public Offering of Common Stock

In October 2014, we completed our IPO, pursuant to which we issued and sold 10,500,000 shares of Class A common stock and the selling stockholders sold 2,150,000 shares of Class A common stock, including 1,650,000 shares of Class A common stock pursuant to the exercise in full of the underwriters’ option to purchase additional shares. The shares sold in the IPO were registered under the Securities Act of 1933, as amended, pursuant to a Registration Statement on Form S-1 (File No. 333-198171), which was declared effective on October 1, 2014. The offering commenced on October 2, 2014.

The shares of Class A common stock were sold at an initial offering price to the public of $29.00 per share for an aggregate offering price of $366.9 million. We did not receive any proceeds from the shares sold by the selling stockholders. We received net proceeds of $282.9 million after deducting approximately $21.6 million in underwriting discount and expenses. We distributed $24.5 million of the net proceeds to our stockholders that held Series A preferred stock immediately prior to the completion of the IPO. Our co-founders and certain of our directors, executive officers and holders of more than 5% of our voting securities held 85% of our outstanding shares of Series A preferred stock and, as a result of their ownership, received 85% of the dividend payment, or approximately $20.8 million. We also used approximately $22.6 million of the net proceeds to satisfy statutory minimum tax withholding and remittance obligations primarily related to the vesting of restricted stock units that settled upon the completion of the IPO.

Issuer Purchases of Equity Securities

None
Item 6. Selected Consolidated Financial Data

You should read the following selected consolidated financial data below in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements, related notes and other financial information included in this Annual Report on Form 10-K. The following consolidated statements of operations data for the fiscal years ended December 31, 2014, 2013 and 2012 and the consolidated balance sheet data as of December 31, 2014 and 2013 are derived from our audited consolidated financial statements included in this Annual Report on Form 10-K. The following consolidated balance sheet data as of December 31, 2012 is derived from the audited consolidated financial statements of Wayfair LLC not included in this Annual Report on Form 10-K. Historical results are not necessarily indicative of the results to be expected in the future. The selected consolidated financial and other data should be read in conjunction with the
sections entitled Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and Item 8, "Financial Statements and Supplementary Data."

### Consolidated Statements of Operations:

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>$1,318,951</td>
<td>$915,843</td>
<td>$601,028</td>
</tr>
<tr>
<td>Cost of goods sold(1)</td>
<td>1,007,853</td>
<td>691,602</td>
<td>455,879</td>
</tr>
<tr>
<td>Gross profit</td>
<td>311,098</td>
<td>224,241</td>
<td>145,149</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer service and merchant fees(1)</td>
<td>55,804</td>
<td>35,500</td>
<td>25,730</td>
</tr>
<tr>
<td>Advertising</td>
<td>191,284</td>
<td>108,469</td>
<td>65,504</td>
</tr>
<tr>
<td>Merchandising, marketing and sales(1)</td>
<td>80,113</td>
<td>33,506</td>
<td>22,136</td>
</tr>
<tr>
<td>Operations, technology, general and administrative(1)</td>
<td>130,701</td>
<td>62,246</td>
<td>52,961</td>
</tr>
<tr>
<td>Amortization of acquired intangible assets</td>
<td>980</td>
<td>539</td>
<td>212</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>458,882</td>
<td>240,260</td>
<td>166,543</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(147,784)</td>
<td>(16,019)</td>
<td>(21,394)</td>
</tr>
<tr>
<td>Interest income, net</td>
<td>350</td>
<td>245</td>
<td>234</td>
</tr>
<tr>
<td>Other (expense) income, net</td>
<td>(489)</td>
<td>294</td>
<td>155</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>(147,923)</td>
<td>(15,480)</td>
<td>(21,005)</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>(175)</td>
<td>(46)</td>
<td>(50)</td>
</tr>
<tr>
<td>Net loss</td>
<td>(148,098)</td>
<td>(15,526)</td>
<td>(21,055)</td>
</tr>
<tr>
<td>Accretion of convertible redeemable preferred units</td>
<td>$ (2,071)</td>
<td>$ (25,388)</td>
<td>$ (12,154)</td>
</tr>
<tr>
<td>Net loss attributable to common unit holders</td>
<td>(150,169)</td>
<td>(40,914)</td>
<td>(33,209)</td>
</tr>
<tr>
<td>Net loss attributable to common unit holders per unit—basic and diluted</td>
<td>$ (2.97)</td>
<td>$ (0.99)</td>
<td>$ (0.80)</td>
</tr>
<tr>
<td>Weighted average number of common units outstanding used in computing per unit amounts—basic and diluted</td>
<td>50,641,601</td>
<td>41,331,546</td>
<td>41,271,992</td>
</tr>
</tbody>
</table>

(1) Includes equity based compensation and related taxes as follows:

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of goods sold</td>
<td>$369</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Customer service and merchant fees</td>
<td>2,265</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Merchandising, marketing and sales</td>
<td>28,514</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Operations, technology, general and administrative</td>
<td>32,096</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>$63,244</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

38
<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consolidated Balance Sheet Data:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents and short-term investments</td>
<td>$415,859</td>
<td>$115,308</td>
<td>$100,878</td>
</tr>
<tr>
<td>Working capital</td>
<td>254,276</td>
<td>18,118</td>
<td>42,031</td>
</tr>
<tr>
<td>Total assets</td>
<td>555,523</td>
<td>196,300</td>
<td>163,577</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>26,784</td>
<td>13,397</td>
<td>12,282</td>
</tr>
<tr>
<td>Convertible redeemable preferred units</td>
<td>—</td>
<td>241,186</td>
<td>215,798</td>
</tr>
<tr>
<td>Total stockholders' equity (deficit)</td>
<td>$305,539</td>
<td>$(191,178)</td>
<td>$(151,130)</td>
</tr>
</tbody>
</table>
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion of our financial condition and results of operations in conjunction with the consolidated financial statements and the notes thereto included elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. As a result of many factors, such as those set forth under the sections in this Annual Report on Form 10-K titled "Special Note Regarding Forward-Looking Statements" and "Risk Factors," our actual results may differ materially from those anticipated in these forward-looking statements.

Overview

Through our e-commerce business model, we offer visually inspiring browsing, compelling merchandising, easy product discovery and attractive prices for over seven million products from over 7,000 suppliers across five distinct brands—Wayfair.com, Joss & Main, AllModern, DwellStudio and Birch Lane. We have built one of the largest online selections of furniture, home furnishings, décor and goods.

We founded our company in May 2002 and have since delivered over 15 million orders. From 2003 to 2011, we grew our net revenue organically from $7.7 million to $517.3 million, representing a 69.2% CAGR. In late 2011, we made the strategic decision to close and permanently redirect over 240 of our niche websites into Wayfair.com to create a one-stop shop for furniture, home furnishings, décor and goods and to build brand awareness, drive customer loyalty and increase repeat purchasing. We also changed our name from CSN Stores LLC to Wayfair LLC.

We plan to grow our customer base by attracting more unique visitors to our sites through two main strategies—increasing brand awareness and expanding direct online marketing—and then converting those visitors to active customers. Our online efforts are focused on building brand awareness to drive visitor traffic via direct navigation, search engine optimization and email marketing campaigns. In addition, we have made significant investments to improve the consumer experience on our sites, such as creating highly engaging visual imagery and merchandising, as well as easy-to-use navigation tools and personalization features that enable better product discovery. We plan to continue investing in our infrastructure, including enhancing our merchandising, data, analytics, and technology platform, as well as developing additional logistics and transportation solutions, self-service tools for our suppliers, fulfillment offerings and enhancing our development, testing and deployment systems.

Until late 2012, we were primarily focused on growing our U.S. business. In 2012, we began laying the groundwork for expanding our international business by building our international infrastructure, developing deeper country-specific knowledge, building international supplier networks and establishing our brand presence in select international regions. We currently deliver products to customers in a number of countries, including the United States, the United Kingdom, Canada, Australia, Germany, France, Austria, Ireland and New Zealand. In 2014 we launched Joss & Main in the United Kingdom, France and Germany. In the year ended December 31, 2014, we generated net revenue outside of North America of $56.9 million, or 4.3% of our total net revenue, respectively.

In the year ended December 31, 2014, we generated net revenue of $1.3 billion, up 44.0% over the year ended December 31, 2013. Our net revenue in the year ended December 31, 2014 included $1.1 billion from Direct Retail, which we define as sales generated primarily through the sites of our five brands and $0.2 billion from Other, which we define as net revenue generated primarily online through third parties, which we refer to as our retail partners and net revenue from third-party advertisers. In the year ended December 31, 2014, we generated a net loss of $148.1 million and Adjusted EBITDA of $(62.5) million, increases of $132.6 million and $59.6 million, respectively, over the year ended December 31, 2013. Our net loss and Adjusted EBITDA results were driven primarily by our increased investment in advertising in the year ended December 31, 2014. See "Key Financial Results."
and Operating Metrics" below for further discussion of Adjusted EBITDA, our use of this measure, the limitations of this measure as an analytical tool and the reconciliation of Adjusted EBITDA to net loss, the most directly comparable generally accepted accounting principle ("GAAP") financial measure.

On October 7, 2014, we completed our IPO of 12,650,000 shares of our Class A common stock at a public offering price of $29.00 per share, of which 10,500,000 shares were sold by us and 2,150,000 shares were sold by our selling stockholders, including 1,650,000 shares pursuant to the underwriters' option to purchase additional shares, resulting in net proceeds to us of approximately $282.9 million, after deducting underwriting discounts and offering expenses. We did not receive any proceeds from the sale of shares by the selling stockholders.

The consolidated financial statements and other disclosures contained in this Annual Report on Form 10-K are those Wayfair Inc., which is the registrant. Prior to the effectiveness of the Corporation's registration statement on Form S-1 related to its initial public offering in October 2014, Wayfair LLC was the principal operating entity. In connection with the initial public offering of Wayfair Inc., Wayfair LLC completed an internal restructuring pursuant to which Wayfair LLC became a wholly-owned subsidiary of the Corporation, and the holders of equity interests in Wayfair LLC became stockholders of the Corporation. We accounted for this restructuring in accordance with the guidance provided for entities under common ownership because the holders of the equity interests in Wayfair LLC held the same ownership interests in Wayfair Inc. as they did in Wayfair LLC immediately prior to the internal restructuring. SK Retail, Inc. was the only holder of equity interest in Wayfair LLC with operations. Accordingly the historical financial statements of SK Retail, Inc. have been combined with the historical financial statements of Wayfair LLC. In addition, all of our outstanding common units and incentive units of Wayfair LLC were exchanged for shares of common stock or incentive units for common stock, and then were converted into shares of Class B common stock or incentive units for Class B common stock. In addition, all of outstanding preferred units were exchanged for shares of Series A and Series B convertible preferred stock. Immediately prior to the completion of this offering, all of our outstanding shares of Series A and Series B convertible preferred stock converted into shares of Class B common stock. Each share of Class B common stock may be converted into one share of Class A common stock upon transfer thereof, subject to certain exceptions.

Key Financial and Operating Metrics

We measure our business using both financial and operating metrics. Our net revenue, Adjusted EBITDA and free cash flow metrics are measured on a consolidated basis. All other key financial and operating metrics are derived and reported from our Direct Retail sales, which includes sales generated primarily through the sites of our five distinct brands. These metrics do not include net revenue derived from the sites operated by our retail partners. We do not have access to certain customer level information on net revenue derived through our retail partners and therefore cannot measure or disclose it.
We use the following metrics to assess the near-term and longer-term performance of our overall business.

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
</tr>
<tr>
<td><strong>Consolidated Financial Metrics</strong></td>
<td></td>
</tr>
<tr>
<td>Net Revenue</td>
<td>$1,318,951</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$(62,537)</td>
</tr>
<tr>
<td>Free Cash Flow</td>
<td>$(41,860)</td>
</tr>
<tr>
<td><strong>Direct Retail Financial and Operating Metrics</strong></td>
<td></td>
</tr>
<tr>
<td>Direct Retail Net Revenue</td>
<td>$1,101,686</td>
</tr>
<tr>
<td>Active Customers</td>
<td>3,217</td>
</tr>
<tr>
<td>LTM Net Revenue Per Active Customer</td>
<td>$342</td>
</tr>
<tr>
<td>Orders Delivered</td>
<td>5,237</td>
</tr>
<tr>
<td>Average Order Value</td>
<td>$210</td>
</tr>
</tbody>
</table>

**Non-GAAP Financial Measures**

**Adjusted EBITDA**

To provide investors with additional information regarding our financial results, we have disclosed here and elsewhere in this Annual Report on Form 10-K Adjusted EBITDA, a non-GAAP financial measure that we calculate as earnings (loss) before depreciation and amortization, equity-based compensation and related taxes, interest and other income and expense and taxes. We have provided a reconciliation below of Adjusted EBITDA to net loss, the most directly comparable GAAP financial measure.

We have included Adjusted EBITDA in this Annual Report on Form 10-K, because it is a key measure used by our management and board of directors to evaluate our operating performance, generate future operating plans and make strategic decisions regarding the allocation of capital. In particular, the exclusion of certain expenses in calculating Adjusted EBITDA facilitates operating performance comparisons on a period-to-period basis. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

Adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and Adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;

- Adjusted EBITDA does not reflect the compensation charge associated with a tender offer we completed in April 2014 and the equity based compensation and related taxes recorded in the fourth quarter of 2014 as described in the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources;”

- Adjusted EBITDA does not reflect changes in our working capital;

- Adjusted EBITDA does not reflect income tax payments that may represent a reduction in cash available to us; and
Other companies, including companies in our industry, may calculate Adjusted EBITDA differently, which reduces its usefulness as a comparative measure.

Because of these limitations, you should consider Adjusted EBITDA alongside other financial performance measures, including various cash flow metrics, net (loss) income and our other GAAP results.

The following table reflects the reconciliation of net loss to Adjusted EBITDA for each of the periods indicated:

<table>
<thead>
<tr>
<th>Reconciliation of Adjusted EBITDA</th>
<th>Year Ended December 31,</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
<td>2013</td>
<td>2012</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (148,098)</td>
<td>$ (15,526)</td>
<td>$ (21,055)</td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>22,003</td>
<td>13,091</td>
<td>9,335</td>
<td></td>
</tr>
<tr>
<td>Equity based compensation and related taxes</td>
<td>63,244</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest income, net</td>
<td>(350)</td>
<td>(245)</td>
<td>(234)</td>
<td></td>
</tr>
<tr>
<td>Other (expenses) income, net</td>
<td>489</td>
<td>(294)</td>
<td>(155)</td>
<td></td>
</tr>
<tr>
<td>Taxes</td>
<td>175</td>
<td>46</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$ (62,537)</td>
<td>$ (2,928)</td>
<td>$ (12,059)</td>
<td></td>
</tr>
</tbody>
</table>

Free Cash Flow

To provide investors with additional information regarding our financial results, we have also disclosed here and elsewhere in this Annual Report on Form 10-K free cash flow, a non-GAAP financial measure that we calculate as net cash (used in) provided by operating activities less net cash used to purchase property and equipment including leasehold improvements and site and software development costs. We have provided a reconciliation below of free cash flow to net cash (used in) provided by operating activities, the most directly comparable GAAP financial measure.

We have included free cash flow in this Annual Report on Form 10-K, because it is an important indicator of our business performance as it measures the amount of cash we generate. Accordingly, we believe that free cash flow provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management.

Free cash flow has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. There are limitations to using non-GAAP financial measures, including that other companies, including companies in our industry, may calculate free cash flow differently. Because of these limitations, you should consider free cash flow alongside other financial performance measures, including net cash (used in) provided by operating activities, capital expenditures and our other GAAP results.

43
The following table presents a reconciliation of free cash flow to net cash provided by operating activities for each of the periods indicated:

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net cash provided by operating activities, net of acquisition</td>
<td>$4,125</td>
<td>$34,413</td>
<td>$3,945</td>
</tr>
<tr>
<td>Purchase of property, equipment, and leasehold improvements</td>
<td>(31,855)</td>
<td>(6,739)</td>
<td>(8,031)</td>
</tr>
<tr>
<td>Site and software development costs</td>
<td>(14,130)</td>
<td>(9,040)</td>
<td>(6,949)</td>
</tr>
<tr>
<td>Free cash flow</td>
<td>$(41,860)</td>
<td>$18,634</td>
<td>$(11,035)</td>
</tr>
</tbody>
</table>

**Key Operating Metrics (Direct Retail)**

**Active Customers**

As of the last date of each reported period, we determine our number of active customers by counting the total number of individual customers who have purchased at least once directly from our sites during the preceding twelve-month period. The change in active customers in a reported period captures both the inflow of new customers as well as the outflow of existing customers who have not made a purchase in the last twelve months. We view the number of active customers as a key indicator of our growth.

**LTM Net Revenue Per Active Customer**

We define LTM net revenue per active customer as our total net revenue derived from Direct Retail sales in the last twelve months divided by our total number of active customers for the same preceding twelve-month period. We view LTM net revenue per active customer as a key indicator of our customers' purchasing patterns, including their initial and repeat purchase behavior.

**Orders Delivered**

We define orders delivered as the total Direct Retail orders delivered in any period, inclusive of orders that may eventually be returned. As we ship a large volume of packages through multiple carriers, actual delivery dates may not always be available, and as such we estimate delivery dates based on historical data. We recognize net revenue when an order is delivered and therefore orders delivered, together with average order value, is an indicator of the net revenue we expect to recognize in a given period. We view orders delivered as a key indicator of our growth.

**Average Order Value**

We define average order value as total Direct Retail net revenue in a given period divided by the orders delivered in that period. We view average order value as a key indicator of the mix of products on our sites, the mix of offers and promotions and the purchasing behavior of our customers.

**Factors Affecting our Performance**

We believe that our performance and future success depend on a number of factors that present significant opportunities for us but also pose risks and challenges, including those discussed below and in the section titled "Risk Factors".
Growth in Brand Awareness and Visitors to our Sites

We intend to continue investing in our brand awareness strategy and direct online marketing efforts. In late 2011, we made a strategic decision to close and permanently redirect over 240 of our niche websites into Wayfair.com. Since late 2011, we have marketed our brands, in particular Wayfair.com, through TV advertising, display advertising, paid search advertising, social media advertising and direct mail, catalog and print advertising. We believe that attracting new visitors to our sites and converting them into customers is key to driving our net revenue growth and operating results.

Growth in Customer Acquisition and Customer Retention

Our goal is to convert visitors into active customers and then encourage repeat purchases because it increases our operating leverage since it costs more to acquire a customer than to retain one. Our continued investments in infrastructure, including enhancing our merchandising, data, analytics, and technology platform, allow us to deliver increasingly tailored and personalized shopping experiences for customers across our sites. We believe our focus on a personalized shopping experience drives sales from new customers as well as repeat customers.

Revenue Growth Through Mobile Platform

Mobile is an increasingly important part of our business, especially for Joss & Main. We launched our mobile applications for Joss & Main in 2012 and Wayfair.com in 2014. Due to the relative newness of smartphones, tablets, and mobile shopping in general, we do not know if this increase in mobile use will continue.

Investment In Growth

We have aggressively invested in the growth of our business and this investment will continue. We anticipate that our operating expenses will increase substantially as we continue to increase our advertising spending, hire additional personnel primarily in merchandising, technology, operations, customer service and general and administrative functions and continue to develop features on our sites. In 2013, we signed a lease to increase our office space, in 2014 we further increased the office space to accommodate the anticipated growth of our headcount in our corporate headquarters and in 2014 we also signed a lease to expand our warehouse space. These investments are expected to continue to generate losses near term and yield returns in the long term, but there is no guarantee that we will be able to realize the return on our investments.

Components of Our Results of Operations

Certain prior period operating expense captions in the consolidated statements of operations have been expanded to provide greater detail and to conform to current period presentation.

Net Revenue

Net revenue consists primarily of sales of product from our sites and through the sites of our online retail partners and includes related shipping fees. We deduct cash discounts, allowances, rewards and estimated returns from gross revenue to determine net revenue. We recognize product revenue upon delivery to our customers. Net revenue is primarily driven by growth of new and active customers and the frequency with which customers purchase. The products offered on our sites are primarily fulfilled with product we ship to our customers directly from our suppliers and, to a lesser extent, from our fulfillment centers.
We also generate net revenue through third-party advertisers that pay us based on the number of advertisement related clicks, actions, or impressions for advertisements placed on our sites. Net revenue earned under these arrangements is included in net revenue and is recognized in the period in which the click, action or impression occurs. This revenue has not been material to date.

We maintain a membership rewards program that allows enrolled customers to earn points which can be redeemed on future purchases. We defer the portion of our revenue associated with rewards which are expected to be redeemed prior to its expiration.

**Cost of Goods Sold**

Cost of goods sold consists of the cost of product sold to customers, shipping and handling costs and shipping supplies and fulfillment costs. Fulfillment costs include costs incurred in operating and staffing the fulfillment centers, such as costs attributed to receiving, inspecting, picking, packaging and preparing customer orders for shipment. Cost of goods sold also includes direct and indirect labor costs including equity-based compensation for fulfillment center oversight, including payroll and related benefit costs. The increase in cost of goods sold is primarily driven by growth in orders delivered, the mix of the product available for sale on our sites and transportation costs related to delivering orders to our customers.

We earn rebates on our incentive programs with our suppliers. These rebates are earned upon shipment of goods. Amounts due from suppliers as a result of these rebate programs are included as a receivable and are reflected as a reduction of cost of goods sold on the consolidated statements of operations. We expect cost of goods sold expenses to remain relatively stable as a percentage of net revenue but some quarterly fluctuations are expected due to the wide variety of products we sell.

**Customer Service and Merchant Fees**

Customer service and merchant fees consist of labor-related costs including equity-based compensation of our employees involved in customer service activities and merchant processing fees associated with customer payments made by credit cards. Increase in our customer service and merchant fees are driven by the growth in our revenue and are expected to remain relatively consistent as a percentage of revenue.

**Advertising**

Advertising consists of direct response performance marketing costs, such as television advertising, display advertising, paid search advertising, social media advertising, search engine optimization, comparison shopping engine advertising, direct mail, catalog and print advertising. We expect advertising expense to continue to increase but decrease as a percentage of net revenue over time.

**Merchandising, Marketing and Sales**

Merchandising, marketing and sales expenses include labor-related costs including equity-based compensation for our category managers, buyers, site merchandisers, merchants, marketers and the team who executes our advertising strategy. Sales, marketing and merchandising expenses are primarily driven by investments to grow and retain our customer base. We expect merchandising, marketing and sales expenses to continue to increase as we grow our net revenue.

**Operations, Technology and General and Administrative**

Operations, technology, general and administrative expenses primarily include labor-related costs including equity-based compensation of our operations group that lead our supply chain and logistics, our technology team, building and supporting our sites, and our corporate general and administrative,
which includes human resources, finance and accounting personnel. Also included are administrative and professional service fees including audit and legal fees, insurance and other corporate expenses, including depreciation and rent. We anticipate that we will incur additional personnel expenses, professional service fees, including audit and legal, investor relations, costs of compliance with securities laws and regulations, and higher director and officer insurance costs related to operating as a public company. We expect operations, technology, general and administrative expenses will continue to increase as we grow our net revenue and operations.

Amortization of Acquired Intangible Assets

We have recorded identifiable intangible assets in conjunction with our acquisitions and are amortizing those assets over their estimated useful lives. We perform impairment testing of goodwill and intangibles with definite lives annually and whenever events or circumstances indicate that an impairment may have occurred.

Interest (Expense) Income, Net

Interest (expense) income, net consists primarily of interest earned on cash, cash equivalents and short-term investments held by us.

Other (Expense) Income, Net

Other (expense) income, net consist primarily foreign currency gains (losses).
## Results of Consolidated Operations

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consolidated Statements of Operations:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net revenue</strong></td>
<td>$1,318,951</td>
<td>$915,843</td>
<td>$601,028</td>
</tr>
<tr>
<td><strong>Cost of goods sold(1)</strong></td>
<td>1,007,853</td>
<td>691,602</td>
<td>455,879</td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>311,098</td>
<td>224,241</td>
<td>145,149</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer service and merchant fees(1)</td>
<td>55,804</td>
<td>35,500</td>
<td>25,730</td>
</tr>
<tr>
<td>Advertising</td>
<td>191,284</td>
<td>108,469</td>
<td>65,504</td>
</tr>
<tr>
<td>Merchandising, marketing and sales(1)</td>
<td>80,113</td>
<td>33,506</td>
<td>22,136</td>
</tr>
<tr>
<td>Operations, technology, general and administrative(1)</td>
<td>130,701</td>
<td>62,246</td>
<td>52,961</td>
</tr>
<tr>
<td>Amortization of acquired intangible assets</td>
<td>980</td>
<td>539</td>
<td>212</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>458,882</td>
<td>240,260</td>
<td>166,543</td>
</tr>
<tr>
<td><strong>Loss from operations</strong></td>
<td>(147,784)</td>
<td>(16,019)</td>
<td>(21,394)</td>
</tr>
<tr>
<td><strong>Interest income, net</strong></td>
<td>350</td>
<td>245</td>
<td>234</td>
</tr>
<tr>
<td><strong>Other (expense) income, net</strong></td>
<td>(489)</td>
<td>294</td>
<td>155</td>
</tr>
<tr>
<td><strong>Loss before income taxes</strong></td>
<td>(147,923)</td>
<td>(15,480)</td>
<td>(21,005)</td>
</tr>
<tr>
<td><strong>Provision for income taxes</strong></td>
<td>(175)</td>
<td>(46)</td>
<td>(50)</td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>$ (148,098</td>
<td>$ (15,526)</td>
<td>$ (21,055)</td>
</tr>
</tbody>
</table>

(1) Includes equity based compensation and related taxes as follows:

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cost of goods sold</strong></td>
<td>$369</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Customer service and merchant fees</strong></td>
<td>2,265</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Merchandising, marketing and sales</strong></td>
<td>28,514</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Operations, technology, general and administrative</strong></td>
<td>32,096</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$63,244</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>
Comparison of the year ended December 31, 2014 and 2013

Net revenue

In 2014, net revenue increased by $403.1 million, or 44.0% compared to 2013, primarily as a result of an increase in Direct Retail net revenue offset by the 10.4% decrease in Other revenue. In 2014, Direct Retail net revenue increased by $428.2 million, or 63.6% compared to 2013. The increase in Direct Retail net revenue was primarily due to sales to a larger customer base, as the number of active customers increased 53.8% in 2014 compared to the number of active customers in 2013. Additionally, LTM net revenue per active customer increased 6.2% in 2014 compared with 2013. The decrease in Other revenue was primarily due to decreased sales through our retail partners, as we continue to focus our investments on growing the Direct Retail business.
Cost of Goods Sold

In 2014, costs of goods sold increased by $316.3 million, or 45.7%, compared to 2013 mainly due to the 44% increase in sales of products. Of the increase in costs of goods sold, $249.9 million was due to the increase in products sold to a larger customer base. In addition, shipping and fulfillment costs increased $66.4 million as a result of the increase in products sold during the period. Costs of goods sold as a percentage of net revenue increased in the year ended December 31, 2014 compared to the year ended December 31, 2013 as a result of changes in product mix and more favorable customer return and free shipping policies.

Operating Expenses

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
</tr>
<tr>
<td>(in thousands)</td>
<td></td>
</tr>
<tr>
<td>Cost of goods sold</td>
<td>$1,007,853</td>
</tr>
<tr>
<td>As a percentage of net revenue</td>
<td>76.4%</td>
</tr>
</tbody>
</table>

In 2014, costs of goods sold increased by $316.3 million, or 45.7%, compared to 2013 mainly due to the 44% increase in sales of products. Of the increase in costs of goods sold, $249.9 million was due to the increase in products sold to a larger customer base. In addition, shipping and fulfillment costs increased $66.4 million as a result of the increase in products sold during the period. Costs of goods sold as a percentage of net revenue increased in the year ended December 31, 2014 compared to the year ended December 31, 2013 as a result of changes in product mix and more favorable customer return and free shipping policies.

Operating Expenses

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
</tr>
<tr>
<td>(in thousands)</td>
<td></td>
</tr>
<tr>
<td>Customer service and merchant fees(1)</td>
<td>$55,804</td>
</tr>
<tr>
<td>Advertising</td>
<td>191,284</td>
</tr>
<tr>
<td>Merchandising, marketing and sales(1)</td>
<td>80,113</td>
</tr>
<tr>
<td>Operations, technology, general and administrative(1)</td>
<td>130,701</td>
</tr>
<tr>
<td>Amortization of acquired intangible assets</td>
<td>980</td>
</tr>
<tr>
<td></td>
<td>$458,882</td>
</tr>
</tbody>
</table>

As a percentage of net revenue

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2013</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer service and merchant fees</td>
<td>4.2%</td>
<td>3.9%</td>
<td></td>
</tr>
<tr>
<td>Advertising</td>
<td>14.5%</td>
<td>11.8%</td>
<td></td>
</tr>
<tr>
<td>Merchandising, marketing and sales</td>
<td>6.1%</td>
<td>3.7%</td>
<td></td>
</tr>
<tr>
<td>Operations, technology, general and administrative</td>
<td>9.9%</td>
<td>6.8%</td>
<td></td>
</tr>
<tr>
<td>Amortization of acquired intangible assets</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>34.8%</td>
<td>26.2%</td>
<td></td>
</tr>
</tbody>
</table>

(1) Excluding equity based compensation and related taxes as follows:

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer service and merchant fees</td>
<td>4.1%</td>
<td>3.9%</td>
</tr>
<tr>
<td>Merchandising, marketing and sales</td>
<td>3.9%</td>
<td>3.7%</td>
</tr>
<tr>
<td>Operations, technology, general and administrative</td>
<td>7.5%</td>
<td>6.8%</td>
</tr>
</tbody>
</table>

In 2014, excluding the impact of equity based compensation and related taxes of $2.3 million recorded in 2014, customer service costs and merchant processing fees increased by $18.0 million from $35.5 million in 2013 to $53.5 million primarily due to the increase in sales during 2014. Our advertising expenses increased by $82.8 million from $108.5 million in 2013 to $191.3 million in 2014, primarily as a result of an increase in television and online advertising. Excluding the impact of equity based compensation and related taxes of $28.5 million recorded in 2014, merchandising, marketing and sales expenses increased by $18.1 million from $33.5 million in 2013 to $51.6 million. The increase in merchandising, marketing and sales expenses was due to an increase in headcount primarily to grow and retain our customer base.

50
In 2014, excluding the impact of equity based compensation and related taxes of $32.1 million recorded in 2014, operations, technology, general and administrative expense increased by $36.4 million from $62.2 million in 2013 to $98.6 million. As our revenue continues to grow, we have invested in headcount in both Operations and Technology to continue to deliver a great experience for our customers. The increase in general and administrative expense was primarily attributable to personnel costs, rent, information technology, depreciation and amortization and costs related to operating as a public company.

In 2014, amortization of purchased intangible assets increased by $0.4 million, or 81.8%, compared to 2013. The increase in amortization expense for 2014 was primarily the result of our acquisition of DwellStudio in July of 2013.

**Interest Income, net**

Interest income, net, increased by $0.1 million in 2014 from $0.2 million in 2013 primarily due to higher average cash and investments.

**Other (Expense), Income, net**

In the year ended December 31, 2014, other (expense), net, increased by $0.8 million from income of $0.3 million in the year ended December 31, 2013 to expense of $0.5 million in the year ended December 31, 2014 primarily attributed to changes in foreign currency.

**Comparison of years ended December 31, 2013 and 2012**

**Net revenue**

<table>
<thead>
<tr>
<th></th>
<th>Years ended December 31, 2013 (in thousands)</th>
<th>% Change 2013 to 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Retail</td>
<td>$673,446</td>
<td>73.0%</td>
</tr>
<tr>
<td>Other</td>
<td>242,397</td>
<td>14.5%</td>
</tr>
<tr>
<td>Net revenue</td>
<td>$915,843</td>
<td>52.4%</td>
</tr>
</tbody>
</table>

In 2013, net revenue increased by $314.8 million, or 52.4% compared to 2012 primarily as a result of increase in Direct Retail net revenue. In 2013, Direct Retail net revenue increased by $284.2 million, or 73.0% compared to 2012. The increase in Direct Retail net revenue was primarily due to sales to a larger customer base, as the number of active customers increased 61.0% in 2013 compared to the number of active customers in 2012. Additionally, LTM net revenue per active customer increased 7.3% in 2013 compared with 2012. The increase in Other revenue was primarily due to increased sales through our existing and new retail partners.

**Cost of Goods Sold**

<table>
<thead>
<tr>
<th></th>
<th>Years ended December 31, 2013 (in thousands)</th>
<th>% Change 2013 to 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of goods sold</td>
<td>$691,602</td>
<td>51.7%</td>
</tr>
<tr>
<td>As a percentage of net revenue</td>
<td>75.5%</td>
<td>75.8%</td>
</tr>
</tbody>
</table>

In 2013, costs of goods sold increased by $235.7 million, or 51.7%, compared to 2012. Of the increase in cost of goods sold, $190.3 million was due to the increase in products sold to a larger customer base. In addition, shipping and fulfillment costs increased $45.4 million as a result of the increase in products sold during the period.
Operating expenses

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2013</td>
</tr>
<tr>
<td>Customer service and merchant fees</td>
<td>$35,500</td>
</tr>
<tr>
<td>Advertising</td>
<td>108,469</td>
</tr>
<tr>
<td>Merchandising, marketing and sales</td>
<td>33,506</td>
</tr>
<tr>
<td>Operations, technology, general and administrative</td>
<td>62,246</td>
</tr>
<tr>
<td>Amortization of acquired intangible assets</td>
<td>539</td>
</tr>
<tr>
<td></td>
<td>$240,260</td>
</tr>
</tbody>
</table>

In 2013, customer service costs and merchant processing fees increased by $9.8 million from $25.7 million in 2012 to $35.5 million. Our advertising expenses increased by $43.0 million from $65.5 million in 2012 to $108.5 million in 2013, primarily due to an increase in television and online advertising. Merchandising, marketing and sales expenses increased by $11.4 million from $22.1 million in 2012 to $33.5 million in 2013. The increase in Merchandising, marketing and sales expenses was due to an increase in headcount primarily to grow and retain our customer base through merchandising and marketing initiatives.

In 2013, operations, technology, general and administrative expense increased by $9.3 million from $53.0 million in 2012 to $62.3 million in 2013. This increase was primarily attributable to personnel costs, rent, information technology and amortization and depreciation expenses.

In 2013, amortization of purchased intangible assets increased by $0.3 million, or 154.2%, compared to 2012. The increase in amortization expense for 2013 was primarily the result of our acquisition of DwellStudio.

Interest Income, net

In 2013 and 2012, interest income, net, was $0.2 million.

Other (Expense), Income, net

In 2013, other (expense), income, net, increased by $0.1 million compared to 2012 primarily attributed to changes in foreign currency.

Quarterly Results of Operations and Other Financial and Operations Data

The following tables set forth selected unaudited quarterly results of operations and other financial and operations data for the eight quarters ended December 31, 2014, as well as the percentage that each line item represents of net revenue. The information for each of these quarters has been prepared on the same basis as the audited consolidated financial statements included elsewhere in this prospectus and in the opinion of management, reflects all adjustments, consisting of only normal recurring adjustments, necessary for the fair statement of our consolidated results of operations for these periods. This data should be read in conjunction with our consolidated financial statements and
Table of Contents
related notes included elsewhere in the Annual Report on Form 10-K. Historical results are not necessarily indicative of the results to be expected in the future.

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consolidated Statements of Operations:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net revenue</td>
<td>$ 179,831</td>
<td>$ 203,377</td>
<td>$ 237,302</td>
<td>$ 295,333</td>
<td>$ 278,707</td>
<td>$ 295,437</td>
</tr>
<tr>
<td>Cost of goods sold(1)</td>
<td>135,798</td>
<td>152,539</td>
<td>178,656</td>
<td>224,609</td>
<td>213,500</td>
<td>226,983</td>
</tr>
<tr>
<td>Gross profit</td>
<td>44,033</td>
<td>50,838</td>
<td>58,646</td>
<td>70,724</td>
<td>65,207</td>
<td>68,454</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer service and merchant fees(1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advertising</td>
<td>7,200</td>
<td>7,782</td>
<td>9,695</td>
<td>10,823</td>
<td>10,969</td>
<td>12,113</td>
</tr>
<tr>
<td>Merchandising, marketing and sales(1)</td>
<td>20,039</td>
<td>23,138</td>
<td>28,384</td>
<td>36,908</td>
<td>44,204</td>
<td>42,511</td>
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<tr>
<td>Operations, technology, general and administrative (1)</td>
<td>6,840</td>
<td>7,715</td>
<td>8,523</td>
<td>10,428</td>
<td>15,171</td>
<td>13,260</td>
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<tr>
<td>Amortization of acquired intangible assets</td>
<td>53</td>
<td>53</td>
<td>184</td>
<td>249</td>
<td>249</td>
<td>250</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>49,459</td>
<td>53,375</td>
<td>62,316</td>
<td>75,110</td>
<td>93,362</td>
<td>91,720</td>
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<tr>
<td>Loss from operations</td>
<td>(5,426)</td>
<td>(2,537)</td>
<td>(3,670)</td>
<td>(4,386)</td>
<td>(28,155)</td>
<td>(23,266)</td>
</tr>
<tr>
<td>Interest income, net</td>
<td>67</td>
<td>57</td>
<td>61</td>
<td>60</td>
<td>56</td>
<td>77</td>
</tr>
<tr>
<td>Other (expense) income, net</td>
<td>(384)</td>
<td>(120)</td>
<td>579</td>
<td>219</td>
<td>88</td>
<td>(184)</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>(5,743)</td>
<td>(2,600)</td>
<td>(3,030)</td>
<td>(4,107)</td>
<td>(28,011)</td>
<td>(23,373)</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>—</td>
<td>5</td>
<td>(1)</td>
<td>(50)</td>
<td>(15)</td>
<td>(2)</td>
</tr>
<tr>
<td>Net loss</td>
<td>(5,743)</td>
<td>(2,595)</td>
<td>(3,031)</td>
<td>(4,157)</td>
<td>(28,026)</td>
<td>(23,375)</td>
</tr>
<tr>
<td>Accretion of convertible redeemable preferred units</td>
<td>(11,416)</td>
<td>(4,532)</td>
<td>(4,673)</td>
<td>(4,767)</td>
<td>(7,150)</td>
<td>(4,605)</td>
</tr>
<tr>
<td>Net loss attributable to common unit holders</td>
<td>(17,159)</td>
<td>(7,127)</td>
<td>(7,704)</td>
<td>(8,924)</td>
<td>(35,176)</td>
<td>(27,980)</td>
</tr>
<tr>
<td>Net loss attributable to common unit holders per unit—basic and diluted</td>
<td>(0.42)</td>
<td>(0.17)</td>
<td>(0.19)</td>
<td>(0.22)</td>
<td>(0.85)</td>
<td>(0.69)</td>
</tr>
<tr>
<td>Weighted average number of common units outstanding used in computing per unit amounts—basic and diluted</td>
<td>41,271,992</td>
<td>41,271,992</td>
<td>41,367,115</td>
<td>41,413,142</td>
<td>41,144,326</td>
<td>40,514,718</td>
</tr>
</tbody>
</table>

(1) Includes equity based compensation and related taxes as follows:

| Cost of goods sold | $ — | $ — | $ — | $ — | $ — | $ — | $ — | $ — | $ 369 |
| Customer | | | | | | | | | |


<table>
<thead>
<tr>
<th>Service and Merchant Fees</th>
<th>Merchandising, Marketing and Sales</th>
<th>Operations, Technology, General and Administrative</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$4,554</td>
</tr>
<tr>
<td>69</td>
<td>184</td>
<td>627</td>
<td>$57,716</td>
</tr>
<tr>
<td>184</td>
<td>69</td>
<td>184</td>
<td>$2,012</td>
</tr>
<tr>
<td>3,858</td>
<td>196</td>
<td>3,858</td>
<td>$24,460</td>
</tr>
<tr>
<td>$4,554</td>
<td>$974</td>
<td>$57,716</td>
<td>$57,716</td>
</tr>
</tbody>
</table>
## Consolidated Statements of Operations:

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Cost of goods sold(1)</td>
<td>75.5</td>
<td>75.0</td>
<td>75.3</td>
<td>76.1</td>
<td>76.6</td>
<td>76.8</td>
<td>76.5</td>
<td>75.9</td>
</tr>
<tr>
<td>Gross profit</td>
<td>24.5</td>
<td>25.0</td>
<td>24.7</td>
<td>23.9</td>
<td>23.4</td>
<td>23.2</td>
<td>23.5</td>
<td>24.1</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer service and merchant fees(1)</td>
<td>4.0</td>
<td>3.8</td>
<td>4.1</td>
<td>3.7</td>
<td>3.9</td>
<td>4.1</td>
<td>4.2</td>
<td>4.5</td>
</tr>
<tr>
<td>Advertising</td>
<td>11.1</td>
<td>11.4</td>
<td>12.0</td>
<td>12.5</td>
<td>15.9</td>
<td>14.4</td>
<td>14.8</td>
<td>13.4</td>
</tr>
<tr>
<td>Merchandising, marketing and sales(1)</td>
<td>3.8</td>
<td>3.8</td>
<td>3.6</td>
<td>3.5</td>
<td>5.4</td>
<td>4.5</td>
<td>4.0</td>
<td>9.4</td>
</tr>
<tr>
<td>Operations, technology, general and administrative(1)</td>
<td>8.5</td>
<td>7.2</td>
<td>6.5</td>
<td>5.7</td>
<td>8.2</td>
<td>8.0</td>
<td>7.5</td>
<td>14.5</td>
</tr>
<tr>
<td>Amortization of acquired intangible assets</td>
<td>—</td>
<td>—</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>27.5</td>
<td>26.2</td>
<td>26.3</td>
<td>25.4</td>
<td>33.5</td>
<td>31.0</td>
<td>30.6</td>
<td>41.8</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(3.0)</td>
<td>(1.2)</td>
<td>(1.5)</td>
<td>(1.5)</td>
<td>(10.1)</td>
<td>(7.9)</td>
<td>(7.1)</td>
<td>(17.7)</td>
</tr>
<tr>
<td>Interest income, net</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other (expense) income, net</td>
<td>(0.2)</td>
<td>(0.1)</td>
<td>0.2</td>
<td>0.1</td>
<td>—</td>
<td>(0.1)</td>
<td>(0.1)</td>
<td>—</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>(3.2)</td>
<td>(1.3)</td>
<td>(1.3)</td>
<td>(1.4)</td>
<td>(10.1)</td>
<td>(7.9)</td>
<td>(7.2)</td>
<td>(17.7)</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Net loss</td>
<td>(3.2)%</td>
<td>(1.3)%</td>
<td>(1.3)%</td>
<td>(1.4)%</td>
<td>(10.1)%</td>
<td>(7.9)%</td>
<td>(7.2)%</td>
<td>(17.8)%</td>
</tr>
</tbody>
</table>

(1) Excluding equity based compensation and related taxes as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of goods sold</td>
<td>75.5%</td>
<td>75.0%</td>
<td>75.3%</td>
<td>76.1%</td>
<td>76.6%</td>
<td>76.8%</td>
<td>76.5%</td>
<td>75.8%</td>
</tr>
<tr>
<td>Customer service and merchant fees</td>
<td>4.0</td>
<td>3.8</td>
<td>4.1</td>
<td>3.7</td>
<td>3.9</td>
<td>4.0</td>
<td>4.2</td>
<td>4.0</td>
</tr>
<tr>
<td>Merchandising, marketing and sales</td>
<td>3.8</td>
<td>3.8</td>
<td>3.6</td>
<td>3.5</td>
<td>4.1</td>
<td>4.4</td>
<td>4.0</td>
<td>3.4</td>
</tr>
<tr>
<td>Operations, technology, general and administrative</td>
<td>8.5</td>
<td>7.2</td>
<td>6.5</td>
<td>5.7</td>
<td>7.9</td>
<td>7.8</td>
<td>7.5</td>
<td>6.9</td>
</tr>
</tbody>
</table>
### Direct Retail Financial and Operating Metrics

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Retail Net Revenue</td>
<td>$120,617</td>
<td>$147,748</td>
<td>$181,693</td>
<td>$223,388</td>
<td>$226,000</td>
<td>$243,534</td>
<td>$285,502</td>
<td>$346,650</td>
</tr>
<tr>
<td>Active Customers</td>
<td>1,366</td>
<td>1,506</td>
<td>1,775</td>
<td>2,092</td>
<td>2,409</td>
<td>2,635</td>
<td>2,858</td>
<td>3,217</td>
</tr>
<tr>
<td>LTM Net Revenue Per Active Customer</td>
<td>$305</td>
<td>$313</td>
<td>$315</td>
<td>$322</td>
<td>$323</td>
<td>$332</td>
<td>$342</td>
<td>$342</td>
</tr>
<tr>
<td>Orders Delivered</td>
<td>555</td>
<td>703</td>
<td>884</td>
<td>1,172</td>
<td>1,138</td>
<td>1,084</td>
<td>1,314</td>
<td>1,701</td>
</tr>
<tr>
<td>Average Order Value</td>
<td>$217</td>
<td>$210</td>
<td>$206</td>
<td>$191</td>
<td>$199</td>
<td>$225</td>
<td>$217</td>
<td>$204</td>
</tr>
</tbody>
</table>
The following table reflects the reconciliation of net loss to Adjusted EBITDA for each of the periods indicated:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net loss</td>
<td>$ (5,743)</td>
<td>$ (2,595)</td>
<td>$ (3,031)</td>
<td>$ (4,157)</td>
<td>$ (28,026)</td>
<td>$ (23,375)</td>
<td>$ (24,143)</td>
<td>$ (72,554)</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>2,884</td>
<td>2,979</td>
<td>3,489</td>
<td>3,739</td>
<td>4,198</td>
<td>4,693</td>
<td>5,547</td>
<td>7,565</td>
</tr>
<tr>
<td>Equity based compensation</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>4,554</td>
<td>974</td>
</tr>
<tr>
<td>Interest income, net</td>
<td>(67)</td>
<td>(57)</td>
<td>(61)</td>
<td>(60)</td>
<td>(56)</td>
<td>(77)</td>
<td>(89)</td>
<td>(128)</td>
</tr>
<tr>
<td>Other (expense) income, net</td>
<td>384</td>
<td>120</td>
<td>(579)</td>
<td>(219)</td>
<td>(88)</td>
<td>184</td>
<td>309</td>
<td>84</td>
</tr>
<tr>
<td>Taxes</td>
<td>—</td>
<td>(5)</td>
<td>1</td>
<td>50</td>
<td>15</td>
<td>2</td>
<td>59</td>
<td>99</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$ (2,542)</td>
<td>$ 442</td>
<td>$ (181)</td>
<td>$ (647)</td>
<td>$ (19,403)</td>
<td>$ (17,599)</td>
<td>$ (18,317)</td>
<td>$ (7,218)</td>
</tr>
</tbody>
</table>

The following table presents a reconciliation of free cash flow to net cash provided by operating activities for each of the periods indicated:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net cash provided by operating activities, net of acquisition</td>
<td>$ (20,451)</td>
<td>$ 14,545</td>
<td>$ (517)</td>
<td>$ 40,836</td>
<td>$ (24,432)</td>
<td>$ (15,339)</td>
<td>$ (11,066)</td>
<td>$ 54,962</td>
</tr>
<tr>
<td>Purchase of property, equipment, and leasehold improvements</td>
<td>2,236</td>
<td>1,065</td>
<td>1,120</td>
<td>(2,318)</td>
<td>(11,357)</td>
<td>12,974</td>
<td>6,837</td>
<td>(687)</td>
</tr>
<tr>
<td>Site and software development costs</td>
<td>(1,996)</td>
<td>(2,071)</td>
<td>(2,345)</td>
<td>(2,528)</td>
<td>(2,717)</td>
<td>3,431</td>
<td>(4,495)</td>
<td>(3,487)</td>
</tr>
<tr>
<td>Free cash flow</td>
<td>$ (24,683)</td>
<td>$ 11,409</td>
<td>$ (3,982)</td>
<td>$ 35,890</td>
<td>$ (38,506)</td>
<td>$ (31,744)</td>
<td>$ (22,398)</td>
<td>$ 50,788</td>
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</table>

### Liquidity and Capital Resources

#### Sources of Liquidity

<table>
<thead>
<tr>
<th>December 31, 2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 355,859</td>
</tr>
<tr>
<td>Short-term investments</td>
<td>60,000</td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>5,949</td>
</tr>
<tr>
<td>Working capital</td>
<td>$ 254,276</td>
</tr>
</tbody>
</table>

#### Historical Cash Flows

<table>
<thead>
<tr>
<th>Year Ended December 31</th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (148,098)</td>
<td>$ (15,526)</td>
<td>$ (21,055)</td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>4,125</td>
<td>34,413</td>
<td>3,945</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(55,435)</td>
<td>(46,991)</td>
<td>(23,080)</td>
</tr>
<tr>
<td>Net cash provided by financing activities</td>
<td>341,150</td>
<td>—</td>
<td>44,944</td>
</tr>
</tbody>
</table>
Since our inception, we have financed our operations, capital expenditures and acquisitions primarily through cash flows generated by operations and, since 2011, also through private sales of convertible redeemable preferred stock and sales of common stock in connection with our initial public offering. Since inception through December 31, 2014, we have raised a total of approximately $646.0 million from the sale of preferred stock and common stock, net of costs and expenses associated with such financings, or approximately $453.8 million, net of repurchases of our securities and dividends paid to Series A convertible preferred stockholders.

On October 7, 2014, we completed our IPO of 12,650,000 shares of our Class A common stock at a public offering price of $29.00 per share, of which 10,500,000 shares were sold by us and 2,150,000 shares were sold by selling stockholders, including 1,650,000 shares pursuant to the underwriters' option to purchase additional shares, resulting in net proceeds to us of approximately $282.9 million, after deducting underwriting discounts and estimated offering expenses. We did not receive any proceeds from the sale of shares by the selling stockholders. We used these proceeds to distribute $24.5 million of cash to our Series A convertible preferred stockholders and pay $22.6 million in minimum tax withholding obligations on the vesting of our restricted stock units upon the closing of our initial public offering.

We believe that our existing cash and cash equivalents, proceeds from the IPO together with cash generated from operations, will be sufficient to meet our anticipated cash needs for at least the foreseeable future. However, our liquidity assumptions may prove to be incorrect, and we could exhaust our available financial resources sooner than we currently expect. In addition, we may elect to raise additional funds at any time through equity, equity linked or debt financing arrangements. Our future capital requirements and the adequacy of available funds will depend on many factors, including those described in the section titled "Risk Factors". We may not be able to secure additional financing to meet our operating requirements on acceptable terms, or at all.

Operating Activities

Cash provided by operating activities consisted of net loss adjusted for certain non-cash items including depreciation and amortization, and certain other non-cash expenses, as well as the effect of changes in working capital and other activities.

Cash provided by operating activities in the year ended December 31, 2014 was $4.1 million and was driven primarily by net loss of $148.1 million, adjusted for certain non-cash items including depreciation and amortization expense of $22.0 million, equity based compensation of $60.8 million and other non-cash items of $0.6 million and cash provided by operating assets and liabilities of $68.8 million. Operating cash flows can be volatile and are sensitive to many factors, including changes in working capital and our net loss.

Cash provided by operating activities in 2013 was $34.4 million and was driven by a net loss of $15.5 million, adjusted for certain non-cash items including depreciation and amortization expense of $13.1 million and other non-cash items of $0.1 million offset by cash provided by operating assets and liabilities of $36.7 million.

Cash provided by operating activities in 2012 was $3.9 million and was driven by a net loss of $21.1 million, adjusted for certain non-cash items including depreciation and amortization expense of $9.3 million and other non-cash items of $0.1 million offset by cash provided by operating assets and liabilities of $15.6 million.

Investing Activities

Our primary investing activities consisted of purchases of property and equipment, particularly purchases of servers and networking equipment, investment in our sites and software development,
purchases and disposal of marketable securities, leasehold improvements for our facilities and acquisitions of businesses.

Cash used in investing activities in the year ended December 31, 2014 was $55.4 million and was primarily driven by net purchases of short-term investments of $10.0 million, purchases of property and equipment of $31.9 million, site and software development costs of $14.1 million partially offset by net decrease in restricted cash of $0.5 million.

Cash used in investing activities in 2013 was $47.0 million and was driven by net purchases of short-term investments of $27.0 million, purchases of property and equipment of $6.7 million, cash paid for the acquisition of DwellStudio of $3.7 million, site and software development costs of $9.0 million and other net investing activities of $0.5 million.

Cash used in investing activities in 2012 was $23.1 million and was driven by net purchases of short-term investments of $8.0 million, purchases of property and equipment of $8.0 million, site and software development costs of $6.9 million and other net investing activities of $0.1 million.

**Financing Activities**

Cash provided by financing activities in the year ended December 31, 2014 was $341.2 million and was primarily due to net proceeds from the IPO of $282.9 million, issuance of Series B convertible redeemable preferred units of $154.8 million partially offset by the dividend distribution to our Series A preferred unit holders of $39.5 million, the repurchase of our securities and our 2014 tender offer of $29.0 million and taxes paid related to net share settlement of equity awards of $28.0 million. There were no financing activities in the year ended December 31, 2013. Cash provided by financing activities in the year ended December 31, 2012 was $44.9 million and was primarily due to net proceeds from issuance of Series A convertible redeemable preferred units.

**Credit Agreement**

We have a credit agreement with a lender which provides us with a line of credit for up to $25.0 million, with the committed amounts of $10.0 million to be used for a revolving line of credit and to support letters of credit and $15.0 million to be used to support our corporate credit card program. We are required to maintain certain covenants, including debt service coverage, tangible net worth, and unencumbered liquid assets. As of December 31, 2014 and December 31, 2013, we did not have any borrowings outstanding and were in full compliance with the credit agreement. The credit agreement is renewable on an annual basis. We renewed this agreement on June 6, 2014 and it will mature on July 31, 2015.

**Off-Balance Sheet Arrangements**

We do not engage in any off-balance sheet activities. We do not have any off-balance sheet interest in variable interest entities, which include special purpose entities and other structured finance entities.

**Contractual Obligations**

The following table summarizes our contractual obligations as of December 31, 2014:

<table>
<thead>
<tr>
<th>Payment Due by Period</th>
<th>Total (in thousands)</th>
<th>Less than 1 year</th>
<th>1 - 3 Years</th>
<th>3 - 5 Years</th>
<th>More than 5 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease Obligations</td>
<td>$ 127,387</td>
<td>13,303</td>
<td>30,841</td>
<td>29,307</td>
<td>$ 53,936</td>
</tr>
</tbody>
</table>

We lease office space under non-cancelable leases. These leases expire at various dates through 2024 and include discounted rental periods and fixed escalation clauses, which are amortized.
straight-line over the terms of the lease. We recognize rent expense on a straight-line basis over the lease periods.

**Critical Accounting Policies**

Our financial statements are prepared in accordance with accounting principles generally accepted in the United States. The preparation of our financial statements and related disclosures requires us to make estimates, assumptions and judgments that affect the reported amount of assets, liabilities, net revenue, costs and expenses and related disclosures. We believe that the estimates, assumptions and judgments involved in the accounting policies described below have the greatest potential impact on our financial statements and, therefore, we consider these to be our critical accounting policies. Accordingly, we evaluate our estimates and assumptions on an ongoing basis. Our actual results may differ from these estimates under different assumptions and conditions. See Note 2 to our consolidated financial statements included in this Annual Report on Form 10-K for information about these critical accounting policies, as well as a description of our other significant accounting policies.

**Revenue Recognition**

We recognize revenue only when the following four criteria are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred; (3) the selling price is fixed or determinable; and (4) collectability is reasonably assured.

We recognize net revenue from sales of our products upon delivery to the customer. As we ship a large volume of packages through multiple carriers, actual delivery dates may not always be available and as such we estimate delivery dates based on historical data. We record our product revenue at the gross amount as we are the primary obligor with the customer and provide the primary customer service for all products sold on our sites, have latitude in establishing price and selecting products sold on our sites, have discretion in selecting suppliers of products sold on our sites, maintain inventory risk from shipment through delivery date and upon accepting returns, and have credit risk. Net revenue includes shipping costs charged to the customer and are recorded net of taxes collected from customers, which are remitted to governmental authorities. Cash discounts, estimated returns and rebates are deducted from gross revenue in determining net revenue. We record an allowance for returns based on current period revenue and historical returns experience. We defer revenue when cash is collected from our customer prior to the satisfaction of the revenue recognition criteria.

We maintain a rewards program that allows enrolled customers to earn points which can be redeemed for future purchases. We defer the portion of our revenue associated with rewards that are ultimately expected to be redeemed prior to expiration.

We also earn revenue through third-party advertisers that pay us based on the number of advertisement related clicks, actions, or impressions for ads placed on our sites. Revenue earned under these arrangements is included in net revenue and is recognized in the period in which the click, action, or impression occurs.

**Site and Software Development Costs**

We capitalize certain external costs and internal labor-related costs, including equity based compensation, associated with the development of our sites and internal-use software products after the preliminary project stage is complete and until the software is ready for its intended use. Initial costs are charged to operating expenses prior to the selection of a vendor and determination of performance requirements. Costs incurred after the software is ready for use are charged to operating expenses as incurred. Abandoned projects previously capitalized are charged to operating expenses in the period of abandonment. The Company expenses site development costs that manage, monitor, and operate the Company's sites, except for costs that provide additional functionality, which are capitalized. Capitalized
software costs are included in property and equipment within our consolidated balance sheets and are amortized over a two-year period.

**Stock-Based Compensation**

We issue equity awards to employees and non-employees, generally in the form of common stock options, common stock and restricted stock units ("RSUs"). We account for our equity awards in accordance with Financial Accounting Standards Board, or FASB, Accounting Standard Codification Topic 718, Compensation—Stock Compensation, or ASC 718, which requires all equity-based payments to employees, including grants of employee options and restricted stock units and modifications to existing options, to be recognized in the consolidated statements of operations and comprehensive loss based on their fair values. We account for equity awards to non-employees in accordance with FASB ASC Topic 505-50, Equity-Based Payments to Non-Employees, which requires the fair value of an award to non-employees be remeasured at fair value as the award vests. All equity awards granted prior to the IPO were subject to two vesting triggers: a service period (typically five years) and a performance condition (a liquidity event in the form of either a change of control or an initial public offering, each as defined in the Amended Plan). Employees were able to retain provisionally vested stock options and shares upon departure. We determined that a liquidity event was not probable until the closing of our IPO on October 7, 2014, and as such, no expense was recognized until that date. After the IPO awards for employees still providing service will continue to vest over the remaining service period. In the fourth quarter of 2014 we recorded $57.7 million of equity based compensation and related employer taxes; the service period for the majority of this expense was satisfied prior to the IPO. Since April 2011, we have only granted restricted stock units and have not granted any stock options or restricted stock. Since our IPO, restricted stock unit values are determined based on the quoted market price of our common stock on the date of grant.

Until our IPO, our estimated fair value of our common stock was determined by our board. We have periodically determined for financial reporting purposes the estimated fair value of our common stock at various dates using contemporaneous valuations performed in accordance with the guidance outlined in the American Institute of Certified Public Accountants Practice Aid, Valuation of Privately-Held Company Equity Securities Issued as Compensation, also known as the Practice Aid. We generally used the income and market approaches prescribed in the Practice Aid, in particular the income approach's discounted cash flow method, which was based on our projections and estimated discount rate and the guideline public company, guideline transactions and precedent transaction methodologies, based on inputs from comparable public companies' equity valuations, comparable acquisition transactions and transactions in our own equity securities, to estimate the enterprise value of our company. We performed these contemporaneous valuations as of December 31, 2011, June 30, 2012, December 31, 2012, June 30, 2013, September 30, 2013, December 31, 2013, March 31, 2014 and June 30, 2014. The assumptions underlying these valuations represent management's best estimates, which involve inherent uncertainties and the application of management judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our equity-based compensation could be materially different.

In connection with the preparation of the financial statements for the year ended December 31, 2013, we undertook a retrospective reassessment of the fair market value of our common stock for certain of our 2013 grants for financial reporting purposes. As part of that reassessment, we determined that the grant date fair values of our May, August and November 2013 grants to be $6.46, $10.88 and $20.87, respectively. Our fair value previously determined at various valuation dates increased substantially in 2013 and there was no particular transaction or event that caused this increase. The grants made in May, August and November 2013 were between the dates when we performed our valuation. Accordingly, we calculated grant date fair value for these grants on a linear basis between each valuation date and believe it to be a reasonable method. Similarly in connection with the preparation of the financial statements for the quarter ended September 30, 2014, we undertook a
retrospective reassessment of the fair market value of our common stock for our grants made in September 2014 to be equal to our October 2, 2014 IPO price of $29.00.

Goodwill

We test goodwill for impairment on the last day of each fiscal year and whenever events or changes in circumstances indicate that the carrying amount of this asset may exceed its fair value. The assessment is performed at the reporting unit level. We first assess qualitative factors to determine whether the existence of events or circumstances leads to a determination that it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If, after assessing the totality of events or circumstances, we determine it is more likely than not that the fair value of a reporting unit is less than its carrying amount, then the two-step impairment test is not required. If the qualitative assessment requires the Company to perform the two-step goodwill impairment test to identify potential goodwill impairment then the first step is to compare the fair value of the reporting unit to the book value including goodwill. If the fair value of the reporting unit exceeds the book value, goodwill is not impaired. If the book value exceeds the fair value, the second step of the process is performed to measure the amount of impairment. Based on the testing performed at the end of 2014 we recorded an impairment to reduce a portion of the carrying amount of our goodwill.

The fair value of the reporting unit is determined by using the income and the market approaches. The income approach uses a discounted cash flow analysis, which involves applying appropriate discount rates to estimated cash flows, including the terminal value based on forecasts of revenue, costs and capital requirements. We estimate future revenue growth based on a number of key assumptions, including customer and order growth by acquisition channel, average order value, advertising spend, e-commerce growth rates and our experience in growth of our more mature markets and categories. Our cost structure assumptions are based on historic trends in product cost and freight, advertising costs, growth in headcount, and merchant processing fees. We deem the discount rate used in our analysis to be commensurate with the underlying uncertainties associated with achieving the estimated cash flows we projected. The terminal value is calculated using the two-stage growth model. The market approach includes the guideline public company method and guideline transaction method. The guideline public company method uses the fair value of comparable publicly-traded companies in the industry group. The companies used for comparison under the guideline public company method are selected based on a number of factors, including, but not limited to, the similarity of their industry, growth rate and stage of development, business model, and financial risk. The guideline transaction method involves determining a fair value using recent mergers and acquisitions transactions in the industry group in the recent years.

Inventory

Inventories consisting of finished goods are stated at the lower of cost or market, determined by the first-in, first-out (FIFO) method, and consist of merchandise for resale. This valuation requires us to make judgments based on currently-available information about the likely method of disposition, such as through sales to individual customers, liquidations, and expected recoverable values of each disposition category.

Recent Accounting Pronouncements

In July 2013, the Financial Accounting Standards Board (“FASB”) issued a new accounting standard update that requires the presentation of certain unrecognized tax benefits as reductions to deferred tax assets rather than as liabilities in the consolidated balance sheets when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists. We adopted this new standard on a prospective basis in the first quarter of fiscal 2014, and the adoption of this accounting standard update did not have a material impact on our consolidated financial statements.

60
In May 2014, the FASB issued new accounting guidance regarding revenue recognition under GAAP. This new guidance will supersede nearly all existing revenue recognition guidance, and is effective for public entities for annual and interim periods beginning after December 31, 2016. Early adoption is not permitted. We are currently evaluating the impact of this new guidance on our consolidated financial statements.

In August 2014, the FASB issued Accounting Standards Update No. 2014-15, "Presentation of Financial Statements—Going Concern", which requires us to evaluate, at each annual and interim reporting period, whether there are conditions or events that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date the financial statements are issued and provide related disclosures. ASU 2014-15 is effective for annual periods ending after December 15, 2016 and interim periods thereafter. Early application is permitted. The adoption of ASU 2014-15 is not expected to have a material effect on our consolidated financial statements.

Item 7A. Quantitative and Qualitative Disclosure About Market Risk

We have operations both within the United States and internationally, and we are exposed to market risks in the ordinary course of our business, including the effects of foreign currency fluctuations, interest rate changes and inflation. Information relating to quantitative and qualitative disclosures about these market risks is set forth below.

Interest Rate Sensitivity

Cash and cash equivalents and short-term investments were held primarily in cash deposits, certificates of deposit and money market funds. The fair value of our cash, cash equivalents and short-term investments would not be significantly affected by either an increase or decrease in interest rates due mainly to the short-term nature of these instruments. Interest on the revolving line of credit incurred pursuant to the credit agreement described above would accrue at a floating rate based on a formula tied to certain market rates at the time of incurrence; however, we do not expect that any change in prevailing interest rates will have a material impact on our results of operations.

Foreign Currency Risk

Most of our sales are denominated in U.S. dollars, and therefore, our revenue is not currently subject to significant foreign currency risk. Our operating expenses are denominated in the currencies of the countries in which our operations are located, and may be subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the British Pound, Australian Dollar and Euro. Fluctuations in foreign currency exchange rates may cause us to recognize transaction gains and losses in our statement of operations. To date, foreign currency transaction gains and losses have not been material to our financial statements, and we have not engaged in any foreign currency hedging transactions.

Inflation

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. We continue to monitor the impact of inflation in order to minimize its effects through pricing strategies, productivity improvements and cost reductions. If our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition and results of operations.
Item 8. Financial Statements and Supplementary Data

INDEX TO FINANCIAL STATEMENTS

Audited consolidated financial statements of Wayfair Inc.:

- Report of Independent Registered Public Accounting Firm 63
- Consolidated Balance Sheets 64
- Consolidated Statements of Operations 65
- Consolidated Statements of Comprehensive Loss 66
- Consolidated Statements of Stockholders' Equity 67
- Consolidated Statements of Cash Flows 68
- Notes to Consolidated Financial Statements 69

62
Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders of Wayfair Inc.

We have audited the accompanying consolidated balance sheets of Wayfair Inc. (the Company) as of December 31, 2014 and 2013, and the related consolidated statements of operations, comprehensive loss, changes in stockholders’ equity, and cash flows for each of the three years in the period ended December 31, 2014. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, 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. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Wayfair Inc. at December 31, 2014 and 2013, and the consolidated results of its operations and its cash flows for the three years then ended December 31, 2014, in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

Boston, Massachusetts
March 19, 2015
Wayfair Inc.

Consolidated Balance Sheets

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2014</th>
<th>December 31, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands, except share and per share data)</td>
<td></td>
</tr>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$355,859</td>
<td>$65,289</td>
</tr>
<tr>
<td>Short-term investments</td>
<td>60,000</td>
<td>50,019</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance</td>
<td>5,949</td>
<td>7,689</td>
</tr>
<tr>
<td>Inventories</td>
<td>19,798</td>
<td>14,963</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>45,262</td>
<td>25,172</td>
</tr>
<tr>
<td>Total current assets</td>
<td>$486,868</td>
<td>$163,132</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>60,639</td>
<td>22,088</td>
</tr>
<tr>
<td>Goodwill and intangible assets, net</td>
<td>6,478</td>
<td>9,084</td>
</tr>
<tr>
<td>Other noncurrent assets</td>
<td>1,538</td>
<td>2,001</td>
</tr>
<tr>
<td>Total assets</td>
<td>$555,523</td>
<td>$196,305</td>
</tr>
<tr>
<td><strong>Liabilities and Stockholders' Equity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$147,873</td>
<td>$102,153</td>
</tr>
<tr>
<td>Accrued expenses</td>
<td>42,335</td>
<td>21,375</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>26,784</td>
<td>13,397</td>
</tr>
<tr>
<td>Other current liabilities</td>
<td>15,600</td>
<td>8,342</td>
</tr>
<tr>
<td>Total current liabilities</td>
<td>$232,592</td>
<td>$145,267</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>17,392</td>
<td>1,030</td>
</tr>
<tr>
<td>Total liabilities</td>
<td>$249,984</td>
<td>$146,297</td>
</tr>
<tr>
<td><strong>Commitments and contingencies (Note 7)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Series A convertible redeemable preferred units, no par value per unit: no units authorized and issued at December 31, 2014 and 21,551,801 units authorized and issued at December 31, 2013, respectively.</td>
<td>—</td>
<td>241,186</td>
</tr>
<tr>
<td>Series B convertible redeemable preferred units, no par value per unit: no units authorized and issued at December 31, 2014 and 2013;</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Stockholders' equity:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common units, no par value per unit: no units and 74,328,124 units authorized at December 31, 2014 and December 31, 2013, respectively; no units and 44,904,110 units issued and outstanding at December 31, 2014 and December 31, 2013, respectively.</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Class A common stock, $0.001 par value; 500,000,000 shares and no shares authorized at December 31, 2014 and 2013, respectively; 37,002,874 shares and no shares issued and outstanding at December 31, 2014 and 2013, respectively</td>
<td>37</td>
<td>—</td>
</tr>
<tr>
<td>Class B common stock, $0.001 par value; 164,000,000 shares and no shares authorized at December 31, 2014 and 2013, respectively; 46,179,192 shares and no shares issued and outstanding at December 31, 2014 and 2013, respectively</td>
<td>46</td>
<td>—</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>363,944</td>
<td>—</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(58,122)</td>
<td>(190,850)</td>
</tr>
<tr>
<td>Accumulated other comprehensive loss</td>
<td>(366)</td>
<td>(328)</td>
</tr>
<tr>
<td>Total stockholders' equity</td>
<td>$305,539</td>
<td>(191,178)</td>
</tr>
<tr>
<td>Total liabilities and stockholders' equity</td>
<td>$555,523</td>
<td>$196,305</td>
</tr>
</tbody>
</table>

64
Wayfair Inc.

Consolidated Statements of Operations

Year Ended December 31,

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net revenue</strong></td>
<td>$1,318,951</td>
<td>$915,843</td>
<td>$601,028</td>
</tr>
<tr>
<td><strong>Cost of goods sold</strong></td>
<td>1,007,853</td>
<td>691,602</td>
<td>455,879</td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>311,098</td>
<td>224,241</td>
<td>145,149</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer service and merchant fees</td>
<td>55,804</td>
<td>35,500</td>
<td>25,730</td>
</tr>
<tr>
<td>Advertising</td>
<td>191,284</td>
<td>108,469</td>
<td>65,504</td>
</tr>
<tr>
<td>Merchandising, marketing and sales</td>
<td>80,113</td>
<td>33,506</td>
<td>22,136</td>
</tr>
<tr>
<td>Operations, technology, general and administrative</td>
<td>130,701</td>
<td>62,246</td>
<td>52,961</td>
</tr>
<tr>
<td>Amortization of acquired intangible assets</td>
<td>980</td>
<td>539</td>
<td>212</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>458,882</td>
<td>240,260</td>
<td>166,543</td>
</tr>
<tr>
<td><strong>Loss from operations</strong></td>
<td>(147,923)</td>
<td>(15,480)</td>
<td>(21,005)</td>
</tr>
<tr>
<td><strong>Interest income, net</strong></td>
<td>350</td>
<td>245</td>
<td>234</td>
</tr>
<tr>
<td><strong>Other (expense) income, net</strong></td>
<td>(489)</td>
<td>294</td>
<td>155</td>
</tr>
<tr>
<td><strong>Loss before income taxes</strong></td>
<td>(147,923)</td>
<td>(15,480)</td>
<td>(21,005)</td>
</tr>
<tr>
<td><strong>Provision for income taxes</strong></td>
<td>(175)</td>
<td>(46)</td>
<td>(50)</td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>(148,098)</td>
<td>(15,526)</td>
<td>(21,055)</td>
</tr>
<tr>
<td><strong>Accretion of convertible redeemable preferred units</strong></td>
<td>(2,071)</td>
<td>(25,388)</td>
<td>(12,154)</td>
</tr>
<tr>
<td><strong>Net loss attributable to common stockholders</strong></td>
<td>$ (150,169)</td>
<td>$ (40,914)</td>
<td>$ (33,209)</td>
</tr>
<tr>
<td><strong>Net loss attributable to common stockholders per share—basic and diluted</strong></td>
<td>$(2.97)</td>
<td>$(0.99)</td>
<td>$(0.80)</td>
</tr>
<tr>
<td><strong>Weighted average number of common stock outstanding used in computing per share amounts—basic and diluted</strong></td>
<td>50,641,601</td>
<td>41,331,546</td>
<td>41,271,992</td>
</tr>
</tbody>
</table>

65
Wayfair Inc.

Consolidated Statements of Comprehensive Loss

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net loss</strong></td>
<td>(148,098)</td>
<td>(15,526)</td>
<td>(21,055)</td>
</tr>
<tr>
<td><strong>Other comprehensive loss:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign currency translation adjustments</td>
<td>(38)</td>
<td>(390)</td>
<td>(392)</td>
</tr>
<tr>
<td><strong>Comprehensive loss</strong></td>
<td>(148,136)</td>
<td>(15,916)</td>
<td>(21,447)</td>
</tr>
</tbody>
</table>
## Wayfair Inc.

### Consolidated Statements of Stockholders' Equity

<table>
<thead>
<tr>
<th>Series A Convertible Redem. Preferred</th>
<th>Members' Equity</th>
<th>Series B Convertible Redem. Preferred</th>
<th>Members' Equity</th>
<th>Class A and Class B Common Stock</th>
<th>Additional Paid-In Capital</th>
<th>Accumulated Other Comprehensive Income (Loss)</th>
<th>Total Stockholders' Equity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>17,666,664 $</td>
<td>167,480 $</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>45,002,043 $</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>(118,529) $</td>
</tr>
<tr>
<td>Cumulative translation adjustment</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>(21,055)</td>
</tr>
<tr>
<td>Due to common unit holders</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>(392)</td>
</tr>
<tr>
<td>Paid-in capital</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>(154)</td>
</tr>
<tr>
<td>Forfeiture of unvested units</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>700</td>
</tr>
<tr>
<td>Accretion of Series A convertible redeemable preferred units</td>
<td>—</td>
<td>12,154</td>
<td>—</td>
<td>—</td>
<td>(12,154)</td>
<td>—</td>
<td>(12,154)</td>
</tr>
<tr>
<td>Issuance of Series A convertible redeemable preferred units</td>
<td>3,885,137</td>
<td>36,164</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance at December 31</td>
<td>21,551,801</td>
<td>215,798 $</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>44,818,934 $</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>(15,526)</td>
</tr>
<tr>
<td>Cumulative translation adjustment</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>(390)</td>
</tr>
<tr>
<td>Accretion of Series A convertible redeemable preferred units</td>
<td>—</td>
<td>25,388</td>
<td>—</td>
<td>—</td>
<td>(25,388)</td>
<td>—</td>
<td>(25,388)</td>
</tr>
<tr>
<td>Forfeiture of unvested units</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>(55,974)</td>
</tr>
<tr>
<td>Equity issued as part of acquisition, net</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>141,150</td>
<td>1,194</td>
<td>—</td>
<td>1,194</td>
</tr>
<tr>
<td>Equity compensation expense</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>62</td>
</tr>
<tr>
<td>Balance at December 31</td>
<td>21,551,801</td>
<td>241,186 $</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>44,904,110 $</td>
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<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>(190,850)</td>
</tr>
<tr>
<td>Cumulative translation adjustment</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td>(38)</td>
</tr>
<tr>
<td>Issuance of Series B convertible redeemable preferred units, net of issuance costs</td>
<td>—</td>
<td>—</td>
<td>5,995,133</td>
<td>154,774</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Accretion of convertible redeemable preferred units</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Description</td>
<td>Preferred Units</td>
<td>Conversion of Convertible Redeemable Preferred Stock</td>
<td>Conversion from LLC to Corporation</td>
<td>Issuance of Class A Common Stock—Net of Issuance Costs</td>
<td>Forfeiture of Unvested Units</td>
<td>Repurchase of Vested Common Units</td>
<td>Dividends Paid to Series A Convertible Redeemable Preferred Unitholders</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>-----------------</td>
<td>------------------------------------------------------</td>
<td>-----------------------------------</td>
<td>--------------------------------------------------------</td>
<td>-----------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Reduction of carrying value of convertible redeemable preferred stock</td>
<td>—</td>
<td>(14,801)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Conversion of convertible redeemable preferred stock to common stock</td>
<td>(21,551,801)</td>
<td>(201,286)</td>
<td>(5,995,133)</td>
<td>(157,229)</td>
<td>—</td>
<td>—</td>
<td>(202,757)</td>
</tr>
<tr>
<td>Issuance of Class A common stock—net of issuance costs</td>
<td>(44,904,110)</td>
<td>44</td>
<td>(306,229)</td>
<td>306,185</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Forfeiture of unvested units</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Repurchase of vested common units</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Dividends paid to Series A convertible redeemable preferred unitholders</td>
<td>—</td>
<td>(39,516)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Exercise of options to purchase common stock</td>
<td>—</td>
<td>157,453</td>
<td>—</td>
<td>12</td>
<td>12</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of common stock upon vesting of RSUs</td>
<td>2,198,847</td>
<td>2</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Shares withheld related to net settlement of RSUs</td>
<td>(918,100)</td>
<td>(1)</td>
<td>(27,985)</td>
<td>(27,986)</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<tr>
<td>Repurchase of common units</td>
<td>(896,052)</td>
<td>—</td>
<td>—</td>
<td>(23,500)</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Return of equity held in escrow as part of acquisition</td>
<td>(4,546)</td>
<td>—</td>
<td>—</td>
<td>(49)</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Equity compensation expense</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance at December 31, 2014</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>$</th>
<th>$</th>
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<th>$</th>
<th>$</th>
<th>$</th>
<th>$</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>83,182,066</td>
<td>83</td>
<td>363,944</td>
<td>(58,122)</td>
<td>(366)</td>
<td>305,539</td>
<td>67</td>
<td>83,182,066</td>
<td>83</td>
<td>363,944</td>
<td>(58,122)</td>
<td>(366)</td>
<td>305,539</td>
</tr>
</tbody>
</table>
Wayfair Inc.

Consolidated Statements of Cash Flows

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash flows from operating activities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$(148,098)</td>
<td>$(15,526)</td>
<td>$(21,055)</td>
</tr>
<tr>
<td>Adjustments to reconcile net loss to net cash provided by operating activities, net of acquisition:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>22,003</td>
<td>13,091</td>
<td>9,335</td>
</tr>
<tr>
<td>Equity based compensation</td>
<td>60,809</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other non-cash adjustments</td>
<td>570</td>
<td>121</td>
<td>110</td>
</tr>
<tr>
<td>Changes in operating assets and liabilities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>1,741</td>
<td>8,112</td>
<td>(8,234)</td>
</tr>
<tr>
<td>Inventories</td>
<td>(4,835)</td>
<td>(6,630)</td>
<td>(2,497)</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>(20,143)</td>
<td>(9,159)</td>
<td>(2,431)</td>
</tr>
<tr>
<td>Accounts payable and accrued expenses</td>
<td>59,521</td>
<td>40,853</td>
<td>25,939</td>
</tr>
<tr>
<td>Deferred revenue and other liabilities</td>
<td>32,616</td>
<td>4,195</td>
<td>3,041</td>
</tr>
<tr>
<td>Other assets</td>
<td>(59)</td>
<td>(644)</td>
<td>(263)</td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>4,125</td>
<td>34,413</td>
<td>3,945</td>
</tr>
<tr>
<td>Cash flows from investing activities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchase of short-term investments</td>
<td>(135,000)</td>
<td>(93,000)</td>
<td>(66,065)</td>
</tr>
<tr>
<td>Maturities of short-term investments</td>
<td>125,019</td>
<td>65,998</td>
<td>58,065</td>
</tr>
<tr>
<td>Purchase of property and equipment</td>
<td>(31,855)</td>
<td>(6,739)</td>
<td>(8,031)</td>
</tr>
<tr>
<td>Site and software development costs</td>
<td>(14,130)</td>
<td>(9,040)</td>
<td>(6,949)</td>
</tr>
<tr>
<td>Cash paid for acquisition</td>
<td>—</td>
<td>(3,741)</td>
<td></td>
</tr>
<tr>
<td>Other investing activities, net</td>
<td>531</td>
<td>(469)</td>
<td>(100)</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(55,435)</td>
<td>(46,991)</td>
<td>(23,080)</td>
</tr>
<tr>
<td>Cash flows from financing activities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Escrow proceeds from the issuance of Series A convertible redeemable preferred units in 2011</td>
<td>—</td>
<td>—</td>
<td>8,080</td>
</tr>
<tr>
<td>Net proceeds from issuance of Series A convertible redeemable preferred units</td>
<td>—</td>
<td>—</td>
<td>36,164</td>
</tr>
<tr>
<td>Proceeds from initial public offering, net of fees</td>
<td>282,893</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Proceeds from exercise of stock options</td>
<td>12</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Taxes paid related to net share settlement of equity awards</td>
<td>(27,985)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Repurchase of common units</td>
<td>(23,500)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Dividends paid to Series A convertible redeemable preferred</td>
<td>(39,516)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Repurchase of employee equity</td>
<td>(5,528)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Additional paid-in-capital</td>
<td>—</td>
<td>—</td>
<td>700</td>
</tr>
<tr>
<td>Net cash provided by financing activities</td>
<td>341,150</td>
<td>—</td>
<td>44,944</td>
</tr>
<tr>
<td>Effect of exchange rate changes on cash and cash equivalents</td>
<td>730</td>
<td>6</td>
<td>25</td>
</tr>
<tr>
<td>Net decrease in cash and cash equivalents</td>
<td>290,570</td>
<td>(12,572)</td>
<td>25,834</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beginning of period</td>
<td>65,289</td>
<td>77,861</td>
<td>52,027</td>
</tr>
<tr>
<td>End of period</td>
<td>$355,859</td>
<td>$65,289</td>
<td>$77,861</td>
</tr>
<tr>
<td>Supplemental disclosure of cash flow information</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income tax payments</td>
<td>$37</td>
<td>$3</td>
<td>$17</td>
</tr>
<tr>
<td>Tax distribution receivable</td>
<td>—</td>
<td>—</td>
<td>154</td>
</tr>
<tr>
<td>Supplemental disclosure of non-cash investing activities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance of common units in connection with acquisition</td>
<td>—</td>
<td>$1,194</td>
<td>—</td>
</tr>
<tr>
<td>Purchase of property and equipment included in accounts payable and accrued expenses and in other liabilities</td>
<td>7,567</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Construction costs capitalized under finance lease obligation</td>
<td>3,960</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Supplemental disclosure of non-cash financing activities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accretion of preferred unit dividends</td>
<td>$2,071</td>
<td>$25,388</td>
<td>$12,154</td>
</tr>
</tbody>
</table>
Notes to Consolidated Financial Statements

1. Basis of Presentation

Wayfair Inc. is an e-commerce business offering visually inspiring browsing, compelling merchandising, easy product discovery and attractive prices for over seven million products from over 7,000 suppliers across distinct brands—Wayfair.com, Joss & Main, AllModern, DwellStudio, and Birch Lane. In addition to generating net revenue through Direct Retail sales, which includes all sales generated primarily through the Company's websites, mobile optimized websites, and mobile applications ("sites"), net revenue is also generated through sites operated by third parties and through third party advertising distribution providers that pay the Company based on the number of advertisement related clicks, actions, or impressions for advertisements placed on the Company's sites.

The consolidated financial statements and other disclosures contained in this Annual Report on Form 10-K are those Wayfair Inc. Wayfair Inc. was incorporated as a Delaware corporation on August 8, 2014. Prior to the effectiveness of Wayfair Inc.’s registration statement on Form S-1 related to its initial public offering ("IPO") in October 2014, Wayfair LLC was the principal operating entity. In connection with the IPO of Wayfair Inc., Wayfair LLC completed an internal restructuring pursuant to which Wayfair LLC became a wholly-owned subsidiary of the Corporation, and the holders of equity interests in Wayfair LLC became stockholders of Wayfair Inc. The Company accounted for this restructuring in accordance with the guidance provided for entities under common ownership because the holders of the equity interests in Wayfair LLC held the same ownership interests in Wayfair Inc. as they did in Wayfair LLC immediately prior to the internal restructuring. SK Retail, Inc. was the only holder of equity interest in Wayfair LLC with operations. Accordingly the historical financial statements of SK Retail, Inc. have been combined with the historical financial statements of Wayfair LLC for the periods presented. As a result, accumulated deficit as of December 31, 2011 increased by $0.3 million and $1.9 million recorded as amounts due to related party as of December 31, 2013 has been reclassified to accrued expenses and no impact on the consolidated statements of operations since all costs had been included in the results of Wayfair LLC. In addition, all of our outstanding common units of Wayfair LLC were exchanged for, and all of our incentive units converted into, shares of Class B common stock. In addition, all of outstanding preferred units were exchanged for shares of Series A and Series B convertible preferred stock. Immediately prior to the completion of the IPO, all of our outstanding shares of Series A and Series B convertible preferred stock converted into shares of Class B common stock. In connection with this the Company also reclassified members' deficit of $306.2 million, accumulated under Wayfair LLC, to additional paid in capital.

Prior period operating expense captions reported under sales and marketing in the consolidated statements of operations have been expanded to provide greater detail and to conform to current period presentation which includes customer service and merchant fees, advertising and merchandising, marketing and sales.

2. Summary of Significant Accounting Policies

Principles of Consolidation

The accompanying consolidated financial statements of Wayfair Inc. include its wholly owned subsidiaries including the accounts of Wayfair LLC and its wholly owned subsidiaries (collectively the
2. Summary of Significant Accounting Policies (Continued)

Company or Wayfair. All intercompany accounts and transactions have been eliminated. Below is a summary of the wholly-owned subsidiaries of the Company with operations:

<table>
<thead>
<tr>
<th>Subsidiary</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wayfair LLC</td>
<td>USA</td>
</tr>
<tr>
<td>Wayfair Securities Corporation</td>
<td>USA</td>
</tr>
<tr>
<td>SK Retail, Inc.</td>
<td>USA</td>
</tr>
<tr>
<td>Wayfair Stores Limited</td>
<td>Republic of Ireland</td>
</tr>
<tr>
<td>Wayfair (UK) Limited</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>Wayfair GmbH</td>
<td>Germany</td>
</tr>
<tr>
<td>Wayfair (BVI) Ltd.</td>
<td>British Virgin Islands</td>
</tr>
<tr>
<td>Wayfair Australia Pty Limited</td>
<td>Australia</td>
</tr>
</tbody>
</table>

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("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 revenue and expenses during the reported period. On an ongoing basis, management evaluates these estimates and judgments, including those related to revenue recognition, capitalization of site and software development costs, stock-based compensation, and inventory. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with an original maturity (at the date of purchase) of three months or less to be the equivalent of cash for the purpose of consolidated balance sheets and statements of cash flows presentation. Cash equivalents, which consist primarily of money market accounts, are carried at cost, which approximates market value.

Restricted Cash

As of December 31, 2014 and 2013, there was $0.3 million, and $0.8 million, respectively, of cash that was restricted from withdrawal and held by banks to guarantee the Company's letters of credit issued principally to secure certain property leases.

Short-Term Investments

Short-term investments consist of certificates of deposits with original maturities of greater than three months and mature in less than twelve months.

Accounts Receivable

Accounts receivable are stated at the amount management expects to collect from outstanding balances. The Company estimates the allowance for doubtful accounts based on historical losses, existing economic conditions, and other information available at the consolidated balance sheets dates. Uncollectible amounts are written off against the allowance after all collection efforts have been exhausted.
Notes to Consolidated Financial Statements (Continued)

2. Summary of Significant Accounting Policies (Continued)

Fair Value of Financial Instruments

The Company's financial assets and liabilities are measured at fair value, which is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). The three levels of inputs used to measure fair value are as follows:

- Level 1—Unadjusted quoted prices in active markets for identical assets or liabilities
- Level 2—Unadjusted quoted prices in active markets for similar assets or liabilities, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active, or inputs other than quoted prices that are observable or can be corroborated by observable market data for substantially the full-term of the asset or liability
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the asset or liability

This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. The Company measures its cash equivalents and short-term investments at fair value. The Company classifies its cash equivalents and short-term investments within Level 1 because the Company values these investments using quoted market prices. The fair value of the Company's Level 1 financial assets is based on quoted market prices of the identical underlying security. The Company does not have any assets or liabilities classified as Level 2 or Level 3 financial assets. See Note 3 for further details.

Concentrations of Credit Risk

Financial instruments that subject the Company to credit risk consist of cash and cash equivalents, short-term investments, and accounts receivable. The risk with respect to cash and cash equivalents and short-term investments is minimized by the Company's policy of investing in financial instruments (i.e., cash equivalents) with short-term maturities issued by highly rated financial institutions. At times, these balances may exceed federally insured limits; however, to date, the Company has not incurred any losses on these investments. As of December 31, 2014 and 2013, the Company had $2.1 million, and $2.6 million, respectively, in banks located outside the United States. The risk with respect to accounts receivable is managed by the Company through its policy of monitoring the creditworthiness of its customers to which it grants credit terms in the normal course of business.

Leases

The Company leases office space in several countries around the world under non-cancelable lease agreements. The Company generally leases its office facilities under operating lease agreements. Office facilities subject to an operating lease and the related lease payments are not recorded on the balance sheet. The terms of certain lease agreements provide for rental payments on a graduated basis, however, the Company recognizes rent expense on a straight-line basis over the lease period in accordance with authoritative accounting guidance. Any lease incentives are recognized as reductions of rental expense on a straight-line basis over the term of the lease. The lease term begins on the date the Company becomes legally obligated for the rent payments or when it takes possession of the office space, whichever is earlier.
2. Summary of Significant Accounting Policies (Continued)

The Company establishes assets and liabilities for the estimated construction costs incurred under lease arrangements where the Company is considered the owner for accounting purposes only, or build-to-suit leases, to the extent the Company is involved in the construction of structural improvements or take construction risk prior to commencement of a lease. Upon occupancy of facilities under build-to-suit leases, the Company assesses whether these arrangements qualify for sales recognition under the sale-leaseback accounting guidance. If the Company continues to be the deemed owner, the facilities are accounted for as financing leases.

Foreign Currency Translation

The functional currency of the Company is the United States dollar, while the functional currency of certain wholly-owned subsidiaries outside of the United States is as follows:

<table>
<thead>
<tr>
<th>Subsidiary</th>
<th>Currency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wayfair Stores Limited</td>
<td>Euro</td>
</tr>
<tr>
<td>Wayfair (UK) Limited</td>
<td>Pound sterling</td>
</tr>
<tr>
<td>Wayfair GmbH</td>
<td>Euro</td>
</tr>
<tr>
<td>Wayfair (BVI) Ltd.</td>
<td>Euro</td>
</tr>
<tr>
<td>Wayfair Australia Pty Limited</td>
<td>Australian dollar</td>
</tr>
</tbody>
</table>

The financial statements of the Company are translated to United States dollars using year-end exchange rates as to assets and liabilities and average exchange rates as to revenue and expenses. Capital accounts are translated at their historical exchange rates when the capital transaction occurred. The effects of foreign currency translation are included in other comprehensive loss in the consolidated statements of comprehensive loss. Transaction gains and losses are included in the Company’s consolidated statements of operations. Translation adjustments arising from the use of differing exchange rates from period to period are included in accumulated other comprehensive loss within total stockholders' equity (deficit).

Inventories

Inventories consisting of finished goods are stated at the lower of cost or market, determined by the first-in, first-out (FIFO) method, and consist of product for resale. Inventory costs consist of cost of product and inbound shipping and handling costs. Inventory costs also include direct and indirect labor costs, rents and depreciation expenses associated with the Company’s fulfillment centers. Inventory valuation requires the Company to make judgments, based on currently-available information, about the likely method of disposition, such as through sales to individual customers, liquidations, and expected recoverable values of each disposition category.

Goods In-Transit

Goods in-transit directly from suppliers to customers are recorded in prepaid expenses and other current assets. Risk of loss and the transfer of title from the supplier to the Company occur at freight on board shipping point. As of December 31, 2014 and 2013, goods in-transit amounted to $19.6 million, and $9.7 million, respectively.
2. Summary of Significant Accounting Policies (Continued)

Property and Equipment

Property and equipment are stated at cost, net of depreciation and amortization. Depreciation and amortization on property and equipment is calculated on the straight-line method over the estimated useful lives of the assets as follows:

<table>
<thead>
<tr>
<th>Class</th>
<th>Range of Life (In Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Furniture and computer equipment</td>
<td>3 to 7</td>
</tr>
<tr>
<td>Site and software development costs</td>
<td>2</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>The lesser of useful life or lease term</td>
</tr>
</tbody>
</table>

Site and Software Development Costs

The Company capitalizes costs associated with the development of its sites and internal-use software products after the preliminary project stage is complete and until the software is ready for its intended use. The capitalized costs are amortized over a two-year period. Costs incurred in the preliminary stages of development, after the software is ready for its intended use and for maintenance of internal-use software are expensed as incurred. Upgrade and enhancements are capitalized to the extent they will result in added functionality.

Total costs capitalized, net of accumulated amortization, totaled $14.2 million, and $8.6 million as of December 31, 2014 and 2013, respectively, and are included in property and equipment, net in the accompanying consolidated balance sheets. Amortization expense for the years ended December 31, 2014, 2013 and 2012 were $9.9 million, $7.0 million, and $4.8 million, respectively. Capitalized software costs are included in property and equipment within our consolidated balance sheets.

Goodwill

Goodwill represents the excess of cost over the fair value of tangible and identifiable intangible assets acquired and liabilities assumed. Goodwill is not amortized, but is subject to an annual impairment test, or more frequently as impairment indicators arise.

The Company tests goodwill for impairment at least annually. The Company reviews goodwill for impairment on the last day of its fiscal year and whenever events or changes in circumstances indicate that the carrying amount of this asset may exceed its fair value. The assessment is performed at the reporting unit level. The Company first assesses qualitative factors to determine whether the existence of events or circumstances leads to a determination that it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If, after assessing the totality of events or circumstances, an entity determines it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, then the two-step impairment test is not required. If the qualitative assessment requires the Company to perform the two-step goodwill impairment test to identify potential goodwill impairment then the first step is to compare the fair value of the reporting unit to the book value including goodwill. If the fair value of the reporting unit exceeds the book value, goodwill is not impaired. If the book value exceeds the fair value, the second step of the process is performed to measure the amount of impairment.
2. Summary of Significant Accounting Policies (Continued)

Long-Lived Assets

The Company reviews long-lived assets for impairment whenever events or changes in circumstances, such as service discontinuance or technological obsolescence, indicate that the carrying amount of the long-lived asset may not be recoverable. When such events occur, the Company compares the carrying amount of the asset to the undiscounted expected future cash flows related to the asset. If the comparison indicates that an impairment exists, the amount of the impairment is calculated as the difference between the excess of the carrying amount over the fair value of the asset. If a readily determinable market price does not exist, fair value is estimated using discounted expected cash flows attributable to the asset. For the years ended December 31, 2014, 2013 and 2012, no impairment of long-lived assets or identifiable intangibles had been indicated.

Revenue Recognition

The Company generates net revenue through product sales generated primarily through the sites of the Company's five distinct brands and through sites operated by third parties.

The Company recognizes revenue only when the following four criteria are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred; (3) the selling price is fixed or determinable; and (4) collectability is reasonably assured. The Company recognizes net revenue from sales of its products, upon delivery to the customer. The Company records product revenue at the gross amount as the Company is the primary obligor with the customer and provides the primary customer service for all products sold on its sites, has latitude in establishing price and selecting products sold on its sites, has discretion in selecting suppliers of products sold on its sites, maintains inventory risk from shipment through delivery date and upon accepting returns, and has credit risk. Net revenue includes shipping costs charged to the customer and is recorded net of taxes collected from customers, which are remitted to governmental authorities. Cash discounts, returns and rebates are deducted from gross revenue in determining net revenue. In addition, the Company defers revenue when cash is collected from its customer prior to the satisfaction of the revenue recognition criteria.

The Company maintains a membership rewards program that allows enrolled customers to earn points which can be redeemed for future purchases. The Company defers a portion of its revenue associated with rewards that are ultimately expected to be redeemed prior to expiration.

The Company also earns revenue through third-party advertisers that pay based on the number of advertisement related clicks, actions, or impressions for advertisements placed on the Company’s sites. Revenue earned under these arrangements is included in net revenue and is recognized in the period in which the click, action, or impression occurs.

Vendor Rebates

The Company earns rebates under a volume incentive programs with its suppliers. These rebates are earned upon shipment of goods. Amounts earned and due from suppliers under these rebate programs are included in other current assets on the consolidated balance sheets and are reflected as a reduction of cost of goods sold on the consolidated statements of operations. Vendor allowances received by the Company reduce the carrying cost of inventory and are recognized in cost of goods sold when the related inventory is sold.

74
Notes to Consolidated Financial Statements (Continued)

2. Summary of Significant Accounting Policies (Continued)

Costs of Goods Sold

Cost of goods sold consists of the cost of product sold to customers, shipping and handling costs and shipping supplies and fulfillment costs. Fulfillment costs include costs incurred in operating and staffing the fulfillment centers, such as costs attributed to receiving, inspecting, picking, packaging and preparing customer orders for shipment. Cost of goods sold also includes direct and indirect labor costs for fulfillment center oversight, including payroll and related benefit costs.

Advertising Costs

Expenditures for advertising are expensed in the period that the advertising first takes place. Advertising expense amounted to approximately $191.3 million, $108.5 million, and $65.5 million in the years ended December 31, 2014, 2013 and 2012, respectively. Included in prepaid expenses at December 31, 2014, 2013 and 2012, are approximately $0.6 million, $0.5 million, and $0.9 million, respectively, of prepaid advertising costs.

Merchant Processing Fees

Merchant processing fees totaling $27.6 million, $19.4 million, and $13.3 million in the years ended December 31, 2014, 2013 and 2012, respectively, are included in customer service and merchant fees expense in the accompanying consolidated statements of operations. These fees are charged by third parties that provide merchant processing services for credit cards and debit cards.

Retail Partner Fees

The Company sells its products through sites owned and operated by third-party online retailers, or retail partners. The Company pays a fee for sales generated through these sites and records them as merchant processing fees and advertising costs. Retail partner fees included in merchant processing fees are $4.4 million, $4.3 million, and $4.3 million for the years ended December 31, 2014, 2013 and 2012, respectively. Retail partner fees included in advertising costs are $24.3 million, $25.2 million, $22.0 million for the years ended December 31, 2014, 2013 and 2012, respectively.

Equity-Based Compensation

The Company accounts for its equity-based compensation awards in accordance with ASC Topic 718, Compensation—Stock Compensation (ASC 718). ASC 718 requires all equity-based payments to employees, to be recognized as expense in the statements of operations based on their grant date fair values. The Company has granted stock options, restricted shares and restricted stock units.

The Company estimated the grant date fair value of each common stock option award using the Black-Scholes option-pricing model. The use of the Black-Scholes option-pricing model required management to make assumptions with respect to the expected term of the option, the expected volatility of the common stock consistent with the expected life of the option, risk-free interest rates and expected dividend yields of the common stock. Until its IPO in October 2014, the fair value of restricted stock and restricted stock units on the date of grant was determined by the board. Since April 2011, the Company has only granted restricted stock units and has not granted any stock options or restricted stock. Since our IPO restricted stock unit values are determined based on the quoted market price of our common stock on the date of grant.
Notes to Consolidated Financial Statements (Continued)

2. Summary of Significant Accounting Policies (Continued)

Prior to the IPO the Company periodically determined for financial reporting purposes the estimated fair value of its common stock at various dates using contemporaneous valuations performed in accordance with the guidance outlined in the American Institute of Certified Public Accountants Practice Aid, Valuation of Privately Held Company Equity Securities Issued as Compensation, also known as the Practice Aid. The Company generally used the income and market approaches prescribed in the Practice Aid, in particular the income approach's discounted cash flow method, which was based on the Company's projections and estimated discount rate and the guideline public company, guideline transactions and precedent transaction methodologies, based on inputs from comparable public companies' equity valuations, comparable acquisition transactions and transactions in the Company's own equity securities, to estimate the enterprise value of the company. The Company performed these contemporaneous valuations as of December 31, 2011, June 30, 2012, December 31, 2012, June 30, 2013, September 30, 2013, December 31, 2013, March 31, 2014 and June 30, 2014.

In connection with the preparation of the financial statements for the year ended December 31, 2013, the Company undertook a retrospective reassessment of the fair market value of its common stock for certain of its 2013 grants for financial reporting purposes. As part of that reassessment, the Company determined that the grant date fair values of its May, August and November 2013 grants to be $6.46, $10.88 and $20.87, respectively. The fair value previously determined at various valuation dates increased substantially in 2013 and there was no particular transaction or event that caused this increase. The grants made in May, August and November 2013 were between the dates when the Company performed its valuation. Accordingly, the Company calculated grant date fair value for these grants on a linear basis between each valuation date and believe it to be a reasonable method. Similarly in connection with the preparation of the financial statements for the quarter ended September 30, 2014, the Company undertook a retrospective reassessment of the fair market value of our common stock for our grants made in September 2014 to be equal to our October 2, 2014 IPO price of $29.00.

Income Taxes

Income taxes are accounted for under the asset and liability method. Under the asset and liability method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases.

Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. The Company records valuation allowances to reduce deferred income tax assets to the amount that is more likely than not to be realized. The Company determines whether it is more likely than not that a tax position will be sustained upon examination. If it is not more likely than not that a position will be sustained, no amount of benefit attributable to the position is recognized. The tax benefit to be recognized of any tax position that meets the more likely than not recognition threshold is calculated as the largest amount that is more than 50% likely of being realized upon resolution of the contingency.

Prior to the IPO, the Company's main operating entity had not been subject to U.S. federal income taxes as it was organized as a limited liability company. As such, the taxable income or loss was passed through to and included in the tax returns of the members. The Company was subject to entity level taxation in certain states, and certain domestic and foreign subsidiaries were subject to entity
Notes to Consolidated Financial Statements (Continued)

2. Summary of Significant Accounting Policies (Continued)

level U.S. and foreign income taxes. As a result of the internal restructuring prior to the IPO, a portion of the Company's income will be subject to U.S. federal, state, local, and foreign income taxes and taxed at the prevailing corporate tax rates.

Net Loss Attributable to Common Stockholders Per Share

The Company follows the two-class method when computing net loss attributable to common stockholders per share as the Company had issued shares that meet the definition of participating securities which converted to common stock upon the IPO. Prior to the internal restructuring, the Company's convertible redeemable preferred units contractually entitled the holders of such units to participate in dividends, but did not contractually require the holders of such units to participate in losses of the Company. Accordingly, in periods prior to 2014 in which the Company reports a net loss or a net loss attributable to common shareholders resulting from preferred stock dividends or accretion, net losses are not allocated to participating securities. After the IPO the Company has continued to follow the two-class method because it has issued two classes of common stock—Class A and Class B.

Basic net income (loss) attributable to common stockholders per share is computed by dividing the net income (loss) attributable to common stockholders by the weighted average number of common stock outstanding for the period. For periods in which the Company has reported net losses, diluted net loss per share attributable to common shareholders is the same as basic net loss per share attributable to common stockholders, since dilutive common stock are not assumed to have been issued if their effect is anti-dilutive.

Subsequent Events

The Company considers events or transactions that have occurred after the balance sheet date of December 31, 2014, but prior to the filing of the financial statements with the Securities and Exchange Commission to provide additional evidence relative to certain estimates or to identify matters that require additional recognition or disclosure. Subsequent events have been evaluated through the filing of these financial statements.

Recent Accounting Pronouncements

In July 2013, the Financial Accounting Standards Board ("FASB") issued a new accounting standard update that requires the presentation of certain unrecognized tax benefits as reductions to deferred tax assets rather than as liabilities in the consolidated balance sheets when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists. The Company adopted this new standard on a prospective basis in the first quarter of fiscal 2014, and the adoption of this accounting standard update did not have a material impact on the Company's consolidated financial statements.

In May 2014, the FASB issued new accounting guidance regarding revenue recognition under GAAP. This new guidance will supersede nearly all existing revenue recognition guidance, and is effective for public entities for annual and interim periods beginning after December 31, 2016. Early adoption is not permitted. The Company is currently evaluating the impact of this new guidance on the Company's consolidated financial statements.

In August 2014, the FASB issued Accounting Standards Update No. 2014-15, "Presentation of Financial Statements—Going Concern", which requires management to evaluate, at each annual and interim reporting period, whether there are conditions or events that raise substantial doubt about the
Notes to Consolidated Financial Statements (Continued)

2. Summary of Significant Accounting Policies (Continued)

The entity’s ability to continue as a going concern within one year after the date the financial statements are issued and provide related disclosures. ASU 2014-15 is effective for annual periods ending after December 15, 2016 and interim periods thereafter. Early application is permitted. The adoption of ASU 2014-15 is not expected to have a material effect on the consolidated financial statements.

3. Fair Value Measurements

The following tables set forth the fair value of the Company’s financial assets measured at fair value on a recurring basis as of December 31, 2013 and 2014 based on the three-tier value hierarchy:

<table>
<thead>
<tr>
<th>December 31, 2014</th>
<th>Total</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash equivalents</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Money market funds</td>
<td>$ 302,595</td>
<td>$ 302,595</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Short-term investments:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificates of deposit</td>
<td>60,000</td>
<td>60,000</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Restricted cash</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Money market funds</td>
<td>302</td>
<td>302</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>$ 362,897</td>
<td>$ 362,897</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>December 31, 2013</th>
<th>Total</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash equivalents</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Money market funds</td>
<td>$ 32,560</td>
<td>$ 32,560</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Short-term investments:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificates of deposit</td>
<td>50,019</td>
<td>50,019</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Restricted cash</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Money market funds</td>
<td>346</td>
<td>346</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>$ 82,925</td>
<td>$ 82,925</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

Assets Measured and Recorded at Fair Value on a Nonrecurring Basis

The Company remeasures the fair value of certain assets upon the occurrence of certain events. In 2014, the Company recorded goodwill impairment charges of $0.8 million after remeasuring the fair value of the goodwill associated with its Australian reporting unit. This adjustment falls within Level 3 of the fair value hierarchy due to the use of significant unobservable inputs to determine fair value. The fair value measurements were determined using the income and the market approaches. The income approach uses a discounted cash flow analysis. The market approach includes the guideline public company method and guideline transaction method.

78
4. Intangible assets and Goodwill

Intangible assets consisted of the following as of December 31, 2013 and 2014 (in thousands):

<table>
<thead>
<tr>
<th>Weighted-Average Amortization Period (Years)</th>
<th>December 31, 2014</th>
<th></th>
<th>December 31, 2013</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Gross Carrying Value</td>
<td>Accumulated Amortization</td>
<td>Net Book Value</td>
<td>Gross Carrying Value</td>
<td>Accumulated Amortization</td>
</tr>
<tr>
<td>Trademarks</td>
<td>5</td>
<td>$2,001</td>
<td>$(604)</td>
<td>$1,397</td>
<td>$2,030</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>5</td>
<td>1,300</td>
<td>(368)</td>
<td>932</td>
<td>1,300</td>
</tr>
<tr>
<td>Non-compete agreement</td>
<td>3 - 5</td>
<td>108</td>
<td>(52)</td>
<td>56</td>
<td>110</td>
</tr>
<tr>
<td>Technology</td>
<td>5</td>
<td>718</td>
<td>(467)</td>
<td>251</td>
<td>920</td>
</tr>
<tr>
<td>Other intangibles</td>
<td>3</td>
<td>373</td>
<td>(158)</td>
<td>215</td>
<td>373</td>
</tr>
<tr>
<td>Domain names</td>
<td>5</td>
<td>2,687</td>
<td>(2,684)</td>
<td>3</td>
<td>2,695</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The following is a summary of the estimated aggregate amortization expense in future years at December 31, 2014 (in thousands):

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>$961</td>
</tr>
<tr>
<td>2016</td>
<td>880</td>
</tr>
<tr>
<td>2017</td>
<td>640</td>
</tr>
<tr>
<td>2018 and thereafter</td>
<td>373</td>
</tr>
<tr>
<td>Total</td>
<td>$2,854</td>
</tr>
</tbody>
</table>

For the years ended December 31, 2013 and 2012, no impairment of goodwill had been indicated. At the end of 2014, because the Company identified material reductions in revenue expectations and increased costs for its Australian reporting unit, it performed a qualitative assessment which required it to perform the two step test. Step one indicated that the fair value of the reporting unit was below the book value including goodwill. Upon completion of its second step the Company identified and recorded a goodwill impairment of $0.8 million which is included in the consolidated statements of operations under operations, technology, general and administrative. The remaining goodwill in that reporting unit is approximately $1.7 million and will continue to be evaluated on a quarterly basis. In 2014 goodwill was reduced by $0.7 million as a result of foreign exchange fluctuations in addition to the reduction due to the impairment.
Notes to Consolidated Financial Statements (Continued)

5. Property and Equipment, net

Property and equipment, net consists of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2014</th>
<th>December 31, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
</tr>
<tr>
<td>Furniture and computer equipment</td>
<td>$ 48,399</td>
<td>$ 26,218</td>
</tr>
<tr>
<td>Site and software development costs</td>
<td>36,294</td>
<td>23,715</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>14,290</td>
<td>1,912</td>
</tr>
<tr>
<td>Construction in progress</td>
<td>4,800</td>
<td>184</td>
</tr>
<tr>
<td></td>
<td>103,783</td>
<td>52,029</td>
</tr>
<tr>
<td>Less accumulated depreciation and amortization</td>
<td>(43,144)</td>
<td>(29,941)</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>$ 60,639</td>
<td>$ 22,088</td>
</tr>
</tbody>
</table>

Property and equipment depreciation and amortization expense was $20.8 million, $12.5 million, and $8.6 million for the years ended December 31, 2014, 2013 and 2012, respectively.

6. Accrued Expenses

Accrued expenses consist of the following:

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2014</th>
<th>December 31, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
</tr>
<tr>
<td>Employee compensation and related benefits</td>
<td>$ 15,244</td>
<td>$ 9,517</td>
</tr>
<tr>
<td>Marketing</td>
<td>9,561</td>
<td>5,329</td>
</tr>
<tr>
<td>Accrued property, plant and equipment</td>
<td>7,151</td>
<td>—</td>
</tr>
<tr>
<td>Credit card</td>
<td>3,560</td>
<td>2,213</td>
</tr>
<tr>
<td>Audit, legal and professional fees</td>
<td>898</td>
<td>377</td>
</tr>
<tr>
<td>Other accrued expenses</td>
<td>5,921</td>
<td>3,939</td>
</tr>
<tr>
<td></td>
<td>$ 42,335</td>
<td>$ 21,375</td>
</tr>
</tbody>
</table>

7. Commitments and Contingencies

Leases

The Company leases office space under non-cancelable leases. These leases expire at various dates through 2024 and include discounted rental periods and fixed escalation clauses, which are amortized straight-line over the terms of the lease. Rental expense under operating leases was $11.4 million, $4.6 million, and $3.0 million in the years ended December 31, 2014, 2013 and 2012, respectively. The Company has issued letters of credit for approximately $3.3 million as security for these lease agreements.

80
7. Commitments and Contingencies (Continued)

Future lease payments under non-cancelable leases are as follows as of December 31, 2014:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>$13,303</td>
</tr>
<tr>
<td>2016</td>
<td>15,596</td>
</tr>
<tr>
<td>2017</td>
<td>15,245</td>
</tr>
<tr>
<td>2018</td>
<td>15,337</td>
</tr>
<tr>
<td>2019</td>
<td>13,970</td>
</tr>
<tr>
<td>Thereafter</td>
<td>53,936</td>
</tr>
<tr>
<td></td>
<td>$127,387</td>
</tr>
</tbody>
</table>

Future lease payments have not been reduced by minimum sublease rentals of $1.1 million due to the Company in the future under non-cancelable subleases.

In March 2014, the Company expanded the lease of office space in Boston, MA to a total of approximately 275,000 square feet through 2024. The Company has an option to extend the lease for two successive 5 year periods.

In September 2014, the Company signed a lease to expand its warehouse space in Ogden, UT by an additional 180,000 square feet through 2022 which it plans to occupy in 2015. The Company established a long-term asset and liability of $3.9 million for the estimated construction costs incurred under this lease arrangement through December 31, 2014 since the Company is considered the owner for accounting purposes only during the construction period. Upon occupancy of the facility, which is expected in 2015, the Company will assess whether this arrangement qualifies for sales recognition under the sale-leaseback accounting guidance. If the Company continues to be the deemed owner, the facility will be accounted for as a financing lease.

Collection of Sales or Other Similar Taxes

Based on the location of the Company's current operations, it collects and remits sales tax in Kentucky, Massachusetts, New York and Utah. The Company does not currently collect sales or other similar taxes for the sale of goods in states where no obligation to collect these taxes is required under applicable law. Several states have presented the Company with assessments, alleging that it is required to collect and remit sales or other similar taxes. The aggregate amount of claims from these states is approximately $11.7 million. The Company does not believe that it was obligated to collect and remit such taxes, and intends to vigorously defend its position. At this time, the Company believes a loss is not probable hence a liability has not been recorded, however, no assurance can be given as to the outcome of this situation.

Legal Matters

The Company is subject to legal proceedings and claims in the ordinary course of business. However, the Company is not currently aware of any legal proceedings or claims that it believes will have, individually or in the aggregate, a material adverse effect on the Company's financial position, results of operations or cash flows.
8. Employee Benefit Plans

The Company has a defined-contribution, incentive savings plan pursuant to Section 401(k) of the Internal Revenue Code. The plan covers all full-time employees who have reached the age of 21 years. Employees may elect to defer compensation up to a dollar limit (as allowable by the Internal Revenue Code), of which up to 4% of an employee's salary will be matched by the Company. The amounts deferred by the employee and the matching amounts contributed by the Company both vest immediately. The amount expensed under the plan totaled approximately $2.4 million, $1.8 million, and $1.5 million in the years ended December 31, 2014, 2013 and 2012, respectively.

9. Equity-Based Compensation

In 2010 the Company established an equity incentive plan and in 2011, the plan was amended and restated as the Wayfair LLC Amended and Restated 2010 Common Unit Plan (the "2010 Plan"). The 2010 Plan was administered by the board of directors of Wayfair LLC and provided for the issuance of common option units, deferred units, and restricted common units (all common units), which currently represent Class B common stock of the Company.

In connection with the IPO of Wayfair Inc. as described earlier, Wayfair LLC completed an internal restructuring pursuant to which Wayfair LLC became a wholly-owned subsidiary of Wayfair Inc., and the holders of equity interests in Wayfair LLC became stockholders of Wayfair Inc. In addition, all of the outstanding common units and incentive units of Wayfair LLC were exchanged for shares of common stock or incentive units for common stock, and then were converted into shares of Class B common stock or incentive units for Class B common stock of Wayfair Inc. Accordingly, common option units, restricted common units and deferred units were converted to stock options, restricted common stock and restricted common units ("RSU"), respectively, and may be referred to as such in these notes to the consolidated financial statements. In connection with the IPO, the board of directors of Wayfair Inc. took over administration of the 2010 Plan and adopted the 2014 Incentive Award Plan ("2014 Plan") to grant cash and equity incentive awards to eligible service providers in order to attract, motivate and retain the talent for which the Company competes. The 2014 Plan is administered by the board of directors of Wayfair Inc. with respect to awards to non-employee directors and by the compensation committee with respect to other participants and provides for the issuance of stock options, SARs, restricted stock, RSUs, performance shares, stock payments, cash payments, dividend awards and other incentives. The 2014 Plan authorizes up to 8,603,066 shares of Class A common stock Wayfair Inc. to be issued, of which no shares had been issued as of December 31, 2014. Shares or RSUs forfeited and unexercised stock option lapses from the 2010 Plan are available for grants of awards under the 2014 Plan. Any future grants of awards are expected to vest over the service period, typically five years.

All equity awards granted prior to the IPO were subject to two vesting triggers: a service period (typically five years) and a performance condition (a liquidity event in the form of either a change of control or an initial public offering, each as defined in the Amended Plan). Employees were able to retain provisionally vested stock options and shares upon departure. The Company determined that a liquidity event was not probable until the closing of its IPO on October 7, 2014, and as such, no expense was recognized until that date. After the IPO awards for employees still providing service will continue to vest over the remaining service period. In the fourth quarter of 2014 the Company recorded $55.3 million of equity based compensation calculated under the accelerated attribution method and the service period for the majority of this expense was satisfied prior to the IPO. In addition the Company recorded an asset of $1.4 million as site and software development cost. The Company will continue to record equity based compensation expense in future periods.

82
9. Equity-Based Compensation (Continued)

In April 2014, the Company completed a tender offer to repurchase provisionally vested (defined as service period completed) stock options and restricted common stock from certain employees at a price of $26.23 per share. A total of 202,757 shares of restricted common stock and 9,028 stock options were tendered for an aggregate of approximately $5.5 million in net cash after adjusting for the exercise prices associated with the stock options. This tender offer was accounted for as a modification resulting in a $5.5 million compensation charge when accepted by the employee. The Company recorded an expense of $5.5 million in the year ended December 31, 2014.

A summary of the status and activity for awards of stock options for the year ended December 31, 2013 and 2014 is as follows:

<table>
<thead>
<tr>
<th>Stock Options</th>
<th>Weighted-Average Exercise Price</th>
<th>Weighted-Average Remaining Contractual Term (Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding at December 31, 2013</td>
<td>664,232</td>
<td>$</td>
</tr>
<tr>
<td>Exercised</td>
<td>(177,704)</td>
<td>$</td>
</tr>
<tr>
<td>Repurchased</td>
<td>(9,028)</td>
<td>$</td>
</tr>
<tr>
<td>Forfeited/cancelled</td>
<td>(28,454)</td>
<td>$</td>
</tr>
<tr>
<td>Outstanding at December 31, 2014</td>
<td>449,046</td>
<td>$</td>
</tr>
<tr>
<td>Exercisable at December 31, 2014</td>
<td>409,567</td>
<td>$</td>
</tr>
<tr>
<td>Expected to vest as of December 31, 2014</td>
<td>26,277</td>
<td>$</td>
</tr>
</tbody>
</table>

Intrinsic value of stock options exercised and repurchased was $4.3 million for the year ended December 31, 2014. Aggregate intrinsic value of stock options outstanding and currently exercisable is $7.6 million and $6.9 million respectively. Unrecognized equity based compensation expense related to stock options expected to vest is less than $0.1 million with a weighted average remaining vesting term of 0.3 years as of December 31, 2014.

A summary of the status and activity for awards of restricted common stock for the years ended December 31, 2014 and 2013 is as follows:

<table>
<thead>
<tr>
<th>Restricted Stock</th>
<th>Weighted-Average Grant Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unvested at December 31, 2013</td>
<td>3,490,968</td>
</tr>
<tr>
<td>Vested</td>
<td>(3,022,912)</td>
</tr>
<tr>
<td>Repurchased</td>
<td>(202,757)</td>
</tr>
<tr>
<td>Forfeited/cancelled</td>
<td>(103,823)</td>
</tr>
<tr>
<td>Unvested at December 31, 2014</td>
<td>161,476</td>
</tr>
<tr>
<td>Expected to vest as of December 31, 2014</td>
<td>109,150</td>
</tr>
</tbody>
</table>

The intrinsic value of restricted common stock vested and repurchased was $101.5 million for the year ended December 31, 2014. Aggregate intrinsic value of restricted common stock outstanding is $3.2 million as of December 31, 2014. Unrecognized equity based compensation expense related to restricted common stock expected to vest is less than $0.1 million with a weighted average remaining vesting term of 0.2 years as of December 31, 2014.
Notes to Consolidated Financial Statements (Continued)

9. Equity-Based Compensation (Continued)

A summary of the status and activity for awards of RSUs for the year ended December 31, 2014 and 2013 is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Restricted Stock Units</th>
<th>Weighted-Average Grant Date Fair Value</th>
<th>Weighted-Average Remaining Contractual Term (Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unvested at December 31, 2013</td>
<td>5,255,113</td>
<td>$ 7.95</td>
<td>6.0</td>
</tr>
<tr>
<td>Granted</td>
<td>1,953,227</td>
<td>$ 27.07</td>
<td></td>
</tr>
<tr>
<td>Vested</td>
<td>(2,198,857)</td>
<td>$ 7.89</td>
<td></td>
</tr>
<tr>
<td>Forfeited/cancelled</td>
<td>(467,252)</td>
<td>$ 12.31</td>
<td></td>
</tr>
<tr>
<td>Unvested at December 31, 2014</td>
<td>4,542,231</td>
<td>$ 17.67</td>
<td>5.6</td>
</tr>
<tr>
<td>Expected to vest as of December 31, 2014</td>
<td>3,394,145</td>
<td>$ 18.11</td>
<td>5.7</td>
</tr>
</tbody>
</table>

The intrinsic value of RSU vested was $69.0 million for the year ended December 31, 2014. Aggregate intrinsic value of RSUs outstanding is $90.2 million as of December 31, 2014. Unrecognized equity based compensation expense related to RSUs expected to vest is $38.2 million with a weighted average remaining vesting term of 1.7 years as of December 31, 2014.

10. Stockholders' Equity (Deficit)

Corporate Reorganization

On October 1, 2014, in anticipation of the IPO, the Company completed an internal restructuring as described in note 1. Pursuant to the restructuring, Wayfair LLC became a wholly-owned subsidiary of Wayfair Inc., and the holders of equity interests in Wayfair LLC became stockholders of Wayfair Inc. Wayfair Inc. was incorporated as a Delaware corporation on August 8, 2014. In connection with this restructuring $306.2 million of accumulated deficit from Wayfair LLC was transferred to additional paid in capital of Wayfair Inc.

Series A and Series B Convertible Redeemable Preferred Units of Wayfair LLC

In connection with the internal restructuring all of the outstanding Series A and Series B Preferred Units were exchanged for shares of Series A and Series B convertible preferred stock. Immediately prior to the completion of the IPO, all of the outstanding shares of Series A and Series B convertible preferred stock converted into 27,546,934 shares of Class B common stock of Wayfair Inc.

The Company recognized changes in the redemption value of the convertible redeemable preferred stock immediately as they occurred by adjusting the carrying amount of the redeemable security to what would be the redemption amount assuming the security was redeemable at the balance sheet date. Accordingly, the Company recorded accretion of the Series A stock of $14.4 million credit, $25.4 million, and $12.2 million for the years ended December 31, 2014 and 2013 and 2012, respectively. At the time of the conversion of Series A and Series B convertible preferred stock an adjustment of $14.8 million was recorded as a reduction of accretion expense when the carrying value of the convertible redeemable preferred units was reduced to its conversion value. The Company recorded accretion on the Series B stock of $2.5 million for the year ended December 31, 2014.
10. Stockholders' Equity (Deficit) (Continued)

Upon the issuance of Series B units in March 2014, the Company distributed $15.0 million in accrued dividends to Series A holders and upon the completion of the IPO in October 2014 distributed the remaining accrued dividends of $24.5 million to Series A holders.

Common Units of Wayfair LLC

Upon the internal restructuring, and in connection with the IPO, all of the outstanding common units were exchanged for shares of common stock and further reclassified into 44,904,110 shares of Class B common stock of Wayfair Inc. As of December 31, 2014, Wayfair Inc. had 83,182,066 shares of Class A and Class B common stock outstanding.

Preferred Stock

Upon the closing of the IPO in October 2014, Wayfair Inc. authorized 10,000,000 shares of undesignated preferred stock, $0.001 par value per share, for future issuance. As of December 31, 2014, Wayfair Inc. had no shares of undesignated preferred stock issued or outstanding.

Common Stock

On October 7, 2014, the Company completed its IPO of 12,650,000 shares of its Class A common stock at a public offering price of $29.00 per share, of which 10,500,000 shares were sold by the Company and 2,150,000 shares were sold by its selling stockholders, including 1,650,000 shares pursuant to the underwriters' option to purchase additional shares, resulting in net proceeds to the Company of approximately $282.9 million, after deducting underwriting discounts and offering expenses. The Company did not receive any proceeds from the sale of shares by the selling stockholders.

The Company authorized 500,000,000 shares of Class A common stock, $0.001 par value per share, and 164,000,000 shares of Class B common stock, $0.001 par value per share, of which 37,002,874 shares of Class A common stock and 46,179,192 shares of Class B common stock were outstanding as of December 31, 2014. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion rights. Each share of Class A common stock is entitled to one vote per share. Each share of Class B common stock is entitled to ten votes per share and is convertible into one share of Class A common stock. Each share of Class B common stock may be converted into one share of Class A common stock at the option of its holder and will be automatically converted into one share of Class A common stock upon transfer thereof, subject to certain exceptions. In addition, upon the date on which the outstanding shares of Class B common stock represent less than 10% of the aggregate number of shares of the then outstanding Class A common stock and Class B common stock, or in the event of the affirmative vote or written consent of holders of at least 66 2/3% of the outstanding shares of Class B common stock, all outstanding shares of Class B common stock shall convert automatically into Class A common stock. Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of common stock are entitled to receive dividends out of funds legally available if the Board, in its discretion, determines to issue dividends and then only at the times and in the amounts that the Board may determine. Since the IPO 24,352,874 shares of Class B common stock were converted to Class A common stock through December 31, 2014.
11. Segment and Geographic Information

The Company considers operating segments to be components of the Company in which separate financial information is available that is evaluated regularly by our chief operating decision maker ("CODM") in managing and accessing the business. The CODM for the Company is the Chief Executive Officer. The CODM reviews financial information presented on a consolidated basis for purposes of making operating decisions, allocating resources and evaluating financial performance. Accordingly, the Company has determined that it has one operating and reportable segment. No country outside of the United States provided greater than 10% of total revenue.

The Company generates net revenue from Direct Retail sales derived through the Company’s sites and Other sales derived through sites operated by third parties and fees from third-party advertising distribution providers as set forth below:

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>$1,101,686</td>
<td>$673,446</td>
<td>$389,290</td>
</tr>
<tr>
<td>Direct Retail</td>
<td>$217,265</td>
<td>$242,397</td>
<td>$211,738</td>
</tr>
<tr>
<td>Other</td>
<td>$1,318,951</td>
<td>$915,843</td>
<td>$601,028</td>
</tr>
</tbody>
</table>

Revenue from external customers for each group of similar products and services are not reported to the CODM. Separate identification of this information for purposes of segment disclosure is impractical, as it is not readily available and the cost to develop it would be excessive.

The following table sets forth revenue and long-lived assets by geographic area:

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geographic net revenue:</td>
<td>$1,236,215</td>
<td>$857,001</td>
<td>$542,736</td>
</tr>
<tr>
<td>United States</td>
<td>$82,736</td>
<td>$58,842</td>
<td>$58,292</td>
</tr>
<tr>
<td>International</td>
<td>$1,318,951</td>
<td>$915,843</td>
<td>$601,028</td>
</tr>
<tr>
<td>Total</td>
<td>$1,318,951</td>
<td>$915,843</td>
<td>$601,028</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geographic long-lived assets:</td>
<td>$59,013</td>
<td>$21,451</td>
</tr>
<tr>
<td>United States</td>
<td>$1,626</td>
<td>$637</td>
</tr>
<tr>
<td>International</td>
<td>$60,639</td>
<td>$22,088</td>
</tr>
<tr>
<td>Total</td>
<td>$60,639</td>
<td>$22,088</td>
</tr>
</tbody>
</table>

86
Notes to Consolidated Financial Statements (Continued)

12. Income Taxes

Income tax expense (benefit) for the years ended December 31, 2014, 2013 and 2012 attributable to income (loss) from operation is presented below (in thousands):

<table>
<thead>
<tr>
<th>Year ended December 31, 2014</th>
<th>Current</th>
<th>Deferred</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>$ —</td>
<td>$ 32</td>
<td>$ 32</td>
</tr>
<tr>
<td>State</td>
<td>1</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Foreign</td>
<td>138</td>
<td>—</td>
<td>138</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 139</strong></td>
<td><strong>$ 36</strong></td>
<td><strong>$ 175</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year ended December 31, 2013</th>
<th>Current</th>
<th>Deferred</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>$ —</td>
<td>$ —</td>
<td>$ —</td>
</tr>
<tr>
<td>State</td>
<td>1</td>
<td>—</td>
<td>1</td>
</tr>
<tr>
<td>Foreign</td>
<td>41</td>
<td>4</td>
<td>45</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 42</strong></td>
<td><strong>$ 4</strong></td>
<td><strong>$ 46</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year ended December 31, 2012</th>
<th>Current</th>
<th>Deferred</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>$ —</td>
<td>$ —</td>
<td>$ —</td>
</tr>
<tr>
<td>State</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Foreign</td>
<td>50</td>
<td>—</td>
<td>50</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
<td><strong>—</strong></td>
<td><strong>50</strong></td>
</tr>
</tbody>
</table>

The actual income tax expense (benefit) differs from the expected income tax expense (benefit) computed by applying the United States Federal corporate income tax rate of 35% to income before tax expense (benefit) as follows (in thousands):

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computed expected tax expense (benefit)</td>
<td>$(51,773)</td>
<td>$(5,417)</td>
<td>$(7,352)</td>
</tr>
<tr>
<td>Decrease in income taxes resulting from:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Partnership losses not creating tax benefit</td>
<td>21,369</td>
<td>3,920</td>
<td>4,620</td>
</tr>
<tr>
<td>Effect of conversion to C-corporation</td>
<td>(28,034)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>State income tax expense, net of federal benefit</td>
<td>(2,517)</td>
<td>(269)</td>
<td>—</td>
</tr>
<tr>
<td>Foreign tax rate differential</td>
<td>2,826</td>
<td>619</td>
<td>1,500</td>
</tr>
<tr>
<td>Restricted stock expense</td>
<td>5,555</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Change in valuation allowance</td>
<td>52,921</td>
<td>1,418</td>
<td>1,199</td>
</tr>
<tr>
<td>Other</td>
<td>(172)</td>
<td>(225)</td>
<td>83</td>
</tr>
<tr>
<td><strong>Net income tax expense (benefit)</strong></td>
<td><strong>$ 175</strong></td>
<td><strong>$ 46</strong></td>
<td><strong>$ 50</strong></td>
</tr>
</tbody>
</table>
Notes to Consolidated Financial Statements (Continued)

12. Income Taxes (Continued)

The components of results of income before income tax expense (benefit) determined by tax jurisdiction, are as follows (in thousands):

<table>
<thead>
<tr>
<th>Year Ended December 31,</th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>$ (128,505)</td>
<td>$ (9,895)</td>
<td>$ (13,299)</td>
</tr>
<tr>
<td>Foreign</td>
<td>(19,418)</td>
<td>5,585</td>
<td>7,706</td>
</tr>
<tr>
<td>Total</td>
<td>$ (147,923)</td>
<td>$ (15,480)</td>
<td>$ (21,005)</td>
</tr>
</tbody>
</table>

The tax effects of temporary differences that give rise to significant portions of deferred tax assets and liabilities for the periods presented are as follows (in thousands):

<table>
<thead>
<tr>
<th>December 31</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred tax asset:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable, due to allowance for doubtful accounts</td>
<td>$ 1,009</td>
<td>$ —</td>
</tr>
<tr>
<td>Inventories</td>
<td>295</td>
<td>—</td>
</tr>
<tr>
<td>Operating loss carry-forwards</td>
<td>17,939</td>
<td>6,901</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
<td>11,529</td>
<td>—</td>
</tr>
<tr>
<td>Intangibles due to differences in amortization</td>
<td>26,557</td>
<td>—</td>
</tr>
<tr>
<td>Accrued Expenses/Other</td>
<td>3,555</td>
<td>1</td>
</tr>
<tr>
<td>Charitable Contributions</td>
<td>18</td>
<td>—</td>
</tr>
<tr>
<td>Deferred Rent</td>
<td>7,161</td>
<td>—</td>
</tr>
<tr>
<td>Gross deferred tax asset</td>
<td>68,063</td>
<td>6,902</td>
</tr>
<tr>
<td>Less: Valuation allowance</td>
<td>(58,980)</td>
<td>(6,902)</td>
</tr>
<tr>
<td>Net deferred tax asset</td>
<td>9,083</td>
<td>—</td>
</tr>
<tr>
<td>Deferred tax liability:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>(783)</td>
<td>—</td>
</tr>
<tr>
<td>Capitalized technology</td>
<td>(5,019)</td>
<td>—</td>
</tr>
<tr>
<td>Property and equipment, due to difference in depreciation</td>
<td>(3,281)</td>
<td>—</td>
</tr>
<tr>
<td>Tax-deductible goodwill</td>
<td>(36)</td>
<td>—</td>
</tr>
<tr>
<td>Total deferred tax liabilities</td>
<td>(9,119)</td>
<td>—</td>
</tr>
<tr>
<td>Net deferred tax assets</td>
<td>(36)</td>
<td>—</td>
</tr>
<tr>
<td>Current net deferred tax asset</td>
<td>(55)</td>
<td>—</td>
</tr>
<tr>
<td>Current net deferred tax liability</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Non-current net deferred tax asset</td>
<td>19</td>
<td>—</td>
</tr>
<tr>
<td>Non-current net deferred tax liability</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>(36)</td>
<td>—</td>
<td></td>
</tr>
</tbody>
</table>

As of December 31, 2014, the Company had federal net operating loss carryforwards available to offset future federal taxable income of $84.9 million. Approximately $60.2 million of the federal net operating loss carryforward will result in an increase to additional paid-in capital if and when these carryforwards are used to reduce income taxes payable.
12. Income Taxes (Continued)

In addition, the Company had state net operating loss carryforwards available in the amount of $81.2 million which are available to offset future state taxable income. Approximately $57.5 million of the state net operating loss carryforward will result in an increase to additional paid-in capital if and when these carryforwards are used to reduce income taxes payable.

The federal net operating loss carryforwards begin to expire in the year ended December 31, 2034. The state net operating loss carryforwards begin to expire in the year ended December 31, 2029.

The Company's ability to utilize these federal and state net operating loss carry-forwards may be limited in the future if the Company experiences an ownership change pursuant to Internal Revenue Code Section 382. An ownership change occurs when the ownership percentages of 5% or greater stockholders change by more than 50% over a three-year period.

The Company also had foreign net operating loss carryforwards available to offset future foreign income of $46.9 million. The foreign net operating loss carryforwards have no expiration.

In assessing the realizability of its net deferred tax assets, the Company considered whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets depends upon the generation of future taxable income during the periods in which those temporary differences become deductible. As of December 31, 2014, based upon an evaluation of the positive and negative evidence, the Company concluded that an increase of $52.1 million of the deferred tax asset valuation allowance was appropriate, resulting in a valuation allowance of $59.0 million as of December 31, 2014. The total expense from the change in valuation allowance is $52.9 million.

As of December 31, 2014, the Company has not provided for U.S. deferred income taxes on undistributed earnings of its foreign subsidiaries of approximately $0.9 million since these earnings are to be indefinitely reinvested. Upon distribution of those earnings in the form of dividends or otherwise, the Company will be subject to additional U.S. and state income taxes (less foreign tax credits), as well as withholding taxes in its foreign locations. The amount of taxes attributable to the undistributed earnings is not practicably determinable.

The Company establishes reserves for uncertain tax positions based on management's assessment of exposure associated with tax deductions, permanent tax differences and tax credits. The tax reserves are analyzed periodically and adjustments are made as events occur to warrant adjustment to the reserve. The Company's policy is to recognize interest and penalties related to unrecognized tax benefits as a component of income tax expense.

The Company had gross unrecognized tax benefits of $0.2 million as of December 31, 2014 and 2013. At December 31, 2014, $0.2 million represents the amount of unrecognized tax benefits that, if recognized, would result in a reduction of the Company's effective tax rate. During the years ended December 31, 2014, 2013 and 2012 the total gross amount of unrecognized tax benefits remain unchanged.

The Company recognizes interest accrued related to unrecognized tax benefits and penalties as income tax expense. Related to the unrecognized tax benefits noted above, the Company did not accrue any penalties and interest during the years ended December 31, 2014, 2013 and 2012 because it believes that such additional interest and penalties would be insignificant. As of December 31, 2014, the combined amount of accrued interest and penalties related to tax positions taken on our tax returns and included in non-current income taxes payable was less than $0.1 million.

89
Notes to Consolidated Financial Statements (Continued)

12. Income Taxes (Continued)

The Company believes that it is reasonably possible that its remaining unrecognized tax benefits may be recognized by the end of 2015 as a result of a lapse of the statute of limitations.

The Company's tax jurisdictions include the United States, the UK, Germany, Ireland, Australia, and the British Virgin Islands. The statute of limitations with respect to the Company's United States federal income taxes has expired for years prior to 2011, except for the 2008 tax year for one of the Company's corporate subsidiaries. The relevant state and foreign statutes vary. However, preceding years remain open to examination by United States federal and state and foreign taxing authorities to the extent of future utilization of net operating losses generated in each preceding year.

13. Credit Agreement

The Company has a credit agreement with Bank of America, which provides the Company with a line of credit for up to $25.0 million, with the committed amounts of $10.0 million to be used for a revolving line of credit and to support letters of credit and $15.0 million to be used to support the Company's credit card program. The Company is required to maintain certain covenants, including debt service coverage, tangible net worth, and unencumbered liquid assets. The Company did not borrow any amounts under the credit agreement during the years ended December 31, 2014, 2013 and 2012. The credit agreement is renewable on an annual basis. The Company renewed this agreement on June 6, 2014 and it will mature on July 31, 2015.

14. Related-Party Transactions

The Company has done business with a company owned by a family member of one of the Company's officers. During the year ended December 31, 2012, the Company paid this related party $2,000 as part of a revenue-sharing agreement. In addition, the Company paid this related party and its affiliates $200, $4,000, and $21,000 in the years ended December 31, 2014, 2013 and 2012, respectively, in conjunction with a supplier relationship.

15. Net Loss per Share

Basic and diluted net (loss) income per share is presented using the two class method required for participating securities. Class A and Class B common stock are the only outstanding equity in the Company since our IPO in October 2014. The rights of the holders of Class A and Class B common stock are identical, except with respect to voting and conversion. Each share of Class A common stock is entitled to one vote per share and each share of Class B common stock is entitled to ten votes per share. The Class B common stock also has approval rights over certain corporate actions. Each share of Class B common stock may be converted into one share of Class A common stock at any time at the option of the stockholder, and will be automatically converted into one share of Class A common stock upon a sale or transfer, subject to certain limited exceptions. In addition, upon the date on which the outstanding shares of Class B common stock represent less than 10% of the aggregate number of shares of the then outstanding Class A common stock and Class B common stock, or in the event of the affirmative vote or written consent of at least $66^{2/3}$% of the outstanding shares of Class B common stock, all outstanding shares of Class B common stock will automatically convert into Class A common stock.

Basic net income (loss) per share attributable to common stockholders is computed using the weighted-average number of shares of common stock outstanding during the period. Diluted net income (loss) per share attributable to common stockholders is computed using the weighted-average
Notes to Consolidated Financial Statements (Continued)

15. Net Loss per Share (Continued)

The number of shares of common stock and, if dilutive, common stock equivalents outstanding during the period. The Company's common stock equivalents consist of shares issuable upon the release of restricted stock units, and to a lesser extent, the incremental shares of common stock issuable upon the exercise of stock options and unvested restricted stock. The dilutive effect of these common stock equivalents is reflected in diluted earnings per share by application of the treasury stock method. The Company’s basic and diluted net loss per share are the same because the Company has generated net loss to common stockholders and common stock equivalents are excluded from diluted net loss per share because they have an antidilutive impact.

The Company allocates undistributed earnings between the classes on a one-to-one basis when computing net income (loss) per share. As a result, basic and diluted net income (loss) per Class A and Class B shares are equivalent.

Even prior to the conversion of its Series A and Series B convertible preferred stock to common stock, effective October 7, 2014, the Company applied the two class method for calculating and presenting earnings per share. Under the two class method, net (loss) income attributable to common stockholders is determined by allocating undistributed earnings between common stock and participating securities. Undistributed earnings are calculated as net income (loss) less distributed earnings and accretion of Series A and Series B convertible preferred stock. As holders of Series A and Series B convertible preferred stock did not have a contractual obligation to share in the losses of the Company, the net loss attributable to common stockholders for each periods prior to the IPO was not allocated between common stock and participating securities. Accordingly, Series A and Series B convertible preferred stock are excluded from the calculation of basic and diluted net loss per share. The Company's basic and diluted net loss per share are the same because the Company has generated net loss to common stockholders and common stock equivalents are excluded from diluted net loss per share because they have an antidilutive impact.

The following table presents the calculation of basic and diluted net loss per share (in thousands, except per share data):

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<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
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<tr>
<td></td>
<td>2014</td>
</tr>
<tr>
<td>Numerator:</td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (148,098)</td>
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<tr>
<td>Accretion of preferred units to redemption value</td>
<td>$ (2,071)</td>
</tr>
<tr>
<td>Net loss attributable to common stockholders per share—basic and diluted</td>
<td>$ (150,169)</td>
</tr>
<tr>
<td>Denominator:</td>
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<tr>
<td>Weighted average shares used for basic and diluted net loss per share computation</td>
<td>50,641,601</td>
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<tr>
<td>Net loss per common share attributable to common stockholders:</td>
<td></td>
</tr>
<tr>
<td>Basic and Diluted</td>
<td>$ (2.97)</td>
</tr>
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</table>
15. Net Loss per Share (Continued)

The following have been excluded from the computation of basic and diluted net loss per share attributable to common stockholders as their effect would have been antidilutive:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended December 31,</th>
</tr>
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<td></td>
<td>2014</td>
</tr>
<tr>
<td>Series A convertible redeemable preferred units</td>
<td>—</td>
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<tr>
<td>Stock options</td>
<td>449,046</td>
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<tr>
<td>Restricted stock</td>
<td>161,476</td>
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<tr>
<td>Restricted stock units</td>
<td>4,542,231</td>
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<td></td>
<td>5,152,753</td>
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</tbody>
</table>

92
Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None

Item 9A. Controls and Procedures

Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2014. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act of 1934, as amended, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of December 31, 2014, our chief executive officer and chief financial officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Management's Annual Report on Internal Control Over Financial Reporting

This annual report on Form 10-K does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the Company's registered public accounting firm due to a transition period established by the rules of the Securities and Exchange Commission for newly public companies.

Changes in Internal Control Over Financial Reporting

No change in our internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-(f) under the Exchange Act) occurred during the quarter ended December 31, 2014 that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

Item 9B. Other Information

None.
PART III

Item 10. Directors, Executive Officers and Corporate Governance

We have adopted a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. The code of business conduct and ethics is available on our website at investor.wayfair.com.

The other information required by this item is incorporated by reference from our proxy statement for our 2015 annual meeting of stockholders, which we will file with the Securities and Exchange Commission within 120 days of December 31, 2014.

Item 11. Executive Compensation

The information required by this item is incorporated by reference from our proxy statement for our 2015 annual meeting of stockholders, which we will file with the Securities and Exchange Commission within 120 days of December 31, 2014.


The information required by this item is incorporated by reference from our proxy statement for our 2015 annual meeting of stockholders, which we will file with the Securities and Exchange Commission within 120 days of December 31, 2014.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this item is incorporated by reference from our proxy statement for our 2015 annual meeting of stockholders, which we will file with the Securities and Exchange Commission within 120 days of December 31, 2014.

Item 14. Principal Accounting Fees and Services

The information required by this item is incorporated by reference from our proxy statement for our 2015 annual meeting of stockholders, which we will file with the Securities and Exchange Commission within 120 days of December 31, 2014.
PART IV

ITEM 15. Exhibits and Financial Statement Schedules

(a) Financial Statements

The following financial statements and supplementary data are included in Part II of Item 8 filed of this Annual Report on Form 10-K:

None

(b) Financial Statement Schedules

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes herein

(c) Exhibits

See the Exhibit Index immediately following the signature page of this Annual Report on Form 10-K, which is incorporated herein by reference.
SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this annual report to be signed on its behalf by the undersigned, thereunto duly authorized.

WAYFAIR INC.

By: /s/ NIRAJ SHAH

Niraj Shah
President and Chief Executive Officer

Date: March 19, 2015

Pursuant to the requirements of the Securities Exchange Act of 1934, this annual report has been signed by the following persons on behalf of the registrant in the capacities indicated.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ NIRAJ SHAH</td>
<td>Chief Executive Officer and Director</td>
<td>March 19, 2015</td>
</tr>
<tr>
<td>Niraj Shah</td>
<td>(Principal Executive Officer)</td>
<td></td>
</tr>
<tr>
<td>/s/ MICHAEL FLEISHER</td>
<td>Chief Financial Officer (Principal</td>
<td>March 19, 2015</td>
</tr>
<tr>
<td>Michael Fleisher</td>
<td>Financial Officer)</td>
<td></td>
</tr>
<tr>
<td>/s/ NICHOLAS MALONE</td>
<td>Chief Administrative Officer (Principal</td>
<td>March 19, 2015</td>
</tr>
<tr>
<td>Nicholas Malone</td>
<td>Accounting Officer)</td>
<td></td>
</tr>
<tr>
<td>/s/ STEVEN CONINE</td>
<td>Chief Technology Officer and Director</td>
<td>March 19, 2015</td>
</tr>
<tr>
<td>Steven Conine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ NEERAJ AGRAWAL</td>
<td>Director</td>
<td>March 19, 2015</td>
</tr>
<tr>
<td>Neeraj Agrawal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ JULIE BRADLEY</td>
<td>Director</td>
<td>March 19, 2015</td>
</tr>
<tr>
<td>Julie Bradley</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ ALEX FINKELSTEIN</td>
<td>Director</td>
<td>March 19, 2015</td>
</tr>
<tr>
<td>Alex Finkelstein</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signature</td>
<td>Title</td>
<td>Date</td>
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<td>---------------------------------</td>
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</tr>
<tr>
<td>/s/ ROBERT GAMGORT</td>
<td>Director</td>
<td>March 19, 2015</td>
</tr>
<tr>
<td>Robert Gamgort</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ MICHAEL KUMIN</td>
<td>Director</td>
<td>March 19, 2015</td>
</tr>
<tr>
<td>Michael Kumin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ IAN LANE</td>
<td>Director</td>
<td>March 19, 2015</td>
</tr>
<tr>
<td>Ian Lane</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ ROMERO RODRIGUES</td>
<td>Director</td>
<td>March 19, 2015</td>
</tr>
<tr>
<td>Romero Rodrigues</td>
<td></td>
<td></td>
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<tr>
<td>Exhibit Number</td>
<td>Exhibit Description</td>
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<tr>
<td>----------------</td>
<td>--------------------------------------------------------------------------------------</td>
<td>----------------</td>
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<tr>
<td>2.1</td>
<td>Contribution and Exchange Agreement dated as of August 15, 2014 between the Company and the other parties thereto</td>
<td>S-1</td>
</tr>
<tr>
<td>3.1</td>
<td>Restated Certificate of Incorporation of the Company</td>
<td>8-K</td>
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<tr>
<td>3.2</td>
<td>Amended and Restated Bylaws of the Company</td>
<td>8-K</td>
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<td>4.1</td>
<td>Specimen stock certificate evidencing the shares of Class A common stock of the Company</td>
<td>S-1</td>
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<tr>
<td>10.1</td>
<td>Second Amended and Restated 2010 Incentive Plan</td>
<td>S-1</td>
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<tr>
<td>10.2</td>
<td>Form of Deferred Unit Agreement under the Second Amended and Restated 2010 Incentive Plan</td>
<td>S-1</td>
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<tr>
<td>10.3</td>
<td>2014 Incentive Award Plan</td>
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<td>10.4</td>
<td>Form of Option Agreement under the 2014 Incentive Award Plan</td>
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<tr>
<td>10.5</td>
<td>Form of Restricted Stock Unit Agreement under the 2014 Incentive Award Plan</td>
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<td>10.6</td>
<td>Form of Restricted Stock Award Agreement under the 2014 Incentive Award Plan</td>
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<td>10.7</td>
<td>Investors' Rights Agreement, dated August 15, 2014, by and among the Company and the other parties thereto</td>
<td>X</td>
</tr>
<tr>
<td>10.8</td>
<td>Form of Indemnification Agreement for Directors and Officers</td>
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</tr>
<tr>
<td>10.9</td>
<td>Office Lease dated April 18, 2013 between Copley Place Associates, LLC and the Company, as amended by the First Amendment to Lease dated February 11, 2014, and as further amended by the Second Amendment to Lease dated October 24, 2014</td>
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<td>Exhibit Number</td>
<td>Exhibit Description</td>
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<tr>
<td>10.10</td>
<td>Agreement of Lease dated December 31, 2013 between Distribution I Patent Tenant LLC and the Company</td>
<td>S-1 333-198171 8/15/14</td>
</tr>
<tr>
<td>10.11</td>
<td>Form of Amended and Restated Letter Agreement dated May 6, 2014 between the Company and each of Niraj Shah and Steven Conine</td>
<td>S-1 333-198171 8/15/14</td>
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<td>Subsidiaries of the Company</td>
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<td>23.1</td>
<td>Consent of Ernst &amp; Young LLP</td>
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<td>Certification of Chief Executive Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</td>
<td>X</td>
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<td>Certification of Chief Financial Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</td>
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<td>Certification of Chief Financial Officer pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</td>
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<td>XBRL Instance Document</td>
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<td>101.SCH</td>
<td>XBRL Taxonomy Schema Linkbase Document</td>
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</table>

100
# TABLE OF CONTENTS

1. Definitions  
   -  

2. Registration Rights  
   - 2.1 Demand Registration  
   - 2.2 Company Registration  
   - 2.3 Underwriting Requirements  
   - 2.4 Obligations of the Company  
   - 2.5 Furnish Information  
   - 2.6 Expenses of Registration  
   - 2.7 Delay of Registration  
   - 2.8 Indemnification  
   - 2.9 Reports Under Exchange Act  
   - 2.10 Limitations on Subsequent Registration Rights  
   - 2.11 “Market Stand-off” Agreement  
   - 2.12 Restrictions on Transfer  
   - 2.13 Termination of Registration Rights  

3. Information and Observer Rights  
   - 3.1 Delivery of Financial Statements  
   - 3.2 Inspection  
   - 3.3 Termination of Information Rights  
   - 3.4 Confidentiality  

4. Rights to Future Equity Issuances  
   - 4.1 Right of First Offer  
   - 4.2 Termination  

5. Additional Covenants  
   - 5.1 Insurance  
   - 5.2 Employee Agreements  
   - 5.3 Employee Vesting  
   - 5.4 Matters Requiring Investor Director Approval  
   - 5.5 Board Matters  
   - 5.6 Control Over Subsidiaries  
   - 5.7 Successor Indemnification  
   - 5.8 Requests for Information  
   - 5.9 Use of Investor Names  
   - 5.10 Termination of Covenants  

6. Miscellaneous  
   -  

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
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<tr>
<td>6.1 Successors and Assigns</td>
<td>24</td>
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<tr>
<td>6.2 Governing Law</td>
<td>24</td>
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<tr>
<td>6.3 Counterparts; Facsimile</td>
<td>24</td>
</tr>
<tr>
<td>6.4 Titles and Subtitles</td>
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</tr>
<tr>
<td>6.5 Notices</td>
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</tr>
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<td>6.6 Amendments and Waivers</td>
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<td>6.7 Severability</td>
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<td>6.8 Aggregation of Shares</td>
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<tr>
<td>6.9 Effectiveness of Agreement; Prior Agreement; Entire Agreement</td>
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<tr>
<td>6.10 Delays or Omissions</td>
<td>26</td>
</tr>
<tr>
<td>6.11 Acknowledgment</td>
<td>26</td>
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</tbody>
</table>

Schedule A - Schedule of Investors
INVESTORS’ RIGHTS AGREEMENT

THIS INVESTORS’ RIGHTS AGREEMENT (“Agreement”) is made as of August 15, 2014, by and among Wayfair Inc., a Delaware corporation (“Wayfair” or the “Company”), each of the investors listed on Schedule A hereto (together with any investors or transferees who become parties hereto as “Investors” pursuant to Sections 6.1 below, the “Investors”).

RECITALS:

WHEREAS, the Investors listed as “Series A Investors” on Schedule A acquired Series A Convertible Preferred Units of Wayfair LLC (“Wayfair LLC”), either directly or indirectly through certain corporate entities, pursuant to the terms of a Series A Convertible Preferred Unit Purchase Agreement, dated June 21, 2011, by and among Wayfair LLC and the parties named therein, and a Series A Convertible Preferred Unit Purchase Agreement, dated November 30, 2012, by and among Wayfair LLC and the parties named therein;

WHEREAS, the Investors listed as “Series B Investors” on Schedule A acquired Series B Convertible Preferred Units of Wayfair LLC, either directly or indirectly through certain corporate entities, pursuant to the terms of a Series B Convertible Preferred Unit Purchase Agreement (the “Purchase Agreement”), dated March 5, 2014, by and among Wayfair LLC and the parties named therein;

WHEREAS, the Series A Investors and Series B Investors (the “Existing Investors”) and Wayfair LLC are parties to that certain Second Amended and Restated Investors’ Rights Agreement dated as of March 5, 2014 (the “Prior Agreement”); and

WHEREAS, on or about the date of this Agreement, Wayfair LLC is undergoing a corporate reorganization, pursuant to which (i) some Existing Investors will exchange their Series A Convertible Preferred Units and Series B Convertible Preferred Units of Wayfair LLC (“Units”) for shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series B Preferred Stock of the Company, (ii) some Existing Investors will contribute certain corporate entities held by them that own Units to the Company in exchange for shares of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series B Preferred Stock of the Company, and (iii) Wayfair LLC will become a wholly-owned subsidiary of the Company (the “Reorganization”).

NOW, THEREFORE, the Company and the Investors agree as follows:

1. Definitions. For purposes of this Agreement:

1.1 “Advisory Investor” means any Investor (or transferee thereof) who, directly or indirectly, is advised by an investment advisor registered under the Investment Advisers Act of 1940, as amended.

1.2 “Affiliate” means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or
more general partners or managing members of, or shares the same management company with, such Person, provided that, with respect to each of the Investors, the term Affiliate shall be deemed to include any Person under common management therewith.

1.3 “Budget” has the meaning assigned to such term in Section 3.1(b)(3).

1.4 “Common Stock” means shares of the Company’s common stock, par value $0.001 per share, and any securities into which such shares of Common Stock may hereinafter be reclassified.

1.5 “Competitor” means any Person reasonably and in good faith determined by the Board of Directors to be a competitor of the Company.

1.6 “Damages” means any loss, damage, or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, damage, or liability (or any action in respect thereof) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law.

1.7 “Derivative Securities” means any securities or rights convertible into, or exercisable or exchangeable for (in each case, directly or indirectly), Common Stock, including options and warrants.


1.9 “Excluded Registration” means (i) a registration relating to the sale of securities to employees of the Company or a subsidiary pursuant to an option, equity purchase, or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

1.10 “Form S-1” means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.11 “Form S-3” means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits incorporation of substantial information by reference to other documents filed by the Company with the SEC.
“GAAP” means generally accepted accounting principles in the United States.

“Holder” means any holder of Registrable Securities who is a party to this Agreement.

“Immediate Family Member” means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, of a natural person referred to herein.

“Initiating Holders” means, collectively, Holders who properly initiate a registration request under this Agreement.

“IPO” means the Company’s first underwritten public offering of its Common Stock under the Securities Act.

“Key Employee” means any executive level employee (including division director and vice president level positions) of the Company as well as any employee or consultant of the Company who either alone or in concert with others develops, invents, programs or designs any Company Intellectual Property Asset (as defined in the Purchase Agreement).

“Major Investor” means each of HarbourVest/NYSTRS Co-invest Fund L.P., HarbourVest Partners VIII-Venture Fund L.P., HarbourVest Partners 2007 Direct Fund L.P., Spark Capital III (AIV I), L.P., Spark Capital Founders’ Fund III, L.P., Great Hill Equity Partners IV, L.P., Great Hill Investors, LLC, Battery Ventures IX (AIV I), L.P., Battery Investment Partners IX, LLC, Iconiq Strategic Partners-B, L.P., Iconiq Strategic Partners, L.P., any Advisory Investor and any Investor that, individually or together with such Investor’s Affiliates, holds at least 10,000 Registrable Securities (as adjusted for any equity dividend, equity split, combination, or other recapitalization or reclassification affecting such securities after the date hereof).

“New Securities” means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

“Person” means any individual, corporation, partnership, trust, limited liability company, association or other entity.


“Registrable Securities” means (i) the Common Stock issuable or issued upon conversion or exchange of the Preferred Stock or otherwise held by Investors; (ii) any Common Stock, or any Common Stock issued or issuable (directly or indirectly) upon conversion and/or exchange of any other securities of the Company, acquired by the Investors.
after the date hereof; and (iii) any Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clauses (i) and (ii) above and, excluding in all cases, however, any Registrable Securities sold by a Person in a transaction in which the applicable rights under this Agreement are not assigned pursuant to Section 6.1, and excluding for purposes of Section 2 any shares for which registration rights have terminated pursuant to Section 2.13 of this Agreement.

1.23 “Registrable Securities then outstanding” means the number of shares at a point in time determined by adding the number of shares of Common Stock that are Registrable Securities at such time and the number of shares of Common Stock issuable as Registrable Securities (directly or indirectly) at such time upon the exercise or conversion of derivative securities pursuant to Section 1.22.

1.24 “Restricted Securities” means the securities of the Company required to bear the legend set forth in Section 2.12(b) hereof.

1.25 “SEC” means the Securities and Exchange Commission.

1.26 “SEC Rule 144” means Rule 144 promulgated by the SEC under the Securities Act, or any successor provisions.

1.27 “SEC Rule 145” means Rule 145 promulgated by the SEC under the Securities Act, or any successor provisions.

1.28 “Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

1.29 “Selling Expenses” means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Section 2.6.

1.30 “Selling Holder Counsel” shall have the meaning assigned to it in Section 2.6.

1.31 “Series A Directors” means the directors of the Company that the holders of record of the Series A Preferred Stock and Series A-1 Preferred Stock are entitled to elect pursuant to the Company’s Certificate of Incorporation.

1.32 “Series A-1 Preferred Stock” means shares of the Company’s Series A-1 Preferred Stock, $0.001 par value per share.

1.33 “Series A-2 Preferred Stock” means shares of the Company’s Series A-2 Preferred Stock, $0.001 par value per share.

1.34 “Series B Preferred Stock” means the Company’s Series B Preferred Stock, $0.001 par value per share.
2. **Registration Rights.** The Company covenants and agrees as follows:

2.1 **Demand Registration.**

(a) **Form S-1 Demand.** Beginning upon the date that is one hundred eighty (180) days after the effective date of the registration statement for the IPO, if the Company receives a request from any Major Investor that the Company file a Form S-1 registration statement with respect to at least twenty percent (20%) of the Registrable Securities then outstanding (or a lesser percent if the anticipated aggregate offering price, net of Selling Expenses, would exceed $10 million), then the Company shall (i) within ten (10) days after the date such request is given, give notice thereof (the “Demand Notice”) to all Holders other than the Initiating Holders; and (ii) as soon as practicable, and in any event within sixty (60) days after the date such request is given by the Initiating Holders, file a Form S-1 registration statement under the Securities Act covering all Registrable Securities that the Initiating Holders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Section 2.1(c) and Section 2.3.

(b) **Form S-3 Demand.** If at any time when it is eligible to use a Form S-3 registration statement and the Company receives a request from Holders of at least ten percent (10%) of the Registrable Securities then outstanding (or a lesser percent if the anticipated aggregate offering price, net of Selling Expenses, would exceed $1.0 million) that the Company file a Form S-3 registration statement with respect to outstanding Registrable Securities of such Holders having an anticipated aggregate offering price, net of Selling Expenses, of at least $1.0 million, then the Company shall (i) within ten (10) days after the date such request is given, give a Demand Notice to all Holders other than the Initiating Holders; and (ii) as soon as practicable, and in any event within thirty (30) days after the date such request is given by the Initiating Holders, file a Form S-3 registration statement under the Securities Act covering all Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Section 2.1(c) and Section 2.3.

(c) Notwithstanding the foregoing obligations, if the Company furnishes to Holders requesting a registration pursuant to this Section 2.1 a certificate signed by the Company’s chief executive officer stating that in the good faith judgment of the Company’s Board of Directors it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act, then the Company shall have the right to defer taking action with respect to such filing, and any time periods with respect to filing or effectiveness thereof shall be tolled correspondingly, for a period of not more than forty-five (45) days after the request of the Initiating Holders is given; provided, however, that the Company may not invoke this right more than once in any twelve (12) month period; and provided further that the Company shall not register any securities for its own account or that of any other stockholder during such forty-five (45) day period other than an Excluded Registration.

(d) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Section 2.1(a)(i) during the period that is sixty (60) days before the Company’s good faith estimate of the date of filing of, and ending on a date that is one hundred eighty (180) days after the effective date of, a Company-initiated registration, provided, that the Company is actively employing its good faith commercially reasonable efforts to cause such registration statement to become effective; or (ii) after the Company has effected two (2) registrations pursuant to Section 2.1(a). The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Section 2.1(b), (i) during the period that is thirty (30) days before the Company’s good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration, provided, that the Company is actively employing its good faith commercially reasonable efforts to cause such registration statement to become effective; or (ii) if the Company has effected two (2) registrations pursuant to Section 2.1(b) within the twelve (12) month period immediately preceding the date of such request. A registration shall not be counted as “effected” for purposes of this Section 2.1(d), until such time as the applicable registration statement has been declared effective by the SEC, unless the Initiating Holders withdraw their request for such registration (other than as a result of a material adverse effect), elect not to pay the registration expenses therefor, and forfeit their right to one demand registration statement pursuant to Section 2.6, in which case such withdrawn registration statement shall be counted as “effected” for purposes of this Section 2.1(d).

2.2 **Company Registration.** If the Company proposes to register (including, for this purpose, a registration effected by the Company for stockholders other than the Holders) any of its securities under the Securities Act in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give each Holder notice of such registration. Upon the request of each Holder given within twenty (20) days after such notice is given by the Company, the Company shall, subject to the provisions of Section 2.3, cause to be registered all of the Registrable Securities that each such Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.2 before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such withdrawn registration shall be borne by the Company in accordance with Section 2.6.

2.3 **Underwriting Requirements.**
(a) If, pursuant to Section 2.1, the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 2.1, and the Company shall include such information in the Demand Notice. The underwriter(s) will be selected by the Company and shall be reasonably acceptable to at least a majority-in-interest of Initiating Holders. In such event, the right of any Holder to include such Holder’s Registrable Securities in the underwriting shall be subject to such terms and conditions as the underwriter(s) may reasonably require.
Securities in such registration shall be conditioned upon such Holder’s participation in such underwriting and the inclusion of such Holder’s Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 2.4(e)) enter into an underwriting agreement in customary form with the underwriter(s) selected for such underwriting. Notwithstanding any other provision of this Section 2.3, if the managing underwriter advises the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities owned by each Holder or in such other proportion as shall mutually be agreed to by all such selling Holders; provided, however, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest 100 shares.

(b) In connection with any offering involving an underwriting of shares pursuant to Section 2.2, the Company shall not be required to include any of the Holders’ Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the number of securities to be sold (other than by the Company) that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable to) the number of Registrable Securities owned by each selling Holder or in such other proportions as shall mutually be agreed to by all such selling Holders. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of Units allocated to any Holder to the nearest 100 shares. Notwithstanding the foregoing, in no event shall the number of Registrable Securities included in the offering be reduced unless all other securities (other than securities to be sold by the Company) are first entirely excluded from the offering. For purposes of the provision in this Section 2.3(b), concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, stockholders, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the foregoing Persons, shall be deemed to be a single “selling Holder,” and any pro rata reduction with respect to such “selling Holder” shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such “selling Holder,” as defined in this sentence.
For purposes of Section 2.1, a registration shall not be counted as “effected” if, as a result of an exercise of the underwriter’s cutback provisions in Section 2.3(a), fewer than fifty percent (50%) of the total number of Registrable Securities that Holders have requested to be included in such registration statement are actually included.

2.4 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

   (a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective and, upon the request of the Holders of at least a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the registration statement has been completed; provided, however, that (i) such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common Stock (or other securities) of the Company, from selling any securities included in such registration, and (ii) in the case of any registration of Registrable Securities on Form S-3 that are intended to be offered on a continuous or delayed basis, subject to compliance with applicable SEC rules, such one hundred twenty (120) day period shall be extended for up to one hundred eighty (180) days, if necessary, to keep the registration statement effective until all such Registrable Securities are sold;

   (b) prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the Securities Act in order to enable the disposition of all securities covered by such registration statement;

   (c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities;

   (d) use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the selling Holders; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

   (e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

   (f) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on a national securities
exchange or trading system and each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed:

(g) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) promptly make available for inspection by the selling Holders, any managing underwriter participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the selling Holders, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company’s officers, managers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(i) notify each selling Holder, 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; and

(j) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus.

In addition, the Company shall ensure that, at all times after any registration statement covering a public offering of securities of the Company under the Securities Act shall have become effective, its insider trading policy shall provide that the Company’s directors may implement a trading program under Rule 10b5-1 of the Exchange Act.

2.5 **Furnish Information.** It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as is reasonably required to effect the registration of such Holder’s Registrable Securities.

2.6 **Expenses of Registration.** All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 2, including all registration, filing, and qualification fees; printers’ and accounting fees; fees and disbursements of counsel for the Company; and the reasonable fees and disbursements, not to exceed $30,000, of one counsel for the selling Holders (“Selling Holder Counsel”) selected by the Holders of at least a majority of the Registrable Securities, shall be borne and paid by the Company: provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 2.1 if the registration request is subsequently withdrawn at the request of the Holders of at least a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata.)
based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless the Holders of at least a majority of the Registrable Securities agree to forfeit their right to one registration pursuant to Section 2.1(a) or Section 2.1(b), as the case may be; provided further that if, at the time of such withdrawal, the Holders have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness after learning of such information, then the Holders shall not be required to pay any of such expenses and shall not forfeit their right to one registration pursuant to Section 2.1(a) or Section 2.1(b). All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. If any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, officers, directors, and stockholders of each such Holder; legal counsel, investment advisers and accountants for each such Holder; any underwriter (as defined in the Securities Act) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 2.8(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its managers or directors, as applicable, each of its officers who has signed the registration statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act), any other Holder selling securities in such registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration; and each such selling Holder will pay to the
Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 2.8(b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further that in no event shall the aggregate amounts payable by a Holder by way of indemnity or contribution under this Section 2.8(b), exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of fraud or willful misconduct by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.8, give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action. The failure to give notice to the indemnifying party within a reasonable time of the commencement of any such action shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.8, to the extent that such failure materially prejudices the indemnifying party’s ability to defend such action. The failure to give notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.8.

(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Section 2.8 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Section 2.8 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any party hereto for which indemnification is provided under this Section 2.8, then, and in each such case, such parties will contribute to the aggregate losses, claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. 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 allegedly untrue statement of a material fact, or the omission or alleged omission of 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; provided, however, that, in any such case, (x) no Holder will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered and sold by such Holder pursuant to such registration statement, and (y) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and provided further that in no event shall a Holder’s liability pursuant to this Section 2.8(e), when combined with the amounts paid or payable by such Holder pursuant to Section 2.8(b), exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of willful misconduct or fraud by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control. The Company shall use commercially reasonable efforts to include provisions in the underwriting agreement that are consistent with the foregoing provisions.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Section 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9 Reports Under Exchange Act. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Company for the IPO;

(b) use commercially reasonable efforts to file with the SEC 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 Company has become subject to such reporting requirements); and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the registration statement filed by the Company for the IPO), the Securities Act, and the Exchange Act (at any time after the Company has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the
Company; and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration (at any time after the Company has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10 **Limitations on Subsequent Registration Rights.** From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of at least a majority of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that would allow such holder or prospective holder (i) to include such securities in any registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the number of the Registrable Securities of the Holders that are included or (ii) to demand registration of any securities held by such holder or prospective holder; provided that this limitation shall not apply to any additional Investor who becomes a party to this Agreement in accordance with Section 6.9.

2.11 **“Market Stand-off” Agreement.** Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the registration by the Company of the IPO, and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days, or such other period not to exceed an additional fifteen days, but only as may be required by applicable regulatory restrictions on (1) the publication or other distribution of research reports, and (2) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto), (i) 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 Common Stock, Incentive Units or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Stock held immediately before the effective date of the registration statement for such offering or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash, or otherwise. The foregoing provisions of this Section 2.11 shall apply only to the IPO, shall not apply to the sale of any securities to an underwriter pursuant to an underwriting agreement or to transactions involving broad-based indices or baskets of securities (in each case, in which the securities of the Company represent less than 5% of such index or basket), and shall be applicable to the Holders only if all officers, managers or directors, as applicable, and stockholders individually owning more than one percent (1%) of the Company’s outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding Preferred Stock) are subject to the same restrictions. The underwriters in connection with such registration are intended third-party beneficiaries of this Section 2.11 and shall have the right, power, and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Section 2.11 or that
2.12 Restrictions on Transfer.

(a) The Preferred Stock and the Registrable Securities shall not be sold, pledged, or otherwise transferred, and the Company shall not recognize and shall issue stop transfer instructions to its transfer agent with respect to any such sale, pledge, or transfer, except upon the conditions specified in this Agreement, which conditions are intended to ensure compliance with the provisions of the Securities Act. A transferring Holder will cause any proposed purchaser, pledgee, or transferee of the Preferred Stock and the Registrable Securities held by such Holder to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Agreement.

(b) Each certificate or instrument representing (i) Registrable Securities and (ii) any other securities issued in respect of the securities referenced in clauses (i) and (ii), upon any split, distribution, recapitalization, merger, consolidation, or similar event affecting such securities, shall (unless otherwise permitted by the provisions of Section 2.12(c)) be stamped or otherwise imprinted with a legend substantially in the following form:

THE SECURITIES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. SUCH SECURITIES MAY NOT BE SOLD, PLEDGED, OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR A VALID EXEMPTION FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT.

THE SECURITIES REPRESENTED HEREBY MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

The Holders consent to the Company making a notation in its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer set forth in this Section 2.12.

(c) The holder of each certificate representing Restricted Securities, by acceptance thereof, agrees to comply in all respects with the provisions of this Section 2. Before any proposed sale, pledge, or transfer of any Restricted Securities or the Preferred Stock and the Registrable Securities, unless there is in effect a registration statement under the Securities Act covering the proposed transaction, the Holder thereof shall give notice to the Company of such Holder’s intention to effect such sale, pledge, or transfer. Each such notice shall describe the manner and circumstances of the proposed sale, pledge, or transfer in sufficient detail and, if
reasonably requested by the Company, shall be accompanied at such Holder’s expense by either (i) a written opinion of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effected without registration under the Securities Act; (ii) a “no action” letter from the SEC to the effect that the proposed sale, pledge, or transfer of such securities without registration will not result in a recommendation by the staff of the SEC that action be taken with respect thereto; or (iii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed sale, pledge, or transfer of the securities may be effected without registration under the Securities Act, whereupon the Holder of such securities shall be entitled to sell, pledge, or transfer such securities in accordance with the terms of the notice given by the Holder to the Company. The Company will not require such a legal opinion or “no action” letter (x) in any transaction in compliance with SEC Rule 144, (y) in any transaction in which such Holder distributes securities to an Affiliate of such Holder for no consideration or (z) in any transaction in which such Holder or such Holder’s Investor Parent is an Advisory Investor and is transferring to another person advised by an investment advisor registered under the Investment Advisers Act of 1940, as amended, or a subsidiary thereof; provided, in each case, that each transferee agrees in writing to be subject to the terms of this Section 2.12. If applicable, each certificate or instrument evidencing the securities transferred as above provided shall bear, except if such transfer is made pursuant to SEC Rule 144, the appropriate restrictive legend set forth in Section 2.12(b), except that such certificate shall not bear such restrictive legend if, in the opinion of counsel for such Holder and the Company, such legend is not required in order to establish compliance with any provisions of the Securities Act.

2.13 Termination of Registration Rights. The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Section 2.1 or Section 2.2 shall terminate upon (a) the closing of a Deemed Liquidation Event (as such term is defined in the Company’s Certificate of Incorporation); provided, that with respect to a Deemed Liquidation Event described in Article Fourth, Section B.2.3.1(b) of the Company’s Certificate of Incorporation, with respect to any Investor, only once the proceeds of such Deemed Liquidation Event have been received by the Company and fully distributed to such Investor; provided, further, that if the proceeds of such Deemed Liquidation Event consist of securities that are not listed on a national securities exchange or another nationally recognized trading system and cannot be sold without restriction under SEC Rule 144 within any 90 day period, the Company shall have used commercially reasonable efforts to provide the Investor with registration rights for such securities in substantially the form set forth in the foregoing provisions, or (b) the later to occur of (x) such time when all of such Holder’s Registrable Securities could be sold without restriction under SEC Rule 144 within any 90 day period and (y) 18 months after the effective date of the registration statement of an IPO.

3. Information and Observer Rights.

3.1 Delivery of Financial Statements.

(a) The Company shall deliver to each Major Investor:

(1) as soon as practicable, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Company, (i) a balance sheet as of the end of such year, (ii) statements of income and of cash flows for such year, and a comparison between (x) the actual amounts as of and for such fiscal year and (y) the comparable amounts for the prior year and as included in the Budget for such year, with an explanation of any material differences between such amounts and a schedule as to the sources and applications of funds for such year, and (iii) a statement of stockholders’ equity as of the end of such year, all such financial statements audited and certified by independent public accountants of nationally recognized standing selected by the Company and approved by the Board of Directors;

(2) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, unaudited statements of income and of cash flows for such fiscal quarter, and an unaudited balance sheet and a statement of stockholders’ equity as of the end of such fiscal quarter, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(3) as soon as practicable, but in any event within forty five (45) days after the end of each fiscal year of the Company, (i) an unaudited balance sheet as of the end of such year, (ii) unaudited statements of income and of cash flows for such year, and a comparison between (x) the actual amounts as of and for such fiscal year and (y) the comparable amounts for the prior year and as included in the Budget for such year, with an explanation of any material differences between such amounts and a schedule as to the sources and applications of funds for such year, and (iii) an unaudited statement of stockholders’ equity as of the end of such year;

(4) as soon as practicable, (i) but in any event within sixty (60) days, after each of (x) June 30th and (y) December 31st and (ii) after the closing of any additional sale and issuance of preferred stock of the Company, a statement showing the number of shares of each class and series of capital stock and securities convertible into or exercisable for shares of capital stock of the Company outstanding at the end of the period, the Common Stock issuable upon conversion or exercise of any outstanding
securities convertible or exercisable for Common Stock and the exchange ratio or
exercise price applicable thereto, and the number of shares of issued stock options and options not yet issued but reserved for issuance, if any, all in sufficient detail as to permit the Major Investors to calculate their respective percentage equity ownership in the Company, and certified by the chief financial officer or chief executive officer of the Company as being true, complete, and correct;

(5) simultaneously with the delivery to the members of the Board of Directors, a copy of the meeting materials sent in advance of quarterly Board of Director meetings; and

(6) with respect to the financial statements called for in Section 3.1(a)(1), Section 3.1(a)(2), and Section 3.1(a)(3) upon request of a Major Investor, an instrument executed by the chief financial officer and chief executive officer of the Company certifying that such financial statements were prepared in accordance with GAAP consistently applied with prior practice for earlier periods (except as otherwise set forth in Section 3.1(a)(2) and Section 3.1(a)(3)) and fairly present the financial condition of the Company and its results of operation for the periods specified therein; provided, however, that the Company shall not be obligated under this Section 3.1(a) to provide information (i) that the Company reasonably determines in good faith to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or (ii) the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

(b) In addition to the financial statements set forth in Section 3.1(a) above, the Company shall deliver to each Major Investor that holds at least 946 shares of Series A Preferred Stock (or Common Stock issued upon conversion thereof):

(1) as soon as practicable, but in any event within thirty (30) days of the end of each month, an unaudited income statement and statement of cash flows for such month, and an unaudited balance sheet and statement of stockholders’ equity as of the end of such month, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(2) as soon as practicable, but in any event thirty (30) days before the end of each fiscal year, a budget and business plan for the next fiscal year (collectively, the “Budget”), approved by the Board of Directors and prepared on a
monthly basis, including balance sheets, income statements, and statements of cash flow for such months and, promptly after prepared, any other budgets or revised budgets prepared by the Company;

(3) with respect to the financial statements called for in Section 3.1(b)(1), upon request of a Major Investor, an instrument executed by the chief financial officer and chief executive officer of the Company certifying that such financial statements were prepared in accordance with GAAP consistently applied with prior practice for earlier periods (except as otherwise set forth in Section 3.1(b)(2)) and fairly present the financial condition of the Company and its results of operation for the periods specified therein; and

(4) such other information relating to the financial condition, business, prospects, or corporate affairs of the Company as a Major Investor may from time to time reasonably request;

provided, however, that the Company shall not be obligated under this Section 3.1(b) to provide information (i) that the Company reasonably determines in good faith to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or (ii) the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Notwithstanding anything else in this Section 3.1 to the contrary, the Company may cease providing the information set forth in this Section 3.1 during the period starting with the date forty-five (45) days before the Company’s good-faith estimate of the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules applicable to such registration statement and related offering; provided that the Company’s covenants under this Section 3.1 shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable efforts to cause such registration statement to become effective.

3.2 Inspection. The Company shall permit each Major Investor, at such Major Investor’s expense, to visit and inspect the Company’s and its subsidiaries’ properties; examine its books of account and records; and discuss the Company’s and its subsidiaries’ affairs, finances, and accounts with its officers, during normal business hours of the Company as may be reasonably requested by the Major Investor; provided, however, that the Company shall not be obligated pursuant to this Section 3.2 to provide access to any information that it reasonably considers to be a trade secret or confidential information (unless covered by an enforceable...
3.3 **Termination of Information Rights.** The covenants set forth in Sections 3.1 and 3.2 shall terminate and be of no further force or effect (i) immediately before but subject to the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon a Deemed Liquidation Event, as such term is defined in the Company’s Certificate of Incorporation, unless, following such Deemed Liquidation Event, the Major Investors hold equity in an entity that is not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, whichever event occurs first.

3.4 **Confidentiality.** Each Investor agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information obtained from the Company pursuant to the terms of this Agreement (including notice of the Company’s intention to file a registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 3.5 by such Investor), (b) is or has been independently developed or conceived by the Investor without use of the Company’s confidential information, or (c) is or has been made known or disclosed to the Investor by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that an Investor may disclose confidential information (i) to its attorneys, accountants, consultants, investment advisors and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any Registrable Securities from such Investor, if such prospective purchaser agrees to be bound by the provisions of this Section 3.5; (iii) to any existing or prospective, direct or indirect Affiliate, investor, partner, member, stockholder, or wholly owned subsidiary of such Investor in the ordinary course of business, provided that such Investor informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information; (iv) to the other Investors and their attorneys, consultants, Affiliates, partners and other persons permitted pursuant to clauses (i) and (iii) above, (v) as may otherwise be required by law, provided that the Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure, or, (vi) in the case of any Advisory Investor, to its registered investment advisor for use solely in such investment advisor’s internal reports, provided that the amount and value of the securities of the Company held by such Advisory Investor is the only confidential information permitted to be disclosed pursuant to this clause (vi).

4. **Rights to Future Equity Issuances.**

4.1 **Right of First Offer.** Subject to the terms and conditions of this Section 4.1 and applicable securities laws, if the Company proposes to offer or sell any New Securities, the Company shall first offer such New Securities to each Major Investor. A Major Investor shall be entitled to apportion the right of first offer hereby granted to it among (i) itself, (ii) its Affiliates or Advisory Investors having the same or affiliated registered investment advisor and (iii) its beneficial interest holders, such as limited partners, members or any other Person having “beneficial ownership,” as such term is defined in Rule 13d-3 promulgated under
the Exchange Act, of such Major Investor ("Investor Beneficial Owner"), in each case in such proportions as it deems appropriate; provided that upon the purchase of any New Securities, each such Affiliate or Investor Beneficial Owner agrees to enter into this Agreement, as an "Investor" under each such agreement (provided that, any such Affiliate or Investor Beneficial Owner that is a Competitor shall not be entitled to any rights under Sections 3.1 and 3.2 hereof).

(a) The Company shall give notice (the "Offer Notice") to each Major Investor, stating (i) its bona fide intention to offer such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) By notification to the Company within twenty (20) days after the Offer Notice is given, each Major Investor may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such New Securities which equals the proportion that the Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other vested Derivative Securities then held, by such Major Investor bears to the total Common Stock of the Company then outstanding (assuming full conversion and/or exercise, as applicable, of all Preferred Stock and other vested Derivative Securities). At the expiration of such twenty (20) day period, the Company shall promptly notify each Major Investor that elects to purchase or acquire all the Common Stock available to it (each, a "Fully Exercising Investor") of any other Major Investor’s failure to likewise. During the ten (10) day period commencing after the Company has given such notice, each Fully Exercising Investor may, by giving notice to the Company, elect to purchase or acquire, in addition to the number of shares specified above, up to that portion of the New Securities for which Major Investors were entitled to subscribe but that were not subscribed for by the Major Investors which is equal to the proportion that the Common Stock issued and held, or issuable upon conversion and/or exercise, as applicable, of Preferred Stock and any other vested Derivative Securities then held, by such Fully Exercising Investor bears to the total Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other vested Derivative Securities then held, by all Fully Exercising Investors who wish to purchase such unsubscribed Units. The closing of any sale pursuant to this Section 4.1(b) shall occur within the later of one hundred twenty (120) days of the date that the Offer Notice is given and the date of initial sale of New Securities pursuant to Section 4.1(c).

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in Section 4.1(b), the Company may, during the ninety (90) day period following the expiration of the periods provided in Section 4.1(b), offer and sell the remaining unsubscribed portion of such New Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Company does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Major Investors in accordance with this Section 4.1.
The right of first offer in this Section 4.1 shall not be applicable to (i) Excluded Securities (as defined in the Company’s Certificate of Incorporation); and (ii) shares of Common Stock issued in the IPO.

The right of first offer set forth in this Section 4.1 shall terminate with respect to any Major Investor who fails to purchase, in any transaction subject to this Section 4.1, some portion of the New Securities allocated to such Major Investor pursuant to this Section 4.1. Following any such termination, such Investor shall no longer be deemed a “Major Investor” for any purpose of this Section 4.1.

4.2 Termination. The covenants set forth in Section 4.1 shall terminate and be of no further force or effect (i) immediately before but subject to the consummation of a Qualified Public Offering, as defined in the Company’s Certificate of Incorporation, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon a Deemed Liquidation Event, (as such term is defined in the Certificate of Incorporation); provided, that with respect to a Deemed Liquidation Event described in Article Fourth, Section B.2.3.1(b) of the Company’s Certificate of Incorporation, with respect to any Investor, only once the proceeds of such Deemed Liquidation Event have been received by the Company and fully distributed to such Investor.

5. Additional Covenants.

5.1 Insurance. The Company shall use commercially reasonable efforts to maintain, from financially sound and reputable insurers, (i) Directors and Officers Errors and Omissions insurance and (ii) an employment practices liability insurance policy, together in a shared amount not less than $5 million, until such time as the Board of Directors (including the approval of at least a majority of the Series A Directors) determines that such insurance should be discontinued. The Company shall use commercially reasonable efforts to maintain term “key person” insurance on each of Steven Conine and Niraj Shah, which policies (i) shall name the Company as loss payee, and (ii) shall not be cancelable by the Company without prior approval of the Board of Directors (including at least a majority of the Series A Directors).

5.2 Employee Agreements. The Company will cause (i) each person now or hereafter employed by it or by any Subsidiary (or engaged by the Company or any Subsidiary as a consultant/independent contractor, including but not limited to persons employed by SK Retail, Inc.) with access to confidential information and/or trade secrets to enter into a nondisclosure and proprietary rights assignment agreement and (ii) each Key Employee to enter into a one (1) year noncompetition and nonsolicitation agreement previously approved by the Board of Directors. In addition, the Company shall not amend, modify, terminate, waive, or otherwise alter, in whole or in part, any of the above-referenced agreements or any restricted stock agreement between the Company and any employee, without the consent of at least a majority of the Series A Directors.

5.3 Employee Vesting. Unless otherwise approved by the Board of Directors, including at least a majority of the Series A Directors, all future employees and consultants of the Company or any Subsidiary who purchase, receive options to purchase, or receive awards of the Company’s shares of capital stock after the date hereof shall be required to execute restricted...
stock or option agreements, as applicable, providing for (i) vesting of shares over a five (5) year period, with the first twenty percent (20%) of such shares vesting following twelve (12) months of continued employment or service, and the remaining shares vesting in equal monthly installments over the following forty-eight (48) months, and (ii) a market stand-off provision substantially similar to that in Section 2.11. In addition, unless otherwise approved by the Board of Directors, including at least a majority of the Series A Directors, the Company shall retain a “right of first refusal” on employee transfers until the Company’s IPO and shall have the right to repurchase unvested shares at cost upon termination of employment of a holder of restricted stock; provided that, notwithstanding any other provision of this Agreement, such “right of first refusal” shall not be assignable by the Company.

5.4 Matters Requiring Investor Director Approval. In addition to any other consents required hereunder or under the Certificate of Incorporation, so long as the holders of Series A-1 Preferred Stock and Series A-2 Preferred Stock are entitled to elect at least one Series A Director, the Company hereby covenants and agrees with each of the Investors that it shall not, nor shall it permit any subsidiary to, directly or indirectly, by amendment, merger, consolidation or otherwise, without approval of the Board of Directors, which approval must include the affirmative vote of at least a majority of the Series A Directors:

(a) make, or permit any subsidiary to make, any loan or advance to any Subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Company;

(b) make, or permit any subsidiary to make, any loan or advance to any Person or Persons in excess of $25,000, including, without limitation, any employee or manager of the Company or any Subsidiary, except advances and similar expenditures in the ordinary course of business or under the terms of an employee option plan approved by the Board of Directors, including at least a majority of the Series A Directors;

(c) otherwise enter into or be a party to any transaction with any manager, officer, or employee of the Company or any “associate” (as defined in Rule 12b-2 promulgated under the Exchange Act) of any such Person, except for (i) transactions contemplated by this Agreement; or (ii) transactions made in the ordinary course of business and pursuant to reasonable requirements of the Company’s business and upon fair and reasonable terms that are approved by at least a majority of the Board of Directors, including at least a majority of the Series A Directors; or

(d) hire, terminate, or change the compensation of Niraj Shah or Steven Conine, including approving any option grants or other equity awards to Niraj Shah or Steven Conine.

5.5 Board Matters. Unless otherwise determined by the vote of at least a majority of the managers then in office (including at least a majority of the Series A Directors), the Board of Directors shall meet at least quarterly in accordance with an agreed-upon schedule. The Company shall reimburse the nonemployee managers for all reasonable out-of-pocket travel expenses incurred in connection with attending meetings of the Board of Directors. Any Board
of Directors committee now existing or hereinafter established shall include not less than one (1) Series A Director.

5.6 **Control Over Subsidiaries.** The Company shall institute and shall keep in place arrangements reasonably satisfactory to the Series A Directors such that the Company (i) will control the operations of any subsidiary and (ii) will be permitted to properly consolidate the financial results of any subsidiary in the consolidated financial statements of the Company. Upon request by the Series A Directors, (A) the composition of the board of directors or similar governing body of each domestic Subsidiary, whether now in existence or formed in the future, shall be comprised of the same members (with the same number of votes) as the Company’s Board of Directors and (B) the composition of the board of directors or similar governing body of each foreign subsidiary, whether now in existence or formed in the future, shall be comprised of at least one member designated by the Series A Directors. The Company shall maintain such rights under applicable law so as to allow it to maintain control, in its capacity as the sole equity holder of each of the Company’s Subsidiaries, over the board of directors managers or similar governing bodies of all of the Company’s Subsidiaries. The Company shall take all necessary actions to maintain any subsidiary, whether now in existence or formed in the future, to comply in all material respects with applicable laws, rules and regulations.

5.7 **Successor Indemnification.** If the Company or any of its successors or assignees consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately before such transaction, whether such obligations are contained in the Company’s Certificate of Incorporation or elsewhere, as the case may be.

5.8 **Requests for Information.** The Company shall respond (or, in the event the Company has engaged the services of a transfer agent to maintain its stockholder list or stock ledger, shall use commercially reasonable efforts to cause its transfer agent to respond) as soon as practicable to an Investor’s reasonable request for (a) accounting or securities law information required in connection with such Investor’s audit or (b) a statement showing the number of shares of capital stock then held by such Investor and the number of outstanding shares of each class and series of outstanding securities and securities convertible into or exercisable for shares of capital stock of the Company in sufficient detail as to permit such Investor to calculate its respective percentage equity ownership in the Company; provided, however, that the Company shall not be obligated to provide such information if such disclosure could reasonably (i) result in a violation of applicable law or (ii) conflict with the Company’s insider trading policy or confidentiality obligations.

5.9 **Use of Investor Names.** Except as required in connection with a registration statement under the Securities Act or other filings required by the Exchange Act, the Company shall not use the name or trademarks of any of Fidelity Management & Research Company, Morgan Stanley Investment Management Inc., T. Rowe Price Associates, Inc., Viking

Global Investments LP, Wellington Management Company, LLP or any of their respective Affiliates or any Investors advised by them (including in any press release relating to the sale of equity securities of the Company) without the prior written consent from such Person, as applicable.

5.10 **Termination of Covenants.** The covenants set forth in this Section 5, except for Sections 5.7, 5.8 and 5.9, shall terminate and be of no further force or effect (i) immediately before but subject to the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) with respect to any Investor, upon a Deemed Liquidation Event, as such term is defined in the Certificate of Incorporation; provided, that with respect to a Deemed Liquidation Event described in Article Fourth, Section B.2.3.1(b) of the Company’s Certificate of Incorporation, with respect to any Investor, only once the proceeds of such Deemed Liquidation Event have been received by the Company and fully distributed to such Investor. The covenant set forth in Section 5.8 shall terminate and be of no further force or effect with regards to an Investor when such Investor no longer holds any Registrable Securities.

6. **Miscellaneous.**

6.1 **Successors and Assigns.** The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to a transferee of Registrable Securities; provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; (y) such transferee agrees in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement, including the provisions of Section 2.11 and (z) any such transferee that is a Competitor shall not be entitled to any rights under Section 3.1 or 3.2. The terms and conditions of this Agreement inure to the benefit of and are binding upon the respective successors and permitted assignees of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

6.2 **Governing Law.** This Agreement and any controversy arising out of or relating to this Agreement shall be governed by and construed in accordance with the General Corporation Law of the State of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware.

6.3 **Counterparts; Facsimile.** This Agreement may be executed and delivered by facsimile signature and in two or more
counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.4 **Titles and Subtitles.** The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

6.5 **Notices.** All notices, requests, and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given, delivered and received (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed
6.6 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Company and the holders of at least a majority of the Registrable Securities then outstanding; provided that (w) the Company may in its sole discretion waive compliance with Section 2.12(c) (and the Company’s failure to object promptly in writing after notification of a proposed assignment allegedly in violation of Section 2.12(c) shall be deemed to be a waiver); (x) any provision hereof may be waived by any waiving party on such party’s own behalf, without the consent of any other party; (y) Sections 1.1, 1.18, 1.22, 2.1, 3, 5.8, 5.10 and 6.6 may not be amended without the consent of the holders of at least two-thirds of the Registrable Securities issued or issuable pursuant to the conversion of the Series B Preferred Stock (other than amendments solely related to the addition of new parties to this Agreement), and (z) Section 5.9 may not be amended without the consent of the Investors advised by the investment advisers named therein. Notwithstanding the foregoing, (a) this Agreement may not be amended or terminated and the observance of any term hereof may not be waived with respect to any Investor without the written consent of such Investor, unless such amendment, termination, or waiver applies to all Investors in the same fashion (it being agreed that a waiver of the provisions of Section 4 with respect to a particular transaction shall be deemed to apply to all Investors in the same fashion if such waiver does so by its terms, notwithstanding the fact that certain Investors may nonetheless, by agreement with the Company, purchase securities in such transaction), and (b) Schedule A hereto may be amended by the Company from time to time in accordance with Section 6.1 or Section 6.9 hereof to add information regarding additional Investors without the consent of the other parties hereto. Any amendment, termination, or waiver effected in accordance with this Section 6.6 shall be binding on all parties hereto, regardless of whether any such party has consented thereto. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

6.7 Severability. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.
6.8 **Aggregation of Shares.** All Registrable Securities held or acquired by Affiliates or Advisory Investors having the same or affiliated registered investment advisor shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliates or Advisory Investors having the same or affiliated registered investment advisor may apportion such rights as among themselves in any manner they deem appropriate.

6.9 **Effectiveness of Agreement; Prior Agreement; Entire Agreement; Other Agreements.** This Agreement shall become effective only upon the effectiveness of the Reorganization (the "**Effective Time**"). In the event the Reorganization shall not have occurred on or prior to December 31, 2014, this Agreement shall be of no force or effect. Upon the Effective Time, the Prior Agreement shall be terminated in its entirety and the provisions of the Prior Agreement shall no longer be of any force or effect. This Agreement (including any Schedules and Exhibits hereto) constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties (including the Prior Agreement) is expressly canceled. In addition, in the event the Reorganization has occurred, but the Company has not consummated a Qualified Public Offering prior to the fourth business day after the Reorganization, the Company and the Investors will either enter into new Voting and Right of First Refusal and Co-Sale Agreements with the Investors on the same terms and conditions or otherwise provide that such agreements currently in effect between Wayfair LLC and the Investors will continue to be in effect and apply with respect to the Company.

6.10 **Delays or Omissions.** No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such nonbreaching or nondefaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

6.11 **Acknowledgment.** The Company acknowledges that the Investors are in the business of venture capital investing and therefore review the business plans and related proprietary information of many enterprises, including enterprises which may have products or services which compete directly or indirectly with those of the Company. Nothing in this Agreement shall preclude or in any way restrict the Investors from investing or participating in any particular enterprise whether or not such enterprise has products or services which compete with those of the Company.

[Remainder of Page Intentionally Left Blank]
IN WITNESS WHEREOF, the parties have executed this Investors’ Rights Agreement as of the date first written above.

COMPANY:

WAYFAIR INC.

By: /s/ Niraj Shah
Name: Niraj Shah
Title: CEO

Address: 4 Copley Place, 7th Floor
Boston, MA 02116

[Signature Page to Wayfair Inc. Investors’ Rights Agreement]
INVESTORS:

BATTERY VENTURES IX (AIV I), L.P.

By: Battery Partners IX (AIV I), LLC, its general partner

By: /s/ Neeraj Agrawal
Name: Neeraj Agrawal
Title: Managing Member

BATTERY INVESTMENT PARTNERS IX, LLC

By: Battery Partners IX, LLC
Its: Managing Member

By: /s/ Neeraj Agrawal
Name: Neeraj Agrawal
Title: Managing Member

[ Signature Page to Wayfair Inc. Investors’ Rights Agreement ]
INVESTORS (Continued):

GREAT HILL INVESTORS, LLC, a Series LLC

By: /s/ Michael A. Kumin
Name: Michael A. Kumin
Title: Manager

GREAT HILL EQUITY PARTNERS IV, L.P.

By: Great Hill Partners GP IV, LP, its general partner
By: GHP IV, LLC, its general partner

By: /s/ Michael A. Kumin
Name: Michael A. Kumin
Title: Manager

[ Signature Page to Investors’ Rights Agreement ]
INVESTORS (Continued):

FIDELITY SECURITIES FUND: FIDELITY OTC PORTFOLIO
By: /s/ Joseph Zambello  
Name: Joseph Zambello  
Title: Deputy Treasurer

FIDELITY COMMONWEALTH TRUST: FIDELITY MID-CAP STOCK FUND
By: /s/ Joseph Zambello  
Name: Joseph Zambello  
Title: Deputy Treasurer

FIDELITY MT. VERNON STREET TRUST: FIDELITY NEW MILLENNIUM FUND
By: /s/ Joseph Zambello  
Name: Joseph Zambello  
Title: Deputy Treasurer

FIDELITY PURITAN TRUST: FIDELITY PURITAN FUND
By: /s/ Joseph Zambello  
Name: Joseph Zambello  
Title: Deputy Treasurer

[ Signature Page to Investors' Rights Agreement ]
INVESTORS (Continued):

HARBOURVEST PARTNERS VIII-VENTURE FUND L.P.
By: HarbourVest VIII-Venture Associates L.P.
   Its General Partner
By: HarbourVest VIII-Venture Associates LLC
   Its General Partner
By: HarbourVest Partners, LLC
   Its Managing Member

By: /s/ Robert Wadsworth
   Managing Director

HARBOURVEST PARTNERS 2007 DIRECT FUND L.P.
By: HarbourVest Partners 2007 Direct Associates L.P.
   Its General Partner
By: HarbourVest 2007 Direct Associates LLC
   Its General Partner
By: HarbourVest Partners, LLC
   Its Managing Member

By: /s/ Robert Wadsworth
   Managing Director

HARBOURVEST/NYSTRS CO-INVEST FUND L.P.
By: HIPEP VI Select Associates L.P.
   as its General Partner
By: HIPEP VI Select Associates LLC
   as its General Partner
By: HarbourVest Partners, LLC
   as its Managing Member

By: /s/ Robert Wadsworth
   Managing Director

[ Signature Page to Investors’ Rights Agreement ]

INVESTORS (Continued):

ICONIQ STRATEGIC PARTNERS-B, L.P.
a Cayman Islands exempted limited partnership
By: ICONIQ Strategic Partners GP, L.P.,
a Cayman Islands exempted limited partnership
   Its General Partner

By: ICONIQ Strategic Partners TT GP, Ltd.,
a Cayman Islands exempted limited partnership
   Its General Partner

By: /s/ Kevin Foster
   Name: Kevin Foster
   Title: Authorized Signatory

ICONIQ STRATEGIC PARTNERS, L.P.
a Cayman Islands exempted limited partnership
By: ICONIQ Strategic Partners GP, L.P.,
a Cayman Islands exempted limited partnership
   Its General Partner
By:  ICONIQ Strategic Partners TT GP, Ltd.,  
a Cayman Islands exempted company  
Its:  General Partner  

By:  /s/ Kevin Foster  
Name:  Kevin Foster  
Title:  Authorized Signatory

[ Signature Page to Investors’ Rights Agreement ]
INVESTORS (Continued):

MORGAN STANLEY INSTITUTIONAL FUND, INC. — SMALL COMPANY GROWTH PORTFOLIO

By: Morgan Stanley Investment Management Inc.
Its Investment Manager

By: /s/ Sandeep Chainani
Name: Sandeep Chainani
Title: MD

MORGAN STANLEY INVESTMENT MANAGEMENT SMALL COMPANY GROWTH TRUST

By: State Street Bank and Trust Company
Solely in its capacity as Trustee

By: /s/ Matthew H. Malkashan
Name: Keith Mahoney
Title: Senior Vice President

[ Signature Page to Investors’ Rights Agreement ]
INVESTORS (Continued):

SPARK CAPITAL III (AIV I), L.P.

By: Spark Management Partners III (AIV I), LLC

By: /s/ Alex Finkelstein
Name: Alex Finkelstein
Title: General Partner

SPARK CAPITAL FOUNDERS’ FUND III, LP

By: /s/ Alex Finkelstein
Name: Alex Finkelstein
Title: General Partner

[ Signature Page to Investors’ Rights Agreement ]
INVESTORS (Continued):

T. ROWE PRICE NEW HORIZONS FUND, INC.
By: /s/ Henry Ellenbogen
Name: Henry Ellenbogen
Title: President

T. ROWE PRICE NEW HORIZONS TRUST
By: T. Rowe Price Trust Company, Trustee of T. Rowe Price New Horizons Trust
By: /s/ Henry Ellenbogen
Name: Henry Ellenbogen
Title: President

T. ROWE PRICE U.S. EQUITIES TRUST
By: T. Rowe Price Trust Company, Trustee of T. Rowe Price U.S. Equities Trust
By: /s/ Henry Ellenbogen
Name: Henry Ellenbogen
Title: President

[Signature Page to Investors' Rights Agreement]
INVESTORS (Continued):

VIKING GLOBAL EQUITIES LP
By: Viking Global Performance LLC,
its general partner

By: /s/ Eric Komitee
Name: Eric Komitee
Title: Authorized Signatory

VIKING GLOBAL EQUITIES II LP
By: Viking Global Performance LLC,
its general partner

By: /s/ Eric Komitee
Name: Eric Komitee
Title: Authorized Signatory

VGE III PORTFOLIO LTD.
By: Viking Global Performance LLC,
its investment manager

By: /s/ Eric Komitee
Name: Eric Komitee
Title: Authorized Signatory

VIKING LONG FUND MASTER LTD
By: Viking Long Fund GP LLC,
its investment manager

By: /s/ Eric Komitee
Name: Eric Komitee
Title: Authorized Signatory

[ Signature Page to Investors' Rights Agreement ]
INVESTORS (Continued):

BAY POND BMD CAYB II, INC.

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman
Name: Steven M. Hoffman
Title: Vice President and Counsel

BAY POND PARTNERS, L.P.

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman
Name: Steven M. Hoffman
Title: Vice President and Counsel

ITHAN CREEK INVESTORS CAYB, INC.

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman
Name: Steven M. Hoffman
Title: Vice President and Counsel

ITHAN CREEK MASTER INVESTORS (CAYMAN) L.P.

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman
Name: Steven M. Hoffman
Title: Vice President and Counsel

[ Signature Page to Investors’ Rights Agreement ]
J. CAIRD REAL ESTATE INVESTMENTS, INC.

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman
Name: Steven M. Hoffman
Title: Vice President and Counsel

J. CAIRD PARTNERS, L.P.

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman
Name: Steven M. Hoffman
Title: Vice President and Counsel

QUISSETT BMD CAYB, INC.

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman
Name: Steven M. Hoffman
Title: Vice President and Counsel

QUISSETT PARTNERS, L.P.

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman
Name: Steven M. Hoffman
Title: Vice President and Counsel

[ Signature Page to Investors' Rights Agreement ]
WOLF CREEK REAL ESTATE INVESTMENTS, INC.

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman
Name: Steven M. Hoffman
Title: Vice President and Counsel

WOLF CREEK PARTNERS, L.P.

By: Wellington Management Company, LLP, as investment adviser

By: /s/ Steven M. Hoffman
Name: Steven M. Hoffman
Title: Vice President and Counsel

INVESTORS (Continued):

/s/ Julie Bradley
Julie Bradley

[ Signature Page to Investors' Rights Agreement ]
INVESTORS (Continued):

/s/ Nirah Shah
Niraj Shah

/s/ Steve Conine
Steve Conine

[Signature Page to Investors' Rights Agreement]
**SCHEDULE A**
**Investors**

**Name and Address**

Series A Investors (holders of Series A-1 and Series A-2 Preferred Stock)

**HarbourVest Partners VIII-venture Fund, L.P.**  
**HarbourVest Partners 2007 Direct Fund L.P.**  
**HarbourVest/NYSTRS Co-Invest Fund L.P.**

One Financial Center  
44 th Floor  
Boston, MA 02111  
Attention: Ian Lane  
Telephone: (617) 348-3592  
E-mail: ilane@harbourvest.com

**ICONIQ Strategic Partners-B, L.P.**  
**ICONIQ Strategic Partners, L.P.**

394 Pacific Avenue  
2 nd Floor  
San Francisco, CA

**Battery Ventures IX (AIV I), L.P.**  
**Battery Investment Partners IX, LLC**

One Marina Park Drive, Suite 1100  
Boston, Massachusetts 02210  
Attention: Neeraj Agrawal, President  
Telephone: 781-478-6600  
E-mail: neeraj@battery.com

**Steve Conine**

c/o Wayfair LLC  
4 Copley Place, 7th Floor  
Boston, MA 02116

**Niraj Shah**

c/o Wayfair LLC  
4 Copley Place, 7th Floor  
Boston, MA 02116
Name and Address

Great Hill Investors, LLC
Great Hill Equity Partners IV, L.P.
c/o Great Hill Partners LLC
One Liberty Square
Boston, Massachusetts 02109
Attention: Michael Kumin, President
Facsimile: (617) 790-9401
Telephone: (617) 790-9435
E-mail: mkumin@greathillpartners.com

Spark Capital III (AIV I), L.P.
Spark Capital Founders' Fund III, L.P.
c/o Spark Capital
137 Newbury Street
Eighth Floor
Boston, Massachusetts 02116
Attention: Alex Finkelstein, President
Facsimile: (617) 830-2001
Telephone: (617) 830-2004
E-mail: alex@sparkcapital.com

Series B Investors

FIDELITY SECURITIES FUND:
  FIDELITY OTC PORTFOLIO
[Address]

FIDELITY COMMONWEALTH TRUST:
  FIDELITY MID-CAP STOCK FUND
[Address]

FIDELITY MT. VERNON STREET TRUST:
  FIDELITY NEW MILLENNIUM FUND
[Address]

FIDELITY PURITAN TRUST:
  FIDELITY PURITAN FUND
[Address]
ICONIQ Strategic Partners, L.P.
ICONIQ Strategic Partners-B, L.P
394 Pacific Avenue
2nd Floor
San Francisco, CA 94111
Facsimile: (415) 321-3960

Morgan Stanley Institutional Fund, Inc. — Small Company Growth Portfolio
Morgan Stanley Investment Management Small Company Growth Trust
c/o Morgan Stanley Investment Management Inc.
522 Fifth Avenue
New York, NY 10036
Attn: Sandeep Chainani
Copy to: Joseph Benedetti

T. Rowe Price New Horizons Fund, Inc.
T. Rowe Price New Horizons Trust
T. Rowe Price U.S. Equities Trust
c/o T. Rowe Price Associates
100 East Pratt Street
Baltimore, MD 21202
Attn: Andrew Baek
Mail Stop # BA-1020

Viking Global Equities LP
Viking Global Equities II LP
VGE III Portfolio Ltd.
Viking Long Fund Master Ltd.
c/o Viking Global Investors LP
55 Railroad Avenue
Greenwich, CT 06830

Bay Pond BMD CayB II, Inc.
Bay Pond Partners, L.P.
Ithan Creek Investors CayB, Inc.
Ithan Creek Master Investors (Cayman) L.P.
J. Caird Real Estate Investments, Inc.
J. Caird Partners, L.P.
Quissett BMD CayB, Inc.
Quissett Partners, L.P.
Wolf Creek Real Estate Investments, Inc.
Wolf Creek Partners, L.P.
c/o Wellington Management Company, LLP
280 Congress Street
Boston, MA 02210
Attn: Steven M. Hoffman
COLEY PLACE
BOSTON, MASSACHUSETTS
OFFICE LEASE

Between

COLEY PLACE ASSOCIATES, LLC
as Landlord

and

WAYFAIR LLC,
as Tenant

DATED April 18, 2013

FROM THE OFFICE OF:

Goulston & Storrs, P.C.
400 Atlantic Avenue
Boston, Massachusetts 02110-3333
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE 1. BASIC DATA</td>
<td>5</td>
</tr>
<tr>
<td>1.01 Date</td>
<td>5</td>
</tr>
<tr>
<td>1.02 Landlord</td>
<td>5</td>
</tr>
<tr>
<td>1.03 Present Mailing Address of Landlord</td>
<td>6</td>
</tr>
<tr>
<td>1.04 Tenant</td>
<td>6</td>
</tr>
<tr>
<td>1.05 Present Mailing Address of Tenant</td>
<td>6</td>
</tr>
<tr>
<td>1.06 Guarantor</td>
<td>6</td>
</tr>
<tr>
<td>1.07 Present Mailing Address of Guarantor</td>
<td>6</td>
</tr>
<tr>
<td>1.08 Commencement Date</td>
<td>6</td>
</tr>
<tr>
<td>1.09 Rent Commencement Date</td>
<td>6</td>
</tr>
<tr>
<td>1.10 Termination Date</td>
<td>6</td>
</tr>
<tr>
<td>1.11 Base Rent</td>
<td>6</td>
</tr>
<tr>
<td>1.12 Operating Expense Base Year</td>
<td>7</td>
</tr>
<tr>
<td>1.13 Base Year Operating Expenses</td>
<td>7</td>
</tr>
<tr>
<td>1.14 Tax Base Year</td>
<td>7</td>
</tr>
<tr>
<td>1.15 Base Year Taxes</td>
<td>7</td>
</tr>
<tr>
<td>1.16 Tenant’s Proportionate Tax Share</td>
<td>7</td>
</tr>
<tr>
<td>1.17 Tenant’s Proportionate Expense Share</td>
<td>7</td>
</tr>
<tr>
<td>1.18 Use</td>
<td>7</td>
</tr>
<tr>
<td>1.19 Premises</td>
<td>8</td>
</tr>
<tr>
<td>1.20 Common Areas</td>
<td>8</td>
</tr>
<tr>
<td>1.21 Letter of Credit Amount</td>
<td>9</td>
</tr>
<tr>
<td>1.22 Brokers</td>
<td>9</td>
</tr>
<tr>
<td>ARTICLE 2. HABENDUM; TERM</td>
<td>9</td>
</tr>
<tr>
<td>ARTICLE 3. POSSESSION</td>
<td>9</td>
</tr>
<tr>
<td>3.01 Rent Commencement</td>
<td>9</td>
</tr>
<tr>
<td>3.02 Early Entry</td>
<td>9</td>
</tr>
<tr>
<td>3.03 No Change in Lease Term</td>
<td>10</td>
</tr>
<tr>
<td>3.04 Appurtenant Rights</td>
<td>10</td>
</tr>
<tr>
<td>3.05 Roof Deck</td>
<td>10</td>
</tr>
<tr>
<td>ARTICLE 4. BASE RENT</td>
<td>11</td>
</tr>
<tr>
<td>ARTICLE 5. ADDITIONAL RENT</td>
<td>11</td>
</tr>
<tr>
<td>5.01 Obligation as to Additional Rent</td>
<td>11</td>
</tr>
<tr>
<td>5.02 Definitions</td>
<td>11</td>
</tr>
<tr>
<td>5.03 Expense &amp; Tax Adjustment</td>
<td>16</td>
</tr>
<tr>
<td>5.04 Adjustment for Services not Rendered by Landlord</td>
<td>16</td>
</tr>
<tr>
<td>5.05 Audit Rights</td>
<td>17</td>
</tr>
<tr>
<td>5.06 Billing for Electricity</td>
<td>18</td>
</tr>
<tr>
<td>ARTICLE 6. USE OF PREMISES</td>
<td>18</td>
</tr>
</tbody>
</table>
ARTICLE 7. CONDITION OF PREMISES; LANDLORD’S WORK
7.01 Condition of Premises
7.02 Building Renovations
7.03 Landlord’s Work

ARTICLE 8. SERVICES
8.01 List of Services
8.02 Landlord Repairs and Maintenance
8.03 Interruption of Services
8.04 Additional Services
8.05 Energy Conservation

ARTICLE 9. COMPLIANCE WITH LAWS; REPAIRS; HAZARDOUS MATERIALS
9.01 Compliance With Laws
9.02 Repairs
9.03 Hazardous Materials

ARTICLE 10. ADDITIONS AND ALTERATIONS
10.01 Consent Required
10.02 Improvements are Landlord’s Property
10.03 Lines
10.04 Specialty Alterations

ARTICLE 11. COVENANT AGAINST LIENS

ARTICLE 12. INSURANCE
12.01 Waiver of Subrogation
12.02 Coverage
12.03 Avoid Action Increasing Rates
12.04 Landlord’s Insurance

ARTICLE 13. FIRE OR OTHER CASUALTY
13.01 Effect of Casualty
13.02 Intentionally Omitted
13.03 Responsibility for Reconstruction of Improvements

ARTICLE 14. WAIVER OF CLAIMS - INDEMNIFICATION
14.01 Tenant’s Indemnification
14.02 Landlord’s Indemnification

ARTICLE 15. NONWAIVER

ARTICLE 16. CONDEMNATION

ARTICLE 17. ASSIGNMENT AND SUBLETTING
17.01 No Transfer Without Consent
17.02 Rent Premium on Transfer
17.03 Change in Control
<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>SURRENDER OF POSSESSION</td>
<td>37</td>
</tr>
<tr>
<td>19</td>
<td>HOLDING OVER</td>
<td>38</td>
</tr>
<tr>
<td>20</td>
<td>ESTOPPEL CERTIFICATE</td>
<td>38</td>
</tr>
<tr>
<td>21</td>
<td>SUBORDINATION</td>
<td>39</td>
</tr>
<tr>
<td>22</td>
<td>CERTAIN RIGHTS RESERVED BY LANDLORD</td>
<td>40</td>
</tr>
<tr>
<td>23</td>
<td>RULES AND REGULATIONS</td>
<td>42</td>
</tr>
<tr>
<td>24</td>
<td>LANDLORD’S REMEDIES</td>
<td>42</td>
</tr>
<tr>
<td>25</td>
<td>EXPENSES OF ENFORCEMENT</td>
<td>45</td>
</tr>
<tr>
<td>26</td>
<td>COVENANT OF QUIET ENJOYMENT</td>
<td>45</td>
</tr>
<tr>
<td>27</td>
<td>LETTER OF CREDIT</td>
<td>45</td>
</tr>
<tr>
<td>27.01</td>
<td>General Provisions</td>
<td>45</td>
</tr>
<tr>
<td>27.02</td>
<td>Drawings under Letter of Credit</td>
<td>46</td>
</tr>
<tr>
<td>27.03</td>
<td>Use of Proceeds by Landlord</td>
<td>46</td>
</tr>
<tr>
<td>27.04</td>
<td>Additional Covenants of Tenant</td>
<td>47</td>
</tr>
<tr>
<td>27.05</td>
<td>Nature of Letter of Credit</td>
<td>47</td>
</tr>
<tr>
<td>28</td>
<td>REAL ESTATE BROKER</td>
<td>47</td>
</tr>
<tr>
<td>29</td>
<td>NOTICE TO MORTGAGEE AND GROUND LESSOR</td>
<td>48</td>
</tr>
<tr>
<td>30</td>
<td>ASSIGNMENT OF RENTS</td>
<td>48</td>
</tr>
<tr>
<td>31</td>
<td>PERSONAL PROPERTY TAXES</td>
<td>48</td>
</tr>
<tr>
<td>32</td>
<td>MISCELLANEOUS</td>
<td>49</td>
</tr>
<tr>
<td>33</td>
<td>NOTICES</td>
<td>54</td>
</tr>
<tr>
<td>34</td>
<td>LIMITATION ON LIABILITY</td>
<td>55</td>
</tr>
<tr>
<td>35</td>
<td>LANDLORD’S DESIGNATED AGENT</td>
<td>55</td>
</tr>
<tr>
<td>36</td>
<td>COMMENCEMENT DATE</td>
<td>56</td>
</tr>
<tr>
<td>37</td>
<td>PARKING</td>
<td>56</td>
</tr>
<tr>
<td>38</td>
<td>TENANT IMPROVEMENT ALLOWANCE</td>
<td>56</td>
</tr>
<tr>
<td>39</td>
<td>FINANCIAL STATEMENTS</td>
<td>59</td>
</tr>
</tbody>
</table>
THIS INSTRUMENT is an Agreement of Lease in which the Landlord and the Tenant are the parties hereinafter named, and which relates to space in the Office Section of Copley Place (hereinafter referred to as the “Office Section”) located at 100 Huntington Avenue, Boston, Suffolk County, Massachusetts (the project known as Copley Place, including without limitation the hotel portions thereof, plazas, pedestrian bridges, service areas and all other common areas, together with all present and future easements, additions, improvements, air rights and other rights appurtenant thereto, is hereinafter referred to as the “Property”), subject to the covenants, terms, provisions and conditions of this Lease. The “Office Section” means the seven (7) levels of office area in four so-called “Towers” (denoted, respectively, as “One Copley Place”, “Two Copley Place”, “Three Copley Place” and “Four Copley Place” or as “Tower 1”, “Tower II”, “Tower III” and “Tower IV”, respectively), containing approximately 867,564 square feet of rentable floor area constituting a portion of the building (the “Building”) located at the aforesaid address. The Building also contains retail shopping, restaurant, parking and other facilities, which are not included within the Office Section. The Building does not, however, include the hotel or residential portions of the Property or the pedestrian bridges.

The provisions set forth in this lease are the result of a negotiation in which the parties were represented by counsel experienced in lease transactions of office space in the Commonwealth of Massachusetts. Each of the provisions was negotiated in view of the entire transaction including the type and location of the property, the rental, the term and the respective rights, obligations and remedies of the Landlord and Tenant. As a result, the rights, obligations and remedies which have been agreed to herein are, as negotiated, a part of the transaction as a whole and neither party intends that the absence of any particular remedy being specified for a particular action or lack of action by the other party imply that the parties intended any remedy not so specified. Without limiting the generality of the foregoing, in no event shall Tenant have the right to terminate or cancel this lease as a result of any default by Landlord or breach by Landlord of its covenants or any warranties or promises hereunder, except in the case of a wrongful eviction of Tenant from the demised premises (constructive or actual) by Landlord or as otherwise specifically set forth herein. In consideration of the covenants herein contained, Landlord and Tenant hereby agree as follows:

ARTICLE 1.
BASIC DATA

The following sets forth basic data and, where the context admits, constitutes definitions of the terms hereinafter listed.

1.01 Date: April 18, 2013

1.02 Landlord: COPLEY PLACE ASSOCIATES, LLC, a Delaware limited liability company
1.03 Present Mailing Address of Landlord: Simon Property Group, Inc.  
Attention: Property Manager  
Two Copley Place, Suite 100  
Boston, MA 02116-6502  

1.04 Tenant: WAYFAIR LLC, a Delaware limited liability company  

1.05 Present Mailing Address of Tenant:  
177 Huntington Avenue, Suite 6000  
Boston, MA 02115  
Attention: General Counsel  

1.06 Guarantor: None  

1.07 Present Mailing Address of Guarantor: Not Applicable  

1.08 Commencement Date: Subject to ARTICLE 3 and ARTICLE 36 hereof, July 1, 2014.  

1.09 Rent Commencement Date: The Commencement Date  

1.10 Termination Date: June 30, 2024 as the same may be extended pursuant to the option of extension set forth in ARTICLE 41, unless, in any case, sooner terminated as provided in this Lease.  

1.11 Base Rent: Subject to ARTICLE 3, ARTICLE 4 and ARTICLE 36 hereof, Base Rent shall be payable in accordance with the following table:  

<table>
<thead>
<tr>
<th>Period</th>
<th>Annual Base Rent Per Rentable Square Foot</th>
<th>Annual Base Rent</th>
<th>Monthly Installment of Annual Base Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 2014 through June 30, 2015</td>
<td>$34.65</td>
<td>$3,662,366.40</td>
<td>$305,197.20</td>
</tr>
<tr>
<td>July 1, 2015 through June 30, 2016</td>
<td>$35.65</td>
<td>$3,768,062.40</td>
<td>$314,005.20</td>
</tr>
<tr>
<td>July 1, 2016 through June 30, 2017</td>
<td>$36.65</td>
<td>$3,873,758.40</td>
<td>$322,813.20</td>
</tr>
<tr>
<td>July 1, 2017 through June 30, 2018</td>
<td>$37.65</td>
<td>$3,979,454.40</td>
<td>$331,621.20</td>
</tr>
<tr>
<td>Date Range</td>
<td>Operating Cost</td>
<td>Total Amount</td>
<td>Tax</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>----------------</td>
<td>--------------</td>
<td>-----</td>
</tr>
<tr>
<td>July 1, 2018 through June 30, 2019</td>
<td>$38.65</td>
<td>$4,085,150.40</td>
<td>$340,429.20</td>
</tr>
<tr>
<td>July 1, 2019 through June 30, 2020</td>
<td>$39.65</td>
<td>$4,190,846.40</td>
<td>$349,237.20</td>
</tr>
<tr>
<td>July 1, 2020 through June 30, 2021</td>
<td>$40.65</td>
<td>$4,296,542.40</td>
<td>$358,045.20</td>
</tr>
<tr>
<td>July 1, 2021 through June 30, 2022</td>
<td>$41.65</td>
<td>$4,402,238.40</td>
<td>$366,853.20</td>
</tr>
<tr>
<td>July 1, 2022 through June 30, 2023</td>
<td>$42.65</td>
<td>$4,507,934.40</td>
<td>$375,661.20</td>
</tr>
<tr>
<td>July 1, 2023 through June 30, 2024</td>
<td>$43.65</td>
<td>$4,613,630.40</td>
<td>$384,469.20</td>
</tr>
</tbody>
</table>

1.12 Operating Expense Base Year: The Calendar Year 2014.

1.13 Base Year Operating Expenses: The amount of Operating Expenses incurred with respect to the Base Year, determined in accordance with subsection 5.02(v) (including the grossing up thereof as provided therein).

1.14 Tax Base Year: The Calendar Year 2014.

1.15 Base Year Taxes: The amount of Taxes incurred with respect to the Tax Base Year determined in accordance with subsection 5.02(iv) (including the grossing up thereof as provided therein).

1.16 Tenant’s Proportionate Tax Share: 12.82% for the Premises initially leased hereunder (computed on the basis of 95% occupancy).

1.17 Tenant’s Proportionate Expense Share: 12.82% for the Premises initially leased hereunder (computed on the basis of 95% occupancy).

1.18 Use: Subject to ARTICLE 23, general executive, professional and administrative offices and uses ancillary or accessory thereto.
1.19 Premises:
That portion of the Office Section designated on the plan attached hereto as Exhibit A consisting of a Sheet for each floor of Tower IV in which a portion of the Premises is located and containing a total of approximately 105,696 rentable square feet, consisting of the following approximate rentable square footages in Tower IV of the Building:

- 35,176 rentable square feet on the 7th floor
- 24,104 rentable square feet on the 6th floor
- 15,976 rentable square feet on the 4th floor
- 23,048 rentable square feet on the 3rd floor
- 7,392 rentable square feet on the 1st floor

The foregoing described Premises ("Initial Premises") is subject to an expansion of the Premises pursuant to the Expansion Rights provided in ARTICLE 42 and the exercise(s) of a Right of First Offer provided in ARTICLE 43.

Excepted and excluded from the Premises are the roof or ceiling, the floor and all perimeter walls of the Premises, except the inner surfaces thereof, but the entry doors to the Premises are not excluded from the Premises and are a part thereof for all purposes; and Tenant agrees that Landlord shall have the right to place in the Premises (but in such manner as to reduce to a minimum interference with Tenant’s use of the Premises) utility lines, pipes and the like, to serve premises other than the Premises, and to replace and maintain and repair such utility lines, pipes and the like, in, over and upon the Premises, but in no event shall such installations reduce the usable square footage of the Premises by more than de minimus amounts.

1.20 Common Areas:
Those portions of the Property not leased to any tenant, but for the benefit of the Property and its tenants, such as landscaped areas, malls, pedestrian walkways and bridges, public restrooms, service areas and the like
and if the Premises include less than the entire rentable floor area of any floor, the common toilets, corridor and elevator lobby of such floor.

1.21 Letter of Credit Amount: $1,220,788.80

1.22 Brokers: Richards Barry Joyce & Partners for Tenant
       CB Richard Ellis-N.E. Partners, L.P. for Landlord

ARTICLE 2.
HABENDUM; TERM

To have and to hold the Premises for the Term (as hereinafter defined), and the right to use the Common Areas during the Term in common with others entitled thereto. The term of this Lease (the “Term”) shall be that period of time commencing on the Commencement Date specified in ARTICLE 1 hereof and ending on the Termination Date specified in ARTICLE 1 hereof, unless extended as set forth in ARTICLE 41 hereof or sooner terminated as provided herein.

ARTICLE 3.
POSSSESSION

3.01 Rent Commencement. In the event Landlord is unable to deliver possession of the Premises on or before September 1, 2013 in the condition required pursuant to Section 7.1 by reason of the holding over or retention of possession by any tenant or occupant, or for any other reason, this Lease shall nevertheless continue in force and effect, except the Commencement Date and the Rent Commencement Date for any portion of the Initial Premises that Landlord is delayed in delivering beyond September 1, 2013 shall be delayed day for day for each day following September 1, 2013 that Landlord is unable to so deliver possession of such portion of the Premises. In addition, (i) if Landlord is unable to so deliver possession of all or any portion of the Initial Premises by December 31, 2013, then following the Rent Commencement Date, Tenant shall have the right to receive an abatement of one (1) day of Base Rent allocable to the portion of the Initial Premises which Landlord has not so delivered for each and every day of delay in such delivery following December 31, 2013 and (ii) if Landlord is unable to so deliver possession of fifty percent (50%) or more of the Initial Premises by February 1, 2014, Tenant shall have the right, by giving written notice thereof to Landlord, to terminate this Lease and in such event all obligations of Landlord and Tenant with respect to this Lease shall terminate and be of no further force and effect.

3.02 Early Entry. Landlord shall deliver the Premises to Tenant, in the condition set forth in Section 7.1 on September 1, 2013 for purposes of performing Tenant’s Initial Alterations (as hereinafter defined) of the Premises and for installation of telecommunications, business equipment and furniture, and may, subject to Legal Requirements (as hereinafter defined) use the Premises for the conduct of Tenant’s business prior to the Commencement Date. Such entry by Tenant prior to the Commencement Date shall be at Tenant’s sole risk and without material interference to any work then being performed in the Building by Landlord or to any work then being performed by other tenants in space occupied by such tenants, and all of the covenants and conditions of this Lease shall be binding upon the parties hereto with respect to such whole or part of the Premises. Nevertheless, Tenant’s obligation to pay Rent shall not commence until the Rent Commencement Date and Tenant shall pay Base Rent and any Additional Rent that may be due under ARTICLE 5 on the Rent Commencement Date and upon the first day of each calendar month thereafter at the rates set forth in ARTICLES 1 and 5 hereof. Tenant shall pay for electricity used by Tenant following commencement of Tenant’s construction of the Initial Alterations in the Premises as determined by actual check metering of such usage.

3.03 No Change in Lease Term. The occurrence of any of the events described in this ARTICLE 3 shall not be deemed to accelerate or defer the Termination Date.

3.04 Appurtenant Rights. Tenant shall have, as appurtenant to the Premises, the right (i) to use, in common with others, to the extent space is available therein, the shafts, stacks, pipes, ducts, risers and conduits that are not for the exclusive use of other tenants in the Building, (ii) to use vertical conduits, installed by Tenant at its sole cost and expense, in locations approved by Landlord, for telecommunications running from the Premises to the roof of the Building or a below grade point of entry into the Building, (iii) to install, at Tenant’s sole cost and expense, fiber optic cabling, in conduits and locations approved by Landlord, (iv) to install, use, maintain and repair, a standby generator, in accordance with ARTICLE 45 below, and the Dish/Antenna (as defined in ARTICLE 44 below), and (v) to use the roof area designated on Exhibit A-2 for the installation and maintenance of a roof deck on the terms and conditions set forth in Section 3.05.

3.05 Roof Deck. If Tenant elects to install a roof deck as described in Section 3.04; such roof deck shall be subject to all Legal Requirements as if the same were a part of the Premises; installed and maintained at Tenant’s expense (but the Allowance provided hereunder may be used for design and installation of the same), removed and replaced at Tenant’s expense as required for roof maintenance, and otherwise subject to all requirements and rights applicable to Initial Alterations, including, without limitation, that the Tenant shall have no obligation of restoration with regard to the roof deck. Tenant shall maintain liability insurance with respect thereto as if the same were part of the Premises. Tenant shall be responsible for any material damage caused to the roof or any other part of the Building by the installation, use, maintenance, removal or replacement of the roof deck, to the extent caused by Tenant, Tenant’s invitees or any of Tenant’s agents or representatives as a result of Tenant’s exercise of its rights with respect to the roof deck. Tenant agrees that if it makes use of the roof for a roof deck, it will keep the roof of the Building free of all trash or waste materials produced by Tenant, Tenant’s invitees or any of Tenant’s agents or representatives. Except as
may arise from the negligence of the Landlord, neither Landlord nor its agents shall have any responsibility or liability for the conduct or safety of any of Tenant, Tenant’s invitees or any of Tenant’s agents or representatives while on the roof deck. If Tenant elects to remove the roof deck, Tenant shall repair any damage to the roof caused by such removal, including the patching of any holes. Tenant specifically acknowledges and agrees that the terms and conditions of ARTICLE 14 regarding indemnification and waiver of claims shall apply with full force and effect to the roof deck.
ARTICLE 4.
BASE RENT

Commencing on the Rent Commencement Date, Tenant shall pay to Landlord or Landlord’s agent without notice or demand at Copley Place Associates, LLC, c/o Simon Property Group, Inc., P.O. Box 5631, Indianapolis, Indiana 40206-5631, or at such other place as Landlord may from time to time designate in writing, in coin or currency which, at the time of payment, is legal tender for private or public debts in the United States of America, the Base Rent specified in ARTICLE 1 hereof in the equal monthly installments specified in ARTICLE 1 hereof in advance on or before the first day of each and every month (and partial month, if any) during the Term following the Rent Commencement Date, without any abatement, counterclaim, set-off or deduction whatsoever, except as expressly provided herein; in this regard, it is understood that the parties have agreed to such remedies with respect to those instances, if any, in which the parties have determined that such remedies are appropriate. If the Rent Commencement Date for any portion of the Premises is other than on the first day of a month or the Term ends other than on the last day of the month, the Base Rent for such month shall be prorated. The prorated Base Rent for the portion of the month in which the Rent Commencement Date occurs shall be paid on the Rent Commencement Date.

ARTICLE 5.
ADDITIONAL RENT

5.01 Obligation as to Additional Rent. In addition to paying the Base Rent specified in ARTICLE 4 hereof, Tenant shall, commencing on the Rent Commencement Date and for the duration of the Term, pay as “Additional Rent” the amounts determined pursuant to Sections 5.03 and 5.04 of this ARTICLE 5. The Base Rent and the Additional Rent are sometimes collectively referred to in this Lease as the “Rent”. All amounts due under this ARTICLE as Additional Rent shall be payable for the same periods and in the same manner, time and place as the Base Rent and in the same currency, without any abatement, counterclaim, set-off or deduction whatsoever, except as expressly set forth herein. Without limitation on other obligations of Tenant that shall survive the expiration of the Term, the obligations of Tenant to pay the Additional Rent provided for in this ARTICLE 5 shall survive the expiration of the Term for a period of eighteen (18) months. For any partial Calendar Year following the Rent Commencement Date, Tenant shall be obligated to pay only a pro rata share of the Additional Rent, based on the number of days of the Term falling within such Calendar Year.

5.02 Definitions. As used in this ARTICLE 5, the terms:

   (i) “Calendar Year” shall mean each calendar year in which any part of the Term falls, through and including the year in which the Term expires.

   (ii) “Tenant’s Proportionate Tax Share” shall mean the percentage specified in ARTICLE 1 hereof, being the percentage calculated by dividing the rentable area contained in the Premises by 824,186 (being 95% of the rentable square foot area of the Office Section).
(iii) “Tenant’s Proportionate Expense Share” shall mean the percentage specified in ARTICLE 1 hereof, being the percentage calculated by dividing the rentable area contained in the Premises by 824,186 (being 95% of the rentable square foot area of the Office Section).

(iv) “Taxes” shall mean all real estate taxes and assessments, special or otherwise, levied or assessed upon or with respect to the Property or any part thereof including without limitation Common Areas as such taxes and assessments are reasonably determined by Landlord to be for the benefit of the Office Section and ad valorem taxes for any personal property of Landlord to the extent used in connection with the Office Section. For purposes of clarity, it is understood that there is one real estate tax bill for the Property and that Landlord allocates to the Office Section real estate taxes and assessments on the entire Property based upon the reasonable determination of Landlord. Should the Commonwealth of Massachusetts, or any political subdivision thereof, or any other governmental authority having jurisdiction over the Building, (a) impose a tax, assessment, charge or fee, which Landlord shall be required to pay, by way of substitution for or as a supplement to such real estate taxes and ad valorem personal property taxes, or (b) impose an income or franchise tax or a tax on rents in substitution for or as a supplement to a tax levied against the Property or any part thereof and/or the personal property used by Landlord in connection with the Property or any part thereof, all such taxes, assessments, fees or charges (hereinafter defined as “in lieu of taxes”) shall be deemed to constitute Taxes hereunder. Taxes shall also include, in the year paid, all fees and costs reasonably incurred by Landlord in seeking to obtain a reduction of, or a limit on the increase in, any Taxes, regardless of whether any reduction or limitation is obtained. Taxes shall not include any inheritance, estate, succession, transfer, gift, franchise, corporate excise taxes, transfer taxes, or net income or capital stock tax. If less than 95% of the Office Section is occupied during all or a portion of the Tax Base Year or any Adjustment Year, Landlord shall make an appropriate adjustment in Taxes for such year by adjusting the amount deemed to be Taxes for such Calendar Year so that Tenant’s responsibility for Taxes shall be an amount equal to the amount it would have paid on account of Taxes had the Office Section been 95% occupied. In computing the Adjustment Amount under Section 5.03, any refund of Taxes received by Landlord in the period during which Taxes is being computed and which is available to benefit Tenant as described in this ARTICLE 5, shall, net of the cost of obtaining such refund (to the extent costs were not previously included in Taxes or Operating Expenses), reduce Taxes to which Section 5.03 is applicable; and if Tenant expands into space formerly occupied by other tenants, which expansion space becomes subject to this Lease, Tenant shall not be entitled to any refund or credit in connection with a refund or abatement of Taxes for periods prior to the commencement date for Tenant’s lease of such expansion space. All references to Taxes “for” a particular Calendar Year shall be deemed to refer to Taxes due and payable during such Calendar Year without regard to when such Taxes are assessed or levied.

(v) “Operating Expenses” mean all expenses, costs and disbursements of every kind and nature, other than Taxes, paid or incurred by Landlord in operating, managing, repairing and maintaining the Property and its appurtenances as such expenses, costs and disbursements are reasonably allocated on a fair and equitable basis.
to the Office Section by the Landlord in its sole reasonable judgment, or as the same are incurred directly in the operation of the Office Section. Operating Expenses shall include, without limitation: premiums for fire, casualty, liability and such other insurance as Landlord may from time to time maintain; security expenses; compensation and all fringe benefits, workmen’s compensation insurance premiums and payroll taxes paid by Landlord to, for or with respect to all persons engaged in operating, maintaining, or cleaning the Property (equitably apportioned, if such personnel serve the Property and other properties); steam, water, sewer, stormwater, electric, gas, telephone, and other utility charges to the Building not billed directly to tenants by Landlord or the utility; expenses incurred in connection with the central plant furnishing heating, ventilating and air conditioning to the Office Section (and to the Building and the Property where and to the extent the expenses of the Building and the Property are otherwise allocable to the Office Section), which expenses may include a reasonable fee paid to the independent operator of such central plant; costs of lighting, ventilating, (including maintaining and repairing ventilating fans and fan rooms) making routine repairs to and maintenance of underground roadways (and the access ramps servicing such roadways) and railroad platforms and railroad rights of way (including track); costs of repairing and maintaining fire protection systems relating to the underground roadways, access ramps, railroad platforms and railroad rights of way; costs of building and cleaning supplies and equipment (including rental); cost of maintenance, cleaning and repairs; cost of snow plowing or removal, or both, and care of interior and exterior landscaping; payments to independent contractors under contracts for cleaning, operating, management, maintenance and repair (which payments may be to affiliates of Landlord so long as not more than the market rate for such services is included in determining Tenant’s share of Operating Expenses); all other expenses paid in connection with cleaning, operating, management, maintenance and repair, and the amortized cost of capital expenditures (provided that replacement parts or components which are essentially in the nature of regular maintenance replacements even though classified for accounting purposes as capital and which are installed in the ordinary course of business shall not be deemed capital for these purposes and shall not therefore be capital expenditures for purposes of this Lease) which are: (a) in good faith based upon engineering estimates intended to (I) stabilize or reduce, over the portion of the useful life of such improvements or equipment within the then Term, operating expense costs that would otherwise be incurred or (II) improve the operating efficiency of the Property; or (b) required to comply with any Laws that are enacted, or first become effective, after the date of this Lease. The amount included in any Calendar Year with respect to such capital expenditure shall be the total expenditure amortized by Landlord over the useful life thereof determined in accordance with generally accepted accounting principles or, in the case of those items described in clause (a)(I) or clause (a)(II) above, the lesser of the useful life of such items and the Payback Period (defined below). The amortized cost of a capital expenditure may, at Landlord’s option, include actual rate paid by Landlord to finance the capital expenditure or imputed interest at the rate that Landlord is charged for moneys then borrowed by Landlord or by an affiliate that makes such funds available to Landlord for operations. “Payback Period” means the reasonably estimated period of time that it takes for the cost savings resulting from a capital expenditure to equal the total capital expenditure.

Operating Expenses shall not, however, include the following:
(a) costs of any alterations or special services rendered to individual tenants (including Tenant), for which a special, separate charge shall be made or which is not furnished generally to all office tenants of the Building;

(b) Taxes;

(c) interest or principal or financing costs on mortgages encumbering the land on which the Building is located or the Building or relating to funds borrowed by Landlord, or any ground lease rent or other rent payable by Landlord to the holder of any ground lease or other lease to the Landlord, as tenant, of the Property or any portion thereof;

(d) leasing commissions, marketing costs, advertising, legal, space planning, construction and related expenses (including permitting, licensing and inspection fees), and lease concessions incurred in procuring, negotiating or disputing leases or subleases with, and installing leasehold improvements for, tenants, subtenants or prospective tenants or subtenants of the Building;

(e) any other expenses for which Landlord actually receives during the applicable period direct reimbursement from insurance (or if Landlord fails to carry the insurance required hereunder, the reimbursement Landlord would have received had it carried such requisite insurance), condemnation awards, other tenants or any other source;

(f) any costs in connection with the repair, replacement or correction of any defective construction work or equipment which is covered by an applicable warranty and for which (and to the extent which) Landlord recovers with respect thereto;

(g) any charges under any maintenance or management contract made with an affiliate of Landlord to the extent such charges exceed what would have been paid at arm’s length with an unrelated party;

(h) any costs, fines or penalties incurred due to the violation by Landlord or any other tenant of any law;

(i) any costs of environmental remediation for which Landlord is responsible under this Lease, or for which any other tenant or other third party is responsible under the law;

(j) costs incurred in connection with the sale, financing or refinancing of the Property or any portion thereof;

(k) fines, interest and penalties incurred due to the late payment of Taxes, or the failure to file tax or informational returns when due, or due to the late payment of Operating Expenses;

(l) organizational expenses associated with the creation and operation of the entity which constitutes Landlord, including Landlord’s general corporate overhead, in-house legal fees and any entertainment, dining or travel expenses of Landlord;
(m) any penalties or damages that Landlord pays to Tenant under this Lease or to other tenants in the Building under their respective leases;

(n) the amount of judgments against Landlord or settlements of third party claims against Landlord and the amount of attorneys’ fees in connection with any of the same (but the foregoing shall not prevent the application of insurance carried by Landlord under this Lease to the same);

(o) costs of the operation of the Copley Garage or the Dartmouth Street Garage (as such terms are hereinafter defined);

(p) rentals and other related expenses incurred in leasing heating, ventilating and air conditioning systems, elevators or other equipment ordinarily considered to be capital items, except (i) expenses in connection with making repairs on or keeping Buildings systems in operation while repairs are being made and (ii) costs of equipment not affixed to the Building which is used in providing janitorial or similar services;

(q) capital expenditures which are not specifically included in Operating Expenses as set forth above;

(r) advertising and promotional expenditures and costs of signs in or on the Building identifying the owner of the Building or other tenants’ signs, costs arising from Landlord’s charitable or political contributions, costs for sculpture, paintings or other objects of art, other than maintenance of the same, and the cost of any “tenant relations” parties, events or promotion;

(s) the cost of any electric power used by any tenant in the Building for which such tenant is billed directly by Landlord including without limitation by reason of such tenant’s usage being metered or sub-metered, or electric power costs for which any tenant directly contracts with the local public service company;

(t) bad debt, rental loss or any reserves for repairs or replacements; or services and utilities provided, taxes attributable to, and costs incurred in connection with the operation of the retail, parking, and restaurant operations in the Building; or

(u) costs of so-called lease or credit enhancement insurance or similar insurance products, whether or not the same is required by any mortgagee of the Property, which are obtained for the purpose of obtaining financing or similar credit benefits that inure to the owner or mortgagee of the Property.

If less than 95% of the Office Section’s rentable area shall have been occupied by tenant(s) at any time during any Calendar Year (including the Operating Expense Base Year), for purposes of determining the Adjustment Amount (as hereinafter defined) and the Operating Expense in the Base Year, each component of Operating Expenses for such Calendar Year allocated to the Office Section that varies with fluctuations in occupancy shall be deemed to be an amount equal to the like component which would reasonably be expected to have been incurred had such occupancy been 95% throughout such Calendar Year (including the Operating Expense Base Year, as applicable), so that the amount Tenant actually pays on account of Operating Expenses paid or incurred by Landlord reflects the amount Tenant would have paid if
the Office Section would have been 95% occupied during such period. If any item of Operating Expenses, though paid or incurred in one calendar year, relates to more than one Calendar Year, at the option of Landlord such item may be proportionately allocated among such related calendar years.

5.03 Expense & Tax Adjustment. Tenant shall pay to Landlord or Landlord’s agent as Additional Rent, a sum (“Adjustment Amount”) equal to the sum of (i) Tenant’s Proportionate Expense Share multiplied by the amount by which (a) Operating Expenses incurred in each Calendar Year exceed (b) Base Year Operating Expenses plus (ii) Tenant’s Proportionate Tax Share multiplied by the amount by which (a) Taxes payable with respect to each Calendar Year exceed (b) Base Year Taxes. The Adjustment Amount with respect to each Calendar Year shall be paid in monthly installments, in an amount reasonably estimated from time to time by Landlord and communicated by written notice to Tenant, which estimate may be revised to reflect increases in Taxes and Operating Expense adjustments. Landlord shall cause to be kept books and records showing Operating Expenses in accordance with an appropriate system of accounts and accounting practices consistently maintained for a period of at least two (2) years following the conclusion of each Calendar Year during the Term. Following the close of each Calendar Year, Landlord shall cause the amount of the Adjustment Amount for such Calendar Year to be computed based on Operating Expenses and Taxes for such Calendar Year and Landlord shall deliver to Tenant a statement of such amount and within thirty (30) days after receipt of such statement, Tenant shall pay any deficiency to Landlord as shown by such statement, as the same may have been adjusted by reason of such review. If the total of the estimated monthly installments paid by Tenant during any Calendar Year exceed the actual Adjustment Amount due from Tenant for such Calendar Year, at Landlord’s option such excess shall be either credited against payments next due hereunder or refunded by Landlord provided Tenant is not then in default hereunder with respect to any monetary obligation or in default beyond applicable notice and cure periods with respect to any other obligations. Delay in computation of the Adjustment Amount or a delay in the delivery of a statement of such amount shall not be deemed a default hereunder or a waiver of Landlord’s right to collect the Adjustment Amount hereunder; provided, however, Landlord’s failure to deliver such computation and statement within eighteen (18) months after the end of the applicable Calendar Year shall be deemed a waiver of Landlord’s right to collect any amount in addition to the amounts theretofore collected with respect to such applicable Calendar Year on account of Operating Expenses and Taxes (but such failure or delay in delivery shall not entitle Tenant to a refund of estimated amounts collected with respect to Operating Expenses and Taxes with respect to such applicable Calendar Year). The provisions of this Section 5.03 shall survive the expiration or earlier termination of this Lease.

5.04 Adjustment for Services not Rendered by Landlord. Tenant acknowledges that if Landlord is not furnishing any particular work or service the cost of which, if performed by Landlord, would be included in Operating Expenses, to any tenant who has undertaken to perform such work or service in lieu of the performance thereof by Landlord, and, as a result, Operating Expenses are reduced, Operating Expenses shall be deemed for the purpose of determining the Adjustment Amount to be increased by an amount equal to the additional Operating Expenses which would reasonably have been incurred during such period by Landlord if it had at its own expense furnished such work or service to such tenant. Furthermore, to the extent Landlord incurs any category or item contained within Operating Expenses that should
have been but was not included in the Base Year, then the Base Year Operating Expenses shall be increased by the amount which should have been included in the Base Year Operating Expenses.

5.05 Audit Rights. Tenant may, within one hundred eighty (180) days after receiving Landlord’s statement of Operating Expenses or Taxes, give Landlord written notice (“Review Notice”) that Tenant intends to review Landlord’s records of the Operating Expenses or Taxes for that calendar year and, if Tenant so chooses, the Calendar Year immediately preceding and/or the Operating Expense Base Year and Tax Base Year. Within a reasonable time after receipt of the Review Notice, Landlord shall make all pertinent records available for inspection by electronic files or in hard copy (which hard copies shall be provided at the Building and may, at Tenant’s expense, be copied). Such records shall set forth in reasonable detail the Operating Expenses or Taxes and shall include reasonable backup necessary for Tenant to conduct its review, including the records for the previous calendar year or base year for comparison. Within one hundred eighty (180) days after the records are made available to Tenant, Tenant shall have the right to give Landlord written notice (an “Objection Notice”) stating in reasonable detail any objection to Landlord’s statement of Operating Expenses or Taxes for the years under review. Tenant shall be deemed to have approved Landlord’s statement of Expenses or Taxes and shall be barred from raising any claims regarding the Operating Expenses or Taxes for that year if Tenant fails to give Landlord an Objection Notice within the 180 day period following the receipt of the statement for the next succeeding Calendar Year or fails to provide Landlord with a Review Notice within the applicable 180 day period described above. If Tenant provides Landlord with a timely Objection Notice, Landlord and Tenant shall work together in good faith to resolve any issues raised in Tenant’s Objection Notice. In the event Landlord and Tenant are unable to reach a mutual determination of the issues, Tenant shall have the right to have professional auditors conduct a review of Landlord’s books and records relating to Operating Expenses or Taxes incurred during the period. Such professional auditors may not, however, be engaged on a contingent fee basis. Such an audit may occur not more often than once in a year; shall be conducted within twelve (12) months (plus any period for which Landlord defers the audit as provided in this sentence) of receipt of a statement of the statement of Operating Expenses and Taxes (and the other documentation to which Tenant is entitled as set forth above) for the period being audited; shall be conducted during regular business hours of Landlord’s property manager at its office in the Boston, Massachusetts metropolitan area; provided, however, so long as Simon Property Group, Inc. or an affiliate is the property manager of the Building and the Building is owned by an entity in which an affiliate of Simon Property Group has an economic interest, such audit must be conducted in the Indianapolis, Indiana office of Landlord. Such audit shall occur on the date requested by Tenant which shall be on not less than fifteen (15) business days’ notice from Tenant to Landlord and may be deferred by Landlord, by notice to Tenant given at least ten (10) business days before the date proposed by Tenant, for up to one (1) month to a date convenient to Landlord’s property manager and Tenant. Landlord shall be provided with a copy of such third-party audit. If Landlord and Tenant determine without a third party audit, or if such audit demonstrates, that Operating Expenses or Taxes for the calendar year are less than reported, Landlord shall provide Tenant with a credit against the next installment of Rent in the amount of the overpayment by Tenant. Likewise, if Landlord and Tenant determine that Operating Expenses or Taxes for the calendar year are greater than reported, or if the audit so demonstrates, Tenant shall pay Landlord the amount of any underpayment within thirty (30) days. In addition, if as a result of an audit, Operating Expenses
or Taxes are found to be overstated by more than five percent (5%), Landlord shall pay to Tenant, Tenant’s reasonable cost of conducting such audit, not to exceed $15,000.00, plus, if applicable, reasonable travel costs to Indianapolis for necessary auditing staff. The records obtained by Tenant shall be treated as confidential. In no event shall Tenant be permitted to examine Landlord’s records or to dispute any statement of Operating Expenses or Taxes unless Tenant has paid and continues to pay during the period of the audit all Rent when due.

5.06 **Billing for Electricity.**

(i) **Lack of Separate Metering.** The Premises are not separately metered for electricity and, accordingly, Tenant shall pay Landlord as further Additional Rent, in monthly installments at the time prescribed for monthly installments, the electrical charge computed by Landlord based on a check meter installed at Landlord’s sole cost and expense and the applicable rates and surcharges of the electrical utility serving the Premises (without any surcharges by Landlord).

(ii) **Separate Metering.** In the event that Landlord in its sole discretion subsequently makes arrangements with the utility company supplying electricity to the Premises for separate metering and billing, Tenant shall pay (as hereinafter described) for the use of all electrical service to the Premises (other than the electrical service necessary for Landlord to fulfill its obligation to provide heating and air conditioning as provided in subsection 8.01(i) hereof). In such event, Tenant shall be billed directly by such utility company and Tenant agrees to pay each bill promptly in accordance with its terms. In the event that for any reason Tenant cannot be billed directly, Landlord shall forward each bill received by it with respect to the Premises to Tenant and Tenant shall pay such bill promptly in accordance with its terms.

**ARTICLE 6. USE OF PREMISES**

Tenant shall use and occupy the Premises in accordance with law; and solely for the Permitted Uses specified in ARTICLE 1 hereof and for no other purpose or purposes. For purposes of clarity, it is understood that an office use shall include the right of the Tenant to conduct an on-line retail operation; provided, however, Tenant shall have no right to conduct an in-person retail operation on the Premises.

**ARTICLE 7. CONDITION OF PREMISES; LANDLORD’S WORK**

7.01 **Condition of Premises.** The Premises are demised to Tenant and Tenant accepts the same “as-is”, except that (a) if, not later than sixty (60) days following the date of this Lease, Tenant notifies Landlord that the Initial Premises or a portion thereof (clearly designated in such notice to Landlord) are to be delivered in shell condition (but absent such notice Landlord will not otherwise be obligated to perform the Shell Work, time being of the essence of such notice), the Landlord shall, with respect to such designated portion(s) of the Premises, perform the Shell Work described in Exhibit B-1 at Landlord’s sole cost and expense prior to September 1, 2013, and all other work necessary to prepare the Initial Premises for Tenant’s occupancy shall be
performed at Tenant’s sole cost and expense, in accordance with the applicable provisions of this Lease and (b) as to space added to the Premises pursuant to Section 42.01, if Tenant elects as provided therein, that some or all of the space so added shall be delivered in shell condition (but absent such notice Landlord will not otherwise be obligated to perform the Shell Work, time being of the essence of such notice), the Landlord shall, with respect to such designated portion(s) of the Premises, perform the Shell Work described in Exhibit B-1 at Landlord’s sole cost and expense prior to the date which is ninety (90) days following the date on which the additional space would be delivered under Section 42.01 but for the Tenant election that the same be delivered in shell condition, and all other work necessary to prepare the space so added under Section 42.01 for Tenant’s occupancy shall be performed at Tenant’s sole cost and expense, in accordance with the applicable provisions of this Lease. Tenant’s taking possession of any portion of the Premises shall be conclusive evidence that such portion of the Premises was in good order and satisfactory condition when Tenant took possession, and except for latent defects not readily apparent from a careful inspection of the Premises without cutting into or otherwise disturbing walls, floors or ceilings and punchlist items of which Tenant has delivered notice to Landlord, excluding items of damage caused by Tenant or its agents, independent contractors or suppliers (subject to the provisions of Section 3.01 of this Lease). No promise of Landlord to alter, remodel or improve the Property and no representation by Landlord or its agents respecting the condition of the Property has been made to Tenant or relied upon by Tenant other than as may be contained in this Lease or in any written amendment hereto signed by Landlord and Tenant.

7.02 Building Renovations. Subject to Landlord obtaining Boston Redevelopment Authority and City of Boston approvals, as well as approvals and/or relocation agreements of tenants affected by proposed construction, including without limitation Barneys New York, Banana Republic, Sovereign Bank, BCBG and Karen Clarke, Landlord shall, at Landlord’s sole cost and expense, complete the planned renovations to the Property (not limited to new office lobby on retail level, upgraded sky lobby, conference center and roof deck). Landlord’s intention is that such approvals will be diligently pursued so as to permit completion of such renovations no later than the Commencement Date.

7.03 Landlord’s Work. Prior to the Commencement Date, Landlord shall, at its sole cost and expense substantially complete, in a good and workmanlike manner and in accordance with Legal Requirements, Landlord’s Work as set forth in Exhibit B-2.

ARTICLE 8.
SERVICES

8.01 List of Services. Landlord shall provide the following services, the costs of which are included within Operating Expenses, on all days during the Term, except Sundays and holidays, unless otherwise stated, and subject to all governmental rules, regulations and guidelines applicable thereto:

(i) HVAC. Heating and air conditioning in the Premises during the normal heating and air conditioning seasons, from Monday through Friday, during the period from 8 a.m. to 6 p.m. and on Saturday during the period from 8 a.m. to 1 p.m., satisfying the standards set forth in Schedule 8.01 attached hereto. Tenant will pay for all heating and air conditioning requested and furnished prior to or following such hours at rates to be established from time to time by Landlord and intended by Landlord to reflect, when set, Landlord’s good faith estimate of its cost to deliver such after-hours heating and air conditioning. Requests for any additional services shall be in writing and delivered to Landlord’s property manager not later than 2 p.m. of the previous day.

(ii) Electric. Adequate electrical wiring and facilities for standard building lighting fixtures provided by Landlord and for Tenant’s incidental uses (it being understood that Tenant is to bear the cost of replacement of all lamps, tubes, ballasts and starters for lighting fixtures in the Premises); provided that (a) the connected electrical load for lighting and incidental use equipment does not exceed an average of six (6) watts per rentable square foot of the Premises; (b) the electricity so furnished for incidental uses will be at 277 volts (and may be stepped down at Tenant’s expense in accordance with Tenant’s requirements) and no electrical circuit for the supply of such incidental use will have a current capacity exceeding 20 amperes; and (c) such electricity will be used only for equipment and accessories normal to office usage, including without limitation a server room. If Tenant’s requirements for such electricity (including without limitation supplemental cooling requirements by reason of such uses) are in excess of those set forth in the preceding sentence, Landlord reserves the right to require Tenant to install the conduit, wiring and other equipment necessary to supply electricity for such excess use requirements at Tenant’s expense.

(iii) Water. Water at temperatures and otherwise as supplied by the City of Boston or other water provider for drinking, lavatory and toilet purposes and to water which Tenant can use to supply its condenser units for supplemental heating, ventilation and air-conditioning as provided in Section 8.3(c) below (but Landlord shall not have an obligation to provide so-called condenser water).

(iv) Janitorial. Janitorial services as delineated in Exhibit D attached hereto.

(v) Window Washing. Window washing of the inside and outside of windows in the Building’s perimeter walls as may be situated in the Premises as delineated in Exhibit D attached hereto.

(vi) Passenger Elevator. Non-exclusive automatic passenger elevator service twenty-four hours (24) a day, seven (7) days a week, three hundred sixty-five (365) days a year.

(vii) Freight Elevator and Loading Dock. Non-exclusive freight elevator service to all floors of the Premises and access.
to the Buildings loading dock, subject to scheduling by Landlord.

(viii) Access. Access to the Premises twenty-four (24) hours per day, seven (7) days a week, three hundred sixty-five (365) days per year, subject to fire, casualty and other causes beyond Landlord’s control.
8.02 **Landlord Repairs and Maintenance.** Landlord shall operate the Building in a good and quality manner at all times and shall maintain and repair the Building components described in this subsection 8.02 in good condition and repair, consistent with standards for similar office buildings in downtown Boston, Massachusetts which have services, systems and facilities comparable to the Building. Landlord agrees to keep neat and clean and in good order, condition and repair, and in compliance with all Legal Requirements, the roof, public and common areas, plazas, exterior walls (including exterior glass), foundation, footings, structure and structural elements of the Building and the plumbing, mechanical, electrical, fire safety, sprinkler, heating, ventilation, air conditioning, elevator and telecommunications systems, ducts, pipes and conduits serving the Premises and the other portions of the Building, but nothing herein shall require the Landlord to repair or maintain any portion thereof that is for the exclusive use of Tenant or any tenant or occupant of the Building. All costs incurred by Landlord in the performance of its obligations under this Section 8.02 shall be included in Operating Expenses subject to and in accordance with ARTICLE 5. If (a) Landlord fails to make repairs or replacements which Landlord has undertaken to make under the provisions of this subsection 8.02 or elsewhere in this Lease and (b) by reason of such failure, there is an imminent threat in the Premises to persons or property or Tenant is prevented from conducting its business operations in the Premises, Tenant may elect to take reasonable action within the Premises (and without affecting structure or systems outside of the Premises) solely to remedy the condition threatening such persons or property or Tenant’s business operations. Tenant shall endeavor to give Landlord advance notice of the condition and the action, but if such notice is not reasonable under the circumstances, shall give notice to Landlord as soon as practicable. Tenant shall not have any such right with respect to any condition which Landlord intends to remedy in accordance with a comprehensive plan, intended to manage the necessary repair or replacement, which has been communicated to Tenant. In the event that Tenant remedies such imminent threat or condition preventing the conduct of Tenant’s business in the Premises, Landlord shall reimburse Tenant for all actual out-of-pocket costs reasonably incurred in connection which such repairs completed by Tenant hereunder within thirty (30) days after submission by Tenant to Landlord of a statement of such costs and a request for reimbursement thereof, together with reasonable back up documentation. In the event Landlord does not, within such thirty (30) day period following the submission of the request for reimbursement and the necessary documentation, make payment of the full amount for which Tenant submitted a request for reimbursement, Tenant may cause the matter to be submitted to arbitration by notice given to Landlord within five (5) business days of the end of the end of the thirty (30) day period, in which event Landlord and Tenant shall, during the ensuing ten (10) business days, attempt to agree on an arbitrator not affiliated with either party (and if they are unable to do so, either party may request that the President of the American Arbitration Association in Boston choose an arbitrator, as promptly as possible, meeting the criteria set forth below; provided, however, the parties shall each have the right during a five (5) business day period following the end of the ten (10) business day period to submit the names of not more than two (2) potential arbitrators meeting the said criteria and if the parties or either of them makes such a submission, the choice of the President of the American Arbitration Association shall be made from the list of potential arbitrators so submitted). The arbitrator shall have a period of ten (10) business days to determine (1) whether Tenant was authorized under this Section 8.02 to make the repairs made by it and (2) if so authorized the amount which Tenant is entitled to be reimbursed consistent with the rights of Tenant and the obligations of Landlord under this Section 8.02. If any amount
is owed by Landlord in addition to any amount which Landlord may have theretofore paid to Tenant with respect hereto, Landlord shall pay such amount within thirty (30) days following the decision of the arbitrator and if Landlord does not make such payment within such thirty (30) day period, Tenant may offset the amount the arbitrator determined was due to Tenant, less any portion thereof theretofore paid to Tenant, from Base Rent thereafter becoming due under this Lease. The arbitrator shall be a person with knowledge of commercial office property management (and not less than ten (10) years’ experience in the field of property management) sufficient to enable such person (a) to assess the requirement for Tenant having taken the actions taken by Tenant and (b) to analyze the cost of the repair work undertaken to assure the reasonability thereof. The expenses of the arbitrator shall be borne equally by the Landlord and the Tenant.

8.03 Intermuption of Services. Tenant agrees that Landlord shall not be liable in damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service, or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by repairs, renewals, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building after reasonable effort so to do, by any accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause beyond Landlord’s reasonable control; and such failures or delays or diminution (any such event, a “Service Failure”) shall never be deemed to constitute an eviction or disturbance of Tenant’s use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Notwithstanding the foregoing, if the Premises, or a material portion of the Premises, is made untenable (that is, Tenant cannot conduct its business in such portion) or inaccessible for a period in excess of five (5) consecutive business days as a result of the Service Failure that has been caused by Landlord’s act or omission with respect to matters within Landlord’s control (“Controlled Service Failure”), then Tenant, as its sole remedy, shall be entitled to receive an abatement of Rent payable hereunder during the period beginning on the sixth (6th) consecutive business day of the Controlled Service Failure and ending on the day the service has been restored. If the entire Premises has not been rendered untenable or inaccessible by such a Controlled Service Failure, the amount of abatement that Tenant is entitled to receive by reason of such a Controlled Service Failure shall be prorated based upon the percentage of the Premises rendered untenable or inaccessible and not used by Tenant. Notwithstanding the foregoing, business days during which the Premises or a material portion thereof are untenable or inaccessible, or during which all or nearly all the Premises are unusable, by reason of a Service Failure which arises from a fire or other casualty which is covered by the provisions of ARTICLE 13 shall in no event be considered in determining whether Tenant is entitled to an abatement of Rent under this Section 8.03 (in such event the provisions of Section 13.01 shall govern Tenant’s rights). In no event shall Landlord be liable to Tenant for any loss or damage, including the theft of Tenant’s property, arising out of or in connection with the failure of any security services, personnel or equipment.

8.04 Additional Services. Landlord may, but shall have no obligation to, provide such extra or additional services (beyond the services described in Section 8.01) as it is reasonably possible for Landlord to provide, and as Tenant may from time to time request in writing, within a reasonable period after the time such extra or additional services are requested; furthermore, if extra or additional elevator or heating and air conditioning services are requested, Landlord shall
not be required to furnish any such services unless Landlord has received advance notice from Tenant requesting such services prior to 2:00 p.m. on the business day next preceding the day with respect to which such services are requested. Failure by Landlord to furnish such services shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant’s business or otherwise. Tenant shall pay for such extra or additional services at Landlord’s scheduled rate therefor from time to time as quoted to other tenants of the Office Section, or if there be no scheduled rate, then at Landlord’s cost in providing them, such amount to be considered additional Rent hereunder. All charges for such extra or additional services shall be due and payable at the same time as the installment of Base Rent with which they are billed, or if billed separately, shall be due and payable within ten (10) days after Tenant receives Landlord’s bill therefor. Any such billings for extra or additional services shall include an itemization of the extra or additional services rendered and the charge for each such service.

8.05   **Energy Conservation.** Notwithstanding anything to the contrary in this ARTICLE 8 or elsewhere in this Lease, Landlord shall have the right to institute such policies, programs and measures as may be necessary or desirable, in Landlord’s discretion, for the conservation and/or preservation of energy or energy related services if consistent with similar programs instituted generally in first-class office buildings in Boston, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary.

**ARTICLE 9. COMPLIANCE WITH LAWS; REPAIRS; HAZARDOUS MATERIALS**

9.01   **Compliance With Laws.** Subject to the following provisions, each of Landlord, in the Base Building Work and in performance of its obligations under Section 8.02, and in its use, ownership, operation and management of the Property, and Tenant, in the Tenant Improvements and any other work it performs in the Building and in its use and occupancy of the Premises, shall comply in all material respects with the requirements of all applicable governmental laws, codes, ordinances, rules and regulations, whether now or hereinafter enacted, including without limitation the Americans With Disabilities Act (42 U.S.C. §12101 et. seq.) and the regulations and accessibility guidelines issued pursuant thereto and the laws set forth in M.G.L. Ch. 22, §13A and the regulations promulgated thereunder (Architectural Access Board Regulations) (collectively, “Legal Requirements”), to the extent that the same are applicable to the Building, and with any and all directions, rules and regulations of Boards of Fire Underwriters, Rating Boards or the like (or successor agencies); and Tenant shall obtain and maintain all permits, licenses and the like, required by all applicable laws in respect of Tenant’s particular use and occupancy of the Premises, as opposed to office use in general. Landlord will cooperate with Tenant’s efforts to obtain any such permits, licenses and the like, at no cost to Landlord. Notwithstanding the foregoing, in no event shall Tenant be responsible or liable for, or obligated to cure, any noncompliance with Legal Requirements existing on or before the Commencement Date, nor shall Tenant be responsible for any future violation of Legal Requirements that results in whole or in part, from Landlord’s acts or omissions or improvements to the Property. Furthermore, Tenant’s obligations under this Section 9.01 shall not include making any structural repairs or improvements to the Building.
9.02 Repairs. Subject to Section 12.01, Tenant will, at Tenant’s own expense, keep the Premises, including all improvements, fixtures and furnishings therein, in good order, repair and condition at all times during the Term, and, except as to damage resulting from ordinary wear and tear, Tenant shall promptly and adequately repair all damage to the Premises and replace or repair all damaged or broken glass, fixtures and appurtenances, under the supervision and subject to the approval of Landlord, and within any reasonable period of time specified by Landlord; provided, however, as to any damage resulting from casualty, Tenant shall have no responsibility for repair or replacement which is Landlord’s responsibility under this Lease. If Tenant does not do so, Landlord may, but shall not be obligated to, make such repairs and replacements, and Tenant shall pay Landlord the cost thereof, including a percentage of the cost thereof (to be uniformly established for the Office Section) sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord’s involvement with such repairs and replacements forthwith upon being billed for same. Landlord may, but shall not be required to, enter the Premises at all reasonable times on reasonable advance notice (and at any time in emergency situations, with such notice as is commensurate with the emergency) to make such repairs, alterations, improvements and additions to the Premises, to the Office Section or the Building or to any equipment located in the Office Section or the Building as Landlord shall desire or deem necessary or as Landlord may be required to do by governmental authority or court order or decree.

9.03 Hazardous Materials.

(i) Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or hazardous substances, or materials (collectively the “Hazardous Materials”). Tenant shall not allow the storage or use of Hazardous Materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such Hazardous Materials, nor allow to be brought into the Building any Hazardous Materials except to use in the ordinary course of Tenant’s business, and then only after written notice is given to Landlord of the identity of Hazardous Materials. Without limitation, Hazardous Materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local laws and the regulations adopted under these acts; provided, however, Hazardous Materials shall not include customary office and cleaning supplies, in reasonable quantities which are maintained and stored in accordance with manufacturer’s specification for maintenance and storage in an office environment. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of Hazardous Materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges if such requirement applies to the Premises. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord’s request concerning Tenant’s best knowledge and belief regarding the presence of Hazardous Materials on the Premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of Hazardous Materials on the Premises occurring while Tenant is in possession or elsewhere if caused by Tenant or persons.
acting under Tenant. The within covenants shall survive the expiration or earlier termination of the Term.

(ii) Landlord hereby represents to Tenant that, to the best of its knowledge, there are no Hazardous Materials present on, in or under the land on which the Building is located that require investigation or remediation under applicable law. Tenant shall have no responsibility for and shall not assume or be deemed to have assumed any liability of Landlord on account of oil or Hazardous Materials on, at or in the Property prior to the date Tenant takes possession of the Premises. In no event, unless caused by Tenant or persons for whose conduct Tenant is responsible, shall Tenant be liable for any release of oil or hazardous substances occurring or accruing after the Term. Landlord shall indemnify, defend and hold Tenant harmless from and against any claims, damages, costs and liabilities, including consultants’ fees and reasonable attorneys fees, arising out of Landlord’s use, generation, storage or disposal of hazardous substances or oil on, under or about, or transported to or from, the Building or the Land. Landlord’s indemnification obligations under this Section 9.03(ii) shall survive the expiration or earlier termination of this Lease.

ARTICLE 10.
ADDITIONS AND ALTERATIONS

10.01 Consent Required. Tenant shall not, without the prior written consent of Landlord, make any alterations, improvements or additions (sometimes referred to in this Lease, collectively, as “Alterations”) to the Premises, which consent shall not be unreasonably, withheld, conditioned or delayed. Alterations to be made to the Initial Premises prior to the commencement of the Term or made initially to SSB Expansion Space and Early Expansion Space (as those terms are defined under Section 42.01) are referred to in this Lease as the “Initial Alterations”. If Landlord consents to said alterations, improvements or additions, it may impose such conditions with respect thereto as Landlord deems reasonable, including, without limitation, requiring Tenant to provide reasonable assurance that all costs incurred with respect to such work shall be fully and timely paid, insurance against liabilities which may arise out of such work, and plans and specifications plus permits necessary for such work, requiring Tenant to perform such work at times reasonably designated by Landlord; provided, however, such conditions shall not require Tenant to construct Initial Alterations during particular hours (although reasonable rules and regulations relating to regulating noise, odor and vibration resulting from such construction may be imposed). Notwithstanding the foregoing, Landlord’s consent shall not be necessary with respect to Alterations that do not affect the Building systems or structure or the roof skin and (a) are cosmetic in nature (such as paint, carpet and attached furniture) or (b) which in the aggregate (together with any reasonably related set of Alterations) cost less than $50,000.00 plus the costs of painting and carpeting related to the particular Alterations. Tenant shall have the right to hire its own contractors, subject to Landlord’s approval, which approval shall not be unreasonably withheld, conditioned or delayed; provided, that it is agreed that it shall not be unreasonable for Landlord to withhold consent to work in the Building by any contractor with whom Landlord has had quality or cooperation issues in the past. It is further understood that Landlord’s consent to the hiring by Tenant of Tenant’s own contractors may be withheld if Landlord’s permitting such hiring might reasonably be expected to adversely affect other construction in the Building or might reasonably be expected to result in
a material interruption of services provided to tenants of the Building. Any contractor hired by Tenant shall be appropriately insured as reasonably determined by Landlord. Tenant shall promptly pay to the contractor, when due, the cost of all such work and of all decorating required by reason thereof. In connection with seeking Landlord’s approval, plans and specifications regarding proposed Alterations shall be in such form and with such content as Landlord shall reasonably require and Tenant shall, in addition to all other expenses which Tenant is obligated to pay to Landlord hereunder, reimburse Landlord for all sums reasonably expended for unaffiliated third party consultants’ examination and approval of the architectural and working plans and specifications for the Alterations and, except in connection with the Initial Alterations to the Premises, shall pay Landlord for use of elevators and hoists during the making of the Alterations; provided, however, that Landlord shall have the exclusive right to determine the scheduling of (and shall cooperate reasonably with Tenant to coordinate) the use of such elevators and hoists which shall not be unreasonably withheld, conditioned or delayed. Landlord shall review and approve (or provide comments on) Tenant’s plans and specifications no later than ten (10) business days after submission. If Landlord fails to approve, object to or provide comments on Tenant’s submission of a set of plans and specifications within such ten (10) business day period, then Tenant may deliver a notice to Landlord stating that if Landlord fails to approve, object to or provide comments on such plans within two (2) business days following the delivery of such notice, and in such event, if Landlord fails to so approve, object to or provide comments on such plans within such two (2) business day period, Landlord shall be deemed to have approved the submitted set of plans and specifications. If any of the plans and specifications are disapproved by Landlord, Landlord shall provide Tenant with reasonably detailed reasons for such disapproval and the foregoing process shall be repeated until all of the plans and specifications shall have been approved or deemed approved by Landlord, except that Landlord’s approval of any revisions to the plans and specifications submitted in response to Landlord’s comments or objections shall be deemed given unless Landlord submits written comments or objections to Tenant within five (5) business days after receipt thereof, subject to the delivery of a second notice and Landlord’s failure to approve, object to or provide comments within two (2) business days following Landlord’s receipt thereof. Except for the reimbursement for third party consultants at commercially reasonable rates, Tenant will not be charged any Landlord supervisory, management or review fees in connection with any Alterations. Landlord’s architect and base building contractor will reasonably cooperate with Tenant to ensure timely completion of Alterations. Upon completion of such work Tenant shall deliver to Landlord, if payment is made directly to contractors, evidence of payment, contractors’ affidavits and full and final waivers of all liens for labor, services or materials, all in form satisfactory to Landlord. Tenant shall defend and hold Landlord, any mortgagee, the DOT (defined in Article 33U), the Property and the Building harmless from all costs, damages, liens and expenses related to such work. All work done by Tenant or its contractors pursuant to ARTICLES 9 or 10 shall be done in a good and workmanlike manner using only good grades of materials and shall comply with all insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies.

10.02 Improvements are Landlord’s Property. All alterations, improvements and additions to the Premises, whether temporary or permanent in character, made or paid for by Landlord or Tenant, shall without compensation to Tenant become Landlord’s property at the termination of this Lease by lapse of time or otherwise; provided, however, all articles of personal property and all business fixtures, machinery and equipment and furniture owned or
installed by Tenant solely at its expense in the Premises (all of which are herein referred to as “Tenant’s Property”) shall remain the property of Tenant and may be removed by Tenant or any person claiming under Tenant at any time or times during the Term and shall be removed by Tenant no later than the expiration or earlier termination of the Term. Any items of Tenant’s Property (except money, securities and like valuables) which remain on the Premises after the Termination Date or earlier termination of the Term shall be deemed to have been abandoned and in such case may either be retained by Landlord as its property or may be removed by Landlord and disposed of at Tenant’s expense (this provision shall survive the termination of this Lease).

10.03 Lines. Tenant may install, maintain, replace, remove or use any communications or computer wires, cables and related devices and fiber optic cabling (collectively the “Lines”) at the Property in or serving the Premises, provided: (a) Tenant shall obtain Landlord’s prior written consent, use an experienced and qualified contractor approved in writing by Landlord in accordance with, and subject to, the procedures and standards for approvals of contractors performing Alterations, and comply with all of the other provisions of ARTICLE 10.01, (b) any such installation, maintenance, replacement, removal or use shall not interfere with the use of any then existing Lines at the Building, (c) an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Building, as determined in Landlord’s reasonable opinion, (d) if Tenant at any time uses any equipment that may create an electromagnetic field exceeding the normal insulation ratings or ordinary twisted pair riser cable or cause radiation higher than normal background radiation, the Lines therefor (including riser cables) shall be appropriately insulated to prevent such excessive electromagnetic fields or radiation, (e) Tenant’s rights shall be subject to the rights of any regulated telephone company, and (f) Tenant shall pay all costs in connection therewith. Landlord reserves the right to require that Tenant remove any Lines located in or serving the Premises which are installed in violation of these provisions, or which are at any time in violation of any laws, ordinances, rules or regulations or represent a dangerous or potentially dangerous condition (whether such Lines were installed by Tenant or any other party claiming under Tenant), within fifteen (15) days after written notice.

Landlord may (but shall not have the obligation to): (i) install new Lines at the Building, (ii) create additional space for Lines at the Property, and (iii) reasonably direct, monitor and/or supervise the installation, maintenance, replacement and removal of, the allocation and periodic re-allocation of available space (if any) for, and the allocation of excess capacity (if any) on, any Lines now or hereafter installed at the Building by Landlord, Tenant or any other party (but Landlord shall have no right to monitor or control the information transmitted through such Lines). Such rights shall not be in limitation of other rights that may be available to Landlord by law or otherwise. If Landlord exercises any such rights, Landlord may charge Tenant for the costs attributable to Tenant, or may include those costs and all other costs in Operating Expenses under ARTICLE 5 (including without limitation, costs for acquiring and installing Lines and risers to accommodate new Lines and spare Lines, any associated computerized system and software for maintaining records of Line connections, and the fees of any consulting engineers and other experts); provided, any capital expenditures included in Operating Expenses hereunder shall be amortized (together with reasonable finance charges) as provided in subsection 5.02(v).
Tenant shall not be required to remove any or all Lines installed by or for Tenant within or serving the Premises upon termination of this Lease. All Lines shall become the property of Landlord (without payment by Landlord) upon termination of this Lease. Tenant shall not, without the prior written consent of Landlord in each instance, grant to any third party a security interest or lien in or on the Lines, and any such security interest or lien granted without Landlord’s written consent shall be null and void. Except to the extent arising from the intentional or negligent acts of Landlord or Landlord’s agents or employees, Landlord shall have no liability for damages arising from, and Landlord does not warrant that the Tenant’s use of any Lines will be free from the following (collectively called “Line Problems”): (x) any eavesdropping or wire-tapping by unauthorized parties, (y) any failure of any Lines to satisfy Tenant’s requirements, or (z) any shortages, failures, variations, interruptions, disconnections, loss or damage caused by the installation, maintenance, replacement, use or removal of Lines by or for other tenants or occupants at the Building, by any failure of the environmental conditions or the power supply for the Building to conform to any requirements for the Lines or any associated equipment, or any other problems associated with any Lines by any other cause. Under no circumstances shall any Line Problems be deemed an actual or constructive eviction of Tenant, render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant’s obligations under this Lease. Landlord in no event shall be liable for damages by reason of loss of profits, business interruption or other consequential damage arising from any Line Problems.

10.04 Specialty Alterations. Subject to the foregoing provisions, Tenant shall have the right to construct within the Premises computer rooms and any other specialized facilities, and may connect floors of the Premises by the installation of interconnecting stairs, as long as any such work does not impact the structural integrity of the Building; provided, however, if Tenant elects to construct any such installations or additions, or any other installations or additions which are not typical office-related leasehold improvements that require substantial or unusual expense to re-adapt the Premises for normal office purposes (collectively, “Specialty Alterations”), Landlord shall notify Tenant of Tenant’s removal or restoration obligations with respect to any Specialty Alterations at the time of Landlord’s approval of such Specialty Alterations, and Tenant shall be obligated to remove any identified Specialty Alterations at the expiration of the Term; provided, however, Landlord hereby agrees that Tenant shall not be required to remove or restore any of Tenant’s Initial Alterations (or Alterations that were comparable replacements of Initial Alterations) whether or not the same are Specialty Alterations.

ARTICLE 11. COVENANT AGAINST LIENS

Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon the Property, the Building or the Premises, or to affect any estate or interest of Landlord, Landlord’s lessor, any mortgagee or the DOT (defined in ARTICLE 33U). Tenant covenants and agrees not to suffer or permit any lien of mechanics, materialmen or others to be placed against the Property, the Building or the Premises, or to affect any estate or interest of Landlord, Landlord’s lessor, any mortgagee or the DOT, with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Tenant or the
ARTICLE 12.
INSURANCE

12.01 Waiver of Subrogation. Landlord and Tenant each hereby waive any and every claim for recovery from the other for any and all loss of or damage to the Property, Building or the Premises or to the contents thereof, which loss or damage is covered by valid and collectible physical damage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies. Inasmuch as this mutual waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Landlord and Tenant each agree to give to each insurance company which has issued, or in the future may issue, to its policies of physical damage insurance, written notice of the terms of this mutual waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver. Tenant’s waiver of subrogation as hereinafter set forth shall also run to the benefit of and extend to Landlord’s lessor and the DOT.

12.02 Coverage. Tenant shall purchase and maintain insurance during the entire Term for the benefit of Tenant, and, except for personal property insurance maintained by Tenant other than with respect to leasehold improvements, for the benefit of Landlord, the DOT and any mortgagee of which Tenant is given notice (as their respective interests may appear) (collectively, the “Insured Landlord Parties”) with terms, coverages and in companies reasonably satisfactory to Landlord, and with such increases in limits as Landlord may from time to time request and which are consistent with increases required of similar office tenants in Class A office buildings in Boston, but initially Tenant shall maintain the following coverages in the following amounts:

(i) Commercial General Liability. Commercial General Liability Insurance covering the Insured Landlord Parties and Landlord’s management agent for claims of bodily injury, personal injury and property damage arising out of Tenant’s operations, assumed liabilities or use of the Premises, for limits of liability not less than:

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bodily Injury and Property</td>
<td>$3,000,000 each occurrence</td>
</tr>
<tr>
<td>Damage Liability</td>
<td>$3,000,000 annual aggregate</td>
</tr>
<tr>
<td>Personal Injury Liability</td>
<td>$3,000,000 annual aggregate</td>
</tr>
<tr>
<td></td>
<td>0% Insured’s participation</td>
</tr>
</tbody>
</table>

(ii) Comprehensive Automobile. Comprehensive Automobile Insurance covering all owned, non-owned and hired automobiles of Tenant including the loading and unloading of any automobile with limits of liability not less than:

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bodily Injury and Property</td>
<td>$3,000,000 each occurrence</td>
</tr>
<tr>
<td>Damage Liability</td>
<td>$3,000,000 annual aggregate</td>
</tr>
</tbody>
</table>

(iii) Physical Damage. Physical Damage Insurance covering all additions, improvements and alterations to the Premises which are beyond the building standard tenant improvements provided by Landlord and all office furniture, trade fixtures, office equipment, merchandise and all other items of Tenant’s property on the Premises. Such insurance shall be written on an “all risks” of physical loss or damage basis, for the full replacement cost value of the covered items and in amounts that meet any coinsurance clauses of the policies of insurance.

(iv) Improvements and Betterments. From and after the time Tenant takes control of the Premises for purposes of its construction, Improvements and Betterments Insurance completed value (non-reporting) form coverage, including “all-risk” type coverage and coverage against the perils normally covered by a special extended coverage endorsement, collapse, cost of demolition, increased cost of construction and the value of the undamaged portion of the construction being undertaken by Tenant, in customary form for Massachusetts construction projects and to be maintained in such amounts as to afford one hundred percent (100%), non-contributory coverage against loss.

Tenant may provide such of the foregoing insurance coverage under a so-called blanket policy providing adequate coverage in Landlord’s reasonable judgment for the properties and risks being covered thereby. In the event Tenant elects to use a blanket policy, Tenant shall specifically notify Landlord thereof and provide such information regarding the properties and risks covered thereby as Landlord shall reasonably request. Tenant may, in addition, satisfy the limits requirements through umbrella coverage written with companies which would satisfy the provisions of this ARTICLE if such companies were providing the underlying coverage hereunder.

Tenant shall, prior to the commencement of the Term, furnish to Landlord certificates evidencing such coverage, on ACORD Form 27,
which certificates shall state that such insurance coverage may not be changed or canceled without at least thirty (30) days’ prior written notice to Landlord and Tenant and shall name Landlord and Landlord’s management agent as additional insureds (other than with respect to the insurance described in subsection 12.02(iii) above).

12.03 **Avoid Action Increasing Rates.** Tenant shall comply with all applicable laws and ordinances, all orders and decrees of court and all requirements of other governmental authorities having jurisdiction over the Building and of the applicable rating bureau, and shall not, directly or indirectly, make any use of the Premises which may thereby be prohibited or be dangerous to person or property or which may jeopardize any insurance coverage or may increase the cost of insurance or require additional insurance coverage. If by reason of the failure of Tenant to
comply with the provisions of this Section 12.03, (i) any insurance coverage is jeopardized, or (ii) insurance premiums are increased, Landlord shall have the option to require Tenant to make immediate payment of the increased insurance premium and if Tenant fails to do so, such failure shall constitute a default in the payment of Rent due under this Lease.

12.04 Landlord’s Insurance. Landlord agrees to maintain in full force and effect throughout the Term (i) Commercial General Liability Coverage with respect to the Property, and the conduct and operation of its business therein, with combined commercial general liability and umbrella coverage limits of not less than Ten Million Dollars ($10,000,000.00) for bodily injury or death and property damage in any one occurrence and shall name Tenant as an additional insured; and (ii) Cause of Loss Special Form property insurance (including commercially reasonable amounts of loss of rents coverage, as long as such coverage is available at commercially reasonable rates) with respect to the Building and the Building’s equipment and personal property, but excluding Tenant’s property and any alterations made by Tenant, in an amount equal to the replacement cost of the equipment and personal property that Landlord is obligated to insure hereunder.

ARTICLE 13.
FIRE OR OTHER CASUALTY

13.01 Effect of Casualty. ARTICLE 9 hereof notwithstanding, if the Premises or the access thereto shall be damaged by fire or other casualty and if such damage does not render all or a material portion of the Premises untenanted and if the Premises, the Office Section or the Building are not substantially damaged (as hereinafter defined), then Landlord shall, subject to building and zoning laws then applicable, repair and restore the same with reasonable promptness, subject to reasonable delays for insurance adjustments and delays caused by matters beyond Landlord’s reasonable control, but shall not be obligated to expend therefor an amount in excess of the proceeds of insurance recovered with respect thereto plus any associated deductible amount. If all or a material portion of the Premises are rendered untenanted by fire or other casualty, or if the Premises, the Office Section or the Building are substantially damaged by fire or other casualty (the term “substantially damaged” meaning damage of such a character that the same cannot, in the ordinary course, reasonably be expected to be repaired within one hundred eighty (180) days from the time that repair work would commence) and Landlord is terminating all other leases in Tower IV, then, in either such case, Landlord shall have the right to terminate this Lease by giving notice of Landlord’s election so to do not later than one hundred twenty (120) days after Landlord has ascertained all information required by Landlord to determine whether or not to terminate this Lease, including without limitation the amount of insurance proceeds which are available to Landlord for restoration. If all or a material portion of the Premises or access thereto are so damaged by fire or other casualty that the Premises are rendered untenanted (reasonable commercial access to the Premises being necessary for the Premises to be “tenantable”) for the operation of Tenant’s business for a period reasonably estimated by Landlord to exceed two hundred forty (240) days or if the damage is not in fact repaired so that the Premises are tenantable for the operation of Tenant’s business within such two hundred forty (240) day period, then Tenant shall have the right to terminate this Lease by giving notice of Tenant’s election to terminate not later than thirty (30) days after (a) receiving notice from Landlord that the period for repair will exceed two hundred forty (240) days or (b) the end of such two hundred forty (240) day period if the Premises are not in fact tenantable at
the end of such period. In the event a party entitled to do so gives such termination notice, this Lease shall terminate (with appropriate proration (s) of Rent being made for Tenant’s possession of the tenantable portion of the Premises after the date of such damage) as of the date specified in such notice (but in no event sooner than thirty (30) days after the date of such notice) with the same force and effect as if the date specified were the date originally established as the expiration date hereof. Except as aforesaid, Landlord shall have no liability to Tenant, and except as specifically provided above, Tenant shall not be entitled to terminate this Lease by virtue of any delays in completion of such repairs and restoration. Further, in the event this Lease is not terminated, Landlord shall not be obligated to restore any portion of the Office Section or the Building outside of the Premises which is not necessary for reasonable access to and egress from the Premises. Rent shall abate on those portions of the Premises as are, from time to time, untenantable as a result of such damage.

13.02 Intentionally Omitted.

13.03 Responsibility for Reconstruction of Improvements. Notwithstanding anything to the contrary herein set forth, Landlord shall have no duty pursuant to this ARTICLE 13 to repair or restore any portion of the alterations, additions or improvements in the Premises or the decorations hereto except to the extent that such alterations additions, improvements and decorations were paid by requisitions from any allowance provided by Landlord to Tenant and only to the extent of the insurance proceeds with respect thereto paid to Landlord by Tenant or its insurers. If Tenant desires any other or additional repairs or restoration, the same shall be done at Tenant’s sole cost and expense subject to all of the provisions of ARTICLE 9 and ARTICLE 10 hereof. Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage, whether carried by Landlord or Tenant, for damage to alterations, additions, improvements or decorations provided by Landlord either directly or through an allowance to Tenant.

ARTICLE 14. WAIVER OF CLAIMS - INDEMNIFICATION

14.01 Tenant’s Indemnification. To the extent not prohibited by law, Landlord, its partners, its managing agent, Landlord’s lessor, any mortgagee, the DOT and their respective officers, agents, servants and employees shall not be liable for any damage either to person or property or resulting from the loss of use thereof sustained by Tenant or by other persons due to the Building or any part thereof or any appurtenances thereof becoming out of repair, or due to the happening of any accident or event in or about the Office Section, the Premises or the Building, or due to any act or neglect of any tenant or occupant of the Office Section, the Building or of any other person or entity. This provision shall apply particularly, but not exclusively, to damage caused by gas, electricity, snow, frost, steam, sewage, sewer gas or odors, fire, water, noise, vibration, fumes or by the bursting or leaking of pipes, faucets, sprinklers, plumbing fixtures and windows, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the causes specifically enumerated above or to some other cause of an entirely different kind. Tenant further agrees that all personal property upon the Premises, or upon loading docks, receiving and holding areas, or freight elevators of the Building shall be at the risk of Tenant only, and that Landlord shall not be liable for any loss or damage thereto or theft thereof. Without limitation of
any other provisions hereof, Tenant agrees to defend, protect, indemnify and save harmless Landlord, Landlord’s lessor, any mortgagee and the
DOT from and against all liability to third parties which arose (or which were claimed to have arisen) within or without the Premises during the
Term of this Lease or out of acts or omissions of Tenant and its servants, agents, employees, contractors, suppliers, workers and invitees, except
to the extent such liability arises from the negligence of Landlord, its property manager or its agents. The foregoing indemnity shall survive the
expiration or earlier termination of this Lease.

14.02  **Landlord’s Indemnification.** To the maximum extent this agreement may be made effective according to law, Landlord agrees
to indemnify and save harmless Tenant from and against all liabilities for claims by third parties arising from any accident, injury or damage to
any person, or to the property of any person occurring on the Property, including any accident, injury or damage in connection with the
Landlord’s Work, where such accident, damage or injury results from negligence of Landlord, its property manager or Landlord’s agents, or
from a breach by Landlord of its representations and warranties set forth in this Lease. The foregoing indemnity shall survive the expiration or
earlier termination of this Lease.

**ARTICLE 15. NONWAIVER**

No waiver of any provision of this Lease shall be implied by any failure of Landlord or Tenant to enforce any remedy against the other
on account of the violation of such provision, even if such violation be continued or repeated subsequently, and no express waiver shall affect
any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of
monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant’s right of
possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the
receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the
Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

**ARTICLE 16. CONDEMNATION**

If the Property, the Building or any portion thereof shall be taken or condemned by any competent authority for any public or quasi-
public use or purpose (a “**taking**”), or if the configuration of any roadway, street, alley, or railroad line adjacent to or beneath the Building is
changed by any competent authority and such taking or change in configuration makes it necessary or desirable to remodel or reconstruct the
Building or any part thereof, Landlord shall have the right, exercisable at its sole discretion, to cancel this Lease upon not less than ninety (90)
days’ notice prior to the date of cancellation designated in the notice. No money or other consideration shall be payable by Landlord to Tenant
for the right of cancellation and Tenant shall have no right to share in the condemnation award or in any judgment for damages caused by such
taking or change in configuration; provided, however, nothing herein shall prevent Tenant from pursuing a judgment from the taking authority
for its moving expenses, the unamortized costs of improvements paid for by Tenant (and not paid by Landlord allowance) and
trade fixtures so long as pursued in a separate action which will not result in a reduction of any award otherwise payable to Landlord (except for the cost of such Tenant’s trade fixtures, unamortized improvements (not paid by allowance) or the Tenant’s expense of moving that might otherwise have been paid to Landlord). In the event that any part of the Premises shall be taken by any public authority or for any public use and the remainder, even after restoration, would not be reasonably suitable for Tenant’s use, in Tenant’s bona fide business judgment, or in the event that a taking results in a permanent loss of adequate parking or a permanent deprivation of all reasonable commercial access to the Premises, then this Lease may be terminated at the election of Tenant, which election shall be made by giving of notice by Tenant to Landlord within thirty (30) days after the date of the taking.

ARTICLE 17.
ASSIGNMENT AND SUBLETTING

17.01 No Transfer Without Consent. Tenant shall not, without the prior written consent of Landlord (which consent shall not be unreasonably conditioned, delayed or withheld), (i) assign, convey or mortgage this Lease or any interest hereunder; (ii) permit to occur or exist any assignment of this Lease, voluntarily or by operation of law; (iii) sublet the Premises or any part thereof; or (iv) permit the occupancy of the Premises by any parties other than Tenant, its affiliates and their employees. Any such action (each, a “Transfer”) on the part of Tenant to any assignee, sublessee or transferee (each assignee, sublessee or other transferee being referred to herein as a “Transferee”), without Landlord’s consent to the extent such consent is required, shall be void and of no effect. Landlord’s consent to any Transfer or Landlord’s election to accept any Transferee as the tenant hereunder and to collect rent from such Transferee shall not release Tenant or any subsequent tenant of the Premises from any covenant or obligation under this Lease. Landlord’s consent to any Transfer shall not constitute a waiver of Landlord’s right to withhold its consent to any future Transfer.

Notwithstanding any contrary provision of this Lease, Tenant shall have the right, without the prior consent of Landlord, to assign this Lease and to sublet all or any portion of the leased Premises to any person or entity (a) controlling, controlled by, or under common control with Tenant, (b) acquiring all or substantially all of the assets of Tenant, or (c) with or into which Tenant merges or consolidates, whether by statutory merger, sale of stock, or otherwise (any of the foregoing (a)-(c), a “Related Party Transfer”), so long as (i) the principal purpose of such assignment or sublease is not the acquisition of Tenant’s interest in this Lease by a third party, (ii) the assignment or sublet is not made to circumvent the provisions of this Section 17.01, and (iii) the assignee or successor under (b) or (c) succeeds to all or substantially of Tenant’s business conducted within the Premises immediately prior to such assignment or sublet. In no event shall any business reorganization (e.g., a change in corporate form of Tenant), nor any change in Tenant’s shareholders, partners, or other beneficial owners in the conduct of Tenant’s business, be deemed an assignment of Tenant’s interest in this Lease.

Landlord agrees that the Premises may be occupied without the need for any sublease during the Term by any persons or entities which in the aggregate occupy not more than five percent (5%) of the Premises if such persons or entities are during the period of occupancy involved in a then current engagement with Tenant, current consultants to Tenant actively
involved in furnishing consulting services during such period, or a member of Tenant or any affiliate thereof, to whom Tenant is providing courtesy office space.

No Transfer or Related Party Transfer shall release the transferor from primary liability with the transferee for all of the Tenant’s obligations under this Lease.

The parties hereby agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer requiring Landlord’s consent where one or more of the following applies (without limitation as to other reasonable grounds for withholding consent, Landlord acknowledging that the rental rate is not a reasonable ground for withholding consent under this Lease): (i) the Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Property; (ii) the Transferee intends to use the Premises or a portion thereof for purposes which are not permitted under this Lease; (iii) the Transferee is either (x) a government (or agency or instrumentality thereof), (y) an occupant of the Property (unless Landlord does not have comparable space in the Building that is suitable for use by such occupant), or (z) a prospective tenant of the Property with whom Landlord is actively negotiating at the time Tenant proposes to make the Transfer; (iv) Tenant is in monetary default (or any other default which has continued beyond applicable notice and cure periods) as described in ARTICLE 24; (v) the proposed Transferee’s anticipated use of the Premises involves the generation, storage, use, treatment or disposal of Hazardous Materials in a manner not otherwise permitted by this Lease; (vi) the proposed Transferee is in any way affiliated with organizations which sponsor terrorist organizations regardless of the use to be made of the Premises by the proposed Transferee; (vii) the corridor pattern resulting from demising the sublease space would result in access to leasable space serviced by that corridor being inconsistent with the corridor pattern of a first-class office building; or (viii) in the reasonable judgment of Landlord acting in good faith, such a Transfer would violate any term, condition, covenant or agreement of the Landlord involving the Property. If Landlord wrongfully withholds its consent to any Transfer, Tenant’s sole and exclusive remedy therefor shall be to seek specific performance of Landlord’s obligation to consent to such Transfer.

17.02 Rent Premium on Transfer. Without limitation of the rights of Landlord hereunder in respect thereto, (i) if there is any assignment of this Lease by Tenant or a subletting or other Transfer of the whole of the Premises (other than a Related Party Transfer, which shall not be subject to the provisions of this Section 17.03) by Tenant, or (ii) if Tenant, as debtor or debtor in possession, or a trustee in bankruptcy for Tenant pursuant to the Bankruptcy Code, 11 U.S.C. 101 et. seq., as amended from time to time (the “Bankruptcy Code”), shall assign this Lease or sublet the Premises, or any part thereof, at a rent or for other consideration which, in any such case, is in excess of the sum of (x) the subleased portion’s pro rata share of the rent payable hereunder by Tenant for the period of the sublease or the amount payable for the assigned space over the remaining term of this Lease with respect thereto, and (y) the Reasonable Transfer Costs (as hereinafter defined), then Tenant shall pay to Landlord, as additional rent, (a) with respect to an assignment of this Lease fifty percent (50%) of the amount by which the total consideration received or to be received by Tenant in connection with the assignment exceeds the Reasonable Transfer Costs and (b) with respect to a sublease, fifty percent (50%) of the amount by which the total consideration received or to be received by Tenant in connection with the sublease exceeds the sum of the rent applicable to the subleased space and the Reasonable Transfer Costs (the
“Sublease Premium”). “Reasonable Transfer Costs” shall mean any tenant improvement allowance paid or credited to the transferee by Tenant, customary brokerage commissions not reimbursed by the transferee or paid directly by the transferee, legal, advertising and marketing expenses, free rent allowances, alteration costs and expenses of preparation of the Premises (or portion thereof) for the transferee. With respect to an assignment of this Lease, the amount payable to Landlord hereunder shall be paid to Landlord by Tenant as a first charge against the consideration received by Tenant and payment shall be made by Tenant within thirty (30) days of Tenant having received consideration in connection with the assignment (Tenant shall pay the first charge as consideration is received so that if there are installments of consideration, the payment to Landlord shall be made from each installment as such first charge until the full amount due to Landlord shall have been paid).

With respect to a sublease, for each month commencing with the first month in which the subtenant pays any consideration to or for the benefit of the Tenant (the “Sublease Start Month”) through the month in which Landlord receives payment or gets other consideration from Tenant in connection with the sublease, Tenant shall pay to Landlord (each such monthly payment to Landlord, an “On-Account Premium Payment”) an amount equal to (a) 50% of (i) the total of all such consideration theretofore paid to or for the benefit of Tenant with respect to the subleasing through the end of such month for which the calculation is being made (the “Calculation Period”) less (ii) the Rent payable by Tenant under this Lease for the Calculation Period less (iii) the Amortized Reasonable Transfer Costs for the Calculation Period, reduced by (b) the total of On-Account Premium Payments theretofore made by Tenant. Tenant shall pay the On-Account Premium Payment due with respect to any calendar month within ten (10) business days following such calendar month. “Amortized Reasonable Transfer Costs” shall mean the Reasonable Transfer Costs (A) divided by the number of calendar months between, and including, the first calendar month with respect to which the subtenant pays any rent to Tenant or provides a benefit to Tenant (such as paying a cost otherwise customarily or legally the responsibility of Tenant) and the last calendar month of the term of the sublease multiplied by (B) the number of calendar months commencing with the first calendar month with respect to which the subtenant paid rent through the calendar month in which the payment due Landlord is being calculated.

The provisions of this Section 17.03 shall apply to each and every assignment of this Lease and each and every subletting or other Transfer of all or a portion of the Premises, other than Related Party Transfers, in each case on the terms and conditions set forth herein. Each request by Tenant for permission to assign this Lease or to sublet the whole or any part of the Premises shall be accompanied by a certification of an executive officer of Tenant as to the elements of consideration paid or to be paid by the assignee or subtenant, however characterized, and the time periods with respect to which such payments have been or will be made together with a calculation, based thereon, of the amount due Landlord under this Section 17.02 by reason of the assignment or sublet. For the purposes of this Section 17.03, the consideration paid by the transferee shall mean all Base Rent, Additional Rent or other payments and/or consideration payable by one party to another related to the use and occupancy of all or a portion of the Premises.

17.03 Change in Control. If Tenant is a corporation or a limited liability company (other than a corporation whose stock is traded through a national or regional exchange or over-the-counter), any transaction or series of transactions (including without limitation any dissolution, merger, consolidation or other reorganization of Tenant, or any issuance, sale, gift, transfer or redemption of any capital stock of Tenant, whether voluntary, involuntary or by operation of
law, or any combination of any of the foregoing transactions) resulting in the transfer of control of Tenant, other than by reason of death, shall be deemed to be a Transfer for the purpose of this ARTICLE 17. If Tenant is a partnership, any transaction or series of transactions (including without limitation any withdrawal or admittance of a partner or any change in any partners’ interest in Tenant, whether voluntary, involuntary or by operation of law, or any combination of any of the foregoing transactions) resulting in the transfer of control of Tenant, other than by reason of death, shall be deemed to be a Transfer for purposes of this ARTICLE 17. The term “control” as used in this Section 17.03 means the power to directly or indirectly direct or cause the direction of the management or policies of Tenant. If Tenant is a corporation or a limited liability company, a change or series of changes in ownership of stock which would result in direct or indirect change in ownership by the stockholders or an affiliated group of stockholders (or members) of less than fifty percent (50%) of the outstanding voting stock of Tenant as of the date of the execution and delivery of this Lease shall not be considered a change of control; provided, however, a sale of part or all of the corporate shares of Tenant resulting in a change in control of Tenant shall not require Landlord’s consent if more than 50% of the voting power is held by twenty-five (25) or more unrelated shareholders or distributed to such number of unrelated shareholders in a public offering registered with the Securities and Exchange Commission. For purposes of clarity, Landlord acknowledges that although a transaction which results in a change in control may be a Transfer under this Article 17, Landlord’s consent thereto is not required and no amount shall be due under Section 17.02 if such Transfer does not itself constitute a Related party Transfer.

ARTICLE 18.
SURRENDER OF POSSESSION

Upon the expiration of the Term or upon the termination of Tenant’s right of possession to all or a portion of the Premises, whether by lapse of time or at the option of Landlord as herein provided, Tenant shall forthwith quietly and peaceably surrender the Premises or portion thereof to Landlord in good order, repair and condition, ordinary wear excepted. Any interest of Tenant in the alterations, improvements and additions to the Premises made or paid for by Landlord or Tenant shall, without compensation to Tenant, become Landlord’s property at the termination of this Lease by lapse of time or otherwise and if such option is exercised such alterations, improvements and additions shall be relinquished to Landlord in good condition, ordinary wear excepted. Prior to the termination of the Term or of Tenant’s right of possession Tenant shall remove office furniture, trade fixtures, office equipment and all other items of Tenant’s property on the Premises. Tenant shall pay to Landlord upon demand the cost of repairing any damage to the Premises and to the Building caused by any removal required hereunder. If Tenant shall fail or refuse to remove any such property from the Premises, Tenant shall be conclusively presumed to have abandoned the same, and title thereto shall thereupon pass to Landlord without any cost either by set-off, credit, allowance or otherwise, and Landlord may at its option accept the title to such property or, at Tenant’s expense, may (i) remove the same or any part in any manner that Landlord shall choose, repairing any damage to the Premises caused by such removal, and (ii) store, destroy or otherwise dispose of the same without incurring liability to Tenant or any other person.
ARTICLE 19.
HOLDING OVER

In addition to performing all of Tenant’s other obligations hereunder, if Tenant retains possession of the Premises or any part thereof after the expiration of the Term, such holding over shall be on the terms and conditions as set forth in this Lease, as far as applicable, except that Tenant shall pay, as a use and occupancy charge with respect to, in addition to all other charges for which Tenant would be liable hereunder if it were occupying during the term of this Lease, during the first thirty (30) days of such holdover 150% of the Base Rent and the Adjustment Amount payable under the terms of this Lease for and with respect to the last full calendar month immediately prior to the expiration of the Term and after such initial thirty (30) day period for each calendar month or portion thereof during which such holdover continues, as a use and occupancy charge with respect to, in addition to all other charges for which Tenant would be liable hereunder if it were occupying during the term of this Lease, an amount equal to 150% of the higher of (x) the Base Rent and the Adjustment Amount payable under the terms of this Lease for and with respect to the last full calendar month immediately prior to the expiration of the Term or (y) one twelfth of the annual fair market rent for the Premises under a one (1) year lease commencing on the day immediately succeeding the last day of the Term. Amounts due as aforesaid shall be prorated for partial months on a per diem basis. Notwithstanding anything to the contrary herein contained, Landlord shall have the right to commence eviction proceedings against Tenant immediately upon any holding over by Tenant in the Premises.

In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any loss, cost or damages (including, without limitation reasonable attorneys’ fees) which Landlord may suffer by reason of any such holdover by Tenant for a period of longer than thirty (30) days. The provisions of this ARTICLE 19 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law.

ARTICLE 20.
ESTOPPEL CERTIFICATE

Tenant agrees that, from time to time upon not less than twenty (20) days’ prior request by Landlord, Landlord’s lessor or any mortgagee, Tenant or Tenant’s duly authorized representative having knowledge of the following facts will deliver to Landlord a statement in writing certifying (i) that this Lease is unmodified (or if there have been modifications, a description of such modifications), (ii) to the best of Tenant’s knowledge, this Lease (as modified if there were modifications) is in full force and effect, (iii) the dates to which Rent and other charges have been paid; (iv) to the best of Tenant’s knowledge, that Landlord is not in default under any provision of this Lease, or, if in default, the nature thereof in detail; (v) if true, that the Premises have been delivered to Tenant by Landlord and accepted by Tenant; (vi) there are no proceedings pending against Tenant which have been adversely decided and which would affect Tenant’s obligations under this Lease (or if there are such proceedings, identifying such proceedings; (vii) that Tenant has not made a claim against Landlord which has not been resolved or satisfied (or is any such claim has not been resolved or satisfied, stating such claims and its status); and (viii) such further matters as may reasonably be requested by Landlord; it being intended that any such statement may be relied upon by any prospective assignee of Landlord, any mortgagee or prospective mortgagee of the Building, any prospective assignee of

38
any such mortgagee, or any prospective and/or subsequent purchaser or transferee of all or a part of Landlord’s interest in the Property, the Office Section or the Building, or any other person having an interest therein. Tenant shall execute and deliver whatever additional instruments may reasonably be required for such purposes. Tenant’s failure to deliver any of the foregoing instruments or the statement within twenty (20) days of Landlord’s request therefor in writing shall be deemed to be an acknowledgement that the statements contained therein are true.

ARTICLE 21. 
SUBORDINATION

This Lease and all rights of Tenant hereunder are subject and subordinate to any mortgage or mortgages, blanket or otherwise, made by Landlord and which do now or may hereafter affect the Property or the Building; and to any and all renewals, modifications, consolidations, replacements and extensions thereof, and to any ground or other lease, or similar instrument now or hereafter placed against the Building; provided that the foregoing subordination shall only be effective as to a mortgagee that has offered to enter into a commercially reasonable subordination, non-disturbance and attornment agreement with Tenant (“SNDA”), and does in fact enter into a SNDA with Tenant if Tenant accepts such offer, under the terms of which (in addition to other commercially reasonable provisions) such Mortgagee shall agree that so long as Tenant is not in default beyond applicable periods of notice and cure of its obligations under this Lease, Tenant’s occupancy under, on and subject to the terms hereof shall not be disturbed. Landlord represents and warrants that as of the date of execution of this Lease, there is no mortgage on the Building or the Property. Tenant shall upon demand at any time or times execute, acknowledge and deliver to Landlord any and all instruments that may be reasonably necessary to subordinate this Lease and all rights of Tenant hereunder to any such mortgage or mortgages or to confirm or evidence such subordination subject to the terms of the SNDA. Each of the parties shall bear its own costs in connection with the subordination and the SNDA. Tenant covenants and agrees, in the event any proceedings are brought for the foreclosure of any mortgage with respect to which it has been delivered a SNDA, to attorn to the purchaser upon any such foreclosure sale if so requested to do by such purchaser, and to recognize such purchaser as the Landlord under this Lease. Tenant agrees to execute and deliver at any time and from time-to-time, upon the request of Landlord or of any holder of such mortgage or of such purchaser, any instrument which may be necessary or appropriate, in the reasonable judgment of the requesting party, in any such foreclosure proceeding or otherwise to evidence such attornment. Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease, or the obligations of Tenant hereunder in the event any such foreclosure proceeding is brought, prosecuted or completed. Tenant and Landlord further agree that if so requested by any mortgagee of Landlord, this Lease shall be made superior to any such mortgage and that they will execute such documents as may be required by such mortgagee to effect the superiority of this Lease to such mortgage.

Following the execution of this Lease, Landlord shall request and use reasonable efforts to obtain from the DOT a recognition agreement, on commercially reasonable terms, pursuant to which the DOT agrees that so long as Tenant is not in default beyond applicable periods of notice and cure of its obligations under this Lease, Tenant’s occupancy under, on and subject to the terms hereof shall not be disturbed in the event of a termination of the Underlying Lease.

39

ARTICLE 22. 
CERTAIN RIGHTS RESERVED BY LANDLORD

Landlord shall have the following rights (but not obligations), each of which Landlord may exercise without notice to Tenant and without liability to Tenant for damage or injury to property, person or business on account of the exercise thereof, and the exercise of any such rights shall not be deemed to constitute an eviction or disturbance of Tenant’s use or possession of the Premises, and shall not give rise to any claim for set-off or abatement of Rent or any other claim:

(i) To change the Building’s name or street address upon not less than one hundred eighty (180) days prior written notice, in which event, Landlord shall reimburse Tenant for all of Tenant’s costs of the type reasonably and customarily incurred by a tenant in connection with changing such name or address on Tenant’s stationary and other office supplies.

(ii) To install, affix and maintain any and all signs on the exterior and on the interior of the Building (other than within the Premises).

(iii) Provided that reasonable access to the Premises shall be maintained and the business of Tenant shall not be interfered with or disrupted unreasonably, to rearrange, relocate, enlarge, reduce, close or change corridors, elevators, stairs, lavatories, doors, lobbies, exits or entrances in or to the Building and to decorate and to make repairs, alterations, additions and improvements, structural or otherwise, in or to the Building or any part thereof, including the Premises, and may erect scaffolding and other structures reasonably required by the character of the work to be performed, and during such operations may upon reasonable notice enter upon the Premises and take into and upon or through any part of the Building, including the Premises, all materials that may be required to make such repairs, alterations, improvements, or additions, and in that connection Landlord may temporarily close public entry ways, other public spaces, stairways, corridors or connecting structures and interrupt or temporarily suspend any services or facilities agreed to be furnished by Landlord all, subject to the provisions of this clause, without the same constituting an eviction of Tenant in whole or in part, and without abatement of Rent by reason of loss or interruption of the business of Tenant or otherwise, and without in any manner rendering Landlord liable for damages or relieving Tenant from performance of Tenant’s obligations under this Lease. Landlord may at its option make any repairs, alterations, improvements and additions in and about the Building and upon reasonable notice in or about the Premises during ordinary business hours and, if Tenant desires to have such work done during other than business hours, Tenant shall pay all overtime and additional expenses resulting therefrom. Landlord’s entry into the Premises shall be accomplished in a
manner to minimize interference with the Tenant’s business but such commitment shall not require Landlord to perform such work during other than ordinary business hours.

(iv) To furnish door keys for the entry door(s) in the Premises at the commencement of this Lease and to retain at all times, and to use in appropriate instances, keys to all doors within and into the Premises and Tenant shall be obligated
should it elect to change the manner in which its Premises are secured to provide Landlord with duplicates of keys, entry cards and with combinations or passwords necessary to allow Landlord and those furnishing services to the Premises in accordance with the terms and conditions of this Lease to access the Premises for such purposes as may be permitted under this Lease. Upon the expiration of the Term or of Tenant’s right of possession, Tenant shall return all keys to Landlord and shall disclose to Landlord the combination of any safes, cabinets or vaults left in the Premises.

(v) To approve all window coverings used in the Building which approval shall not be unreasonably withheld, conditioned or delayed, it being understood that window coverings which are visible from outside the Premises may be subject to a standard of uniformity imposed by the Landlord in its reasonable discretion.

(vi) To approve the weight, size and location of safes, vaults and other heavy equipment and articles in and about the Premises and the Building so as not to exceed the legal live load per square foot designated by the structural engineers for the Building, and to require all such items and furniture and similar items to be moved into or out of the Building and Premises only at such times and in such manner as Landlord shall direct in writing. Tenant shall not install or operate machinery or any mechanical devices of a nature not directly related to Tenant’s ordinary use of the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Movement of Tenant’s property into or out of the Building or the Premises and within the Building are entirely at the risk and responsibility of Tenant, and Landlord reserves the right to require permits before allowing any property to be moved into or out of the Building or the Premises.

(vii) To establish reasonable security policies and other controls for the purpose of regulating all property and packages, both personal and otherwise, to be moved into or out of the Building and Premises and all persons using the Building both during and after normal office hours, provided such policies and other controls do not unreasonably interfere with Tenant’s security system and security protocol set forth herein. Without limiting the generality of the foregoing, Landlord may require all persons entering or leaving the Building during such hours as Landlord may from time to time reasonably determine to identify themselves to security personnel by registration or otherwise in accordance with Building security controls, and to establish their right to enter or leave in accordance with the provisions of applicable rules and regulations adopted by Landlord. Landlord shall not be liable in damages for any error with respect to exclusion from the Building of any person. In case of fire, casualty, invasion, insurrection, mob, riot, civil disorder, public excitement or other commotion, or threat thereof, Landlord reserves the right, in its reasonable discretion, to limit or prevent access to the Building during the continuance of the same, shut down elevator service, activate elevator emergency controls or otherwise take such action or preventive measures deemed reasonably necessary by Landlord for the safety or security of the tenants or other occupants of the Building or the protection of the Building and the property in the Building. Tenant agrees to cooperate with any reasonable safety or security program developed by Landlord.
(viii) To reasonably regulate delivery and service of supplies and the usage of the loading docks, receiving areas and freight elevators.

(ix) To show the Premises to prospective tenants at reasonable times in the last eighteen (18) months of the Term (as the same may have been extended as set forth in ARTICLE 41), and, if vacated or abandoned, to show the Premises at any time, and to decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy.

(x) To erect, use and maintain pipes, ducts, wiring and conduits, and appurtenances thereto, in and through the Premises at reasonable locations.

(xi) To enter the Premises at any reasonable time to inspect the Premises upon twenty-four (24) hours prior written, telephone or fax notice to Tenant except in an emergency, for the purpose of inspecting or making repairs to the Premises or responding to any emergency condition, and Landlord shall also have the right to make access available at all reasonable hours, upon twenty-four (24) hours prior written notice to Tenant except in an emergency, to prospective or existing mortgagees, purchasers or tenants of all or any part of the Property.

(xii) To grant to any person or to reserve unto itself the exclusive right to conduct any business or render any service in the Building. If Landlord elects to make available to tenants in the Building any services or supplies, or arranges a master contract therefor, Tenant agrees to obtain its requirements, if any, therefor from Landlord or under any such contract, provided that the charges therefor are reasonable.

ARTICLE 23.
RULES AND REGULATIONS

Tenant agrees to observe the rules and regulations for the Building attached hereto as Exhibit C and made a part hereof. Landlord shall have the right from time to time to prescribe additional rules and regulations which, in its judgment, may be desirable for the use, entry, operation and management of the Premises, the Office Section and the Building, each of which rules and regulations and any amendments thereto shall become a part of this Lease. Tenant shall comply with all such rules and regulations; provided, however, that such rules and regulations shall not contradict or abrogate any right or privilege herein expressly granted to Tenant.

ARTICLE 24.
LANDLORD’S REMEDIES

The following shall each be an “Event of Default” under this Lease: If Tenant shall fail to pay the Rent or any installment thereof within five (5) business days after the date due or shall fail to pay, within five (5) business days after written notice of such failure is given to Tenant, any other sum required to be paid by Tenant under this Lease or under the terms of any other agreement between Landlord and Tenant; or if the interest of Tenant in this Lease shall be levied on under execution or other legal process; or if any voluntary petition in bankruptcy or for corporate re-organization or any similar relief shall be filed by Tenant; or if any involuntary petition in bankruptcy shall be filed against Tenant under any federal or state bankruptcy or
insolvency act and shall not have been dismissed within ninety (90) days from the filing thereof; or if a receiver shall be appointed for Tenant or any of the property of Tenant by any court and such receiver shall not have been dismissed within ninety (90) days from the date of his appointment; or if Tenant shall make an assignment for the benefit of creditors; or if Tenant shall admit in writing Tenant’s inability to meet Tenant’s debts as they mature; or if Tenant shall have misrepresented or breached a warranty to Landlord set forth in clause S of Section 32 of this Lease for which no cure period is applicable under Section 32.S; or if any event has occurred which is specified as an Event of Default under this Lease; or if Tenant shall fail to observe or perform any of the other covenants or conditions in this Lease which Tenant is required to observe and perform and such default shall continue for thirty (30) days after written notice to Tenant (or if such default is curable and shall reasonably require more than thirty (30) days to cure, if Tenant shall fail to commence to cure said default within thirty (30) days after notice thereof and/or fail to continuously prosecute the curing of the same to completion with due diligence) then Landlord may treat the occurrence of any one or more of the foregoing events as a breach of this Lease. If an Event of Default occurs, Landlord at its option may, without additional notice or any demand of any kind to Tenant or any other person, have any one or more of the following described remedies in addition to all other rights and remedies provided at law or in equity or elsewhere in this Lease:

(i) Landlord may terminate this Lease and the Term created hereby at any time after the occurrence of any such Event of Default and shall give Tenant written notice of Landlord’s election to do so and the effective date thereof (the “Effective Date”), in which event Landlord may forthwith repossess the Premises in accordance with applicable law and shall be entitled to recover,

(a) forthwith as liquidated damages, in addition to any other sums or liabilities under this Lease due to Landlord and damages for which Tenant may be liable, a sum of money equal to the present value (such present value to be computed on the basis of a per annum discount rate equal to the effective annual yield on U.S. Treasury obligations which could be purchased on the business day next succeeding the Effective Date (or if Landlord has elected to first avail itself of the remedy provided in subclause 24(i) (b) below, the date as of which it notifies Tenant that it is electing the remedy set forth in this subclause 24(i)(a)) and mature closest to the Termination Date as determined as if this Lease had not been terminated for a default hereunder) of the Rent provided to be paid by Tenant for the balance of the Term over the present value of the fair market rental value of the Premises, after deduction from the present value of such fair market rental value of all anticipated expenses of reletting. Should the present value of the fair market rental value of the Premises, after deduction of all anticipated expenses of reletting, for the balance of the Term exceed the present value of the Rent provided to be paid by Tenant for the balance of the Term, Landlord shall have no obligation to pay to Tenant the excess or any part thereof or to credit such excess or any part thereof against any other sums or damages for which Tenant may be liable to Landlord, and unless and until such time as Landlord elects to avail itself of the remedy set forth in this subclause 24(i)(a).

(b) in addition to any other sums or damages for which Tenant may otherwise be liable to Landlord, a sum of money equal to amounts due at the Effective Date and to recover from time to time from Tenant, and Tenant shall remain liable for, all Rent which
would have thereafter been due but for such termination as and when the same would have become due (or after the same would have become due) had such termination not occurred by reason of default by Tenant, and any other sums thereafter accruing as they would have become due under this Lease during the period from the Effective Date to the Termination Date and at any time while Landlord is pursuing its rights hereunder, Landlord may invoke its rights to liquidated damages for the balance of the term as provided in subclause 24(i)(a) above.

Landlord may, but shall be under no obligation to, except as required by law, relet the Premises or any part thereof for the account of Tenant, for such rent, from time to time (which may be for a term extending beyond the Term of this Lease), and upon such terms as Landlord in Landlord’s sole discretion shall determine and Landlord shall have no obligation to accept any proposal made by third parties nor shall Landlord be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant relative to such reletting. Also at any time prior to Landlord exercising rights under subclause 24(i)(a) above, Landlord may change the locks or other entry devices of the Premises and make repairs, alterations and additions in or to the Premises and redecorate same to the extent deemed by Landlord necessary or desirable, and Tenant shall upon written demand pay the cost thereof together with, if Landlord successfully relets the Premises or any part thereof, Landlord’s expenses of reletting, including without limitation, brokerage commissions payable to Landlord’s agent or to others.

Landlord may collect the rents from any such reletting and apply the same to the payment of expenses of reentry, redecoration, repair and alterations and the expenses of reletting and the excess or residue remaining to the payment of Rent and other sums in this Lease provided to be paid by Tenant under subclause 24(i)(b) above after the date of any such reletting, and any such excess or residue shall operate only as an offsetting credit against the amount of Rent and other sums due and owing with respect to periods after the date of such reletting. For purposes of clarity, in no event shall Tenant be entitled to a credit on its indebtedness to Landlord with respect to prior periods or a refund of amounts accelerated pursuant to subclause 24(i)(a) if Landlord relets the Premises or any part thereof. No such reentry, repossession, repairs, alterations, additions or reletting pursuant to this ARTICLE shall operate to release Tenant in whole or in part from any of Tenant’s obligations hereunder, and if Landlord effects any such reletting, Landlord may, at any time and from time to time, with respect to periods prior to the period with respect to which Landlord avails itself of the remedy set forth in subclause 24(i)(a) above (and Tenant’s payment of the amount required thereby) sue and recover judgment for any deficiencies from time to time remaining after the application from time to time of the proceeds of any such reletting.

(ii) Landlord, without thereby waiving default or breach, may cure the same for the account and at the expense of Tenant, without notice in a case of emergency threatening life or property, as determined by Landlord in its sole discretion, or in case of correction of a dangerous or hazardous condition threatening life or property, and in any other case if such default or breach is or becomes an Event of Default or continues for five (5) days after the Landlord gives written notice of intention to cure. Bills for any expense incurred by Landlord in connection with any such performance by Landlord shall be for the account of Tenant, and shall be due and payable within thirty (30) days.
after Tenant receives said bills, and if not paid when due, the amounts thereof shall become immediately due and payable as Additional Rent under this Lease.

ARTICLE 25.
EXPENSES OF ENFORCEMENT

Tenant shall pay upon demand all Landlord’s reasonable costs, charges and expenses including the fees and out-of-pocket expenses of counsel, agents and others retained by Landlord incurred in enforcing Tenant’s obligations hereunder following the occurrence of a default or breach which continues beyond any applicable grace or cure periods.

ARTICLE 26.
COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing, within applicable periods of notice, cure and grace, all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed shall, during the Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof, without hindrance or ejection by any persons lawfully claiming by, through or under Landlord, the foregoing covenant of quiet enjoyment being in lieu of any other covenant, expressed or implied.

ARTICLE 27.
LETTER OF CREDIT

27.01 General Provisions. Not later than the date on which Tenant commences its Initial Alterations, Tenant shall deliver to Landlord, as collateral for the full performance by Tenant of all of its obligations under this Lease and for all losses and damages Landlord may suffer as a result of Tenant’s failure to comply with one or more provisions of this Lease, a Letter of Credit (hereinafter defined) substantially in the form of Exhibit F and containing the terms required herein, in the face amount of the Letter of Credit Amount, naming Landlord as beneficiary.

“Letter of Credit” shall mean a clean, irrevocable, non-documentary and unconditional letter of credit, permitting multiple and partial draws thereon, and otherwise in form acceptable to Landlord in its sole, reasonable discretion issued by and drawable upon a commercial bank (the “Issuing Bank”), which is satisfactory to Landlord and which satisfies both the Minimum Rating Agency Threshold (as hereinafter defined) and the Minimum Capital Threshold (as hereinafter defined). The “Minimum Rating Agency Threshold” shall mean that the Issuing Bank has outstanding unsecured, uninsured and unguaranteed senior long-term indebtedness that is then rated (without regard to qualification of such rating by symbols such as “+” or “-” or numerical notation) “Baa” or better by Moody’s Investors Service, Inc. and/or “BBB” or better by Standard & Poor’s Rating Services, or a comparable rating by a comparable national rating agency designated by Landlord in its discretion. The “Minimum Capital Threshold” shall mean that the Issuing Bank has combined capital, surplus and undivided profits of not less than $2,000,000,000.
If, at any time or from time to time, Landlord reasonably determines that an Issuing Bank (i) no longer satisfies the Minimum Rating Agency Threshold, (ii) no longer satisfies the Minimum Capital Threshold, (iii) has been seized or closed by the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, or another governmental or regulatory agency or authority, (iv) has become insolvent or its financial condition is such that in Landlord’s reasonable judgment, the Issuing Bank may be unable to honor a draw on the Letter of Credit, or (v) is unwilling or unable to honor the Letter of Credit or to perform its obligations to honor a draw upon the Letter of Credit, then within ten (10) days after demand, Tenant shall deliver to Landlord a replacement Letter of Credit, issued by a replacement Issuing Bank which satisfies the Minimum Rating Agency Threshold and the Minimum Capital Threshold and is otherwise satisfactory to Landlord in its discretion.

Tenant shall cause the Letter of Credit to be continuously maintained in effect (whether through replacement, renewal or extension) in the Letter of Credit Amount through the date (the “Final LC Expiration Date”) that is sixty (60) days after the scheduled expiration date of the Term or any renewal Term. If the Letter of Credit held by Landlord expires earlier than the Final LC Expiration Date (whether by reason of a stated expiration date or a notice of termination or non-renewal given by the issuing bank), Tenant shall deliver a new Letter of Credit or certificate of renewal or extension (a “Renewal or Replacement LC”) to Landlord not later than sixty (60) days prior to the expiration date of the Letter of Credit then held by Landlord. Any Renewal or Replacement LC shall comply with all of the provisions of this ARTICLE 27, shall be irrevocable, transferable and shall remain in effect (or be automatically renewable) through the Final LC Expiration Date upon the same terms as the expiring Letter of Credit or such other terms as may be acceptable to Landlord in its sole, reasonable discretion.

27.02 Drawings under Letter of Credit. Upon Tenant’s failure to comply with one or more provisions of this Lease which continues beyond applicable periods of notice and cure, or as otherwise specifically agreed by Landlord and Tenant pursuant to this Lease or any amendment hereof, Landlord may, without prejudice to any other remedy provided in this Lease or by Law, draw on the Letter of Credit and use all or part of the proceeds to (a) satisfy any amounts due to Landlord from Tenant, and (b) satisfy any other damage, injury, expense or liability caused by Tenant’s failure to so comply. In addition, if Tenant fails to furnish a Renewal or Replacement LC complying with all of the provisions of this ARTICLE 27 at least sixty (60) days prior to the stated expiration date of the Letter of Credit then held by Landlord, Landlord may draw upon such Letter of Credit and hold the proceeds thereof (and such proceeds need not be segregated) in accordance with the terms of this ARTICLE 27 (the “LC Proceeds Account”).

27.03 Use of Proceeds by Landlord. Subject to Section 27.02, the proceeds of the Letter of Credit shall constitute Landlord’s sole and separate property (and not Tenant’s property or the property of Tenant’s bankruptcy estate) and Landlord may immediately upon any draw (and without notice to Tenant) apply or offset the proceeds of the Letter of Credit: (a) against any Rent or other amount payable by Tenant under this Lease that is not paid when due; (b) against all losses and damages that Landlord has suffered; (c) against any costs incurred by Landlord in connection with this Lease (including attorneys fees); and (d) against any other amount that Landlord is owed by reason of Landlord’s exercise of its remedies for Tenant default under this Lease. Landlord agrees to return the Original Letter of Credit or any Renewal or Replacement LC pay to Tenant, or at Tenant’s written direction, the Issuing Bank or pay within thirty (30)
days after the Final LC Expiration Date the amount of any proceeds of the Letter of Credit received by Landlord and not applied as allowed above; provided, that if prior to the Final LC Expiration Date a voluntary petition is filed by Tenant, or an involuntary petition is filed against Tenant by any of Tenant’s creditors, under the Federal Bankruptcy Code, then Landlord shall not be obligated to make such payment in the amount of the unused Letter of Credit proceeds until either all preference issues relating to payments under this Lease have been resolved in such bankruptcy or reorganization case or such bankruptcy or reorganization case has been dismissed, in each case pursuant to a final court order not subject to appeal or any stay pending appeal.

27.04 Additional Covenants of Tenant. If, as result of any application or use by Landlord of all or any part of the Letter of Credit, the amount of the Letter of Credit shall be less than the Letter of Credit Amount, Tenant shall, within five (5) business days thereafter, provide Landlord with additional letter(s) of credit in an amount equal to the deficiency (or a replacement letter of credit in the total Letter of Credit Amount), and any such additional (or replacement) letter of credit shall comply with all of the provisions of this ARTICLE 27, and if Tenant fails to comply with the foregoing, notwithstanding anything to the contrary contained in this Lease, the same shall constitute an Event of Default by Tenant. Tenant further covenants and warrants that it will neither assign nor encumber the Letter of Credit or any part thereof and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

27.05 Nature of Letter of Credit. Landlord and Tenant (a) acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal thereof or substitute therefor or any proceeds thereof (including the LC Proceeds Account) be deemed to be or treated as a “security deposit” under any Law applicable to security deposits in the commercial context ("Security Deposit Laws"), (b) acknowledge and agree that the Letter of Credit (including any renewal thereof or substitute therefor or any proceeds thereof) is not intended to serve as a security deposit, and the Security Deposit Laws shall have no applicability or relevancy thereto, and (c) waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws.

ARTICLE 28.
REAL ESTATE BROKER

The Tenant represents that Tenant has dealt with (and only with) the Broker specified in ARTICLE 1 hereof as broker in connection with this Lease, and that insofar as Tenant knows, no other broker negotiated this Lease or is entitled to any commission in connection therewith. Tenant agrees to indemnify, defend and hold harmless Landlord its employees and agents from and against any claims made by any broker or finder other than the Broker named above for a commission or fee in connection with this Lease or any sublease hereunder, but nothing herein shall be construed as permitting any such sublease, provided that Landlord has not in fact retained such broker or finder. Landlord agrees to indemnify, defend and hold harmless Tenant, its employees and agents from and against any claims made by any broker or finder named above for a commission or fee in connection with this Lease, provided Tenant has not in fact retained such broker or finder and, in addition, Landlord shall pay the fees of the Broker(s) named in ARTICLE 1 of this Lease.
ARTICLE 29.
NOTICE TO MORTGAGEE AND GROUND LESSOR

After receiving notice from any person, firm or other entity that it holds a mortgage which includes the Premises, the Building or the Office Section as part of the mortgaged premises, or that it is the ground lessor under a ground lease (which term shall include the Underlying Lease and the Sublease (as such terms are defined in Section 32U of this Lease)) with Landlord, as ground lessee, which includes the Premises, the Building or the Office Section as part of the demised premises, no notice of default from Tenant to Landlord shall be effective unless and until a copy of the same is given to such holder or ground lessor, and the timely curing of any of Landlord’s defaults by such holder or ground lessor shall be treated as performance by Landlord. Such holder or ground lessor shall be given such reasonable time as may be necessary to effect such cure or to foreclose the mortgage or terminate the ground lease, as the case may be. For the purposes of ARTICLE 21, this ARTICLE 29, ARTICLE 30 and ARTICLE 33, the term “mortgage” includes a mortgage on a leasehold interest of Landlord (but not one on Tenant’s leasehold interest).

ARTICLE 30.
ASSIGNMENT OF RENTS

With reference to any assignment by Landlord of Landlord’s interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage or ground lease (which term shall include the Underlying Lease and the Sublease) on property which includes the Premises, the Building or the Office Section, Tenant agrees:

(i) that the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage, or the ground lessor, shall never be treated as an assumption by such holder or ground lessor of any of the obligations of Landlord hereunder, unless such holder, or ground lessor, shall, by notice sent to Tenant, specifically otherwise elect; and

(ii) that, except as aforesaid, such holder or ground lessor shall be treated as having assumed Landlord’s obligations hereunder only upon a foreclosure of such holder’s mortgage and the taking of possession of the Premises, or in the case of a ground lessor, the assumption of Landlord’s position hereunder by such ground lessor. In no event shall the acquisition of title to the Building and the land on which the same is located by a purchaser which, simultaneously therewith, leases the entire Building or such land back to the seller thereof be treated as an assumption, by operation of law or otherwise, of Landlord’s obligations hereunder, but Tenant shall look solely to such seller-lessee, and its successors from time to time in title, for performance of Landlord’s obligations hereunder. In any such event, this Lease shall be subject and subordinate to the lease to such seller. For all purposes, such seller-lessee, and its successors in title, shall be the landlord hereunder unless and until Landlord’s position shall have been assumed by such purchaser-lessee.
ARTICLE 31.
PERSONAL PROPERTY TAXES

Tenant shall pay all taxes which may be lawfully charged, assessed, or imposed upon all fixtures and equipment of every type and also upon all of Tenant’s personal property in the Premises, and Tenant shall pay all license fees which may lawfully be imposed upon the business of Tenant conducted upon the Premises.

ARTICLE 32.
MISCELLANEOUS

A. Remedies Cumulative. All rights and remedies of Landlord under this Lease shall be cumulative and none shall exclude any other rights and remedies allowed by law.

B. Interest on Overdue Amounts. All payments becoming due under this Lease and remaining unpaid for five (5) days thereafter shall bear interest from the date actually due until paid at the rate two percent (2%) per annum above the prime rate of interest charged from time to time by Bank of America (or its successor), but in no event more than the highest rate which is at the time lawful in the Commonwealth of Massachusetts; provided, however, if a payment otherwise due is not received on the date due (rather than within five (5) days thereafter, more than once in any twelve (12) month period, any payment due for the next succeeding twelve (12) months shall bear interest from the date due without the five (5) day grace period. Interest hereunder shall be payable within ten (10) days of billing therefor by Landlord. The obligation hereunder shall survive the termination of this Lease.

C. Grammatical Rules. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed.

D. Successors and Assigns. Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of ARTICLE 17 hereof. All indemnities, covenants and agreements of Tenant contained herein shall inure to the benefit of Landlord’s agents and employees.

E. Incorporation by Reference; Authority. All of the representations and obligations of Landlord are contained herein and in the Exhibits attached hereto, each of which is incorporated herein by reference so that all references to “Lease” herein shall refer to the body of this Lease and all Exhibits thereto; and no modification, waiver or amendment of this Lease or of any of its conditions or provisions shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant or, as to Landlord, by a duly authorized agent of Landlord empowered by a written authority signed by Landlord.

F. Submission Not an Offer. Submission of this Lease for examination shall not bind Landlord or Tenant in any manner, and no lease or obligations of Landlord or Tenant shall arise until this instrument is signed by both Landlord and Tenant and delivery is made to each.

G. Rights to View, etc. No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease.

H. Intentionally Omitted.

I. Transfer or Assignment by Landlord. Tenant acknowledges that Landlord has the right to transfer its interest in the Premises, the Office Section and the Building and in this Lease, and Tenant agrees that in the event of any such transfer Landlord shall be released from all liability thereafter accruing under this Lease and all liability with respect to periods prior to such transfer to the extent assumed by the transferee specifically or as a matter of law and Tenant agrees to look solely to such transferee for the performance of Landlord’s obligations hereunder from and after the date of such transfer except to the extent liabilities were not assumed by the transferee for the period prior to the transfer; provided that nothing herein shall result in liability to the transferee beyond the net proceeds received by the transferor in connection with such transfer. Tenant further acknowledges that Landlord may assign its interest in this Lease to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

J. Paramount Title. Landlord’s title is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to commit or engage in any act which can, shall or may encumber the title of Landlord.

K. No Recording of Lease. This Lease shall not be recorded by Tenant or by anyone acting through, under or on behalf of Tenant, and the recording thereof in violation of this provision shall make this Lease null and void at Landlord’s election. At Tenant’s request, Landlord agrees to execute a Notice of Lease in recordable form for recording with the Suffolk County Registry of Deeds.

L. Captions. The captions of ARTICLES, Sections and subsections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such ARTICLES, Sections and subsections.

M. Intentionally Omitted.
N. **Landlord/Tenant Relationship.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

O. **Order of Application.** Landlord shall have the right to apply payments received from Tenant pursuant to this Lease (regardless of Tenant’s designation of such payments) to satisfy any obligations of Tenant hereunder that are past due, in such order and amounts as Landlord in its sole discretion may elect.

P. **Time is of the Essence.** Time is of the essence of this Lease and each of its provisions.
Q.  **Interpretive Law.** Interpretation of this Lease shall be governed by the law of the Commonwealth of Massachusetts.

R.  **Effect of Indemnifications.** All indemnities, covenants and agreements of Tenant and Landlord contained herein which inure to the benefit of the other party shall be construed to also inure to the benefit of the other party’s agents and employees.

S.  **OFAC.** Each of Landlord and Tenant certifies, represents, warrants and covenants (the party so certifying, representing, warranting and covenanting is referred to herein as the “Certifying Party”) to the other that:

   (i) The Certifying Party is not acting and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person”, or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and

   (ii) The Certifying Party is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation.

   (iii) Without limiting the foregoing, the Certifying Party is not, and the entities or individuals constituting the Certifying Party or which may own or control the Certifying Party or which may be owned or controlled by the Certifying Party are not, among the individuals or entities identified on any list compiled pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists.

Each of Landlord and Tenant hereby agrees to defend (with counsel reasonably acceptable to the indemnified party), indemnify and hold harmless the other party (and as to landlord as the indemnified party, Landlord’s designated property management company), and their respective partners, members, affiliates and subsidiaries, and all of their respective officers, trustees, directors, shareholders, employees, servants, partners, representatives, insurers and agents from and against any and all claims arising from or related to any such breach the indemnifying party of the foregoing certifications, representations, warranties and covenants. In connection with the foregoing, it is expressly understood and agreed that (x) any breach by Tenant of the foregoing representations and warranties shall be a default by Tenant under ARTICLE 24 above and that, as to any such breach which would result in any material liability to Landlord which would not be discharged by a cure by Tenant in accordance with ARTICLE 24, no cure period for such default shall be applicable, and (y) the representations and warranties contained in this clause S and the indemnity set forth herein shall be continuing in nature and shall survive the expiration or earlier termination of this Lease.

T.  **Substitution of Other Premises.** At any time hereafter, Landlord may relocate any portion of Tenant’s Premises not within Tower IV, subject to the terms set forth below, on the following conditions: (i) if the portion of the Premises which Landlord wants to relocate comprises a full floor of a Tower, the Premises on such full floor can only be relocated in
connection with a lease to another tenant of not less than 40,000 rentable square feet; and (ii) if the portion of the Premises which Landlord wants to relocate comprises less than a full floor of a Tower, the Premises on such floor can be relocated in connection with a lease to another tenant of not less than one full floor of a Tower of the Office Section. Any such re-locatable portion of the Premises is referred to herein as “Committed Non-Tower IV Premises”. Landlord may (upon not less than one hundred eighty (180) days’ prior notice) substitute for the Committed Non-Tower IV Premises, different space (herein referred to as the “New Premises”) in the Office Section, provided that the New Premises shall be usable for Tenant’s purpose; shall be contiguous to the remaining Premises; shall be situated on the same floor as, or a higher floor than, the Committed Non Tower IV Premises; shall have a window line not less that the window line of the Committed Non-Tower IV Premises from which Tenant is being relocated; and Landlord shall pay the expenses of Tenant’s moving from the Committed Non-Tower IV Premises to the New Premises and for fully demising and improving the New Premises so that they are substantially similar to the Committed Non-Tower IV Premises in quality of improvement and utility to Tenant. The New Premises shall contain not less rentable square footage as the Committed Non-Tower IV Premises and in no event will the Base Rent or Tenant’s Proportionate Expense Share or Proportionate Tax Share be increased by reason of the substitution.

U. **Underlying Leases.** Landlord is the lessee of air rights premises collectively referred to as Copley Place, pursuant to that certain Air Rights Lease Agreement (the “Underlying Lease”), made as of June 20, 2011, by and between Landlord, as the tenant thereunder, and the Massachusetts Department of Transportation (“DOT”), as the landlord thereunder.

Landlord hereby gives notice to Tenant that it supports the Affirmative Action and Resident Preference goals set forth in Paragraph 6 of Schedule D to the Underlying Lease and in Attachment C to the City of Boston’s Urban Development Action Grant application for Copley Place, and encourages Tenant to pursue such goals in Tenant’s own employment practices. In connection with hiring to fill permanent jobs at the Premises, Tenant shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. Tenant shall comply to the extent applicable, with Title VII of the U.S. Civil Rights Act and M.G.L. c.151B with respect to employment at the Premises.

V. **Partial Invalidity.** If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

W. **Intentionally Omitted.**

X. **Signage.** Landlord hereby consents to Tenant placing signage on the exterior of the Premises at Tenant’s entrance doors, at Tenant’s sole cost and expense, in accordance with Landlord’s reasonable rules with respect thereto and Tenant may, at its option, at Landlord’s sole cost and expense, have its name on the electronic Building directory provided for tenants in the
Sky Lobby of the Building as well as elevator lobby signage, consistent in quality and aesthetics with other elevator lobby signage in the Building, in each floor elevator lobby serving the Premises. Subject to any necessary approval from the City of Boston and Landlord’s approval of design, materials and specific location, not to be unreasonably withheld, Tenant may, at Tenant’s sole cost and expense, install, maintain and replace, so long as Signage Tenants occupy not less than 70% of the Initial Premises (or rentable area equivalent thereto), at Tenant’s sole cost and expense:

1. the name and/or logo of the original Tenant or of a transferee pursuant to a Related Party Transfer, or, so long as such installation shall not result in a breach by Landlord of its obligations under any then existing lease of space in the Property, of a transferee to which Landlord has consented, a plaque not to exceed 18 inches by 18 inches in the new retail level office lobby at or near the elevators or Building directory.

2. the name and/or logo of the original Tenant or of a transferee pursuant to a Related Party Transfer, or, so long as such installation shall not result in a breach by Landlord of its obligations under any then existing lease of space in the Property, of a transferee to which Landlord has consented, to be located above or next to signage identifying Tower IV in the Sky Lobby and sized consistent with new or existing Building Standard Tower identification signage (which presently exists on Tower entrance doors).

3. the name and/or logo of the original Tenant or of a transferee pursuant to a Related Party Transfer, or, so long as such installation shall not result in a breach by Landlord of its obligations under any then existing lease of space in the Property, of a transferee to which Landlord has consented, on monument signage of approximately 2 feet deep by 3 feet wide by 4 feet high, in the outdoor plaza at the corner of Dartmouth Street and Huntington Avenue.

“Signage Tenant” shall mean the original Tenant named herein, any transferee pursuant to a Related Party Transfer, or any other transferee pursuant to a transfer to which Landlord has consented. No such signage shall display the name or logo of more than one entity and the name and logo on the signage must be the Tenant under this Lease or, if the Tenant under this Lease is an entity which is a lease-holding entity, the name and logo can be that of the affiliate of Tenant that is the principal operating company occupying the Premises.

Y. Attorneys’ Fees. In the event of any legal action or proceeding brought by either party against the other arising out of this Lease, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs (including, without limitation, court costs and expert witness fees) incurred in such action. Such amounts shall be included in any judgment rendered in any such action or proceeding.

Z. Waiver of Consequential Damages. Landlord and Tenant each hereby waive all claims for special, incidental, or consequential damages (except as may arise by reason of a Tenant holdover under Article 19) against the other arising out of the breach of or failure to perform or observe the requirements and obligations created by this Lease.
AA. Violations of Law. Landlord hereby represents and warrants that as of the date hereof, Landlord has received no notices of any uncured violation of law, ordinance, order or regulation applicable to the Property.

ARTICLE 33.
NOTICES

All notices to be given under this Lease shall be in writing and either hand delivered; delivered by reputable overnight courier, delivery acknowledged by recipient; or deposited in the United States mail, certified or registered mail with return receipt requested, postage prepaid, addressed as follows:

(i) If to Landlord:

Simon Property Group, L.P.
Attention: Mike Connell, Property Manager
Two Copley Place, Suite 100
Boston, MA 02116-6502

With a copy to:

Simon Property Group, L.P.
225 West Washington Street
Indianapolis, IN 46204

and as provided in ARTICLE 29 of this Lease

and to such other person or such other address designated by notice sent by Landlord or Tenant.

(ii) If to Tenant:

Prior to the Commencement Date:

Wayfair LLC
177 Huntington Avenue, Suite 6000
Boston, MA 02115
Attention: Chief Financial Officer

Following the Commencement Date:

Wayfair LLC
Four Copley Place
Boston, MA 02116
Attention: Chief Financial Officer

With a copy to:
After receiving notice from any person, firm or other entity that it holds a mortgage which includes the Building as part of the mortgaged premises, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given to such holder, and the curing of any of Landlord’s defaults by such holder shall be treated as performance by Landlord. Such holder shall be given such reasonable time as may be necessary to effect such cure or to foreclose the mortgage, as the case may be. For the purposes of ARTICLE 21, ARTICLE 29, ARTICLE 30 and this ARTICLE 33, the term “mortgage” includes a mortgage on a leasehold interest of Landlord (but not one on Tenant’s leasehold interest.

Notice by mail shall be deemed to have been given as of the date of receipt. Notice by hand delivery or reputable overnight courier shall be deemed to have been given at the time of delivery or attempted delivery (as customarily evidenced by the courier).

ARTICLE 34.
LIMITATION ON LIABILITY

It is expressly understood and agreed by Tenant that none of Landlord’s covenants, undertakings, representations or agreements are made or intended as personal covenants, undertakings, representations or agreements by Landlord or its partners, and any liability for damage or breach or nonperformance by Landlord shall be collectible only out of Landlord’s interest in the Property and no personal liability is assumed by, nor at any time may be asserted against, Landlord or its partners or any of its or their directors, officers, agents, employees, legal representatives, successors or assigns, all such liability, if any, being expressly waived and released by Tenant. The provisions of this ARTICLE 34 shall expressly be applicable to and inure to the benefit of Landlord’s successors and assigns. In no event shall Landlord or its constituent partners be liable for any incidental or consequential damages in connection with its obligations under, or any action taken by Landlord or its constituent partners in connection with, this Lease.

It is expressly understood and agreed by Landlord that none of Tenant’s covenants, undertakings, representations or agreements are made or intended as personal covenants, undertakings, representations or agreements by, and no personal liability is assumed by, nor at any time may be asserted against, any of Tenant’s members or partners or any of its or their directors, officers, agents, employees, legal representatives, successors or assigns, all such liability, if any, being expressly waived and released by Landlord.

ARTICLE 35.
LANDLORD’S DESIGNATED AGENT

It is expressly understood and agreed by Tenant that the provisions of this Lease may be enforced on behalf of Landlord by an agent designated by Landlord for such purpose, and such enforcement shall be equally effective whether in the name of Landlord or such agent.
ARTICLE 36.
COMMENCEMENT DATE

If Landlord shall not have substantially completed Landlord’s Work (as set forth in Exhibit B) by the Commencement Date (“Landlord’s Completion Date”), the Commencement Date shall be deferred for the number of days after Landlord’s Completion Date required for Landlord to substantially complete Landlord’s Work; provided, however, the Commencement Date shall not be deferred if the Premises are not substantially completed by reason of any Tenant Delays (hereinafter defined). “Tenant Delays” shall mean delays caused by Tenant, its employees, agents or contractors which begin one (1) business day following notice thereof from Landlord to Tenant. Furthermore, if Landlord shall not have substantially completed Landlord’s Work with respect to restroom renovation with respect to the Initial Premises by September 14, 2014, then Tenant shall be entitled to a credit, for each day from September 1, 2014 to the date of such substantial completion, against Base Rent equal to one (1) day of Base Rent applicable to any floor of Tower IV (based on rentable square feet on that floor) with respect to which the Landlord’s Work thereon shall not have been substantially completed. In addition, if Tenant adds space to the Initial Premises and as a result of such addition, Tenant is leasing more than 50% of a floor of a Tower, Landlord shall renovate the restrooms on such floor as contemplated by Exhibit B-2, and if Landlord shall not have substantially completed such restroom renovation on such floor by the date which is one hundred twenty (120) days following the date on which the Landlord delivers the space to Tenant that results in Tenant being the tenant of more than 50% of such floor, then Tenant shall be entitled to a credit, for each day following the end of such one hundred twenty (120) day period to the date of such substantial completion, against Base Rent due under this Lease equal to one (1) day of Base Rent applicable to the additional space on such floor which resulted in Landlord’s obligation.

ARTICLE 37.
PARKING

Tenant shall have the right during the Term to use up to twenty-five (25) non reserved parking spaces in the garage located within and serving the Property and up to fifteen (15) non-reserved parking spaces in the Dartmouth Street Garage in the property adjacent to the Building and located on Dartmouth Street, subject with respect to each garage of payment by Tenant for such use at the prevailing monthly rate therefor generally charged to Office Section tenants by the operator of the garage from time to time; provided, however, for every additional 3,500 rentable square feet of space in the Premises in excess of 130,000 rentable square feet, Tenant will be entitled to use, at the monthly rate and on the same terms as other spaces used by Tenant therein, one additional non-reserved parking space in the Dartmouth Street garage. In the event of non-payment of parking charges due hereunder by the Tenant, Landlord shall have the right to terminate Tenant’s rights with respect to parking without any obligation to reinstate such right to parking in the event Tenant attempts to resume payment for parking.

ARTICLE 38.
TELEPHONE SERVICES

Subject to the terms of this Section 38 set forth below, there shall be paid by the Landlord as the Landlord’s contribution toward Tenant’s Initial Alterations, the sum (“Allowance”) of

56
$7,191,555.84, based upon a contribution of $68.04 per rentable square foot for 105,696 rentable square feet in the Initial Premises. Tenant shall submit to Landlord Tenant’s good faith estimate (“Qualified Cost Estimate”) of the Qualified Costs (hereinafter defined) to be incurred by Tenant in connection with its move to and the construction of Initial Alterations in the Premises. Installments of the Allowance shall be payable in accordance with the procedures set forth below. Installments of the Allowance, which shall in no event exceed the aggregate amount of the Allowance, shall be paid to Tenant (or, at Landlord’s option if Landlord reasonably determines that Tenant is not paying its contractors and such failure to pay may give rise to a lien against the Building, to the order of the contractor that performed the work set forth in the respective invoices) or, at Tenant’s option to Tenant’s contractors, with respect to Qualified Costs theretofore incurred by Tenant (and not theretofore paid to Tenant or which were Tenant’s responsibility as set forth in this Article 38) for which Tenant has submitted a requisition consisting of, (i) in the case of other than costs incurred under architectural and engineering contracts (collectively “Professional Services Contracts”) or under construction contracts, such as furniture or moving or professional fees that are contracted for by Tenant separate from construction and Professional Services Contracts, paid invoices, (ii) in the case of Professional Services Contracts, invoices, and (iii) in the case of construction costs (a) an application for payment and sworn statement of a contractor performing general contracting work in the Premises substantially in the form of AIA Document G-702 covering all work for which disbursement is to be made to a date specified therein which is part of the construction contract; (b) a certification from an AIA architect substantially in the form of the Architect’s Certificate for Payment which is located on AIA Document G702, Application and Certificate of Payment; (c) contractor’s, project managers and subcontractor’s waivers of liens which shall cover all applicable items of Qualified Costs under such construction contracts for which disbursement is being requested and any other statements and forms required for compliance with the mechanics’ lien laws of the Commonwealth of Massachusetts, together with invoices with respect to such Qualified Costs and such other supporting data as Landlord or Landlord’s Mortgagee may reasonably require; (iv) a cost breakdown for each trade or subcontractor performing the work included in Qualified Costs for which a request for disbursement under such construction contracts is being made; (v) copies of all construction contracts for the such Alterations, together with copies of all change orders, if any; and (iii) a request to disburse from Tenant containing an acknowledgement by Tenant of the work done and a good faith estimate of the cost to complete the Initial Alterations to the Premises. Upon completion of the Initial Alterations, and as part of the requisition for final disbursement of the Allowance for hard construction costs, Tenant shall furnish Landlord with: (1) general contractor and architect’s completion affidavits, (2) full and final waivers of lien, (3) receipted bills covering all labor and materials expended and used, (4) as-built plans of the Alterations, and (5) the certification of Tenant’s architect to the Landlord that, based on on-site observation and the data comprising the application for disbursement, to the best of the architect’s knowledge, information and belief, the Alterations have progressed as indicated in the application, the quality of the Alterations is in accordance with the construction contract documents and the contractor is entitled to; payment of the amount certified in the application. Notwithstanding the foregoing, if the Qualified Cost Estimate exceeds the Allowance, Tenant shall be entitled to payments with respect to any requisition in accordance with the terms hereof except that each individual disbursement of the Allowance by Landlord shall be in the same ratio to the amount properly requisitioned as the Allowance bears to the Adjusted Qualified Cost Estimate (hereinafter defined). “Adjusted

57
Qualified Cost Estimate means the Qualified Cost Estimate reduced by any amount paid prior to the date of computing the Adjusted Qualified cost Estimate by Tenant directly to a contractor, professional or supplier with respect to the cost of an item that had been included in the Qualified Cost Estimate, but with respect to which Tenant will not be submitting a requisition (and for which Landlord will not make any payment with respect to the Allowance). Furthermore, the amount of any installment of the Allowance otherwise payable shall be reduced by the amount of any retainage applicable to the Qualified Costs (proportionately if an individual disbursement is reduced as set forth in the immediately preceding sentence) with respect to which the disbursement is being requested, but such retainage shall be payable as part of the final draw when all requirements set forth for such disbursement have been met). In no event shall Landlord be required to disburse any installment of the Allowance more than twice in any calendar month and in no event will Landlord be obligated to disburse an amount which is less than $50,000 (other than the final disbursement on account of the Allowance). Notwithstanding anything herein to the contrary, Landlord shall not be obligated to disburse any portion of the Allowance during the continuance of an uncured default under this Lease, and Landlord’s obligation to disburse shall only resume when and if such default is curable and is, in fact, cured. Time is of the essence with respect to the time periods set forth in this Section 38.

For purposes hereof, “Qualified Costs” shall mean actual costs for (a) preparation of drawings and other expenses incurred in connection with design and construction, including without limitation permit fees and costs of labor and materials, (b) construction of the Premises in accordance with the plans and specifications approved in accordance with ARTICLE 10, (c) wiring and cabling in the Premises, (d) architectural, engineering, construction management, project management and other professional fees relating to design and construction of the Premises and the negotiation of this Lease, (e) costs for the procurement of furniture, fixtures and equipment in connection with this Lease, (f) telephone data, equipment, audio visual equipment, security systems and special power distribution, (g) moving and delivery costs, (h) skylights and (i) a roof deck on the roof of Tower IV, (j) interconnecting staircases between floors in the Premises, and (k) all other hard and soft costs related to the Tenant’s Alterations and moving expenses associated with the space with respect to which the Allowance for such Qualified Costs is being provided.

Notwithstanding the foregoing, if, as of June 15, 2015, the amount paid or payable (by reason of requisitions) by Landlord with respect to the Allowance is less than the Allowance, Landlord shall apply an amount equal the difference between the amount theretofore requisitioned by Tenant and the Allowance to Base Rent next coming due under this Lease; provided however, Landlord shall have no obligation to apply such amount to Base Rent if Tenant is in default of its obligations under this Lease unless and until such application would cure all defaults of Tenant in full.

Landlord shall pay the portion of the Allowance related to a requisition as is to be paid by Landlord under this Article 38 not later than thirty (30) days following the Landlord’s approval of the applicable requisition package. Landlord shall have a review period of fifteen (15) business days following the submission of a requisition package to object to the submission as not being in compliance with this Article 38 and if Landlord does not object to the submission within such period, the submission shall be deemed approved. If Landlord shall object to a requisition package, Tenant shall resubmit as necessary to comply with this Article 38 and the
process for approval shall begin again. If Landlord shall fail to pay by the date due hereunder the amount to be paid by Landlord in accordance with this Article 38 for thirty (30) days following approval or deemed approval of the requisition package, upon five (5) days prior written notice thereof from Tenant to Landlord of such failure, Tenant may offset against Base Rent next payable by Tenant to Landlord under this Lease, the amount which was not paid by the end of such thirty (30) day notice period together with interest thereon at the rate specified in Section 32. B of this Lease from the end of such thirty (30) day period until the date on which such amount with interest is offset against such Base Rent or otherwise paid by Landlord to Tenant.

ARTICLE 39.
FINANCIAL STATEMENTS

Tenant shall furnish to Landlord annually within thirty (30) days after Landlord’s request therefor in connection with any bona fide potential sale or financing of the Building, Tenant’s most recent annual statement, certified by a responsible financial officer of Tenant. Tenant agrees that Landlord may deliver a copy of such statements to its mortgagee or ground lessor or a potential purchaser of Landlord’s interest in the Premises, but otherwise, Landlord shall treat such statements and information contained therein as confidential; provided, however, Landlord may release such statements and information if and to the extent required by a court of competent jurisdiction or if in the opinion of Landlord’s counsel, the information contained in such statements and information is required to be disclosed under applicable law following not less than ten (10) business days’ notice to Tenant unless otherwise required by applicable law.

ARTICLE 40.
TENANT AUTHORITY TO EXECUTE LEASE

40.01 Tenant Authority to Execute Lease. Tenant (a) represents and warrants that this Lease has been duly authorized, executed and delivered by and on behalf of Tenant and constitutes the valid and binding agreement of Tenant in accordance with the terms hereof and (b) if Landlord so requests, Tenant shall deliver to Landlord or its agent, concurrently with the delivery of this Lease executed by Tenant, certified resolutions authorizing Tenant’s execution and delivery of this Lease by the person executing on behalf of Tenant and the performance of Tenant’s obligations hereunder.

40.02 Landlord Authority to Execute Lease. Landlord has all requisite power and authority to execute and deliver this Lease and to carry out its obligations hereunder and the transactions contemplated hereby.

ARTICLE 41.
OPTION TO EXTEND LEASE

Tenant shall have the right to extend the Term of this Lease for two (2) successive five (5) year periods, each such right of Tenant to be conditioned upon (a) this Lease at the time of election being in full force and effect and Tenant not then being in default under this Lease beyond any applicable notice and cure period, such extension period to commence upon the expiration of the original Term of this Lease, (b) as to the second option, the first option having been exercised. Each option may be exercised for all or a portion, but not less than 70%, of the Premises as the same is constituted at the date the option is exercised; provided, however, any contiguous portion of the Premises on any floor of any Tower with respect to which Tenant does not exercise an option to extend (each, a “Non-Extended Space”) (a) shall be not less than 5,000 contiguous rentable square feet on any one floor of any one Tower and (b) shall meet the Window Line Criterion (hereinafter defined) and (c) shall be accessible by a corridor that is consistent with corridor layouts in comparable first class office towers. Tenant shall be responsible for the cost of separately demising the remaining Premises (demising walls erected and Building systems separated from the space relinquished). The “Window Line Criterion” shall mean that the Non-Extended Space satisfies any one of the following conditions:

(i) The window lines (exterior and atrium facing) are comparable to the window lines (exterior and atrium facing) of any other leased space in the Office Section of comparable size;

(ii) The window lines (exterior and atrium facing) are substantially proportionate to the window lines (exterior and atrium facing) in the space on the floor that they is being retained;

(iii) The window line is, in the view of the Landlord’s Office Section brokers, marketable at rates consistent with the rates for other space of the Office Section; or

(iv) The window lines (exterior and atrium facing) are substantially proportionate to the window lines (exterior and atrium facing) of any other leased space in the Office Section.

A right of extension shall be exercised, if at all, by written notice to Landlord given at least eighteen (18) months, but not more than twenty-four (24) months prior to the expiration of the then Term of this Lease and such notice must designate the portion of the then Premises, if less than all, with respect to which the extension is being exercised. If a notice is given in compliance with the provisions hereof, this Lease shall, thereupon, be extended for the applicable extension period, subject to the terms of this ARTICLE 41, without the need for any further instrument to be executed (but either party shall execute such a confirmatory instrument upon the request of the other); and if no such notice is given, then Tenant’s right of extension shall be null and void. All of the terms, conditions and provisions of this Lease shall be applicable to any extension of the Term hereof, as if the termination date of the extension period were the date originally set forth herein for the expiration of the
Term, except that (i) the exercised right of extension shall be of no further force or effect, so that there shall be no further right of extension with respect thereto, (ii) the Base Rent per square foot during the extension period shall be 95% of the Fair Market Rent (as hereinafter defined); and (iii) the Premises demised under this Lease during the extension period shall be the Premises set forth in Tenant’s notice of extension (which may not be less than seventy percent (70%) of the Premises demised under this Lease at the time the notice of extension is given, as described above) and Tenant’s Proportionate Tax Share and Tenant’s Proportionate Expense Share shall be proportionately adjusted, if necessary to reflect the reduced size of space included in the Premises.

60
“Fair Market Rent” for purposes of this ARTICLE 41 shall mean the rent (base rent and additional rent adjusted, if necessary, to reflect the base years to be used for the applicable period) per rentable square foot for similar office space in the Building and in comparable buildings as reasonably located in the City of Boston, (i) without taking into account actual improvements (regardless of who paid for such improvements), or the cost of demolition of the space, and (ii) taking into account (A) the magnitude of any free rent or buildout allowance, (B) length of lease, (C) building amenities, (D) the location and floor levels of the premises, (E) services provided, (F) surrender rights, if any, (G) parking rights and obligations, (H) free rent, tenant allowances or other concessions and (I) all other relevant market factors and (iii) taking into account the brokerage commissions, if any, to be paid in connection with the renewal.

Within thirty (30) days after Tenant’s exercise of the extension option (or, if earlier, within thirty (30) days after Tenant’s request for Landlord’s rental rate, which may be made at any time after the date twenty-two (22) months prior to the then scheduled expiration of the Term and prior to Tenant’s giving its notice exercising the extension option), Landlord shall provide Tenant with its good faith estimate of the Fair Market Rent for the period of the extension. If, within thirty (30) days after Tenant’s receipt of Landlord’s estimate (“Consideration Period”), Tenant shall not have accepted Landlord’s estimate of Fair Market Rent, the parties shall at the request of either party made by notice given within ten (10) days of the end of the Consideration Period, discuss the matter in good faith for thirty (30) days. If within such thirty (30) day period the parties have not agreed on the Fair Market Rent rate in writing, then Landlord and Tenant shall, during the ensuing fifteen (15) days, attempt to agree on an arbitrator not affiliated with either party (and if they are unable to do so, either party may request that the President of the American Arbitration Association in Boston choose an arbitrator, as promptly as possible, meeting the criteria set forth below; provided, however, the parties shall have the right during the ten (10) day period following the end of the fifteen (15) day period to submit the names of not more than two (2) potential arbitrators meeting the said criteria and if the parties or either of them makes such a submission, the choice of the President of the American Arbitration Association shall be made from the list of potential arbitrators so submitted). Such arbitrator shall have a period of thirty (30) days to determine which of Landlord’s estimate of Fair Market Rent or Tenant’s estimate of Fair Market Rent hereunder more closely corresponds to the Fair Market Rent and the estimate of Fair Market Rent which in the judgment of the arbitrator more closely corresponds to the arbitrator’s estimate of Fair Market Rent shall be the Fair Market Rent for purposes hereof and the determination shall be binding upon the parties. The arbitrator must choose either the Fair Market Rent estimate submitted by Landlord or the Fair Market Rent estimate submitted by Tenant. Such arbitrator shall have at least ten (10) years’ experience in the valuation and appraisal of first-class office rents for real estate in the City of Boston, be experienced with leasing transactions exceeding 100,000 square feet within the downtown Boston area, and have no then contractual relationship with either Landlord or Tenant. The expenses of the arbitrator shall be borne equally by the Landlord and the Tenant.

ARTICLE 42.
EXPANSION RIGHTS

42.01 Special Expansion Rights. Exhibit A-1 described certain spaces in Tower IV of the Building of which the Tenant is State Street Bank or an affiliate. Each such space is
designated on Exhibit A-1 as “SSB” and is referred to herein as an “SSB Expansion Space” and such spaces are referred to herein collectively as “SSB Expansion Spaces”. The SSB Expansion Spaces are subject to a lease which terminates on December 31, 2014, if not extended pursuant to its current terms by December 31, 2013. In the event the lease of the SSB Expansion Spaces is not extended pursuant to the terms of the currently existing rights of the tenant thereof to extend either because the tenant of the SSB Expansion Space does not give timely notice of extension or because such tenant provides a waiver of the right to extend prior to December 31, 2013, Landlord shall promptly notify Tenant and Tenant shall have the option to expand the Initial Premises by any or all of the SSB Expansion Spaces (but as to any designated SSB Expansion Space on any one floor of any Tower, the expansion option must be exercised as to the entire SSB Expansion Space), by notice to Landlord given not later than the earlier of (a) February 28, 2014 and (b) sixty (60) days following the date of Landlord’s notice, but in no event shall Tenant be obligated to exercise an option earlier than September 30, 2013. If Tenant timely provides such notice, the SSB Expansion Spaces which Tenant elected to add to the Premises shall be added thereto as of January 1, 2015 (subject to any holdover by the tenant thereof).

Exhibit A-1 also designates a portion of the first floor of Tower I as space that may become Available (as hereinafter defined) prior to July 1, 2014. It is also possible that an SSB Expansion Space may become Available prior to July 1, 2014 by reason of a negotiated termination of the existing lease with respect to such SSB Expansion Space. Furthermore, space contiguous (vertically or horizontally) to the Initial Premises excluding the currently vacant (approximately 8,963 rsf) suite on the second floor of Tower III may become available by reason of a termination of lease. Each SSB Expansion Space that becomes Available prior to July 1, 2014; the Tower I Space described in Exhibit A-1 and any such contiguous space in Tower III that becomes Available prior to July 1, 2014, is referred to herein as an “Early Expansion Space” (and collectively as “Early Expansion Spaces”). If the current tenant of an Early Expansion Space notifies Landlord that it is willing to terminate its existing lease of an Early Expansion Space prior to July 1, 2014 and Landlord is willing, in its sole discretion, to permit such termination, Landlord shall notify Tenant of the anticipated date of such Early Expansion Space shall be Available (“EES Notice”), and Tenant shall have the option to expand the Initial Premises by the addition thereto of such Early Expansion Space, by notice (“EES Acceptance”) to Landlord given not later than the later to occur of (i) September 1, 2013 and (ii) thirty (30) days following the date Tenant receives the associated EES Notice.

An Early Expansion Space shall be added to the Premises on later to occur of September 1, 2013 and the Add Date (as hereinafter defined) for such Early Expansion Space.

“Add Date” as to an Early Expansion Space shall be five (5) business days following the later to occur of (A) the date the Landlord anticipated the Early Expansion Space would be available in the EES Notice and (B) the date such Early Expansion Space is Available and Tenant is given notice thereof by Landlord; but in no event prior to thirty (30) days following the date Tenant gives the EES Acceptance with respect to such Early Expansion Space; provided, however, the Add Date shall be deferred as provided in Article 7 with respect to Early Expansion Space to be delivered in “shell” rather than “as-is” condition as provided in Article 7.

Space shall be “Available” if the lease with respect thereto is terminated, such space is vacant and currently existing tenants of the Building do not have rights to such space which were
With respect to SSB Expansion Space and Early Expansion Space added to the Premises hereunder, such space shall as of the date the same become a part of the Premises be leased on all of the terms and conditions of this Lease as if the same were a part of the Premises originally designated in Section 1.19, and, accordingly, (ii) Base Rent shall be increased by the Annual Base Rent per Rentable Square Foot set forth in Section 1.11 of this Lease multiplied by the rentable square feet in the SSB Expansion Space and/or Early Expansion Space so added to the Premises originally designated as of the date so added, (iii) the Tenant’s Proportionate Expense Share and Tenant’s Proportionate Tax Share will be increased to reflect the additional square footage in the Premises as of the date so added, and (iv) the Allowance under Section 38 shall be increased by an amount equal to $60.00 per rentable square foot contained in the added SSB Expansion Space and/or Early Expansion Space.

42.02 Expansion Rights. Tenant shall have two (2) additional options to expand the Premises, subject to Section 43.01(ii). The first option (“Expansion Option One”) is to expand the Premises by the addition thereto of approximately 16,654 rentable square feet on the 4th floor of Tower III (“Expansion Space One”) and the second option (“Expansion Option Two”) is to expand the Premises by the addition thereto of approximately 5,413 rentable square feet on the 4th floor of Tower III (“Expansion Space Two”). Expansion Space One and Expansion Space Two are designated on Exhibit A-3. In the event Tenant exercises a right of first offer as provided in Article 43 with respect to space within Expansion Space One and/or Expansion Space Two, the space that landlord is obligated to deliver hereunder shall be correspondingly reduced. The right to exercise Expansion Option One is subject only to the prior rights of the current tenant thereof to extend or renew its lease thereof pursuant to existing rights contained in its lease as of the date hereof on or before March 31, 2014. The right to exercise Expansion Option Two is subject only to the right of first offer granted to the current tenant of Expansion Space One prior to the date of this Lease. Each option to expand requires notice of the exercise of the option by the applicable Expansion Notice Date (hereinafter defined), time being of the essence, and the space which is the subject of such option to expand shall be delivered by Landlord to Tenant by the applicable Expansion Delivery Date (as hereinafter defined). “Expansion Notice Date” for Expansion Option One is March 1, 2014 and for Expansion Option Two is July 1, 2014. “Expansion Delivery Date” for Expansion Space One is March 1, 2015 and for Expansion Space Two is July 1, 2015. Rent will be payable on the space added by the exercise of Expansion Option One beginning on July 1, 2015. Rent will be payable on the space added by the exercise of Expansion Option Two beginning on November 1, 2015. With respect to expansion space added to the Premises under this Section 42.02, such expansion space shall be leased on all of the terms and conditions of this Lease as amended from time to time, except that (i) the Term for such expansion space shall begin on the applicable Expansion Delivery Date and end on the Termination Date (as the same may be extended or reduced as provided in this Lease), (ii) Base Rent shall be increased by the addition thereto of the Annual Base Rent per Rentable Square Foot set forth in Section 1.11 of this Lease multiplied by the rentable square feet in the applicable expansion space, (iii) the Proportionate Share of Expenses and the Proportionate Share of Taxes will be increased to reflect the additional square footage in the Premises and (iv) Tenant shall receive an improvement allowance with respect to the
expansion space at a rate of $60.00 (not $68.04) per rentable square foot of the applicable expansion space multiplied by the ratio of the number of months in the term of the expansion space to the number of months in the original term of this Lease, such improvement allowance to be administered on the same terms as the Allowance under ARTICLE 38, but only disbursed to the extent of Qualified Costs related to the expansion space, without the right to apply any unused portion to free rent and such allowance must be requisitioned by December 31, 2016. The expansion space shall be otherwise delivered in “as-is” condition, broom clean and free of all personal property, debris, tenants and occupants.

If Landlord is delayed delivering possession of Expansion Space One or Expansion Space Two, as applicable, beyond the applicable Expansion Delivery Date due to the holdover or unlawful possession of Expansion Space One or Expansion Space Two, as applicable, by any party, or otherwise, Landlord shall use reasonable efforts to obtain possession of, and deliver to Tenant, Expansion Space One or Expansion Space Two, as applicable, and the commencement of the term for Expansion Space One or Expansion Space Two, as applicable, and Tenant’s obligation to pay Rent therefor shall be postponed accordingly. If Landlord is unable to deliver an Expansion Space under this Section 42.02 by the date which is ninety (90) days following the applicable Expansion Delivery Date, Tenant shall have the right to withdraw its notice to expand the Premises by the addition of such Expansion Space at any time thereafter, but prior to delivery of such Expansion Space in the condition required hereunder, by thirty (30) days’ notice to Landlord of such withdrawal; provided, however, such notice of withdrawal shall be of no force or effect if, prior to the end of such thirty (30) days, Landlord delivers the Expansion Space to Tenant in the condition required hereunder.

42.03 Expansion Amendment. If Tenant exercises an expansion option under Section 41.01 and/or Section 42.02, Landlord shall prepare an amendment (an “Expansion Amendment”) adding the applicable expansion space to the Premises on the terms set forth above and reflecting the changes in the Base Rent, Rentable Square Footage of the Premises, Tenant’s Proportionate Share of Taxes and Tenant’s Proportionate Share of Expenses and other appropriate terms. A copy of the Expansion Amendment shall be sent to Tenant and, subject to Landlord and Tenant agreeing upon any reasonable changes requested by Tenant, Tenant shall execute and return the expansion Amendment to Landlord within thirty (30) days thereafter, and Landlord shall deliver a copy thereof executed by Landlord to Tenant, but an otherwise valid exercise of an expansion option shall be fully effective, whether or not an Expansion Amendment is executed.

42.04 Bentley Space. In the event Tenant is offered and elects to sublease the “Bentley” space consisting of 13,294 rentable square feet of space on the 7th floor of Tower III, designated by Landlord as Space #3701, from the tenant thereof, Landlord will consent to such sublease to Tenant and provide Tenant the option to add the sublease space to the Premises upon expiration of such sublease on the terms then in effect under this Lease, and if Tenant adds the sublease space to the Premises, Tenant shall receive an improvement allowance with respect to the expansion space at a rate of $60.00 (not $68.04) per rentable square foot of such space multiplied by the ratio of the number of months remaining in the term of this Lease at the date such space becomes a part of the Premises to the number of months in the original term of this Lease, such improvement allowance to be administered on the same terms as the Allowance under ARTICLE 38, but only disbursed to the extent of Qualified Costs related to the Bentley space, without the right to apply any unused portion to free rent.
ARTICLE 43.
RIGHT OF FIRST OFFER

43.01 Grant of Option; Conditions. Tenant shall have a continuing right of first offer (the “Right of First Offer”) with respect to the following space in the Office Section:

(i) Commencing on the date hereof, all space in Tower IV other than on the first floor;

(ii) Commencing on the date hereof, any space in Tower III that is contiguous to the then Premises, whether on a floor above or below the Premises (including SSB Expansion Space and Early Expansion Space not added under Section 41.01 and any expansion space under Section 41.02) or on the same floor as a portion of the Premises, but in Tower III;

(iii) Commencing July 1, 2019, any space in Tower I, but subject to the rights, existing as of the date of this Lease, of other tenants of the Building.

Any such space that becomes available as hereinafter described is referred to herein as the “Offering Space”. If during the Term Landlord determines (in Landlord’s sole judgment) that Offering Space is available to lease to a third party other than the existing tenant or licensee of the Offering Space, then Landlord shall so advise Tenant (the “Advice”). Tenant may lease such Offering Space in its entirety only, under the applicable terms described below, by delivering written notice of exercise to Landlord (the “Notice of Exercise”) within ten business (10) days after the date of the Advice. In any event, Tenant’s delivery of a Notice of Exercise shall be deemed to be the irrevocable exercise by Tenant of its Right of First Offer subject to and in accordance with the provisions of this ARTICLE 43. Any reference to the Advice below shall be a reference to the Advice with respect to which a Notice of Exercise was given.

Notwithstanding the foregoing, Tenant shall have no such Right of First Offer and Landlord need not provide Tenant with an Advice, if:

(a) A material default is then continuing at the time that Landlord would otherwise deliver the Advice; or

(b) Tenant herein named (or a transferee pursuant to a Related Party Transfer, as defined in ARTICLE 17 of this Lease) is not in occupancy of at least 70% of the Premises initially leased at the time Landlord would otherwise deliver the Advice; or

(c) This Lease has been assigned (other than pursuant to a Related Party Transfer) prior to the date Landlord would otherwise deliver the Advice.

43.02 Terms for Offering Space. The term for the Offering Space shall commence upon the commencement date stated in the Advice and shall thereafter continue for the balance of the Term of this Lease as the same may be extended; provided, however, in the event the commencement date for Offering Space as set forth in the Advice is to commence on or after July 1, 2019, the term of the lease with respect to the Offering Space shall be the term set forth in the Advice with respect thereto. The Offering Space shall be added to the then Premises under
this Lease on all of the terms and conditions of this Lease as the same may be amended from time to time except as hereinafter provided and except as provided in the immediately preceding sentence. In the event the Offering Space becomes a part of the Premises prior to July 1, 2019, as of the date the Offering Space term commences (i) the amount added to Base Rent on account of the Offering Space shall be the Annual Base Rent per Rentable Square Foot set forth in Section 1.11 of this Lease multiplied by the rentable square feet in the Offering Space and (ii) the Tenant’s Proportionate Expanse Share and Tenant’s Proportionate Tax Share shall be increased to reflect the additional square footage in the Premises and (iii) Tenant shall receive an improvement allowance to be used for Qualified Costs with respect to the Offering Space at a rate of $60.00 per rentable square foot in the Offering Space multiplied by the ratio of the number of months in the Offering Space term to the number of months in the original Term of this Lease, such improvement allowance to be administered on the same terms as the Allowance under ARTICLE 38, but only disbursed to the extent of Qualified Costs related to the Offering Space, without the right to apply any unused portion to rent and such improvement allowance must be requisitioned by the date which is fifteen (15) months following the date of delivery of the Offering Space, but the Offering Space shall be otherwise delivered in the condition set forth in the Advice. In the event the Offering Space becomes a part of the Premises after June 30, 2019, Base Rent under this Lease shall be increased by the Prevailing Market Rent (as hereinafter defined) for the Offering Space and the terms and conditions under which the Offering Space shall be leased (including, without limitation, the duration of the term for the Offering Space) shall otherwise be as set forth in the Advice with respect to the Offering Space.

43.03 Definition of Prevailing Market Rent. “Prevailing Market Rent” for purposes of this ARTICLE 43 shall mean the rent (base rent and additional rent adjusted, if necessary, to reflect the base years to be used for the applicable period) per rentable square foot for similar office space in the Building and in comparable buildings as reasonably located in the City of Boston (i) taking into account (A) any difference in the base years between the Offering Space and the compared space for measurement of additional rent on account of taxes and expenses, (B) the magnitude of any free rent or buildout allowance included in rent for the compared space, (C) length of lease, (D) building amenities in the respective buildings, (E) the location and floor levels of the Offering Space and the compared space, (F) services provided in the respective buildings, (G) surrender rights, if any, in the compared space (H) parking rights and obligations, (I) free rent, tenant allowances or other concessions in the compared space and (J) all other relevant market factors and (iii) taking into account the brokerage commissions, if any, to be paid in connection with the leasing the respective spaces.

43.04 Determination of Prevailing Market Rent. Within thirty (30) days after Landlord’s receipt of the Notice of Exercise, if Base Rent is to be determined with reference to Prevailing Market Rent, Landlord shall provide Tenant with its good faith estimate of the Prevailing Market Rent. If, within thirty (30) days after Tenant’s receipt of Landlord’s estimate, Tenant shall not have notified Landlord of its objection to Landlord’s estimate and of Tenant’s estimate of Prevailing Market Rent, the estimate of Prevailing Market Rent quoted by Landlord shall be deemed to be the Prevailing Market Rent for the Offering Space. If Tenant so notifies Landlord of its objection, the parties shall discuss the matter in good faith for thirty (30) days after Tenant’s objection notice. If within such thirty (30) day period the parties have not agreed on the Prevailing Market Rent rate in writing, then Landlord and Tenant shall, during the ensuing fifteen (15) days, attempt to agree on an arbitrator not affiliated with either party (and if they are
unable to do so, either party may request that the President of the American Arbitration Association in Boston choose an arbitrator, as promptly as possible, meeting the criteria set forth below; provided, however, the parties shall have the right during the ten (10) day period following the end of the fifteen (15) day period to submit the names of not more than two (2) potential arbitrators meeting the said criteria and if the parties or either of them makes such a submission, the choice of the President of the American Arbitration Association shall be made from the arbitrators so submitted. Such arbitrator shall have a period of thirty (30) days to determine which of Landlord’s estimate of Prevailing Market Rent or Tenant’s estimate of Prevailing Market Rent hereunder more closely corresponds to the Prevailing Market Rent and the estimate of Prevailing Market Rent which more closely corresponds to the arbitrator’s estimate of Prevailing Market Rent shall be the Prevailing Market Rent for purposes hereof with respect to the subject Offering Space and the determination shall be binding upon the parties. The arbitrator must choose either the Prevailing Market Rent estimate submitted by Landlord or the Prevailing Market Rent Estimate submitted by Tenant. Such arbitrator shall have at least ten (10) years’ experience in the valuation and appraisal of first-class office rents for real estate in the City of Boston, be experienced with leasing transactions exceeding 100,000 square feet within the downtown Boston area, and have no then contractual relationship with either Landlord or Tenant. The expenses of the arbitrator shall be borne equally by the Landlord and the Tenant.

43.05 Condition of Offering Space. The Offering Space (including improvements therein) shall be delivered to Tenant broom-clean and free of occupants and personal property but otherwise in its condition and as-built configuration existing on the earlier of the date Tenant takes possession of the Offering Space or as of the date the term for such Offering Space commences. If Landlord is delayed delivering possession of the Offering Space due to the holdover or unlawful possession of the Offering Space by any party, or otherwise, Landlord shall use reasonable efforts to obtain possession of the Offering Space, and the commencement of the term for the Offering Space and Tenant’s obligation to pay Rent for such Offering Space shall be postponed until the date Landlord delivers possession of the Offering Space to Tenant free from occupancy by any party and otherwise in the condition required hereunder. If Landlord is unable to deliver an Offering Space under this Article 43 by the date which is ninety (90) days following the commencement date set forth in the applicable Advice, Tenant shall have the right to withdraw its notice to add the Offering Space to the Premises at any time thereafter, but only prior to delivery of such Expansion Space in the condition required hereunder, by thirty (30) days’ notice to Landlord of such withdrawal; provided, however, such notice of withdrawal shall be of no force or effect if, prior to the end of such thirty (30) days, Landlord delivers the Offering Space to Tenant in the condition required hereunder.

43.06 Offering Amendment. If Tenant exercises its Right of First Offer, Landlord shall prepare an amendment (an “Offering Amendment”) adding the Offering Space to the Premises on the terms set forth in the Advice and reflecting the changes in the Base Rent, Rentable Square Footage of the Premises, Tenant’s Proportionate Share of Taxes and Tenant’s Proportionate Share of Expenses and other appropriate terms. A copy of the Offering Amendment shall be sent to Tenant and, subject to Landlord and Tenant agreeing upon any reasonable changes requested by Tenant, Tenant shall execute and return the Offering Amendment to Landlord within thirty (30) days thereafter, but an otherwise valid exercise of a Right of First Offer shall be fully effective, whether or not an Offering Amendment is executed.
Landlord hereby grants to Tenant a license to use space on the roof of the Building for communications infrastructure, Tenant shall have the right to access and use the roof of the Building (such right being referred to herein as a “Roof License”), commencing on the Commencement Date, in accordance with the following terms and conditions:

A. During the term of a Roof License, Tenant, at no additional cost other than the costs incurred by Tenant in connection with installation and maintenance, may use the Roof Space (as hereinafter defined) for the purpose of installing, operating and maintaining microwave dishes, antennae and/or other communication devices approved by the Landlord (each, a “Dish/Antenna”), such approval not to be unreasonably withheld, conditioned or delayed. Tenant shall have no right to use the Roof Space under a Roof License subsequent to the Termination Date. Tenant may elect to terminate the use of the Roof Space and so terminate the Roof License under which Tenant is using the Roof Space by giving not less than thirty (30) days notice to Landlord of Tenant’s intention to cease using the Roof Space, complying with its obligations relating to removal of the Dish/Antenna Items (as defined below) not later than such date. The exact location of the space on the roof to be used by Tenant under a Roof License shall be reasonably designated by Landlord (the “Roof Space”). Landlord reserves the right at Landlord’s sole cost and expense and without material disruption to Tenant, to relocate the Roof Space as reasonably necessary during the Term. Landlord’s designation shall take into account Tenant’s use of the Dish/Antenna Items. Notwithstanding the foregoing, Tenant’s right to install the Dish/Antenna shall be subject to the reasonable approval rights of Landlord and Landlord’s architect and/or engineer with respect to the plans and specifications of the Dish/Antenna Items (as hereinafter defined) including without limitation appearance, the size of the Dish/Antenna, the manner in which the Dish/Antenna is attached to the roof of the Building and the manner in which any cables are run to and from the Dish/Antenna, it being understood that Tenant shall have the right at its cost and expense to run conduit to connect the Premises to the Dish/Antenna, provided that Tenant installs such conduit in existing chases reasonably designated by Landlord, installs such conduit in a manner that avoids, and at times that do not result in, interference with other tenants of the Building as of the date of this Lease and their equipment and installations and performs such installation in compliance with rules with respect thereto from time to time promulgated by Landlord using contractors approved by Landlord and providing such insurance coverage as Landlord may reasonably require. The Dish/Antenna must be tagged with weatherproof labels showing manufacturer, model, frequency range, and name of Tenant. In addition, the cable between the Dish/Antenna and the Premises, and any other cable connected to the Dish/Antenna (the “Dish/Antenna Cable”) must be tagged in the telecom closet on each floor with a label showing Tenant’s name, phone number and suite number. The precise specifications and a general description of the Dish/Antenna along with all documents Landlord reasonably requires to review the installation of the Dish/Antenna Items (the “Communications Plans and Specifications”) shall be submitted to Landlord for Landlord’s written approval no later than twenty (20) days before Tenant commences to install the Dish/Antenna. Tenant shall be solely responsible for obtaining all necessary governmental and regulatory approvals and for the cost of installing, operating, maintaining and removing the Dish/Antenna. Tenant shall notify Landlord upon completion of the installation of the Dish/Antenna Items. If Landlord determines that the Dish/Antenna does not comply with the approved Communications Plans and
Specifications, that the Building has been damaged during installation of the Dish/Antenna Items or that the installation was defective, Landlord shall notify Tenant of any noncompliance or detected problems and Tenant shall act promptly with the application of diligence to cure the defects. If the Tenant fails to promptly cure the defects, Tenant shall pay to Landlord upon demand the cost, as reasonably determined by Landlord, of correcting any defects and repairing any damage to the Building caused by such installation. If at any time Landlord, in its sole but reasonable discretion, deems it necessary, Tenant shall provide and install, at Tenant’s sole cost and expense, appropriate aesthetic screening, reasonably satisfactory to Landlord, for the Dish/Antenna (the “Aesthetic Screening”).

B. Landlord agrees that during the term of a Roof License, Tenant, upon reasonable prior written notice to Landlord, shall have access to the Building and the Roof Space for the purpose of installing, maintaining, repairing and removing the Dish/Antenna Items, Cable, the appurtenances and the Aesthetic Screening, if any (collectively, the “Dish/Antenna Items”), all of which shall be performed by Tenant or Tenant’s authorized representative or contractors, which shall be approved by Landlord (such approval not to be unreasonably withheld, conditioned or delayed), at Tenant’s sole cost and risk. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Tenant, FCC inspectors, or persons under their direct supervision will be permitted to have access to the roof of the Building and the Roof Space. Tenant further agrees to exercise such control over the people requiring access to the roof of the Building and the Roof Space as is necessary to keep to a minimum the number of people having access to the roof of the Building and the Roof Space and the frequency of their visits.

C. It is further understood and agreed that the installation, maintenance, operation and removal of the Dish/Antenna Items are not permitted to damage the Building or the roof thereof, or unreasonably interfere with the use of the Building and roof by Landlord or other tenants of the Building. Tenant shall be responsible for any material damage caused to the roof or any other part of the Building, to the extent caused by Tenant or any of its agents or representatives as a result of Tenant’s exercise of its rights under a Roof License under this ARTICLE 44. Tenant agrees that at all times during the term of a Roof License, it will keep the roof of the Building and the Roof Space free of all trash or waste materials produced by Tenant or Tenant’s agents, employees or contractors.

D. Tenant agrees to install only Dish/Antenna Items of types and frequencies which will not cause unreasonable interference to Landlord or existing tenants of the Building. If Tenant’s Dish/Antenna Items cause such interference, Tenant will change the frequency on which it transmits and/or receives and take any other steps necessary to eliminate the interference including relocating the Dish/Antenna to another location on the roof of the Building made available by Landlord. If said interference cannot be eliminated within a reasonable period of time, in the reasonable judgment of Landlord, then Tenant agrees to remove the Dish/Antenna from the Roof Space and to remove such other Dish/Antenna Items as Landlord may request, but may reinstall the same, at Tenant’s sole cost and expense, when it has demonstrated that such reinstallation will not result in interference.

E. Tenant, at its sole cost and expense, and at its sole risk, shall install, operate and maintain the Dish/Antenna Items in a good and workmanlike manner, and in compliance with all building, electric, communication, and safety codes, ordinances, standards, regulations and requirements, now in effect or hereafter promulgated, of the Federal Government, including, without limitation, the Federal Communications Commission (the “FCC”), the Federal Aviation Administration (“FAA”) or any successor agency of either the FCC or FAA having jurisdiction over radio or telecommunications, and of the state, city and county in which the Building is located. Landlord and its agents assume no responsibility for the licensing, operation and/or maintenance of the Dish/Antenna Items. Tenant has the responsibility of carrying out the terms of its FCC license in all respects. The Dish/Antenna shall be connected to Landlord’s power supply in strict compliance with all applicable building, electrical, fire and safety codes. Neither Landlord nor its agents shall be liable to Tenant for any stoppages or shortages of electrical power furnished to the Dish/Antenna or the Roof Space because of any act, omission or requirement of the public utility serving the Building, or the act or omission of any other tenant, invitee or licensee or their respective agents, employees or contractors, or for any other cause beyond the reasonable control of Landlord, and Tenant shall not be entitled to any rental abatement for any such stoppage or shortage of electrical power. Except as may arise from the negligence of the Landlord, neither Landlord nor its agents shall have any responsibility or liability for the conduct or safety of any of Tenant’s representatives or repair, maintenance and engineering personnel while in or on any part of the Building or the Roof Space in connection with installing or maintaining the Dish/Antenna Items. No failure of service under a Roof License shall constitute a Service Failure under this Lease.

F. The Dish/Antenna Items shall remain the personal property of Tenant, and shall be removed by Tenant at its own expense at the expiration or earlier termination of a Roof License or Tenant’s right to possession hereunder. Tenant shall repair any damage caused by such removal, including the patching of any holes. Tenant agrees to maintain all of the Dish/Antenna Items placed on or about the roof or in any other part of the Building in proper operating condition and maintain same in satisfactory condition as to safety in Landlord’s sole discretion. Such maintenance and operation shall be performed in a manner to avoid any unreasonable interference with any other tenants or Landlord.

G. In light of the specialized nature of the Dish/Antenna, Tenant shall be permitted to utilize the services of its choice for installation, operation, removal and repair of the Dish/Antenna Items, subject to the reasonable approval of Landlord. Notwithstanding the foregoing, Tenant must provide Landlord with prior written notice of any such installation, removal or repair and coordinate such work with Landlord in order to avoid voiding or otherwise adversely affecting any warranties granted to Landlord with respect to the roof. If necessary, Tenant, at its sole cost and expense, shall retain any contractor having a then existing warranty in effect on the roof to perform such work (to the extent that it involves the roof), or, at Tenant’s option, to perform such work in conjunction with Tenant’s contractor. If Landlord contemplates roof repairs that could affect Tenant’s Dish/Antenna, or which may result in an interruption of the Tenant’s telecommunication service, Landlord shall formally notify Tenant at least thirty (30) days in advance (except in cases of an emergency) prior to the commencement of such contemplated work in order to allow Tenant to make other arrangements for such service and Landlord shall diligently perform (or cause the
performance of such roof repairs so as to minimize the interference of Tenant’s Dish/Antenna.
H. Tenant shall not allow any provider of telecommunication, video, data or related services (“Communication Services”) to locate any equipment on the roof of the Building or in the Roof Space for any purpose whatsoever unrelated to Tenant’s (or its permitted subtenants’) own use, nor may Tenant use the Roof Space and/or Dish/Antenna to provide Communication Services to an unaffiliated tenant, occupant or licensee of another building, or to facilitate the provision of Communication Services on behalf of another Communication Services provider to an unaffiliated tenant, occupant or licensee of the Building or any other building.

I. Tenant acknowledges that Landlord may at some time establish a standard license agreement (“Standard License Agreement”) with respect to the use of roof space by tenants of the Building. Tenant, upon request of Landlord, shall enter into such Standard License Agreement with Landlord provided that such agreement does not materially alter the rights or obligations of Tenant for a Roof License hereunder with respect to the Roof Space.

J. Tenant specifically acknowledges and agrees that the terms and conditions of ARTICLE 14 regarding indemnification and waiver of claims shall apply with full force and effect to Roof Space and any other portions of the roof accessed or utilized by Tenant, its representatives, agents, employees or contractors.

K. If Tenant defaults under any of the terms and conditions of this ARTICLE 44, and Tenant fails to cure said default within any applicable cure period provided for in this Lease, the same shall be an Event of Default under ARTICLE 24 of this Lease, but Landlord’s sole remedies for such a default shall be to terminate a then-existing Roof License on notice to Tenant and, in addition, Landlord may perform any non-monetary obligations of Tenant hereunder, including, without limitation the obligations of Tenant to remove all or any of the Dish/Antenna Items, and restore the Building and the Roof Space to the condition that existed prior to the installation of the Dish/Antenna Items. Tenant shall be liable for all out of pocket costs and expenses Landlord incurs in removing such Dish/Antenna Items and repairing any damage to the Building, the roof of the Building and the Roof Space caused by the installation, operation or maintenance of the Dish/Antenna Items. In such event, Tenant shall reimburse Landlord for all such costs incurred by Landlord as aforesaid together with an administrative charge equal to 10% of the cost of the work performed by Landlord. The amount to be reimbursed hereunder shall be paid together with interest from the date such cost is paid by Landlord (as evidenced by paid invoices supplied by Landlord to Tenant) at the rate of 12% per annum.

ARTICLE 45.
EMERGENCY GENERATOR

A. In addition to Tenant’s rights under ARTICLE 44 of this Lease, Landlord hereby grants to Tenant the right to install in a location or locations (collectively “Location”) in the lower level of the Building mutually agreeable to Landlord and Tenant, a standby generator and related equipment. The generator and such equipment installed by Tenant, together with the equipment already referred to in said ARTICLE 44, shall be included in the definition of Equipment for all purposes of this Lease. Notwithstanding anything elsewhere in this Lease to the contrary, the generator and related equipment need not be removed by Tenant prior to the Termination Date but shall be removed by Tenant no later than the Termination Date. Obligations with respect to removal shall survive any termination of this Lease.
B. Landlord agrees that Tenant, upon reasonable prior written notice to Landlord, shall have access to the Location for the purpose of installing, maintaining, repairing and removing the generator and related equipment, all of which shall be performed by Tenant or Tenant’s authorized representative or contractors, which shall be approved by Landlord (such approval to be not unreasonably withheld, conditioned or delayed), at Tenant’s sole cost and risk. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Tenant or persons under their direct supervision will be permitted to have access to the Location. Tenant further agrees to exercise firm control over the people requiring access to the Location in order to keep to a minimum the number of people having access to the Location and the frequency of their visits.

C. Tenant agrees to be responsible for any damage caused to the Location or any other part of the Building, which may be caused by Tenant or any of its agents or representatives as a result of Tenant’s exercise of its rights under this ARTICLE 45.

D. Tenant, at its sole cost and expense, and at its sole risk, shall install, operate and maintain the generator and related equipment in a good and workmanlike manner, and in compliance with all building and safety codes, ordinances, standards, regulations and requirements, now in effect or hereafter promulgated. Landlord and its agents assume no responsibility for the licensing, operation and/or maintenance of the generator and related equipment. Except as may arise from the negligence of the Landlord, neither Landlord nor its agents shall have any responsibility or liability for the conduct or safety of any of Tenant’s representatives or repair, maintenance and engineering personnel while in or on any part of the Building or the Location in connection with installing or maintaining the generator and related equipment. No failure of service hereunder shall constitute a Service Failure under this Lease.

E. Tenant agrees to maintain all of the generator and related equipment placed on or about the Location or in any other part of the Building in proper operating condition and maintain same in satisfactory condition as to safety in Landlord’s sole, reasonable discretion. Such maintenance and operation shall be performed in a manner to avoid any unreasonable interference with any other tenants or Landlord.

F. In light of the specialized nature of the generator and related equipment, Tenant shall be permitted to utilize the services of its choice for installation, operation, removal and repair of the generator and related equipment, subject to the reasonable approval of Landlord. Notwithstanding the foregoing, Tenant must provide Landlord with prior written notice of any such installation, removal or repair and coordinate such work with Landlord in order to avoid voiding or otherwise adversely affecting any warranties granted to Landlord with respect to the Location.

G. Tenant specifically acknowledges and agrees that the terms and conditions of ARTICLE 14 regarding indemnification and waiver of claims shall apply with full force and effect to the Location and any other portions of the Building accessed or utilized by Tenant, its representatives, agents, employees or contractors.

H. If Tenant defaults under any of the terms and conditions of this ARTICLE 45, and Tenant fails to cure said default within any applicable cure period provided for in this Lease, the
same shall be an Event of Default under ARTICLE 24 of this Lease, but Landlord’s sole remedies for such a default shall be to terminate the rights hereunder on notice to Tenant and Tenant and, in addition, Landlord may perform any non-monetary obligations of Tenant hereunder, including, without limitation the obligations of Tenant to remove all or any of the generator and related equipment, and restore the Location to the condition that existed prior to the installation of the generator and related equipment. Tenant shall be liable for all out of pocket costs and expenses Landlord incurs in removing the generator and related equipment and repairing any damage to the Building caused by the installation, operation or maintenance of the generator and/or related equipment. In such event, Tenant shall reimburse Landlord for all such costs incurred by Landlord as aforesaid together with an administrative charge equal to 10% of the cost of the work performed by Landlord. The amount to be reimbursed hereunder shall be paid together with interest from the date such cost paid is by Landlord (as evidenced by paid invoices supplied by Landlord to Tenant) at the rate of 12% per annum.

{Signatures on Next Page}
Executed as a sealed instrument as of the date first above written.

**LANDLORD:**

COPLEY PLACE ASSOCIATES, LLC, a Delaware limited liability company

By: SPG COPLEY ASSOCIATES, a Delaware limited liability company, its Managing Member

By: /s/ David Simon

David Simon

Hereunto duly authorized

**TENANT:**

WAYFAIR LLC

By: /s/ Nicholas Malone

its: CFO and not individually

Hereunto duly authorized
EXHIBIT A
OFFICE LEASE
FOR
WAYFAIR LLC
COLEY PLACE
BOSTON, MASSACHUSETTS
PREMISES

Exhibit A-1
EXHIBIT A-1
OFFICE LEASE
FOR
WAYFAIR LLC
COPLEY PLACE
BOSTON, MASSACHUSETTS
EARLY EXPANSION SPACES

Exhibit A-1-1
Exhibit A-1-3
EXHIBIT A-2
OFFICE LEASE
FOR
WAYFAIR LLC
COPLEY PLACE
BOSTON, MASSACHUSETTS
ROOF DECK PLAN

Exhibit A-2-1
EXHIBIT A-3

OFFICE LEASE

FOR

WAYFAIR LLC

COPLEY PLACE

BOSTON, MASSACHUSETTS

EXPANSION SPACE ONE AND EXPANSION SPACE TWO

Exhibit A-3-1
Exhibit A-3-2

EXHIBIT A-3, "EXPANSION SPACE ONE"

16,654 RSF
4TH FLOOR
TOWER THREE
COLEY PLACE
10 APRIL 2013

Exhibit A-3-2

EXHIBIT A-3, "EXPANSION SPACE TWO"

5,413 RSF
4TH FLOOR
TOWER THREE
COLEY PLACE
10 APRIL 2013

Exhibit A-3-2
EXHIBIT B-1
OFFICE LEASE
FOR
WAYFAIR LLC
COPLEY PLACE
BOSTON, MASSACHUSETTS
SHELL WORK

• Removal of floor surface to concrete slab, including all raised access flooring and ramps;
• Removal of ceiling surfaces and lighting, perimeter soffit and linear diffuser to remain;
• Installation of temporary lighting;
• Removal of HVAC diffusers and ductwork back to VAV/Fan Powered Terminal Boxes;
• Removal of all supplemental HVAC equipment and piping associated with existing tenant computer rooms;
• Plumbing to be cut, capped and removed back to risers;
• Fire alarm system devices secured to structure or Building elements;
• Removal of office(s), and partitions, doors, sidelights and interior glass;
• Electrical distribution in the Premises to be made safe and removed back to tenant distribution panel. All supplemental electrical panels and electrical equipment located within the open space to be removed back to core tenant distribution panels;
• Removal of all existing tenant tel/data cabling;
• Gypsum soffits with linear diffusers to remain;
• Gypsum Columns to remain;
• Infill existing floor cores;
• Code compliant tenant demising walls to be provided throughout space.

Exhibit B-1-1
EXHIBIT B-2
OFFICE LEASE
FOR
WAYFAIR LLC
COPLEYS PLACE
BOSTON, MASSACHUSETTS
LANDLORD’S WORK

Landlord shall be responsible for all demising work with respect to the Initial Premises at its sole cost and expense. Landlord shall also be responsible at its sole cost and expense for all restroom renovations on any floor of any Tower on which Tenant has leased, initially or during the Term, more than 50% of the floor area of such floor. Men’s and women’s restroom renovations, compliant with ADA (if necessary, including construction of additional handicap restrooms), will include plumbing fixtures, hot and cold running water, ceramic tile floors and wall surfaces, accessories and dividers, and ceilings and lighting.

Exhibit B-2-1
RULES AND REGULATIONS. Tenant agrees to observe the rights reserved to Landlord in the Lease and agrees, for itself, its employees, agents, clients, customers, invitees and guests, to comply with the following rules and regulations and with such reasonable modifications thereof and additions thereto as Landlord may make, from time to time, for the Building.

(a) Any sign, lettering, picture, notice, or advertisement installed within Tenant’s Premises (including but not limited to Tenant identification signs on doors to the Premises) which is visible outside of the Premises shall be installed at Tenant’s cost and in such manner, character and style as Landlord may approve in writing. No sign, lettering, picture, notice or advertisement shall be placed on any outside window or in any position so as to be visible from outside the Building or from any atrium or lobbies of the Building.

(b) Tenant shall not use the name of the Building or use pictures or illustrations of the Building in advertising or other publicity, without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

(c) Tenant, its customers, invitees, licensees, and guests shall not obstruct sidewalks, entrances, passages, courts, corridors, vestibules, halls, elevators and stairways in and about the Building. Tenant shall not place objects against glass partitions or doors or windows or adjacent to any open common space which would be unsightly from the Building corridors or from the exterior of the Building, and will promptly remove the same upon notice from Landlord.

(d) Tenant shall not make noises, cause disturbances, create vibrations, odors or noxious fumes or use or operate any electrical or electronic devices or other devices that emit sound, waves or are dangerous to other tenants and occupants of the Building or that would interfere with the operation of any

Exhibit C-1
device or equipment or radio or television broadcasting or reception from or within the Building or elsewhere, or with
the operation of roads or highways in the vicinity of the Building and shall not place or install any projections,
antennae, aerials or similar devices inside or outside of the Premises.

(e) Tenant shall not make any room to room canvass to solicit business from other tenants in the Building, and shall not
exhibit, sell or offer to sell, use, rent or exchange any item or services in or from the Premises unless ordinarily
embraced within Tenant’s use of the Premises as specified in its lease.

(f) Tenant shall not waste electricity or water and agrees to cooperate fully with Landlord to assure the most effective
operation of the Building’s heating and air conditioning and shall refrain from attempting to adjust any controls.
Tenant shall keep doors from the Premises to the public corridor doors closed when not in use.

(g) Door keys for doors in the Premises will be furnished at the commencement of the Lease by Landlord. Tenant shall
not affix additional locks on doors and shall purchase duplicate keys only from Landlord. When the Lease is
terminated, Tenant shall return all keys to Landlord and will provide to Landlord the means of opening any safes,
cabinets or vaults left in the Premises.

(h) Tenant assumes full responsibility for protecting its space from theft, robbery and pilferage, which includes keeping
doors locked and other means of entry to the Premises closed and secured.

(i) Peddlers, solicitors and beggars shall be reported to the office of the Building or as Landlord otherwise requests.

(j) Tenant shall not install nor operate machinery or any mechanical devices of a nature not directly related to Tenant’s
ordinary use of the Premises without the written permission of Landlord.

(k) No person or contractor not employed by Landlord shall be used to perform window washing, cleaning, decorating,
repair or other work in the Premises.

(l) Tenant shall not, and Tenant shall not permit or suffer anyone to:

   (1) Cook in the Premises (other than through the use of microwave or toaster oven(s)), but nothing herein shall
prevent the use of customary coffee stations;

Exhibit C-2
(2) Place vending or dispensing machines of any kind in or about the Premises for use by other than its employees, guests and business invitees;

(3) At any time sell, purchase or give away, or permit the sale, purchase or gift of, food in any form other than to employees, guests and business invitees;

(m) Tenant shall not:

   (1) Use the Premises for lodging, manufacturing or for any immoral or illegal purposes.

   (2) Use the Premises to engage in the manufacture or sale of any spirituous, fermented, intoxicating or alcoholic beverages.

   (3) Use the Premises to engage in the manufacture or sale of, or permit the use of, any illegal drugs on the Premises.

(n) In no event shall any person bring into the Building inflammables such as gasoline, kerosene, naphtha and benzene, or explosives or firearms or any other article of intrinsically dangerous nature. If by reason of the failure of Tenant to comply with the provisions of this paragraph, any insurance premium payable by Landlord for all or any part of the Building shall at any time be increased above normal insurance premiums for insurance not covering the items aforesaid, Landlord shall have the option to either terminate the Lease or to require Tenant to make immediate payment for the whole of the increased insurance premium.

(o) Tenant shall comply with all applicable federal, state and municipal laws, ordinances and regulations and building rules, and shall not directly or indirectly make any use of the Premises which may be prohibited thereby or which shall be dangerous to person or property or shall increase the cost of insurance or require additional insurance coverage.

(p) If Tenant desires signal, communication, alarm or other utility or service connection installed or changed, the same shall be made at the expense of Tenant, with approval and under direction of Landlord.

(q) Bicycles shall not be permitted in the Building in other than Landlord designated locations.

(r) Tenant shall cooperate and participate in all security programs affecting the Building.

(s) In the event Landlord allows one or more tenants in the Building to do any act prohibited herein, Landlord shall not be precluded from denying any other tenant the right to do any such act.

Exhibit C-3
(t) Tenant, or the employees, agents, servants, visitors or licensees of Tenant shall not at any time place, leave or discard any rubbish, paper, articles, or objects of any kind whatsoever outside the doors of the Premises or in the corridors or passageways of the Building. No animals or birds shall be brought or kept in or about the Building.

(u) Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord’s opinion, tends to impair the reputation of the Building or its desirability for offices, and, upon written notice from Landlord, Tenant will refrain from or discontinue such advertising.

(v) Except as permitted under the Lease or in connection with the installation of any Tenant improvements and office decorations, Tenant shall not mark, paint, drill into, or in any way deface any part of the Building or the Premises. No boring, driving of nails or screws, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct. Tenant shall not install any resilient tile or similar floor covering in the Premises except with the prior approval of Landlord. The use of cement or other similar adhesive material is expressly prohibited.

(w) Landlord shall have the right to limit or control the number and format of listings on the main Building directory.

Exhibit C-4
I. CLEANING - TENANT'S AREAS

A. NIGHTLY - MONDAY THROUGH FRIDAY HOLIDAYS EXCLUDED

1. DUST MOP, ALL STONE, CERAMIC, TILE, TERRAZZO, AND OTHER TYPES OF UNWAXED FLOORING, USING A TREATED MOP.

2. DUST MOP ALL VINYL, ASBESTOS, ASPHALT, RUBBER AND SIMILAR TYPES OF FLOORING, USING A TREATED MOP. THIS INCLUDES REMOVAL OF GUM AND OTHER SIMILAR SUBSTANCES USING A SCRAPING DEVICE.

3. VACUUM ALL CARPETED AREAS.

4. DUST MOP ALL PRIVATE AND PUBLIC STAIRWAYS AND VACUUM IF CARPETED.

5. HAND DUST AND WIPE CLEAN ALL HORIZONTAL SURFACES INCLUDING FURNITURE, FILE CABINETS, FIXTURES, AND WINDOW SILLS, USING A CHEMICALLY TREATED DUST CLOTH. PAPERS ON DESK SHALL REMAIN UNDISTURBED.

6. DUST AND SANITIZE ALL TELEPHONES USING A DISINFECTANT SOLUTION.

7. REMOVE FINGER MARKS FROM ALL PAINTED SURFACES NEAR LIGHT SWITCHES, ENTRANCE DOORS, ETC.

8. REMOVE ALL GUM AND FOREIGN MATTER ON SIGHT.

9. EMPTY AND CLEAN ALL WASTE RECEPTACLES AND REMOVE WASTE PAPER AND WASTE MATERIALS TO A DESIGNATED AREA. REPLACE LINERS IN EACH RECEPTACLE.

Exhibit D-1
10. DAMP DUST INTERIORS OF ALL WASTE DISPOSAL RECEPTACLES AND WASH AS NECESSARY.

11. CLEAN AND SANITIZE USING A DISINFECTANT SOLUTION, ALL WATER FOUNTAINS AND WATER COOLERS. SINKS/FLOORS ADJACENT TO SINKS/FOUNTAINS TO BE WASHED NIGHTLY.

12. SPOT MOP FLOORS FOR SPILLAGES, ETC.

13. EMPTY AND DAMP CLEAN ALL ASH TRAYS AND SCREEN ALL SAND URNS.

14. REMOVE FINGER MARKS AND DUST DOORS OF ELEVATOR HATCHWAYS.

15. CLEAN ALL LOW LEDGES, SHELVES, BOOKCASES, CHAIR RAILS, TRIM, PICTURES, CHARTS, ETC., WITHIN REACH.

16. CLEAN SINKS, TOILETS, AND RELATED PLUMBING FIXTURES.

17. CLEAN MIRRORS, METALWORK, AND GLASS TABLE TOPS.

18. UPON COMPLETION OF WORK, ALL SLOP SINKS ARE TO BE THOROUGHLY CLEANED AND ALL CLEANING EQUIPMENT AND SUPPLIES STORED NEATLY IN LOCATIONS DESIGNATED BY THE OFFICE OF THE BUILDING.

19. ALL CLEANING OPERATIONS SHALL BE SCHEDULED SO THAT A MINIMUM OF LIGHTS ARE TO BE LEFT ON AT ANY TIME. UPON COMPLETION OF CLEANING ALL LIGHTS ARE TO BE TURNED OFF. ALL ENTRANCE DOORS ARE TO BE KEPT LOCKED DURING THE CLEANING OPERATION.

B. WEEKLY

1. HAND DUST ALL DOOR LOUVERS AND OTHER VENTILATING LOUVERS WITHIN REACH.

2. DUST ALL BASEBOARDS.

3. MOVE AND VACUUM UNDERNEATH ALL FURNITURE THAT CAN BE MOVED.

4. IN HIGH TRAFFIC AREAS, DAMP MOP IF NECESSARY AND APPLY SPRAY BUFFING SOLUTION IN A FINE MIST AND BUFF WITH A SYNTHETIC PAD.

5. BUFF TRAFFIC AREAS AND PIVOT POINTS.

Exhibit D-2
6. DAMP MOP ALL NON-CARPETED AND PUBLIC STAIRWAYS.
7. WIPE CLEAN ALL BRIGHT WORK.
8. CLEAN INTERIOR GLASS PARTITIONS AND DOORS.
9. DUST ALL CHAIR RAILS.

C. QUARTERLY
1. VACUUM UPHOLSTERED FURNITURE.
2. MACHINE SCRUB FLOORING.
3. WASH AND APPLY ONE COAT OF APPROVED FLOOR FINISH TO COMPOSITION FLOORING.
4. DUST ALL VERTICAL SURFACES SUCH AS WALLS, FURNITURE, PARTITIONS, AND SURFACES NOT REACHED IN NIGHTLY CLEANING.
5. DUST EXTERIOR OF LIGHTING FIXTURES.
6. WASH ALL BASEBOARDS.
7. STRIP ALL RESILIENT FLOORING USING DILUTED STRIPPING SOLUTION. MACHINE SCRUB FLOOR USING PAD TO REMOVE ALL FLOOR FINISH. THOROUGHLY RINSE WITH CLEAR WATER AND APPLY TWO COATS OF FLOOR FINISH.

II. LAVATORIES
A. NIGHTLY - MONDAY THROUGH FRIDAY
1. POLICE LAVATORIES DURING THE DAY WITH MATRON OR PORTER TO PICK UP WASTE AND REPLENISH MATERIALS.
2. CLEAN, SANITIZE (USING DISINFECTANT SOLUTION), AND POLISH ALL VITREOUS FIXTURES INCLUDING TOILET BOWLS, URINALS, AND WASH BASINS.
3. SWEEP AND WASH FLOORING WITH APPROVED GERMICIDAL SOLUTION.
4. WASH AND POLISH MIRRORS, POWDER SHELVES, DISPENSERS, HAND DRYERS, BRIGHTWORK, INCLUDING FLUSHOMETERS, PIPING, AND TOILET SEAT HINGES.
5. CLEAN AND SANITIZE BOTH SIDES OF TOILET SEATS.

6. EMPTY ALL CONTAINERS AND DISPOSAL UNITS AND INSERT NEW LINERS WHERE REQUIRED.
7. WASH AND SANITIZE (USING A DISINFECTANT SOLUTION) EXTERIOR OF ALL CONTAINERS.
8. EMPTY, CLEAN, AND SANITIZE ALL SANITARY NAPKIN DISPOSAL UNITS.
9. DUST AND SPOT WASH, WHERE NECESSARY, PARTITIONS, TILE WALLS, DISPENSERS, CEILINGS, LIGHTS, SWITCHES AND RECEPTACLES.
10. REFILL ALL DISPENSERS TO NORMAL LIMITS INCLUDING NAPKINS, SOAP, TISSUE, TOWELS, ETC.
11. VACUUM ENTIRE CARPETED AREAS, IF ANY.
12. REMOVE ALL RUBBISH.

B. WEEKLY
1. WET MOP ALL TILE FLOORS AND WASH BASEBOARDS.
2. MACHINE SCRUB FLOORS, HAND BRUSH CORNERS, AND HAND BRUSH TOILET EDGES WITH APPROVED
GERMICIDAL DETERGENT SOLUTION.

C. MONTHLY
   1. WASH ALL PARTITIONS, TILE WALLS, AND ENAMEL SURFACES WITH APPROVED GERMICIDAL DETERGENT SOLUTION.

D. QUARTERLY
   1. DUST ALL HVAC GRILLS AND LOUVERS.

E. OTHER
   1. CLEANING OF COMPUTER ROOMS AND KITCHENS WILL BE THE RESPONSIBILITY OF INDIVIDUAL TENANTS.

III. PUBLIC CORRIDORS, STAIRWELLS, AND SERVICE AREAS:

A. NIGHTLY
   1. VACUUM AND SPOT CLEAN CARPETING.
   2. SWEEP AND DAMP MOP PUBLIC AREA CONCRETE FLOORS.

Exhibit D-4
3. SWEEP AND DAMP MOP PUBLIC STAIRWELLS AND LANDINGS.
4. CLEAN BASEBOARDS OF SCUFFS AND MARKS.
5. EMPTY AND CLEAN ASHTRAYS AND SAND URNS.
6. CLEAN ALL DIRECTORIES AND LOBBY SECURITY CONSOLE.
7. CLEAN CORRIDOR GLASS AND METAL WORK.
8. SPOT CLEAN WALLS, CEILINGS, LIGHTS, ETC.
9. REMOVE TRASH TO COMPACTOR.
10. CLEAN TELEPHONES, TELEPHONE BOOTH AREAS AND MAIL DROPS.
11. KEEP SLOP SINKS, CLOSETS, SUPPLY ROOMS, AND OTHER JANITORIAL AREAS IN A CLEAN CONDITION.
12. KEEP ELECTRICAL AND TELEPHONE CLOSETS CLEAN AND FREE OF STORAGE.
13. CLEAN AND SANITIZE ALL PUBLIC DRINKING FOUNTAINS.
14. SWEEP AND WASH ALL FLOORS IN PUBLIC LOBBY.
15. CLEAN AND VACUUM CARPETING IN PASSENGER ELEVATOR CABS AND SPOT CLEAN AS NECESSARY.
16. DUST AND WIPE CLEAN WALLS, DOORS AND METAL WORK ON ALL PASSENGER ELEVATORS.
17. CLEAN FLOORS AND WALLS OF SERVICE ELEVATORS.
18. CLEAN AND REMOVE ANY DEBRIS FROM CEILING FIXTURES IN PASSENGER ELEVATORS.
19. WASH ALL LOBBY WALK OFF MATS.

B. WEEKLY

1. CLEAN ALL DOOR VENTS.
2. DUST ALL VERTICAL SURFACES WITHIN REACH.

C. MONTHLY

1. DRY SHAMPOO ALL LOBBY CARPETING.

Exhibit D-5
D. QUARTERLY

1. STEAM CLEAN ALL LOBBY CARPETING.

2. VACUUM ALL CEILING GRILLS AND AIR LOUVERS.

IV. WINDOW CLEANING

A. WINDOWS WILL BE CLEANED AS NECESSARY, BUT NOT LESS THAN THE FOLLOWING FREQUENCIES:

- EXTERIOR OF EXTERIOR GLASS - NOT LESS THAN 5 TIMES/YEAR.
- INTERIOR OF EXTERIOR GLASS - NOT LESS THAN 2 TIMES/YEAR.
- EXTERIOR OF INTERIOR GLASS - NOT LESS THAN 1 TIMES/YEAR.
- INTERIOR OF INTERIOR GLASS - NOT LESS THAN 2 TIMES/YEAR.

Exhibit D-6
I. Measurement Standards- Single Tenancy Floors. Three steps, in sequence, are to be followed to determine the Total Rentable Area: (i) compute gross area, (ii) deduct certain areas, and (iii) add applicable share of areas to be apportioned (see paragraph C below).

A. Gross Area: The gross area of a floor shall be the entire area within the exterior walls. If the exterior wall consists in whole or part of windows, fixed clear glass or other transparent material, the measurement along the entire such wall shall be taken to a line established by the vertical plan of the inside of the glass or other transparent material. If it consists solely of a nontransparent material, the measurement shall be taken to the inside surface of the outer building wall. If a floor has no exterior wall within the property line, measurements shall be taken to the property line. If a floor has no full-height enclosure wall, measurement shall be taken to the edge of the floor slab.

B. Deductions from Gross Area: The following non-rentable building areas with one-half of their enclosing walls are to be deducted.

1. Public elevator shafts and associated elevator machine rooms.

2. Required egress stairways.

3. Areas within the gross area which are to be apportioned pursuant to paragraph (C) below.

C. Areas to be apportioned (“Attributable Area”):

1. Common facilities including, without limitation, all heating, ventilating, air conditioning, mechanical, electrical, cooling tower, telephone and other service floors, rooms or areas, containing equipment or supplies (exclusive of any tenant special air conditioning or mechanical area or facilities) and all public lobbies (including monumental stair and/or escalator), loading and other common service areas, throughout and within the Building including one-half of their enclosing walls, are to be apportioned.

Exhibit E-1
2. Whenever the height of any room or space used for a heating, ventilating, air conditioning, mechanical, or electrical facility above the ground floor shall exceed the average story height in the Building by more than 25 percent, then the floor area of such room or space shall be determined by multiplying the actual floor area by the percentage that the height of the room or space exceeds the average story height, and adding the area so determined to the actual floor area of such room or space; however, if any such rooms or spaces penetrate the next higher floor, then the entire area of such room or space on both floors shall be apportioned under this paragraph (C).

II. Measurement Standards - Multiple Occupancy Floors. The sum of the Total Rentable Area for two or more tenants on a floor shall be the Total Rentable Area for that floor as computed in the manner for single tenancy floors. Three steps are to be followed to determine the Total Rentable Area for each tenant on a multiple occupancy floor: (i) compute the Net Rentable Area for such floor pursuant to (a) below, (ii) compute the Net Rentable Area for each tenant pursuant to (b) below, and (iii) multiply the Total Rentable Area of such floor by a fraction whose numerator is the Net Rentable Area for such tenant and whose denominator is the Net Rentable Area for such floor.

A. Net Rentable Area for Any Floor: The Net Rentable Area shall be the gross area as described for single tenancy floors less the entire core area (measured to the finished enclosing walls thereof, but excluding any part of the core rented to a tenant) and corridors (measured to the corridor side of the finished enclosing walls of the corridor).

B. Net Rentable Area for Each Tenant: Exterior walls are to be measured as described in the procedure for gross area. Demising walls between tenants are to be equally divided. Corridor walls to the finished corridor side are to be included in the Net Rentable Area of each tenant.

III. Rentable Calculation. Rentable Area is determined by measuring gross area less deductions (assuming all full floor occupants) and multiplying by 1.165.

Exhibit E-2
EXHIBIT F
OFFICE LEASE
FOR
WAYFAIR LLC
COPLEY PLACE
BOSTON, MASSACHUSETTS
LETTER OF CREDIT FORM

[Name of Financial Institution]

Irrevocable Standby
Letter of Credit
No.
Issuance Date:
Expiration Date:
Applicant:

Beneficiary

Copley Place Associates, LLC
Simon Property Group, L.P.
Attention: Property Manager
Two Copley Place, Suite 100
Boston, MA 02116-6502

Ladies/Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit in your favor for the account of the above referenced Applicant in the amount of
U.S. Dollars($) available for payment at sight by your draft drawn on us when accompanied by the following documents:

1. The original of this Irrevocable Standby Letter of Credit.

2. Beneficiary’s dated statement purportedly signed by an authorized signatory reading:

“This draw in the amount of U.S. Dollars($) under your Irrevocable Standby Letter of Credit No. represents funds due and owing to us pursuant to the terms of that certain lease by and between , as landlord, and , as tenant, and/or any amendment to the lease or any other agreement between such parties related to the lease.”

Exhibit F-1
IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT IS DEEMED TO BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR PERIOD(S) OF ONE YEAR EACH FROM THE CURRENT EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE, WE NOTIFY YOU BY REGISTERED MAIL OR OVERNIGHT COURIER AT THE ABOVE LISTED ADDRESS THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD.

ANY SUCH NOTICE SHALL BE EFFECTIVE WHEN SENT BY US AND UPON SUCH NOTICE TO YOU, YOU MAY DRAW AT ANY TIME PRIOR TO THE THEN CURRENT EXPIRATION DATE, UP TO THE FULL AMOUNT THEN AVAILABLE HEREUNDER, AGAINST YOUR DRAFT(S) DRAWN ON US AT SIGHT AND THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENTS THERETO, ACCOMPANIED BY YOUR STATEMENT, SIGNED BY AN AUTHORIZED OFFICER ON YOUR LETTERHEAD STATING THAT YOU ARE IN RECEIPT OF BANK OF AMERICA, N.A.'S NOTICE OF NON-EXTENSION UNDER LETTER OF CREDIT NO. AND THE APPLICANT'S OBLIGATION TO YOU REMAINS.

THIS LETTER OF CREDIT IS TRANSFERABLE IN FULL AND NOT IN PART. ANY TRANSFER MADE HEREUNDER MUST CONFORM STRICTLY TO THE TERMS HEREOF AND TO THE CONDITIONS OF RULE 6 OF THE INTERNATIONAL STANDBY PRACTICES (ISP98) FIXED BY THE INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 590. SHOULD YOU WISH TO EFFECT A TRANSFER UNDER THIS CREDIT, SUCH TRANSFER WILL BE SUBJECT TO THE RETURN TO US OF THE ORIGINAL CREDIT INSTRUMENT, ACCOMPANIED BY OUR FORM OF TRANSFER, PROPERLY COMPLETED AND SIGNED BY AN AUTHORIZED SIGNATORY OF YOUR FIRM, BEARING YOUR BANKERS STAMP AND SIGNATURE AUTHENTICATION. ANY TRANSFER FEE SHALL BE FOR THE ACCOUNT OF THE APPLICANT AND FAILURE TO PAY BY THE APPLICANT WILL NOT AFFECT THE TRANSFERABILITY BY THE BENEFICIARY. SUCH TRANSFER FORM IS AVAILABLE UPON REQUEST.

DRAFT(S) MUST STATE: “DRAWN UNDER BANK OF AMERICA, N.A. STANDBY L/C NO. DATED .”


This Irrevocable Standby Letter of Credit is subject to the International Standby Practices (ISP98) ICC Publication No. 590.

We hereby engage with you to honor drafts and documents drawn under and in compliance with the terms of this Irrevocable Standby Letter of Credit.

All communications to us with respect to this Irrevocable Standby Letter of Credit must be addressed to our office located at to the attention of .

Very truly yours,

Exhibit F-2
OFFICE LEASE
FOR
WAYFAIR LLC
COPELEY PLACE
BOSTON, MASSACHUSETTS

TENANT'S HVAC REQUIREMENTS

OUTDOOR DESIGN CONDITIONS (ASHRAE 1%)

A. Summer: 91 F dry bulb
73 F wet bulb
B. Winter: 9F

INDOOR DESIGN CONDITIONS

A. Summer: 74 F dry bulb
50% RH
B. Winter: 72 F dry bulb
20% RH

VENTILATION

Minimum Outside Air: In accordance with the Massachusetts Building Code, 7th Edition
- 7 people per 1000sf for office / @ 20cfm per person
- 50 people per 1000sf for conference room / @20cfm per person

INTERNAL HEAT GAIN

- Occupants: 150sf/person reusable sf
- Lighting: 2.0 watts/reusable sf
- Power: 3.5 watts/reusable sf

Schedule 8.01-1

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("First Amendment") is made and entered into as of the 11th day of February, 2014 by and between COPELEY PLACE ASSOCIATES, LLC, a Delaware limited liability company (the "Landlord"), and WAYFAIR LLC, a Delaware limited liability company (the "Tenant").

Reference is made to the following:

A. That certain lease (the "Lease") dated as of April 18, 2013, by and between Landlord and Tenant of space in the Office Section of the Building known as Copley Place, in Boston, Suffolk County, Massachusetts, consisting of approximately 105,696 rentable square feet of space on the First, Third, Fourth, Sixth and Seventh Floors of Four Copley Place ("Original Premises"); and

B. That the Lease stated the square footage of the Building to be 867,564 when the correct square footage of the Building is 881,660, as a result of which the Tenant’s Proportionate Expense Share and Tenant’s Proportionate Tax Share set forth in the Lease were erroneous.

C. Tenant desires to increase the Original Premises by the addition thereto of 867 rentable square feet on the Fourth Floor of Four Copley Place and Landlord is willing to increase the Premises, subject to, and on the terms hereinafter set forth with respect to such increase; and

D. Tenant further desires to increase the space leased to Tenant under the Lease by the addition of space on the Second, Fourth and Fifth Floors of Tower Four and space contiguous to the existing Premises on the Third Floor of Tower Three) and Landlord is willing to increase the Premises, subject to, and on the terms hereinafter set forth with respect to such increases; and
E. Tenant further desires to increase the space leased to Tenant under the Lease by the addition of space on the First Floor of Tower One and space on the Third Floor of Tower One and Landlord is willing to increase the Premises, subject to, and on the terms hereinafter set forth with respect to such increases; and

F. A portion of Expansion Space One (as such space is defined in Section 42.02 of the Lease) and all of Expansion Space Two (as such space is defined in Section 42.02 of the Lease) may become available if the current tenant of Expansion Space One does not elect to extend or renew its lease of Expansion Space One and not to exercise its right of first offer with respect to Expansion Space Two, but the current tenant of Expansion Space One is currently negotiating with Landlord to extend its lease for Expansion Space One, but only as to a portion thereof. Tenant has agreed that it will waive its right under Section 42.02 with respect to (i) the portion of Expansion Space One to be leased by the current Tenant thereof (the “CC Renewal Space”) and (ii) the approximately 1,001 rentable square feet of Expansion Space One which is not contiguous with the balance of Expansion Space One (the “Non-Contiguous CC Space”) which will not be leased by such current tenant, if Tenant can add the balance of Expansion
Space One (Expansion Space One less the CC Renewal Space and the Non-Contiguous CC Space) and all of Expansion Space Two to the Premises on the terms and conditions hereinafter set forth with respect to Expansion Space Two; and

G. Volkswagen Group of America, Inc (“Bentley Tenant”) has entered into a lease dated June 10, 2008 (“Bentley Lease”), of certain space (“Bentley Space”) on the Seventh Floor of Three Copley Place consisting of approximately 13,294 rentable square feet; and

H. Tenant has entered into a sublease (“Bentley Sublease”) of the Bentley Space to expire on October 31, 2019 (unless sooner terminated as provided in the Bentley Sublease) and Landlord has consented to the Bentley Sublease by a Consent to Sublease (“Consent”) dated September 3, 2013; and

I. In the Consent Landlord agreed, under certain circumstances, to enter into a direct lease with Tenant for the Bentley Space if the Bentley Sublease is terminated prior to October 31, 2019; and

J. Section 42.04 of the Lease provides that in the event Tenant subleases the Bentley Space, Landlord will provide Tenant the option (“Option”) to add the Bentley Space to the Premises upon the expiration of the term of the Bentley Sublease on all of the terms applicable to the Original Premises except with regard to the improvement allowance applicable thereto; and

K. Landlord desires to memorialize its grant of the Option contemplated by Section 42.04 of the Lease and to confirm that, in all events, if the Bentley Lease terminates as a result of which the Bentley Sublease is terminated, Tenant will become the direct Tenant of the Bentley Space on the terms of the Lease as amended hereby; and

L. Tenant desires to exercise the Option to lease the Bentley Space immediately following the expiration of the term of the Bentley Sublease and, if the Bentley Lease terminates prior to such expiration, to lease the Bentley Space directly from Landlord, all as more particularly hereinafter set forth, subject to, and on the terms hereinafter set forth.

M. Each capitalized term used in this First Amendment without definition shall have the meaning ascribed to such term in the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree to amend the Lease and otherwise agree as follows:

1. Increase in Premises Demised under the Lease.
   A. Effective as of the date hereof, the premises consisting of approximately 867 rentable square feet on the 4th floor Tower IV of the Building as depicted as hatched area on Exhibit FA attached hereto and made a part hereof is hereby added to, and for all purposes, shall be part of, the Initial Premises. Section 1.19 of the Lease is hereby amended accordingly. By reason of such addition, the rentable square footage of the Premises on the
4th floor of Tower IV of the Building is 16,843 and the total rentable square footage of the Premises initially leased shall be 106,563 (in lieu of the 105,696 rentable square feet set forth in the Lease). Furthermore, Article 38 of the Lease is amended to reflect the foregoing increase to add $68.04 per rentable square foot of such increase, or $58,990.68, to the Allowance, thereby increasing the same to $7,250,546.52. Consistent with the foregoing, Exhibit A to the Lease is amended to reflect the increase in the Premises by deleting the Sheet 3 for the 4th floor of Tower IV and inserting in lieu thereof, Exhibit FA attached hereto. The un-shaded and the hatched areas shown on Exhibit FA constitute the portion of the Premises on the 4th floor of Tower IV. The shaded area on Exhibit FA constitutes common areas and space leased to third parties.

B. Effective as of October 1, 2014 (adjusted as provided below, the “First Expansion Date”), the premises (contiguous to the existing Premises and referred to herein as the “First Expansion Space”) described as approximately 5,117 rentable square feet on the Third Floor of Tower Three and shown on Exhibit FB attached hereto and made a part hereof is hereby added to the Premises. Section 1.19 of the Lease is hereby amended accordingly.

By reason of the addition of the First Expansion Space, the rentable square footage of the Premises is increased on the First Expansion Date to 111,680 and Exhibit A to the Lease is amended by adding thereto Exhibit FB. With respect to the foregoing additions to the Premises, Section 3.01, Section 3.02 and Section 7.01 shall be inapplicable, but the following shall be applicable:

(x) In the event Landlord is unable to deliver possession of the First Expansion Space in as-is condition on or before April 1, 2014 by reason of the holding over or retention of possession by any tenant or occupant, or for any other reason, the Lease as amended hereby shall nevertheless continue in force and effect, except (i) the First Expansion Date shall be delayed day for day for each day following April 1, 2014 that Landlord is unable to so deliver possession of the First Expansion Space and (ii) if Landlord does not deliver the First Expansion Space as required hereby for a period of sixty (60) days following the date on which Landlord is not prevented by reasons beyond Landlord’s control from so delivering, Base Rent with respect to the First Expansion Space shall be abated for one additional day for each day following the end of such sixty (60) day period until Landlord makes such delivery.

(y) Tenant shall be responsible for the demolition of the First Expansion Space and all costs in connection therewith including without limitation, electricity used incident to such demolition.
Landlord shall deliver the First Expansion Space to Tenant, in the condition set forth in clause (x) of this subsection B on April 1, 2014, for purposes of performing Tenant’s Alterations thereto and for installation of telecommunications, business equipment and furniture, and may, subject to Legal Requirements, use the First Expansion Space for the conduct of Tenant’s business prior to the First Expansion Date. Such entry by Tenant prior to the First Expansion Date shall be at Tenant’s sole risk and without material interference to any work then being performed in the Building by Landlord or to any work then being performed by other tenants in space occupied by such tenants, and all of the covenants and conditions of the Lease as amended hereby shall be binding upon the parties hereto with respect to such whole or part of the First Expansion Space. Nevertheless, Tenant’s obligation to pay Rent with respect to the First Expansion Space shall not commence until the First Expansion Date, subject to a delay for a late delivery as provided in clause (x) of this subsection B, and Tenant shall pay the increase in Base Rent at the rates described below and any Additional Rent that may be due with respect to the First Expansion Space under ARTICLE 5 on the First Expansion Date and upon the first day of each calendar month thereafter. Tenant shall pay for electricity used by Tenant with respect to the First Expansion Space following commencement of Tenant’s construction of the Alterations in the First Expansion Space based upon Landlord’s good-faith, reasonable determination of the usage using sampling meters.

C. Effective as of July 1, 2015 (adjusted as provided below, the “Second Expansion Date”) the spaces (shown on Exhibit A-1 of the Lease) and described in clauses (i), (ii), (iii) and (iv) as follows (collectively referred to as the “Second Expansion Spaces”) is hereby added to the Premises:

(i) Approximately 28,334 rentable square feet on the Second Floor of Tower Four; and
(ii) Approximately 7,677 rentable square feet on the Fourth Floor of Tower Four; and
(iii) Approximately 29,021 rentable square feet on the Fifth Floor of Tower Four; and
(iv) Approximately 29,716 rentable square feet on the First Floor of Tower One.

Section 1.19 of the Lease is hereby amended accordingly.

By reason of the addition of the Second Expansion Spaces (shown on Exhibit FC, attached hereto and made a part hereof) aggregating 94,748 rentable square feet, the rentable square footage of the Premises is increased on the Second Expansion Date to 206,428 and Exhibit A to the
Lease is amended to include as of the Second Expansion Date, the Second Expansion Spaces on Exhibit FC.

Notwithstanding the foregoing, Tenant acknowledges that the rentable square feet to be leased to Tenant hereunder may be reduced by reason of an increase to the proposed “Simon Conference Facility” shown on Exhibit A-1, Sheet 4 of the Lease. Such reduction, in an amount not to exceed 4,000 rentable square feet contiguous to the designated Simon Conference Facility, shall be effected by notice to Tenant specifying the rentable square feet to be leased under the foregoing clause (iv) and the rentable square footage to be added to the Simon Conference Facility, given not later than July 1, 2014. Such notice shall be accompanied by a new floor plan of the space on the First Floor of Tower One which shall automatically thereupon be substituted into Exhibit A to the Lease in lieu of the plan for such space in Exhibit FC.

With respect to the foregoing additions to the Premises, Section 3.01, Section 3.02 and Section 7.01 shall be inapplicable, but the following shall be applicable:

(x) In the event Landlord is unable to deliver possession of the Second Expansion Spaces in as-is condition on or before January 1, 2015 by reason of the holding over or retention of possession by any tenant or occupant, or for any other reason, the Lease as amended hereby shall nevertheless continue in force and effect, except (i) the Second Expansion Date for any portion of the Second Expansion Spaces that Landlord is delayed in delivering beyond January 1, 2015, shall be delayed day for day for each day following January 1, 2015 that Landlord is unable to so deliver possession of such portion of the Second Expansion Spaces and (ii) if Landlord does not deliver the Second Expansion Spaces in the condition required hereby for a period of sixty (60) days following the date on which Landlord is not prevented by reasons beyond Landlord’s control from so delivering, Base Rent with respect to the portion of the Second Expansion Spaces not so delivered shall be abated for one additional day for each day following the end of such sixty (60) day period until Landlord makes such delivery.

(y) Tenant shall be responsible for the demolition of the Second Expansion Spaces, but Landlord agrees to pay the Demo Cost (as hereinafter defined) of the Second Expansion Spaces to the Demo Contractor (as hereinafter defined) within thirty (30) days of Landlord’s receipt of the invoices therefor, together with the contractor’s waiver of lien with respect to such work conditioned only on such payment. For purposes of this First Amendment, “Demo Cost” shall mean, as to a space being demolished, the lowest qualifying bid of the bids received from three reputable demolition contractors selected by Landlord subject to Tenant’s approval of such contractors not to be unreasonably withheld. The bids are to be based on demolition plans, specifications and scope prepared by Landlord and approved by Tenant, such approval to be not
unreasonably withheld or delayed. A qualifying bid shall be consistent with the plans, specifications and scope submitted in the bid package. The scope of the demolition work the Tenant will perform (and which will be paid for by Landlord) will be such as to at least provide for demolition to a shell condition equivalent to that of the shell condition in which Landlord is to deliver the Initial Premises. The contractor submitting the lowest qualifying bid shall be the “Demo Contractor” unless Landlord and Tenant otherwise agree to choose an alternate contractor, in which event, such alternate contractor shall be the Demo Contractor. If Landlord shall fail to pay the amount to be paid by Landlord in accordance with this paragraph by the date which is sixty (60) days following the date Landlord received the Demo Contractor’s invoice and lien waiver, then upon five (5) days prior written notice thereof from Tenant to Landlord of such failure, Tenant may (but shall not be obligated to) make payments of the amounts then due to the Demo Contractor and if Tenant makes such payment, Tenant may then offset such amounts against Base Rent next payable by Tenant to Landlord under the Lease, as amended hereby, together with interest thereon at the rate specified in Section 32.B of this Lease from the date of payment by Tenant until the date on which such amount with interest is offset against such Base Rent or otherwise paid by Landlord to Tenant.

(z) Landlord shall deliver the Second Expansion Spaces to Tenant, in the condition set forth in clause (x) of this subsection C on January 1, 2015, for purposes of performing Tenant’s Alterations thereto and for installation of telecommunications, business equipment and furniture, and may, subject to Legal Requirements use the Second Expansion Spaces for the conduct of Tenant’s business prior to the Second Expansion Date. Such entry by Tenant prior to the Second Expansion Date shall be at Tenant’s sole risk and without material interference to any work then being performed in the Building by Landlord or to any work then being performed by other tenants in space occupied by such tenants, and all of the covenants and conditions of the Lease as amended hereby shall be binding upon the parties hereto with respect to such whole or part of the Second Expansion Spaces. Nevertheless, Tenant’s obligation to pay Rent with respect to the Second Expansion Spaces shall not commence until the Second Expansion Date, subject to a delay for a late delivery as provided in clause (x) of this subsection C, and Tenant shall pay the increase in Base Rent at the rates described below and any Additional Rent that may be due with respect to the Second Expansion Spaces under ARTICLE 5 on the Second Expansion Date and upon the first day of each calendar month thereafter. Tenant shall pay for electricity used by Tenant with respect to the Second Expansion Spaces following commencement of Tenant’s construction of the Alterations in the Second Expansion Spaces as based upon Landlord’s good-faith, reasonable determination of the usage using sampling meters. Prior to such time, Tenant shall not be responsible for electricity costs in the Second Expansion Spaces.
D. Effective as of January 1, 2016 (adjusted as provided below, the “Third Expansion Date”), the premises consisting of approximately 47,131 rentable square feet on the Third Floor of Tower One (“Third Expansion Space”) shown on Exhibit FD attached hereto and made a part hereof is hereby added to the Premises. Section 1.19 of the Lease is hereby amended accordingly.

By reason of the addition of the Third Expansion Space, the rentable square footage of the Premises is increased on the Third Expansion Date to 253,559 and Exhibit A to the Lease is amended to include as of the Third Expansion Date, the Third Expansion Space on Exhibit FD.

With respect to the foregoing addition to the Premises, Section 3.01, Section 3.02 and Section 7.01 shall be inapplicable, but the following shall be applicable:

(x) In the event Landlord is unable to deliver possession of the Third Expansion Space in as-is condition on or before January 1, 2015 by reason of the holding over or retention of possession by any tenant or occupant, or for any other reason, the Lease as amended hereby shall nevertheless continue in force and effect, except (i) the Third Expansion Date shall be delayed day for day for each day following January 1, 2015 that Landlord is unable to so deliver possession of the Third Expansion Space and (ii) if Landlord does not deliver the Third Expansion Space as required hereby for a period of sixty (60) days following the date on which Landlord is not prevented by reasons beyond Landlord’s control from so delivering, Base Rent with respect to the Third Expansion Space shall be abated for one additional day for each day following the end of such sixty (60) day period until Landlord makes such delivery.

(y) Tenant shall be responsible for the demolition of the Third Expansion Space, but Landlord agrees to pay the Demo Cost of the Third Expansion Space to the Demo Contractor within thirty (30) days of Landlord’s receipt of the invoice therefor, together with the contractor’s waiver of lien with respect to such work conditioned only on such payment. If Landlord shall fail to pay the amount to be paid by Landlord in accordance with this paragraph by the date which is sixty (60) days following the date Landlord received the Demo Contractor’s invoice and lien waiver, then upon five (5) days prior written notice thereof from Tenant to Landlord of such failure, Tenant may (but shall not be obligated to) make payments of the amounts then due to the Demo Contractor and if Tenant makes such payment, Tenant may then offset such amounts against Base Rent next payable by Tenant under the Lease, as amended hereby, together with interest thereon at the rate specified in Section 32.B of this Lease from the date of payment by Tenant until the date on which such amount with interest is offset against such Base Rent or otherwise paid by Landlord to Tenant.
Landlord shall deliver the Third Expansion Space to Tenant, in the condition set forth in clause (x) of this subsection D on January 1, 2015, for purposes of performing Tenant’s Alterations thereto and for installation of telecommunications, business equipment and furniture, and may, subject to Legal Requirements use the Third Expansion Space for the conduct of Tenant’s business prior to the Third Expansion Date. Such entry by Tenant prior to the Third Expansion Date shall be at Tenant’s sole risk and without material interference to any work then being performed in the Building by Landlord or to any work then being performed by other tenants in space occupied by such tenants, and all of the covenants and conditions of the Lease as amended hereby shall be binding upon the parties hereto with respect to such whole or part of the Third Expansion Space. Nevertheless, Tenant’s obligation to pay Rent with respect to the Third Expansion Space shall not commence until the Third Expansion Date, subject to a delay for a late delivery as provided in clause (x) of this subsection D, and Tenant shall pay the increase in Base Rent at the rates described below and any Additional Rent that may be due with respect to the Third Expansion Space under ARTICLE 5 on the Third Expansion Date and upon the first day of each calendar month thereafter. Tenant shall pay for electricity used by Tenant with respect to the Third Expansion Space following commencement of Tenant’s construction of the Alterations in the Third Expansion Spaces based upon Landlord’s good-faith, reasonable determination of the usage using sampling meters. Prior to such time, Tenant shall not be responsible for electricity costs in the Second Expansion Spaces.

2. **Increase in Premises in the Event of a Renewal of Part of Expansion Space One**. The current tenant of Expansion Space One is negotiating with Landlord to extend its lease with a reduction in the premises demised thereunder. Landlord anticipates that if such negotiations are successful, the remainder of Expansion Space One (Expansion Space One less the CC Renewal Space and the Non-Contiguous CC Space) and all of Expansion Space Two on the Fourth Floor of Tower Three, aggregating approximately 8,288 rentable square feet as shown on Exhibit FE, attached hereto and made a part hereof and referred to herein as “Expansion Space Four”, will be available for leasing to Tenant and in such event shall be added to the Premises on the following terms (which, for clarity, shall only be effective if such negotiations with the tenant of Expansion Space One are successful):

   A. Effective as of the November 1, 2014 (adjusted as set forth below, the “Fourth Expansion Date”), Expansion Space Four is hereby added to the Premises. Section 1.19 of the Lease is hereby amended accordingly.

   B. In the event of the addition of Expansion Space Four, the rentable square footage of the Premises is increased on the Fourth Expansion Date by 8,288 rentable square feet (so that when the First Expansion Space, Second Expansion Space and Expansion Space Four are a part of the Premises (but only if Expansion Space Four becomes a part of the Premises, and before the addition of the Bentley Space to the Premises as
C. With respect to the addition of Expansion Space Four to the Premises, Section 3.01, Section 3.02 and Section 7.01 shall be inapplicable, but the following shall be applicable:

(x) In the event Landlord is unable to deliver possession of Expansion Space Four in as-is condition on or before May 1, 2014 by reason of the holding over or retention of possession by any tenant or occupant, or for any other reason, the Lease as amended hereby shall nevertheless continue in force and effect, except (i) the November 1, 2014 date for the addition of Expansion Space Four to the Premises shall be delayed day for day for each day following May 1, 2014 that Landlord is unable to so deliver possession of Expansion Space Four and (ii) if Landlord does not deliver the Expansion Space Four as required hereby for a period of sixty (60) days following the date on which Landlord is not prevented by reasons beyond Landlord’s control from so delivering, Base Rent with respect to the Expansion Space Four shall be abated for one additional day for each day following the end of such sixty (60) day period until Landlord makes such delivery.

(y) Tenant shall be responsible for the demolition of Expansion Space Four, but Landlord agrees to pay the Demo Cost of Expansion Space Four to the Demo Contractor within thirty (30) days of Landlord’s receipt of the invoice therefor, together with the contractor’s waiver of lien with respect to such work conditioned only on such payment. If Landlord shall fail to pay the amount to be paid by Landlord in accordance with this paragraph by the date which is sixty (60) days following the date Landlord received the Demo Contractor’s invoice and lien waiver, then upon five (5) days prior written notice thereof from Tenant to Landlord of such failure, Tenant may (but shall not be obligated to) make payments of the amounts then due to the Demo Contractor and if Tenant makes such payment, Tenant may then offset such amounts against Base Rent next payable by Tenant under the Lease, as amended hereby, together with interest thereon at the rate specified in Section 32.B of this Lease from the date of payment by Tenant until the date on which such amount with interest is offset against such Base Rent or otherwise paid by Landlord to Tenant.

(z) Landlord shall deliver Expansion Space Four to Tenant, in the condition set forth in clause (x) of this subsection C on April 1, 2014, for purposes of performing Tenant’s Alterations thereto and for installation of telecommunications, business equipment and furniture, and may, subject to Legal Requirements use Expansion Space Four for the conduct of Tenant’s business prior to the Fourth Expansion Date. Such entry by
Tenant prior to the Fourth Expansion Date shall be at Tenant’s sole risk and without material interference to any work then being performed in the Building by Landlord or to any work then being performed by other tenants in space occupied by such tenants, and all of the covenants and conditions of the Lease as amended hereby shall be binding upon the parties hereto with respect to such whole or part of the Expansion Space Four. Nevertheless, Tenant’s obligation to pay Rent with respect to Expansion Space Four shall not commence until the Fourth Expansion Date, subject to a delay for a late delivery as provided in clause (x) of this subsection C, and Tenant shall pay the increase in Base Rent at the rates described below and any Additional Rent that may be due with respect to Expansion Space Four under ARTICLE 5 on October 1, 2014 and upon the first day of each calendar month thereafter. Tenant shall pay for electricity used by Tenant with respect to Expansion Space Four following commencement of Tenant’s construction of the Alterations in Expansion Space Four based upon Landlord’s good-faith, reasonable determination of the usage using sampling meters. Prior to such time, Tenant shall not be responsible for electricity costs in the Second Expansion Spaces.

3. **Effect on Existing Expansion Options.** Tenant acknowledges that by reason of the addition to the Premises of the First Expansion Space and the Second Expansion Spaces, Tenant has no further rights with respect to Section 42.01 of the Lease. Tenant further acknowledges that in the event (a) the current tenant of Expansion Space One (as defined in Section 42.02 of the Lease) extends its lease for a portion of Expansion Space One and (b) the balance of Expansion Space One, exclusive of the Non-Contiguous CC Space, as well as Expansion Space Two, become a part of the Premises as described in Section 2 of this First Amendment, Tenant shall have no further rights with respect to Expansion Space One and Expansion Space Two pursuant to Section 42.02 of the Lease shall be of no further force or effect.

4. **Increase in Base Rent.** To reflect the increase in rentable square footage under the Lease, the table in Section 1.11 of the Lease is deleted and the table set forth on *Exhibit Rent*, attached hereto and made a part hereof shall be inserted as the table of Base Rent in Section 1.11. Furthermore, in the event Expansion Space Four becomes a part of the Premises pursuant to Section 2 of this First Amendment, there shall be payable as additional Base Rent (that is, in addition to the Base Rent payable pursuant to Exhibit Rent) the Base Rent set forth in *Exhibit Space Four Rent*, attached hereto and made a part hereof. In the event of a delay in the First Expansion Date, Second Expansion Date, Third Expansion Date or Fourth Expansion Date by reason of a delay in delivery of a space as described above, the Base Rent (on a per day, per square foot basis multiplied by the square footage of the space delivered late) with respect to such late delivered space shall not be payable with respect to the period of the delay.

5. **Proportionate Shares.**

   A. **Section 1.15 of the Lease is amended to read in its entirety:**

   **1.15 Tenant’s Proportionate Tax Share:**

   12.72% for the Premises initially leased hereunder (computed on the basis of 95% occupancy) consisting of 106,563 rentable square feet.

   For periods from and after the date the First Expansion Space becomes a part of the Premises, 0.61% shall be added to the Proportionate Tax Share.

   For periods from and after the date the Second Expansion Spaces become a part of the Premises, 11.31% shall be added to the then Proportionate Tax Share to reflect the addition of the Second Expansion Spaces; provided, however, the amount of such increase shall be proportionately deferred for any delay in adding a Second Expansion Space to the Premises.

   For periods from and after the date the Third Expansion Space becomes a part of the Premises, 5.63% shall be added to the then Proportionate Tax Share to reflect the addition of the Third Expansion Space to the Premises.

   For periods from and after the date Expansion Space Four becomes a part of the Premises (if but only if by reason of the successful negotiation of a lease with the current Tenant of Expansion Space One), 0.99% shall be added to the then Proportionate Tax Share to reflect the addition of Expansion Space Four to the Premises.
B. Section 1.16 of the Lease is amended to read in its entirety:

1.17 Tenant’s Proportionate Expense Share:

12.72% for the Premises initially leased hereunder (computed on the basis of 95% occupancy) consisting of 106,563 rentable square feet.

For periods from and after the date the First Expansion Space becomes a part of the Premises, 0.61% shall be added to the Proportionate Expense Share.

For periods from and after the date the Second Expansion Spaces become a part of the Premises, 11.31% shall be added to the then Proportionate Expense Share to reflect the addition of the Second Expansion Spaces; provided, however, the amount of such increase shall be proportionately deferred for any delay in adding a Second Expansion Space to the Premises.

For periods from and after the date the Third Expansion Space becomes a part of the Premises, 5.63% shall be added to the then Proportionate Expense Share to reflect the addition of the Third Expansion Space to the Premises.

For periods from and after the date Expansion Space Four becomes a part of the Premises (if but only if by reason of the successful negotiation of a lease with the current Tenant of Expansion Space One), 0.99% shall be added to the then Proportionate Expense Share to reflect the addition of Expansion Space Four to the Premises.

For purposes of clarity, adding a percentage to the then Proportionate Tax Share or Proportionate Expense Share shall mean, for example, that if the then Proportionate Tax Share is 12.69%, the addition of 0.66% would produce a Proportionate Tax Share of 13.35%.
6. **Letter of Credit.** Tenant agrees, on or before January 1, 2015, to increase the Letter of Credit Amount to **$3,013,126.12**. Section 1.21 of the Lease is hereby amended accordingly.

7. **Improvement Allowance for Expansion Spaces.** Article 38 of the Lease will be applicable to the First Expansion Space, Second Expansion Space, Third Expansion Space and, if added to the Premises pursuant to this First Amendment, Expansion Space Four, with the following modifications:

A. References therein to “Initial Alterations” shall mean and include the Alterations in the First Expansion Space, Second Expansion Space, Third Expansion Space and Expansion Space Four.

B. References to the Premises shall mean the First Expansion Space, Second Expansion Space, Third Expansion Space and Expansion Space Four.

C. The reference in the penultimate paragraph of Article 38 to June 15, 2015 shall be a reference to July 15, 2016.

D. The first sentence of Article 38 shall read:

   (i) With respect to the First Expansion Space: “Subject to the terms of this Article 38 set forth below, there shall be paid by the Landlord as the Landlord’s contribution toward Tenant’s Alterations of the First Expansion Space, the sum (“Allowance”) of **$307,020.00**, based upon a contribution of $60.00 per rentable square foot for **5,117** rentable square feet in the First Expansion Space.”

   (ii) With respect to the Second Expansion Space: “Subject to the terms of this Article 38 set forth below, there shall be paid by the Landlord as the Landlord’s contribution toward Tenant’s Alterations of the Second Expansion Space, the sum (“Allowance”) of **$5,684,880.00**, based upon a contribution of $60.00 per rentable square foot for **94,748** rentable square feet in the Second Expansion Space”. However, if the space leased as Second Expansion Space is reduced pursuant to the terms of this First Amendment, the amount of the Allowance with respect to the Second Expansion Space shall be correspondingly reduced at the rate of $60 per rentable square foot.

   (iii) With respect to the Third Expansion Space: “Subject to the terms of this Article 38 set forth below, there shall be paid by the Landlord as the Landlord’s contribution toward Tenant’s Alterations of the Third Expansion Space, the sum (“Allowance”) of **$2,403,681.00**, based upon a contribution
of $51.00 per rentable square foot for 47,131 rentable square feet in the Third Expansion Space.”

(iv) With respect to Expansion Space Four: “Subject to the terms of this Article 38 set forth below, there shall be paid by the Landlord as the Landlord’s contribution toward Tenant’s Alterations of Expansion Space Four, the sum (“Allowance”) of $497,280.00, based upon a contribution of $60.00 per rentable square foot for 8,288 rentable square feet in Expansion Space Four.”

E. Notwithstanding the foregoing, Tenant shall have the right to allocate and apply (without regard to any dollar or dollar per square foot limitation) the Allowance sums described above for uses permitted pursuant to Article 38 of the Lease among the Initial Premises, First Expansion Space, Second Expansion Space, Third Expansion Space, the Bentley Space and, if added to the Premises pursuant to this First Amendment, Expansion Space Four, in such proportions as Tenant shall determine in its sole discretion as if such Allowance sums were a single aggregate amount and Tenant’s preparation of such space was a single project.

8. Confirmation of the Grant of Option. Landlord hereby confirms its grant of the Option to add the Bentley Space to the Premises as of the November 1, 2019, so that subject to Section 3 hereof, the Lease is hereby amended so that from and after November 1, 2019, the Bentley Space together with the Premises then demised under the Lease as amended shall constitute the Premises under the Lease on the terms set forth in Sections 4 and 5 hereof.

9. Exercise of Option. Tenant hereby exercises the Bentley Option, so that subject to Section 3 hereof, the Lease shall be deemed amended so that the Bentley Space shall become a part of the Premises on November 1, 2019, on the terms set forth in Sections 4 and 5 hereof.

10. Effect of Early Termination of Bentley Lease. In the event the Bentley Lease terminates prior to October 31, 2019, for whatever reason, the Lease is hereby amended so that from and after the date of such termination, the Bentley Space shall become a part of the Premises on the terms set forth in Section 4 hereof. By reason of the foregoing, the right of Tenant to enter into a direct lease of the Bentley Space under certain conditions as set forth in the Consent is of no force or effect. In the event the Bentley Space is added to the Premises under this Section 3, the Bentley Space shall have become a part of the Premises prior to November 1, 2019 on the terms set forth in Section 4 hereof and the deemed amendment otherwise effected by Section 1 and Section 2 hereof, shall not be required and so shall be of no force or effect.

11. Modification of Lease. For periods from and after the Bentley Space Add Date (hereinafter defined), the Lease is hereby amended (a) to increase the Base Rent for each of the periods described in Section 1.11 of the Lease beginning on the Bentley Space Add Date by an amount equal to the rentable square feet in the Bentley Space multiplied by the Annual Base Rent per Rentable Square Foot for the respective periods and (b) to add 1.59% to Tenant’s Proportionate Tax Share and Tenant’s Proportionate Expense Share to reflect the addition of the

14
Bentley Space. The “**Bentley Space Add Date**” shall be November 1, 2019 or, if earlier, the date on which the Bentley Lease has been terminated. Landlord shall provide written notice of such termination to Tenant. As of the Bentley Space Add Date, if the First Expansion Space, Second Expansion Space, Third Expansion Space and Expansion Space Four have been added to the Premises, the aggregate rentable square footage of the Premises shall be **275,141**.

12. **Exhibit A.** From and after the Bentley Space Add Date, Exhibit A to the Lease shall be amended to include the Bentley Space as described in the sublease of the Bentley Space and shown on **Exhibit FF**, attached hereto and made a part hereof.

13. **Bentley Space Allowance.** The improvement allowance (“**Bentley Improvement Allowance**”) for the Bentley Space under Section 42.04 of the Lease is **$372,232.00** ($28 per rentable square foot of the Bentley Space) and would be due for alterations to the Bentley Space from and after November 1, 2019. Notwithstanding the foregoing, Landlord has agreed to pay the discounted present value of the Bentley Improvement Allowance, which the parties agree is **$253,489.99**, in accordance with Article 38 of the Lease as if the Bentley Space were, for purposes of Article 38, currently a part of the Premises. As a result of the foregoing and the increase in the Allowance under Section 1A above, the Allowance under Article 38 shall be **$7,504,036.51** (as the same is further increased with respect to the First Expansion Space, Second Expansion Space, Third Expansion Space, and, potentially, Expansion Space Four) and, notwithstanding anything to the contrary contained in the Lease, as amended hereby, may be used by Tenant in accordance with Article 38 on any portion of the Premises leased by Tenant. Tenant acknowledges that, by reason of the increase in the Allowance to reflect the discounted present value of the Bentley Improvement Allowance, Tenant has no right to any improvement allowance with respect to the Bentley Space when the same in fact becomes part of the Premises on November 1, 2019.

14. **Brokerage.** Tenant represents that Tenant has dealt with (and only with) Transwestern/RBJ as broker in connection with this First Amendment, and that insofar as Tenant knows, no other broker negotiated this First Amendment or is entitled to any commission in connection therewith. Tenant agrees to indemnify, defend and hold harmless Landlord its employees and agents from and against any claims made by any broker or finder other than the broker described above for a commission or fee in connection with this First Amendment or any sublease hereunder (but nothing herein shall be construed as permitting any such sublease) provided that Landlord has not in fact retained such broker or finder. Landlord agrees to indemnify, defend and hold harmless Tenant, its employees and agents from and against any claims made by any broker or finder named above or any other broker claiming to have earned a commission or fee in connection with this First Amendment, provided Tenant has not in fact retained such broker or finder. In addition, Landlord shall pay the fees of Transwestern/RBJ with respect to the addition of the Bentley Space for the period from and after November 1, 2019 through the end of the initial term of the Lease in accordance with a separate agreement with such broker.

15. **Construction.**

A. All Alterations made by Tenant to prepare any of the space leased by Tenant pursuant to the provisions of this First Amendment (including,
B. Consistent with Exhibit B-2 of the Lease, Landlord shall be responsible at its sole cost and expense for all restroom renovations on any floor of any Tower on which Tenant has leased more than 50% of the floor area of such floor in such Tower. Without limiting the generality of the foregoing, such obligation shall be in effect with respect to the Original Premises as increased by this First Amendment.

C. Landlord shall be responsible for all demising work with respect to the First Expansion Space, Second Expansion Spaces, the Third Expansion Space and Expansion Space Four without cost or expense to Tenant and shall cause the common corridor on the First Floor of Tower One to be constructed so as to provide Tenant access to the portion of its Premises on such floor. Landlord shall cause the demising work and the corridor work to be completed as soon as practicable, but Tenant acknowledges that such work may be delayed by reason of the occupancy of State Street Bank and/or delays by State Street Bank in performing its obligations of restoration under its lease.Tenant acknowledges that delays (i) by State Street Bank and (ii) in Landlord obtaining permits timely applied for and diligently pursued with respect to any such work to be performed by Landlord, shall be delays not within Landlord’s control. Notwithstanding the foregoing, Landlord agrees that it will not, without Tenant’s consent, alter the existing obligations of State Street Bank to vacate and restore the spaces necessary to permit Landlord to do the demising work and the corridor work on a timely bases and Landlord agrees to take reasonable steps (including commencing eviction proceedings) to enforce such obligations if such enforcement should become necessary.

16. Miscellaneous

A. This First Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Under no circumstances shall Tenant be entitled to any Rent abatement, improvement allowance, leasehold improvements, or other work to the Premises, or any similar economic incentives that may have been provided Tenant in connection with entering into the Lease, unless specifically set forth in this First Amendment.

B. Landlord represents and warrants to Tenant that as of the date of Landlord’s execution of this First Amendment, there is no mortgage on the Building or the Property. Landlord shall request and use reasonable efforts to obtain from the DOT a recognition agreement with respect to this First Amendment consistent with the provisions of the last paragraph of Article 21 of the Lease.
C. Landlord (on behalf of itself and its affiliates) shall have the right at any time and from time to time, in its sole discretion, to submit all or any portion of the Property to one or more condominiums pursuant to Massachusetts General Laws, Chapter 183A (each, singly, and collectively, the “Condominiums”) so long as such submission does not in any material way or degree increase Tenant’s obligations, or decrease Tenant’s rights, under the Lease as amended. Tenant covenants and agrees for itself and for the holders of any mortgages or other security interests in Tenant’s leasehold (“Leasehold Security Holders”) that: (i) the consent or approval of Tenant (and any such Leasehold Security Holders) shall not be necessary or required in order to create any of the Condominiums; and (ii) the Lease as amended from time to time shall be subject and subordinate to the Condominiums and all of the documents creating the Condominiums and pursuant to which the Condominiums are governed (collectively the “Condominium Documents”) with the same force and effect as if the Lease as amended (and any notice of the Lease as amended) were executed, acknowledged, delivered and recorded subsequent to the execution, acknowledgment, delivery and recording of the Condominium Documents; provided, however, nothing herein shall be construed as granting Tenant the right, without Landlord’s consent, to grant any such security interests. In confirmation of such subordination, Tenant shall execute and deliver promptly such instruments of subordination as Landlord shall reasonably request. Landlord represents, warrants and covenants that the creation of any one or more Condominiums shall not materially adversely affect: (a) the determination or reporting of Operating Expenses, including the portion thereof payable by Tenant hereunder; (b) Tenant’s use of or access to the Premises or to the common areas as set forth in the Lease as amended hereby; or (c) Landlord’s obligations under the Lease as amended hereby to provide maintenance, repairs and services as required pursuant to the Lease as amended hereby.

D. Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect.

E. In the case of any inconsistency between the provisions of the Lease and this First Amendment, the provisions of this First Amendment shall govern and control.

F. Submission of this First Amendment by Landlord is not an offer to enter into this First Amendment, but rather is a solicitation for such an offer by Tenant. Neither party shall be bound by this First Amendment until such party has executed and delivered the same to the other party.

[Signatures appear on the next succeeding page]
IN WITNESS WHEREOF, Landlord and Tenant have caused this document to be executed under seal as of the date first above written.

LANDLORD:

COPLEY PLACE ASSOCIATES, LLC, a Delaware limited liability company

By: SPG COLEY ASSOCIATES, LLC, a Delaware limited liability company, managing member

By: 

David J. Contis
hereunto duly authorized

TENANT:

WAYFAIR LLC

By: 

Its: and not individually
hereunto duly authorized
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<td>July 1, 2014 through September 30, 2014, based on 106,563 rsf</td>
<td>$34.65</td>
<td>$3,692,407.95</td>
<td>$307,700.66</td>
</tr>
<tr>
<td>October 1, 2014 through June 30, 2015, based on 111,680 rsf</td>
<td>$34.65</td>
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<tr>
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<td>$36.65</td>
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<td>Annual Base Rent</td>
<td>Monthly Installment of Annual Base Rent</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>------------------------------------------</td>
<td>--------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
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<tr>
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<td>$43.65</td>
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</tbody>
</table>

Exhibit Rent 2
SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (“Second Amendment”) is made and entered into as of the 24 day of October, 2014 by and between COPLEY PLACE ASSOCIATES, LLC, a Delaware limited liability company (the “Landlord”), and WAYFAIR LLC, a Delaware limited liability company (the “Tenant”).

Reference is made to the following:

A. That certain lease (the “Original Lease”) dated as of April 18, 2013, by and between Landlord and Tenant of space in the Office Section of the Building known as Copley Place, in Boston, Suffolk County, Massachusetts, consisting of approximately 105,696 rentable square feet of space on the First, Third, Fourth, Sixth and Seventh Floors of Four Copley Place (“Original Premises”) as amended by a First Amendment to Lease (“First Amendment”) dated as of February 11, 2014 by and between Landlord and Tenant (the Original Lease as amended by the First Amendment is referred to herein as the “Lease”) as a result of which, among other things, the rentable square footage of the premises demised under the Lease increased by 867 rentable square feet to approximately 106,563 rentable square feet, increased on October 1, 2014 to approximately 111,680 rentable square feet by the addition of the First Expansion Premises (as defined in the First Amendment), conditionally increased by approximately 8,288 rentable square feet depending on whether and when Expansion Space Four (as defined in the First Amendment) was delivered to Tenant, shall increase on July 1, 2015 by approximately 94,748 rentable square feet by the addition of the Second Expansion Premises (as defined in the First Amendment) and shall increase on January 1, 2016 by approximately 47,131 rentable square feet by the addition of the Third Expansion Premises; and

B. Landlord and Tenant have agreed that a portion of the Second Expansion Premises, consisting of approximately 29,716 rentable square feet on the First Floor of Tower One, will not become a part of the Premises demised under the Lease, but in lieu thereof, the Fourth Floor of Tower One of the Building, consisting of approximately 46,403 rentable square feet and delineated on Exhibit A hereto shall be a part of the Second Expansion Premises (such substitution of a portion of the Second Expansion Premises being referred to herein as the “Substitution”), subject to the terms and conditions of this Second Amendment, as a result of which, after the Substitution, (i) the Second Expansion Premises shall comprise approximately 111,435 rentable square feet rather than 94,748 rentable square feet and (ii) on the Second Expansion Date (as defined in the First Amendment, the Premises demised under the Lease shall be approximately 223,115 rentable square feet, (iii) on the Third Expansion Date, the Fourth Expansion Date and the Bentley Space Add Date (as such terms are defined in the First Amendment), the Premises demised under the Lease shall be increased over the rentable square footage set forth in the Lease, by approximately 16,687 rentable square feet.

C. Each capitalized term used in this Second Amendment without definition shall have the meaning ascribed to such term in the Lease.
NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree to amend the Lease and otherwise agree as follows:

1. **Increase in Premises by Addition of Expansion Space Four**. Tenant acknowledges that Landlord delivered Expansion Space Four to Tenant on July 1, 2014 as a result of which, consistent with the First Amendment and the adjustment provided therein for the Fourth Expansion Date, effective January 1, 2015, Expansion Space Four consisting of approximately 8,288 rentable square feet shall be added to the Premises.

2. **Substitution of Space Demised under the Lease**. The first two grammatical paragraphs of Section 1.C of the First Amendment are amended to read in their entirety as follows (the balance of Section 1.C shall remain in effect with respect to the Second Expansion Spaces):

   “Effective as of July 1, 2015 (adjusted as provided below, the “Second Expansion Date”) the spaces (shown on Exhibit A-1 of the Lease) and described in clauses (i), (ii), (iii) and (iv) as follows (collectively referred to as the “Second Expansion Spaces”) is hereby added to the Premises:

   (i) Approximately 28,334 rentable square feet on the Second Floor of Tower Four; and
   (ii) Approximately 7,677 rentable square feet on the Fourth Floor of Tower Four; and
   (iii) Approximately 29,021 rentable square feet on the Fifth Floor of Tower Four; and
   (iv) Approximately 46,403 rentable square feet constituting the Fourth Floor of Tower One.

   Section 1.19 of the Lease is hereby amended accordingly.

   By reason of the addition of Second Expansion Spaces (shown on Exhibit FC, attached hereto and made a part hereof) aggregating 111,435 rentable square feet and Expansion Space Four aggregating approximately 8,288 rentable square feet, the rentable square footage of the Premises is increased on the Second Expansion Date to 231,403 and Exhibit A to the Lease is amended to include as of the Second Expansion Date, the Second Expansion Spaces on Exhibit FC.”

   Tenant agrees that shall have no rights under Article 43 of the Lease with respect to the space on First Floor of Tower One. Without limiting the generality of the foregoing, such First Floor of Tower One Space shall not be Offering Space (as defined in the Lease) for purposes of the Lease as amended by this Second Amendment.
3. **Substitution of Exhibit**. Consistent with the Substitution, there shall be substituted for page 4 of Exhibit FC of the Lease, Exhibit A attached hereto.

4. **Former Expansion Option**. Tenant acknowledges that by reason of the addition to the Premises of Expansion Space Four, Tenant has no further rights with respect to Expansion Space One and Expansion Space Two pursuant to Section 42.02 of the Lease which is of no further force or effect.

5. **Increase in Base Rent**. To reflect the increase in rentable square footage under the Lease resulting from the Substitution and the satisfaction of the conditions relating to the addition to the Premises of Expansion Space Four, the table in Section 1.11 of the Lease (as amended in the First Amendment) is deleted and the table set forth on Exhibit Rent, attached hereto and made a part hereof, shall be inserted as the table of Base Rent in Section 1.11. Exhibit Space Four Rent in the First Amendment is deleted and of no further force or effect, the rents set forth therein having been incorporated in Exhibit Rent attached hereto. In the event of a delay in the Second Expansion Date or the Third Expansion Date (the delivery conditions for the First Expansion Space and Expansion Space Four having been satisfied) by reason of a delay in delivery of a space as in the First Amendment, the Base Rent (on a per day, per square foot basis multiplied by the square footage of the space delivered late) with respect to such late delivered space shall not be payable with respect to the period of the delay and shall be abated to the extent provided in Section 1.C(x) of the First Amendment with respect to a delay in the Second Expansion Date and to the extent provided in Section 1.D(x) of the First Amendment with respect to a delay in the Third Expansion Date. The provisions relating to abatement of Base Rent for delay in delivery set forth in Section 4 the First Amendment are superseded by the provisions of this Section 5.

6. **Proportionate Shares**.

A. Section 1.15 of the Lease is amended to read in its entirety:

1.15 Tenant’s Proportionate Tax Share:

   - 12.72% for the Premises initially leased hereunder (computed on the basis of 95% occupancy) consisting of 106,563 rentable square feet.

   For periods from and after the date the First Expansion Space becomes a part of the Premises, 0.61% shall be added to the Proportionate Tax Share.

   For periods from and after the date the Second Expansion Spaces become a part of the Premises, 12.64% shall be added to the then Proportionate Tax Share to reflect the addition of the Second Expansion Spaces; provided, however, the amount of such increase shall be proportionately deferred for any delay in adding a Second Expansion Space to the Premises.

   For periods from and after the date the Third Expansion Space becomes a part of the Premises,
For purposes of clarity, adding a percentage to then Proportionate Tax Share or Proportionate Expense Share shall mean, for example, that if the then Proportionate Tax Share is 12.69%, the addition of 0.66% would produce a Proportionate Tax Share of 13.35%. 

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| 1.17 | Tenant’s Proportionate Expense Share: | 12.72% for the Premises initially leased hereunder (computed on the basis of 95% occupancy) consisting of 106,563 rentable square feet. | 
|      |                                      | For periods from and after the date the First Expansion Space becomes a part of the Premises, 0.61% shall be added to the Proportionate Expense Share. | 
|      |                                      | For periods from and after the date the Second Expansion Spaces become a part of the Premises, 12.64% shall be added to the then Proportionate Expense Share to reflect the addition of the Second Expansion Spaces; provided, however, the amount of such increase shall be proportionately deferred for any delay in adding a Second Expansion Space to the Premises. | 
|      |                                      | For periods from and after the date the Third Expansion Space becomes a part of the Premises, 5.63% shall be added to the then Proportionate Expense Share to reflect the addition of the Third Expansion Space to the Premises. | 
|      |                                      | For periods from and after January 1, 2015, 0.99% shall be added to the then Proportionate Expense Share to reflect the addition of Expansion Space Four to the Premises. |
7. **Letter of Credit.** Tenant agrees, on or before January 1, 2015, to increase the Letter of Credit Amount to $3,217,067.77. Section 1.21 of the Lease is hereby amended accordingly.

8. **Improvement Allowance for Expansion Spaces.** Article 38 of the Lease, as amended by the First Amendment, shall remain effective with no change by reason of the Substitution. For the purpose of clarity, and without limiting the generality of the foregoing, the Improvement Allowance shall not increase by reason of the addition of 16,687 rentable square feet to the Premises pursuant to the Substitution, but Landlord shall be obligated to pay the full amount of the Demo Cost with respect to the Premises with the addition space resulting from the Substitution.

9. **Brokerage.** Tenant and Landlord agree that Landlord shall be responsible for the commission to be paid by reason of the Substitution in accordance with a separate agreement between Landlord and Transwestern/RBJ. Tenant agrees to indemnify, defend and hold harmless Landlord its employees and agents from and against any claims made by any broker or finder other Transwestern/RBJ for a commission or fee in connection with this Second Amendment provided that Landlord has not in fact retained any such broker or finder. Landlord agrees to indemnify, defend and hold harmless Tenant, its employees and agents from and against any claims made by any broker or finder claiming to have earned a commission or fee in connection with this Second Amendment, provided Tenant has not in fact retained such broker or finder.

10. **Notice of Lease; No Mortgage; and Recognition Agreement.** Landlord and Tenant hereby agree to execute, acknowledge and deliver, in recordable form, an amended notice of the Lease to reflect all of the premises leased by Tenant under the Lease, consistent with the provisions of Massachusetts General Laws Chapter 183, Section 4, as amended. Landlord represents and warrants to Tenant that as of the date of Landlord’s execution of this Second Amendment, there is no mortgage encumbering the Building or the Property or any portion thereof. Landlord shall request and use reasonable efforts to obtain from the DOT a recognition agreement with respect to this Second Amendment consistent with the provisions of the last paragraph of Article 21 of the Lease.

11. **Miscellaneous.**
   
   A. This Second Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.
   
   B. Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect.
   
   C. In the case of any inconsistency between the provisions of the Lease and this Second Amendment, the provisions of this Second Amendment shall govern and control.
   
   D. Submission of this Second Amendment by Landlord is not an offer to enter into this Second Amendment, but rather is a solicitation for such an
Neither party shall be bound by this Second Amendment until such party has executed and delivered the same to the other party.

[Signatures appear on the next succeeding page]
IN WITNESS WHEREOF, Landlord and Tenant have caused this document to be executed under seal as of the date first above written.

**LANDLORD:**

COPLEY PLACE ASSOCIATES, LLC, a Delaware limited liability company

By: SPG Copley Associates, LLC, a Delaware limited liability company, managing member

By: David J. Contis
    hereunto duly authorized

**TENANT:**

WAYFAIR LLC

By: ____________________________ and not individually

Its: ____________________________ hereunto duly authorized
# Exhibit Rent

## Revised Section 1.11 Base Rent Table

<table>
<thead>
<tr>
<th>Period</th>
<th>Annual Base Rent Per Rentable Square Foot</th>
<th>Annual Base Rent</th>
<th>Monthly Installment of Annual Base Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 2014 through September 30, 2014, based on 106,563 rsf</td>
<td>$34.65</td>
<td>$3,692,407.95</td>
<td>$307,700.66</td>
</tr>
<tr>
<td>October 1, 2014 through December 31, 2014, based on 111,680 rsf</td>
<td>$34.65</td>
<td>$3,869,712.00</td>
<td>$322,476.00</td>
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<tr>
<td>January 1, 2015 through June 30, 2015, based on 119,968 rsf</td>
<td>$34.65</td>
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<tr>
<td>July 1, 2016 through June 30, 2017, based on 278,534 rsf</td>
<td>$36.65</td>
<td>$10,208,271.10</td>
<td>$850,689.26</td>
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<tr>
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<td>$37.65</td>
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<td>$38.65</td>
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Exhibit Space Four Rent 1
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<tr>
<th>Period</th>
<th>Annual Base Rent Per Rentable Square Foot</th>
<th>Annual Base Rent</th>
<th>Monthly Installment of Annual Base Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 2019 through June 30, 2020, based on 278,534 rsf</td>
<td>$39.65</td>
<td>$11,043,873.10</td>
<td>$920,322.76</td>
</tr>
<tr>
<td>July 1, 2020 through June 30, 2021, based on 278,534 rsf</td>
<td>$40.65</td>
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<td>July 1, 2021 through June 30, 2022, based on 278,534 rsf</td>
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<td>$966,745.09</td>
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<tr>
<td>July 1, 2022 through June 30, 2023, based on 278,534 rsf</td>
<td>$42.65</td>
<td>$11,879,475.10</td>
<td>$989,956.26</td>
</tr>
<tr>
<td>July 1, 2023 through June 30, 2024, based on 278,534 rsf</td>
<td>$43.65</td>
<td>$12,158,009.10</td>
<td>$1,013,167.43</td>
</tr>
</tbody>
</table>
Bank of America

LOAN AGREEMENT

This Agreement dated as of October 29, 2012, is between Bank of America, NA (the “Bank”) and WAYFAIR LLC, Delaware limited liability company, (the “Borrower”).

1. FACILITY NO. 1: LINE OF CREDIT AMOUNT AND TERMS

1.1 Line of Credit Amount.

(a) During the availability period described below, the Bank will provide a line of credit to the Borrower (“Facility No. 1”). The amount of the Facility No 1 commitment (the “Facility No. 1 Commitment”) is Ten Million and 00/100 Dollars ($10,000,000.00). As of the date hereof, FIA Services, Inc. has agreed to provide a card program to the Borrower (“Card Program”) in the amount of Ten Million Dollars ($10,000,000.00). In no event shall the Facility No. 1 Commitment together with the commitment under the Card Program exceed at any time Twenty Million Dollars ($20,000,000.00).

(b) The Facility No. 1 is a revolving line of credit. During the availability period, the Borrower may repay principal amounts and reborrow them subject to the maximum amount limitations set forth in paragraph (a) above.

(c) The Borrower agrees not to permit the principal balance outstanding under Facility No. 1 to exceed the Facility No. 1 Commitment as such commitment may be reduced from time to time by the Card Program. If the Borrower exceeds the applicable limitation, the Borrower will immediately pay the excess to the Bank upon the Bank’s demand.

1.2 Availability Period. The Facility No. 1 is available between the date of this Agreement and October 28, 2013, or such earlier date as the availability may terminate as provided in this Agreement (the “Facility No. 1 Expiration Date”).

The availability period for this line of credit will be considered renewed if and only if the Bank has sent to the Borrower a written notice of renewal for the Facility No. 1 (the “Renewal Notice”). If the Facility No. 1 is renewed, it will continue to be subject to all the terms and conditions set forth in this Agreement except as modified by the Renewal Notice (as such modified terms are agreed to by the Borrower). If the Facility No. 1 is renewed, the term “Facility No. 1 Expiration Date shall mean the date set forth in the Renewal Notice as the Expiration Date and the same process for renewal will apply to any subsequent renewal of the Facility No. 1. A renewal fee may be charged at the Bank’s option. The amount of the renewal fee will be specified in the Renewal Notice.

1.3 Repayment Terms.

(a) The Borrower will pay interest on any principal amounts outstanding under the Facility No. 1 on October 31, 2012, and then on the last day of each month thereafter until payment in full of any principal outstanding under the Facility No. 1.

(b) The Borrower will repay in full any principal, interest or other charges outstanding under the Facility No. 1 no later than the Facility No. 1 Expiration Date. Any interest period for an optional interest rate (as described below) shall expire no later than the Facility No. 1 Expiration Date,
1.4 Interest Rate

(a) The interest rate is a rate per year equal to the BBA LIBOR Daily Floating Rate plus 1.75 percentage point(s).

(b) The BBA LIBOR Daily Floating Rate is a fluctuating rate of interest which can change on each banking day. The rate will be adjusted on each banking day to equal the British Bankers Association LIBOR Rate (“BBA LIBOR”) for U.S. Dollar deposits for delivery on the date in question for a one month term beginning on that date. The Bank will use the BBA LIBOR Rate as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by the Bank from time to time) as determined at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, as adjusted from time to time in the Bank’s sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate will be determined by such alternate method as reasonably selected by the Bank. A “London Banking Day” is a day on which banks in London are open for business and dealing in offshore dollars.

1.5 Optional Interest Rates. Instead of the interest rate based on the rate stated in the paragraph entitled “Interest Rate” above, the Borrower may elect the optional interest rates listed below for this Facility No. 1 during Interest periods agreed to by the Bank and the Borrower. The optional interest rates shall be subject to the terms and conditions described later in this Agreement. Any principal amount bearing interest at an optional rate under this Agreement is referred to as a “Portion.” The following optional interest rates are available:

(a) The LIBOR Rate plus 1.75 percentage point(s).

2. OPTIONAL INTEREST RATES

2.1 Optional Rates. Each optional Interest rate is a rate per year. Interest will be paid on any principal amounts outstanding under the Facility No. 1 on October 31, 2012, and then on the same day of each month thereafter until payment in full of any principal outstanding under the Facility No. 1. No Portion will be converted to a different interest rate during the applicable Interest period. Upon the occurrence of an event of default under this Agreement, the Bank may terminate the availability of optional Interest rates for Interest periods commencing after the default occurs. At the end of each interest period, the Interest rate will revert to the rate stated in the paragraph(s) entitled “Interest Rate” above, unless the Borrower has designated another optional Interest rate for the Portion.

2.2 LIBOR Rate. The election of LIBOR Rates shall be subject to the following terms and requirements:

(a) The Interest period during which the LIBOR Rate will be in effect will be one month, two months or three months. The first day of the interest period must be a day other than a Saturday or a Sunday on which banks are open for business in New York and London and dealing in offshore dollars (a “LIBOR Banking Day”). The last day of the Interest period and the actual number of days during the Interest period will be determined by the Bank using the practices of the London inter-bank market.

(b) Each LIBOR Rate portion will be for an amount not less than One Hundred Thousand and 00/100 Dollars ($100,000.00).
The “LIBOR Rate” means the interest rate determined by the following formula. (All amounts in the calculation will be determined by the Bank as of the first day of the interest period.)

\[
\text{LIBOR Rate} = \frac{\text{London Inter-Bank Offered Rate}}{(1.00 = \text{Reserve Percentage})}
\]

Where,

(i) “London Inter-Bank Offered Rate” means for any applicable interest period, the rate per annum equal to the British Bankers Association LIBOR Rate BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by the Bank from time to time) at approximately 11:00 a.m., London time two (2) London Banking Days before the commencement of the interest period for U.S. Dollar deposits (for delivery on the first day of such interest period) with a term equivalent to such Interest period. If such rate is not available at such time for any reason then the rate for that interest period will be determined by such alternate method as reasonably selected by the Bank. A “London Banking Day” is a day on which banks in London are open for business and dealing in offshore dollars.

(ii) “Reserve Percentage” means the total of the maximum reserve percentages for determining the reserves to be maintained by member banks of the Federal Reserve System for Eurocurrency Liabilities, as defined in Federal Reserve Board Regulation D, rounded upward to the nearest 1/100 of one percent. The percentage will be expressed as a decimal, and will include, but not be limited to, marginal, emergency, supplemental, special, and other reserve percentages.

(d) The Borrower shall irrevocably request a LIBOR Rate Portion no later than 12:00 noon Eastern time on the LIBOR Banking Day preceding the day on which the London Inter-Bank Offered Rate will be set, as specified above. For example, if there are no intervening holidays or weekend days in any of the relevant locations, the request must be made at least three days before the LIBOR Rate takes effect.

(e) The Bank will have no obligation to accept an election for a LIBOR Rate Portion if any of the following described events has occurred and is continuing:

(i) Dollar deposits in the principal amount, and for periods equal to the Interest period, of a LIBOR Rate Portion are not available in the London inter-bank market; or

(ii) The LIBOR Rate does not accurately reflect the cost of a LIBOR Rate Portion.

(f) Each prepayment of a LIBOR Rate Portion, whether voluntary, by reason of acceleration or otherwise, will be accompanied by the amount of accrued interest on the amount prepaid and a prepayment fee as described below. A “prepayment” is a payment of an amount on a date earlier than the scheduled payment date for such amount as required by this Agreement.

(g) The prepayment fee is Intended to compensate the Bank for the funding costs of the prepaid credit, if any. The prepayment fee will be determined by calculating the funding costs incurred by the Bank, used on the cost of funds at the time the interest rate was fixed, and subtracting the interest income which can be earned by the Bank by reinvesting the prepaid funds at the Reinvestment Rate. The calculation is defined more fully below.
The “Fixed interest Rate Period” is the period during which the interest rate in effect at the time of the prepayment does not change, if the Fixed Interest Rate Period does not extend for the entire remaining life of the credit, then the following rules will apply:

(i) For any portion of the prepaid principal for which the scheduled payment date is after the end of the Fixed Interest Rate Period, the prepayment fee for that portion shall be calculated based only on the period through the end of the Fixed Interest Rate Period, as described below.

(ii) If a prepayment is made on a date on which the interest rate resets, then there will be no prepayment fee.

The prepayment fee calculation is made separately for each Prepaid Installment. A “Prepaid Installment” is the amount of the prepaid principal that would have been due on a particular scheduled payment date (the “Scheduled Payment Date”). However, as explained in the preceding paragraph, all amounts of the credit which would have been paid after the end of the Fixed interest Rate Period shall be considered a single Prepaid Installment with a Scheduled Payment Date (for the purposes of this calculation) equal to the last day of the Fixed Interest Rate Period.

The prepayment fee for a particular Prepaid Installment will be calculated as follows:

(i) Calculate the monthly interest payments that would have accrued on the Prepaid installment through the applicable Scheduled Payment Date, if the prepayment had not been made. The interest payments will be calculated using the Original Cost of Funds Rate.

(ii) Next, calculate the monthly interest income which could be earned on the Prepaid Installment if it were reinvested by the Bank at the Reinvestment Rate through the Scheduled Payment Date.

(iii) Calculate the monthly differences of the amounts calculated in (i) minus the amounts calculated in (ii).

(iv) If the remaining term of the Fixed Interest Rate Period is greater than one year, calculate the present value of the amounts calculated in (iii), using the Reinvestment Rate. The result of the present value calculation is the prepayment fee for the Prepaid Installment.

Finally, the prepayment fees for all of the Prepaid Installments are added together. The sum, if greater than zero, is the total prepayment fee due to the Bank.

The following definitions will apply to the calculation of the prepayment fee:

(i) “Original Cost of Funds Rate” means the fixed interest rate per annum, determined solely by the Bank, at which the Bank would be able to borrow funds in the bank Funding Markets for the duration of the Fixed Interest Rate Period in the amount of the prepaid principal and with a term, interest payment frequency, and principal repayment schedule matching the prepaid principal.

(ii) “Bank Funding Markets” means one or more wholesale funding markets available to the Bank, including the LIBOR, Eurodollar, and SWAP markets as applicable and available, or such other appropriate money market as determined by the Bank in its sole discretion.
“Reinvestment Rate” means the fixed rate per annum, determined solely by the Bank, as the rate at which the Bank would be able to reinvest funds in the amount of the Prepaid Installment in the Bank Funding Markets on the date of prepayment for a period of time approximating the period starting on the date of prepayment and ending on the Scheduled Payment Date.

The Original Cost of Funds Rate and the Reinvestment Rate are the Bank’s estimates only and the Bank is under no obligation to actually purchase or match funds for any transaction or reinvest any prepayment. The Bank may adjust the Original Cost of Funds Rate and the Reinvestment Rate to reflect the compounding, accrual basis, or other costs of the prepaid amount. The rates shall include adjustment for reserve requirements, federal deposit insurance and any other similar adjustment which the Bank deems appropriate. These rates are not fixed by or related in any way to any rate the Bank quotes or pays for deposits accepted through its branch system.

3. FEES AND EXPENSES

3.1 Fees

(a) Late Fee. To the extent permitted by law, the Borrower agrees to pay a late fee in an amount not to exceed four percent (4%) of any payment that is more than fifteen (15) days late; provided that such late fee shall be reduced to three percent (3%) of any required principal and interest payment that is not paid within fifteen (15) days of the date it is due the loan is secured by a first or subordinate lien on real property consisting of four or fewer separate households. The imposition and payment of a late fee shall not constitute a waiver of the Bank’s rights with respect to the default.

4. DISBURSEMENTS, PAYMENTS AND COSTS

4.1 Disbursements and Payments

(a) Each payment by the Borrower will be made in U.S. Dollars and immediately available funds, without setoff or counterclaim. Payments will be made by debit to a deposit account, if direct debit is provided for in this Agreement or is otherwise authorized by the Borrower. For payments not made by direct debit, payments will be made by mail to the address shown on the Borrower’s statement, or by such other method as may be permitted by the Bank.

(b) The Bank may honor instructions for advances or repayments given by the Borrower (if an individual), or by any one of the individuals authorized to sign loan agreements on behalf of the Borrower, or any other individual designated by any one of authorized signers (each an “Authorized Individual”),

(c) For any payment under this Agreement made by debit to a deposit account, the Borrower will maintain sufficient immediately available funds in the deposit account to cover each debit. If there are insufficient immediately available funds in the deposit account on the date the Bank enters such debit authorized by this Agreement, the Bank may reverse the debit.

(d) Each disbursement by the Bank and each payment by the Borrower will be evidenced by records kept by the Bank. In addition, the Bank may, at its discretion, require the Borrower to sign one or more promissory notes.

(e) Prior to the date each payment of principal and interest and any fees from the Borrower becomes due (the “Due Date”), the Bank will send to the Borrower a statement of the amounts that will be
due on that Due Date (the “Billed Amount”). The calculations in the bill will be made on the assumption that no new extensions of credit or payments will be made between the date of the billing statement and the Due Date, and that there will be no changes in the applicable interest rate. If the Billed Amount differs from the actual amount due on the Due Date (the “Accrued Amount”), the discrepancy will be treated as follows:

(i) If the Billed Amount is less than the Accrued Amount, the Billed Amount for the following Due Date will be increased by the amount of the discrepancy. The Borrower will not be in default by reason of any such discrepancy.

(ii) If the Billed Amount is more than the Accrued Amount, the Billed Amount for the following Due Date will be decreased by the amount of the discrepancy.

Regardless of any such discrepancy, interest will continue to accrue based on the actual amount of principal outstanding without compounding. The Bank will not pay the Borrower interest on any overpayment.

4.2 **Borrower’s Instructions**.

(a) The Bank may honor instructions for advances or repayments or for the designation of optional interest rates given, or purported to be given, by any one of the Authorized individuals. Such instructions may be given in writing or by telephone, telefax or internet and intranet websites designated by the Bank with respect to separate products or services offered by the Bank. The Bank’s obligation to act on such instructions is subject to the terms, conditions and procedures stated elsewhere in this Agreement.

(b) Except as specified elsewhere in this Agreement or as otherwise agreed between the Bank and the Borrower, advances will be deposited in and repayments will be withdrawn from account number MA-46834434352 owned by the Borrower or such other of the Borrower’s accounts with the Bank as designated in writing by the Borrower.

(c) The Borrower will indemnify and hold the Bank harmless from all liability, loss, and costs in connection with any act resulting from instructions the Bank reasonably believes are made by any Authorized Individual, whether such instructions are given in writing or by telephone, telefax or electronic communications (including e-mail, internet and intranet websites). This paragraph will survive this Agreement’s termination, and will benefit the Bank and its officers, employees, and agents.

4.3 **Direct Debit**.

(a) The Borrower agrees that on the Due Date the Bank will debit the Billed Amount from deposit account number MA-4634434352 owned by the Borrower or such other of the Borrower’s accounts with the Bank as designated in writing by the Borrower (the “Designated Account”).

(b) The Borrower may terminate this direct debit arrangement at any time by sending written notice to the Bank at the address specified at the end of this Agreement.

4.4 **Banking Days**. Unless otherwise provided in this Agreement, a banking day is a day other than a Saturday, Sunday or other day on which commercial banks are authorized to close, or are in fact closed, in the state where the Bank’s lending office is located, and, if such day relates to amounts bearing interest at an offshore rate (if any), means any such day on which dealings in dollar deposits are conducted among banks in the offshore dollar Interbank market. All payments and disbursements which would be due on a
day which is not a banking day will be due on the next banking day. All payments received on a day which is not a banking day will be applied to the credit on the next banking day.

4.5 **Interest Calculation.** Except as otherwise stated in this Agreement, all interest and fees, if any, will be computed on the basis of a 360-day year and the actual number of days elapsed. This results in more interest or a higher fee than if a 365-day year is used. Installments of principal which are not paid when due under this Agreement shall continue to bear interest until paid.

4.6 **Default Rate.** Upon the occurrence of any default or after maturity or after judgment has been rendered on any obligation under this Agreement, all amounts outstanding under this Agreement, including any unpaid interest, fees, or costs, will at the option of the Bank bear Interest at a rate which is 2.0 percentage points) higher than the rate of Interest otherwise provided under this Agreement. This may result in compounding of interest. This will not constitute a waiver of any default.

5. **CONDITIONS**

Before the Bank is required to extend any credit to the Borrower under this Agreement, it must receive any documents and other items it may reasonably require, in form and content acceptable to the Bank, including any items specifically listed below.

5.1 **Authorizations.** If the Borrower or any guarantor is anything other than a natural person, evidence that the execution, delivery and performance by the Borrower and/or such guarantor of this Agreement and any instrument or agreement required under this Agreement have been duly authorized.

5.2 **Governing Documents.** If required by the Bank, a copy of the Borrower’s organizational documents.

5.3 **Good Standing.** Certificates of good standing for the Borrower from its state of formation and from any other state in which the Borrower is required to qualify to conduct its business.

5.4 **Insurance.** Evidence of insurance coverage, as required in the “Covenants” section of this Agreement.

6. **REPRESENTATIONS AND WARRANTIES**

When the Borrower signs this Agreement, and until the Bank is repaid in full, the Borrower makes the following representations and warranties. Each request for an extension of credit constitutes a renewal of these representations and warranties as of the date of the request:

6.1 **Formation.** If the Borrower is anything other than a natural person, it is duly formed and existing under the laws of the state or other Jurisdiction where organized.

6.2 **Authorization.** This Agreement, and any instrument or agreement required hereunder, are within the Borrowers powers, have been duly authorized, and do not conflict with any its organizational papers.

6.3 **Enforceable Agreement.** This Agreement is a legal, valid and binding agreement of the Borrower, enforceable against the Borrower in accordance with its terms, and any Instrument or agreement required hereunder, when executed and delivered, will be similarly legal, valid, binding and enforceable.

6.4 **Good Standing.** In each state in which the Borrower does business, It is properly licensed, in good standing, and, where required, in compliance with fictitious name statutes.
6.5 **No Conflicts.** This Agreement does not conflict with any law, agreement, or obligation by which the Borrower is bound.

6.6 **Financial Information.** All financial and other information that has been or will be supplied to the Bank is sufficiently complete to give the Bank accurate knowledge of the Borrower’s (and any guarantor’s) financial condition, including all material contingent liabilities. Since the date of the most recent financial statement provided to the Bank, there has been no material adverse change in the business condition (financial or otherwise), operations, properties or prospects of the Borrower (or any guarantor). If the Borrower is comprised of the trustees of a trust, the foregoing representations shall also pertain to the trustor(s) of the trust.

6.7 **Lawsuits.** There is no lawsuit, tax claim or other dispute pending or threatened against the Borrower which, if lost, would impair the Borrower’s financial condition or ability to repay the loan, except as have been disclosed in writing to the Bank.

6.8 **Permits, Franchises.** The Borrower possesses all permits, memberships, franchises, contracts and licenses required and all trademark rights, trade name rights, patent rights, copyrights and fictitious name rights necessary to enable it to conduct the business in which it is now engaged.

6.9 **Other Obligations.** The Borrower is not in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation, except as have been disclosed in writing to the Bank.

6.10 **Tax Matter.** The Borrower has no knowledge of any pending assessments or adjustments of its income tax for any year and all taxes have been paid, except as have been disclosed in writing to the Bank.

6.11 **No Event of Default.** There is no event which is, or with notice or lapse of time or both would be, a default under this Agreement.

6.12 **Insurance.** The Borrower has obtained, and maintained in effect, the insurance coverage required in the “Covenants” section of this Agreement.

7. **COVENANTS**

The Borrower agrees, so long as credit is available under this Agreement and until the Bank is repaid in full:

7.1 **Use of Proceeds.**

(a) To use the proceeds of Facility No. 1 only for working capital and general corporate purposes.

7.2 **Financial Information.** To provide the following financial information and statements in form and content acceptable to the Bank, and such additional information as requested by the Bank from time to time. The Bank reserves the right, upon written notice to the Borrower, to require the Borrower to deliver financial information and statements to the Bank more frequently than otherwise provided below, end to use such additional information and statements to measure any applicable financial covenants in this Agreement.

(a) Within one hundred eighty (180) days of the fiscal year end, the annual financial statements of the Borrower, certified and dated by an authorized financial officer. These financial statements must be audited (with an opinion satisfactory to the Bank) by a Certified Public Accountant.
acceptable to the Bank, and accompanied by a final certified compliance certificate as described in paragraph (c) below. The statements shall be prepared on a consolidated basis.

(b) Within forty-five (45) days after each periods end (including the last period in each fiscal year), quarterly financial statements of the Borrower, certified and dated by an authorized financial officer. These financial statements may be company-prepared. The statements shall be prepared on a consolidated basis.

(c) Within forty-five (45) days of the end of each quarter (including the last period in each fiscal year), a compliance certificate of the Borrower signed by an authorized financial officer, and setting forth whether there existed as of the date of such financial statements and whether there exists as of the date of the certificate, any Event of Default under this Agreement applicable to the party submitting the information and, if any such Event of Default exists, specifying the nature thereof and the action the party is taking and proposes to take with respect thereto.

7.3 Minimum Unencumbered Liquid Assets. To maintain Unencumbered Liquid Assets having an aggregate market value of not less than Twenty Million and 00/100 Dollars ($20,000,000.00) plus the amount of any borrowings under the Facility No. 1 Commitment for the period December 31, 2012 and thereafter.

This covenant will be tested quarterly and annually.

“Unencumbered Liquid Assets” means the following assets (excluding assets of any retirement plan) which (i) are not the subject of any lien, pledge, security Interest or other arrangement with any creditor to have his claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of the owner of the asset, (ii) are held solely in the name of one or more credit parties subject to this covenant (with no other persons or entities having ownership rights therein). The Unencumbered Liquid Assets shall be held in a Bank of America depository account.

7.4 Tangible Net Worth. To maintain on a consolidated basis Tangible Net Worth, for the twelve-month period ending as of each fiscal quarter, equal to at least Twenty Million and 00/100 Dollars ($20,000,000.00) for the period December 31, 2012 and thereafter.

This covenant will be tested quarterly, annually and measured at an all times basis.

“Tangible Net Worth” means the value of total assets (including leaseholds and leasehold improvements and reserves against assets but excluding goodwill, patents, trademarks, trade names, organization expense, unamortized debt discount and expense, capitalized or deferred research and development costs, deferred marketing expenses, and other like intangibles (other than domain names), and monies due from affiliates, officers, directors, employees, shareholders, members or managers) less total liabilities, including but not limited to accrued and deferred income taxes, but excluding the non-current portion of Subordinated Liabilities.

“Subordinated Liabilities” means liabilities subordinated to the Borrower’s obligations to the Bank in a manner acceptable to the Bank in its sole discretion.

7.5 Capitalized terms not defined in paragraphs 7.3 and 7.4 shall have the meaning applied to such terms under generally acceptable accounting principles.

7.6 Bank as Principal Depository. To maintain the Bank or one of its affiliates as its principal depository bank including for the maintenance of business, cash management, operating and administrative deposit accounts.
7.7 Other Debts. Not to have outstanding or incur any direct or contingent liabilities or lease obligations (other than those to the Bank or to any affiliate of the Bank), or become liable for the liabilities of others, without the Bank’s written consent, not to be unreasonably withheld, conditioned or delayed. This does not prohibit:

(a) Acquiring goods, supplies, or merchandise on normal trade credit.
(b) Endorsing negotiable instruments received in the usual course of business.
(c) Obtaining surety bonds in the usual course of business.
(d) Liabilities, lines of credit and leases in existence on the date of this Agreement disclosed in writing to the Bank.
(e) Additional debts and lease obligations for the acquisition of fixed assets, to the extent permitted elsewhere in this Agreement.
(f) Additional unsecured indebtedness not to exceed One Hundred Thousand and 00/100 Dollars ($100,000.00).

7.8 Other Liens. (i) Not to enter into any agreement with any other creditor wherein Borrower agrees not to create, assume, or allow a security interest or lien to exist on any of its assets; and (ii) not to create, assume, or allow any security interest or lien (including judicial liens) on property the Borrower now or later owns, except:

(a) Liens and security interests in favor of the Bank or any affiliate of the Bank.
(b) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith.
(c) Liens outstanding on the date of this Agreement disclosed in writing to the Bank.
(d) Additional purchase money security interests in assets acquired after the date of this Agreement.
(e) Liens of carriers, warehousemen, suppliers, or other persons that are possessory in nature arising in the ordinary course of business.
(f) Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA).
(g) Leases or subleases of real property granted in the ordinary course of business, and leases, subleases, non-exclusive licenses or sublicenses of property (other than real property and intellectual property) granted in the ordinary course of Borrower’s business.
(h) (i) Non-exclusive licenses of intellectual property granted to third parties in the ordinary course of business, and (ii) other licenses of intellectual property that would not result in a legal transfer of title of the licensed property.
(i) Liens arising from attachments or judgments, orders or decrees in circumstances not constituting an Event of Default under Section 8.9.

7.9 Maintenance of Assets.

(a) Not to sell, assign, lease, transfer or otherwise dispose of any part of the Borrower’s business or the Borrower’s assets except in the ordinary course of the Borrower’s business.
(b) Not to sell, assign, lease, transfer or otherwise dispose of any assets for ICES than fair market value, or enter into any agreement to do so,
(c) Not to enter into any sale and leaseback agreement covering any of its fixed assets,
(d) To maintain and preserve all rights, privileges, and franchises the Borrower now has.
(e) To make any repairs, renewals, or replacements to keep the Borrower’s properties in good working condition.

7.10 Investments. Not to have any existing, or make any new, investments in any individual or entity, or make any capital contributions or other transfers of assets to any individual or entity, except for

(a) Existing Investments disclosed to the Bank in writing.
(b) Investments in the Borrower’s current subsidiaries.
(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary
(d) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business.

(e) Investments in any of the following:

(i) certificates of deposit;

(ii) U.S. treasury bills and other obligations at the federal government

(iii) readily marketable securities (including commercial paper, but excluding restricted stock and stock subject to the provisions of Rule 144 of the Securities and Exchange Commission).

7.11 Loans. Not to make any loans, advances or other extensions of credit to any Individual or entity, except for:

(a) Existing extensions of credit disclosed to the Bank in writing.

(b) Extensions of credit to the Borrower’s current subsidiaries.

(c) Extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods or services in the ordinary course of business to non-affiliated entities.

(d) Extensions of credit consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower pursuant to employee stock purchase plans or agreements approved by Borrower’s board of directors.
7.12 Change of Management or Ownership. Not to make any substantial change in the executive roles of Niraj Shah and Steven Conine; not to pause or permit Neel Shah or Steven Conine to change their direct or indirect capital ownership of the Borrower to be lean than a majority ownership interest in Borrower.

7.13 Additional Negative Covenants. Not to, without the Bank’s written consent, not to be unreasonably withheld, conditioned or delayed:

(a) Enter into any consolidation, merger, or other combination.

(b) Engage in any business activities substantially different from the Borrower’s present business.

(c) Liquidate or dissolve the Borrower’s business.

(d) Voluntarily suspend the Borrower’s business for more than seven (7) days in any thirty (30) day period.

7.14 Notices to Bank. To promptly notify the Bank in writing of:

(a) Any lawsuit over One Million and 00/100 Dollars ($1,000,000.00) against the Borrower or any Obligor.

(b) Any substantial dispute between any governmental authority and the Borrower or any Obligor.

(c) Any Event of Default under this Agreement, or any event which, with notice or lapse of time or both, would constitute an Event of Default.

(d) Any material adverse change in the Borrower’s or any Obligor’s financial condition, operations or properties, or ability to repay the credit.

(e) Any change in the Borrower’s or any Obligor’s name, legal structure, principal residence (for an individual), state of registration (for a registered entity), piece of business, or chief executive office if the Borrower or any Obligor has more than one place of business.

(f) Any actual contingent liabilities of the Borrower or any Obligor, and any such contingent liabilities which are reasonably foreseeable.

For purposes of this Agreement, “Obligor shall mean any guarantor, or any party pledging collateral to the Bank, or, if the Borrower is comprised of the trustees of a trust, any trustor.

7.15 Insurance.

(a) General Business Insurance. To maintain insurance as is usual for the business it is in.

7.16 Compliance with Laws. To comply with the laws (including any fictitious or trade name statute), regulations, and orders of any government body with authority over the Borrower’s business. The Bank shall have no obligation to make any advance to the Borrower except in compliance with all applicable laws and regulations and the Borrower shall fully cooperate with the Bank in complying with all such applicable laws and restrictions.

7.17 ERISA Plans. Promptly during each year, to pay and cause any subsidiaries to pay contributions adequate to meet at least the minimum funding standards under ERISA with respect to each and every Plan; file each annual report required to be titled pursuant to ERISA in connection with each Plan for each
year; and notify the Bank within ten (10) days of the occurrence of any Reportable Event that might constitute grounds for termination of any capital Plan by the Pension Benefit Guaranty Corporation or for the appointment by the appropriate United States District Court of a trustee to administer any Plan. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, Capitalized terms in this paragraph shall have the meanings defined within ERISA.

7.18 Books and Records. To maintain adequate books and records.

7.19 Audits. To allow the Bank and its agents to inspect the Borrower’s properties and examine, audit, and make copies of books and records at any reasonable time. If any of the Borrower’s properties, books or records are in the possession of a third party, the Borrower authorizes that third party to permit the Bank or its agents to have access to perform inspections or audits and to respond to the Bank’s requests for information concerning such properties, books and records.

7.20 Cooperation. To take any action reasonably requested by the Bank to carry out the intent of this Agreement.

8. DEFAULT AND REMEDIES

If any of the following occur (each, an ‘Event of Default”), the Bank may do one or more of the following: declare the Borrower in default, stop making any additional credit available to the Borrower, and require the Borrower to repay its entire debt immediately and without prior notice. If an event which, with notice or the passage of time, will constitute an Event of Default has occurred and is continuing, the Bank has no obligation to make advances or extend additional credit under this Agreement. In addition, if any Event of Default occurs, the Bank shall have all rights, powers and remedies available under any Instruments and agreements required by or executed in connection with this Agreement, as well as all rights and remedies available at law or in equity. If an Event of Default occurs under the paragraph entitled “Bankruptcy,” below, with respect to the Borrower, then the entire debt outstanding under this Agreement will automatically be due Immediately.

8.1 Failure to Pay. The Borrower fails to make a payment under this Agreement when due.

8.2 Other Breach Under Agreement. A default occurs under any other term or condition of this Agreement not specifically referred to in this Article and such default, if susceptible of cure, remains uncured for 30 days. This Section 8.2 includes any failure or anticipated failure by the Borrower (or any other party named in the Covenants section) to comply with the financial covenants set forth in this Agreement, whether such failure is evidenced by financial statements delivered to the Bank or is otherwise known to the Borrower or the Bank. The 30 day cure period shall not apply to financial covenant defaults.

8.3 Other Bank Agreements. Any default occurs under any other agreement the Borrower (or any Obligor) or any of the Borrowers related entities or affiliates has with the Bank or any affiliate of the Bank and such default remains uncured beyond any applicable grace or cure period.

8.4 Cross-default. Any default occurs under any agreement in connection with any credit in excess of $250,000.00 that the Borrower (or any Obligor) or any of the Borrowers related entities or affiliates has obtained from anyone else or which the Borrower (or any Obligor) or any of the Borrower’s related entities or affiliates has guaranteed.

8.5 False Information. The Borrower or any Obligor has given the Bank false or misleading information or representations.
8.6 **Bankruptcy.** The Borrower, any Obligor, or any general partner of the Borrower or of any Obligor files a bankruptcy petition, a bankruptcy petition is filed against any of the foregoing parties, and such petition has not been dismissed or stayed within sixty (60) days of such filing, or the Borrower, any Obligor, or any general partner of the Borrower or of any Obligor makes a general assignment for the benefit of creditors.

8.7 ** Receivers.** A receiver or similar official is appointed for a substantial portion of the Borrower’s or any Obligor’s business, or the business is terminated, or, if any Obligor is anything other than a natural person, such Obligor is liquidated or dissolved.

8.8 **Lien Priority.** The Bank fails to have an enforceable first lien (except for any prior liens to which the Bank has consented in writing) on or security interest in any property given as security for this Agreement (or any guaranty).

8.9 **Judgments.** Any judgments or arbitration awards are entered against the Borrower or any Obligor, or the Borrower or any Obligor enters into any settlement agreements with respect to any litigation or arbitration, in an aggregate amount of One Million and 00/100 Dollars ($1,000,000.00) or more in excess of any insurance coverage.

8.10 **Material Adverse Change.** A material adverse change occurs, or is reasonably likely to occur, in the Borrower’s (or any Obligor’s) business condition (financial or otherwise), operations, properties or prospects, or ability to repay the credit; or the Bank determines that it is insecure for any other reason.

8.11 **Government Action.** Any government authority takes action that the Bank believes materially adversely affects the borrowers or any Obligors financial condition or ability to repay.

8.12 **ERISA Plans.** Any one or more of the following events occurs with respect to a Plan of the Borrower subject to Title IV of ERISA, provided such event or events could reasonably be expected, in the judgment of the Bank, to subject the Borrower to any tax, penalty or liability (or any combination of the foregoing) which, in the aggregate, could have a material adverse effect on the financial condition of the Borrower;

(a) A reportable event shall occur under Section 4043(c) of ERISA with respect to a Plan.

(b) Any Plan termination (or commencement of proceedings to terminate a Plan) or the full or partial withdrawal from a Plan by the Borrower or any ERISA Affiliate.

9. **ENFORCING THIS AGREEMENT; MISCELLANEOUS**

9.1 **GAAP.** Except as otherwise stated in this Agreement, all financial Information provided to the Bank and all financial covenants will be made under generally accepted accounting principles, consistently applied.

9.2 **Governing Law.** This Agreement is governed by and shall be interpreted according to federal law and the laws of Massachusetts. If state or local law and federal law are Inconsistent, or if state or local law is preempted by federal law, federal law governs. If the Bank has greater rights or remedies under federal law, whether as a national bank or otherwise, this paragraph shall not be deemed to deprive the Bank of such rights and remedies as may be available under federal law.

9.3 **Successors and Assigns.** This Agreement is binding on the Borrowers and the Banks successors and assignees. The Borrower agrees that it may not assign this Agreement without the Bank’s prior consent, not to be unreasonably withheld, conditioned or delayed. The Bank may sell participations in or
assign this loan, and may exchange information about the Borrower (including, without limitation, any information regarding any hazardous substances) with actual or potential participants or assignees. If a participation is sold or the loan is assigned, the purchaser will have the right of set-off against the Borrower.

9.4 Dispute Resolution Provision. This paragraph, including the subparagraphs below, is referred to as the “Dispute Resolution Provision.” This Dispute Resolution Provision is a material inducement for the parties entering into this agreement.

(a) This Dispute Resolution Provision concerns the resolution of any controversies or claims between the parties, whether arising in contract, tort or by statute, including but not limited to controversies or claims that arise out of or relate to: (i) this agreement (including any renewals, extensions or modifications); or (ii) any document related to this agreement (collectively a “Claim”). For the purposes of this Dispute Resolution Provision only, the term “parties” shall include any parent corporation, subsidiary or affiliate of the Bank involved in the servicing, management or administration of any obligation described or evidenced by this agreement.

(b) At the request of any party to this agreement, any Claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the “Act”). The Act will apply even though this agreement provides that it is governed by the law of a specified state.

(c) Arbitration proceedings will be determined in accordance with the Act, the then-current rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof (“AAA”), end the terms of this Dispute Resolution Provision, in the event of any inconsistency, the terms of this Dispute Resolution Provision shall control. If AAA is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, the Bank may designate another arbitration organization with similar procedures to serve as the provider of arbitration.

(d) The arbitration shall be administered by AAA and conducted, unless otherwise required by law, in any U.S. state where real or tangible personal property collateral for this credit is located or if there is no such collateral, in the state specified in the governing law section of this agreement. All Claims shall be determined by one arbitrator, however, if Claims exceed Five Million Dollars ($5,000,000.00), upon the request of any party, the Claims shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the Arbitrator(s), upon a showing of good cause, may extend the commencement or the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any Court having jurisdiction to be confirmed and have judgment entered and enforced.

(e) The arbitrator(s) will give effect to statutes of limitation in determining any Claim and shall dismiss the arbitration if the Claim is barred under the applicable statutes of limitation. For purposes of the application of any statutes of limitation, the service on AAA under applicable AAA rules of a notice of Claim is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator(s), except as set forth at subparagraph (h) of this Dispute Resolution Provision. The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this agreement.

(f) This paragraph does not limit the right of any party to: (i) exercise self-help remedies, such as but not limited to setoff; (ii) initiate judicial or non-Judicial foreclosure against any real or personal
property collateral; (iii) exercise any judicial or power of sale rights, or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies.

(g) The filing of a court action is not intended to constitute a waiver of the right of any party, including the suing party, thereafter to require submittal of the Claim to arbitration.

(h) Any arbitration or court trial (whether before a Judge or jury) of any Claim will take place on an individual basis without resort to any form of class or representative action (the “Class Action Waiver”). The Class Action Waiver precludes any party from participating in or being represented in any class or representative action regarding a Claim. Regardless of anything else in this Dispute Resolution Provision, the validity and effect of the Class Action Waiver may be determined only by a court and not by an arbitrator. The parties to this agreement acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between the parties and is nonseverable from the agreement to arbitrate Claims. If the Class Action Waiver is limited, voided or found unenforceable, then the parties’ agreement to arbitrate shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. The Parties acknowledge and agree that under no circumstances will a class action be arbitrated.

(i) By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Claim. Furthermore, without intending in any way to limit this agreement to arbitrate, to the extent any Claim is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of such Claim. This waiver of jury trial shall remain in effect even if the Class Action Waiver is limited, voided or found unenforceable. WHETHER THE CLAIM IS DECIDED BY ARBITRATION OR BY TRIAL BY A JUDGE, THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.

9.5 Severability: Waivers. If any part of this Agreement is not enforceable, the rest of the Agreement may be enforced. The Bank retains all rights, even if it makes a loan after default. If the Bank waives a default, it may enforce a later default. Any consent or waiver under this Agreement must be in writing.

9.6 Attorneys’ Fees. The Borrower shall reimburse the Bank for any reasonable costs and attorneys’ fees incurred by the Bank in connection with the enforcement or preservation of any rights or remedies under this Agreement and any other documents executed in connection with this Agreement and in connection with any amendment, waiver, “workout” or restructuring under this Agreement. In the event of a lawsuit or arbitration proceeding, the prevailing party is entitled to recover costs and reasonable attorneys’ fees incurred in connection with the lawsuit or arbitration proceeding, as determined by the court or arbitrator. In the event that any case is commenced by or against the Borrower under the Bankruptcy Code (Title 11, United States Code) or any similar or successor statute, the Bank is entitled to recover costs and reasonable attorneys’ fees incurred by the Bank related to the preservation, protection, or enforcement of any rights of the Bank in such a case. As used in this paragraph, “attorneys’ fees” includes the allocated costs of the Bank’s in-house counsel.

9.7 Set-Off.

(a) In addition to any rights and remedies of the Bank provided by law, upon the occurrence and during the continuance of any event of default under this Agreement, the Bank is authorized, at any time, to set off and apply any and all Deposits of the Borrower or any Obligor held by the Bank or its affiliates against any and all Obligations owing to the Bank. The set-off may be made
irrespective of whether or not the Bank shall have made demand under this Agreement or any guaranty, and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable Deposits and without regard for the availability or adequacy of other collateral. Any Deposits may be converted, sold or otherwise liquidated at prevailing market prices in order to effect such set-off.

(b) The set-off may be made without prior notice to the Borrower or any other party, any such notice being waived by the Borrower (on its own behalf and on behalf of each Obligor) to the fullest extent permitted by law. The Bank agrees promptly to notify the Borrower after any such set-off and application; provided, however, that the failure to give such notice shall not effect the validity of such set-off and application.

(c) For the purposes of this paragraph, “Deposits” means any deposits (general or special, time or demand, provisional or final, individual or Joint) as well as any money, instruments, securities, credits, claims, demands, income or other property, rights or interests owned by the Borrower or any Obligor which come into the possession or custody or under the control of the Bank or its affiliates. “Obligations” means all obligations, now or hereafter existing, of the Borrower to the Bank under this Agreement and under any other agreement or instrument executed in connection with this Agreement, and the obligations to the Bank of any Obligor. TO THE EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS TO REQUIRE THE BANK TO EXERCISE ITS REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS PRIOR TO EXERCISING ITS RIGHT OF SET-OFF WITH RESPECT TO SUCH DEPOSITS ARE HEREBY VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVED.

9.8 One Agreement. This Agreement and any related security or other agreements required by this Agreement, collectively:

(a) represent the sum of the understandings and agreements between the Bank and the Borrower concerning this credit;

(b) replace any prior oral or written agreements between the Bank and the Borrower concerning this credit; and

(c) are intended by the Bank and the Borrower as the final, complete and exclusive statement of the terms agreed to by them.

In the event of any Conflict between this Agreement and any other agreements required by this Agreement, this Agreement will prevail. Any reference in any related document to a “promissory note” or a “note” executed by the Borrower and dated as of the date of this Agreement shall be deemed to refer to this Agreement, as now in effect or as hereafter amended, renewed, or restated.

9.9 Waiver of Confidentiality. The Borrower authorizes the Bank to discuss the Borrower’s financial affairs and business operations with any accountants or auditors employed by the Borrower, and authorizes such parties to discuss to the Bank such financial and business Information or reports (including management letters) concerning the Borrower as the Bank may request.

9.10 Indemnification. The Borrower will indemnify and hold the Bank harmless from any loss, liability, damages, judgments, and costs of any kind relating to or arising directly or indirectly out of (a) this Agreement or any document required hereunder, (b) any credit extended or committed by the Bank to the Borrower hereunder, and (c) any litigation or proceeding related to or arising out of this Agreement, any such document, or any such credit. This indemnity includes but is not limited to attorneys’ fees.
(including the allocated cost of in-house counsel). This indemnity extends to the Bank, its parent, subsidiaries, affiliates and all of their directors, officers, employees, agents, successors, attorneys, and assigns. This indemnity will survive repayment of the Borrower’s obligations to the Bank. All sums due to the Bank hereunder shall be obligations of the Borrower, due and payable immediately without demand.

9.11 **Notices.** Unless otherwise provided in this Agreement or in another agreement between the Bank and the Borrower, all notices required under this Agreement shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses on the signature page of this Agreement, or sent by facsimile to the fax numbers listed on the signature pages, or to such other addresses as the Bank and the Borrower may specify from time to time in writing. Notices and other communications shall be effective (i) if mailed, upon the earlier of receipt or five (5) days after deposit in the U.S. mail, first class, postage prepaid, (ii) if telecopied, when transmitted, or (iii) if hand-delivered, by courier or otherwise (including telegram, lettergram or mailgram), when delivered.

9.12 **Headings.** Article and paragraph headings are for reference only and shall not affect the interpretation or meaning of any provisions of this Agreement.

9.13 **Counterparts.** This Agreement may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same agreement. Delivery of an executed counterpart of this Agreement (or of any agreement or document required by this Agreement and any amendment to this Agreement) by telecopy or other electronic imaging means shall be as effective as delivery of a manually executed counterpart of this Agreement provided, however, that the telecopy or other electronic image shall be promptly followed by an original if required by the Bank.

9.14 **Borrower Information; Reporting to Credit Bureaus.** The Borrower authorizes the Bank at any time to verify or check any information given by the Borrower to the Bank, check the Borrowers credit references, verify employment, and obtain credit reports. The Borrower agrees that the Bank shall have the right at all times to disclose and report to credit reporting agencies and credit rating agencies such information pertaining to the Borrower and/or all guarantors as is consistent with the Bank’s policies and practices from time to time in effect.

9.15 **Amendment and Restatement of Prior Agreement.** This Agreement is an amendment and restatement, in its entirety, of the Loan Agreement entered into as of October 12, 2010, between the Bank and CSN Stores LLC, now known as Wayfair LLC, and any indebtedness outstanding thereunder shall be deemed to be outstanding under this Agreement. Nothing in this Agreement shall be deemed to be a repayment or novation of the indebtedness, or to release or otherwise adversely affect any lien, mortgage or security interest securing such indebtedness or any rights of the Bank against any guarantor, surety or other party primarily or secondarily liable for such indebtedness.

9.16 **Limitation of Interest and Other Charges.** If, at any time, the rate of interest, together with all amounts which constitute interest and which are reserved, charged or taken by the Bank as compensation for fees, services or expenses incidental to the making, negotiating or collection of the loan evidenced hereby, shall be deemed by any competent court of law, governmental agency or tribunal to exceed the maximum rate of Interest permitted to be charged by the Bank to the Borrower under applicable law, then, during such time as such rate of interest would be deemed excessive, that portion of each sum paid attributable to that portion of such interest rate that exceeds the maximum rate of interest so permitted shall be deemed a voluntary prepayment of principal. As used herein, the term “applicable laws shall mean the law in effect as of the date hereof; provided, however, that in the event there is a change in the law which results in a higher permissible rate of interest, then this Agreement shall be governed by such new law as of its effective date.
This Amendment No. 1 (the “Amendment”) dated as of October 29, 2013, is between Bank of America, N.A. (the “Bank”) and Wayfair LLC (the “Borrower”).

RECITALS

(A) The Bank and the Borrower entered into a certain Loan Agreement dated as of October 29, 2012 (together with any previous amendments, the “Agreement”). The current commitment amount of Facility No. 1 is Ten Million and 00/100 Dollars ($10,000,000.00) and the current commitment amount under the Card Program is Fifteen Million and 00/100 Dollars ($15,000,000.00).

(B) The Bank and the Borrower desire to amend the Agreement.

AGREEMENT

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meaning given to them in the Agreement.

2. Amendments. The Agreement is hereby amended as follows:

2.1 Paragraph 1.1 is hereby amended to read in its entirety as follows:
1.1 Line of Credit Amount.

(a) During the availability period described below, the Bank will provide a line of credit to the Borrower (“Facility No. 1”). The amount of the Facility No. 1 commitment (the Facility No. 1 Commitment”) is Ten Million and 00/100 Dollars ($10,000,000.00). As of the date hereof, FIA Services, Inc. has agreed to provide a card program to the Borrower (“Card Program”) in the amount of Fifteen Million and 00/100 Dollars ($15,000,000.00). In no event shall the Facility No. 1 Commitment together with the commitment under the Card Program exceed at any time Twenty Five Million and 00/100 Dollars ($25,000,000.00).

(b) The Facility No. 1 is a revolving line of credit. During the availability period, the Borrower may repay principal amounts and reborrow them subject to the maximum amount limitations set forth in paragraph (a) above.

(c) The Borrower agrees not to permit the principal balance outstanding under Facility No. 1 to exceed the Facility No. 1 Commitment as such commitment maybe reduced from time to time by the Card Program. If the Borrower exceeds the applicable limitation, the Borrower will immediately pay the excess to the Bank upon the Bank’s demand.

2.2 In Paragraph 1.2, the date “October 28, 2013” is changed to “October 28, 2014”.

3. **Representations and Warranties.** When the Borrower signs this Amendment, the Borrower represents and warrants to the Bank that: (a) there is no event which is, or with notice or lapse of time or both would be, a default under the Agreement except those events, if any, that have been disclosed in writing to the Bank or waived in writing by the Bank (b) the representations and warranties in the Agreement are true as of the date of this Amendment as if made on the date of this Amendment, (c) this
Amendment does not conflict with any law, agreement, or obligation by which the Borrower is bound, and (d) if the Borrower is a business entity or a trust, this Amendment is within the Borrower’s powers, has been duly authorized, and does not conflict with any of the Borrower’s organizational papers.

4. **Conditions.** This Amendment will be effective when the Bank receives the following items, in form and content acceptable to the Bank:

   4.1 If the Borrower or any guarantor is anything other than a natural person, evidence that the execution, delivery, and performance by the Borrower and/or such guarantor of this Amendment and any instrument or agreement required under this Amendment have been duly authorized.

5. **Effect of Amendment.** Except as provided in this Amendment, all of the terms and conditions of the Agreement, including but not limited to the Dispute Resolution Provision, shall remain in full force and effect.

6. **Counterparts.** This Amendment may be executed in counterparts, each of which when so executed shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

7. **FINAL AGREEMENT.** By signing this document each party represents and agrees that:

   (A) This document represents the final agreement between parties with respect to the subject matter hereof,
   (B) This document supersedes any commitment letter, term sheet or other written outline of terms and conditions relating to the subject matter hereof, unless such commitment letter, term sheet or other written outline of terms and conditions expressly provides to the contrary,
   (C) There are no unwritten oral agreements between the parties, and
   (D) This document may not be contradicted by evidence of any prior, contemporaneous, or subsequent oral agreements or understandings of the parties.

The parties executed this Amendment as of the date stated at the beginning of this Amendment, intending to create an instrument executed under seal.

Bank of America, N.A.

By: /s/ Christopher P. Busconi
    Christopher P. Busconi, Senior Vice President

BORROWER(S):

Wayfair LLC

By: /s/ Nicholas C. Malone
    Nicholas C. Malone, Chief Administrative Officer

/s/ Marie Moynihan
Witness

AMENDMENT NO. 1 TO LOAN AGREEMENT

This Amendment No.1 (the “Amendment”) dated as of June 6, 2014, is between Bank of America, N.A. (the “Bank”) and Wayfair LLC (the “Borrower”).

**RECATALS**

A. The Bank and the Borrower entered into a certain Loan Agreement dated as of October 29, 2012 (together with any previous amendments, the “Agreement”). The current commitment amount of Facility No. 1 is $10,000,000.00.

B. The Bank and the Borrower desire to amend the Agreement.

**AGREEMENT**

1. **Definitions.** Capitalized terms used but not defined in this Amendment shall have the meaning given to them in the Agreement.

2. **Amendments.** The Agreement is hereby amended as follows:

   2.1 In Paragraph 1.2, the date “October 28, 2014” is changed to “July 31, 2015”.


2.2 The following Paragraph 1.6 is hereby added:

1.6 Letters of Credit.

(a) As a subfacility under the Line of Credit, during the availability period, the Bank agrees from time to time to issue or cause an affiliate to issue Commercial and Standby letters of credit for the account of the Borrower (each, a “Letter of Credit” and collectively, “Letters of Credit”); provided however, that the aggregate drawn and undrawn amount of all outstanding Letters of Credit shall not at any time exceed Two Million and 00/100 Dollars ($2,000,000.00) for commercial letters of credit and Five Million and 00/100 Dollars ($5,000,000.00) for standby letters of credit. The form and substance of each Letter of Credit shall be subject to approval by the Bank, in its sole discretion. Each Letter of Credit shall be issued for a term not to exceed three hundred sixty-five (365) days, as designated by the Borrower; provided however, that no Letter of Credit shall have an expiration date more than one hundred eighty (180) days beyond the Facility No. 1 Expiration Date. Standby letters of credit may include a provision providing that their expiry date will automatically be extended each year for an additional one year period unless the Bank delivers written notice to the contrary. The undrawn amount of all Letters of Credit shall be reserved under the Line of Credit and such amount shall not be available for borrowings. Each Letter of Credit shall
be subject to the additional terms and conditions of the Letter of Credit agreements, applications and any related documents required by the Bank in connection with the issuance of Letters of Credit. At the option of the Bank, any drawing paid under a Letter of Credit may be deemed an advance under the Line of Credit and shall be repaid by the Borrower in accordance with the terms and conditions of this Agreement applicable to such advances; provided however, that if advances under the Line of Credit are not available, for any reason, at the time any drawing is paid, then the Borrower shall immediately pay to the Bank the full amount drawn, together with interest from the date such drawing is paid to the date such amount is fully repaid by the Borrower, at the rate of interest applicable to advances under the Line of Credit. In such event the Borrower agrees that the Bank, in its sole discretion, may debit any account maintained by the Borrower with the Bank for the amount of any such drawing. The Borrower agrees to deposit in a cash collateral account with the Bank an amount equal to the aggregate outstanding undrawn face amount of all letters of credit which remain outstanding on the Facility No. 1 Expiration Date. The Borrower grants a security interest in such cash collateral account to the Bank. Amounts held in such cash collateral account shall be applied by the Bank to the payment of drafts drawn under such letters of credit and to the obligations and liabilities of the Borrower to the Bank, in such order of application as the Bank may in its sole discretion elect.

(b) The Borrower shall pay the Bank a non-refundable fee equal to 1.25% per annum of the outstanding undrawn amount of each Standby letter of credit, payable quarterly in advance, calculated on the basis of the face amount outstanding on the day the fee is calculated. If there is a default under this Agreement, at the Bank’s option, the amount of the fee shall be increased to 2.25% per annum, effective starting on the day the Bank provides notice of the increase to the Borrower. As it relates to Commercial letters of credit, standard bank pricing rates apply.

2.3 Any reference in the Agreement to the “British Bankers Association LIBOR Rate” is amended to read as follows: “the London Interbank Offered Rate (or a comparable or successor rate which is approved by the Bank).”

3. Representations and Warranties. When the Borrower signs this Amendment, the Borrower represents and warrants to the Bank that: (a) there is no event which is, or with notice or lapse of time or both would be, a default under the Agreement except those events, if any, that have been disclosed in writing to the Bank or waived in writing by the Bank (b) the representations and warranties in the Agreement are true as of the date of this Amendment as if made on the date of this Amendment, (c) this Amendment does not conflict with any law, agreement, or obligation by which the Borrower is bound, and (d) if the Borrower is a business entity or a trust, this Amendment is within the Borrower’s powers, has been duly authorized, and does not conflict with any of the Borrower’s organizational papers.

4. Conditions. This Amendment will be effective when the Bank receives the following items, in form and content acceptable to the Bank:
4.1 If the Borrower or any guarantor is anything other than a natural person, evidence that the execution, delivery, and performance by the Borrower and/or such guarantor of this Amendment and any instrument or agreement required under this Amendment have been duly authorized.

5. Effect of Amendment. Except as provided in this Amendment, all of the terms and conditions of the Agreement, including but not limited to the Dispute Resolution Provision, shall remain in full force and effect.

6. Counterparts. This Amendment may be executed in counterparts, each of which when so executed shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

7. FINAL AGREEMENT. BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT:
(A) THIS DOCUMENT REPRESENTS THE FINAL AGREEMENT BETWEEN PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, (B) THIS DOCUMENT SUPERSEDES ANY COMMITMENT LETTER, TERM SHEET OR OTHER WRITTEN OUTLINE OF TERMS AND CONDITIONS RELATING TO THE SUBJECT MATTER HEREOF, UNLESS SUCH COMMITMENT LETTER, TERM SHEET OR OTHER WRITTEN OUTLINE OF TERMS AND CONDITIONS EXPRESSLY PROVIDES TO THE CONTRARY, (C) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (D) THIS DOCUMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

The parties executed this Amendment as of the date stated at the beginning of this Amendment, intending to create an instrument executed under seal.

Bank of America, N.A.

By: ________________________________
Christopher Busconi, Senior Vice President

BORROWER(S):

Wayfair LLC

By: ________________________________ (Seal)
Nicholas C. Malone, Chief Financial Officer
<table>
<thead>
<tr>
<th>Subsidiary Name</th>
<th>Other Jurisdiction of Incorporation or Organization</th>
</tr>
</thead>
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<tr>
<td>Wayfair LLC</td>
<td>Delaware</td>
</tr>
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<td>Wayfair Securities Corporation</td>
<td>Massachusetts</td>
</tr>
<tr>
<td>SK Retail, Inc.</td>
<td>Massachusetts</td>
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<tr>
<td>Wayfair Stores Limited</td>
<td>Ireland</td>
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<td>Wayfair (UK) Limited</td>
<td>United Kingdom</td>
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<td>Wayfair GmbH</td>
<td>Germany</td>
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<tr>
<td>Wayfair (BVI) Ltd.</td>
<td>British Virgin Islands</td>
</tr>
<tr>
<td>Wayfair Australia Pty Limited</td>
<td>Australia</td>
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</tbody>
</table>
Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-199236) of our report dated March 19, 2015, with respect to the consolidated financial statements of Wayfair Inc., included in this Annual Report (Form 10-K) for the year ended December 31, 2014.

/s/ Ernst & Young LLP

Boston, Massachusetts
March 19, 2015
CEO CERTIFICATION

I, Niraj Shah, certify that:

1. I have reviewed this Annual Report on Form 10-K of Wayfair Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f) and 15d- 15(f)) for the registrant and have:
   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   c. Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

March 19, 2015  
(Date)  

/s/ NIRAJ SHAH  

Niraj Shah  
Chief Executive Officer
QuickLinks

Exhibit 31.1

CEO CERTIFICATION
CFO CERTIFICATION

I, Michael Fleisher, certify that:

1. I have reviewed this Annual Report on Form 10-K of Wayfair Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f) and 15d-15(f)) for the registrant and have:
   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

March 19, 2015
(Date)

/s/ MICHAEL FLEISHER
Michael Fleisher
Chief Financial Officer
CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002  

In connection with the Annual Report on Form 10-K of Wayfair Inc. (the "Company") for the year ended December 31, 2014, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Niraj Shah, Chief Executive Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

1) the Report which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 19, 2015  

/s/ NIRAJ SHAH

Niraj Shah
Chief Executive Officer
CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002
CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Wayfair Inc. (the "Company") for the year ended December 31, 2014, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Fleisher, Chief Financial Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

1) the Report which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 19, 2015

/s/ MICHAEL FLEISHER

Michael Fleisher
Chief Financial Officer
CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002