
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended September 30, 2015

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: 000-49799



OVERSTOCK.COM, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

87-0634302

(I.R.S. Employer Identification Number)

6350 South 3000 East, Salt Lake City, Utah 84121

(Address, including zip code, of Registrant's principal executive offices)

(801) 947-3100

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the act). Yes ☐ No ☒

There were 25,234,316 shares of the Registrant's common stock, par value \$0.0001, outstanding on November 2, 2015.

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS (UNAUDITED)

Overstock.com, Inc. Consolidated Balance Sheets (Unaudited) (in thousands)

	September 30, 2015	December 31, 2014
Assets		
Current assets:		
Cash and cash equivalents	\$ 81,268	\$ 181,641
Restricted cash	505	580
Accounts receivable, net	16,951	18,963
Inventories, net	23,206	26,208
Prepaid inventories, net	1,278	3,214
Deferred tax assets, net	11,686	14,835
Prepays and other current assets	16,833	12,621
Total current assets	151,727	258,062
Fixed assets, net	78,807	52,071
Precious metals	10,243	10,905
Deferred tax assets, net	50,672	50,331
Intangible assets, net	15,434	—
Goodwill	15,343	2,784
Other long-term assets, net	9,580	2,712
Total assets	<u>\$ 331,806</u>	<u>\$ 376,865</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 64,955	\$ 112,787
Accrued liabilities	64,858	81,564
Deferred revenue	45,153	48,451
Other current liabilities	1,123	—
Total current liabilities	176,089	242,802
Other long-term liabilities	7,380	4,843
Total liabilities	<u>183,469</u>	<u>247,645</u>
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value:		
Authorized shares - 5,000		
Issued and outstanding shares - none	—	—
Common stock, \$0.0001 par value		
Authorized shares - 100,000		
Issued shares - 27,633 and 27,241		
Outstanding shares - 25,234 and 24,037	3	2
Additional paid-in capital	369,099	366,252
Accumulated deficit	(166,530)	(153,864)
Accumulated other comprehensive loss	(1,643)	(621)
Treasury stock:		
Shares at cost - 2,399 and 3,204	(51,747)	(82,531)
Equity attributable to stockholders of Overstock.com, Inc.	149,182	129,238
Equity attributable to noncontrolling interests	(845)	(18)
Total equity	<u>148,337</u>	<u>129,220</u>
Total liabilities and stockholders' equity	<u>\$ 331,806</u>	<u>\$ 376,865</u>

See accompanying notes to unaudited consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Operations (Unaudited)
(in thousands, except per share data)

	Three months ended September 30,		Nine months ended September 30,	
	2015	2014	2015	2014
Revenue, net				
Direct	\$ 33,621	\$ 33,592	\$ 104,184	\$ 104,854
Partner	357,590	319,399	1,073,384	921,889
Total net revenue	391,211	352,991	1,177,568	1,026,743
Cost of goods sold				
Direct ⁽¹⁾	31,989	29,385	95,751	91,955
Partner	286,771	256,548	860,272	741,109
Total cost of goods sold	318,760	285,933	956,023	833,064
Gross profit	72,451	67,058	221,545	193,679
Operating expenses:				
Sales and marketing ⁽¹⁾	30,062	25,428	86,121	72,363
Technology ⁽¹⁾	25,084	22,202	72,230	63,211
General and administrative ⁽¹⁾	20,676	17,073	60,639	48,250
Restructuring	—	—	—	(360)
Total operating expenses	75,822	64,703	218,990	183,464
Operating income (loss)	(3,371)	2,355	2,555	10,215
Interest income	37	36	118	114
Interest expense	(62)	(11)	(74)	(30)
Other income (expense), net	764	(350)	2,532	633
Income (loss) before income taxes	(2,632)	2,030	5,131	10,932
Provision (benefit) for income taxes	(15)	413	3,774	3,436
Consolidated net income (loss)	\$ (2,617)	\$ 1,617	\$ 1,357	\$ 7,496
Less: Net loss attributable to noncontrolling interests	(546)	—	(979)	—
Net income (loss) attributable to stockholders of Overstock.com, Inc.	\$ (2,071)	\$ 1,617	\$ 2,336	\$ 7,496
Net income (loss) per common share—basic:				
Net income (loss) attributable to common shares—basic	\$ (0.08)	\$ 0.07	\$ 0.10	\$ 0.31
Weighted average common shares outstanding—basic	24,681	24,027	24,402	23,988
Net income (loss) per common share—diluted:				
Net income (loss) attributable to common shares—diluted	\$ (0.08)	\$ 0.07	\$ 0.10	\$ 0.31
Weighted average common shares outstanding—diluted	24,681	24,283	24,513	24,290

(1) Includes stock-based compensation as follows (Note 7):

Cost of goods sold — direct	\$ 52	\$ 45	\$ 129	\$ 130
Sales and marketing	50	77	140	255
Technology	165	183	491	550
General and administrative	572	693	1,817	2,014
Total	\$ 839	\$ 998	\$ 2,577	\$ 2,949

See accompanying notes to unaudited consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Comprehensive Income (Loss) (Unaudited)
(in thousands)

	Three months ended September 30,		Nine months ended September 30,	
	2015	2014	2015	2014
Consolidated net income (loss)	\$ (2,617)	\$ 1,617	\$ 1,357	\$ 7,496
Other comprehensive:				
Unrealized (loss) on cash flow hedges, net of benefit for taxes of \$581, \$0, \$662, and \$0.	(907)	—	(1,022)	—
Other comprehensive (loss)	(907)	—	(1,022)	—
Comprehensive income (loss)	\$ (3,524)	\$ 1,617	\$ 335	\$ 7,496
Less: Comprehensive (loss) attributable to noncontrolling interests	(546)	—	(979)	—
Comprehensive income (loss) attributable to stockholders of Overstock.com, Inc.	\$ (2,978)	\$ 1,617	\$ 1,314	\$ 7,496

See accompanying notes to unaudited consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Changes in Stockholders' Equity (Unaudited)
(in thousands)

	Nine months ended September 30, 2015
Equity attributable to stockholders of Overstock.com, Inc.	
Number of common shares issued	
Balance at beginning of period	27,241
Common stock issued upon vesting of restricted stock	378
Exercise of stock options	14
Balance at end of period	27,633
Number of treasury stock shares	
Balance at beginning of period	3,204
Issuance of treasury stock	(909)
Purchases of treasury stock	104
Balance at end of period	2,399
Total number of outstanding shares	25,234
Common stock	\$ 3
Additional paid-in capital	
Balance at beginning of period	\$ 366,252
Stock-based compensation to employees and directors	2,577
Exercise of stock options	270
Balance at end of period	\$ 369,099
Accumulated deficit	
Balance at beginning of period	\$ (153,864)
Net income attributable to stockholders of Overstock.com, Inc.	2,336
Deficiency in cost of treasury stock issued	(15,002)
Balance at end of period	\$ (166,530)
Accumulated other comprehensive loss	
Balance at beginning of period	\$ (621)
Net other comprehensive loss	(1,022)
Balance at end of period	\$ (1,643)
Treasury stock	
Balance at beginning of period	\$ (82,531)
Purchases of treasury stock	(2,367)
Issuance of treasury stock	33,151
Balance at end of period	(51,747)
Total equity attributable to stockholders of Overstock.com, Inc.	\$ 149,182
Equity attributable to noncontrolling interests	
Balance at beginning of period	\$ (18)
Net loss attributable to noncontrolling interests	(979)
Paid-in capital attributable to noncontrolling interests	152
Total equity attributable to noncontrolling interests	\$ (845)
Total equity	\$ 148,337
See accompanying notes to unaudited consolidated financial statements.	

Overstock.com, Inc.
Consolidated Statements of Cash Flows (Unaudited)
(in thousands)

	Nine months ended September 30,		Twelve months ended September 30,	
	2015	2014	2015	2014
Cash flows from operating activities:				
Consolidated net income	\$ 1,357	\$ 7,496	\$ 2,662	\$ 76,946
Adjustments to reconcile net income to net cash provided by (used in) operating activities:				
Depreciation and amortization	17,827	12,806	23,085	16,495
Stock-based compensation to employees and directors	2,577	2,949	3,663	3,823
Deferred income taxes	3,470	2,909	4,302	(65,611)
Amortization of debt issuance costs	21	—	21	4
Loss on investment in precious metals	662	752	1,179	1,734
Loss on investment in cryptocurrency	147	50	147	50
Restructuring reversals	—	(360)	—	(360)
Ineffective portion of loss on cash flow hedge	124	—	124	—
Other	9	(11)	(38)	(16)
Changes in operating assets and liabilities, net of acquisitions:				
Restricted cash	—	—	1,000	75
Accounts receivable, net	2,662	1,106	(1,360)	(269)
Inventories, net	3,002	1,760	2,077	(2,550)
Prepaid inventories, net	1,936	81	445	203
Prepays and other current assets	(3,782)	(3,484)	(1,753)	(1,025)
Other long-term assets, net	380	(7)	413	440
Accounts payable	(47,313)	(27,512)	1,851	8,447
Accrued liabilities	(17,751)	(3,164)	1,020	17,103
Deferred revenue	(3,298)	3,330	4,502	10,793
Other long-term liabilities	1,570	803	1,590	3,083
Net cash (used in) provided by operating activities	(36,400)	(496)	44,930	69,365
Cash flows from investing activities:				
Purchases of marketable securities	(11)	(19)	(15)	(40)
Sales of marketable securities	35	77	35	78
Purchases of intangible assets	(187)	(54)	(268)	(54)
Investment in precious metals	—	—	(2,496)	(2,100)
Investment in cryptocurrency	—	(396)	96	(396)
Equity method investment	(152)	—	(402)	—
Disbursements for loans	(5,000)	—	(5,000)	—
Cost method investments	(7,000)	—	(7,000)	—
Acquisitions of businesses, net of cash acquired	(10,573)	—	(10,573)	—
Expenditures for fixed assets, including internal-use software and website development	(43,381)	(32,544)	(52,183)	(36,641)
Proceeds from sale of fixed assets	30	—	73	—
Net cash used in investing activities	(66,239)	(32,936)	(77,733)	(39,153)
Cash flows from financing activities:				
Payments on capital lease obligations	(362)	(325)	(362)	(325)
Paydown on direct financing arrangement	(229)	(209)	(302)	(275)
Change in restricted cash	75	—	75	125
Proceeds from exercise of stock options	270	342	439	444
Purchase of treasury stock	(2,367)	(2,301)	(2,367)	(2,303)
Proceeds from debt issuance	5,500	—	5,500	—
Payment of debt issuance costs	(621)	—	(1,652)	—
Net cash provided by (used in) financing activities	2,266	(2,493)	1,331	(2,334)
Net (decrease) increase in cash and cash equivalents	(100,373)	(35,925)	(31,472)	27,878
Cash and cash equivalents, beginning of period	181,641	148,665	112,740	84,862
Cash and cash equivalents, end of period	<u>\$ 81,268</u>	<u>\$ 112,740</u>	<u>\$ 81,268</u>	<u>\$ 112,740</u>

Continued on the following page

Overstock.com, Inc.
Consolidated Statements of Cash Flows (Unaudited)
(Continued)
(in thousands)

	Nine months ended September 30,		Twelve months ended September 30,	
	2015	2014	2015	2014
Supplemental disclosures of cash flow information:				
Cash paid during the period:				
Interest paid	\$ 35	\$ 37	\$ 45	\$ 52

Taxes paid	272	36	312	267
Non-cash investing and financing activities:				
Fixed assets, including internal-use software and website development, costs financed through accounts payable and accrued liabilities	\$ 1,414	\$ 505	\$ 1,414	\$ 635
Equipment acquired under capital lease obligations	362	325	362	325
Capitalized interest cost	117	—	143	—
Acquisition of businesses through stock issuance	18,149	—	18,149	—
Change in value of cash flow hedge	1,684	—	2,692	—

See accompanying notes to unaudited consolidated financial statements.

Overstock.com, Inc.
Notes to Unaudited Consolidated Financial Statements

1. BASIS OF PRESENTATION

As used herein, "Overstock," "Overstock.com," "O.co," "we," "our" and similar terms include Overstock.com, Inc. and our majority-owned subsidiaries, unless the context indicates otherwise. We have prepared the accompanying unaudited consolidated financial statements pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements and should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and our audited annual consolidated financial statements and related notes included in our Annual Report on Form 10-K for the year ended December 31, 2014. The accompanying unaudited consolidated financial statements reflect all adjustments, consisting only of normal recurring adjustments, which are, in our opinion, necessary for a fair presentation of results for the interim periods presented. Preparing financial statements requires us to make estimates and assumptions that affect the amounts that are reported in the consolidated financial statements and accompanying disclosures. Although these estimates are based on our best knowledge of current events and actions that we may undertake in the future, actual results may be different from the estimates. The results of operations for the three and nine months ended September 30, 2015 are not necessarily indicative of the results to be expected for any future period or the full fiscal year.

2. ACCOUNTING POLICIES

Principles of consolidation

The accompanying consolidated financial statements include our accounts and the accounts of our wholly-owned and majority-owned subsidiaries. All intercompany account balances and transactions have been eliminated in consolidation.

Use of estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent liabilities in the consolidated financial statements and accompanying notes. Estimates are used for, but not limited to, investment valuation, receivables valuation, valuation of derivative financial instruments, revenue recognition, sales returns, incentive discount offers, inventory valuation, depreciable lives of fixed assets and internally-developed software, goodwill valuation, intangible valuation, income taxes, stock-based compensation, performance-based compensation, restructuring liabilities and contingencies. We also used preliminary estimates in our valuation of recently acquired intangible assets. These preliminary estimates and assumptions could change significantly as we finalize the valuations of the net tangible and intangible assets acquired and liabilities assumed in our recent acquisition as described in Note 3—Acquisitions, Goodwill, and Acquired Intangible Assets. Actual results could differ materially from those estimates.

Cash equivalents

We classify all highly liquid instruments, including instruments with a remaining maturity of three months or less at the time of purchase, as cash equivalents. Cash equivalents were \$30.1 million and \$135.1 million at September 30, 2015 and December 31, 2014, respectively.

Restricted cash

We consider cash that is legally restricted and cash that is held as a compensating balance for letter of credit arrangements as restricted cash.

Fair value of financial instruments

We account for our assets and liabilities using a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect our market assumptions. These two types of inputs have created the fair-value hierarchy

below. This hierarchy requires us to minimize the use of unobservable inputs and to use observable market data, if available, when determining fair value.

- Level 1—Quoted prices for identical instruments in active markets;
- Level 2—Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets; and
- Level 3—Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

Under GAAP, certain assets and liabilities are required to be recorded at fair value on a recurring basis. Our assets and liabilities that are adjusted to fair value on a recurring basis are investments in money market mutual funds, trading securities, derivative instruments, and deferred compensation liabilities.

The fair values of our investments in money market mutual funds, trading securities, and deferred compensation liabilities are determined using quoted market prices from daily exchange traded markets on the closing price as of the balance sheet date and are classified as Level 1. The fair values of our derivative instruments are determined using standard valuation models. The significant inputs used in these models are readily available in public markets, or can be derived from observable market transactions, and therefore have been classified as Level 2. Inputs used in these standard valuation models for derivative instruments include the applicable forward rates, interest rates and discount rates. Included in the fair value of derivative instruments is an adjustment for nonperformance risk. The adjustment for nonperformance risk did not have a significant impact on the estimated fair value of our derivative instruments. For additional disclosures related to our derivative instruments, see *Derivative financial instruments* below.

The following tables summarize our assets and liabilities measured at fair value on a recurring basis using the following levels of inputs as of September 30, 2015 and December 31, 2014 as indicated (in thousands):

Fair Value Measurements at September 30, 2015:				
	Total	Level 1	Level 2	Level 3
Assets:				
Cash equivalents - Money market mutual funds	\$ 30,100	\$ 30,100	\$ —	\$ —
Trading securities held in a “rabbi trust” (1)	62	62	—	—
Total assets	<u>\$ 30,162</u>	<u>\$ 30,162</u>	<u>\$ —</u>	<u>\$ —</u>
Liabilities:				
Derivatives (2)	\$ 2,815	\$ —	\$ 2,815	\$ —
Deferred compensation accrual “rabbi trust” (3)	65	65	—	—
Total liabilities	<u>\$ 2,880</u>	<u>\$ 65</u>	<u>\$ 2,815</u>	<u>\$ —</u>
Fair Value Measurements at December 31, 2014:				
	Total	Level 1	Level 2	Level 3
Assets:				
Cash equivalents - Money market mutual funds	\$ 135,092	\$ 135,092	\$ —	\$ —
Trading securities held in a “rabbi trust” (1)	90	90	—	—
Total assets	<u>\$ 135,182</u>	<u>\$ 135,182</u>	<u>\$ —</u>	<u>\$ —</u>
Liabilities:				
Derivatives (2)	\$ 1,008	\$ —	\$ 1,008	\$ —
Deferred compensation accrual “rabbi trust” (3)	94	94	—	—
Total liabilities	<u>\$ 1,102</u>	<u>\$ 94</u>	<u>\$ 1,008</u>	<u>\$ —</u>

(1) — Trading securities held in a rabbi trust are included in Other current and Other long-term assets in the consolidated balance sheets.

(2) — Derivative financial instruments are included in Other current and Other long-term liabilities in the consolidated balance sheets.

(3) — Non qualified deferred compensation in a rabbi trust is included in Accrued liabilities and Other long-term liabilities in the consolidated balance sheets.

Our other financial instruments, including cash, restricted cash, accounts receivable, accounts payable, accrued liabilities and notes payable are carried at cost, which approximates their fair value because of the short-term maturity of these instruments.

Restricted investments

We have a Non-Qualified Deferred Compensation Plan (the “NQDC Plan”) for senior management. Deferred compensation amounts are invested in mutual funds held in a “rabbi trust” and are restricted for payment to the participants of the NQDC Plan. We account for our investments held in the trust in accordance with Accounting Standards Codification (“ASC”) No. 320 “*Investments — Debt and Equity Securities*.” The investments held in the trust are classified as trading securities. The fair value of the investments held in the trust totaled \$62,000 at September 30, 2015 and are included in Other current and Other long-term assets in the consolidated balance sheets. Our gains and losses on these investments were immaterial for the three and nine months ended September 30, 2015 and 2014.

Accounts receivable

Accounts receivable consist primarily of trade amounts due from customers in the United States and from uncleared credit card transactions at period end. Accounts receivable are recorded at invoiced amounts and do not bear interest.

Allowance for doubtful accounts

From time to time, we grant credit to some of our business customers on normal credit terms (typically 30 days). We perform credit evaluations of our business customers’ financial condition and payment history and maintain an allowance for doubtful accounts receivable based upon our historical collection experience and expected collectability of accounts receivable. The allowance for doubtful accounts receivable was \$444,000 and \$511,000 at September 30, 2015 and December 31, 2014, respectively.

Concentration of credit risk

Cash equivalents include short-term, highly liquid instruments with maturities at date of purchase of three months or less. At September 30, 2015 and December 31, 2014, two banks held the majority of our cash and cash equivalents. We do not believe that, as a result of this concentration, we are subject to any unusual financial risk beyond the normal risk associated with commercial banking relationships.

Financial instruments that potentially subject us to significant concentrations of credit risk consist primarily of cash equivalents and receivables. We invest our cash primarily in money market securities which are uninsured.

Valuation of inventories

Inventories, consisting of merchandise purchased for resale, are accounted for using a standard costing system which approximates the first-in-first-out (“FIFO”) method of accounting, and are valued at the lower of cost or market. We write down our inventory for estimated obsolescence and to lower of cost or market value based upon assumptions about future demand and market conditions. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required. Once established, the original cost of the inventory less the related inventory allowance represents the new cost basis of such products. Reversal of the allowance is recognized only when the related inventory has been sold or scrapped.

Prepaid inventories, net

Prepaid inventories, net represent inventories paid for in advance of receipt.

Prepays and other current assets

Prepays and other current assets represent expenses paid prior to receipt of the related goods or services, including advertising, license fees, maintenance, packaging, insurance, and other miscellaneous costs.

Fixed assets

Fixed assets, which include assets such as technology infrastructure, internal-use software, website development, furniture and fixtures and leasehold improvements, are recorded at cost and depreciated using the straight-line method over the estimated useful lives of the related assets or the term of the related capital lease, whichever is shorter, as follows:

	Life (years)
Computer software	2-4
Computer hardware	3-4
Furniture and equipment	3-5

Leasehold improvements are amortized over the shorter of the term of the related leases or estimated useful lives.

Depreciation and amortization expense is classified within the corresponding operating expense categories on the consolidated statements of income as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2015	2014	2015	2014
Cost of goods sold - direct	\$ 73	\$ 61	\$ 206	\$ 217
Technology	5,875	4,356	16,331	11,752
General and administrative	665	284	1,290	837
Total depreciation and amortization, including internal-use software and website development	<u>\$ 6,613</u>	<u>\$ 4,701</u>	<u>\$ 17,827</u>	<u>\$ 12,806</u>

Capitalized interest

We capitalize interest cost incurred on debt during the construction of major projects. Capitalized interest for the three and nine months ended September 30, 2015 and 2014 was not significant.

Internal-use software and website development

Included in fixed assets is the capitalized cost of internal-use software and website development, including software used to upgrade and enhance our Website and processes supporting our business. We capitalize costs incurred during the application development stage of internal-use software and amortize these costs over the estimated useful life of two to three years. Costs incurred related to design or maintenance of internal-use software are expensed as incurred.

During the three months ended September 30, 2015 and 2014, we capitalized \$4.4 million and \$3.6 million, respectively, of costs associated with internal-use software and website development, both developed internally and acquired externally. Amortization of costs associated with internal-use software and website development was \$3.9 million and \$2.7 million, respectively, for those respective periods. During the nine months ended September 30, 2015 and 2014, we capitalized \$13.8 million and \$10.7 million, respectively, of such costs and had amortization of \$10.8 million and \$7.6 million for those respective periods.

Cost and equity method investments

At September 30, 2015, we held noncontrolling interests (less than 20%) in three privately held entities. The total aggregate amount of our three investments was \$7.0 million and the investments are recognized as cost method investments included in Other long-term assets in our consolidated balance sheets. Earnings from the investments are recognized to the extent of dividends received, and we will recognize subsequent impairments to the investment if they are other than temporary. We review these investments individually for impairment by evaluating if events or circumstances have occurred that may have a significant adverse effect on their fair value. If such events or circumstances have occurred, we will then estimate the fair

value of the investment and determine if any decline in the fair value of the investment below its carrying value is other-than-temporary. At September 30, 2015, the carrying amount of the investments was \$7.0 million. We recognized zero impairment losses during the nine months ended September 30, 2015 and the year ended 2014.

During 2014, we formed Medici Inc., doing business as tØ.com, to develop and own the digital securities trading technology we refer to as the tØ technology or the tØ software. Also during 2014, we acquired a 24.9% interest in Pro Securities LLC, a broker-dealer operating a registered alternative trading system or ATS, which we subsequently contributed to Medici in connection with its efforts to develop and license software to trade digital securities using crypto-technologies. The initial purchase price for the investment was \$250,000 and is accounted for as an equity method investment included in Other long-term assets in our consolidated balance sheets. At September 30, 2015, the difference between the carrying value of this investment and the amount of underlying equity in net assets of the investee was not significant. Our proportionate share of the net income or loss of our equity method investee for the three months ended September 30, 2015 and 2014 was not significant. When we record our proportionate share of net income, it increases income (or decreases loss) in our consolidated statements of income and our carrying value in that investment. Conversely, when we record our proportionate share of a net loss, it decreases income (or increases loss) in our consolidated statements of income and our carrying value in that investment.

tØ.com has licensed the tØ technology on a non-exclusive basis to Pro Securities LLC. tØ.com is an entity that is 81% owned by us and 19% owned by other parties at September 30, 2015. This entity is included in our consolidated financial statements. Intercompany transactions with the entity have been eliminated and the amounts of contributions and gains or losses that are attributable to noncontrolling interests are disclosed in our consolidated financial statements. During the quarter ended September 30, 2015, we purchased an additional 5.9% interest in tØ.com (for a total ownership interest of 81%). During the quarter ended September 30, 2015, Medici also entered into an agreement to acquire the remaining 75.1% interest in Pro Securities (for a total ownership interest of 100%) as described in Note 3—Acquisitions, Goodwill, and Acquired Intangible Assets.

Leases

We account for lease agreements as either operating or capital leases depending on certain defined criteria. In certain of our lease agreements, we receive rent holidays and other incentives. We recognize lease costs on a straight-line basis without regard to deferred payment terms, such as rent holidays, that defer the commencement date of required payments. Additionally, tenant improvement allowances are amortized as a reduction in rent expense over the term of the lease. Leasehold improvements are capitalized at cost and amortized over the lesser of their expected useful life or the life of the lease, without assuming renewal features, if any, are exercised.

Treasury stock

We account for treasury stock under the cost method and include treasury stock as a component of stockholders' equity.

Precious Metals

Our precious metals consisted of \$6.0 million in gold and \$4.3 million in silver at September 30, 2015 and \$6.3 million in gold and \$4.6 million in silver at December 31, 2014. We store our precious metals at an off-site secure facility. Because these assets consist of actual precious metals, rather than financial instruments, we account for them as a cost method investment initially recorded at cost (including transaction fees) and then adjusted to the lower of cost or market based on an average unit cost. On an interim basis, we recognize decreases in the value of these assets caused by market declines. Subsequent increases in the value of these assets through market price recoveries during the same fiscal year are recognized in the later interim period, but may not exceed the total previously recognized decreases in value during the same year. Gains or losses resulting from changes in the value of our precious metal assets are recorded in Other income (expense), net in our consolidated statements of operations. We recorded a \$610,000 and \$662,000 loss on investments in precious metals for the three and nine months ended September 30, 2015. Losses on investments in precious metals were \$752,000 during the three and nine months ended September 30, 2014.

Goodwill

Goodwill represents the excess of the purchase price paid over the fair value of the tangible net assets acquired in business combinations. During the three and nine months ended September 30, 2015, we recognized \$12.6 million in goodwill related to an asset acquisition as described in Note 3—Acquisitions, Goodwill, and Acquired Intangible Assets.

Goodwill is not amortized but is tested for impairment at least annually. When evaluating whether goodwill is impaired, we make a qualitative assessment to determine if it is more likely than not that its fair value is less than its carrying amount. If the qualitative assessment determines that it is more likely than not that its fair value is less than its carrying amount, we compare the fair value of the reporting unit to which the goodwill is assigned to its carrying amount. If the carrying amount exceeds its fair value, then the amount of the impairment loss must be measured. The impairment loss, if any, is calculated by comparing the implied fair value of the goodwill to its carrying amount. In calculating the implied fair value of goodwill, the fair value of the reporting unit is allocated to the other assets and liabilities within the reporting unit based on estimated fair value. The excess of the fair value of a reporting unit over the amount allocated to its other assets and liabilities is the implied fair value of goodwill. An impairment loss is recognized when the carrying amount of goodwill exceeds its implied fair value.

In accordance with this guidance, we test for impairment of goodwill in the fourth quarter or when we deem that a triggering event has occurred. There were no impairments to goodwill recorded during the nine months ended September 30, 2015 or the year ended December 31, 2014.

Intangible assets other than goodwill

We capitalize and amortize intangible assets other than goodwill over their estimated useful lives unless such lives are indefinite. Intangible assets other than goodwill acquired separately from third-parties are capitalized at cost while such assets acquired as part of a business combination are capitalized at their acquisition-date fair value. Intangible assets other than goodwill are amortized using the straight line method of amortization over their useful lives, with the exception of certain intangibles (such as acquired technology, customer relationships, and trade names) which are amortized using an accelerated method of amortization based on cash flows. These assets are reviewed for impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable as described below under *Impairment of long-lived assets*.

During the three and nine months ended September 30, 2015, we acquired \$15.8 million of intangible assets other than goodwill related to an asset acquisition as described in Note 3—Acquisitions, Goodwill, and Acquired Intangible Assets. Aggregate amortization expense for intangible assets other than goodwill was \$354,000 and \$416,000 for the three and nine months ended September 30, 2015, respectively. Amortization expense for intangible assets other than goodwill was not significant for the three and nine months ended September 30, 2014.

Impairment of long-lived assets

We review property and equipment and other long-lived assets, including intangible assets other than goodwill, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable. Recoverability is measured by comparison of the assets' carrying amount to future undiscounted net cash flows the asset group is expected to generate. Cash flow forecasts are based on trends of historical performance and management's estimate of future performance, giving consideration to existing and anticipated competitive and economic conditions. If such asset group is considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds their fair values. There were no impairments to long-lived assets recorded during the nine months ended September 30, 2015 or the year ended December 31, 2014.

Cryptocurrency holdings

We hold cryptocurrency-denominated assets such as bitcoin and we include them in other current assets in our Consolidated Balance Sheets. Cryptocurrency-denominated assets were \$208,000 and \$340,000 at September 30, 2015 and December 31, 2014, respectively, and are recorded at the lower of cost or market based on an average unit cost. On an interim basis, we recognize decreases in the value of these assets caused by market declines. Subsequent increases in the value of these assets through market price recoveries during the same fiscal year are recognized in the later interim period, but may not exceed the total previously recognized decreases in value during the same year. Gains or losses resulting from changes in the value of our cryptocurrency assets are recorded in Other income (expense), net in our consolidated statements of operations. Losses on cryptocurrency holdings were \$41,000 and \$147,000 during the three and nine months ended September 30, 2015, respectively, and \$50,000 during the three and nine months ended September 30, 2014.

Other long-term assets

Other long-term assets consist primarily of cost and equity method investments (see *Cost and equity method investments* above) and long-term prepaid expenses.

Derivative financial instruments

In 2014, we entered into a loan agreement in connection with the construction of our new corporate headquarters. We began borrowing under the facility in October 2015. Because amounts borrowed on the loan will carry a variable LIBOR-based interest rate, we will be affected by changes in certain market conditions. These changes in market conditions may adversely impact our financial performance, and as such, we use derivatives as a risk management tool to mitigate the potential impact of these changes. We do not enter into derivatives for speculative or trading purposes. The primary market risk we manage through the use of derivative instruments is interest rate risk on the amounts we expect to borrow under the loan agreement relating to our new headquarters. To manage that risk, we use interest rate swap agreements. An interest rate swap agreement is a contract between two parties to exchange cash flows based on underlying notional amounts and indices. Our interest rate swaps entitle us to pay amounts based on a fixed rate in exchange for receipt of amounts based on variable rates. The notional amounts under our hedges at September 30, 2015 and December 31, 2014, was \$3.6 million and zero, respectively.

Our derivatives are carried at fair value in our consolidated balance sheets in Other current and Other long-term liabilities on a gross basis. The accounting for gains and losses that result from changes in the fair values of derivative instruments depends on whether the derivatives have been designated and qualify as hedging instruments under GAAP. Our derivatives have been designated and qualify as cash flow hedges. We formally designated and documented, at inception, the financial instruments as hedges of specific underlying exposures, the risk management objectives, and the strategy for undertaking the hedging transactions. In addition, we formally assess, both at the inception and at least quarterly thereafter, whether the financial instruments used in hedging transactions are effective at offsetting changes in the cash flows of the related underlying exposures. To the extent that the hedges are effective, the changes in fair values of our cash flow hedges are recorded in Accumulated other comprehensive income. Any ineffective portion is immediately recognized into earnings.

We determine the fair values of our derivatives based on quoted market prices or using standard valuation models (see *Fair value of financial instruments* above). The notional amounts of the derivative financial instruments do not necessarily represent amounts exchanged by the parties and, therefore, are not a direct measure of our exposure to the financial risks described above. The amounts exchanged are calculated by reference to the notional amounts and by other terms of the derivatives, such as interest rates.

The following table shows the effect of derivative financial instruments that were designated as accounting hedges for the period indicated (in thousands):

Cash flow hedges	Amount of gain (loss) recognized in OCI on derivative (effective portion) net of tax	Location of gain (loss) reclassified from Accumulated OCI into income (effective portion)	Amount of gain (loss) reclassified from Accumulated OCI into income (effective portion)	Location of gain (loss) recognized in income on derivative (ineffective portion)	Amount of gain (loss) recognized in income on derivative (ineffective portion)
Three months ended September 30, 2015					
Interest rate swap	\$ (907)	Interest expense	\$ —	Other income (expense)	\$ (124)
Nine months ended September 30, 2015					
Interest rate swap	\$ (1,022)	Interest expense	\$ —	Other income (expense)	\$ (124)

The following table provides the outstanding notional balances and fair values of derivative financial instruments that were designated as accounting hedges outstanding positions for the dates indicated, and recorded gains/(losses) during the periods indicated (in thousands):

Cash flow hedges	Location in balance sheet	Expiration date	Outstanding notional	Fair value	Beginning gains (losses)	Gains (losses) recorded during period (1)	Ending gains (losses)
Three months ended September 30, 2015							
Interest rate swap	Current and Other long-term liabilities	2023	\$ 3,646	\$ (2,815)	\$ (1,210)	\$ (1,605)	\$ (2,815)
Nine months ended September 30, 2015							
Interest rate swap	Current and Other long-term liabilities	2023	\$ 3,646	\$ (2,815)	\$ (1,008)	\$ (1,807)	\$ (2,815)

(1) — Gains (losses) recorded during the period are presented gross of the related tax impact.

Revenue recognition

We derive our revenue primarily from direct revenue and partner revenue from merchandise sales. We also earn revenue from advertising on our shopping and other pages. We have organized our operations into two principal segments based on the primary source of revenue: direct revenue and partner revenue (see Note 8—Business Segments).

Revenue is recognized when the following revenue recognition criteria are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or the service has been provided; (3) the selling price or fee revenue earned is fixed or determinable; and (4) collection of the resulting receivable is reasonably assured. Revenue related to merchandise sales is recognized upon delivery to our customers. As we ship high volumes of packages through multiple carriers, it is not practical for us to track the actual delivery date of each shipment. Therefore, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times, which are calculated using the following factors: (i) the type of shipping carrier (as carriers have different in-transit times); (ii) the fulfillment source (either our warehouses, those warehouses we control, or those of our partners); (iii) the delivery destination; and (iv) actual transit time experience, which shows that delivery date is typically one to eight business days from the date of shipment. We review and update our estimates on a quarterly basis based on our actual transit time experience. However, actual shipping times may differ from our estimates.

We evaluate the criteria outlined in ASC Topic 605-45, *Principal Agent Considerations*, in determining whether it is appropriate to record the gross amount of product sales and related costs or the net amount earned as commissions. When we are the primary obligor in a transaction, are subject to inventory risk, have latitude in establishing prices and selecting suppliers, or have several but not all of these indicators, revenue is recorded gross. If we are not the primary obligor in the transaction and amounts earned are determined using a fixed percentage, revenue is recorded on a net basis. Currently, the majority of both direct revenue and partner revenue is recorded on a gross basis, as we are the primary obligor. We present revenue net of sales taxes.

We periodically provide incentive offers to our customers to encourage purchases. Such offers include current discount offers, such as percentage discounts off current purchases and other similar offers, which, when used by customers, are treated as a reduction of revenue.

Based upon our historical experience, revenue typically increases during the fourth quarter because of the holiday retail season.

Direct revenue

Direct revenue is derived from merchandise sales of our owned inventory to individual consumers and businesses. Direct revenue comes from merchandise sales that occur primarily through our Website, but may also occur through offline and other channels.

Partner revenue

Partner revenue is derived from merchandise sales of inventory owned by our partners which they generally ship directly to our consumers and businesses. Partner revenue comes from merchandise sales that occur primarily through our Website, but may also occur through offline and other channels.

Club O loyalty program

We have a customer loyalty program called Club O Gold for which we sell annual memberships. We also recently introduced an introductory customer loyalty program called Club O Silver for customers who sign up to receive promotional emails. For Club O Gold memberships, we record membership fees as deferred revenue and we recognize revenue ratably over the membership period. Both the Club O Gold and Club O Silver loyalty programs allow members to earn Club O Reward dollars for qualifying purchases made on our Website. We also have a co-branded credit card program (see *Co-branded credit card revenue* below for more information). Co-branded cardholders are also Club O Gold members and earn additional reward dollars for purchases made on our Website, and from other merchants.

Club O Reward dollars earned may be redeemed on future purchases made through our Website. Club O Gold membership reward dollars expire 90 days after the customer's Club O Gold membership expires. Club O Silver reward dollars expire 90 days after they are earned if no additional qualifying purchases are made during that period.

We account for these transactions as multiple element arrangements and allocate revenue to the elements using their relative fair values. We include the value of reward dollars earned in deferred revenue and we record it as a reduction of revenue at the time the reward dollars are earned.

We recognize revenue for Club O Reward dollars when customers redeem their reward dollars as part of a purchase at our Website. We recognize other income when Club O Reward dollars expire or the likelihood of reward dollars being redeemed by a customer is remote ("reward dollar breakage"). Reward dollar breakage is currently recognized when the reward dollars expire as Other income in our consolidated statements of operations.

In instances where customers receive free Club O Reward dollars not associated with any purchases, we account for these transactions as sales incentives such as coupons and record a reduction of revenue at the time the reward dollars are redeemed.

Co-branded credit card program

We have a co-branded credit card agreement with a commercial bank for the issuance of credit cards bearing the Overstock.com brand, under which the bank pays us fees for new accounts and for customer usage of the cards. The agreement also provides for a customer loyalty program offering reward points that customers will accrue from card usage and can use to make purchases on our Website (see *Club O loyalty program* above for more information). New account fees are recognized as revenue on a straight-line basis over the estimated expected life of co-branded credit card customers. Credit card usage fees are recognized as revenues as actual credit card usage occurs.

We also have a private label credit card agreement with another commercial bank for the issuance of credit cards bearing our brand, but that is only available for use on our Website. In connection with the agreement, we received upfront fees that we recognize as revenue on a straight line basis over the term of the agreement, which runs through February 2022. When customers make regular revolving purchases using the card, we receive fees, which are recognized as revenue. When we offer promotional financing for purchases made with the card (for example, 12 months same as cash), we pay a discount fee to the commercial bank, which we recognize as a reduction of revenue. The commercial bank owns all of the accounts under the program and performs all account administration, underwriting and servicing. Fees and royalties from new accounts, credit card usage fees, and fees from both of these cards were less than 1% of total net revenues for all periods presented.

Deferred revenue

Customer orders are recorded as deferred revenue prior to delivery of products or services ordered. We record amounts received for Club O Gold membership fees as deferred revenue and we recognize it ratably over the membership period. We record Club O Reward dollars earned from purchases as deferred revenue at the time they are earned and we recognize it as revenue upon redemption. If reward dollars are not redeemed, we recognize other income upon expiration. In addition, we sell gift cards and record related deferred revenue at the time of the sale. We sell gift cards without expiration dates and we recognize revenue from a gift card upon redemption of the gift card. If a gift card is not redeemed, we recognize other income when the likelihood of its redemption becomes remote based on our historical redemption experience. We consider the likelihood of redemption to be remote after 36 months.

We periodically enter into agreements with other parties to jointly market ancillary products or services on our website. As a result of those agreements, we sometimes receive payments in advance of performing our obligations under those agreements. Such payments received before we perform our obligations are recognized over our service period.

Sales returns allowance

We inspect returned items when they arrive at our processing facility. We refund the full cost of the merchandise returned and all original shipping charges if the returned item is defective or we or our partners have made an error, such as shipping the wrong product.

If the return is not a result of a product defect or a fulfillment error and the customer initiates a return of an unopened item within 30 days of delivery, for most products we refund the full cost of the merchandise minus the original shipping charge and actual return shipping fees. However, we reduce refunds for returns initiated more than 30 days after delivery or that are received at our returns processing facility more than 45 days after initial delivery.

If our customer returns an item that has been opened or shows signs of wear, we issue a partial refund minus the original shipping charge and actual return shipping fees.

Revenue is recorded net of estimated returns. We record an allowance for returns based on current period revenues and historical returns experience. We analyze actual historical returns, current economic trends and changes in order volume and acceptance of our products when evaluating the adequacy of the sales returns allowance in any accounting period.

The allowance for returns was \$11.2 million and \$15.5 million at September 30, 2015 and December 31, 2014 respectively. The decrease in allowance for returns at September 30, 2015 compared to December 31, 2014 is primarily due to decreased revenues mostly due to seasonality.

Credit card chargeback allowance

Revenue is recorded net of credit card chargebacks. We maintain an allowance for credit card chargebacks based on current period revenues and historical chargeback experience. The allowance for chargebacks was \$182,000 and \$129,000 at September 30, 2015 and December 31, 2014, respectively.

Cost of goods sold

Cost of goods sold includes product costs, warehousing costs, outbound shipping costs, handling and fulfillment costs, customer service costs and credit card fees, and is recorded in the same period in which related revenues have been recorded. Cost of goods sold, including product cost and other costs and fulfillment and related costs are as follows (in thousands):

	Three months ended September 30,				Nine months ended September 30,			
	2015		2014		2015		2014	
Total revenue, net	\$ 391,211	100%	\$ 352,991	100%	\$ 1,177,568	100%	\$ 1,026,743	100%
Cost of goods sold								
Product costs and other cost of goods sold	301,164	77%	270,219	77%	903,720	77%	786,981	77%
Fulfillment and related costs	17,596	4%	15,714	4%	52,303	4%	46,083	4%
Total cost of goods sold	318,760	81%	285,933	81%	956,023	81%	833,064	81%
Gross profit	\$ 72,451	19%	\$ 67,058	19%	\$ 221,545	19%	\$ 193,679	19%

Advertising expense

We expense the costs of producing advertisements the first time the advertising takes place and expense the cost of communicating advertising in the period during which the advertising space or airtime is used. Internet advertising expenses are recognized as incurred based on the terms of the individual agreements, which are generally: 1) a commission for traffic driven to the Website that generates a sale or 2) a referral fee based on the number of clicks on keywords or links to our Website generated during a given period. Advertising expense is included in sales and marketing expenses and totaled \$27.7 million and \$23.1 million during the three months ended September 30, 2015 and 2014, respectively. For the nine months ended September 30, 2015 and 2014, advertising expenses totaled \$79.5 million and \$64.8 million, respectively. Prepaid advertising (included in Prepaids and other current assets in the accompanying consolidated balance sheets) was \$1.9 million and \$2.0 million at September 30, 2015 and December 31, 2014, respectively.

Stock-based compensation

We measure compensation expense for all outstanding unvested share-based awards at fair value on the date of grant and recognize compensation expense over the service period for awards expected to vest at the greater of a straight line basis or on an accelerated schedule when vesting of restricted stock awards exceeds a straight line basis. The estimation of stock awards that will ultimately vest requires judgment, and to the extent actual results differ from estimates, such amounts are recorded as an adjustment in the period estimates are revised. We consider many factors when estimating expected forfeitures, including types of awards, and historical experience. Actual results may differ substantially from these estimates (see Note 7—Stock-Based Awards).

Loss contingencies

In the normal course of business, we are involved in legal proceedings and other potential loss contingencies. We accrue a liability for such matters when it is probable that a loss has been incurred and the amount can be reasonably estimated. When only a range of probable loss can be estimated, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued. We expense legal fees as incurred (see Note 5—Commitments and Contingencies).

Income taxes

Our income tax provision for interim periods is determined using an estimate of our annual effective tax rate adjusted for discrete items, if any, for relevant interim periods. We update our estimate of the annual effective tax rate each quarter and make cumulative adjustments if our estimated annual effective tax rate changes.

Our quarterly tax provision and our quarterly estimate of our annual effective tax rate are subject to significant variations due to several factors including variability in predicting our pre-tax and taxable income and the mix of jurisdictions to which those items relate, relative changes of expenses or losses for which tax benefits are not recognized, how we do business, and changes in law, regulations, and administrative practices. Our effective tax rate can be volatile based on the amount of pre-tax income. For example, the impact of discrete items on our effective tax rate is greater when pre-tax income is lower. The tax provision does not include a benefit for the federal research credit, which expired at the end of 2014. If retroactively reinstated, the credit will be a discrete tax benefit in the period enacted.

We assess the available positive and negative evidence to estimate whether we will generate sufficient future taxable income to use our existing deferred tax assets. We consider, among other things, our recent historical financial and operating results (three years of cumulative income, fourteen of the last fifteen quarters of profitability, and revenue growth during those periods), along with our forecasted growth rates, projected future taxable income, including the impact of any costs associated with our recent acquisition, and tax planning strategies. We perform multiple sensitivity analyses to address how potential changes in significant assumptions would impact our ability to generate the minimum amount of taxable income required. We give the most weight to objective evidence related to our more recent financial results. Based upon the level of historical taxable income and projections for future taxable income, including the impact of any acquisition costs, and planned tax strategies over the periods in which the deferred tax assets are deductible, we believe it is more likely than not that we will realize the benefits of these deduction differences, net of existing valuation allowances. However, it is possible that certain state tax credits could ultimately expire unused if estimates of future apportioned taxable income during the carryforward period are reduced.

We have not provided for U.S. income tax on certain foreign earnings because we intend to indefinitely reinvest these earnings outside the U.S. We have begun expansion of operations outside of the U.S. and have plans for additional expansion for which we have incurred and will continue to incur capital requirements. We have considered ongoing capital requirements of the parent company in the U.S.

We have tax deductions from stock-based compensation that exceed the stock-based compensation recorded for such instruments. To the extent such excess tax benefits are ultimately realized, they will increase shareholders' equity. We utilize the "with-and-without" approach in determining if and when such excess tax benefits are realized. Under this approach, excess tax benefits related to stock-based compensation are the last tax benefits to be realized.

Earnings per share

Basic earnings per share is computed by dividing net income attributable to common shares by the weighted average number of common shares outstanding during the period. Diluted earnings per share is computed by dividing net income attributable to common shares for the period by the weighted average number of common and potential common shares outstanding during the period. Potential common shares, comprising incremental common shares issuable upon the exercise of stock options and restricted stock awards are included in the calculation of diluted earnings per common share to the extent such shares are dilutive.

The following table sets forth the computation of basic and diluted net income per common share for the periods indicated (in thousands, except per share data):

	Three months ended September 30,		Nine months ended September 30,	
	2015	2014	2015	2014
Net income (loss) attributable to stockholders of Overstock.com, Inc.	\$ (2,071)	\$ 1,617	\$ 2,336	\$ 7,496
Net income (loss) per common share—basic:				
Net income (loss) attributable to common shares—basic	(0.08)	0.07	0.10	0.31
Weighted average common shares outstanding—basic	24,681	24,027	24,402	23,988
Effect of dilutive securities:				
Stock options and restricted stock awards	—	256	111	302
Weighted average common shares outstanding—diluted	24,681	24,283	24,513	24,290
Net income (loss) attributable to common shares—diluted	\$ (0.08)	\$ 0.07	\$ 0.10	\$ 0.31

The following shares were excluded from the calculation of diluted shares outstanding as their effect would have been anti-dilutive (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2015	2014	2015	2014
Stock options and restricted stock units	566	463	262	386

Stock repurchase program

On May 5, 2015, our Board of Directors authorized a stock repurchase program under which we may repurchase shares of our outstanding common stock for up to \$25 million at any time through December 31, 2017. To date, we have not made any repurchases under this program.

Recently issued accounting standards

In April 2015, the FASB issued ASU No. 2015-03, *Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs*, which requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. The new standard becomes effective for us on January 1, 2016. Early adoption is permitted. The standard requires entities to apply this change on a retrospective basis for the periods presented. The adoption of this standard will cause us to reclassify certain debt issuance costs currently classified in other assets to a direct reduction of the related debt liability.

In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers*, which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The ASU will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. In July 2015, the FASB issued ASU No. 2015-14, *Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date*, which deferred the effective date for us to January 1, 2018. Early adoption is permitted, but not before the original effective date. The standard permits the use of either the retrospective or cumulative effect transition method. There have also been other Proposed Accounting Standards Updates which may further modify ASU 2014-09. We are evaluating the effect that ASU 2014-09 will have on our consolidated financial statements and related disclosures. We have not yet selected a transition method nor have we determined the effect of the standard on our ongoing financial reporting.

In July 2015, the FASB issued ASU No. 2015-11, *Inventory (Topic 330): Simplifying the Measurement of Inventory*, which requires inventory to be measured at the lower of cost and net realizable value. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. The new standard becomes effective for us on January 1, 2017. Early adoption is permitted. Entities should apply the amendments in this update prospectively to the measurement of inventory after the date of adoption. We are evaluating the effect that ASU 2015-11 will have on our consolidated financial statements and related disclosures.

In August 2015, the FASB issued ASU No. 2015-15, *Interest-Imputation of Interest (Subtopic 835-30): Presentation and Subsequent Measurement of Debt Issuance Costs Associated with Line-of-Credit Arrangements-Amendments to SEC Paragraphs Pursuant to Staff Announcement at June 18, 2015 EITF Meeting (SEC Update)*, which states that the SEC staff would not object to an entity deferring and presenting debt issuance costs as an asset and subsequently amortizing the deferred debt issuance costs ratably over the term of the line-of-credit arrangement. The new standard becomes effective for us on January 1, 2016. We do not expect that ASU 2015-15 will have a material impact on our consolidated financial statements or related disclosures.

In September 2015, the FASB issued ASU No. 2015-16, *Business Combinations (Topic 805): Simplifying the Accounting for Measurement-Period Adjustments*, which requires an acquirer recognize adjustments to provisional amounts that are identified during the measurement period in the reporting period in which the adjustment amounts are determined and eliminates the requirement to retrospectively account for those adjustments. The new standard becomes effective for us on January 1, 2016. Early adoption is permitted. The amendments in this update should be applied prospectively to adjustments to provisional amounts that occur after the effective date of this update. We are evaluating the effect that ASU 2015-16 will have on our consolidated financial statements and related disclosures.

3. ACQUISITIONS, GOODWILL, AND ACQUIRED INTANGIBLE ASSETS

As part of our crypto-initiatives, on August 26, 2015 Cirrus Services LLC, a wholly owned subsidiary of Medici, Inc., which is a majority owned subsidiary of Overstock.com, Inc., entered into an asset purchase agreement with Cirrus Technologies LLC. On August 26, 2015 the transaction also closed, and Cirrus Services LLC acquired all or substantially all of Cirrus Technologies LLC's assets for a purchase price of \$29.1 million, consisting of approximately \$11.0 million in cash and 908,364 shares of Overstock's common stock valued at approximately \$18.1 million. The total purchase price has been allocated to the assets acquired and the liabilities assumed based on their respective fair values at the acquisition date, with

amounts exceeding fair value recorded as goodwill. We do not expect to record significant deferred taxes related to the acquisition. The goodwill of the acquired business is deductible for tax purposes. During the three and nine months ended September 30, 2015, we recognized \$754,000 in acquisition costs which were included in general and administrative expenses in our consolidated statement of operations.

Determination and allocation of the purchase price is based upon preliminary estimates and assumptions. These preliminary estimates and assumptions could change significantly during the measurement period as we finalize the valuations of the net tangible and intangible assets acquired and liabilities assumed. Any change could result in variances between our future financial results and the amounts recognized in the accompanying condensed consolidated financial statements as of and for the period ended September 30, 2015, including variances in fair values recorded, as well as expenses associated with these items.

The preliminary estimated fair values of the assets acquired and liabilities assumed at the acquisition date are as follows (in thousands):

Purchase Price	Fair Value
Cash paid, net of cash acquired	\$ 10,573
Common stock issued	18,149
	<u>\$ 28,722</u>
Allocation	
Goodwill	\$ 12,559
Intangibles	15,781
Accounts receivable	650
Property and equipment	266
Other liabilities assumed	(534)
	<u>\$ 28,722</u>

The following table details the identifiable intangible assets acquired at their fair value and useful lives (amounts in thousands):

Intangible Assets	Fair Value	Weighted Average Useful Life (years)
Technology and developed software	\$ 13,600	6
Customer relationships	1,862	1
Trade names	294	10
Other	25	
	<u>\$ 15,781</u>	

The expense for amortizing acquired intangible assets in connection with this acquisition was \$354,000 for the three and nine months ended September 30, 2015.

Acquired intangible assets primarily include technology, customer relationships and trade names. We determined the fair value of the identifiable intangible assets using various income approach methods including excess earnings to determine the present value of expected future cash flows for each identifiable intangible asset based on discount rates which incorporate a risk premium to take into account the risks inherent in those expected cash flows. The expected cash flows were estimated using the expectations of market participants.

The acquired assets, liabilities, and associated operating results were consolidated into our financial statements at the acquisition date. The net sales and operating loss of the acquired company included in our financial statements was \$491,000 and \$139,000, respectively, for the nine months ended September 30, 2015.

The following unaudited pro forma financial information presents our results as if the current year acquisitions had occurred at the beginning of 2014 (amounts in thousands):

	Nine Months Ended September 30,	
	2015	2014
Net revenues	\$ 1,181,270	\$ 1,028,761
Operating income	\$ 3,208	\$ 7,364

The unaudited pro forma financial information is not intended to represent or be indicative of our consolidated results of operations that would have been reported had the acquisition been completed as of the beginning of 2014, nor should it be taken as indicative of our future consolidated results of operations.

In connection with the Cirrus Technology asset transaction, on August 26, 2015 Medici also entered into (i) an agreement to purchase all of the outstanding membership interests in SpeedRoute LLC ("SpeedRoute"), (ii) an agreement to purchase all of the outstanding membership interests not already owned by Medici in Pro Securities, LLC ("Pro Securities") and (iii) an agreement to acquire all of the outstanding stock of TraderField Securities Inc. ("TraderField"), each of which was under common control with Cirrus Technology. SpeedRoute and Pro Securities are each privately-held registered broker dealers, and these acquisitions are subject to conditions, including satisfaction of all applicable regulatory requirements, which we have sought. The aggregate consideration to be paid for the interests to be acquired in SpeedRoute and Pro Securities is expected to be shares of Overstock common stock having a market value of approximately \$600,000 as measured based on the average of the ten-day closing price of our stock preceding the day of closing. For accounting purposes, the fair value of these shares will be based on the price of our stock on the day of closing. We also have the right to pay any or all of the purchase price for these entities in cash if the ten-day closing price average is less than \$18.00. We anticipate closing on these transactions during the quarter ending December 31, 2015, subject to regulatory approval.

TraderField is also a privately-held registered broker-dealer. We have not yet sought regulatory approval of the TraderField acquisition, but would be required to obtain approval prior to closing the acquisition.

4. BORROWINGS

U.S. Bank term loan and revolving loan agreement

In October 2014, we entered into a syndicated senior secured credit facility (the "Facility") with U.S. Bank National Association ("U.S. Bank" or the "Administrative Bank") and certain other banks in connection with the construction of our new corporate headquarters (the "Project"). The Facility is governed by a Loan Agreement dated as of October 24, 2014 which provides for an aggregate credit amount of \$55.8 million, consisting of (i) a senior secured real estate loan of \$45.8 million (the "Real Estate Loan") to be used to finance a portion of the Project and (ii) a three-year \$10.0 million senior secured revolving credit facility (the "Revolving Loan") for working capital and capital expenditures, but not for the Project. We must satisfy a number of conditions at least 60 days prior to any funding under the Facility, including making cash contributions of approximately \$37.4 million toward the Project, which we have done. In the future, we may be required to make additional cash contributions if necessary to maintain a loan to value ratio of 80% or less. The Real Estate Loan and the Revolving Loan are both secured by the Project, our inventory and accounts receivable, substantially all of our deposit accounts and related assets. We began borrowing under the facility in October 2015.

On or about January 1, 2017, upon completion of the Project, the Real Estate Loan is designed to convert into an approximately 6.75-year term loan due October 1, 2023 (the "Term Loan"). The conditions to conversion of the Real Estate Loan to the Term Loan include, among others, requirements that the Project must have been completed in accordance with the applicable plans, paid for in full, and generally free of liens; completion must have been certified by the project architect and the inspecting architect; certificates of occupancy must have been issued; we must have paid all amounts then due to the lending banks and must be in compliance with the covenants under the Loan Agreement; the Real Estate Loan must be brought "in balance" as defined in the Loan Agreement, which may require us to contribute additional cash to the Project; we must have paid the final amount of our cash contribution as required by the Loan Agreement; and if required by the Administrative Bank, an updated appraisal must show that the Project is in compliance with an 80% loan to value ratio requirement. If the conditions to conversion are not satisfied in early 2017, all amounts outstanding under the Facility will become immediately due and payable.

Amounts outstanding under the Real Estate Loan and the Term Loan will carry an interest rate based on one-month LIBOR plus 2.00% or an Alternate Base Rate plus 1.00%. However, we have entered into interest rate swap agreements

designed to fix our interest rate on the Real Estate Loan and the Term Loan at approximately 4.6% annually (see *Derivative financial instruments* in Note 2. Accounting Policies). Monthly payments of interest only will be due and payable on the Real Estate Loan prior to conversion. Following conversion, we are required to make monthly payments of principal estimated to be \$1.1 million annually plus interest, with a balloon payment of all unpaid principal (estimated to be \$38.0 million) and interest on October 1, 2023. Amounts outstanding under the Revolving Loan will carry an interest rate based on LIBOR plus 2.00% or an Alternate Base Rate plus 1.00%.

We are required to maintain compliance as of the end of each calendar quarter beginning with the quarter ending December 31, 2014 with the following financial covenants:

- a fixed charge coverage ratio on a trailing 12-month basis of no less than 1.15 to 1.00;
- a cash flow leverage ratio on a trailing 12-month basis not greater than 3.00 to 1.00 during the Construction Phase (as defined in the Loan Agreement);
- a cash flow leverage ratio not greater than 2.50 to 1.00 following the Construction Phase; and
- minimum liquidity of at least \$50.0 million.

At September 30, 2015 we were in compliance with the financial covenants. In addition to the financial covenants described above, we are required to comply with a number of covenants relating to the Project and our business, including covenants limiting certain indebtedness. Notwithstanding, the Loan Agreement permits us to incur up to \$20.0 million of additional senior-secured indebtedness for equipment financing, and other senior-secured indebtedness provided that the aggregate principal amount of such other senior-secured indebtedness does not exceed ten percent of our consolidated assets. The Loan Agreement includes customary events of default in addition to events of default relating specifically to the Project. The Real Estate Loan and the Revolving Loan are cross-defaulted and cross-collateralized. In the event of a default, the default rate of interest would be 2.00% above the otherwise applicable rate. Unless it terminates earlier or is extended with the consent of the Administrative Bank and all of the Banks, the Revolving Loan facility will terminate on October 24, 2017.

As of September 30, 2015 we had not borrowed any amounts under either the Real Estate Loan or the Revolving Loan.

Cryptobonds

In June 2015, as part of an initial demonstration of the digital securities trading system our majority-owned subsidiary Medici is working to develop, our Chief Executive Officer, Dr. Patrick M. Byrne purchased a \$500,000 privately-placed digital “cryptobond” from us for \$500,000 in cash. The terms of the bond include a fixed annual interest rate of 7.0%, and put and call rights that allow us to redeem the debt at 105.0% of the principal amount, and allow the holder to require us to repurchase the debt at 102.5% of the principal amount, in each case at any time after November 1, 2015. Because we intend to redeem this bond within the next year, this bond is included in Other current liabilities in the accompanying consolidated balance sheets. The initial terms of this cryptobond were changed to match the terms of the cryptobond we issued in July 2015 described below. The impact of this change was not significant. Dr. Byrne has waived his right to receive any prepayment premium to which he would otherwise have been entitled.

In July 2015, as an additional step in demonstrating the viability of the digital securities trading system Medici is developing, we issued additional privately-placed digital cryptobond debt to an unaffiliated purchaser for \$5.0 million in cash and concurrently made a \$5.0 million loan to the purchaser. The debt we issued to the unaffiliated purchaser has a 7.0% annual interest rate and is subject to put and call rights that allow us to redeem the debt at 105.0% of the principal amount, and allow the holder to require us to repurchase the debt at 102.5% of the principal amount, in each case at any time after November 1, 2015. The purchaser also has the right to require us to repurchase the debt prior to November 2, 2015 at 96.0% of the principal amount. The \$5.0 million loan we made to the purchaser has a 3.0% annual interest rate, resulting in an effective net interest rate payable by us to the purchaser of the \$5.0 million digital cryptobond debt of 4.0%. Both instruments have 5-year terms. The terms of our loan to the purchaser require repayment of the loan concurrently with the repayment of the digital cryptobond debt, whether at maturity or pursuant to the exercise of the put or call features. We issued the \$5.0 million digital cryptobond debt for the purpose of further demonstrating the viability of the digital securities trading system Medici is developing, and made the offsetting loan to the purchaser in order to demonstrate the trading system without the complications of a normal financing and to reduce the borrowing cost. We have the right and intention to offset any amount owed between us and the purchaser. We intend to repay the digital cryptobond debt sometime after November 1, 2015, but prior to December 31, 2015, and will offset that repayment with our \$5.0 million loan. At that time, we will amortize all of the unamortized debt issuance costs, and will incur the 5.0% cost associated with our right to put the debt to the holder. The cryptobond debt to our Chief Executive Officer and to the unaffiliated purchaser approximates fair value.

At September 30, 2015, the digital cryptobond and our loan back to the cryptobond purchaser are presented net in the accompanying consolidated balance sheets as follows (in thousands):

Description	Gross amounts of recognized assets	Gross amounts offset in the balance sheet	Net amounts of assets presented in the balance sheet	Gross amounts not offset in the balance sheet			Net amount
				Financial instruments	Cash collateral received		
Cryptobonds	\$ 5,000	\$ (5,000)	\$ —	\$ —	\$ —	\$ —	\$ —

U.S. Bank letters of credit

At September 30, 2015 and December 31, 2014, letters of credit totaling \$505,000 and \$580,000 respectively, were issued on our behalf collateralized by compensating cash balances held at U.S. Bank, which are included in Restricted cash in the accompanying consolidated balance sheets.

U.S. Bank commercial purchasing card agreement

We have a commercial purchasing card (the “Purchasing Card”) agreement with U.S. Bank. We use the Purchasing Card for business purpose purchasing and must pay it in full each month. At September 30, 2015, \$1.0 million was outstanding and \$4.0 million was available under the Purchasing Card. At December 31, 2014, \$803,000 was outstanding and \$4.2 million was available under the Purchasing Card.

Capital leases

During the nine months ended September 30, 2015, and the year ended December 31, 2014, we entered into capital lease arrangements of computer equipment for \$362,000 and \$325,000, respectively. These arrangements will expire in 2017. In order to obtain discounted pricing, we prepaid the entire \$362,000 and \$325,000 shortly after entering into the respective agreements. As such, we had no future payment obligations under capital leases at September 30, 2015 or December 31, 2014.

Fixed assets included assets under capital leases of \$4.9 million and \$4.7 million and accumulated depreciation related to assets under capital leases of \$3.4 million and \$2.8 million, respectively, at September 30, 2015 and December 31, 2014. Depreciation expense of assets recorded under capital leases was \$218,000 and \$188,000, for the three months ended September 30, 2015 and 2014, respectively and \$632,000 and \$518,000, for the nine months ended September 30, 2015 and 2014, respectively.

5. COMMITMENTS AND CONTINGENCIES

Summary of future minimum lease payments for all operating leases

Minimum future payments under all operating leases as of September 30, 2015, are as follows (in thousands):

Payments due by period	
2015 (remainder)	\$ 3,004
2016	10,233
2017	5,890
2018	5,498
2019	5,331
Thereafter	28,521
	<u>\$ 58,477</u>

Rental expense for operating leases totaled \$3.1 million and \$2.9 million for the three months ended September 30, 2015 and 2014, respectively, and \$9.4 million and \$8.7 million for the nine months ended September 30, 2015 and 2014, respectively.

Naming rights

During 2011, we entered into a six-year agreement with the Oakland-Alameda County Coliseum Authority ("OACCA") for the right to name the Oakland Alameda County Coliseum. Amounts shown below represent annual payments due OACCA for the naming rights. We have the right to terminate this agreement at our sole option, subject to payment of a termination fee.

Minimum future payments under the naming rights agreement as of September 30, 2015, are as follows (in thousands):

Payments due by period:	
2015 (remainder)	\$ —
2016	1,391
	<u>\$ 1,391</u>

Technology

From time to time we enter into non-cancellable, long-term contractual agreements for technology services. Minimum future payments under these agreements as of September 30, 2015, are as follows (in thousands):

Payments due by period:	
2015 (remainder)	\$ 609
2016	2,118
	<u>\$ 2,727</u>

Legal Proceedings and Contingencies

From time to time, we are involved in litigation concerning consumer protection, employment, intellectual property and other commercial matters related to the conduct and operation of our business and the sale of products on our Website. In connection with such litigation, we may be subject to significant damages. In some instances other parties may have contractual indemnification obligations to us. However, such contractual obligations may prove unenforceable or non-collectible, and if we cannot enforce or collect on indemnification obligations, we may bear the full responsibility for damages, fees and costs resulting from such litigation. We may also be subject to penalties and equitable remedies that could force us to alter important business practices. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of these matters could materially affect our business, results of operations, financial position, or cash flows.

On February 2, 2007, along with five shareholder plaintiffs, we filed a lawsuit in the Superior Court of California, County of San Francisco against Goldman Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith, Inc., and also in the original complaint and by later amendment, against 8 other defendant banks. The suit alleged that the defendants, who controlled over 80% of the prime brokerage market, participated in an illegal stock market manipulation scheme and that the defendants had no intention of covering short sell orders with borrowed stock, as they are required to do, causing what are referred to as "fails to deliver" and that the defendants' actions caused and continued to cause dramatic declines in the share price of our stock and that the amount of "fails to deliver" often exceeded our entire supply of outstanding shares. The suit accused the defendants of violations of California securities laws and common law and violations of California's Unfair Business Practices Act. Owing to its bankruptcy filing in 2008, we elected not to pursue our claims against one of the defendants. On July 23, 2009, the court sustained defendants' demurrer to our amended causes of action for conversion and trespass to chattels. On December 15, 2010, we and the other plaintiffs in the case entered into a settlement agreement with certain of the defendants requiring these defendants to pay in the aggregate \$4.5 million to plaintiffs. Other terms of settlement are confidential. Following this settlement, remaining defendants in the suit were Goldman Sachs Group, Inc., Goldman Sachs & Co., Goldman Sachs Execution & Clearing L.P., ("Goldman Defendants") Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch Professional Clearing Corporation ("Merrill Lynch Defendants"), and Bank of America Securities LLC. On December 15, 2010, we filed a motion to amend our complaint against the Goldman and Merrill Lynch Defendants to add a cause of action based on the New Jersey Racketeer Influenced and Corrupt Organization (RICO) Act. Defendants challenged the RICO claim by demurrer and eventually the court sustained the demurrer. We thereafter entered a settlement agreement with Bank of America

Securities LLC, the terms of which are confidential, and dismissed the action as to that defendant. On August 19, 2011, the remaining defendants filed a motion for summary judgment. On January 10, 2012, the court granted the motion for summary judgment as to all remaining defendants and the judgment was entered. We appealed that decision and each side appealed the trial court's decisions regarding sealing of certain records in the case. The Court of Appeal issued its decision on November 13, 2014, reversing the trial court's dismissal and summary judgment in favor of the Merrill Lynch Defendants, but the court upheld the decision dismissing the Goldman Defendants. The Court of Appeal also upheld the trial court's decision denying the amendment of the complaint to include RICO claims, and in the matter of the sealing of the records, ordered that the relevant portions of the records be made public, subject to the trial court's determination of which documents were relevant and what third party, private financial information should be redacted. All parties petitioned the California Supreme Court for review of various parts the decision, and the court denied the petitions. The case has been remitted to the Court of Appeal, and subsequently to the trial court for final trial preparation and trial of our claims against the Merrill Lynch Defendants. On June 9, 2015 we filed suit against the Goldman Defendants in the Superior Court of New Jersey, County of Hudson alleging *inter alia* violations of New Jersey's RICO statute (the "New Jersey Action"). On June 10, 2015 we settled the New Jersey Action. We intend to continue to pursue claims against the Merrill Lynch Defendants and expect the trial to commence in the first half of 2016.

On September 23, 2009, SpeedTrack, Inc. sued us along with 27 other defendants in the United States District Court in the Northern District of California. We are alleged to have infringed a patent covering search and categorization software. We believe that certain third party vendors of products and services sold to us are contractually obligated to indemnify us in this action. On November 11, 2009, the parties stipulated to stay all proceedings in the case until resolution of a reexamination of the patent in question; and also until separately filed infringement actions against other retailers resulted either in judgment or dismissal. The nature of the loss contingencies relating to claims that have been asserted against us are described above. However no estimate of the loss or range of loss can be made. We intend to vigorously defend this action and pursue our indemnification rights with our vendors.

On September 29, 2010, a trustee in bankruptcy filed against us an adversary proceeding in the matter of In re: Petters Company, Inc., a case filed in United States Bankruptcy Court, in the District of Minnesota. The complaint alleges principal causes of action against us under various Bankruptcy Code sections and the Minnesota Fraudulent Transfer Act, to recover damages for alleged transfers of property from the Petters Company occurring prior to the filing of the case initially as a civil receivership in October 2008. The trustee's complaint alleges such transfers occurred in at least one note transaction whereby we transferred at least \$2.3 million and received in return transfers totaling at least \$2.5 million. The case is in its discovery stages. We filed a motion to dismiss on statute of limitations and other grounds. The court consolidated the issues in our motion with issues raised by motion in similar trustee-filed cases. The court issued legal rulings on these consolidated legal issues, and has allowed portions of the case to proceed to the discovery stage. The nature of the loss contingencies relating to claims that have been asserted against us are described above. However, no estimate of the loss or range of loss can be made. We intend to vigorously defend this action.

On November 17, 2010, we were sued in the Superior Court of California, County of Alameda, by District Attorneys for the California Counties of Alameda, Marin, Monterey, Napa, Santa Clara, Shasta and Sonoma County, and the County of Santa Cruz later joined the suit. The district attorneys sought damages and an injunction under claims for violations of California consumer protection laws, alleging we made untrue or misleading statements concerning our pricing, price reductions, sources of products and shipping charges. The complaint asked for damages in the amount of not less than \$15.0 million. We tried the case in September 2013 before the judge of the court and made final arguments in December 2013. On January 3, 2014, the court issued a tentative ruling in favor of the District Attorneys, which became a final Statement of Decision on February 5, 2014. The decision provides for an injunction that prescribes disclosures necessary for certain types of price advertising and price reductions and imposes civil penalties of \$3,500 per day for practices from March 2006 through September 2008, and \$2,000 per day for September 2008 through September 2013, totaling \$6.8 million. The court issued a Final Judgment February 19, 2014 reflecting the Court's Statement of Decision. We have stipulated to Plaintiff's reimbursement of costs in the amount of \$111,500. We have appealed the decision and have secured a bond as required in the ruling in the amount of 150% of the penalty imposed in the matter until the ruling on the appeal. The appeal is briefed. No date has been set for oral argument. The nature of the loss contingencies relating to claims that have been asserted against us are described above. We intend to continue to vigorously pursue the appeal and defend this action.

On September 11, 2011, Droplets, Inc. filed suit against us and eight other defendants in the United States District Court in the Eastern District of Texas for infringement of a patent covering strings of programming code downloaded from a server to a client computer. The case was tried and on January 16, 2015 the jury rendered a verdict of infringement assessing damages in the amount of \$4.0 million against us. Droplets has filed a motion for, and court may also order, injunctive relief,

the payment of pre- and post-judgment interest, future royalties, attorney fees and costs. Droplets alleges future royalties in the amount of \$305,000 per month. We have responded that we do not now infringe and that in any event, the amount requested is not legally justified. We have taken steps to avoid a future infringement finding. Droplets is also seeking reimbursement of its attorneys fees in an unspecified amount. Once judgment is final, we intend to appeal. The nature of the loss contingencies relating to claims that have been asserted against us are described above. We intend to vigorously defend this action and pursue our indemnification rights with our vendors.

On February 11, 2013, RPost Holdings, Inc., RPost Communications Limited, and RMail Limited, filed suit against us in the United States District Court in Eastern District of Texas for infringement of patents covering products and services that verify the delivery and integrity of email messages. We tendered defense of the case to an indemnitor who accepted the defense. We answered the complaint. The nature of the loss contingencies relating to claims that have been asserted against us are described above. However, no estimate of the loss or range of loss can be made. We intend to vigorously defend this action and pursue our indemnification rights with our vendors.

On September 30, 2013, Altaf Nazerali filed suit against us in the Supreme Court of British Columbia for vicarious liability for defamation, libel and slander. The suit relates to alleged representations about Nazerali found on the website deepcapture.com. The suit alleges that the representations were made by our Chief Executive Officer, Patrick Byrne, and two other individuals on deepcapture.com. We are vigorously defending the action. The trial of the matter recently concluded; however, the judgment of the Court has not yet been rendered. The nature of the loss contingencies relating to claims that have been asserted against us are described above. However, no estimate of the loss or range of loss can be made.

In June 2013, William French filed suit against us and 46 other defendants under seal in the Superior Court of the State of Delaware. The filing was unsealed on March 24, 2014. French brought the action on Delaware's behalf for violations of Delaware's unclaimed property laws and for recovery of the unredeemed gift card value allegedly attributable to Delaware residents. French's complaint alleges that we, and other defendants, knowingly refused to fulfill obligations under Delaware's Abandoned Property Law by failing to report and deliver unclaimed gift card funds to the State of Delaware, and knowingly made, used or caused to be made or used, false statements and records to conceal, avoid or decrease an obligation to pay or transmit money to Delaware in violation of the Delaware False Claims and Reporting Act. The complaint seeks an injunction, monetary damages (including treble damages) penalties, and attorneys' fees and costs. We, along with others, have filed motions to dismiss the case and are waiting on the court to rule. The case is in its discovery stages. The nature of the loss contingencies relating to claims that have been asserted against us are described above. However, no estimate of the loss or range of loss can be made.

On September 18, 2015, we received a Tax Assessment from the Department of Revenue of the State of Washington asserting that we had nexus with Washington during the period January 1, 2008 to May 31, 2015 and assessing approximately \$31.5 million in taxes, interest, and/or penalties asserted to be due, subject to future field verification by the Department of Revenue, for the period. The nature of the loss contingencies relating to the assessment is described above. We do not believe that we had nexus in Washington during that period and we intend to vigorously contest this administrative action.

We establish liabilities when a particular contingency is probable and estimable. At September 30, 2015, we have accrued \$12.7 million in light of these probable and estimable liabilities. It is reasonably possible that the actual losses may exceed our accrued liabilities. We have other contingencies which are reasonably possible; however, the reasonably possible exposure to losses cannot currently be estimated.

6. INDEMNIFICATIONS AND GUARANTEES

During our normal course of business, we have made certain indemnities, commitments, and guarantees under which we may be required to make payments in relation to certain transactions. These indemnities include, but are not limited to, indemnities to various lessors in connection with facility leases for certain claims arising from such facility or lease, the environmental indemnity we entered into in favor of the lenders under our Loan Agreement with U.S. Bank and other banks, and indemnities to our directors and officers to the maximum extent permitted under the laws of the State of Delaware. The duration of these indemnities, commitments, and guarantees varies, and in certain cases, is indefinite. In addition, the majority of these indemnities, commitments, and guarantees do not provide for any limitation of the maximum potential future payments we could be obligated to make. As such, we are unable to estimate with any reasonableness our potential exposure under these items. We have not recorded any liability for these indemnities, commitments, and guarantees in the accompanying consolidated balance sheets. We do, however, accrue for losses for any known contingent liability, including those that may arise from indemnification provisions, when future payment is both probable and reasonably estimable.

7. STOCK-BASED AWARDS

We have equity incentive plans that provide for the grant to employees of stock-based awards, including stock options and restricted stock. During the three and nine months ended September 30, 2015, the Compensation Committee of the Board of Directors approved grants of 1,000 and 236,350 restricted stock awards, respectively, to our officers, board members and employees. The restricted stock awards vest over three years at 33.3% at the end of the first year, 33.3% at the end of the second year and 33.3% at the end of the third year and are subject to the employee's continuing service to us. At September 30, 2015, there were 361,000 unvested restricted stock awards that remained outstanding.

The cost of restricted stock awards is determined using the fair value of our common stock on the date of the grant, and compensation expense is either recognized on a straight line basis over the three-year vesting schedule or on an accelerated schedule when vesting of restricted stock awards exceeds a straight-line basis. The cumulative amount of compensation expense recognized at any point in time is at least equal to the portion of the grant date fair value of the award that is vested at that date. The weighted average grant date fair value of restricted stock awards granted during the three and nine months ended September 30, 2015 was \$20.98 and \$24.71, respectively.

Stock-based compensation expense related to restricted stock awards was \$839,000 and \$998,000 during the three months ended September 30, 2015 and 2014, respectively. During the nine months ended September 30, 2015 and 2014 stock-based compensation expense related to restricted stock awards was \$2.6 million and \$2.9 million, respectively.

The following table summarizes restricted stock award activity during the nine months ended September 30, 2015 (in thousands):

	Nine months ended September 30, 2015	
	Units	Weighted Average Grant Date Fair Value
Outstanding—beginning of year	578	\$ 16.70
Granted at fair value	236	24.71
Vested	(378)	12.34
Forfeited	(75)	24.40
Outstanding—end of period	361	\$ 24.84

8. BUSINESS SEGMENTS

Segment information has been prepared in accordance with ASC Topic 280 *Segment Reporting*. Segments were determined based on how we manage the business. There were no inter-segment sales or transfers during the three and nine months ended September 30, 2015 and 2014. We evaluate the performance of our segments and allocate resources to them based primarily on gross profit. The table below summarizes information about reportable segments for the three and nine months ended September 30, 2015 and 2014 (in thousands):

	Three months ended September 30,			Nine months ended September 30,		
	Direct	Partner	Total	Direct	Partner	Total
2015						
Revenue, net	\$ 33,621	\$ 357,590	\$ 391,211	\$ 104,184	\$ 1,073,384	\$ 1,177,568
Cost of goods sold	31,989	286,771	318,760	95,751	860,272	956,023
Gross profit	\$ 1,632	\$ 70,819	\$ 72,451	\$ 8,433	\$ 213,112	\$ 221,545
Operating expenses			75,822			218,990
Interest and other income, net			739			2,576
(Benefit) provision for income taxes			(15)			3,774
Consolidated net (loss) income			<u>\$ (2,617)</u>			<u>\$ 1,357</u>
2014						
Revenue, net	\$ 33,592	\$ 319,399	\$ 352,991	\$ 104,854	\$ 921,889	\$ 1,026,743
Cost of goods sold	29,385	256,548	285,933	91,955	741,109	833,064
Gross profit	\$ 4,207	\$ 62,851	\$ 67,058	\$ 12,899	\$ 180,780	\$ 193,679
Operating expenses			64,703			183,464
Interest and other (expense) income, net			(325)			717
Provision for income taxes			413			3,436
Consolidated net income			<u>\$ 1,617</u>			<u>\$ 7,496</u>

The direct segment includes revenues, direct costs, and cost allocations associated with sales of inventory we own. Costs for this segment include product costs, freight, warehousing and fulfillment costs, credit card fees and customer service costs.

The partner segment includes revenues, direct costs and cost allocations associated with sales of inventory owned by our partners. Costs for this segment include product costs, outbound freight and fulfillment costs, credit card fees and customer service costs.

Assets have not been allocated between the segments for our internal management purposes and, as such, they are not presented here.

For the three and nine months ended September 30, 2015 and 2014, substantially all of our sales revenues were attributable to customers in the United States. At September 30, 2015 and December 31, 2014, substantially all of our fixed assets were located in the United States.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**Special Cautionary Note Regarding Forward-Looking Statements**

This Quarterly Report on Form 10-Q and the documents incorporated herein by reference, as well as our other public documents and statements our officers and representatives may make from time to time, contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended. These statements are therefore entitled to the protection of the safe harbor provisions of these laws. These forward-looking statements involve risks and uncertainties, and relate to future events or our future financial or operating performance. The forward-looking statements include all statements other than statements of historical fact, including, without limitation, all statements regarding:

- the anticipated benefits and risks of our business and plans;*
- our beliefs regarding our ability to attract and retain customers in a cost-efficient manner;*
- the anticipated effectiveness of our marketing;*
- our future operating and financial results, including any projections of revenue, profits or losses, contribution, technology expense, general and administrative ("G&A") expense, cash flow, capital expenditures or other financial measures or amounts or non-GAAP financial measures or amounts or anticipated changes in any of them;*
- our plans and expectations regarding our design and construction of an office campus in Salt Lake City to serve as our corporate headquarters;*
- our beliefs and expectations regarding the adequacy of our office and warehouse facilities and our anticipated transition from our current facilities to our anticipated new facilities;*
- our expectations regarding the benefits and risks of the Construction Agreement and related agreements we recently entered into in connection with our construction of our planned corporate headquarters and of the credit facility we recently entered into for the purpose of, among other things, financing a portion of the costs of that construction;*
- our expectations regarding our ability to secure the additional financing that we will need to complete our corporate headquarters;*
- our future capital requirements and our ability to satisfy our capital needs;*
- our expectations regarding the adequacy of our liquidity;*
- our ability to retire or refinance any debt we may have or incur in the future;*
- our decision to accept bitcoins as payment for the goods and services we sell and our expectations regarding the advantages and risks of doing so, and our expectations that any bitcoin or other transaction processing agents we utilize will perform in accordance with our expectations regardless of fluctuations in the value of bitcoin or other developments that may affect us or such processing agents;*
- our decision to acquire and hold bitcoins and other cryptocurrencies and our expectations regarding the advantages and risks of doing so;*
- the competition we currently face and will face in our business as the ecommerce business continues to evolve and to become more competitive, and as additional competitors, including competitors based in China or elsewhere, continue to increase their efforts in our primary markets;*
- the effects of government regulation;*
- our plans for international markets, our expectations for our international sales efforts and the anticipated results of our international operations;*
- our plans and expectations regarding Overstock Fulfillment Services and Supplier Oasis and our efforts to provide multi-channel fulfillment services;*
- our plans and expectations regarding our Farmers Market offerings;*
- our plans and expectations regarding our insurance product offerings and consumer finance offerings;*
- our plans and expectations regarding our recently-announced acquisition of the assets and operations of a financial technology company and our agreements to acquire three registered broker dealers affiliated with the fintech business;*
- our expectations about our project to develop a system for the trading of digital securities and other future businesses, innovations and projects and the anticipated functionality and results of operations of them;*
- our expectations regarding our recent private offering of cryptobonds;*
- our plans for further changes to our business;*

- our beliefs regarding current or future litigation or regulatory actions, including our expectations about our anticipated appeal of the Droplets verdict against us;
- our beliefs regarding the costs and benefits of our “spend and defend” policy under which we generally refuse to settle abusive patent suits brought against us;
- our beliefs and expectations regarding existing and future tax laws and related laws and the application of those laws to our business, including the assessment we recently received from the Department of Revenue of the State of Washington;
- our beliefs regarding the adequacy of our insurance coverage;
- our beliefs regarding the adequacy and anticipated functionality of our infrastructure, including our backup facilities and beliefs regarding the adequacy of our disaster planning and our ability to recover from a disaster or other interruption of our ability to operate our website at its highest level of functionality;
- our beliefs regarding our cybersecurity efforts and measures and the costs we will incur in our ongoing efforts to avoid interruptions to our product offerings and other business processes from cyber attacks;
- our belief that we can meet our published product shipping standards even during periods of relatively high sales activity;
- our belief that we can maintain or improve upon customer service levels that we and our customers consider acceptable;
- our beliefs regarding the adequacy of our order processing systems and our fulfillment and distribution capabilities;
- our expectations regarding the costs and benefits of our other businesses, innovations and projects, including our new and used car listing service, our Worldstock Fair Trade offerings, our Main Street Revolution offerings, our consignment services, our ecommerce marketplace channel offerings, and our projects involving bitcoin;
- our expectations regarding the costs and benefits of various programs we offer, including Club O and programs pursuant to which we offer free or discounted participation in Club O or other programs we offer to members of the United States Armed Forces and/or to full-time, post-secondary students or others, and including our community site and our public service pet adoption program;
- our expectations regarding the costs and benefits of shifting our offerings from coupons to rewards for our Club O members;
- our belief that we and our partners will be able to maintain inventory levels at appropriate levels despite the seasonal nature of our business;
- our belief that our sales through other ecommerce marketplace channels will be successful and will become an important part of our business; and
- our belief that we can successfully offer and sell a constantly changing mix of products and services.

Further, in some cases, you can identify forward-looking statements by terminology such as *may, will, could, should, likely, expect, plan, seek, intend, anticipate, project, believe, estimate, predict, potential, goal, strategy, future or continue*, the negative of such terms or other comparable terminology. These statements are only predictions. Actual events or results may differ materially from those contemplated by forward-looking statements for a variety of reasons, including among others:

- changes in U.S. and global economic conditions and consumer spending;
- any downturn in the U.S. housing industry;
- world events;
- the rate of growth of the Internet and online commerce, and the occurrence of any event that would discourage or prevent consumers from shopping or making payments online or via mobile apps;
- any failure to maintain our existing relationships or build new relationships with partners on acceptable terms;
- any difficulties we may encounter maintaining optimal levels of product quality and selection or in attracting sufficient consumer interest in our product offerings;
- any difficulties we may have with the quality or safety of the products we offer;
- modifications we may make to our business model from time to time, including aspects relating to our product mix and the mix of direct/partner sourcing of the products we offer;
- the mix of products purchased by our customers;
- problems with cyber security or data breaches or Internet or other infrastructure or communications impairment problems or the costs of preventing or responding to any such problems;
- problems with or affecting our credit card processors, including cyber-attacks, Internet or other infrastructure or communications impairment or other events that could interrupt the normal operation of the

credit card processors or any difficulties we may have maintaining compliance with the rules of the credit card processors;

- any problems we may encounter as a result of the implementation in the U.S. of the EMV (Europay, MasterCard and Visa) standards for credit cards, which generally became effective in the U.S. in October 2015, including any problems that may result from any increase in online fraud as a result of the implementation of the EMV standards;*
- problems with or affecting the facility where substantially all of our computer and communications hardware is located or any other problems that result in the unavailability of our Website or reduced performance of our transaction systems;*
- difficulties we may have in responding to technological changes;*
- problems with the large volume of fraudulent purchase orders we receive on a daily basis;*
- problems we may encounter as a result of the listing or sale of pirated, counterfeit or illegal items by third parties;*
- difficulties we may have financing our operations or our expansion with either internally generated funds or external sources of financing;*
- any environmental or other difficulties we may encounter relating to the real estate we recently purchased, the design and construction of an office campus on that property to serve as our corporate headquarters, our financing of a substantial portion of the costs of designing and constructing the office campus and headquarters or of the interest rate swaps we entered into in connection with the financing, of financing it after construction, or the transition from our current facilities to the new facilities;*
- any difficulties we may encounter in connection with Overstock Fulfillment Services or Supplier Oasis or our efforts to provide multi-channel fulfillment services, our Farmers Market offerings, our insurance product offerings, our consumer finance offerings or other businesses or product or service offerings outside of our main shopping website offerings;*
- any difficulties we may encounter as a result of our reliance on third parties that we do not control for the performance of critical functions material to our business;*
- any difficulties we may encounter in connection with the rapid shift of ecommerce and online payments to mobile and multi-channel commerce and payments;*
- the extent to which we owe income or sales taxes or other types of taxes or are required to collect sales taxes or report sales or to modify our business model in order to avoid being required to collect sales taxes or report sales or avoid the application of other types of taxes;*
- any difficulties we may encounter as a consequence of accepting or holding bitcoins or other cryptocurrencies, whether as a result of regulatory, tax or other legal issues, technological issues, value fluctuations, lack of widespread adoption of bitcoins or other cryptocurrencies as an acceptable medium of exchange or otherwise;*
- increasing competition, including competition from well-established competitors including Amazon.com, competition from competitors based in China or elsewhere, competition from companies willing to incur substantial losses in order to build market share, and from others including competitors with business models that may include delivery capabilities that we may be unable to match;*
- difficulties with the management of our growth and any periods in which we fail to grow in accordance with our plans;*
- fluctuations in our operating results;*
- difficulties we may encounter in connection with our efforts to expand internationally;*
- difficulties we may encounter in connection with our efforts to offer additional types of services to our customers, including insurance products and consumer financing;*
- difficulties, including expense and any operational or regulatory issues we may encounter in connection with the integration or operation of our recently-announced acquisition of the assets and operations of a financial technology company and our agreements to acquire three registered broker dealers affiliated with the fintech business;*
- technical, operational, regulatory or other difficulties we may encounter in connection with Medici's efforts to create a system for the trading of digital securities, or with the operation of Medici's system, which began on a limited trial basis during Q2 2015 with a privately-placed sale of \$500,000 principal amount of our cryptobonds to our CEO Dr. Patrick Byrne in exchange for cash and a subsequent sale of \$5.0 million to an unaffiliated third party in July 2015;*
- difficulties Medici may encounter with its proposed system for the trading of digital securities due to lack of market acceptance or as a result of competition from any of the numerous other competitors seeking to*

- develop competing technologies or systems, most of which may have substantially greater financial and technical resources than Medici does;
- the outcomes of legal proceedings, investigations and claims, including the outcome of our appeal of the judgment against us in the Droplets matter or the judgment obtained by the District Attorneys of a number of California counties as described in this report;
- our inability to optimize our warehouse operations;
- risks of inventory management and seasonality;
- the cost and availability of traditional and online advertising, the rapid changes in the online advertising business and the longer-term changes in the traditional advertising business, and the results of our various brand building and marketing campaigns;
- risks that the amount of deferred tax assets we consider realizable could be reduced if estimates of future taxable income during the carryforward period are reduced; and
- the other risks described in this report or in our other public filings.

In evaluating all forward-looking statements, you should specifically consider the risks outlined above and in this Quarterly Report on Form 10-Q in Part II, Item 1A under the caption “Risk Factors” in Part I, Item 2 under the caption “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this report. These factors may cause our actual results to differ materially from those contemplated by any forward-looking statement. Although we believe that our expectations reflected in the forward-looking statements are reasonable, we cannot guarantee or offer any assurance of future results, levels of activity, performance or achievements or other future events.

Our forward-looking statements contained in this report speak only as of the date of this report and, except as required by law, we undertake no obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this report or any changes in our expectations or any change in any events, conditions or circumstances on which any of our forward-looking statements are based.

Available Information

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 are available free of charge through the Investor Relations section of our main website www.overstock.com as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. Our Internet Website and the information contained therein or connected thereto are not a part of or incorporated into this Quarterly Report on Form 10-Q.

Overview

We are an online retailer offering price-competitive brand name and non-brand name merchandise, including furniture, home decor, bedding and bath, housewares, jewelry and watches, apparel and designer accessories, electronics and computers, and sporting goods, among other products and services. Our Farmers Market offers delivery of local, farm-fresh food to our customers. Our Worldstock Fair Trade store offers products from artisans in emerging regions around the world, and our Main Street Revolution store offers products from small U.S.-based entrepreneurs. We also use our technology to provide a nationwide free pet adoptions service. We also sell hundreds of thousands of best seller and current run books, magazines, CDs, DVDs and video games (“BMMG”). We sell these products and services through our websites located at www.overstock.com, www.o.co and www.o.biz (referred to collectively as the “Website” or our “website”). Although our three websites are located at different domain addresses, the technology and equipment and processes supporting the Website and the process of order fulfillment described herein are the same for all three websites. In late 2014, we began working on an initiative to develop a digital securities trading system through our tØ subsidiary. In Q3 2015, we entered into agreements to acquire the assets and operations of a financial technology business, and entered into agreements to acquire three small registered broker dealers as part of these initiatives.

Our company, based in Salt Lake City, Utah, was founded in 1997. We launched our initial website in March 1999 and were re-incorporated in Delaware in 2002. Our Website and our mobile app offer our customers an opportunity to shop for bargains conveniently, while offering our suppliers an alternative inventory liquidation or sales channel. We continually add new, and sometimes limited, inventory to our Website. We seek to compete primarily with low prices, a wide assortment, particularly of furniture and home furnishings, and outstanding customer service. We sell products primarily in the United States.

We have two operating segments, direct and partner. Our direct business includes sales made to individual consumers and businesses, from our owned inventory and that are fulfilled primarily from our warehouse in Salt Lake City, Utah. For our partner business, we sell merchandise of other retailers, cataloguers or manufacturers ("partners") primarily through our Website. We are considered to be the primary obligor for the majority of these sales transactions and we record revenue from the majority of these sales transactions on a gross basis. Our use of the term "partner" does not mean that we have formed any legal partnerships with any of our partners.

As used herein, "Overstock," "Overstock.com," "O.co," "we," "our" and similar terms include Overstock.com, Inc. and its subsidiaries, unless the context indicates otherwise.

Executive Commentary

This executive commentary is intended to provide investors with a view of our business through the eyes of our management. As an executive commentary, it necessarily focuses on selected aspects of our business. This executive commentary is intended as a supplement to, but not a substitute for, the more detailed discussion of our business included elsewhere herein. Investors are cautioned to read our entire "Management's Discussion and Analysis of Financial Condition and Results of Operations," as well as our interim and audited financial statements, and the discussion of our business and risk factors and other information included elsewhere or incorporated in this report. This executive commentary includes forward-looking statements, and investors are cautioned to read "Special Cautionary Note Regarding Forward-Looking Statements."

Revenues in Q3 2015 increased 11% compared to Q3 2014. The growth in revenue was primarily due to a 9% increase in orders, coupled with a 2% increase in average order size, from \$180 to \$183. Although our average order size has increased in recent years, we expect the rate of increase to lessen as our sales mix shift into home and garden products becomes fully realized. In addition, the percentage of revenue we defer from orders taken but not delivered was less due to the timing of quarter end. These increases were partially offset by increased promotional activities including coupons, site sales, and Club O Rewards (which we recognize as a reduction of revenue) due to our driving a higher proportion of our sales using such promotions.

We are experiencing some slowing of our overall revenue growth which we believe is due in part to changes that Google made in its natural search engine algorithms, to which we are responding. While we work to adapt to Google's changes, we are increasing our emphasis on other marketing channels, such as sponsored search and display ad marketing, which are generating revenue growth but with higher associated marketing expenses than natural search.

We also believe that an industry-wide decline in market demand in non-home categories began this summer and spread to the home category at the end of the summer home buying season.

Our Club O loyalty program is becoming increasingly significant to our revenues and we believe the long-term value of Club O members is significantly higher to us than non-Club O members. We recently enhanced the program by adding a two-tiered structure that includes our current standard Club O paid membership, which is now called Club O Gold, and an introductory membership, called Club O Silver, for customers who agree to receive promotional emails. In Q3 2015, we transitioned a significant number of customers into the Club O Silver program and began to shift coupon offers into Club O rewards. We believe that the shift from coupons to rewards will benefit us in the long-term, but we have experienced some difficulties with the transition, and in the short-term it is slowing our revenue growth as customers become accustomed to this change. We are continuing to test and refine our approach in this transition.

Gross profit in Q3 2015 increased 8% compared to Q3 2014 primarily as a result of revenue growth. Gross margin decreased to 18.5% in Q3 2015 compared to 19.0% in Q3 2014. The decrease in gross margin was primarily due to increased promotional activities including coupons, site sales, and Club O Rewards (which we recognize as a reduction of revenue) due to our driving a higher proportion of our sales using such promotions, partially offset by a continued shift in sales mix into higher margin home and garden products.

Sales and marketing expenses as a percentage of revenue increased from 7.2% to 7.7% during Q3 2015 as compared to Q3 2014, primarily due to increased spending in the sponsored search and display ad marketing channels, in part in response to changes we believe that Google made in its natural search engine algorithms.

As a result of these factors, we had a 2% increase in Contribution in Q3 2015 compared to Q3 2014 (see Non-GAAP Financial Measures below for a reconciliation of Contribution to Gross Profit). Contribution margin was 10.8% for Q3 2015

and 11.8% for Q3 2014.

Technology expenses in Q3 2015 increased \$2.9 million compared to Q3 2014, primarily due to an increase in depreciation of \$1.7 million and an increase in staff-related costs of \$835,000.

General and administrative expense in Q3 2015 increased \$3.6 million compared to Q3 2014, primarily due to an increase of \$1.7 million in legal costs, a \$1.2 million increase in management consulting services, and a \$406,000 increase in staff and travel related costs. These increases in general and administrative expenses include acquisition related transaction costs of \$754,000.

In Q3 2015, our majority-owned subsidiary Medici (dba tØ.com) entered into agreements to acquire the assets and business of a financial technology company and three related registered broker-dealers for approximately \$30.3 million as part of its initiatives to develop a digital securities trading system. Medici closed on the acquisition of one of the companies while the others remain subject to regulatory approval. We recognized \$754,000 in transaction costs and \$354,000 in amortization of intangibles during Q3 2015 in connection with this acquisition.

We continue to seek opportunities for growth by expanding our sales and distribution footprint, through Medici's crypto-initiatives, and through other means, which may include the addition of one or more warehouses. As a result of these initiatives, we expect to continue to incur additional technology and G&A expenses, and may continue to make investments in other financial and technology companies. These expenses or investments may be material, and, coupled with the seasonality of our business, may lead to reduced income as compared to prior periods or to losses in some periods.

We are continuing the construction of our new corporate headquarters in Salt Lake City, Utah and we expect to complete the project in 2016. We estimate that the total project will cost approximately \$99 million and as of September 30, 2015 have spent approximately \$41 million toward the project. In connection with this project, we entered into a loan agreement in 2014 which provides for an approximately aggregate \$56 million credit facility consisting of a term loan and revolving loan facility. We began borrowing under the facility in October 2015. The construction project and related financing is discussed in further detail in the Liquidity and Capital Resources, Borrowings section below.

The balance of our Management's Discussion and Analysis of Financial Condition and Results of Operations provides further information about the matters discussed above and other important matters affecting our business.

Results of Operations

The following table sets forth our results of operations expressed as a percentage of total net revenue:

	Three months ended September 30,		Nine months ended September 30,	
	2015	2014	2015	2014
	(as a percentage of total net revenue)		(as a percentage of total net revenue)	
Revenue, net				
Direct	8.6 %	9.5 %	8.8%	10.2%
Partner	91.4	90.5	91.2	89.8
Total net revenue	100.0	100.0	100.0	100.0
Cost of goods sold				
Direct	8.2	8.3	8.1	9.0
Partner	73.3	72.7	73.1	72.2
Total cost of goods sold	81.5	81.0	81.2	81.1
Gross profit	18.5	19.0	18.8	18.9
Operating expenses:				
Sales and marketing	7.7	7.2	7.3	7.0
Technology	6.4	6.3	6.1	6.2
General and administrative	5.3	4.8	5.1	4.7
Total operating expenses	19.4	18.3	18.6	17.9
Operating income (loss)	(0.9)	0.7	0.2	1.0
Other income, (expense) net	0.2	(0.1)	0.2	0.1
Income (loss) before income taxes	(0.7)	0.6	0.4	1.1
Provision for income taxes	—	0.1	0.3	0.3
Consolidated net income (loss)	(0.7)%	0.5 %	0.1%	0.7%

Comparisons of Three Months Ended September 30, 2015 to Three Months Ended September 30, 2014, and Nine Months Ended September 30, 2015 to Nine Months Ended September 30, 2014

Revenue

The following table reflects our net revenues for the three and nine months ended September 30, 2015 and 2014 (in thousands):

	Three months ended September 30,				Nine months ended September 30,			
	2015	2014			2015	2014		
			\$ Change	% Change			\$ Change	% Change
Revenue, net								
Direct	\$ 33,621	\$ 33,592	\$ 29	0.1%	\$ 104,184	\$ 104,854	\$ (670)	(0.6)%
Partner	357,590	319,399	38,191	12.0	1,073,384	921,889	151,495	16.4
Total revenue, net	<u>\$ 391,211</u>	<u>\$ 352,991</u>	<u>\$ 38,220</u>	<u>10.8%</u>	<u>\$ 1,177,568</u>	<u>\$ 1,026,743</u>	<u>\$ 150,825</u>	<u>14.7 %</u>

The primary reason for increased total net revenue for the three months ended September 30, 2015, as compared to the same period in 2014, was a 9% increase in orders, coupled with a 2% increase in average order size, from \$180 to \$183. The primary reason for increased total net revenue for the nine months ended September 30, 2015, as compared to the same period in 2014, was a 12% increase in orders, coupled with a 4% increase in average order size, from \$174 to \$181. Although our average order size has increased in recent years, we expect the rate of increase to lessen as our sales mix shift into home and garden products becomes fully realized. These increases were partially offset by increased promotional activities including coupons, site sales, and Club O Rewards (which we recognize as a reduction of revenue) due to our driving a higher proportion of our sales using such promotions. For the three months ended September 30, 2015, the total net revenue increase was partially

due to decreases in the percentage of revenue we defer from orders taken but not delivered due to the timing of quarter end. For the nine months ended September 30, 2015, the total net revenue increase was partially offset by an increase in returns.

We are experiencing some slowing of our overall revenue growth which we believe is due in part to changes that Google made in its natural search engine algorithms, to which we are responding. While we work to adapt to Google's changes, we are increasing our emphasis on other marketing channels, such as sponsored search and display ad marketing, which are generating revenue growth but with higher associated marketing expenses than natural search.

We also believe that an industry-wide decline in market demand in non-home categories began this summer and spread to the home category at the end of the summer home buying season.

Our Club O loyalty program is becoming increasingly significant to our revenues and we believe the long-term value of Club O members is significantly higher to us than non-Club O members. We recently enhanced the program by adding a two-tiered structure that includes our current standard Club O paid membership, which is now called Club O Gold, and an introductory membership, called Club O Silver, for customers who agree to receive promotional emails. In Q3 2015, we transitioned a significant number of customers into the Club O Silver program and began to shift coupon offers into Club O rewards. We believe that the shift from coupons to rewards will benefit us in the long-term, but we have experienced some difficulties with the transition, and in the short-term it is slowing our revenue growth as customers become accustomed to this change. We are continuing to test and refine our approach in this transition. For additional information regarding our Club O loyalty program see Item 1 of Part I, "Financial Statements (Unaudited)"—Note 2. Accounting Policies, *Club O loyalty program*.

The primary reason for increased direct revenue for the three months ended September 30, 2015, as compared to the same period in 2014, was an increase in sales of home and garden products, partially offset by increased promotional activities including coupons, site sales, and Club O Rewards (which we recognize as a reduction of revenue) due to our driving a higher proportion of our sales using such promotions. The primary reason for decreased direct revenue for the nine months ended September 30, 2015, as compared to the same period in 2014, was increased promotional activities including coupons, site sales, and Club O Rewards (which we recognize as a reduction of revenue) due to our driving a higher proportion of our sales using such promotions, and by an increase in returns.

The increase in partner revenue for the three months ended September 30, 2015, as compared to the same period in 2014, was primarily due to an increase in sales of home and garden products. In addition, the percentage of revenue we defer from orders taken but not delivered was less due to the timing of quarter end. These increases were partially offset by increased promotional activities including coupons, site sales, and Club O Rewards (which we recognize as a reduction of revenue) due to our driving a higher proportion of our sales using such promotions. The increase in partner revenue for the nine months ended September 30, 2015, as compared to the same period in 2014, was primarily due to an increase in sales of home and garden products, partially offset by an increased promotional activities including coupons, site sales, and Club O Rewards (which we recognize as a reduction of revenue) due to our driving a higher proportion of our sales using such promotions, and by an increase in returns.

The shift of business from direct to partner (or vice versa) is a result of the economics of each particular product offering at the time of sale and we generally do not have particular goals for an "appropriate" mix or percentage for the size of either. We believe that the mix of the business between direct and partner is consistent with our strategic objectives for our business model in the current economic environment. The trend of partner sales increasing as a percentage of our total sales has continued in recent periods. We do not know whether this trend will continue.

The product lines we offer, and their respective percentages of our revenue, are based on many factors including customer demand, our marketing efforts, promotional pricing and joint-marketing offered by our suppliers, and the types of liquidation inventory we are able to obtain. These factors change frequently and affect the mix of the product lines we sell. While we have experienced a trend toward our home and garden category in recent years, our business model is to deal primarily in price-competitive replenishable and closeout merchandise, which includes a wide variety of product offerings. While we do not currently expect any material shifts in our product line mix, the amount of the product lines we sell is an economic result of the factors described above, which may change from time to time.

International sales were less than 2% of total net revenues for the three and nine months ended September 30, 2015 and 2014.

Change in estimate of average transit times (days)

Revenue related to merchandise sales is recognized upon delivery to our customers. As we ship high volumes of packages through multiple carriers, it is not practical for us to track the actual delivery date of each shipment. Therefore, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times. We review and update our estimates on a quarterly basis based on our actual transit time experience. However, actual shipping times may differ from our estimates.

The following table shows the effect that hypothetical changes in the estimate of average shipping transit times would have had on the reported amount of revenue and pre-tax income for the three months ended September 30, 2015 (in thousands):

Change in the Estimate of Average Transit Times (Days)	Three Months Ended September 30, 2015	
	Increase (Decrease) Revenue	Increase (Decrease) Pre-Tax Income
2	\$ (8,657)	\$ (1,157)
1	\$ (4,160)	\$ (556)
As reported	As reported	As reported
-1	\$ 8,971	\$ 1,163
-2	\$ 14,842	\$ 1,948

See “Executive Commentary” above for additional discussion regarding revenue.

Gross profit and gross margin

Our overall gross margins fluctuate based on our sales volume mix between our direct business and partner business; changes in supplier cost and / or sales price; competitive pricing; inventory management decisions within the direct business; sales coupons and promotions; product mix of sales; and operational and fulfillment costs.

The following table reflects our net revenues, cost of goods sold and gross profit for the three and nine months ended September 30, 2015 and 2014 (in thousands):

	Three months ended September 30,		\$ Change	% Change	Nine months ended September 30,		\$ Change	% Change
	2015	2014			2015	2014		
Revenue, net								
Direct	\$ 33,621	\$ 33,592	\$ 29	0.1 %	\$ 104,184	\$ 104,854	\$ (670)	(0.6)%
Partner	357,590	319,399	38,191	12.0	1,073,384	921,889	151,495	16.4
Total net revenue	\$ 391,211	\$ 352,991	\$ 38,220	10.8 %	\$ 1,177,568	\$ 1,026,743	\$ 150,825	14.7 %
Cost of goods sold								
Direct	\$ 31,989	\$ 29,385	\$ 2,604	8.9 %	\$ 95,751	\$ 91,955	\$ 3,796	4.1 %
Partner	286,771	256,548	30,223	11.8	860,272	741,109	119,163	16.1
Total cost of goods sold	\$ 318,760	\$ 285,933	\$ 32,827	11.5 %	\$ 956,023	\$ 833,064	\$ 122,959	14.8 %
Gross Profit								
Direct	\$ 1,632	\$ 4,207	\$ (2,575)	(61.2)%	\$ 8,433	\$ 12,899	\$ (4,466)	(34.6)%
Partner	70,819	62,851	7,968	12.7	213,112	180,780	32,332	17.9
Total gross profit	\$ 72,451	\$ 67,058	\$ 5,393	8.0 %	\$ 221,545	\$ 193,679	\$ 27,866	14.4 %

Gross margins for the past seven quarterly periods and fiscal year ending 2014 were:

	Q1 2014	Q2 2014	Q3 2014	Q4 2014	FY 2014	Q1 2015	Q2 2015	Q3 2015
Direct	13.0%	11.3%	12.5%	12.5%	12.3%	10.0%	9.3%	4.9%
Partner	19.5%	19.7%	19.7%	18.7%	19.3%	19.8%	19.9%	19.8%
Combined	18.8%	18.8%	19.0%	18.2%	18.6%	18.9%	19.0%	18.5%

The 767 basis point decrease in direct gross margin for the three months ended September 30, 2015, as compared to the same period in 2014, was primarily due to increased warehousing costs due to additional warehouse space, increased product costs as a percentage of revenue due to pricing initiatives, increased liquidation activities and increased promotional activities including coupons, site sales, and Club O Rewards (which we recognize as a reduction of revenue) due to our driving a higher proportion of our sales using such promotions. These factors were partially offset by decreased freight costs.

The 421 basis point decrease in direct gross margin for the nine months ended September 30, 2015, as compared to the same period in 2014, was primarily due to increased warehousing costs due to additional warehouse space, increased promotional activities including coupons, site sales, and Club O Rewards (which we recognize as a reduction of revenue) due to our driving a higher proportion of our sales using such promotions, increased product costs as a percentage of revenue due to pricing initiatives and increased liquidation activities. These factors were partially offset by decreased freight costs.

The 13 basis point increase in partner gross margin for the three months ended September 30, 2015, and the 24 basis point increase in partner gross margin for the nine months ended September 30, 2015, as compared to the same periods in 2014, were primarily due to a continued shift in sales mix into higher margin home and garden products, partially offset by increased promotional activities including coupons, site sales, and Club O Rewards (which we recognize as a reduction of revenue) due to our driving a higher proportion of our sales using such promotions.

We do not expect the sales mix shift to home and garden products to continue at the same rate in the future as in recent years.

Cost of goods sold includes stock-based compensation expense of \$52,000 and \$45,000 for the three months ended September 30, 2015 and 2014, respectively, and \$129,000 and \$130,000 for the nine months ended September 30, 2015 and 2014, respectively.

See “Executive Commentary” above for additional discussion.

Fulfillment costs

Fulfillment costs include all warehousing costs, including fixed overhead and variable handling costs (excluding packaging costs), as well as credit card fees and customer service costs, all of which we include as costs in calculating gross margin. We believe that some companies in our industry, including some of our competitors, account for fulfillment costs within operating expenses, and therefore exclude fulfillment costs from gross margin. As a result, our gross margin may not be directly comparable to others in our industry.

The following table has been included to provide investors additional information regarding our classification of fulfillment costs, gross profit and margin, thus enabling investors to better compare our gross margin with others in our industry (in thousands):

	Three months ended September 30,				Nine months ended September 30,			
	2015		2014		2015		2014	
Total revenue, net	\$	391,211	100%	\$	352,991	100%	\$	1,177,568
Cost of goods sold								
Product costs and other cost of goods sold		301,164	77%		270,219	77%		903,720
Fulfillment and related costs		17,596	4%		15,714	4%		52,303
Total cost of goods sold		318,760	81%		285,933	81%		956,023
Gross profit	\$	72,451	19%	\$	67,058	19%	\$	221,545

Fulfillment costs as a percentage of sales may vary due to several factors, such as our ability to manage costs at our warehouses, significant changes in the number of units received and fulfilled, the extent to which we use third party fulfillment services and warehouses, and our ability to effectively manage customer service costs and credit card fees. Fulfillment and related costs remained relatively flat during the three and nine months ended September 30, 2015 as compared to the same periods in 2014.

See “Gross profit” above for additional discussion.

Operating expenses

Sales and marketing expenses

We use a variety of methods to target our consumer audience, including online campaigns, such as advertising through keywords, product listing ads, display ads, search engines, affiliate marketing programs, social coupon websites, portals, banners, e-mail, direct mail and viral and social media campaigns. We also do brand advertising through television, radio, print ads, and event sponsorships.

The following table reflects our sales and marketing expenses for the three and nine months ended September 30, 2015 and 2014 (in thousands):

	Three months ended September 30,				Nine months ended September 30,			
	2015	2014	\$ Change	% Change	2015	2014	\$ Change	% Change
Sales and marketing expenses	\$ 30,062	\$ 25,428	\$ 4,634	18.2%	\$ 86,121	\$ 72,363	\$ 13,758	19.0%
Sales and marketing expenses as a percent of net revenues	7.7%	7.2%			7.3%	7.0%		

The 48 basis point increase in sales and marketing expenses as a percentage of revenue for the three months ended September 30, 2015, as compared to the same period in 2014, was primarily due to increased spending in the sponsored search and display ad marketing channels, in part in response to changes we believe that Google made in its natural search engine algorithms.

The 27 basis point increase in sales and marketing expenses as a percentage of revenue for the nine months ended September 30, 2015, as compared to the same period in 2014, was primarily due to increased spending in the display ad and brand advertising marketing channels, partially offset by decreased staff-related costs.

Sales and marketing expenses include stock-based compensation expense of \$50,000 and \$77,000 for the three months ended September 30, 2015 and 2014, respectively and \$140,000 and \$255,000 for the nine months ended September 30, 2015 and 2014, respectively.

Costs associated with our discounted shipping and other promotions, such as coupons, are not included in marketing expense. Rather, they are accounted for as a reduction of revenue and therefore affect sales and gross margin. We consider discounted shipping and other promotions, such as our policy of free shipping on orders over \$50, as an effective marketing tool, and intend to continue to offer them as we deem appropriate as part of our overall marketing plan.

Technology expenses

We seek to invest efficiently in technology, including web services, customer support solutions, website search, expansion of new and existing product categories, and in investments in technology to enhance the customer experience, improve our process efficiency and support and expand our logistics infrastructure. We expect to continue to increase our technology expenses to support these initiatives and these increases may be material.

We have experienced an increase in the frequency and variety of cyber attacks on our Website. The impact of these attacks, their costs, and the costs incurred to protect our Website against future attacks have not been material. However, we consider the threat from cyber attacks to be serious and will continue to incur costs relating to them.

The following table reflects our technology expenses for the three and nine months ended September 30, 2015 and 2014 (in thousands):

	Three months ended September 30,		\$ Change	% Change	Nine months ended September 30,		\$ Change	% Change
	2015	2014			2015	2014		
Technology expenses	\$ 25,084	\$ 22,202	\$ 2,882	13.0%	\$ 72,230	\$ 63,211	\$ 9,019	14.3%
Technology expenses as a percent of net revenues	6.4%	6.3%			6.1%	6.2%		

The \$2.9 million increase in technology costs for the three months ended September 30, 2015, as compared to the same period in 2014, was primarily due to an increase in depreciation of \$1.7 million and an increase in staff-related costs of \$835,000.

The \$9.0 million increase in technology costs for the nine months ended September 30, 2015, as compared to the same period in 2014, was primarily due to an increase in depreciation of \$4.8 million, an increase in staff-related costs of \$3.4 million, and increased licensing and support costs of \$1.3 million.

We continue to seek opportunities for growth by expanding our sales and distribution footprint, through Medici's crypto-initiatives, and through other means, which may include the addition of one or more warehouses. As a result of these initiatives, we expect to continue to incur additional technology and G&A expenses, and may continue to make investments in other financial and technology companies. These expenses or investments may be material, and, coupled with the seasonality of our business, may lead to reduced income as compared to prior periods or to losses in some periods.

Technology expenses include stock-based compensation expense of \$165,000 and \$183,000 for the three months ended September 30, 2015 and 2014, respectively and \$491,000 and \$550,000 for the nine months ended September 30, 2015 and 2014, respectively.

General and administrative expenses

The following table reflects our general and administrative expenses ("G&A") for the three and nine months ended September 30, 2015 and 2014 (in thousands):

	Three months ended September 30,		\$ Change	% Change	Nine months ended September 30,		\$ Change	% Change
	2015	2014			2015	2014		
General and administrative expenses	\$ 20,676	\$ 17,073	\$ 3,603	21.1%	\$ 60,639	\$ 48,250	\$ 12,389	25.7%
General and administrative expenses as a percent of net revenues	5.3%	4.8%			5.1%	4.7%		

The \$3.6 million increase in general and administrative expenses ("G&A") for the three months ended September 30, 2015, as compared to the same period in 2014, was primarily due to an increase of \$1.7 million in legal costs, a \$1.2 million increase in management consulting services, and a \$406,000 increase in staff and travel related costs.

The \$12.4 million increase in general and administrative expenses ("G&A") for the nine months ended September 30, 2015, as compared to the same period in 2014, was primarily due to an increase of \$4.3 million in staff and travel related costs, an increase in legal costs of \$3.1 million, an increase in management consulting services of \$3.0 million, and a \$1.0 million expense for a contract termination fee.

The increases in general and administrative expenses for the three and nine months ended September 30, 2015, as compared to the same periods in 2014, include acquisition related transaction costs of \$754,000.

G&A expenses include stock-based compensation expense of approximately \$572,000 and \$693,000 for the three months ended September 30, 2015 and 2014, respectively, and \$1.8 million and \$2.0 million for the nine months ended September 30, 2015 and 2014, respectively.

Depreciation expense

Depreciation expense is classified within the corresponding operating expense categories on the consolidated statements of operations as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2015	2014	2015	2014
Cost of goods sold - direct	\$ 73	\$ 61	\$ 206	\$ 217
Technology	5,875	4,356	16,331	11,752
General and administrative	665	284	1,290	837
Total depreciation and amortization, including internal-use software and website development	\$ 6,613	\$ 4,701	\$ 17,827	\$ 12,806

Other income

Other income (expense), net for the three months ended September 30, 2015 was \$764,000 as compared to (\$350,000) in 2014. The change is primarily due to increased Club O Rewards breakage of \$1.2 million due to increased participation in the Club O Rewards program, including our recently introduced Club O Silver program.

Other income, net for the nine months ended September 30, 2015 was \$2.5 million as compared to \$633,000 in 2014. The change is primarily due to increased Club O Rewards breakage of \$2.3 million due to increased participation in the Club O Rewards program, including our recently introduced Club O Silver program.

Because we recently introduced Club O Silver, and enrolled a significant number of Club O Silver members, reward dollars and resulting breakage may continue to increase as compared to prior periods.

Income taxes

Our provision for income taxes for the three months ended September 30, 2015 and 2014 was \$(15,000) and \$413,000, respectively. Our provision for income taxes for the nine months ended September 30, 2015 and 2014 was \$3.8 million and \$3.4 million, respectively. The effective tax rate for the nine months ended September 30, 2015 and 2014 was 73.5% and 31.4%, respectively. The increase in the effective tax rate is primarily attributable to losses in separate tax-filing subsidiaries where no benefit can be recognized at this time. The increase is also attributable to certain jurisdictions where no benefit can be recognized and to an increase in the valuation allowance related to the deferred tax asset for unrealized capital losses. We have indefinitely reinvested foreign earnings of \$232,000 at September 30, 2015. We would need to accrue and pay U.S. income tax on this amount if repatriated. We do not intend to repatriate these earnings.

We assess the available positive and negative evidence to estimate whether we will generate sufficient future taxable income to use the existing deferred tax assets. We consider, among other things, our recent historical financial and operating results (three years of cumulative income, fourteen of the last fifteen quarters of profitability, and revenue growth during those periods), along with our forecasted growth rates, projected future taxable income, including the impact of any costs associated with our recent acquisition, and tax planning strategies. We perform multiple sensitivity analyses to address how potential changes in significant assumptions would impact our ability to generate the minimum amount of taxable income required. We give the most weight to objective evidence related to our more recent financial results. Based upon the level of historical taxable income and projections for future taxable income, including the impact of any acquisition costs, and planned tax strategies over the periods in which the deferred tax assets are deductible, we believe it is more likely than not that we will realize the benefits of these deduction differences, net of existing valuation allowances. However, it is possible that certain state tax credits could ultimately expire unused if estimates of future apportioned taxable income during the carryforward period are reduced.

Seasonality

Based upon our historical experience, revenue typically increases during the fourth quarter because of the holiday retail season and gross margin decreases due to increased sales of certain lower margin products, such as electronics. The actual quarterly results for each quarter could differ materially depending upon consumer preferences, availability of product and competition, among other risks and uncertainties. Accordingly, there can be no assurances that seasonal variations will not materially affect our results of operations in the future.

The following table reflects our total net revenues for each of the quarters in 2015, 2014 and 2013 (in thousands):

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
2015	\$ 398,344	\$ 388,013	\$ 391,211	\$ N/A
2014	341,207	332,545	352,991	470,360
2013	311,994	293,204	301,426	397,593

Liquidity and Capital Resources

Current sources of liquidity

Subject to our need for additional financing for a portion of the anticipated costs of completing our new corporate headquarters as described below, we believe that the cash and cash equivalents currently on hand and expected cash flows from future operations will be sufficient to continue operations for at least the next twelve months. However, we may require additional financing for the completion of the new corporate headquarters and related equipment and furniture. Although we are attempting to obtain additional financing, there can be no assurance that we will be able to do so, or that any financing available will be available on satisfactory terms. Our failure to generate sufficient revenues or profits or to obtain additional financing or raise additional capital could have a material adverse effect on our operations and on our ability to achieve our intended business objectives. Any projections of future cash needs and cash flows are subject to substantial uncertainty.

As we have previously announced, we are building a new corporate headquarters in Salt Lake City, Utah. We currently estimate the total cost of the headquarters, including the cost of the land and related equipment and furniture, at approximately \$99 million. We have spent approximately \$41 million toward the project as of September 30, 2015. In 2014, we entered into a syndicated senior secured credit facility with U.S. Bank National Association and other banks which provides for an approximately 27-month construction loan of \$45.8 million (which is designed to subsequently convert into an approximately 6.75-year term loan following completion of the construction of the headquarters), and a three-year \$10 million revolving loan facility that terminates on October 24, 2017 but may be renewed with the consent of all lenders. The revolving loan facility may be used for working capital, capital expenditures and other corporate purposes, but may not be used for the construction of the headquarters. In October 2015, we received our first loan draw under the construction loan.

The actual amount of financing to be available under the construction loan facility will be limited by a loan-to-value limit of 80% based on periodic appraisals. We have the right to prepay either loan without penalty at any time. If the conditions to the conversion of the construction loan into the term loan are not satisfied in early 2017, both the construction loan and the revolver would become due immediately. This would have a material adverse effect on our liquidity. For additional information, see *Borrowings - U.S. Bank term loan and revolving loan agreement* below.

We are in discussions with banks regarding additional financing for equipment and furniture for our new corporate headquarters, however no definitive agreements have yet been reached.

Medici is working to demonstrate the viability of a digital securities trading system that it is developing. In June 2015, we issued a \$500,000 privately-placed digital "cryptobond" to our Chief Executive Officer, Dr. Patrick Byrne, in exchange for cash. During July 2015, we issued an additional privately-placed digital cryptobond to an unaffiliated purchaser for \$5.0 million in cash and concurrently made a \$5.0 million loan to the purchaser. We intend to repay the \$5.5 million in digital cryptobond debt sometime after November 1, 2015, but prior to December 31, 2015, and will offset that repayment with the proceeds of our \$5.0 million loan. These transactions are described in further detail in the *Borrowings - Cryptobonds* section below.

Our principal sources of liquidity are cash flows generated from operations, and our existing cash and cash equivalents. At September 30, 2015, we had cash and cash equivalents of \$81.3 million.

Cash flow information is as follows (in thousands):

	Nine months ended September 30,		Twelve months ended September 30,	
	2015	2014	2015	2014
Cash provided by (used in):				
Operating activities	\$ (36,400)	\$ (496)	\$ 44,930	\$ 69,365
Investing activities	(66,239)	(32,936)	(77,733)	(39,153)
Financing activities	2,266	(2,493)	1,331	(2,334)

Free cash flow

“Free Cash Flow” (a non-GAAP measure) for the nine months ended September 30, 2015 and 2014, was \$(79.8) million and \$(33.0) million, respectively, and \$(7.3) million and \$32.7 million for the twelve months ended September 30, 2015 and 2014, respectively. See *Non-GAAP Financial Measures* below for a reconciliation of Free Cash Flow to net cash provided by (used in) operating activities.

Cash flows from operating activities

For the nine months ended September 30, 2015 and 2014, our operating activities resulted in net cash outflows of \$36.4 million and \$496,000, respectively.

Cash received from customers generally corresponds to our net revenues as our customers primarily use credit cards to buy from us causing our receivables from these sales transactions to settle quickly. We have payment terms with our partners that generally extend beyond the amount of time necessary to collect proceeds from our customers. As a result, following our typically seasonally strong fourth quarter sales, at December 31 of each year, our cash, cash equivalents, accounts payable and accrued liability balances normally reach their highest level (other than as a result of cash flows provided by or used in investing and financing activities). However, our accounts payable and accrued liability balances normally decline during the first three months following year-end, which normally results in a decline in our cash and cash equivalents balances from the year-end balance. The seasonality of our business causes payables and accruals to grow significantly in the fourth quarter, and then decrease in the first quarter when they are typically paid.

The \$36.4 million of net cash used in operating activities during the nine months ended September 30, 2015 was primarily due to decreases in accounts payable of \$47.3 million, accrued liabilities of \$17.8 million, prepaids and other assets of \$3.8 million and deferred revenue of \$3.3 million. Accounts payable, accrued liabilities and deferred revenue decreased due to seasonality which caused high balances at year-end 2014 and a significant decline during 2015. The net cash used by operating activities during the nine months ended September 30, 2015 was partially offset by non-cash depreciation and amortization expense of \$17.8 million, deferred income taxes of \$3.5 million, and a decrease in inventories of \$3.0 million.

The \$496,000 of net cash used by operating activities during the nine months ended September 30, 2014 was due to decreases in accounts payable of \$27.5 million and accrued liabilities of \$3.2 million, and increase in prepaids and other assets of \$3.5 million. Accounts payable increased in Q4 2013 due to increased sales and in part due to the timing of key holiday sales. In 2013, the holiday sales season began later than in previous years, and as a result some of our payments to our suppliers for holiday sales were due in January 2014 rather than in December 2013. This caused a significant increase in accounts payable during Q4 2013 and a significant decrease in accounts payable during Q1 2014. Accrued liabilities increased during Q4 2013 due to the timing of some invoices related to marketing expenses and legal matters which were paid in Q1 2014. The net cash used by operating activities during the nine months ended September 30, 2014 was partially offset by non-cash depreciation and amortization expense of \$12.8 million, net income of \$7.5 million, an increase in deferred revenue of \$3.3 million, stock-based compensation of \$2.9 million and deferred income taxes of \$2.9 million.

Cash flows from investing activities

For the nine months ended September 30, 2015 investing activities resulted in net cash outflows of \$66.2 million primarily due to \$43.4 million of expenditures for fixed assets, \$10.6 million of acquisitions of businesses, and \$7.0 million in cost method investments and \$5.0 million of disbursements for loans made.

For the nine months ended September 30, 2014 investing activities resulted in net cash outflows of \$32.9 million and resulting primarily from expenditures for fixed assets. Included in cash outflows for expenditures of fixed assets during the nine months ended September 30, 2014 is our purchase of land for approximately \$11.0 million in connection with the construction of our corporate headquarters.

Cash flows from financing activities

For the nine months ended September 30, 2015 financing activities resulted in net cash inflows of \$2.3 million primarily due to \$5.5 million of proceeds from the issuances of privately-placed digital cryptobonds, offset by \$2.4 million of purchase of shares of our common stock withheld for minimum tax withholdings upon the vesting of a portion of certain restricted stock award grants.

The \$2.5 million used in financing activities during the nine months ended September 30, 2014 resulted primarily from \$2.3 million for the purchase of shares of our common stock withheld for minimum tax withholdings upon the vesting of a portion of certain restricted stock award grants.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of September 30, 2015 and the effect such obligations and commitments are expected to have on our liquidity and cash flow in future periods (in thousands):

Contractual Obligations	Payments Due by Period						
	Remainder of 2015	2016	2017	2018	2019	Thereafter	Total
Operating leases	\$ 3,004	\$ 10,233	\$ 5,890	\$ 5,498	\$ 5,331	\$ 28,521	\$ 58,477
Naming rights	—	1,391	—	—	—	—	1,391
Purchase obligations	5,488	670	—	—	—	—	6,158
Technology, marketing and other services	609	2,118	—	—	—	—	2,727
Headquarters construction costs	16,422	41,782	208	—	—	—	58,412
U.S. Bank term loan payments	77	1,630	3,137	3,181	3,128	49,547	60,700
Cryptobond redemption	5,500	—	—	—	—	—	5,500
Total contractual cash obligations (1)	<u>\$ 31,100</u>	<u>\$ 57,824</u>	<u>\$ 9,235</u>	<u>\$ 8,679</u>	<u>\$ 8,459</u>	<u>\$ 78,068</u>	<u>\$ 193,365</u>

(1) As described below under "U.S. Bank Term Loan Payments," \$45.8 million of the payments shown here is duplicative. See *U.S. Bank term loan payments* below.

Other Commercial Commitments	Amounts of Commitment Expiration Per Period						
	2015	2016	2017	2018	2019	Thereafter	Total
Letters of credit	\$ 505	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 505

Operating leases

From time to time we enter into operating leases for facilities and equipment for use in our operations.

Naming rights

During 2011, we entered into a six-year agreement with the Oakland-Alameda County Coliseum Authority ("OACCA") for the right to name Oakland Alameda County Coliseum (now known as "O.co Coliseum"). Amounts represent annual payments due OACCA for the naming rights. We have the right to terminate this agreement at our sole option, subject to payment of a termination fee.

Purchase obligations

The amount of purchase obligations shown above is based on assumptions regarding the legal enforceability against us of inventory purchase orders we had outstanding at September 30, 2015. Under different assumptions regarding our rights to cancel our purchase orders or different assumptions regarding the enforceability of the purchase orders under applicable law, the amount of purchase obligations shown in the table above would be less.

Technology, marketing and other services

From time to time we enter into long-term contractual agreements for technology, marketing or other services.

Headquarters construction costs

We have entered into various agreements under which we have incurred obligations relating to our plans to build an approximately 225,000 square foot building in Salt Lake City, Utah, to serve as our corporate headquarters, together with related facilities and improvements (collectively, the "Project"). We expect the total Project costs to be approximately \$99 million. At September 30, 2015 we had funded approximately \$41 million toward the project, including approximately \$11 million we paid to purchase the land. Our obligations include payments to become due under the Construction Agreement described below, and under engineering, architectural, project management and consulting agreements, as well as anticipated expenditures for fixed assets and various other anticipated obligations related to the Project. These costs are based on our current estimates; however, the costs we actually incur, the amounts we actually pay and the timing of the actual payments could vary significantly from these estimates.

U.S. Bank term loan payments

We have entered into a financing agreement related to the Project (see *Borrowings* below). The amounts presented reflect our estimated payments of principal and interest based on our anticipated draws on the loan. The timing and amount of our draws on the loan could vary significantly from these estimates. Further, \$45.8 million of the amounts shown in the row titled "U.S. Bank term loan payments" reflect the scheduled repayment of the financing of \$45.8 million of costs shown in the row titled "Headquarters construction costs."

Construction agreement

We estimate the total cost of building our corporate headquarters, including the land and related equipment and furniture, at approximately \$99 million. Our wholly owned subsidiary O.com Land is party to a construction agreement (the "Construction Agreement") with Okland Construction Company Inc. ("Okland") regarding preconstruction and construction services to be provided by Okland in connection with the construction of the Project.

In accordance with the Project Milestones as described in the Construction Agreement, Okland is required to Substantially Complete the Work (as such term is defined in the Construction Agreement) within 100 weeks following the commencement of the Construction Phase (as defined in the Construction Agreement) subject to modification under certain circumstances. Pursuant to the Construction Agreement, O.Com Land agreed to make progress payments to Okland for construction services as set forth in the Construction Agreement, and subject to a 5% retention on progress payments for the Work.

Cryptobonds

During Q2 2015, as part of the digital securities trading system that Medici is developing, we issued a \$500,000 privately-placed digital "cryptobond" to our Chief Executive Officer, Dr. Patrick Byrne, in exchange for cash. During July 2015 we issued an additional privately-placed digital cryptobond to an unaffiliated purchaser for \$5.0 million in cash and concurrently made a \$5.0 million loan to the purchaser. We intend to repay the \$5.5 million in digital cryptobond debt sometime after November 1, 2015, but prior to December 31, 2015, and will offset that repayment with the proceeds of our \$5.0 million loan. These transactions are described in further detail in the *Borrowings - Cryptobonds* section below.

Tax contingencies

We are involved in various tax matters, in which some of the outcomes are uncertain. As of September 30, 2015 and December 31, 2014, tax contingencies were \$776,000 and \$709,000, respectively. We expect the total amount of tax

contingencies to increase in the future. In addition, changes in state, federal, and foreign tax laws may increase our tax contingencies. The timing of the resolution of income tax examinations is highly uncertain, and the amounts ultimately paid, if any, upon resolution of the issues raised by the taxing authorities may differ from the amounts accrued. While it is reasonably possible that within the next 12 months we will receive additional assessments by various tax authorities or reach resolution of income tax examinations in one or more jurisdictions, we do not anticipate that we will make any payments to such authorities during that period. These assessments or settlements may or may not result in changes to our contingencies related to positions on prior years' tax filings.

Borrowings

U.S. Bank term loan and revolving loan agreement

In October 2014, we entered into a syndicated senior secured credit facility (the "Facility") with U.S. Bank National Association ("U.S. Bank" or the "Administrative Bank") and certain other banks in connection with the construction of our new corporate headquarters (the "Project"). The Facility is governed by a Loan Agreement dated as of October 24, 2014 which provides for an aggregate credit amount of \$55.8 million, consisting of (i) a senior secured real estate loan of \$45.8 million (the "Real Estate Loan") to be used to finance a portion of the Project and (ii) a three-year \$10.0 million senior secured revolving credit facility (the "Revolving Loan") for working capital and capital expenditures, but not for the Project. We must satisfy a number of conditions at least 60 days prior to any funding under the Facility, including making cash contributions of approximately \$37.4 million toward the Project, which we have done. In the future, we may also be required to make additional cash contributions if necessary to maintain a loan to value ratio of 80% or less. The Real Estate Loan and the Revolving Loan are both secured by the Project, our inventory and accounts receivable, substantially all of our deposit accounts and related assets. We began borrowing under the facility in October 2015.

On or about January 1, 2017, upon completion of the Project, the Real Estate Loan is designed to convert into an approximately 6.75-year term loan due October 1, 2023 (the "Term Loan"). The conditions to conversion of the Real Estate Loan to the Term Loan include, among others, requirements that the Project must have been completed in accordance with the applicable plans, paid for in full, and generally free of liens; completion must have been certified by the project architect and the inspecting architect; certificates of occupancy must have been issued; we must have paid all amounts then due to the lending banks and must be in compliance with the covenants under the Loan Agreement; the Real Estate Loan must be brought "in balance" as defined in the Loan Agreement, which may require us to contribute additional cash to the Project; we must have paid the final amount of our cash contribution as required by the Loan Agreement; and if required by the Administrative Bank, an updated appraisal must show that the Project is in compliance with an 80% loan to value ratio requirement. If the conditions to conversion are not satisfied in early 2017, all amounts outstanding under the Facility will become immediately due and payable.

Amounts outstanding under the Real Estate Loan and the Term Loan will carry an interest rate based on one-month LIBOR plus 2.00% or an Alternate Base Rate plus 1.00%. However, we have entered into interest rate swap agreements designed to fix our interest rate on the Real Estate Loan and the Term Loan at approximately 4.6% annually (see *Derivative financial instruments* in Note 2. Accounting Policies). Monthly payments of interest only will be due and payable on the Real Estate Loan prior to conversion. Following conversion, we are required to make monthly payments of principal estimated to be \$1.1 million annually plus interest, with a balloon payment of all unpaid principal (estimated to be \$38.0 million) and interest on October 1, 2023. Amounts outstanding under the Revolving Loan will carry an interest rate based on LIBOR plus 2.00% or an Alternate Base Rate plus 1.00%.

We are required to maintain compliance as of the end of each calendar quarter beginning with the quarter ending December 31, 2014 with the following financial covenants:

- a fixed charge coverage ratio on a trailing 12-month basis of no less than 1.15 to 1.00;
- a cash flow leverage ratio on a trailing 12-month basis not greater than 3.00 to 1.00 during the Construction Phase (as defined in the Loan Agreement);
- a cash flow leverage ratio not greater than 2.50 to 1.00 following the Construction Phase; and
- minimum liquidity of at least \$50.0 million.

At September 30, 2015 we were in compliance with the financial covenants. In addition to the financial covenants described above, we are required to comply with a number of covenants relating to the Project and our business, including covenants limiting certain indebtedness. Notwithstanding, the Loan Agreement permits us to incur up to \$20.0 million of

additional senior-secured indebtedness for equipment financing, and other senior-secured indebtedness provided that the aggregate principal amount of such other senior-secured indebtedness does not exceed ten percent of our consolidated assets. The Loan Agreement includes customary events of default in addition to events of default relating specifically to the Project. The Real Estate Loan and the Revolving Loan are cross-defaulted and cross-collateralized. In the event of a default, the default rate of interest would be 2.00% above the otherwise applicable rate. Unless it terminates earlier or is extended with the consent of the Administrative Bank and all of the Banks, the Revolving Loan facility will terminate on October 24, 2017.

We had not borrowed any amounts under either the Real Estate Loan or the Revolving Loan as of September 30, 2015. We began borrowing under the Real Estate Loan in October 2015.

Cryptobonds

In June 2015, as part of an initial demonstration of the digital securities trading system our majority-owned subsidiary Medici is working to develop, our Chief Executive Officer, Dr. Patrick M. Byrne purchased a \$500,000 privately-placed digital “cryptobond” from us for \$500,000 in cash. The terms of the bond include a fixed annual interest rate of 7.0%, and put and call rights that allow us to redeem the debt at 105.0% of the principal amount, and allow the holder to require us to repurchase the debt at 102.5% of the principal amount, in each case at any time after November 1, 2015. Because we intend to redeem this bond within the next year, this bond is included in Other current liabilities in the accompanying consolidated balance sheets. The initial terms of this cryptobond were changed to match the terms of the cryptobond we issued in July 2015 described below. The impact of this change was not significant. Dr. Byrne has waived his right to receive any prepayment premium to which he would otherwise have been entitled.

In July 2015, as an additional step in demonstrating the viability of the digital securities trading system Medici is developing, we issued additional privately-placed digital cryptobond debt to an unaffiliated purchaser for \$5.0 million in cash and concurrently made a \$5.0 million loan to the purchaser. The debt we issued to the unaffiliated purchaser has a 7.0% annual interest rate and is subject to put and call rights that allow us to redeem the debt at 105.0% of the principal amount, and allow the holder to require us to repurchase the debt at 102.5% of the principal amount, in each case at any time after November 1, 2015. The purchaser also has the right to require us to repurchase the debt prior to November 2, 2015 at 96.0% of the principal amount. The \$5.0 million loan we made to the purchaser has a 3.0% annual interest rate, resulting in an effective net interest rate payable by us to the purchaser of the \$5.0 million digital cryptobond debt of 4.0%. Both instruments have 5-year terms. The terms of our loan to the purchaser require repayment of the loan concurrently with the repayment of the digital cryptobond debt, whether at maturity or pursuant to the exercise of the put or call features. We issued the \$5.0 million digital cryptobond debt for the purpose of further demonstrating the viability of the digital securities trading system Medici is developing, and made the offsetting loan to the purchaser in order to demonstrate the trading system without the complications of a normal financing and to reduce the borrowing cost. We have the right and intention to offset any amount owed between us and the purchaser. We intend to repay the digital cryptobond debt sometime after November 1, 2015, but prior to December 31, 2015, and will offset that repayment with the proceeds of our \$5.0 million loan. At that time, we will amortize all of the unamortized debt issuance costs, and expect to incur the 5.0% cost associated with our right to put the debt to the holder.

U.S. Bank commercial purchasing card agreement

We have a commercial purchasing card (the “Purchasing Card”) agreement with U.S. Bank. We use the Purchasing Card for business purpose purchasing and must pay it in full each month. At September 30, 2015, \$1.0 million was outstanding and \$4.0 million was available under the Purchasing Card. At December 31, 2014, \$803,000 was outstanding and \$4.2 million was available under the Purchasing Card.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that would be material to investors.

Critical Accounting Policies and Estimates

The preparation of our financial statements requires that we make estimates and judgments. We base these on historical experience and on other assumptions that we believe to be reasonable. Our critical accounting policies are discussed in Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of our Annual

Report on Form 10-K for the year ended December 31, 2014, and our accounting policies and use of estimates are further discussed in Note 2 to the financial statements included in this Form 10-Q and elsewhere in this Management's Discussion and Analysis of Financial Condition and Results of Operations. During Q3 2015, we acquired certain intangible assets and we used preliminary estimates in our valuations of those assets which could change significantly as we finalize their valuations. Actual results could differ materially from those estimates. There have been no other material changes to the critical accounting policies previously disclosed in Annual Report on Form 10-K for the year ended December 31, 2014.

Non-GAAP Financial Measures

Regulation G, *Conditions for Use of Non-GAAP Financial Measures*, and other SEC regulations regulate the disclosure of certain non-GAAP financial information.

Contribution and Contribution Margin

Contribution (a non-GAAP financial measure which we reconcile to "Gross profit" in our consolidated statements of operations and our consolidated statements of comprehensive income (loss)) consists of gross profit less sales and marketing expense and reflects an additional way of viewing our results. Contribution Margin is Contribution as a percentage of revenues. When viewed together with our GAAP results, we believe Contribution and Contribution Margin provide management and users of the financial statements information about our ability to cover our operating costs, such as technology and general and administrative expenses. Contribution and Contribution Margin are used in addition to and in conjunction with results presented in accordance with GAAP and should not be relied upon to the exclusion of GAAP financial measures. You should review our financial statements and publicly-filed reports in their entirety and not rely on any single financial measure. The material limitation associated with the use of Contribution is that it is an incomplete measure of profitability as it does not include all operating expenses or non-operating income and expenses. Management compensates for these limitations when using this measure by looking at other GAAP measures, such as operating income and net income.

For further details on Contribution and Contribution Margin, see the calculation of these non-GAAP financial measures below (in thousands):

	Three months ended September 30,				Nine months ended September 30,			
	2015		2014		2015		2014	
Total net revenue	\$ 391,211	100%	\$ 352,991	100%	\$ 1,177,568	100%	\$ 1,026,743	100%
Cost of goods sold	318,760	81.5	285,933	81.0	956,023	81.2	833,064	81.1
Gross profit	72,451	18.5	67,058	19.0	221,545	18.8	193,679	18.9
Less: Sales and marketing expense	30,062	7.7	25,428	7.2	86,121	7.3	72,363	7.0
Contribution and contribution margin	\$ 42,389	10.8%	\$ 41,630	11.8%	\$ 135,424	11.5%	\$ 121,316	11.8%

Free cash flow

Free cash flow (a non-GAAP financial measure) reflects an additional way of viewing our cash flows and liquidity that, when viewed with our GAAP results, provides a more complete understanding of factors and trends affecting our cash flows and liquidity. Free cash flow, which we reconcile to "Net cash provided by (used in) operating activities," is net cash provided by operating activities reduced by "Expenditures for fixed assets, including internal-use software and website development." We believe that net cash provided by operating activities is an important measure, since it includes both the cash impact of the continuing operations of the business and changes in the balance sheet that impact cash. However, we believe free cash flow is a useful measure to evaluate our business since purchases of fixed assets are a necessary component of ongoing operations and free cash flow measures the amount of cash we have available for mandatory debt service and financing obligations, changes in our capital structure, and future investments after purchases of fixed assets. Therefore, we believe it is important to view free cash flow as a complement to our entire consolidated statements of cash flows as calculated below (in thousands):

	Nine months ended September 30,		Twelve months ended September 30,	
	2015	2014	2015	2014
Net cash (used in) provided by operating activities	\$ (36,400)	\$ (496)	\$ 44,930	\$ 69,365
Expenditures for fixed assets, including internal-use software and website development	(43,381)	(32,544)	(52,183)	(36,641)
Free cash flow	<u>\$ (79,781)</u>	<u>\$ (33,040)</u>	<u>\$ (7,253)</u>	<u>\$ 32,724</u>

Government Regulation

Our main business is subject to general business regulations and laws, as well as regulations and laws specifically governing the Internet, e-commerce and other services. Existing and future laws and regulations may result in increasing expense and may impede our growth. These regulations and laws may cover taxation, privacy, data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, environmental regulation, electronic contracts and other communications, competition, consumer protection, information reporting requirements, the design and operation of websites, and the characteristics and quality of products and services. New state tax regulations in states where we do not now collect state and local taxes may subject us to the obligation to collect and remit state and local taxes, or subject us to additional state and local sales and income taxes, or to requirements intended to assist states with their tax collection efforts. New legislation or regulations, the application of laws and regulations from jurisdictions whose laws do not currently apply to our business or the application of existing laws and regulations to the Internet and commercial online services could result in significant additional taxes on our business. These taxes or tax collection obligations could have an adverse effect on us. Further, there is a possibility that we may be subject to significant fines or other payments for any past failures to comply with these requirements. In addition, it is not clear how existing laws governing issues such as property ownership, libel, and personal privacy apply to the Internet, e-commerce and digital content. Laws and regulations may diminish the demand for our products and services and increase our cost of doing business. Certain of our services are subject to federal and state consumer protection laws, including laws protecting the privacy of consumer information and regulations prohibiting unfair and deceptive trade practices. In particular, under federal and state financial privacy laws and regulations, we must provide notice to consumers of our policies on sharing non-public information with third parties, advance notice of any changes to our policies and, with limited exceptions, we must give consumers the right to prevent sharing of their non-public personal information with unaffiliated third parties. Further, the growth and demand for online commerce could result in more stringent consumer protection laws that could impose additional compliance burdens on us. These consumer protection laws could result in substantial compliance costs.

In addition, the broker-dealers that Medici recently agreed to acquire are subject to additional extensive regulatory requirements under federal and state laws and regulations and self-regulatory organization (“SRO”) rules. Broker-dealers are subject to regulation, examination and disciplinary action by the SEC, FINRA and state securities regulators, as well as other governmental authorities and SROs with which they are registered or licensed or of which they are members. See Part II - Item 1A - “Risk Factors - We have entered into agreements to acquire registered broker-dealers, which are subject to extensive regulation.”

Our efforts to expand our sales outside of the U.S. expose us to additional U.S. and foreign laws and regulations, including but not limited to, laws and regulations relating to taxation, business licensing or certification requirements, advertising practices, online services, the use of cryptocurrency, the importation of specified or proscribed items, importation quotas, consumer protection, intellectual property rights, consumer and data protection, privacy, encryption, restrictions on pricing or discounts, and the U.S. Foreign Corrupt Practices Act and other applicable U.S. and foreign laws prohibiting corrupt payments to government officials and other third parties.

Factors that May Affect Future Results

As described above, subject to our need for additional financing for the completion of our future headquarters, we believe that the cash and cash equivalents currently on hand and expected cash flows from future operations will be sufficient to continue operations for at least the next twelve months. All projections of future cash needs and cash flows are subject to substantial uncertainty. See Item 1A of Part II, “Risk Factors.”

On May 5, 2015, our Board of Directors authorized a stock repurchase program under which we may repurchase shares of our outstanding common stock for up to \$25 million at any time through December 31, 2017. To date we have not

made any repurchases under this program. We periodically evaluate opportunities to sell additional equity or debt securities, obtain credit facilities, or repurchase common stock. Any sale of additional equity or convertible debt securities could be dilutive to our stockholders. In addition, we may, from time to time, consider the acquisition of, or investment in, complementary businesses, products, services, or technologies, any of which might affect our liquidity requirements or cause us to issue additional equity or debt securities. There can be no assurance that financing arrangements will be available in amounts or on terms acceptable to us, if at all.

Any investment in our securities involves a high degree of risk. Investors should consider carefully the risks and uncertainties described in this Form 10-Q, including the risks described in Item 1A of Part II ("Risk Factors") of this Form 10-Q, and all other information in this Form 10-Q and in our other filings with the SEC including those we file after we file this Form 10-Q, before deciding whether to purchase or hold our securities.

Additional risks and uncertainties not currently known to us or that we currently deem immaterial may also become important factors that may harm our business. The occurrence of any of the risks described under "Risk Factors" in this report could harm our business. The trading price of our securities could decline due to any of these risks and uncertainties, and investors may lose part or all of their investment.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Other than the interest rate swaps described below and elsewhere in this Quarterly Report on Form 10-Q, we do not use derivative financial instruments in our investment portfolio, and we have no foreign exchange contracts. Our financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable, current notes payable and long-term obligations. We consider investments in highly-liquid instruments with a remaining maturity of 90 days or less at the date of purchase to be cash equivalents.

In connection with the syndicated senior secured credit facility described above, we entered into interest rate swap transactions. The swaps have an effective date of September 1, 2015 and a maturity date of October 1, 2023. The combined notional amount changes monthly beginning at approximately \$3.6 million on September 1, 2015, increasing to a maximum of approximately \$45.8 million on October 1, 2016, and decreasing thereafter to approximately \$38.2 million on October 1, 2023. The swaps effectively fix our effective interest rate on the approximate amounts expected to be outstanding from time to time on the Real Estate Loan at an annual rate of approximately 4.6%. At September 30, 2015 we had no amounts outstanding under the Real Estate Loan, and the notional amount of the swaps was \$3.6 million.

We carry our interest rate swaps at fair value on our consolidated balance sheets. At September 30, 2015 we recognized swap liabilities in the amount of \$2.8 million. The change in fair value of our swaps for the nine months ended September 30, 2015 was a loss of \$1.8 million. The fair value of the swaps can be impacted by several factors including forward rates, interest rates and discount rates (see Item 1 of Part I, "Financial Statements"—Note 2. Accounting Policies, *Fair value of financial instruments*). Because we have designated our swaps as cash flow hedges for accounting purposes, to the extent the swaps qualify for this designation and are effective, changes in the fair value of the instruments are recognized through Other comprehensive income in our statements of comprehensive income (see Item 1 of Part I, "Financial Statements"—Note 2. Accounting Policies, *Derivative financial instruments*).

Our exposure to market risk for changes in interest rates relates primarily to our short-term investments and short-term obligations; thus, fluctuations in interest rates would not have a material impact on the fair value of these securities. However, the fair values of our investments may be subject to fluctuations due to volatility of the stock market in general, investment-specific circumstances, and changes in general economic conditions.

At September 30, 2015, we had \$81.3 million in cash and cash equivalents. Hypothetically, an increase or decrease in interest rates of one hundred basis points would have an estimated impact of \$813,000 on our earnings or loss, or the cash flows of these instruments.

At September 30, 2015, we had assets consisting of investments in precious metals totaling \$10.2 million. Hypothetically, an increase or decrease in the market value of one hundred basis points could potentially have an estimated impact of \$102,000 on our earnings or loss, or the recorded value of these instruments. Earnings resulting from increases in the market value of precious metals would be limited to losses incurred in the same fiscal year.

At September 30, 2015, letters of credit totaling \$505,000 were outstanding under our credit facilities. Hypothetically, an increase or decrease in interest rates of one hundred basis points would have an estimated impact of \$5,050 on our earnings or loss if the letters of credit were fully drawn.

At September 30, 2015, we had cryptocurrency-denominated assets totaling \$208,000. Hypothetically, an increase or decrease in the market value of one hundred basis points could potentially have an estimated impact of \$2,080 on our earnings or loss, or the recorded value of these instruments. Reported earnings resulting from increases in the market value of cryptocurrency would be limited to their historical cost.

ITEM 4. CONTROLS AND PROCEDURES

We maintain disclosure controls and procedures, as such term is defined in Rule 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934 (the “Exchange Act”). The term *disclosure controls and procedures* means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer 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 Commission’s rules and forms.

Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer’s management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation required by the Exchange Act under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the 1934 Act, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

During the most recent fiscal quarter, there has not occurred any change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The information set forth under Item 1 of Part I, “Financial Statements”—Note 5—“Commitments and Contingencies,” subheading “Legal Proceedings,” contained in the “Notes to Consolidated Financial Statements” of this Quarterly Report on Form 10-Q is incorporated by reference in answer to this Item.

ITEM 1A. RISK FACTORS

Please consider the following risk factors carefully. If any one or more of the following risks were to occur, it could have a material adverse effect on our business, prospects, financial condition and results of operations, and the market price of our securities could decrease significantly. Statements below to the effect that an event could or would harm our business or have a material adverse effect on us or on our business (or similar statements) mean that the event could or would have a material adverse effect on our business, prospects, financial condition and results of operations, which in turn could have a material adverse effect on the market price of our securities. These are not the only risks we face.

We are an e-commerce business and we depend on the continued use of the Internet and the adequacy of the Internet infrastructure.

Our business depends upon the widespread use of the Internet and e-commerce. Factors which could reduce the widespread use of the Internet for e-commerce include:

- actual or perceived lack of security of information or privacy protection;
- cyber-attacks or other disruptions or damage to the Internet or to users’ computers or mobile devices, or the software or cloud-based service programs on which they may depend;
- significant increases in the costs of transportation of goods; and
- taxation and governmental regulation.

The occurrence of any of the foregoing would have a material adverse effect on our business.

We depend on our relationships with independent partners for substantially all of the products that we offer for sale on our Website. If we fail to maintain these relationships, our business will suffer.

At September 30, 2015, we had relationships with approximately 3,674 independent partners whose products we offer for sale on our Website. Sales through our partners accounted for approximately 91% of our net revenues for the three and nine months ended September 30, 2015. If we do not maintain our existing relationships or build new relationships with partners on acceptable commercial terms, we may not be able to maintain a broad selection of merchandise, and our business and prospects would suffer severely. Our agreements with partners are generally terminable at will by either party upon short notice. Our failure to maintain, replace or expand these relationships could have a material adverse effect on our business.

We depend on our partners to perform critical services regarding the products that we offer.

In general, we agree to offer the partners’ products on our Website and these partners agree to conduct a number of other traditional retail operations such as maintaining inventory, preparing merchandise for shipment to our customers and delivering purchased merchandise on a timely basis. We have no ability to ensure that these third parties will continue to perform these services to our satisfaction or on terms we or our customers consider reasonable. In addition, because we do not take possession of these fulfillment parties’ products (other than on the return of such products), we are generally unable to fulfill these traditional retail operations ourselves. If our customers become dissatisfied with the services provided by these third parties, our business and reputation and brand would suffer, which could have a material adverse effect on our business.

Risks associated with the suppliers from whom our products are sourced and the safety of those products could adversely affect our financial performance.

Global sourcing of many of the products we sell is an important aspect of our business. We depend on our ability to access products from qualified suppliers in a timely and efficient manner. Our ability to find qualified suppliers who meet our standards and supply products in a timely and efficient manner is a significant challenge, especially with respect to goods

sourced from outside the U.S. Political and economic instability, the financial stability of suppliers, suppliers' ability to meet our standards, labor problems experienced by our 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 and the countries in which they are located or from which they may source materials or products are beyond our control. We also largely rely on our suppliers' representations of product content and quality. Concerns regarding product content or quality, or the safety of products that we source from our suppliers, could cause shoppers to avoid purchasing certain products from us, or to seek alternative sources of supply for all of their needs, even if the basis for the concern is outside of our control. Any lost confidence on the part of our customers would be difficult and costly to reestablish. As such, any issue regarding the safety of any items we sell, regardless of the cause, could adversely affect our financial performance. Further, if any product we sell were to cause physical injury or injury to property, the injured party or parties might bring claims against us. Any indemnity agreement we may have with the supplier may be inadequate or inapplicable, and any insurance coverage we may carry may not be adequate to cover claims that could be asserted. Even unsuccessful claims could result in the expenditure of funds and management time and could have a negative impact on our business. The occurrence of any of the foregoing could have a material adverse effect on our business.

Manufacturers may refuse to sell to us or through our site.

We rely upon our partners and other suppliers for the product offerings sold on our website and other products and services we use to run our business. Our ability to retain or attract new partners and other suppliers may depend in part on our financial performance. Poor financial performance could result in suppliers choosing to limit or suspend doing business with us or require us to prepay for our purchases. Further, some manufacturers are unwilling to offer products for sale on the Internet or on sites like ours. Our inability to source and offer popular products could be a significant problem for us and could have a material adverse effect on our business.

Our business depends on our Website, our mobile app, our network infrastructure and transaction-processing systems.

As an e-commerce company, we are completely dependent on our infrastructure. Any system interruption that results in the unavailability of our Website or our mobile app or reduced performance of our transaction systems could substantially reduce our ability to conduct our business. If our Website or our mobile app or any of the many systems necessary to support the operation of either of them fail at any time to operate well and quickly enough to satisfy a potential customer, we may quickly lose the opportunity to convert that potential customer into an actual or regular customer. We use internally and externally developed systems for our Website, our mobile app and our transaction processing systems, including personalization databases used for internal analytics, recommendations and order verifications. We have experienced periodic systems interruptions due to server failure and power failure in the past, which we expect will continue to occur from time to time. We have also experienced and may continue to experience temporary capacity constraints due to sharply increased traffic during sales or other promotions and during the holiday shopping season. Capacity constraints can cause system disruptions, slower response times, delayed page presentation, degradation in levels of customer service and other problems. In the past we have also experienced difficulties with our infrastructure upgrades. Our business and the various technologies necessary to support our business change rapidly, and we must upgrade our infrastructure virtually continuously. Any future difficulties with our transaction processing systems or difficulties upgrading, expanding or integrating aspects of our systems may cause system disruptions, slower response times, and degradation in levels of customer service, additional expense, impaired quality and speed of order fulfillment or other problems. The occurrence of any of the foregoing could have a material adverse effect on our business.

If the facility where substantially all of our computer and communications hardware is located fails, our business, prospects, financial condition and results of operations could be harmed.

If the facility where substantially all of our computer and communications hardware is located fails, or if we suffer an interruption or degradation of services at the facility for any reason, our business could be harmed. Our success, and in particular, our ability to successfully receive and fulfill orders and provide high-quality customer service, largely depends on the efficient and uninterrupted operation of our computer and communications systems. Substantially all of our computer and communications hardware is located at a single co-location facility. In the event of an earthquake or other local disaster, or any other cause of interruption of service, both our primary and back-up sites could be adversely affected. Our systems and operations are vulnerable to damage or interruption from fire, flood, power loss, telecommunications failure, terrorist attacks, cyber-attacks, acts of war, break-ins, earthquake and similar events. In the event of a failure of our primary facility, the failover to our back-up facility would take at least several hours, during which time our Website would be completely shut down. Our back-up facility is not adequate to support sales at a high level. The back-up facility may not process effectively during time of

higher traffic to our Website and may process transactions more slowly and may not support all of the functionality of our primary site. These limitations could have an adverse effect on our conversion rate and sales. Our disaster recovery plan may be inadequate, and we do not carry business interruption insurance sufficient to compensate us for the losses that could occur. Our servers are vulnerable to computer viruses, physical or electronic break-ins and similar disruptions, the occurrence of any of which could lead to interruptions, delays, loss of critical data or the inability to accept and fulfill customer orders. The occurrence of any of the foregoing risks could have a material adverse effect on our business.

We depend upon third party fulfillment and delivery services to fulfill and deliver products to our customers on a timely and consistent basis. Deterioration in our relationship with any one of these third parties could decrease our ability to track shipments, cause shipment delays, and increase our shipping costs and the number of damaged products.

We rely upon third party fulfillment and delivery providers for the shipment of products to customers. We cannot be sure that these relationships will continue on terms we find acceptable, or at all. Increases in shipping or fulfillment costs or delivery times, particularly during the holiday season, could harm our business. For example, in June 2015, UPS announced that it will discontinue offering discounts for its customers on oversize packages during the holiday season. If our relationships with these third parties are terminated or impaired or if these third parties are unable to deliver products for us on terms we find acceptable, whether as a result of labor shortage, slow down or stoppage, deteriorating financial or business condition, fulfillment facilities impairment, terrorist attacks, cyber-attacks, Internet or other infrastructure or communications impairment, natural disasters, unexpectedly high shipping volumes, an increase in shipping rates, or for any other reason, we may be required to use alternative fulfillment service providers or carriers for the shipment of products to our customers, if such alternatives were available. If under such circumstances there were no alternatives available, we may be forced to accept fulfillment services which may have an adverse effect on our customers' satisfaction with us, which may materially increase our shipping costs, or both. Conditions such as adverse weather or natural disasters can prevent any carrier from performing its delivery services, which can also have an adverse effect on our customers' satisfaction with us. In any of these circumstances, we may be unable to engage alternative fulfillment services or carriers on a timely basis, upon terms we find acceptable, or at all. Changing fulfillment services or carriers, the absence of fulfillment services or carrier availability, or increases in the shipping rates of our current fulfillment service or carrier providers could have a material adverse effect on our business.

We depend upon our credit card processors and payment card associations.

Our customers primarily use credit cards to buy from us. We are dependent upon our credit card processors to process the sales transactions and remit the proceeds to us. The credit card processors have the right to withhold funds otherwise payable to us to establish or increase a reserve based on their assessment of the inherent risks of credit card processing and their assessment of the risks of processing our customers' credit cards at any time, and have done so from time to time in the past. We are also subject to payment card associations' operating rules, certification requirements and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply. If we fail to comply with these rules or requirements, we may be subject to fines and higher transaction fees and lose our ability to accept credit and debit card payments from our customers, process electronic funds transfers, or facilitate other types of online payments. In addition, events affecting our credit card processors, including cyber-attacks, Internet or other infrastructure or communications impairment or other events that could interrupt the normal operation of the credit card processors, could have a material adverse effect on our business.

We rely upon paid and natural search engines including Google, Bing, and Yahoo! to rank our product offerings. Our financial results may suffer if search engines change their ranking algorithms and our product offerings are ranked lower, and we may at times be subject to ranking penalties if the operators of search engines believe we are not in compliance with their guidelines.

We rely on paid and natural search engines to attract consumer interest in our product offerings. Potential and existing customers use search engines provided by search engine companies, including, but not limited to, Google, Bing, and Yahoo!, which use algorithms and other devices to provide users a natural ranked listing of relevant Internet sites matching a user's search criteria and specifications. Generally, Internet sites ranked higher in the paid and natural search results attract the largest visitor share among similar Internet sites, and often benefit from increased sales. Natural search engine algorithms use information available throughout the Internet, including information available on our site. Search engine companies change their natural search engine algorithms periodically, and our ranking in natural searches may be adversely affected by those changes. When this occurs, our financial results may suffer from reduced revenues and from increased marketing expenses, as we believe we have experienced during 2015 and some prior periods, as we seek to replace lost revenues by using other sources.

Rules and guidelines of these natural search engine companies govern our participation on their sites and how we share relevant Internet information that may be considered or incorporated into the algorithms used by these sites. If these rules and guidelines change, or if we fail to present, or improperly present, our site information for use by natural search engine companies, or if any of these natural search engine companies determine that we have violated their rules or guidelines, as Google did in February 2011 through April 2011, or if others improperly present our site information to these search engine companies, we may fail to achieve an optimum ranking in natural search engine listing results, or we may be penalized in a way that could harm our business.

In addition, large marketplace websites and sites which aggregate marketplace sellers with a large product selection are becoming increasingly popular, and we may not be able to place our products on these sites to take advantage of their internal search platforms. Our inability to place products on or access these sites may have a material adverse effect on our business.

Our business depends on effective marketing, and we change our advertising and marketing programs often.

We depend on effective marketing and high customer traffic. We have many initiatives in this area, and often change our advertising and marketing programs. The results of our advertising and marketing programs vary. If we are unable to develop, implement and maintain effective and efficient advertising and marketing programs, it could have a material adverse effect on our business.

Our business relies heavily on email, and reduced utilization of email in general and any restrictions on the sending of commercial email could have a material adverse effect on our business.

We depend on email to promote our site and offerings. We provide daily emails to potential customers about our offerings, and email promotions are an important part of our marketing and help generate a substantial portion of our net revenue. If a significant portion of our target customers no longer utilize email, or we are unable to effectively deliver email to our potential customers, our business, financial condition and operating results would be harmed. Changes in webmail applications' organization or prioritization of email could reduce the number of potential customers opening our email. For example, email inbox organization or prioritization 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. Anything, including legal or regulatory restrictions, that blocks, imposes restrictions on or imposes charges for the delivery of email could also harm our business. 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 have a material adverse effect on our business.

We are experimenting with reductions in the number of coupons we offer to our customers and with increases in the amount of Club O Rewards we offer to Club O members, which may have adversely affected our revenue growth and may continue to do so.

Although our business has historically relied heavily on email and coupons to generate sales, we are experimenting with reductions in our coupon marketing and are attempting to substitute increased Club O Rewards for a portion of our coupon marketing. We believe that the changes we have made recently have adversely affected our revenue growth. We are continuing to attempt to increase the attractiveness of our Club O offerings, but have not yet achieved the results we are seeking, and there can be no assurance that we will be able to do so. If we are unable to generate sales from Club O members at rates equal to or better than the rates we were generating through our coupon marketing to non-Club O members, our revenue growth could be adversely affected or reversed, and our business, financial condition and operating results could be materially adversely affected.

We depend upon third parties for all or substantially all of the services we offer.

In addition to the many third parties we rely on in connection with our sale and the delivery of products to our customers, we depend upon third parties for all or substantially all of the services we offer, including our insurance offerings, our consumer financing offerings, our new and used car listings, our car-related services and our pet adoption services. Services offerings are inherently different from product offerings, and we may encounter difficulties with our services offerings that may

be different from the types of issues we face with our product offerings. Any such difficulties could have a material adverse effect on our business.

We are subject to cyber security risks and risks of data loss or other security breaches, and may incur increasing costs in an effort to minimize those risks and to respond to cyber incidents.

Our business is entirely dependent on the secure operation of our Website and systems as well as the operation of the Internet generally. Our business involves the storage and transmission of users' proprietary information, and security breaches could expose us to a risk of loss or misuse of this information, and to resulting claims and litigation. A number of large Internet companies have suffered security breaches, many of which have involved intentional attacks. From time to time we and many other Internet businesses also experience denial of service attacks in which attackers attempt to block customers' access to our Website. If we are unable to avert a denial of service attack for any significant period, we could sustain substantial revenue loss from lost sales and customer dissatisfaction. We may not have the resources or technical sophistication to anticipate or prevent rapidly evolving types of cyber-attacks. Cyber-attacks may target us, our customers, our suppliers, banks, credit card processors, delivery services, e-commerce in general or the communication infrastructure on which we depend. If an actual or perceived attack or breach of our security occurs, customer and/or supplier perception of the effectiveness of our security measures could be harmed and we could lose customers, suppliers or both. Actual or anticipated attacks and risks 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. The occurrence of any of the foregoing could have a material adverse effect on our business.

A person who is able to circumvent our security measures might be able to misappropriate our or our users' proprietary information, cause interruption in our operations, damage our computers or those of our users, or otherwise damage our reputation and business. Any compromise of our security could result in a violation of applicable privacy and other laws, significant legal and financial exposure, damage to our reputation, and a loss of confidence in our security measures, which could have a material adverse effect on our business.

Most of our customers use credit cards to pay for their purchases. We rely on encryption and authentication technology licensed from third parties to provide the security and authentication to effectively secure transmission of confidential information, including customer payment card numbers. We cannot provide assurance that our technology can prevent breaches of the systems that we use to protect customer data. Data breaches can also occur as a result of non-technical issues. The occurrence of any of the foregoing could have a material adverse effect on our business.

Under payment card rules and our contracts with our card processors, if there is a breach of payment card information that we store, we could be liable to the payment card issuing banks for their cost of issuing new cards and related expenses. In addition, if we fail to follow payment card industry security standards, even if there is no compromise of customer information, we could incur significant fines or lose our ability to give customers the option of using payment cards to fund their payments or pay their fees. If we were unable to accept payment cards, it would have a material adverse effect on our business.

Our servers and the servers of our suppliers may also be vulnerable to computer viruses, physical or electronic break-ins, and similar disruptions, including denial-of-service attacks. We may need to expend significant resources to protect against attacks or security breaches or to address problems caused by attacks or breaches. Any attack or breach involving us or persons with whom we have commercial relationships, that results in the unauthorized release of our users' personal information, could damage our reputation and expose us to claims and litigation and could have a material adverse effect on our business.

Third parties have demonstrated that they can breach the security of customer transaction data of large sophisticated Internet retailers, government organizations and others. Any breach, whether it affects us directly or not, could cause our customers to lose confidence in the security of our site or the use of the Internet and e-commerce in general. If third parties are able to penetrate our network security or otherwise misappropriate our customers' personal information or credit card information, or if we give third parties improper access to our customers' personal information or credit card information, we could be subject to claims. The claims could include claims for unauthorized purchases with credit card information, impersonation or other similar fraud claims or damages for alleged violations of state or federal laws governing security protocols for the safekeeping of customers' personal or credit card information. They could also include claims for other misuses of personal information, including unauthorized marketing purposes. These claims could result in litigation. Any of these types of events or claims could have a material adverse effect on our business.

Cyber-attacks affecting our suppliers, delivery services or other service providers could adversely affect us.

We depend on our partners to provide a large portion of the product selection we offer and on vendors for the products we purchase and offer in our direct business. We also depend on delivery services to deliver products, and on other service providers, including suppliers of services which support Website operations, including payment systems, customer service support, and communications. Cyber-attacks affecting our delivery services or any of our most significant suppliers or affecting a significant number of our suppliers of products or services could result in our inability to source product or fulfill orders, our customers' or suppliers' inability to contact us or access our Website or call centers or chat lines, or the compromise of our customers' confidential data. The occurrence of any of the foregoing could have a material adverse effect on our business.

Credit card fraud and our response to it could adversely affect our business.

We routinely receive orders placed with fraudulent credit card data. We do not carry insurance against the risk of credit card fraud, so our failure to adequately control fraudulent credit card transactions could reduce our net revenues and our gross profit or cause credit card or payment system companies to disallow their cards' use for customer payments for the goods and services we sell. 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 because we do not obtain a cardholder's signature. If we are unable to detect or control credit card fraud, claims against us for these transactions could harm our business, prospects, financial condition and results of operation. Further, to the extent that our efforts to prevent fraudulent orders result in our inadvertent refusal to fill legitimate orders, we would lose the benefit of legitimate potential sales and risk the alienation of legitimate customers. The occurrence of any of the foregoing could have a material adverse effect on our business.

Implementation of the EMV credit card standards in the U.S. during 2015 may increase fraud efforts against U.S. online retailers, including us.

Credit card issuers in the United States are expected to begin replacing traditional credit cards with credit cards meeting the EMV (Europay, MasterCard and Visa) standards during 2015. Cards meeting the EMV standards contain a chip which makes the cards more difficult to counterfeit than the traditional magnetic stripe-only cards widely used in the U.S. However, to the extent that the EMV standards make card-duplication fraud more difficult, the new standards may drive more fraud efforts against online retailers. Consequently, as an online retailer, we may be subject to increasing levels of fraudulent orders and other types of criminal activities. Increased levels of fraud and other criminal activities could have a material adverse effect on our business.

Natural disasters, pandemics, and geo-political events could adversely affect our business.

Natural disasters, including hurricanes, cyclones, typhoons, tropical storms, floods, earthquakes and tsunamis, weather conditions, including winter storms, droughts and tornados, whether as a result of climate change or otherwise, pandemics, and geo-political events, including civil unrest or terrorist attacks, that affect us or our delivery services, suppliers, credit card processors or other service providers could adversely affect our business.

Our insurance coverage and indemnity rights may not adequately protect us against loss.

The types, coverage, or the amounts of any insurance coverage we may carry from time to time may not be adequate to compensate us for any losses we may actually incur in the operation of our business. Further, any insurance we may desire to purchase may not be available to us on terms we find acceptable or at all. We are not indemnified by all of our suppliers, and any indemnification rights we may have may not be enforceable or adequate to cover actual losses we may incur as a result of our sales of their products. Actual losses for which we are not insured or indemnified, or which exceed our insurance coverage or the capacity of our indemnitors or our ability to enforce our indemnity agreements, could have a material adverse effect on our business.

We face intense competition and may not be able to compete successfully against existing or future competitors.

The online retail market is rapidly evolving and intensely competitive. Barriers to entry are minimal, and current and new competitors can launch new websites at a relatively low cost. We currently compete with numerous competitors, including:

- online retailers with or without discount departments, including AliExpress (part of the Alibaba Group), Amazon.com, eBay, and Rakuten.com (formerly Buy.com);

- private sale sites such as Gilt Groupe and Rue La La;
- online specialty retailers such as Blue Nile, Bluefly, Jet.com, Wayfair, Zappos.com, and Zulily;
- furniture specialists including Ashley Furniture, Bob's Discount Furniture, Havertys, Raymour & Flanigan and Rooms To Go;
- traditional general merchandise and specialty retailers and liquidators including Barnes and Noble, Bed, Bath & Beyond, Best Buy, Costco Wholesale Corporation, Crate and Barrel, Ethan Allen, Home Depot, HomeGoods, IKEA, J.C. Penny Company, Kirkland's, Kohl's, Lands' End, Lowes, Macy's, Nordstrom, Pier 1 Imports, Pottery Barn, Restoration Hardware, Ross Stores, Sears Holding Corporation, T.J. Maxx, Target Corporation, Wal-Mart and Williams-Sonoma, all of which also have an online presence; and
- liquidation e-tailers such as SmartBargains;

We expect the online retail market to become even more competitive as traditional and online retailers continue to develop and improve services that compete with our services. Many traditional manufacturers and retailers have added or improved their e-commerce offerings, and we expect that more will do so and that they will all continue to improve their offerings. Traditional and predominantly online retailers may create proprietary, store-based distribution and returns channels that we may be unable to match. Competitive pressures, including same-day delivery capabilities, from any of our competitors, many of whom have longer operating histories, larger customer bases, greater brand recognition and significantly greater financial, marketing and other resources than we do, could have a material adverse effect on our business.

Further, from time to time we may make competitive pricing, service, marketing, business development or other decisions that could harm our business. When we modify our business, or enter a new line of businesses, we generally face competition from numerous large established businesses, many of which may specialize in the type of business we are attempting to enter. For example, our Supplier Oasis Fulfillment Services faces substantial competition from third party logistics providers as well as from Amazon and eBay and other e-commerce service providers having substantially greater experience and resources than we have. We are currently offering insurance products, and as such face competition from large established businesses with substantially more experience than we have. In the past we have entered the online auctions, car listing and real estate listing businesses in which we compete or competed with large established businesses including eBay, Inc., and AutoTrader.com, Inc. We no longer offer online auctions services or real estate listing services.

Mobile commerce and our Club O offerings are becoming increasingly significant to us.

Mobile commerce and our Club O offerings are becoming increasingly significant to us. Customers who use mobile devices and customers who join Club O may behave differently from our other customers. For example, the conversion rate of purchases from mobile devices is lower than from other sources. If our mobile customers or our Club O customers are less profitable to us than our other customers, it could have a material adverse effect on our business.

If one or more states successfully assert that we should collect sales or other taxes on the sale of our merchandise or the merchandise of third parties that we offer for sale on our Website, or that we should pay commercial activity taxes, our business could be harmed.

We do not currently collect sales or other similar taxes on sales of goods into states where we have no duty to do so under federal court decisions construing applicable constitutional law. One or more local, state or foreign jurisdictions may seek to impose sales tax collection obligations on us because we are engaged in online commerce, even though to do so would be contrary to existing court decisions. The future location of our fulfillment or customer service centers networks, or any other operation, service contracts with third parties located in another state, channel distribution arrangements or other agreements with third party sellers, or any act that may be deemed by a state to have established a physical presence in states where we are not now present, may result in additional sales and other tax obligations. New York and other states have passed so-called "Internet affiliate advertising" statutes, which require a remote seller, with no physical presence in the state, to collect state sales tax if the remote seller contracted for advertising services with an Internet advertiser in that state. In New York and states passing similar laws, we have terminated our use of locally based Internet advertisers. Many other states currently have passed similar laws and others have legislative proposals under consideration. We may discontinue valuable marketing through the use of affiliates based in those states, or we may begin to collect taxes in those states. In either event, or if one or more states or any foreign country where we do not or did not collect sales or other taxes successfully asserts that we should do so or have done so, it could have a material adverse effect on our business.

In 2013 the United States Senate passed the Marketplace Fairness Act of 2013 ("MFA"), but it failed to pass in the House of Representatives. Efforts continue to enact similar legislation, which would permit qualifying states to force remote

sellers like us to collect taxes in states where we have no physical presence. The enactment of legislation similar to the MFA could have a material adverse effect on our business.

Other states have enacted forms of economic taxes to which we may be subject. We have been subject to and in the past contested an audit by one such state of an economic tax assessment and settled the audit demand by payment of a diminished assessment without penalty or interest. In Q3 2015, we received a Tax Assessment from the Department of Revenue of the State of Washington asserting that we had nexus with Washington during the period January 1, 2008 to May 31, 2015 and assessing approximately \$31.5 million in taxes, interest, and/or penalties asserted to be due, subject to future field verification by the Department of Revenue, for the period. If we were ultimately held liable for all or substantially all of the amounts assessed against us by the Washington Department of Revenue, or for any large claims by any other states or their revenue departments, it would have a material adverse effect on our business.

Several other states have enacted laws requiring remote vendors to notify resident purchasers in those states of their obligation to pay a use tax on their purchases and, in some instances, to report untaxed purchases to the state tax authorities. Other states have enacted legislation to require retailers without a physical presence in the state to collect and remit state sales taxes if they engage in any activity in connection with the selling, leasing or delivery of tangible personal property or taxable services within the state. More states may enact these laws, or other laws to force or encourage through economic pressures remote retailers to collect and remit sales tax. Such laws could harm our business by imposing unreasonable notice burdens upon us, by interposing burdensome transaction notices that negatively affect conversion, or by discouraging customer purchases by requiring detailed purchase reporting. The occurrence of any of the foregoing could have a material adverse effect on our business.

Economic pressure on states could harm our business.

Economic circumstances affecting many states have increased the pressures on state legislatures and agencies to find ways to increase state revenues. States may continue to increase sales and use tax rates, create new tax laws covering previously untaxed activities, increase existing license fees or create new fees, any or all of which may directly or indirectly harm our business. Similarly, administrative agencies may apply more rigorous enforcement efforts or take aggressive positions respecting the laws they administer, especially if the laws permit the imposition of monetary penalties and fines which either the state or the administrative agency may use to balance their budgets or otherwise fund operations. The occurrence of any of the foregoing could have a material adverse effect on our business.

If we do not respond to rapid technological changes, our services could become obsolete, and we could lose customers.

The Internet and the online commerce industry are changing rapidly. To remain competitive, we must continue to enhance and improve the functionality and features of our e-commerce businesses. If we fail to do so, we may lose customers. If competitors introduce new products or services using new technologies or if new industry standards and practices emerge, our Website, our mobile app and our proprietary technology and systems may become obsolete. Our failure to respond to technological change or to adequately maintain, upgrade and develop our Website, our mobile app, our infrastructure and the numerous systems we use to process customers' orders and payments and to perform important related functions could have a material adverse effect on our business.

We have an evolving business model, which increases the complexity of our business.

Our business model has evolved in the past and continues to do so. In prior years we have added additional types of services and product offerings and in some cases we have modified or discontinued those offerings. We intend to continue to try to offer additional types of products or services, and we cannot offer any assurance that any of them will be successful. From time to time we have also modified aspects of our business model relating to our product mix and the mix of direct/partner sourcing of the products we offer. We may continue to modify this aspect of our business as well as other significant aspects of our business. We cannot offer any assurance that these or any other modifications will be successful or will not result in harm to the business. The additions and modifications to our business have increased the complexity of our business and placed significant strain on our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions. Future additions to or modifications of our business are likely to have similar effects. We may not be able to manage growth effectively, which could damage our reputation, limit our growth and negatively affect our operating results. Further, any new business or website we launch that is not favorably received by consumers could damage our reputation or our brand. The occurrence of any of the foregoing could have a material adverse effect on our business.

Acquisitions we make will increase costs and regulatory and integration risks.

From time to time we acquire other businesses. Integrating an acquired business involves a number of risks and financial, managerial and operational challenges. The acquisition of a business and the integration of a business requires us to allocate significant management time and attention to the matter. We have incurred significant expenses in connection with acquisitions we have made recently, and may incur additional expenses in connection with those acquisitions or in connection with other acquisitions we may make in the future. Our overall profitability would be adversely affected if our investments and expenses associated with any investments we have made or may make in the future are not matched or exceeded by the revenues that are derived from such investment or growth. Further, acquisitions may also create a need for additional accounting, tax, compliance, documentation, risk management and internal control procedures, and may require us to hire additional personnel to implement, perform and/or monitor such procedures. To the extent our procedures are not adequate to appropriately implement, perform and/or monitor all necessary procedures relating to any new or expanded business, we could be exposed to a material loss or regulatory sanction.

Our foreign brand domain name may cause confusion.

In 2010, we undertook an effort to associate our brand globally with the domain address: www.O.co. We did this in part because in many foreign markets the word “Overstock” lacked a good foreign cognate. Following a period of testing for the O.co brand and domain address, we returned to the Overstock.com name as our primary brand domestically because domestic consumer acceptance did not occur as quickly as we had hoped. While we have returned domestically to the Overstock.com brand and principal domain address, we continue to use the O.co address and brand outside of the United States and plan to use it or another domain address and brand domestically as well. There is no assurance that the use of Overstock.com or O.co will gain acceptance or have success in foreign markets or that other domain addresses or brands we may use domestically will be successful. Any such difficulties with any of our brands could have a material adverse effect on our business.

We are attempting to expand our international business, which may cause our business to become increasingly susceptible to numerous risks and challenges that could affect our profitability.

We sell products in international markets, and are attempting to expand into these markets more aggressively. International sales and transactions, and our efforts to expand them, are subject to inherent risks and challenges that could adversely affect our profitability, including:

- the need to develop new supplier and manufacturer relationships;
- the need to comply with additional U.S. and foreign laws and regulations to the extent applicable, including but not limited to, restrictions on advertising practices, regulations governing online services, regulations governing or prohibiting the use of cryptocurrency such as bitcoin, restrictions on importation of specified or proscribed items, importation quotas, consumer protection laws, laws regarding intellectual property rights, laws dealing with consumer and data protection, privacy, encryption, and restrictions on pricing or discounts;
- changes in international laws, regulatory requirements, taxes and tariffs;
- geopolitical events, such as war and terrorist attacks;
- our limited experience with different local cultures and standards;
- the risk that the products we offer may not appeal to customers in international markets; and
- the additional resources and management attention required for such expansion.

To the extent we generate international sales transactions in the future, any negative impact on our international operations could negatively impact our business. To date, most of our international sales have been denominated in U.S. dollars, and we have not had significant foreign currency risk on those sales. However, in the future, gains and losses on the conversion of foreign payments into U. S. dollars may contribute to fluctuations in our results of operations and fluctuating exchange rates could cause reduced gross revenues and/or gross profit percentages from non-dollar-denominated international sales. Additionally, penalties for non-compliance with laws applicable to international business and trade, including the U.S. Foreign Corrupt Practices Act, or laws governing or prohibiting the use of cryptocurrencies, could have a material adverse effect on our business.

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 from consumers before using their data for certain purposes, including some marketing activities. 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 protection 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 October 2015 the European Court of Justice overturned the European Commission's long-standing decision finding that the privacy principles of the EU-U.S. safe harbor provide an adequate level of protection of the data of EU citizens. We have relied on the safe harbor in order to receive personal information from the EU to enable us to provide goods and services to our customers and users in the EU, process payments, maintain customer and user accounts, personalize and improve the functionality of our website, and to take other actions in connection with these activities. If the safe harbor is not reinstated, or if we are unable to comply with any successor safe harbor or equivalent, we could be required to make costly changes to our business and could be required to avoid sales in some countries. The occurrence of any of the foregoing could have an adverse effect on our business.

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.

A subsidiary of Medici has acquired the assets and business of a financial technology company and Medici has entered into agreements to acquire registered broker-dealers; Medici does not have any experience with the operation of a fintech company or of a registered broker-dealer, and the businesses that Medici intends to pursue are novel.

In August 2015 Medici acquired the assets and business of a financial technology company and entered into agreements to acquire three registered broker-dealers (the “BDs” or our “broker-dealer subsidiaries”) that were affiliated with the fintech company. In connection with Medici’s acquisition of the assets of the fintech company, Medici intends to hire all or substantially all of the employees of the fintech company. However, Medici does not otherwise have any experience with the operation of a fintech company or of a registered broker-dealer, and will be dependent upon the new employees for the expertise necessary to operate the fintech company and the registered broker dealers. Further, Medici’s plans for the fintech company and the broker-dealers include the expansion of Medici’s business plans regarding the creation of a novel system for the trading of digital securities as well as a novel system to provide short sellers of publicly-traded securities with evidence of their identification of securities available to borrow. All of these are areas in which we do not have substantial, or any, experience, and all of them are subject to the risks of new and novel businesses, including operational risk, financial risk, regulatory and legal risk, and reputational risk.

Medici’s efforts to create a system for the trading of digital securities is in an area in which it has limited experience, and the project may be expensive and is subject to the resolution of significant technical, legal and regulatory constraints and other risks.

Our majority-owned subsidiary Medici is working to create a digital system for the trading of securities. Although Medici has hired employees with significant experience in the technical workings of cryptocurrencies and distributed ledgers, and has been involved in our issuance of privately-placed bonds tracked on a distributed ledger as initial tests of an early version of the digital securities trading system, the types of projects Medici is now pursuing are novel and Medici does not have significant experience with them. These projects may be expensive, and are subject to substantial risk that they may ultimately be unsuccessful. The creation of a digital system for the trading of securities is subject to the resolution of technical, legal and regulatory constraints. Further, even assuming the resolution of all technical, legal and regulatory constraints, Medici faces the risks that it may be unable to market, license or sell its technology successfully or profitably. Any significant problems Medici encounters with these projects could have a material adverse effect on our business.

Medici's efforts to create a novel system able to provide short sellers of publicly-traded securities with evidence of their identification of securities available to borrow is in an area in which it has limited or no experience, and the project may be expensive and is subject to the resolution of significant technical, legal and regulatory constraints and other risks.

Our majority-owned subsidiary Medici and its minority-owned subsidiary Pro Securities, LLC are working to create a novel system able to provide short sellers of publicly-traded securities with evidence of their identification of securities available to borrow. Although Medici has conducted limited initial tests, this project is novel and Medici has limited or no experience in this area. This project may be expensive, and is subject to substantial risk that it may ultimately be unsuccessful. The creation of this system is subject to the satisfaction of technical, legal and regulatory requirements. Further, even assuming the resolution of all technical, legal and regulatory constraints, Medici faces the risks that it may be unable to market, license or sell its technology successfully or profitably. Any significant problems Medici encounters with this project could have a material adverse effect on our business.

Medici has entered into agreements to acquire registered broker-dealers, which are subject to extensive regulation.

Broker-dealer and other financial services firms are subject to extensive regulatory requirements under federal and state laws and regulations and self-regulatory organization ("SRO") rules. The broker-dealers Medici intends to acquire are registered with the SEC as broker-dealers under the Exchange Act and in the states in which they conduct securities business and are members of the Financial Industry Regulatory Authority ("FINRA") and other SROs. They are subject to regulation, examination and disciplinary action by the SEC, FINRA and state securities regulators, as well as other governmental authorities and SROs with which they are registered or licensed or of which they are members.

The regulations applicable to broker-dealers depend in part on the nature of the business conducted by the broker-dealer, and generally cover all aspects of the securities business, including, among other things, sales practices, fee arrangements, disclosures to clients, capital adequacy, use and safekeeping of clients' funds and securities, recordkeeping and reporting and the qualification and conduct of officers, employees and independent contractors. As part of this regulatory scheme, broker-dealers are subject to regular and special examinations by the SEC and FINRA intended to determine their compliance with securities laws, regulations and rules. Following an examination's conclusion, a broker-dealer may receive a deficiency letter identifying potential compliance or supervisory weaknesses or rule violations which the firm must address.

The SEC, FINRA and other governmental authorities and SROs may bring enforcement proceedings against firms and place other limitations on firms subject to their jurisdiction, as well as their officers, directors, employees and independent contractors, whether arising out of an examination or otherwise, for violations of the securities laws, regulations and rules. Sanctions can include cease-and-desist orders, censures, fines, civil monetary penalties and disgorgement, limitations on a firm's business activities, suspension, revocation of FINRA membership or expulsion of the firm from the securities industry. Criminal actions are referred to the appropriate criminal law enforcement agency. Any such proceeding against any of the broker-dealers that Medici intends to acquire, or any of their associated persons, could harm our reputation, cause us to lose clients or fail to gain new clients and have a material adverse effect on our business.

Financial services firms are subject to numerous conflicts of interest or perceived conflicts of interest. The SEC, FINRA and other governmental authorities and SROs have increased their scrutiny of potential conflicts of interest. We will adopt and regularly review and update, policies, procedures and controls designed to address or limit actual or perceived conflicts, but there can be no assurance of the effectiveness of these protocols. Addressing conflicts of interest adequately is complex and difficult and our reputation could be damaged if we fail, or appear to fail, to identify and successfully manage these conflicts of interest. The development and implementation of policies, procedures and controls to address or limit actual or perceived conflicts may also result in increased costs. Failure to identify and successfully manage conflicts of interest procedures could subject the broker-dealers or Medici or us to disciplinary sanctions or litigation or could harm our reputation.

Financial services firms are also subject to rules and regulations relating to the prevention and detection of money laundering. The USA PATRIOT Act of 2001 (the "PATRIOT Act") mandates that financial institutions, including broker-dealers and investment advisers, establish and implement anti-money laundering ("AML") programs reasonably designed to achieve compliance with the Bank Secrecy Act of 1970 and the rules thereunder. Financial services firms must maintain AML policies, procedures and controls, designate an AML compliance officer to oversee the firm's AML program, implement appropriate employee training and provide for annual independent testing of the program. Failure to comply with AML requirements could subject the broker-dealers and/or us to disciplinary sanctions and other penalties.

Financial services firms must also comply with applicable privacy and data protection laws and regulations. Any violations of laws and regulations relating to the safeguarding of private information could subject the broker-dealers and/or us to fines and penalties, as well as to civil action by affected parties.

Our ability to comply with applicable laws, rules and regulations is largely dependent on our establishment and maintenance of compliance, supervision, recordkeeping and reporting and audit systems and procedures, as well as our ability to attract and retain qualified compliance, audit and risk management personnel. While we have adopted policies and procedures we believe are reasonably designed to comply with applicable laws, rules and regulations, these systems and procedures may not be fully effective, and there can be no assurance that regulators or third parties will not raise material issues with respect to our past or future compliance with applicable regulations.

We have purchased land to build a facility to serve as our future headquarters, and consequently have environmental and other risks, and may incur environmental expense and liabilities, in connection with the project, and under the environmental indemnity agreement we entered into in connection with our credit facility.

In the third quarter of 2014, we purchased land in Salt Lake City, Utah in preparation for our construction of our future headquarters. In purchasing the land, we became subject to the risks of owning real estate, including the risks of environmental liabilities and the requirements for compliance with applicable laws, rules, regulations, ordinances and other requirements. The land we purchased is part of the Midvale Slat Superfund Site ("Site"), a former Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") superfund site that was remediated pursuant to CERCLA prior to our purchase. As purchaser of the property, O.com Land, LLC is required to follow certain requirements of the CERCLA statute and the consent decree governing remediation of the Site. Its failure to do so could expose us to environmental liabilities which could be material. Further, in connection with the credit facility we entered into with U.S. Bank and other banks, we entered into a broad environmental indemnity agreement pursuant to which we made detailed representations about the environmental status of the land and agreed to indemnify and defend U.S. Bank and other banks and other persons against a broad array of potential environmental claims, liabilities and exposures relating to the property we purchased and the headquarters we are building. Any such environmental liabilities, and any liabilities under the environmental indemnity agreement, could be material and could have a material adverse effect on our business.

We have entered into contracts and plan to spend approximately \$99 million to build, equip and furnish a facility to serve as our future headquarters, and expect to incur risks, expense and debt in connection with the project.

We are building our new headquarters in Salt Lake City, and are incurring the risks and expense of doing so. The design and construction of the headquarters are complicated. We may encounter unanticipated developments affecting our estimates regarding the expense of the project. We may also encounter delays in the construction of the facility. Any such difficulties could result in our default under the Loan Agreement and related agreements we have entered into with U.S. Bank and other banks, and could result in material liabilities and expense and could have a material adverse effect on our business.

In connection with the construction of our new headquarters, we have entered into a syndicated senior secured credit facility, and may need to obtain additional financing as well.

Our current estimate of the total cost of the development and construction and related equipment and furniture of our new headquarters is approximately \$99 million. We have entered into a syndicated senior secured credit facility with U.S. Bank and other banks that is intended to provide us with construction and term financing of \$45.8 million. The facility is designed to convert to an approximately 6.75-year term loan upon completion of construction. We will need to maintain compliance with the requirements governing the facility, including compliance with financial and other covenants, certain of which may be subject to events outside of our control. If we fail to comply with any of such covenants, we may be unable to obtain or utilize the financing contemplated by the facility. If the financing we anticipate under the facility is not fully available to us for any reason, it would have a material adverse effect on our liquidity and could have a material adverse effect on our business.

We have pledged the land and our new headquarters and all related assets, as well as our inventory and accounts receivable and related assets, to secure our obligations under the syndicated senior secured credit facility.

We have pledged all of our assets relating to the new headquarters and the site on which it is to be located, as well as our inventory, accounts receivable and related assets, and most of our deposit accounts, to secure our obligations under the syndicated senior secured credit facility. The real estate loan and the revolving loan facilities included within the facility are cross-collateralized and cross-defaulted. If we were to default on either loan or have an Event of Default under the facility, the

lenders would have the right to, among other things, foreclose on the collateral for our obligations under the facility, which would have a material adverse effect on our liquidity and could have a material adverse effect on our business.

We have entered into long-term interest rate swaps covering a period of approximately nine years.

In connection with the syndicated senior secured credit facility described above, we have entered into interest rate swaps with U.S. Bank and Compass Bank. The interest rate swaps are intended to manage the interest rate risk on the indebtedness we expect to incur in 2015 and 2016 for the Real Estate Loan. However, if for any reason the notional amounts of the swaps fail to substantially match our indebtedness for the Real Estate Loan at any time until the October 2023 maturity of the swaps, we could potentially be exposed to liabilities under the loan agreement that are not be substantially offset by the interest rate swap. If the lenders under the senior secured credit facility were to fail to fund the Real Estate Loan for any reason, we would remain liable for payments due under the swaps unless we were to settle the swaps. If we were to settle the swaps at a time when interest rates have fallen (relative to the swaps' inception), the price to settle the swaps could be material. Any such adverse developments could result in material liabilities and expense and could have a material adverse effect on our business.

We may fail to qualify for hedge accounting treatment.

In connection with the financing we obtained to fund a portion of the construction of our new corporate headquarters, we have entered into interest rate swap transactions with certain of our lenders intended to minimize our exposure to various interest rate risks. At inception in 2014 we designated these swaps as cash flow hedges in accordance with Accounting Standards Codification (“ASC”) 815, *Derivatives and Hedging*. However, in the future, we may fail to qualify for hedge accounting treatment under these standards for a number of reasons, including if we fail to satisfy hedge documentation and hedge effectiveness assessment requirements or if our derivative instruments are not highly effective. If we fail to qualify for hedge accounting treatment, losses on the swaps caused by the change in their fair value will be recognized as part of net income, rather than being recognized as part of other comprehensive income. Additionally, although our derivative instruments may be highly effective, ineffectiveness in such instruments will also be recognized as part of net income, rather than other comprehensive income. Any such adverse developments could result in material liabilities and expense and could have a material adverse effect on our business.

We have entered into a Construction Agreement relating to the construction of the new headquarters; however, many aspects of the proposed construction remain subject to future agreement.

In October 2014, we entered into a Construction Agreement (the “Construction Agreement”) with Okland Construction Company Inc. (“Okland”) regarding preconstruction and construction services to be provided in connection with the construction of our corporate headquarters, together with related facilities and improvements. Okland has agreed that the work contemplated by the Construction Agreement will be performed for the Guaranteed Maximum Price (as defined in the Construction Agreement and as established in the First Amendment to the Agreement dated July 31, 2015) and in accordance with the Construction Schedule (as defined in the Construction Agreement). However, both the Guaranteed Maximum Price and the Construction Schedule remain subject to change. Because many aspects of the proposed construction remain subject to future agreement, there is a risk of difficulties under the Construction Agreement, any of which if not resolved to the satisfaction of us and Okland could cause difficulties with the construction of our headquarters, any of which in turn could cause us to default under the syndicated senior secured credit facility we recently entered into with U.S. Bank and other banks. Any such adverse developments could result in material liabilities and expense and could have a material adverse effect on our business.

We expect to incur substantial indebtedness.

At September 30, 2015, we had no indebtedness for borrowed money except for the principal and accrued interest on \$5.5 million aggregate principal amount of bonds we issued as privately-placed digital bonds or “cryptobonds” as an initial test of the digital securities trading system we are working to develop. However, we expect to incur substantial indebtedness under the syndicated senior secured credit facility we recently entered into with U.S. Bank and other banks, and we expect to incur substantial additional indebtedness in connection with the completion of our headquarters. In addition, we may incur up to the full \$10.0 million of indebtedness potentially available to us under the revolving credit facility included in the senior secured credit facility, and we may also incur additional indebtedness, subject to the limitations set forth in the Loan Agreement governing our senior secured credit facility. All such indebtedness will increase our business risks substantially, including our vulnerability to industry downturns and competitive pressures. Further, the Loan Agreement and related agreements governing the senior secured credit facility contain numerous requirements, including affirmative and negative financial and other

covenants. If we are unable to maintain compliance with all of them, we will be in default, the consequences of which could materially harm our business. Further, to the extent that we incur additional indebtedness, we may be subject to additional requirements. The degree to which we are ultimately leveraged could materially and adversely affect our ability to obtain additional financing for working capital, acquisitions or other purposes and could make us more vulnerable to industry downturns and competitive pressures. Our ability to meet our debt service obligations will be dependent upon our future performance, which will be subject to financial, business and other factors affecting our operations, many of which are beyond our control.

Our Board has authorized a stock repurchase program and repurchases under the program would reduce our liquidity.

In May, 2015, our Board authorized a stock repurchase program under which we may repurchase shares of our outstanding common stock for up to \$25 million at any time through December 31, 2017. Any such repurchases would reduce our liquidity and could increase our vulnerability to industry downturns and competitive pressures. A material decrease in our liquidity could have a material adverse effect on our business.

We may be unable to generate sufficient cash flow to satisfy our debt service obligations.

Our ability to generate cash flow from operations to make interest and principal payments on our debt obligations will depend on our future performance, which will be affected by a range of economic, competitive and business factors. We cannot control many of these factors, including general economic conditions and the health of the Internet retail industry. If our operations do not generate sufficient cash flow from operations to satisfy our debt service obligations and all of our other obligations, we may need to borrow additional funds to make these payments or undertake alternative financing plans, such as refinancing or restructuring our debt, or reducing or delaying capital investments and other expenses. Additional funds or alternative financing may not be available to us on favorable terms, or at all. Our inability to generate sufficient cash flow from operations or obtain additional funds or alternative financing on acceptable terms could have a material adverse effect on our business.

Existing or future government regulation could harm our business.

We are subject to regulation at the federal, state and international levels, including regulation relating to privacy, security, retention, transfer and use of personal user information and telemarketing laws. Increasing regulation, along with increased governmental or private enforcement, may increase the cost of our business. Compliance with existing and new privacy and security laws may be difficult and costly and may further restrict our ability to collect demographic and personal information from users, which could harm our marketing efforts, and could require us to implement new and potentially costly processes, procedures and/or protective measures. The expansion of these and other laws, both in terms of their number and their applicability to the Internet could also harm our business. Many laws, adopted prior to the advent of the Internet, do not contemplate or address the unique issues raised thereby. Consequently, courts or regulators may apply these laws to Internet commerce in ways that may present difficult or impossible compliance challenges. Laws that do reference the Internet generally remain subject to interpretation by the courts and their applicability and reach are therefore not always clear. Moreover, Internet advances and innovations may result in new questions about the applicability and reach of these laws. Additionally, laws governing the permissible contents of products may adversely affect us, and we are subject to federal and state consumer laws, including those governing advertising, product labeling, product content requirements and product safety. The laws may cause us to incur losses for any non-compliant items in our inventory, or which we may previously have sold. We may be subject to claims related to personal injury, death, environmental or property damage. We have in the past and may from time to time be required to participate in product recalls. We may incur expense in connection with any of the foregoing or other matters or actions which may not be covered, in whole, in part or at all, by our liability insurance. These current and future laws and regulations could have a material adverse effect on our business.

Economic factors, including our increasing exposure to the U.S. housing industry, may adversely affect our financial performance.

Economic conditions may adversely affect our financial performance. In the United States, weakness in the housing market, changes in interest rates, changes in fuel and other energy costs, inflation or deflation or expectations of either inflation or deflation, actual or anticipated levels of unemployment, unavailability or limitations of consumer credit, higher consumer debt levels or efforts by consumers to reduce debt levels, higher tax rates and other changes in tax laws, overall economic slowdown, changes in consumer desires affecting demand for the products and services we sell and other economic factors could adversely affect consumer demand for the products and services we sell. Any of these factors may change the mix of

products we sell to a mix with a lower average gross margin and/or result in slower inventory turnover and/or greater markdowns on inventory. Higher interest rates, transportation costs, inflation, higher costs of labor, insurance and healthcare, foreign exchange rates fluctuations, higher tax rates and other changes in tax laws, changes in other laws and regulations and other economic factors in the United States may increase our cost of sales and operating, may increase our selling, general and administrative expenses, and may otherwise adversely affect our operations and operating results. These factors may affect not only our operations, but also the operations of suppliers from whom we purchase goods, which may also result in increases in the cost to us of the goods and services we sell. The occurrence of any of the foregoing could have a material adverse effect on our business.

Over the last few years the percentage of our sales from home and garden products has increased substantially. We believe that our sales of home and garden products are affected by the strength of the U.S. housing industry, and that downturns in the U.S. housing industry could have a material adverse effect on our business.

Decreases in discretionary consumer spending may have an adverse effect on us.

A substantial portion of the products and services we offer are products or services that consumers may view 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. Difficult macro-economic conditions, particularly high levels of unemployment or underemployment, also impact our customers' ability to obtain consumer credit. Other factors, including consumer confidence, employment levels, interest rates, tax rates, consumer debt levels, and fuel and energy costs could reduce consumer spending or change consumer purchasing habits. Slowdowns in the U.S. or global economy, or an uncertain economic outlook, could materially adversely affect consumer spending habits and could have a material adverse effect on our business.

We have reversed the valuation allowance for our deferred tax assets, and we may not be able to realize these assets in the future. Our deferred tax assets may also be subject to additional valuation allowances, which could adversely affect our operating results.

From our inception to December 31, 2013, we established a valuation allowance for our deferred tax assets, primarily due to realized losses and uncertainty regarding our future taxable income. Determining whether a valuation allowance for deferred tax assets is appropriate requires significant judgment and an evaluation of all positive and negative evidence. At each reporting period, we assess the need for, or the sufficiency of, a valuation allowance against deferred tax assets. At December 31, 2013, based on the weight of all the positive and negative evidence, we concluded that it was more likely than not that we will realize our net deferred tax assets based upon future taxable income. Therefore we reversed the valuation allowance at December 31, 2013.

Our conclusion at December 31, 2013 that it is more likely than not that we will realize our net deferred tax assets was based primarily on our estimate of future taxable income. Our estimate of future taxable income is based on internal projections which primarily consider historical performance, but also include various internal estimates and assumptions as well as certain external data. We believe all of these inputs to be reasonable, although inherently subject to significant judgment. If actual results differ significantly from these estimates of future taxable income, we may need to reestablish a valuation allowance for some or all of our deferred tax assets. Establishing an allowance on our net deferred tax assets could have a material adverse effect on our financial condition and operating results.

Our income tax provisions and the amounts we reserve for tax contingencies are estimates and are subject to variations and adjustments. The amounts we ultimately pay may exceed the amounts estimated or accrued.

Our quarterly tax provision, and our quarterly estimate of our annual effective tax rate, is subject to significant variation due to several factors, including variability in accurately predicting our pre-tax and taxable income and loss and the mix of jurisdictions to which they relate, changes in how we do business, changes in law, regulations, and administrative practices, and relative changes of expenses or losses for which tax benefits are not recognized. Additionally, our effective tax rate can be more or less volatile based on the amount of pre-tax income. For example, the impact of discrete items and non-deductible expenses on our effective tax rate is greater when our pre-tax income is relatively low.

Changes in state, federal, and foreign tax laws may increase our tax contingencies. The timing of the resolution of income tax examinations is highly uncertain, and the amounts ultimately paid, if any, upon resolution of the issues raised by the taxing authorities may differ from the amounts accrued. It is reasonably possible that within the next 12 months we will receive

assessments by various tax authorities or possibly reach resolution of income tax examinations in one or more jurisdictions. These assessments or settlements may result in changes to our contingencies related to positions on prior years' tax filings. The volatility of our quarterly tax provision or the resolution of matters related to our tax contingencies could have a material adverse effect on our financial results.

We may need to implement additional finance and accounting systems, procedures and controls as we grow our business and organization and to satisfy new reporting requirements.

We are required to comply with a variety of reporting, accounting and other rules and regulations. Compliance with existing requirements is expensive. We will have to ensure that the reporting, accounting, records maintenance and other systems in place at the fintech company we recently acquired and at the broker dealers we recently agreed to acquire are compliant and adequate. These and future requirements may increase our costs and require additional management time and resources. We may need to implement additional finance and accounting systems, procedures and controls to satisfy our reporting requirements. If our internal control over financial reporting is determined to be ineffective, such failure could cause investors to lose confidence in our reported financial information, negatively affect the market price of our common stock, subject us to regulatory investigations and penalties, and could have a material adverse effect on our business.

Changes in accounting standards and subjective assumptions, estimates and judgments by management related to complex accounting matters could significantly affect our financial results.

Generally accepted accounting principles and related accounting pronouncements, implementation guidelines and interpretations with regard to a wide range of matters that are relevant to our business, including but not limited to revenue recognition, estimating valuation allowances and accrued liabilities (including allowances for returns, credit card chargebacks, doubtful accounts and obsolete and damaged inventory), internal use software and website development (acquired and developed internally), accounting for income taxes, valuation of long-lived and intangible assets and goodwill, stock-based compensation and loss contingencies, are highly complex and involve many subjective assumptions, estimates and judgments by our management. Changes in these rules or their interpretation or changes in underlying assumptions, estimates or judgments by our management could significantly change our reported or expected financial performance, and could have a material adverse effect on our business.

We face risks relating to our inventory.

In our direct business, we sell merchandise that we have purchased and hold in inventory. We assume the risks of inventory damage, theft and obsolescence, as well as risks of price erosion for these products. These risks are especially significant because some of the merchandise we sell is characterized by seasonal trends, fashion trends, rapid technological change, obsolescence and price erosion, and because we sometimes make large purchases of particular types of inventory. Subject to our returns policies, we accept returns of products sold through our partners as well as products we sell in our direct business, and we have the risk of reselling the returned products. In the past we have recorded charges for obsolete inventory and have had to sell certain merchandise at a discount or loss. To the extent that we rely on purchased inventory, our success will depend on our ability to sell our inventory rapidly, the ability of our buying staff to purchase inventory at attractive prices relative to its resale value and our ability to manage customer returns and other costs. If we are unsuccessful in any of these areas, we may be forced to sell our inventory at a discount or loss. Further, we purchase some of our inventory from foreign suppliers and pay for inventory with U.S. dollars. If the dollar weakens with respect to foreign currencies, foreign suppliers may require us to pay higher prices for products, which could negatively affect our profit margins. The occurrence of any of the foregoing could have a material adverse effect on our business.

If we do not successfully optimize and operate our warehouse and customer service operations, our business could be harmed.

We have expanded, contracted and otherwise modified our warehouse and customer service operations from time to time in the past, and expect that we will continue to do so. We also contract with third parties to receive returns and process orders. If we or our third party providers do not successfully optimize and operate our warehouse and customer service operations, it could significantly limit our ability to meet customer demand, customer shipping or return time expectations, or result in excessive costs and expenses for the size of our business. Because it is difficult to predict demand, we may not manage our facilities in an optimal way, which may result in excess or insufficient inventory or warehousing capacity. We may also fail to staff our fulfillment and customer service centers at optimal levels. Our failure to do so could negatively impact our operating results and customer experience, and could have a material adverse effect on our business.

Our cash, cash equivalents and short-term investments are subject to a risk of loss based upon the solvency of the financial institutions in which they are maintained.

We maintain the majority of our cash, cash equivalents and short-term investments in accounts with a small number of major financial institutions within the United States, in the form of demand deposits, money market accounts, time deposits, U.S. Treasury Bills and other short-term investments. Our deposits in these institutions are generally substantially in excess of the amounts of insurance provided by the FDIC, and some deposits may not be covered by insurance at all. If any of these institutions were to become insolvent or subject to regulatory action, we could lose some, or all, of such deposits, which would have a material adverse effect on our business.

Our decision to accept and hold cryptocurrency, such as bitcoins, may subject us to exchange risk and additional tax and regulatory requirements.

In January 2014, we began accepting bitcoins as a form of payment for purchases on our website. Bitcoin is a cryptocurrency that uses cryptography to control the creation and transfer of the currency between individual parties. Bitcoin is not considered legal tender or backed by any government. Since inception in 2009, bitcoins have experienced price volatility, technological glitches and various law enforcement and regulatory interventions. At present we do not accept bitcoin payments directly, but use a third party vendor to accept bitcoin payments on our behalf. That third party vendor then immediately converts the bitcoin payments into U.S. dollars so that we receive payment for the product sold at the sales price in U.S. dollars.

In September 2014 we launched an updated international checkout system which allows us to accept bitcoin globally. The use of cryptocurrency such as bitcoin has been prohibited or effectively prohibited in some countries. Authorities in other countries have issued statements or regulations prohibiting financial institutions or others from holding or dealing in cryptocurrency. Authorities in some countries have issued statements or regulations to the effect that cryptocurrency is not legal tender. Authorities in many other countries have issued warnings about their perceptions of the risks of dealing in bitcoin or other cryptocurrency and/or announcing that cryptocurrency is subject to money laundering or other laws or to taxation, or that the authorities are studying the legality of cryptocurrency. If we fail to comply with prohibitions applicable to us, we could face regulatory or other enforcement actions and potential fines and other consequences.

We have also begun to hold bitcoin and other cryptocurrency directly. Consequently, we have exchange rate risk on the amounts we hold as well as the risks that regulatory or other developments may adversely affect the value of the cryptocurrency we hold. In the future, we may transact in cryptocurrency directly or increase our cryptocurrency holdings. This will subject us to additional exchange risk and other risks as described above, which may have an adverse effect on our results. There is also uncertainty regarding the future legal and regulatory requirements relating to cryptocurrency or transactions utilizing cryptocurrency. These uncertainties, as well as future accounting and tax developments, or other requirements relating to cryptocurrency could have a material adverse effect on our business.

We may be adversely affected by fluctuations in precious metal prices.

At September 30, 2015 our investment in precious metals was \$10.2 million. Our financial results may be adversely affected by declines in the price of precious metals. The prices of precious metals may fluctuate widely in the future and are affected by numerous factors beyond our control such as interest rates, exchange rates, inflation or deflation, fluctuation in the value of the United States dollar and foreign currencies, global and regional supply and demand, and the political and economic conditions of mineral producing countries throughout the world. Our investment consists of actual precious metals, rather than financial instruments. We store our precious metals off-site in a third party facility. Consequently, we are subject to the risks of physical storage with a third party that we do not control. Any loss of these assets or substantial decline in their value could have a material adverse effect on our business.

We have a history of significant losses. If we do not maintain profitability, our financial condition and our stock price could suffer.

We have a history of losses, and we may incur operating and net losses in the foreseeable future. At September 30, 2015, our accumulated deficit was \$166.5 million. We need to generate significant revenues to maintain profitability, and we may not be able to do so. Although we have generated positive net income in recent years, we incurred a net loss of \$19.4 million in 2011, and we incurred a net loss of \$2.1 million during Q3 2015. We may be unable to maintain profitability in the future. If our revenues grow more slowly than we anticipate or decline, or if our expenses exceed our expectations, our

financial results would be harmed and our business, prospects, financial condition and results of operations could fall below the expectations of public market analysts and investors. The occurrence of any of the foregoing could have a material adverse effect on our business.

If we fail to accurately forecast our expenses and revenues, our business, prospects, financial condition and results of operations may suffer and the price of our securities may decline.

The rapidly evolving nature of our industry and the constantly evolving nature of our business make forecasting operating results difficult. We periodically implement large, complex and expensive infrastructure upgrades in order to increase our ability to handle larger volumes of sales and to develop or increase our ability to perform a variety of analytical procedures relating to our business. We are continuing to upgrade and further expand these and other components of our infrastructure, and are in the process of integrating infrastructure relating to the fintech company we recently acquired and the broker-dealers we recently agreed to acquire. We are also in the process of constructing a facility to serve as our corporate headquarters. In the past, we have experienced difficulties with upgrades of our infrastructure, and have incurred increased expenses as a result of these difficulties. As a result of expenditures on our infrastructure and headquarters, our ability to reduce our expenditures is and will be limited. Therefore, any significant shortfall in the revenues for which we have built and are continuing to build our business could have a material adverse effect on our business.

The seasonality of our business places increased strain on our operations.

A disproportionate amount of our sales normally occur during our fourth quarter. If we do not stock or are otherwise unable to source products sufficient to meet customer demand, our business would be adversely affected. If we liquidate products, as we have in the past, we may be required to take significant inventory markdowns or write-offs, which could reduce gross profits. We may experience an increase in our net shipping cost due to complimentary upgrades, split-shipments, and additional long-zone shipments necessary to ensure timely delivery for the holiday season. If too many customers access our Website within a short period of time due to increased holiday demand, we may experience system interruptions that make our Website unavailable or prevent us from efficiently fulfilling orders, which may reduce the volume of goods we sell and the attractiveness of our products and services. In addition, we may be unable to adequately staff our fulfillment and customer service centers during peak periods, and delivery services and other fulfillment companies and customer service providers may be unable to meet the seasonal demand. The occurrence of any of the foregoing could have a material adverse effect on our business.

Significant merchandise returns could harm our business.

We allow our customers to return products, subject to our returns policies. If merchandise returns are higher than we expect, our business, prospects, financial condition and results of operations could be harmed. Further, we modify our policies relating to returns from time to time, and policies intended to reduce the number of product returns may result in customer dissatisfaction and/or fewer repeat customers. The occurrence of any of the foregoing could have a material adverse effect on our business.

Our pricing strategy may not meet customers' price expectations or result in net income.

Demand for our products is generally highly sensitive to price. Our pricing strategies have had, and may continue to have, a significant impact on our net sales and net income. We often offer discounted prices, and free or discounted shipping as a means of attracting customers and encouraging repeat purchases. Such offers and discounts reduce our margins. In addition, our competitors' pricing and marketing strategies are beyond our control and can significantly affect the results of our pricing strategies. If we fail to meet our customers' price expectations, or if we are unable to compete effectively with our competitors when they engage in aggressive pricing strategies or other competitive activities, it could have a material adverse effect on our business.

If the products that we offer do not reflect our customers' tastes and preferences, our sales and profit margins would decrease.

Our success depends in part on our ability to offer products that reflect consumers' tastes and preferences. Consumers' tastes are subject to frequent, significant and sometimes unpredictable changes. Because some of the products that we sell consist of manufacturers' and retailers' excess inventory, we have limited control over some of the products that we are able to offer for sale. If our merchandise fails to satisfy customers' tastes or respond to changes in customer preferences, our sales

could suffer and we could be required to mark down unsold inventory, as we have in the past, which would depress our profit margins. In addition, any failure to offer products in line with customers' preferences could allow our competitors to gain market share. The occurrence of any of the foregoing could have a material adverse effect on our business.

The loss of key personnel or any inability to attract and retain additional personnel could affect our ability to successfully grow our business.

Our performance is substantially dependent on the continued services and on the performance of our senior management and other key personnel. Our performance also depends on our ability to retain and motivate our officers and key employees. The loss of the services of any of our executive officers or other key employees for any reason could harm our business. Occasionally, members of senior management or key employees may find it necessary to take a leave of absence due to medical or other causes. In early 2013 our Chief Executive Officer and then Chairman of the Board, Dr. Patrick M. Byrne, took a two-month personal leave of absence for medical reasons. Leaves of absence for temporary or extended periods may harm our business. We do not have employment agreements with any of our key personnel and we do not maintain "key person" life insurance policies. Our future success also depends on our ability to identify, attract, hire, train, retain and motivate other highly-skilled technical, managerial, editorial, merchandising, marketing and customer service personnel. Competition for such personnel is intense. Our failure to retain and attract the necessary technical, managerial, editorial, merchandising, marketing, and customer service personnel could have a material adverse effect on our business.

In order to obtain future revenue growth and sustain profitability, we will have to attract and retain customers on cost-effective terms.

Our success depends on our ability to attract and retain customers on cost-effective terms. We have relationships with online services, search engines, affiliate marketing websites, directories and other website and e-commerce businesses to provide content, advertising banners and other links that direct customers to our Website. We rely on these relationships as significant sources of traffic to our Website and to generate new customers. In the past we have terminated affiliate marketing websites as a result of efforts by certain states to require us to collect sales taxes based on the presence of those third party Internet advertising affiliates in those states, and we are likely to do so again in the future if necessary. If we are unable to develop or maintain these relationships, or develop and maintain new relationships for newly developed and necessary marketing services on acceptable terms, our ability to attract new customers and our financial condition would suffer. In addition, certain of our online marketing agreements may require us to pay upfront fees and make other payments prior to the realization of the sales, if any, associated with those payments. Current or future relationships or agreements may fail to produce the sales that we anticipate. We periodically conduct television and radio branding and advertising campaigns. Such campaigns are expensive and may not result in the cost-effective acquisition of customers. Other means of utilizing social media campaigns to attract or retain customers are expensive and may not result in cost-effective acquisition or retention of customers. The occurrence of any of the foregoing risks or our inability to attract and retain customers on cost-effective terms could have a material adverse effect on our business.

We may be unable to protect our proprietary technology or keep up with that of our competitors.

Our success depends to a significant degree upon the protection of our software and other proprietary intellectual property rights. We may be unable to deter misappropriation of our proprietary information, detect unauthorized use or take appropriate steps to enforce our intellectual property rights. In addition, our competitors may now have or may in the future develop technologies that are as good as or better than our technology without violating our proprietary rights. Our failure to protect our software and other proprietary intellectual property rights or to utilize technologies that are as good as our competitors' could put us at a disadvantage to our competitors. In addition, the failure of the third parties whose products we offer for sale on our Website to protect their intellectual property rights, including their domain names, could impair our operations. These failures could have a material adverse effect on our business.

We may not be able to obtain trademark protection for our marks, which could impede our efforts to build brand identity.

We have filed trademark applications with the Patent and Trademark Office seeking registration of certain service marks and trademarks. There can be no assurance that our applications will be successful or that we will be able to secure significant protection for our service marks or trademarks in the United States or elsewhere as we expand internationally. Our competitors or others could adopt product or service marks similar to our marks, or try to prevent us from using our marks, thereby impeding our ability to build brand identity and possibly leading to customer confusion. Any claim by another party

against us or customer confusion related to our trademarks, or our failure to obtain trademark registration, could have a material adverse effect on our business.

We may not be able to enforce protection of our intellectual property rights under the laws of other countries.

We sell products internationally and consequently we are subject to risks of doing business internationally as related to our intellectual property, including:

- legal uncertainty regarding liability for the listings and other content provided by our users, including uncertainty as a result of less Internet-friendly legal systems, unique local laws, and lack of clear precedent or applicable law; and
- differing intellectual property laws, which may provide insufficient protection for our intellectual property.

Any such difficulties could have a material adverse effect on our business.

We may be accused of infringing intellectual property rights of third parties.

Other parties have claimed and may claim that we infringe their intellectual property rights. We have been and are subject to, and expect to continue to be subject to, legal claims of alleged infringement of the intellectual property rights of third parties. The ready availability of damages, royalties and the potential for injunctive relief has increased the defense litigation costs of patent infringement claims, especially those asserted by third parties whose sole or primary business is to assert such claims. Such claims, even if not meritorious, may result in significant expenditure of financial and managerial resources, and the payment of damages or settlement amounts. Additionally, we may become subject to injunctions prohibiting us from using software or business processes we currently use or may need to use in the future, or requiring us to obtain licenses from third parties when such licenses may not be available on financially feasible terms or terms acceptable to us or at all. In addition, we may not be able to obtain on favorable terms, or at all, licenses or other rights with respect to intellectual property we do not own in providing e-commerce services to other businesses and individuals under commercial agreements. Any such difficulties could have a material adverse effect on our business.

Our business and reputation may be harmed by the offering or sale of pirated, counterfeit or illegal items by third parties, and by intellectual property litigation.

We have received in the past, and we anticipate we will receive in the future, communications alleging that items offered or sold through our Website infringe third party copyrights, trademarks and trade names or other intellectual property rights or that we have otherwise infringed third parties' past, current or future intellectual property rights. We may be unable to prevent third parties from offering and selling unlawful goods, and we may be subject to allegations of civil or criminal liability for unlawful activities carried out by third parties through our Website. We may implement measures in an effort to protect against these potential liabilities that could require us to spend substantial resources and/or to reduce revenues by discontinuing certain service offerings. Any costs incurred as a result of liability or asserted liability relating to the sale of unlawful goods or the unlawful sale of goods could harm our business. Resolving litigation or claims regarding patents or other intellectual property, whether meritorious or not, could be costly, time-consuming, cause service delays, divert our management and key personnel from our business operations, require expensive or unwanted changes in our methods of doing business or require us to enter into costly royalty or licensing agreements, if available. As a result, these claims and any negative publicity generated as a result of any of the foregoing could damage our reputation, diminish the value of our brand name, and have a material adverse effect on our business.

Use of social media may adversely impact our reputation.

There has been a marked increase in use of social media platforms and similar devices, including weblogs (blogs), social media websites, and other forms of Internet-based communications which allow individual access to a broad audience of consumers and other interested persons. Consumers value readily available information concerning retailers, manufacturers, and their goods and services and often act on such information without further investigation, authentication and without regard to its accuracy. The availability of information on social media platforms and devices is virtually immediate as is its impact. Social media platforms and devices immediately publish the content their subscribers and participants post, often without filters or checks on accuracy of the content posted. The opportunity for dissemination of information, including inaccurate information, is virtually limitless. Information concerning or affecting us may be posted on such platforms and devices at any time. Information posted may be inaccurate and adverse to us, and it may harm our business. The harm may be immediate

without affording us an opportunity for redress or correction. Such platforms also could be used for the dissemination of trade secret information or compromise of other valuable company assets, any of which could have a material adverse effect on our business.

Our car listing service may be subject to a variety of regulatory requirements and risks.

Many states and other jurisdictions, including Utah, where we are located, have regulations governing the conduct of car sellers and public advertisement for car sales. Generally, these regulations govern the conduct of those sellers advertising their automobiles for sale and are not directly applicable to those providing the medium through which the advertisement is made available to the public. Sellers are often subject to regulations in the nature of “truth in advertising laws.” We have no ability to know whether the information sellers provide is correct. While our site terms and conditions of usage prohibit unlawful acts, we cannot assure that sellers will comply with all laws and regulations applicable to them and their transactions. The application of these regulations to online car listing service providers is not clear. Although we do not expect these laws to have a significant effect on our listing service, we will incur costs in complying with these laws, and we may from time to time be required to make changes in our service that may increase our costs, reduce our revenues, cause us to prohibit certain listing or advertising practices, or make other changes that may adversely affect our car listing service. Further, like our shopping business, our car listing service is subject to most of the same laws and regulations that apply to other companies conducting business on and off the Internet. To the extent that current or future laws or regulations prevent users from selling items on our car listing site, they could harm our business. In addition, any negative publicity we receive regarding any allegations of unlawful or deceptive conduct may damage our reputation, our ability to attract new customers to our main shopping site, and our brand name generally. The occurrence of any of the foregoing could have a material adverse effect on our business.

Our recently-launched Overstock Fulfillment Services and Supplier Oasis face competition from other distribution networks and will require substantial resources.

We recently launched Overstock Fulfillment Services and Supplier Oasis, which provide multi-channel fulfillment services to sellers, suppliers, and partners and a single integration point through which partners can manage their products, inventory and sales channels. The marketplace for these services is highly competitive, and many of our current and potential competitors in this area have greater brand recognition, longer operating histories, larger customer bases and significantly greater financial, marketing and other resources than we do. Our continued development of Overstock Fulfillment Services and Supplier Oasis may require substantial investments over a lengthy period of time. Further, most of the risks applicable to our business generally are also applicable to the business of Overstock Fulfillment Services and Supplier Oasis. If we are unable to generate sufficient revenues and gross profits from Overstock Fulfillment Services and Supplier Oasis, it could have a material adverse effect on our business.

Our recently-launched Farmers Market will face competition from a variety of competitors and may require substantial resources.

In late 2014 we launched Farmers Market, a tab within our website from which our customers can order locally grown fresh produce and other food products. Farmers Market competes with a wide variety of businesses nationwide, many of which have greater brand recognition, longer operating histories, larger customer bases and significantly greater financial, marketing and other resources than we do. Our continued development of Farmers Market may require substantial attention from our senior executives and may involve delivery and other issues that may be different from those we face in connection with the sale and delivery of non-perishable products. Further, most of the risks applicable to our business generally are also applicable to our Farmers Market business. Any significant difficulties we encounter with our Farmers Market offering could have a material adverse effect on our business.

Our recently-launched insurance offerings will face competition from traditional insurance brokers and direct insurance marketing organizations.

In 2014 we launched a tab offering insurance for vehicle, residential and small businesses on our website. The tab allows consumers to compare live quotes for insurance on residential, vehicle, and small business insurance, and to bind (pay for and have go into effect) insurance policies. The insurance business is highly competitive, and many of our current and potential competitors in this area have greater brand recognition, longer operating histories, larger customer bases and significantly greater financial, marketing and other resources than we do. Further, most of the risks applicable to our business generally are also applicable to our insurance offerings business. Any significant difficulties we encounter with our insurance offerings could have a material adverse effect on our business.

We are involved in substantial litigation.

From time to time we receive claims of and become subject to consumer protection, employment, intellectual property and other commercial litigation related to the conduct and operation of our business and the sale of products on our Website. In connection with such litigation, we may be subject to significant damages or equitable remedies. In addition, we have in the past been, are now, and in the future may be, involved in substantial litigation in which we are the plaintiff, including litigation regarding the constitutionality of certain state tax laws, and the prime broker litigation described below. Any of such litigation, whether as plaintiff or defendant, could be costly and time consuming and could divert management and key personnel from our regular business operations. We do not currently believe that any of our outstanding litigation will have a material adverse effect on our business, prospects, financial condition or results of operations. However, due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of these matters could have a material adverse effect on our business.

Our prime broker litigation may have an adverse effect on our business and financial condition.

We remain involved in substantial litigation against Merrill Lynch, Pierce, Fenner & Smith, Inc., and Merrill Lynch Professional Clearing Corporation, and the use of management's time and attention in connection with the litigation and related matters may reduce the time management is able to spend on other aspects of our business, which may have adverse effects on other aspects of our business. To the extent that any such adverse effects exceed any benefits we may realize from the litigation, it could have a material adverse effect on our business.

Public statements we or our Chief Executive Officer, Patrick M. Byrne, have made or may make in the future may antagonize regulatory officials or others.

We and our Chief Executive Officer, Dr. Patrick M. Byrne, have from time to time made public statements regarding our or his beliefs about matters of public interest, including statements regarding naked short selling and regulatory capture. Some of those public statements have been critical of the Securities and Exchange Commission and other regulatory agencies. These public statements may have consequences for us, whether as a result of increased regulatory scrutiny or otherwise. Additionally, other officers may make public statements that could have adverse consequences and these statements could have a material adverse effect on our business.

The price of our securities may be volatile and you may lose all or a part of your investment.

The market price of our common stock historically has been subject to significant fluctuations. These fluctuations could continue. It is possible that in future periods our results of operations may be below the expectations of public market analysts and investors. If this occurs, the market price of our securities may decline. Any of the foregoing could have a material adverse effect on our business.

Our quarterly operating results are volatile and may adversely affect the market price of our securities.

Our future revenues and operating results have varied in the past and may continue to vary significantly from quarter to quarter due to a number of factors, many of which are outside our control, and any of which could harm our business. As a result, we believe that quarterly comparisons of our operating results are not necessarily meaningful and that you should not rely on the results of one quarter as an indication of our future performance. In addition to the other risk factors described in this report, additional factors that have caused and/or could cause our quarterly operating results to fluctuate and in turn affect the market price of our securities include:

- increases in the cost of advertising and changes in our sales and marketing expenditures;
- our inability to retain existing customers or encourage repeat purchases;
- the extent to which our existing and future marketing campaigns are successful;
- price competition that results in losses or lower profit margins;
- the amount and timing of operating costs and capital expenditures relating to the expansion of our business operations and infrastructure including those relating to our construction of our new corporate headquarters;
- the amount and timing of our purchases of inventory;
- our inability to manage distribution operations or provide adequate levels of customer service;
- increases in the cost of fuel and transportation;

- our ability to successfully implement technology changes or to integrate operations and technologies from acquisitions or other business combinations;
- our efforts to offer new lines of products and services; and
- our ability to attract users to our shopping and other sites.

Any of the foregoing could have a material adverse effect on our business.

Our operating results may fluctuate depending on the season, and such fluctuations may affect the market price of our securities.

We have experienced and expect to continue to experience fluctuations in our operating results because of seasonal fluctuations in traditional retail patterns. Sales in the retail and wholesale industry tend to be significantly higher in the fourth calendar quarter of each year than in the preceding three quarters due primarily to increased shopping activity during the holiday season. However, there can be no assurance that our sales in the fourth quarter will exceed those of the preceding quarters or, if the fourth quarter sales do exceed those of the preceding quarters, that we will be able to manage the increased sales effectively. Further, we generally increase our inventories substantially in anticipation of holiday season shopping activity, which has a negative effect on our cash flow. Securities analysts and investors may inaccurately estimate the effects of seasonality on our results of operations in one or more future quarters and, consequently, our operating results may fall below expectations, causing the market price of our securities to decline. Any of the foregoing could have a material adverse effect on our business.

Sales by our significant stockholders could have an adverse effect on the market price of our stock.

Several of our stockholders own significant portions of our common stock. If one or more of our stockholders were to sell all or a portion of their holdings of our common stock, the market price of our common stock could be negatively impacted. The effect of such sales, or of significant portions of our stock being offered or made available for sale, could result in strong downward pressure on our stock price. Investors should be aware that they could experience significant short-term volatility in our stock if any one or more of such stockholders were to decide to sell all or a portion of their holdings of our common stock at once or within a short period of time. In addition, the transfer of ownership of a significant portion of our outstanding shares within a three-year period could adversely affect our ability to use our net operating losses to offset future taxable net income. Any of the foregoing could have a material adverse effect on our business.

We do not intend to pay dividends on our common stock and you may lose the entire amount of your investment in our common stock.

We have never declared or paid any cash dividends on our common stock and do not intend to pay dividends on our common stock for the foreseeable future. We intend to invest our future earnings, if any, to fund our growth. Therefore, you will not receive any funds without selling your shares. We cannot assure that you will receive a positive return on your investment when you sell your shares or that you will not lose the entire amount of your investment.

Provisions in our amended and restated certificate of incorporation and bylaws and Delaware law might discourage, delay or prevent a change of control of our company or changes in our management.

Our amended and restated certificate of incorporation and bylaws contain provisions that could discourage, delay or prevent a change in control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions among other things:

- permit the board of directors to establish the number of directors;
- provide that only one-third of our board of directors is elected at each of our annual meetings of stockholders (and our amended and restated certificate of incorporation prohibits cumulative voting in the election of directors);
- mean that directors may be removed by the affirmative vote of the holders of the outstanding shares of common stock only “for cause;”
- authorize the issuance of “blank check” preferred stock that our board could use to implement a stockholder rights plan (also known as a “poison pill”);
- eliminate the ability of our stockholders to call special meetings of stockholders;

- 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;
- establish advance notice requirements, including specific requirements as to the timing, form and content of a stockholder’s notice, for nominations for election to our board or for proposing matters that can be acted upon by stockholders at annual stockholder meetings;
- provide that special meetings of our stockholders may be called only by the board of directors, the chairman of the board, the chief executive officer or the president; and
- provide that stockholders are permitted to amend the bylaws only with the approval of the holders of sixty-six and two-thirds percent (66-2/3%) of the voting power of outstanding capital stock entitled to vote at an election of directors.

In addition, Section 203 of the Delaware General Corporation Law may discourage, delay or prevent a change in control of our company. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years following the date the person became an interested stockholder, subject to certain exceptions.

The price of our stock may be vulnerable to manipulation.

We filed an unfair business practice lawsuit against Morgan Stanley & Co. Incorporated, Goldman Sachs & Co., Bear Stearns Companies, Inc., Bank of America Securities LLC, Bank of New York, Citigroup Inc., Credit Suisse (USA) Inc., Deutsche Bank Securities, Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., and UBS Financial Services, Inc., and settled the case with respect to all defendants except Merrill Lynch, Pierce, Fenner & Smith, Inc., and Merrill Lynch Professional Clearing Corporation. The litigation is ongoing.

We believe these remaining defendants engaged in unlawful actions and have caused substantial harm to Overstock, and that the remaining defendants manipulated downward the market price of Overstock’s common stock. To the extent that the defendants or other persons engage in any such actions or take any other actions to interfere with or destroy or harm Overstock’s existing and/or prospective business relationships with its suppliers, bankers, customers, lenders, investors, prospective investors or others, our business, prospects, financial condition and results of operation could be harmed, and the price of our common stock may be more volatile than it might otherwise be and/or may trade at prices below those that might prevail in the absence of any such efforts. The practice of “abusive naked short selling” continues to place our stock at risk for manipulative attacks by large investment pools and prime brokers.

Abusive naked short selling is the practice by which short sellers place large short sell orders for shares without first borrowing the shares to be sold, or without having first adequately located such shares and arranged for a firm contract to borrow such shares prior to the delivery date set to close the sale. While selling broker dealers are by rule required to deliver shares to close a transaction by a certain date, and while purchasing broker-dealers are obligated by rule to purchase the sold quantity of shares when they are not delivered to close the sale, these rules are often ignored. Abusive naked short selling has a depressive effect on share prices when it is allowed to persist because the economic effect of abusive naked short selling is the oversupply of counterfeit stock to the market. We believe the regulations designed to address this abusive practice are both inadequately structured and inadequately enforced. Consequently, we believe that without the enactment of adequate regulations and the enforcement necessary to curb these abuses, the manipulations achieved through abusive naked short selling are likely to continue. We believe that our stock has been subject to these abusive practices by those attempting to manipulate its price downward. To the extent that our stock is subject to these practices in the future, our stock may be more volatile than it might otherwise be and/or may trade at prices below those that might prevail in the absence of such abuses.

In the past, our stock has consistently been on the Regulation SHO threshold list.

Regulation SHO requires the stock exchanges to publish daily a list of companies whose stock has failures-to-deliver above a certain threshold. It also requires mandatory close-outs for open fail-to-deliver positions in threshold securities persisting for over 13 days, with the aim that no security would appear on the threshold for any extended period. Despite that aim, our common stock has frequently appeared on the Regulation SHO threshold list for extended and continuous periods and, while we do not currently appear on the Regulation SHO threshold list, in the past our stock has been on the list for more trading days than any other company.

Any investment in our securities involves a high degree of risk. Investors should consider carefully the risks and uncertainties described above, and all other information in this Form 10-Q and in any reports we file with the SEC after we file this Form 10-Q, before deciding whether to purchase or hold our securities. Additional risks and uncertainties not currently known to us or that we currently deem immaterial may also become important factors that may harm our business. The occurrence of any of the risks described in this Form 10-Q could harm our business. The trading price of our securities could decline due to any of these risks and uncertainties, and investors may lose part or all of their investment.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

During the quarter ended September 30, 2015, the Company issued 908,364 shares of its common stock, \$0.0001 par value, in an unregistered transaction. The shares were issued on August 26, 2015 as part of the consideration paid pursuant to an Asset Purchase Agreement dated as of August 26, 2015 by and between Cirrus Technologies, LLC and Cirrus Services LLC, a wholly owned subsidiary of Medici, Inc., a majority-owned subsidiary of the Company. The consideration received (in exchange for the shares and approximately \$11 million in cash, reflecting an aggregate consideration paid for the assets of approximately \$30.3 million) consisted of all or substantially all of the assets of Cirrus Technologies, LLC. The shares were issued to the equityholders and debtholders of Cirrus Technologies, LLC at the instruction of Cirrus Technologies, LLC pursuant to the exemption from registration provided by Rule 506(b) promulgated under the Securities Act of 1933, as amended. The facts relied upon to establish the exemption were the facts certified to the Company by each of the persons who received shares in the private placement regarding the status of each as either (i) an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act, or (ii) a person who had either alone or with his or her purchaser representative, if any, such knowledge and experience in financial and business matters that he or she was capable of evaluating the merits and risks of an investment in the shares, as well as the facts certified to the Company by the purchaser representative for persons who utilized a purchaser representative. Concurrently with the issuance, the Company entered into a registration rights agreement relating to the shares issued, and on September 25, 2015 the Company filed a registration statement for the re-sale of the shares.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

(a)	Exhibits
2.1	Asset Purchase Agreement by and between Cirrus Technologies, LLC, as Seller, and Cirrus Services LLC, as Buyer, dated as of August 26, 2015.*
2.2	Pro Securities, LLC Membership Interest Purchase Agreement by and among Joseph Cammarata and John Paul DeVito, as Sellers, and Medici, Inc., as Buyer, dated as of August 26, 2015.*
2.3	SpeedRoute LLC Membership Interest Purchase Agreement by and among Joseph Cammarata and John Paul DeVito, as Sellers, and Medici, Inc., as Buyer, dated as of August 26, 2015.*
2.4	TraderField Securities, Inc. Stock Purchase Agreement by and between Joseph Cammarata, as Seller, and Medici, Inc., as Buyer, dated as of August 26, 2015.*
2.5	Registration Rights Agreement by and among Overstock.com, Inc., and each of the holders listed on Schedule I thereto dated August 26, 2015 (incorporated by reference to exhibit 4.2 to our registration statement on Form S-3 filed September 25, 2015 (File No. 333-207141)).
3.1	Amendment No. 1 to the Amended and Restated Bylaws of Overstock.com, Inc. (incorporated by reference to exhibit 3.1 to our report on Form 8-K filed November 3, 2015 (File No. 000-49799)).
3.2	Composite Amended and Restated Bylaws of Overstock.com, Inc. (as of October 28, 2015).
10.1	First Amendment to Construction Agreement dated July 31, 2015, by and between O.com Land, LLC and Okland Construction Company Inc. (incorporated by reference to exhibit 10.2 to our report on Form 8-K filed August 4, 2015 (File No. 000-49799)).
31.1	Exhibit 31.1 Certification of Chief Executive Officer
31.2	Exhibit 31.2 Certification of Chief Financial Officer
32.1	Exhibit 32.1 Section 1350 Certification of Chief Executive Officer
32.2	Exhibit 32.2 Section 1350 Certification of Chief Financial Officer
101	The following financial information from our Quarterly Report on Form 10-Q for the third quarter of 2015, filed with the SEC on November 9, 2015, formatted in Extensible Business Reporting Language (“XBRL”): (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Income, (iii) Consolidated Statements of Comprehensive Income, (iv) Consolidated Statements of Cash Flows, (v) Consolidated Statements of Stockholders’ Equity, and (vi) Notes to Consolidated Financial Statements.

*Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule will be furnished supplementally to the Securities and Exchange Commission upon request.

SIGNATURE

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

Date: November 9, 2015

OVERSTOCK.COM, INC.

/s/ ROBERT P. HUGHES

Robert P. Hughes

Senior Vice President, Finance and Risk Management

ASSET PURCHASE AGREEMENT

by and between

CIRRUS TECHNOLOGIES LLC,

as Seller,

and

CIRRUS SERVICES LLC,

as Buyer

dated as of August 26, 2015

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of August 26, 2015, is by and between Cirrus Technologies LLC, a New Jersey limited liability company (“**Seller**”), and Cirrus Services LLC, a Utah limited liability company (“**Buyer**,” and together with Seller, the “**Parties**” and each, individually, a “**Party**”).

RECITALS

WHEREAS, Buyer is a wholly owned subsidiary of Medici, Inc., a Utah corporation, a majority-owned subsidiary of Overstock.com, Inc., a Delaware corporation (“**Overstock**”);

WHEREAS, Seller owns all of the rights, title and interest in, to and under the Purchased Assets (as defined below);

WHEREAS, each Holder (as defined herein) has previously delivered to Overstock a completed and signed Investor Questionnaire;

WHEREAS, the members of Seller have previously executed a unanimous written consent to, among other things, approve the transactions contemplated by this Agreement (the “**Transactions**”); and

WHEREAS, Seller wishes to sell, convey, transfer, assign and deliver to Buyer, and Buyer wishes to purchase from Seller, the Purchased Assets, and Buyer has agreed to assume the Assumed Liabilities (as defined below), all upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, Joseph Cammarata, who is the Chief Executive Officer, sole Managing Partner and majority owner of the membership interests of Seller, has agreed to guarantee the obligations of Seller under this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the respective agreements, covenants, representations and warranties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending be legally bound hereby, the Parties hereby agree as follows:

Article 1
DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the capitalized terms included in Schedule 1.1 shall have the meanings specified or referred to therein, other than terms defined elsewhere in this Agreement:

ARTICLE 2
SALE AND PURCHASE OF ASSETS

2.1 Purchase of Purchased Assets. On the terms and subject to the conditions hereof, at the Closing, in consideration of the Purchase Price, Seller shall sell, convey, transfer, assign and deliver, or cause one or more of its Affiliates to sell, convey, transfer, assign and deliver, to Buyer, and Buyer shall purchase from Seller, all of Seller's right, title and interest in and to all of the assets held by Seller or held by any Affiliate of Seller and used in the Business, including without limitation the assets listed or described on Schedule 1.1-PA (collectively, the "**Purchased Assets**").

2.2 Excluded Assets. Notwithstanding anything in Section 2.1, Seller shall not sell, convey, transfer, assign or deliver, nor cause to be sold, conveyed, assigned, transferred or delivered, to Buyer, Buyer shall not purchase or acquire and the Purchased Assets shall not include Seller's right, title and interests in and to any assets of Seller not expressly included in the Purchased Assets (collectively, the "**Excluded Assets**").

2.3 Assumed Liabilities. On the terms and subject to the conditions hereof, at the Closing, Buyer shall assume and agree to pay, perform and discharge when due only those liabilities arising out of the Purchased Assets on or after the Closing Date, excluding any obligation or liability for any breach thereof or default thereunder occurring prior to the Closing or as a consequence of the Closing and excluding the Excluded Liabilities (as defined in Section 2.4). Subject to the exclusions set forth herein, the assumed liabilities shall be collectively referred to as the "**Assumed Liabilities**". At the Closing, Buyer shall assume the Assumed Liabilities by executing and delivering to Seller the Assignment and Assumption Agreement.

2.4 Excluded Liabilities. Seller shall retain, and shall be responsible for paying, performing and discharging when due, and Buyer shall not assume, any liabilities of Seller other than the Assumed Liabilities (the "**Excluded Liabilities**"), including the following:

- (a) all liabilities relating to or arising out of the Excluded Assets;
- (b) all liabilities (including Environmental Liabilities) relating to or arising out of any Leased Real Property and the Lease;
- (c) all liabilities incurred on or prior to the Closing in connection with the employment, or the termination of the employment, of the Business Employees, including wages, severance, liabilities arising from any improper classification of Business Employees as independent contractors or anything other than employees, withholding liabilities,

workers' compensation, health and welfare liabilities, Benefit Plans, WARN Acts and Labor Contracts;

(d) all liabilities relating to or arising out of the Purchased Assets prior to the Closing Date, including any Environmental Liabilities arising from or related to ownership or operation of the Purchased Assets prior to the Closing Date; and

(e) all liabilities for Tax relating, incurred by or in connection with (i) Seller, on or before the Closing Date, (ii) the ownership of the Purchased Assets on or before the Closing Date, (iii) any prepaid amount, installment sale, open transaction or similar item that occurred or was realized on or prior to the Closing, and (iv) any Person other than Seller in connection with any of the items described under clauses (i) through (iii) above under any provision of applicable Law, as a transferee or successor, by Contract or otherwise.

2.5 Purchase Price. On the terms and subject to the conditions hereof, Buyer shall pay to Seller an amount equal to Thirty Million Two Hundred Ninety Thousand Dollars (\$30,290,000) consisting of (a) a cash payment of Ten Million Nine Hundred Ninety Thousand Dollars (\$10,990,000) made on the date hereof by wire transfer of immediately available funds to the bank account(s) previously designated by Seller to Buyer in writing (the "**Cash Consideration**") and (b) Nine Hundred Eight Thousand Three Hundred Sixty Four (908,364) shares of common stock, par value \$0.0001 per share, of Overstock (the "**Shares**" and, together with the Cash Consideration, the "**Purchase Price**"), issued by Overstock as instructed by Seller to the Persons identified in the Seller's Instruction (the "**Holders**") in the respective amounts set forth opposite such Holders' names in Schedule 2.5 hereto.

2.6 Closing. Subject to the terms and conditions of this Agreement, the sale and purchase of the Purchased Assets and the Colombian Entity Shares and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the "**Closing**") to be held at the offices of Overstock.com, Inc., 6350 South 3000 East, Salt Lake City, Utah 84121 at 10:00 A.M. local time, on the date hereof. The date upon which the Closing occurs is referred to as the "**Closing Date**."

2.7 Closing Deliveries by Seller. At the Closing, Seller shall deliver (or cause to be delivered) the following documents to Buyer, duly executed by Seller, as applicable:

(a) a bill of sale and assignment with respect to the Purchased Assets, substantially in the form attached hereto as **Exhibit A** (the "**Bill of Sale**");

(b) an assignment and assumption agreement in the form attached hereto as **Exhibit B** hereto (the "**Assignment and Assumption Agreement**") and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;

(c) with respect to the Lease, an Assignment and Assumption of Lease in the form attached hereto as **Exhibit C** hereto (the "**Assignment and Assumption of Lease**") and duly executed by Seller;

(d) a Registration Rights Agreement with respect to the Shares in the form attached hereto as **Exhibit D** (the “**Registration Rights Agreement**”) duly executed by Joe Cammarata on behalf of the Holders;

(e) non-competition agreements, executed by Joseph Cammarata, by John Paul DeVito and by John Tabacco, respectively, each in the form attached hereto as **Exhibit E**;

(f) a Transition Services Agreement in the form attached hereto as **Exhibit F** (the “**Transition Services Agreement**”) duly executed by Seller and Joseph Cammarata;

(g) a duly executed certificate of non-foreign status from Seller that meets the requirements of Treasury Regulations Section 1.1445-2(b) and is in a form reasonably satisfactory to Buyer;

(h) a written opinion of counsel for Seller, dated the date hereof, in substantially the form attached hereto as **Exhibit G**;

(i) an officer’s certificate of Seller certifying as to the resolutions adopted by Seller authorizing the Transactions and certifying the authorization of the officers executing documents in connection with the Transactions;

(j) a certificate of Joseph Cammarata certifying as to the approval of the Transactions by all of the members of Seller;

(k) a guarantee of Joseph Cammarata of the obligations of Seller under this Agreement dated the date hereof, in substantially the form attached hereto as **Exhibit H**;

(l) such other documents, instruments and certificates as Buyer may reasonably request.

2.8 Closing Deliveries by Buyer. At the Closing, Buyer shall deliver (or cause to be delivered) the following documents to Seller, duly executed by Buyer:

(a) the Assignment and Assumption Agreement duly executed by Buyer;

(b) with respect to the Lease, an Assignment and Assumption of Lease duly executed by Buyer;

(c) the Registration Rights Agreement, duly executed by Overstock;

(d) the Transition Services Agreement, duly executed by Buyer;

(e) a secretary’s (or officer’s) certificate of Buyer certifying as to the resolutions adopted by Buyer authorizing the Transactions and certifying the authorization of the officers executing documents in connection with the Transactions; and

(f) such other documents, instruments and certificates as Seller may reasonably request.

2.9 Withholding. Notwithstanding any other provision in this Agreement, Buyer shall have the right to deduct and withhold from any payments to be made hereunder any Taxes that it is required to deduct and withhold with respect to the making of such payments under the Code or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld and paid to the appropriate Tax Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to the Person in respect of which such deduction and withholding was made.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as of the execution date of this Agreement and as of the Closing as follows:

3.1 Organization and Qualification. Seller is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of New Jersey. Seller is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on the Business or Seller's ability to perform its obligations hereunder.

3.2 Authority, Due Execution; Binding Effect.

(a) Seller has the requisite limited liability company power and authority to execute and deliver this Agreement and the Ancillary Agreements to which Seller as of the Closing shall be a party, to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery by Seller of this Agreement and the Ancillary Agreements to which Seller as of the Closing shall be a party when executed and delivered by Seller, and the performance by Seller of its obligations hereunder and thereunder, have been or as of the Closing shall be duly and validly authorized by all necessary limited liability company action, including approval of Seller's sale of the Purchased Assets by the unanimous written consent of the members of Seller, a copy of which unanimous written consent, certified by an appropriate officer of Seller, has been delivered to Buyer.

(b) This Agreement has been duly executed and delivered by Seller and constitutes the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law). When executed and delivered by Seller on the Closing Date, each of the Ancillary Agreements to which Seller is a party shall have been duly executed and delivered by Seller and shall constitute the valid and binding obligation of

Seller, enforceable against Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law).

3.3 No Conflict. Neither the execution and delivery of this Agreement by Seller, nor the performance by Seller of the Transactions, shall, directly or indirectly (a) contravene, conflict with or result in (with or without notice or lapse of time) a violation or breach of any Law or Order to which Seller may be subject; (b) violate, conflict with or result in the breach of any provision of the Organizational Documents of Seller or (c) conflict in any material respect with, result in a material breach of, constitute a material default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any Consent under or give to others any right of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Lien pursuant to, any Contract to which Seller is a party or by which any of the Purchased Assets are bound or affected.

3.4 Consents and Approvals. The execution and delivery of this Agreement and the performance of the Transactions by Seller does not and will not require any Consent of any Governmental Authority or any other Person.

3.5 Title. Seller has good and valid title to all of the Purchased Assets, free and clear of any Liens or liabilities, other than the Assumed Liabilities.

3.6 Financial Statements; Undisclosed Liabilities.

(m) Seller has made available to Buyer true and complete copies of (i) the unaudited balance sheet of Seller as of December 31, 2013 and (ii) the unaudited balance sheet of Seller, as of December 31, 2014 (collectively, the "**Financial Statements**"). The Financial Statements are set forth in Schedule 3.6(a), are consistent with the books and records of Seller, and fairly present in all material respects the financial condition and the results of operations of Seller as of the dates thereof and the results of its operations for the periods covered thereby.

(n) Except as set forth on the Financial Statements or on Schedule 3.6(b), Seller does not have any liability or obligation (whether accrued, absolute, contingent or otherwise) which, individually or in the aggregate, would exceed \$10,000.

3.7 Books and Records. Seller (a) makes and keeps books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Seller and (b) has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements and (B) to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets

is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

3.8 Compliance with Laws; Permits; Proceedings. Seller is currently, and since its formation has been, in compliance in all material respects with all Laws and Governmental Orders applicable to the Purchased Assets and the Business (other than Environmental Laws, which are addressed in Section 3.13).

3.9 Real Property.

(a) Seller owns no real property and has no interest of any type in any real property other than the Lease.

(b) Schedule 3.11(b) sets forth each parcel of Leased Real Property. Other than the Lease, there are no other leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which Seller holds any Leased Real Property. Seller has delivered to Buyer a true and complete copy of the Lease. With respect to the Lease:

(i) such Lease is valid, binding, enforceable and in full force and effect, and Seller enjoys peaceful and undisturbed possession of the Leased Real Property;

(ii) Seller is not in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and Seller has paid all rent due and payable under such Lease;

(iii) Seller has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under such Lease and, to the Knowledge of Seller, no other party is in default thereof, and no party to such Lease has exercised any termination rights with respect thereto;

(iv) Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(v) Seller has not pledged, mortgaged or otherwise granted a Lien on its leasehold interest in any Leased Real Property.

(c) Seller has not received any written notice of (i) material violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Leased Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Leased Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to materially and adversely affect the ability to operate the Leased Real Property as currently operated. Neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or other casualty.

(d) The Leased Real Property is sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the office and other space necessary to conduct the Business as currently conducted.

3.10 Tax Matters. All income and other material Tax Returns required to be filed by Seller or otherwise with respect to the Purchased Assets or the Business have been timely and duly filed. All such Tax Returns were true, correct and complete in all material respects. All Taxes due and owing by Seller or otherwise with respect to the Purchased Assets or the Business (whether or not shown on any Tax Return) have been timely paid in full in accordance with all applicable legal requirements.

3.11 Environmental Matters. Since the date of formation of Seller:

(a) Seller currently is and has been in compliance in all material respects with all Environmental Laws applicable to the Purchased Assets or the Business; Seller holds all material permits, licenses and authorizations arising under applicable Environmental Law necessary for the ownership and operation of the Purchased Assets and the conduct of the Business in compliance with Environmental Laws, and all such Environmental Permits are valid and in full force and effect, and none is undergoing any form of review or proceeding, whether requested or imposed, whose outcome may be to revoke, restrict, fail to renew or materially modify the Environmental Permit or to issue or require an additional Environmental Permit, compliance plan or Order;

3.12 Intellectual Property.

(a) Seller owns and has the sole and exclusive legal and beneficial and good and valid title and all rights to all Intellectual Property presently used in the conduct of the Business or necessary to conduct the Business as presently conducted, including all software and all code that is presently used in the conduct of the Business or necessary to conduct the Business as presently conducted, or is otherwise material to the operation of the Business, including all Intellectual Property that Seller licenses or otherwise provides to any or all of Pro Securities, LLC, a California limited liability company ("**Pro Securities**"), SpeedRoute LLC, a New York limited liability company ("**SpeedRoute**"), DATA IFX S.A.S., a corporation formed under the laws of Colombia ("**DATAIFX**"), and TraderField Securities Inc., a New York corporation ("**TraderField**"). All required filings and fees related to any Intellectual Property Registrations have been timely filed with and paid to the relevant

Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing.

(b) There is no Intellectual Property, including all rights to all software and all code and all rights to modify and utilize all such software and all such code and all rights relating thereto, that is required or necessary for Seller to operate the Business as it is presently conducted other than Intellectual Property that Seller owns and of which Seller is the sole and exclusive legal and beneficial owner. There is no Intellectual Property, including all rights to all software and all code and all rights to modify and utilize all such software and all such code and all rights relating thereto, that is required or necessary for any of Pro Securities, SpeedRoute, DATAIFX or TraderField to operate their respective businesses as they are presently conducted, other than Intellectual Property that Seller owns and of which Seller is the sole and exclusive legal and beneficial owner. Seller is the sole and exclusive legal and beneficial, and with respect to any Intellectual Property Registrations, record, owner of all right, title and interest in and to the Intellectual Property Assets, and has the valid right to use all other Intellectual Property used in or necessary for the conduct of the Business as currently conducted. Without limiting the generality of the foregoing, Seller has entered into binding, written agreements with every current and former employee of Seller, and with every current and former independent contractor, whereby such employees and independent contractors (i) assign to Seller any ownership interest and right they may have in the Intellectual Property Assets; and (ii) acknowledge Seller's exclusive ownership of all Intellectual Property Assets.

(c) The Intellectual Property Assets include without limitation all software and code and other Intellectual Property necessary to the legal and non-infringing use of all of the applications described on Schedule 3.14(c). The consummation of the transactions contemplated hereunder will not result in the loss or impairment of, or payment of any amounts with respect to, nor require the consent of any other Person in respect of, the Buyer's right to own, use or hold for use any Intellectual Property as owned, used or held for use in the conduct of the Business as currently conducted.

(d) Seller's rights in the Intellectual Property Assets are valid, subsisting and enforceable. Seller has taken all reasonable steps to maintain the Intellectual Property Assets and to protect and preserve the confidentiality of all trade secrets included in the Intellectual Property Assets, including requiring all Persons having access thereto to execute written non-disclosure agreements.

(e) The conduct of the Business as currently and formerly conducted, and the Intellectual Property Assets and Intellectual Property licensed under the Intellectual Property Agreements as currently or formerly owned, licensed or used by Seller, have not infringed, misappropriated, diluted or otherwise violated, and have not, do not and will not infringe, dilute, misappropriate or otherwise violate, the Intellectual Property or other rights of any Person. No Person has infringed, misappropriated, diluted or otherwise violated, or is currently infringing, misappropriating, diluting or otherwise violating, any Intellectual Property Assets.

(f) There are no Proceedings (including any oppositions, interferences or re-examinations) settled, pending or threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by Seller in connection with the Business; (ii) challenging the validity, enforceability, registrability or ownership of any Intellectual Property Assets or Seller's rights with respect to any Intellectual Property Assets; or (iii) by Seller or any other Person alleging any infringement, misappropriation, dilution or violation by any Person of any Intellectual Property Assets. Seller is not subject to any outstanding or prospective Order (including any motion or petition therefor) that does or would restrict or impair the use of any Intellectual Property Assets.

3.13 Benefit Plans. Seller does not have, and has never had, any Benefit Plans with respect to the Business or any of the Business Employees. No event has occurred and there exists no condition or set of circumstances in connection with which the Purchased Assets, Buyer or any of Buyer's Affiliates could be subject to any liability or obligation of any kind, whether contingent or otherwise, under the terms of, or with respect to, any Benefit Plan or under ERISA.

3.14 Brokers. Neither Seller nor any Affiliate of Seller has or will have any liability or obligation to pay fees or commissions to any Person with respect to the Transactions that could be or become a claim against Buyer.

3.15 Accuracy of Information. The information contained in the document entitled "SpeedRoute—CORE System Software Architecture Document—Version 6.5," attached hereto as Schedule 3.17, was true and correct on the date provided to Buyer and remains true and correct as of the date hereof and as of the Closing Date.

3.16 Full Disclosure. No representation or warranty by Seller in this Agreement and no statement contained in any Schedule to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. No investigation by Buyer or its agents or information received by Buyer or any of its agents, including all such investigations performed and information delivered to Buyer or its agents prior to the execution and delivery of this Agreement or prior to the Closing, shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement. Seller acknowledges that the Parties are entering into this Agreement for the purposes of allocating the economic risks between the Parties, and such entry is predicated on the representations and warranties contained herein being accurate and complete.

3.17 Restricted Shares. Seller acknowledges that the Shares are restricted securities and must be held indefinitely unless subsequently registered under the Securities Act or (if a Holder is not selling the Shares pursuant to Rule 144 promulgated under the Securities Act) Overstock receives an opinion of counsel reasonably satisfactory to Overstock that such registration is not required. Seller is aware of the provisions of Rule 144 promulgated under the Securities Act which provide a safe harbor for the limited resale of stock purchased in a private placement subject to the satisfaction of certain conditions (if applicable), including, among other things, the existence of a public market

for the stock, the availability of certain current public information about Overstock, the resale occurring after certain holding periods have been met, the sale being conducted through a “broker’s transaction” or a transaction directly with a “market maker” and the number of shares of the stock being sold during any three-month period not exceeding specified limitations. Seller further acknowledges and understands that Overstock may not be satisfying the current public information requirement of Rule 144 at the time a Holder wishes to sell Shares and, if so, such Holder may be precluded from selling such Shares under Rule 144 even if the required holding period has been satisfied.

3.18 Stock Legends. Seller acknowledges that certificates evidencing the Shares shall bear a restrictive legend in substantially the following form (and including related stock transfer instructions and record notations):

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as of the execution date of this Agreement and as of the Closing Date as follows:

4.1 Organization and Qualification. Buyer is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Utah. Buyer is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on Buyer’s ability to perform its obligations hereunder.

4.2 Authority; Due Execution; Binding Effect.

(f) Buyer has the requisite limited liability company power and authority to execute and deliver this Agreement and the Ancillary Agreements to which Buyer as of the Closing shall be a party, to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which Buyer as of the Closing shall be a party when executed and delivered by Buyer, and the performance by Buyer of its obligations hereunder and thereunder, have been or as of the Closing shall be duly and validly authorized by all necessary corporate action.

(g) This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law). When executed and delivered by Buyer on the Closing Date, each of the Ancillary Agreements to which Buyer is a party shall have been duly executed and delivered by Buyer and shall constitute the valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law).

4.3 No Conflict. Neither the execution and delivery of this Agreement by Buyer, nor the performance by Buyer of the Transactions, shall, directly or indirectly (a) contravene, conflict with or result in (with or without notice or lapse of time) a violation or breach of any Law or Order to which Buyer may be subject; (b) violate, conflict with or result in the breach of any provision of the Organizational Documents of Buyer; or (c) conflict in any respect with, result in a breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any Consent under or give to others any right of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Lien pursuant to, any Contract to which such Buyer is a party or by which any of its assets or properties are bound or affected.

4.4 Consents. The execution and delivery of this Agreement and the performance of the Transactions by Buyer do not and will not require any Consent of any Governmental Authority or any other Person other than as set forth on Schedule 4.4.

4.5 Proceedings. There are no Proceedings pending or, to Buyer's knowledge, threatened against or involving Buyer before or by any Governmental Authority which are material to Buyer or that could reasonably be expected to prevent, enjoin, alter or materially delay the Transactions.

4.6 Brokers. Neither Buyer nor any Affiliate of Buyer has any liability or obligation to pay fees or commissions to any investment banking firm, broker or finder with respect to the Transactions.

ARTICLE 5 COVENANTS

5.1 Confidentiality.

(h) From and after the Closing, Seller shall, and shall cause each of its Affiliates and their Representatives (the “**Restricted Persons**”) to, maintain the confidentiality of, and not use for their own benefit or the benefit of any other Person (except as and to the extent permitted by the terms of this Agreement), any confidential information to the extent relating to the Business or the Purchased Assets.

(i) Neither Seller nor Buyer shall, and Seller and Buyer shall cause each of their respective Restricted Persons not to, disclose to any Person any information with respect to the legal, financial or other terms or conditions of this Agreement or the Transactions; provided that the foregoing does not restrict the right of any Party to disclose such information (i) to its respective Restricted Persons to the extent reasonably required to facilitate the negotiation, execution, delivery or performance of this Agreement and the Ancillary Agreements, (ii) to any Governmental Authority in connection with seeking the regulatory approvals in connection with this Agreement or the Ancillary Agreements, (iii) to any Governmental Authority in connection with any Proceeding relating to the enforcement of this Agreement or any Ancillary Agreement, (iv) that is or may (in Overstock’s sole judgment) be required to be disclosed by Overstock pursuant to the Securities Act or the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, or (v) in a press release, provided, however, that no Party may issue a press release containing information about the Transactions without the prior consent of the other Party, which consent may not be unreasonably withheld. Each Party shall advise its respective Restricted Persons with respect to the confidentiality obligations under this Section 5.1 and shall be responsible for any breach or violation of such obligations by its Restricted Persons.

(j) If a Party or any of its respective Restricted Persons becomes legally compelled to make any disclosure that is prohibited or otherwise restricted by this Section 5.1, then such Party shall, to the fullest extent legally permissible, (i) give the other Party prompt written notice of such requirement, (ii) consult with and assist the other Party in obtaining an injunction or other appropriate remedy to prevent such disclosure, (iii) use its commercially reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment shall be accorded to any information so disclosed and (iv) consult with the other Party in advance of such disclosure regarding the contents thereof. Subject to the previous sentence, the disclosing Party or such Restricted Persons may make only such disclosure that, in the opinion of its counsel, it is legally compelled or otherwise required to make to avoid standing liable for contempt or suffering other penalties.

5.2 Further Action. From time to time from the date hereof, as and when requested by any Party hereto, the requested Party shall use its commercially reasonable efforts to take or to cause to be taken, all actions and to do, or cause to be done, or to execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other Party may reasonably deem necessary, proper or advisable to vest in Buyer good and valid title to the Purchased Assets and to consummate the Transactions, as promptly as practicable, including such actions as are necessary in connection with any regulatory filings as any Party may undertake in connection herewith.

5.3 Tax Matters.

(a) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees including conveyance fees or recording charges, but excluding, for the avoidance of doubt, any Taxes imposed on or measured by income or Taxes in-lieu of income Taxes (“**Transfer Taxes**”) imposed in connection with the acquisition of the Purchased Assets pursuant to this Agreement and the Transactions shall be borne by Buyer (including, for the avoidance of doubt, any costs related to the preparation and the filing of any Tax Returns with respect to such Transfer Taxes). Each Party shall use its commercially reasonable efforts to minimize such Transfer Taxes. The appropriate Party responsible by Law for filing the necessary Tax Returns shall timely prepare and file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes. Each Party shall fully cooperate with the other Parties in connection with the preparation and filing of such Tax Returns and, to the extent required by Law, shall timely file the Tax Returns with respect to such Transfer Taxes. Each Party required to file the Tax Returns shall submit such draft Tax Returns to the other Parties for such other Parties’ review in a reasonable period of time prior to the filing date of such Tax Returns, and the Parties shall cooperate in good faith to resolve any disagreements they may have with respect thereto on a timely basis.

(b) Each Party shall provide the other Parties with such assistance as may reasonably be requested by the other Parties in connection with the preparation of any Tax Return, any audit or other examination or determination by any Tax Authority or any judicial or administrative Proceedings relating to liability for Taxes, and each Party shall retain and provide the requesting Party with any records or information which may be relevant to such Tax Return, audit, examination, Proceeding or determination. Any information obtained pursuant to this Section 5.3 or pursuant to any other Section hereof providing for the sharing of information relating to or review of any Tax Return or other schedule relating to Taxes shall be subject to the terms of the Confidentiality Agreement.

(c) Purchase Price Allocation. Seller and Buyer agree to use commercially reasonable efforts to reach an agreement regarding the allocation of the Purchase Price (together with any other items treated as consideration for federal income and other applicable Tax purposes) among the Purchased Assets in accordance with the provisions of this Section 5.3(c) and in a manner consistent with Section 1060 of the Code and the Treasury regulations promulgated thereunder (as subsequently revised or amended pursuant to this Agreement, the “**Allocation**”). Buyer shall prepare and deliver a draft of the Allocation

to Seller within ninety (90) days following the Closing Date. Seller shall be deemed to have agreed and accepted the draft Allocation unless Seller deliver a written dispute notice to Buyer within thirty (30) days from the receipt thereof setting forth in reasonable detail the reason for any objections and any proposed adjustments to the Allocation. Buyer and Seller shall negotiate in good faith to resolve such objections within thirty (30) days after the delivery of such written dispute notice by Seller. If Buyer and Seller are unable to agree in good faith on the Allocation within the said thirty (30) day period following the delivery of a written dispute with respect thereof, each Party shall report the Allocation in accordance with its own determination. To the extent Seller and Buyer agree (or are deemed to agree) on the Allocation in accordance with the provisions of this Section 5.3(c), the Parties agree to report the transactions contemplated by this Agreement in a manner consistent with the most recent Allocation on all Tax Returns, except to the extent otherwise required by an applicable Tax or other Governmental Authority. To the extent the Parties agree on an Allocation pursuant to the provisions of this Section 5.3(c), the Parties agree to promptly inform one another of any challenge by any Governmental Authority to the Allocation.

5.4 Transfer of DATAIFX Shares. On the terms and subject to the conditions hereof, at the Closing, Seller agrees to sell, convey, transfer, assign and deliver, or cause one or more of its Affiliates to sell, convey, transfer, assign and deliver, to Buyer, good and marketable title to all of the outstanding capital stock of DATAIFX (collectively, the “**DATAIFX Shares**”), free and clear of all Encumbrances. At the Closing, Seller shall deliver (or cause to be delivered) to Buyer, with respect to the DATAIFX Shares:

(o) instruments of assignment transferring the DATAIFX Shares held by Seller to Buyer in accordance with applicable Law and DATAIFX’s organizational documents, including a letter addressed by Seller to the legal representative of DATAIFX, together with the share certificates representing the DATAIFX Shares in the name of Seller duly endorsed to Buyer, in form and substance acceptable to Buyer, instructing such legal representative to (1) cancel such share certificates, (2) issue new share certificates in the name of Buyer representing the DATAIFX Shares, and (3) register Buyer as the new and sole owner of the DATAIFX Shares in the stock ledger of DATAIFX;

(p) the DATAIFX stock ledger, duly updated in accordance with Section 5.4(a); and

(q) one or more duly executed certificates representing the DATAIFX Shares issued in the name of Buyer.

5.5 Bulk Transfer Laws. Each of Seller and Buyer hereby waives compliance by the other Party with any applicable bulk sale or bulk transfer Laws of any jurisdiction in connection with the sale of the Purchased Assets to Buyer (other than any obligations of Seller with respect to the application of the proceeds therefrom).

ARTICLE 6

INDEMNIFICATION

6.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date; provided, that the representations and warranties in Section 3.1, Section 3.2, Section 3.5, Section 3.8, Section 3.12 and Section 3.17 shall survive indefinitely. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching Party to the breaching Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

6.2 Indemnification by Seller. Subject to the other terms and conditions of this Article 6, Seller shall indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(d) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, the Ancillary Agreements or in any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(e) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement, the Ancillary Agreements or any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;

(f) any Excluded Asset or any Excluded Liability; or

(g) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller or any of its Affiliates (other than the Purchased Assets or Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date.

6.3 Indemnification by Buyer. Subject to the other terms and conditions of this Article 6, Buyer shall indemnify and defend each of Seller and its Affiliates and their respective Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(r) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(s) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or

(t) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Buyer or any of its Affiliates (other than the Excluded Assets or Excluded Liabilities) conducted, existing or arising after the Closing Date.

6.4 Certain Limitations. The indemnification provided for in Section 6.2 and Section 6.3 shall be subject to the following limitations:

(g) Seller shall not be liable to the Buyer Indemnitees for indemnification under Section 6.2(a) until the aggregate amount of all Losses in respect of indemnification under Section 6.2(a) exceeds one hundred thousand dollars (\$100,000) (the “**Basket**”), in which event Seller shall be required to pay or be liable for all such Losses in excess of the Basket. The aggregate amount of all Losses for which Seller shall be liable pursuant to Section 6.2(a) shall not exceed fifteen percent (15%) of the Purchase Price (the “**Cap**”).

(h) Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 6.3(a) until the aggregate amount of all Losses in respect of indemnification under Section 6.3(a) exceeds the Basket, in which event Buyer shall be required to pay or be liable for all such Losses in excess of the Basket. The aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 6.3(a) shall not exceed the Cap.

(i) Notwithstanding the foregoing, the limitations set forth in Section 6.4(a) shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in Section 3.1, Section 3.2, Section 3.5, Section 3.8, Section 3.12 and Section 3.17. The aggregate amount of all Losses for which Seller shall be liable pursuant to Section 6.1(a) based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in Section 3.1, Section 3.2, Section 3.5, Section 3.8, Section 3.12 and Section 3.17 shall not exceed the Purchase Price.

(j) For purposes of this Article 6, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

6.5 Indemnification Procedures. The Party making a claim under this Article 6 is referred to as the “**Indemnified Party**”, and the Party against whom such claims are asserted under this Article 6 is referred to as the “**Indemnifying Party**”.

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Proceeding made or brought by any Person who is not a Party to this Agreement or an Affiliate of a Party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Business, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 6.5(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 6.5(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 6.6)

records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 6.5(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 6.5(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Proceeding initiated by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30)-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

6.6 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article 6, the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The Parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such fifteen (15) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to the lesser of (i) six percent (6%) and (ii) the maximum non-usurious rate allowed by applicable Law. Such interest shall be calculated daily on the basis of a 365-day year and the actual number of days elapsed.

6.7 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

6.8 Exclusive Remedies. Subject to Section 5.1 and Section 7.8, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article 6. In furtherance of the foregoing, each Party hereby waives, to the fullest extent

permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article 6. Nothing in this Section 6.8 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Party's fraudulent, criminal or intentional misconduct.

ARTICLE 7

MISCELLANEOUS

7.1 Notices.

(h) Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Seller:

Cirrus Technologies LLC

[Address]

Attention: [●]

Tel: [●]

Email: [●]

with a copy (which shall not constitute notice) to:

Stuart Moskowitz

Law Offices of Stuart J. Moskowitz, Esq.

4400 Route 9 South – Suite 1000

Freehold, New Jersey 07728

Tel: [●]

Email: stuartj@moskovitz.org

If to Buyer:

Cirrus Services LLC

c/o Overstock.com, Inc.

6530 South 3000 East

Salt Lake City, Utah 84121

Attention: Raj Karkara

Tel: (801) 947-3140

Email: rajkarkara@overstock.com

with a copy (which shall not constitute notice) to:

Bracewell & Giuliani LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701
Attention: Thomas W. Adkins
Tel: (512) 542-2122
Email: thomas.adkins@bgllp.com

(i) Notice given by personal delivery, mail or overnight courier pursuant to this Section 7.1 shall be effective upon physical receipt. Notice given by facsimile pursuant to this Section 7.1 shall be effective as of the date of confirmed delivery if delivered before 5:00 P.M. Eastern Time on any Business Day or the next succeeding Business Day if confirmed delivery is after 5:00 P.M. Eastern Time on any Business Day or during any non-Business Day

7.2 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement shall not be materially and adversely affected thereby, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

7.3 Assignment; Successors. Neither this Agreement nor any rights, obligations or interests hereunder may be assigned by any Party hereto except with the prior written consent of the other Parties; *provided, however*, that Buyer may, without the consent of Seller, assign any of its rights, interests and obligations under this Agreement to one or more Affiliate(s) of Buyer, which assignment shall not relieve Buyer of any obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and assigns.

7.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any facsimile or electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

7.5 Expenses. Except as otherwise expressly stated otherwise herein, all costs and expenses (including fees and disbursements of counsel, financial advisors and accountants) incurred or to be incurred in connection with this Agreement, the performance of its obligations hereunder

and the consummation of the Transactions shall be paid by the Party incurring such costs and expenses.

7.6 Governing Law; Venue; Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of Utah, without giving effect to any conflict or choice of law provision that would require or permit the application of the Laws of any other jurisdiction.

(a) Each Party consents to personal jurisdiction in any action brought in any court, federal or state, within the City of Salt Lake City, Utah, having subject matter jurisdiction arising under this Agreement, and each of the Parties hereto agrees that any Proceeding instituted by either of them against the other with respect to this Agreement shall be instituted exclusively in a court, federal or state, within the City of Salt Lake City, Utah. Each Party to this Agreement hereby irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of such Proceeding. The Parties further agree, to the extent permitted by law, that a final and unappealable judgment against any of them in any Proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.

7.7 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT WAIVES TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THEM AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR ANY OTHER AGREEMENTS OR CERTIFICATES EXECUTED IN CONNECTION HERewith OR THEREWITH OR THE ADMINISTRATION THEREOF OR ANY OF THE TRANSACTION. NO PARTY TO THIS AGREEMENT SHALL SEEK A JURY TRIAL IN ANY PROCEEDING OR ANY OTHER LITIGATION PROCEDURE BASED UPON, OR ARISING OUT OF, THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY RELATED INSTRUMENTS OR THE RELATIONSHIP BETWEEN THE PARTIES. NO PARTY SHALL SEEK TO CONSOLIDATE ANY SUCH PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EACH PARTY TO THIS AGREEMENT CERTIFIES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY OTHER INSTRUMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH ABOVE IN THIS SECTION 7.7. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO THE OTHER PARTY THAT THE PROVISIONS OF THIS SECTION 7.7 SHALL NOT BE FULLY ENFORCED IN ALL INSTANCES.

7.8 Specific Performance. Each Party acknowledges and agrees that a breach of this Agreement would cause irreparable damage to the other Parties and that the non-breaching Parties shall not have an adequate remedy at law. Therefore, it is agreed that in the event of such a breach, the non-breaching Party shall be entitled to injunctive relief, specific performance or other equitable remedies to enforce the terms and provisions of this Agreement in any state or federal court sitting

in the City of Salt Lake City, Utah, in addition to any other remedies it may have at law or in equity. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any Party may have under this Agreement or otherwise.

7.9 Entire Agreement. This Agreement, including the Schedules and Exhibits, together with the Ancillary Agreements, supersede all prior discussions and agreements among the Parties, both written and oral, with respect to the subject matter hereof, and contain the sole and entire agreement among the Parties with respect to the subject matter hereof.

7.10 Third Party Beneficiaries. This Agreement is not intended to and does not confer upon any Person other than the Parties or their permitted successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

7.11 Interpretive Matters.

(a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated;

(b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

(c) whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation” whether or not they are in fact followed by such words or words of similar import;

(d) the words “hereof,” “hereby,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

(f) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

(g) references to a Person are also to its successors and permitted assigns;

(h) the use of “or” is not intended to be exclusive unless expressly indicated otherwise; *provided* that the use of “or” preceded by the word “either” is intended to be exclusive;

(i) reference to “day” or “days” are to calendar days;

(j) any reference in this Agreement to “writing” or comparable expressions includes a reference to facsimile transmission or comparable means of communication;

(k) when a reference is made in this Agreement to “ordinary course of business,” such reference shall be deemed to be followed by “consistent (in scope and amount) with past practice”;

(l) “made available” with reference to any document or information provided by Seller hereunder means made available to Buyer or its representatives in the sharefile data room organized and maintained by Buyer’s counsel, as an accommodation to Seller, or otherwise e-mailed or delivered directly to Buyer or its Representatives; and

(m) any reference to a given Law is a reference to that Law and the rules and regulations adopted or promulgated thereunder, in each case, as amended, modified, supplemented or restated as of the date on which the reference is made and shall include any successor thereto, unless the context otherwise requires.

7.12 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party. Any amendment, modification or supplement to this Agreement not made in accordance with this Section 7.12 shall be void.

7.13 Waiver of Compliance. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, shall be cumulative and not alternative.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date first above written.

SELLER:

CIRRUS TECHNOLOGIES LLC

By: /s/ Joseph Cammarata

Name: Joseph Cammarata

Title: Manager

BUYER:

CIRRUS SERVICES LLC

By: /s/ Michael Skirucha

Name: Michael Skirucha

Title: Vice President

[Signature Page to Cirrus Technologies Asset Purchase Agreement]

EXHIBIT A
Form of Bill of Sale

BILL OF SALE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, Cirrus Technologies LLC, a New Jersey limited liability company (“**Seller**”), does hereby grant, bargain, transfer, sell, assign, convey and deliver to Cirrus Services LLC, a Utah limited liability company (“**Buyer**”), all of Seller’s rights, title and interest in, to and under the Purchased Assets, as such term is defined in the Asset Purchase Agreement, dated as of August 26, 2015 (the “**Purchase Agreement**”), by and between Seller and Buyer, to have and to hold the Purchased Assets unto Buyer, its successors and assigns, forever.

This Bill of Sale is subject in all respects to the terms and conditions contained in the Purchase Agreement and shall not be construed to limit, enlarge, amend or otherwise alter any of the terms or provisions of, or any rights, duties or obligations under, the Purchase Agreement. In the event of any conflict or inconsistency between this Bill of Sale and the Purchase Agreement, the terms of the Purchase Agreement shall govern and control.

This Bill of Sale shall be binding upon, inure to the benefit of, and be enforceable by Sellers and Buyer and their respective successors and assigns.

Seller shall execute and deliver, or cause to be executed and delivered, from time to time hereafter, upon request and without further consideration, all such further documents and instruments and shall do and perform all such acts as may be reasonably necessary to give full effect to the intent of this Bill of Sale.

[Signature page immediately follows.]

IN WITNESS WHEREOF, this Bill of Sale is executed and delivered by Seller as of August 26, 2015.

CIRRUS TECHNOLOGIES LLC

By:___

Name: Joseph Cammarata

Title: Manager

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EXHIBIT B

Form of Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the “**Agreement**”), effective as of August 26, 2015 (the “**Effective Date**”), is by and between Cirrus Technologies LLC, a New Jersey limited liability company (“**Seller**”), and Cirrus Services LLC, a Utah limited liability company (“**Buyer**”).

WHEREAS, Seller and Buyer have entered into a certain Asset Purchase Agreement, dated as of August 26, 2015 (the “**Purchase Agreement**”), pursuant to which, among other things, Seller has agreed to assign all of its rights, title and interests in, and Buyer has agreed to assume all of Seller’s duties and obligations under, the Assigned Contracts (as defined in the Purchase Agreement).

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Purchase Agreement.
2. **Assignment and Assumption.** Seller hereby sells, assigns, grants, conveys and transfers to Buyer all of Seller’s right, title and interest in and to the Assigned Contracts. Buyer hereby accepts such assignment and assumes all of Seller’s duties and obligations under the Assigned Contracts and agrees to pay, perform and discharge, as and when due, all of the obligations of Seller under the Assigned Contracts accruing on and after the Effective Date.
3. **Terms of the Purchase Agreement.** The terms of the Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Assigned Contracts are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.
4. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction).
5. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

6. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

SELLER:

CIRRUS TECHNOLOGIES LLC

By:___

Name: Joseph Cammarata

Title: Manager

B-3

BUYER:

CIRRUS SERVICES LLC

By:___

Name: Michael Skirucha

Title: Vice President

B-4

EXHIBIT C
Form of Assignment and Assumption of Lease

ASSIGNMENT AND ASSUMPTION OF AGREEMENT OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENT OF LEASE ("Assignment and Assumption") is made as of this 26th day of August, 2015 (the "Effective Date"), by and between CIRRUS TECHNOLOGIES LLC, a New Jersey limited liability company ("Assignor"), and CIRRUS SERVICES LLC, a Utah limited liability company ("Assignee").

WITNESSETH

A. Assignor is the "Tenant" under that certain Agreement of Lease from ROAZ 14W LLC, as landlord, dated as of October 24, 2014 (as amended, supplemented or otherwise modified as of the date hereof and as may be further amended, supplemented or otherwise modified from time to time, the "Lease"), covering premises located at 14 Wall Street, Suite 8A, New York, New York 10005, as more particularly described in the Lease.

B. Assignor and Assignee are parties to that certain Asset Purchase Agreement dated as of August 26, 2015 (the "Purchase Contract"), pursuant to which Assignor has agreed to sell to Assignee, and Assignee has agreed to purchase from Assignor, all or substantially all of Assignor's assets, including Assignor's rights in and to the Lease.

C. Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, all of Assignor's rights, obligations and interest as "Tenant" under the Lease.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the sufficiency and receipt whereof hereby is acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Assignment. Effective immediately as of the Effective Date, Assignor hereby conveys, assigns, transfers and sets over unto Assignee, its successors and assigns, all of Assignor's right, title and interest as "Tenant" in, under and to the Lease.

2. Assumption. Effective immediately as of the Effective Date, Assignee hereby accepts the conveyance, transfer and assignment of all of Assignor's right, title and interest as "Tenant" in, under and to the Lease, and agrees (i) to assume the obligations and performance of the Lease, (ii) to be personally bound by and upon all of the covenants, agreements, terms, provisions and conditions of the Lease on the part of the "Tenant" to be performed or observed thereunder, and (iii) that the provisions of Section 13.01 of the Lease shall, notwithstanding the assignment effected by this Assignment and Assumption, continue to be binding upon Assignee in the future.

3. Indemnification by Assignor. Assignor hereby indemnifies and agrees to hold harmless Assignee from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, attorney's fees and court costs) which Assignee may incur, sustain or suffer, or which may be asserted or charged against Assignee, arising out of, pertaining to, or in any way connected with Assignor's obligations, duties and liabilities under the Lease arising or accruing on or prior to the Effective Date.

4. Indemnification by Assignee. Assignee hereby indemnifies and agrees to hold harmless Assignor from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, attorney's fees and court costs) which Assignor may incur, sustain or suffer, or which may be asserted or charged against Assignor, arising out of, pertaining to or in any way connected with Assignee's obligations, duties and liabilities under the Lease arising or accruing after the Effective Date.

5. Terms of the Purchase Contract. This Assignment and Assumption is delivered pursuant to and is subject to the terms of the Purchase Contract, which terms are incorporated herein by reference. Assignor and Assignee acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Contract shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Contract and the terms hereof, the terms of the Purchase Contract shall govern.

6. Governing Law. This Assignment and Assumption shall be in all respects governed by and construed in accordance with the laws of the State of New York applicable to a contract performed in such State, without giving effect to any choice of law or conflict of law rules or principles thereof that would require the application of the rules of another jurisdiction.

7. Amendments, Supplements, Waivers, Etc. This Assignment and Assumption may be amended, supplemented, waived or modified only by an instrument in writing signed by each party.

8. Successors and Assigns. The terms and provisions of this Assignment and Assumption shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and assigns. This instrument may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same document.

9. Counterparts. This Assignment and Assumption may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed and delivered this Assignment and Assumption as of the day and year first written above.

Assignor:

CIRRUS TECHNOLOGIES LLC,
a New Jersey limited liability company

By: _____
Name: Joseph Cammarata
Title: Manager

STATE OF _____ §
§ ss
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2015, by _____, the _____ of CIRRUS TECHNOLOGIES LLC, a New Jersey limited liability company, on behalf of said limited liability company.

[seal]

Notary Public
My Commission Expires: _____
Printed Name of Notary: _____

[Signatures continue on next page]

Assignee:

CIRRUS SERVICES LLC,
a Utah limited liability company

By: _____

Name:

Title:

STATE OF _____ §

§ SS

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2015, by _____, the _____ of CIRRUS SERVICES LLC, a Utah limited liability company, on behalf of said limited liability company.

Notary Public

My Commission Expires: _____

Printed Name of Notary: _____

[seal]

[End of Signatures]

EXHIBIT D
Form of Registration Rights Agreement

D-1

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”) is made and entered into as of August 26, 2015, by and among Overstock.com, Inc., a Delaware corporation (the “**Issuer**”), and each of the holders listed on Schedule I hereto, each of which is referred to in this Agreement as a “**Holder**”, and shall become effective as of the Closing (as defined in the Purchase Agreement, defined below).

RECITALS

A. This Agreement is being entered into pursuant to the Purchase Agreement between Cirrus Services LLC, a Utah limited liability and an indirect majority-owned subsidiary of the Issuer, and Cirrus Technologies, LLC, a New Jersey limited liability company, dated as of August 26, 2015 (the “**Purchase Agreement**”).

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Issuer and the Holders agree as follows:

Article I DEFINITIONS

Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls or is controlled by or under common control with such Person. For the purposes of this definition, “**control**,” when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms “**affiliated**,” “**controlling**” and “**controlled**” have meanings correlative to the foregoing.

“**Board**” means the Board of Directors of the Issuer.

“**Business Day**” means any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in the state of Utah generally are authorized or required by law or other government actions to close.

“**Closing Date**” means the date of the closing of the acquisition and issuance of the Issuer Shares pursuant to the Purchase Agreement.

“**Commission**” means the Securities and Exchange Commission.

“Effectiveness Date” the 120th calendar day following the Closing Date; provided, however, that if the Effectiveness Date falls on a day that is not a Business Day, then the Effectiveness Date shall be extended to the next Business Day.

“Effectiveness Period” shall have the meaning set forth in Article II.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Filing Date” means the 15th Business Day following the Closing Date; provided, however, that if the Filing Date falls on a day that is not a Business Day, then the Filing Date shall be extended to the next Business Day.

“Indemnified Party” shall have the meaning set forth in Section 5.3(a).

“Indemnifying Party” shall have the meaning set forth in Section 5.3(a).

“Issuer Common Stock” means the Issuer’s Common Stock, par value \$0.0001 per share.

“Issuer Shares” means the shares of Issuer Common Stock.

“Losses” shall have the meaning set forth in Section 5.1.

“Person” means an individual or a corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or political subdivision thereof) or other entity of any kind.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Prospectus” means any prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to any such Prospectus, including post-effective amendments, and all material incorporated by reference in such Prospectus.

“Registrable Securities” means all of the Issuer Shares issued to the Holders pursuant to the Purchase Agreement and any securities issued with respect to, or in exchange for or in replacement of such shares of Issuer Common Stock upon any stock split, stock dividend, recapitalization, subdivision, merger or similar event; *provided, however*, that such securities shall no longer be deemed Registrable Securities if (i) such securities have been sold pursuant to a Registration Statement, (ii) such securities have been sold in compliance with Rule 144, or (iii) such securities may be sold pursuant to Rule 144.

“Registration Statement” means the registration statements and any additional registration statements contemplated by Article II, including (in each case) the related Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference in such registration statement.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Securities Act” means the Securities Act of 1933, as amended.

“Transaction Documents” means this Agreement, the Purchase Agreement, and the schedules and exhibits attached hereto and thereto.

ARTICLE II REGISTRATION

2.1 Registration Obligations; Filing Date Registration. On or prior to the Filing Date, the Issuer shall prepare and file with the Commission a Registration Statement covering the resale of the Registrable Securities as would permit the sale and distribution of all the Registrable Securities from time to time pursuant to Rule 415 in the manner reasonably requested by the Holders. The Registration Statement shall be on Form S-3 (except if the Issuer is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance with the Securities Act and the rules promulgated thereunder and the Issuer shall undertake to register the Registrable Securities on Form S-3 as soon as practicable following the availability of such form, provided that the Issuer shall use reasonable best efforts to maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission). The Issuer shall use reasonable best efforts to cause the Registration Statement filed by it to be declared effective under the Securities Act as promptly as practicable after the filing thereof but in any event on or prior to the Effectiveness Date, and, subject to Section 3.1(m) hereof, to keep such Registration Statement continuously effective under the Securities Act until such date as all Registrable Securities covered by such Registration Statement have ceased to be Registrable Securities (the **“Effectiveness Period”**). By 5:30 p.m. Eastern Time on the Business Day following the effective date of the Registration Statement, the Issuer shall file with the Commission in accordance with Rule 424 under the Securities Act the final prospectus to be used in connection with sales pursuant to such Registration Statement.

ARTICLE III REGISTRATION PROCEDURES

3.1 Registration Procedures. In connection with the Issuer's registration obligations hereunder, the Issuer shall:

(a) Prepare and file with the Commission on or prior to the Filing Date, a Registration Statement on Form S-3 (or if the Issuer is not then eligible to register for resale the Registrable Securities on Form S-3 such Registration Statement shall be on another appropriate form in accordance with the Securities Act and the rules and regulations promulgated thereunder), and use reasonable best efforts to cause the Registration Statement to become effective and remain effective as provided herein.

(b) Prepare and file with the Commission such amendments, including post-effective amendments, to the Registration Statement as may be necessary to keep the Registration Statement continuously effective (subject to Section 3.1(m)) as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements, if necessary, in order to register for resale under the Securities Act all of the Registrable Securities; cause the related Prospectus to be amended or supplemented by any required Prospectus supplement, and as so supplemented or amended to be filed pursuant to Rule 424 (or any similar provisions then in force) promulgated under the Securities Act; respond promptly to any comments received from the Commission with respect to the Registration Statement or any amendment thereto and promptly provide the Holders true and complete copies of all correspondence from and to the Commission relating to such Registration Statement; and comply in all material respects with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by the Registration Statement during the applicable period in accordance with the intended methods of disposition by the Holders thereof set forth in the Registration Statement as so amended or in such Prospectus as so supplemented.

(c) At the time the Commission declares the Registration Statement effective, to the extent required by applicable regulations, each Holder shall be named as a selling stockholder in the Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of Registrable Securities included in the Registration Statement in accordance with applicable law, subject to the terms and conditions hereof.

(d) Promptly notify the Holders of Registrable Securities (i)(A) when a Registration Statement, a Prospectus or any Prospectus supplement or pre- or post-effective amendment to the Registration Statement is filed, and (B) with respect to the Registration Statement or any post-effective amendment filed by the Issuer, when the same has become effective; (ii) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose; (iii) of the receipt by the Issuer of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities of the Issuer for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose; and (iv) of the occurrence of any event that makes any statement made in the Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to such Registration Statement, Prospectus or other documents so that, in the case of such Registration Statement or the Prospectus, as the case

may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) Use reasonable best efforts to avoid the issuance of, and, if issued, to obtain the withdrawal of, (i) any order suspending the effectiveness of the Registration Statement or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any U.S. jurisdiction.

(f) Promptly deliver to each Holder, without charge, as many copies of the Prospectus or Prospectuses (including each form of prospectus) and each amendment or supplement thereto as such Persons may reasonably request; and the Issuer hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto.

(g) Cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities of the Issuer to be sold pursuant to a Registration Statement.

(h) Upon the occurrence of any event contemplated by Section 3.1(d)(iv), as promptly as practicable provide notice to the Holders that no further sales of Registrable Securities will be permitted until further notice and, if necessary, prepare a supplement or amendment, including a post-effective amendment, to the Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither the Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) The Issuer may require each selling Holder to furnish to the Issuer information regarding such Holder and the distribution of such Registrable Securities as is required by law to be disclosed in the Registration Statement, and the Issuer may exclude from such registration the Registrable Securities of any such Holder who fails to furnish such information within 15 days after receiving such request.

(j) If (i) there is material non-public information regarding the Issuer which the Issuer reasonably determines not to be in the Issuer's best interest to disclose and which the Issuer is not otherwise required to disclose, or (ii) there is a significant business opportunity (including, but not limited to, the acquisition or disposition of assets (other than in the ordinary course of business) or any merger, consolidation, tender offer or other similar transaction) available to the Issuer which the Issuer reasonably determines not to be in the Issuer's best interest to disclose, then the Issuer may postpone or suspend filing or effectiveness of a Registration Statement for a period (a "**Deferral Period**") not to exceed 90 consecutive days, provided that the Issuer may not postpone or suspend its obligation under this Section 3.1(m) for more than 180 days in the aggregate during any 12-month period.

(k) The Issuer shall use reasonable best efforts to register or qualify, or cooperate with the Holders of the Registrable Securities included in the Registration Statement in connection with the registration or qualification of, the resale of the Registrable Securities under applicable securities or “blue sky” laws of such states of the United States as any such Holder requests in writing and to do any and all other acts or things necessary or advisable to enable the offer and sale in such jurisdictions of the Registrable Securities covered by the Registration Statement; provided, however, that the Issuer shall not be required to (i) qualify generally to do business in any jurisdiction where it is not then so qualified or (ii) take any action that would subject it to general service of process or to taxation in any jurisdiction to which it is not then so subject.

(l) The Issuer will comply with all rules and regulations of the Commission to the extent and so long as they are applicable to the Registration Statement and will make generally available to its security holders (or otherwise provide in accordance with Section 11(a) of the Securities Act) an earning statement (which need not be audited) satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder, no later than 45 days after the end of a 12-month period (or 90 days, if such period is a fiscal year) beginning with the Issuer’s first fiscal quarter commencing after the effective date of the Registration Statement.

3.2 Holder Covenants. Each Holder covenants and agrees by its acquisition of such Registrable Securities that:

(a) (i) it will not sell any Registrable Securities under the Registration Statement until it has received copies of the Prospectus as then amended or supplemented as contemplated in Section 3.1(h) and notice from the Issuer that such Registration Statement and any post-effective amendments thereto have become effective as contemplated by Section 3.1(d) and (ii) it and its officers, directors or Affiliates, if any, will comply with the prospectus delivery requirements of the Securities Act as applicable to them in connection with sales of Registrable Securities pursuant to the Registration Statement.

(b) Upon receipt of a notice from the Issuer of the occurrence of any event of the kind described in Section 3.1(d)(ii), 3.1(d)(iii), 3.1(d)(iv), 3.1(d)(v) or 3.1(m), such Holder will forthwith discontinue disposition of such Registrable Securities under the Registration Statement until such Holder’s receipt of the copies of the supplemented Prospectus and/or amended Registration Statement contemplated by Section 3.1(j), or until it is advised in writing by the Issuer that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement.

ARTICLE IV REGISTRATION EXPENSES

4.1 Registration Expenses. All reasonable fees and expenses incident to the performance of or compliance with this Agreement by the Issuer (excluding any underwriters’ discounts and commissions and any fees and expenses of legal counsel and other advisors for any Holder) shall be borne by the Issuer whether or not a Registration Statement is filed by the Issuer or becomes effective and whether or not any Registrable Securities are sold pursuant to a Registration Statement.

ARTICLE V INDEMNIFICATION

5.1 Indemnification by the Issuer. The Issuer shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, its permitted assignees, officers, directors, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Issuer Common Stock), underwriters, investment advisors and employees, each Person who controls any such Holder or permitted assignee (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, agents and employees of each such controlling Person, and the respective successors, assigns, estate and personal representatives of each of the foregoing, to the fullest extent permitted by applicable law, from and against any and all claims, losses, damages, liabilities, penalties, judgments, costs (including, without limitation, costs of investigation) and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "**Losses**"), arising out of or relating to any untrue or alleged untrue statement of a material fact contained in the Registration Statement, any Prospectus, as supplemented or amended, if applicable, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, except (i) to the extent, but only to the extent, that such untrue statements or omissions or alleged untrue statements or omissions are based upon information regarding such Holder furnished in writing to the Issuer by such Holder expressly for use in such Registration Statement, such Prospectus or in any amendment or supplement thereto; or (ii) in the case of an occurrence of an event of the type specified in Section 3.1(d)(ii)-(v), the use by a Holder of an outdated or defective Prospectus, but only if and to the extent that following such receipt the misstatement or omission giving rise to such Loss would have been corrected; provided, however, that the indemnity agreement contained in this Section 5.1 shall not apply to amounts paid in settlement of any Losses if such settlement is effected without the prior written consent of the Issuer, which consent shall not be unreasonably withheld. The Issuer shall notify such Holder promptly of the institution, threat or assertion of any Proceeding of which the Issuer is aware in connection with the transactions contemplated by this Agreement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an Indemnified Party (as defined in Section 5.3(a) hereof) and shall survive the transfer of the Registrable Securities by the Holder.

5.2 Conduct of Indemnification Proceedings.

(a) If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "**Indemnified Party**"), such Indemnified Party promptly shall notify the Person from whom indemnity is sought (the "**Indemnifying Party**") in writing, and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent

jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party.

(b) An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; or (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel (which shall be reasonably acceptable to the Indemnifying Party) that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, the Indemnifying Party shall be responsible for reasonable fees and expenses of no more than one counsel (together with appropriate local counsel) for the Indemnified Parties). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is or could have been a party, unless such settlement (i) includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any Indemnified Party.

(c) All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within 20 Business Days of written notice thereof to the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder; provided, that the Indemnifying Party may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification hereunder).

5.3 Contribution.

(a) If a claim for indemnification under Section 5.1 is unavailable to an Indemnified Party because of a failure or refusal of a governmental authority to enforce such indemnification in accordance with its terms (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying, Party or

Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in Section 5.2, any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

(b) The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5.3 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(c) The indemnity and contribution agreements contained in this Article V are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

ARTICLE VI MISCELLANEOUS

6.1 Effectiveness. The Issuer's obligations hereunder shall be conditioned upon the occurrence of the Closing under the Purchase Agreement, and this Agreement shall not be effective until such Closing. If the Purchase Agreement shall be terminated prior to the Closing, then this Agreement shall be void and of no further force or effect (and no party hereto shall have any rights or obligations with respect to this Agreement).

6.2 Remedies. In the event of a breach by the Issuer or by a Holder, of any of their obligations under this Agreement, each non-breaching Holder and Issuer, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Issuer and each Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

6.3 Entire Agreement; Amendment. This Agreement and the other Transaction Documents contain the entire understanding and agreement of the parties with respect to the matters covered hereby and, except as specifically set forth herein or therein, neither the Issuer nor any Holder make any representation, warranty, covenant or undertaking with respect to such matters, and they supersede all prior understandings and agreements with respect to said subject matter, all of which are merged herein. This Agreement and any term hereof may be amended, terminated or waived only with the written consent of the Issuer and the Holders of at least a majority of all Registrable Securities then outstanding. Any amendment or waiver effected in accordance with this Section 6.3 shall be binding upon each Holder (and their permitted assigns).

6.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address specified in this Section 6.5 prior to 4:00 p.m. (Salt Lake City time) on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address specified in this Section on a day that is not a Business Day or later than 4:00 p.m. (Salt Lake City time) on any Business Day, (c) the Business Day following the date of deposit with a nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses, facsimile numbers and email addresses for such notices and communications are those set forth below, or such other address or facsimile number as may be designated in writing hereafter, in the same manner, by any such Person:

If to the Issuer: Overstock.com, Inc.

6350 South 3000 East
Salt Lake City, Utah 84121
Attention: General Counsel

with copies (which copies shall not constitute notice to the Issuer) to: Austin, Texas 78701

Bracewell & Giuliani LLP
111 Congress Avenue, Suite 2300
Attention: Thomas Adkins
Email: Thomas.Adkins@bgllp.com
Fax No.: 800.404.3970

If to the Holders:

To Joseph Cammarata, as agent for the Holders, at the address as set forth beneath his signature below, or to such other address or email address or facsimile number as may otherwise be provided

6.5 Waivers. No waiver by either party of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.

6.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns and shall inure to the benefit of each Holder and its successors and assigns. The Issuer may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the Holders of at least a majority of all Registrable Securities then outstanding.

6.7 Counterparts. This Agreement may be executed 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. Counterparts may be delivered via facsimile, email (including pdf or any electronic

signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

6.8 Termination. This Agreement shall terminate at the end of the Effectiveness Period, except that Articles IV and V and this Article VI shall remain in effect in accordance with their terms.

6.9 Governing Law. This Agreement will be governed by the laws of the State of Texas without regard to conflict of law principles.

6.10 Dispute Resolution. WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

Except as otherwise provided in this Agreement, any unresolved controversy or claim arising out of or relating to this Agreement shall be submitted to arbitration by one arbitrator mutually agreed upon by the parties, and if no agreement can be reached within 30 days after names of potential arbitrators have been proposed by the American Arbitration Association (the “AAA”), then by one arbitrator having reasonable experience in corporate finance transactions of the type provided for in this Agreement and who is chosen by the AAA. The arbitration shall take place in Salt Lake City, Utah, in accordance with the AAA rules then in effect, and judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction thereof. There shall be limited discovery prior to the arbitration hearing as follows: (a) exchange of witness lists and copies of documentary evidence and documents relating to or arising out of the issues to be arbitrated, (b) depositions of all party witnesses and (c) such other depositions as may be allowed by the arbitrators upon a showing of good cause. Depositions shall be conducted in accordance with the Utah Code of Civil Procedure, the arbitrator shall be required to provide in writing to the parties the basis for the award or order of such arbitrator, and a court reporter shall record all hearings, with such record constituting the official transcript of such proceedings.

The prevailing party shall be entitled to reasonable attorney’s fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

6.11 Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

6.12 Severability. The provisions of this Agreement are severable and, in the event that any court of competent jurisdiction shall determine that any one or more of the provisions or part of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement and this Agreement shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of such provision, had never been contained herein, so that such provisions would be valid, legal and enforceable to the maximum extent possible.

6.13 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Registration Rights Agreement to be duly executed by their respective authorized officers as of the date first above written.

ISSUER:

OVERSTOCK.COM, INC.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Registration Rights Agreement to be duly executed by their respective authorized officers as of the date first above written.

HOLDERS:

**EACH OF THE HOLDERS LISTED ON SCHEDULE I ATTACHED
HERETO**

By: Joseph Cammarata, as attorney-in-fact pursuant to the Power of
Attorney executed by each of the Holders

By:

Joseph Cammarata

Address:

Schedule I

Holder	Address
Joseph Cammarata	
SpeedRoute Technologies Inc. (Barbados)	
Tommy McSherry	
Max Melmed	
Rob Collucci	
John Gilchrist	
John Paul DeVito	
Jason Heckler	
Dohi Ang	
Brian Capuano	
Jimmy Ambrose	
Alex Vlastakis	
Olalekan Abebefe	
Samson Arubuola	
Ryan Mitchell	
Juan Pablo Gomez	
Raymond Doyle	
Yu Huang	
Zachary Wilezol	
Anthony Bove	

EXHIBIT E
Form of Non-Competition Agreement

E-1

Noncompetition Agreement

This Noncompetition Agreement (this “**Agreement**”), effective as of August 26, 2015 (the “**Effective Date**”), is made by and between the undersigned (the “**Restricted Party**”) and Cirrus Services LLC, a Utah limited liability company (“**Buyer**”). Buyer and Restricted Party are sometimes referred to individually in this Agreement as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Buyer has entered into that certain Asset Purchase Agreement, dated as of the date hereof (the “**Purchase Agreement**”), by and between Buyer and Cirrus Technologies LLC, a New Jersey limited liability company (the “**Seller**”), pursuant to which, *inter alia*, Buyer purchased and assumed from Seller all or substantially all of Seller’s property and assets and certain of the liabilities of the Business (as defined below), as more fully set forth in the Purchase Agreement (the “**Transaction**”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

B. In connection with the Transaction, Buyer desires to obtain certain covenants not to compete from Restricted Party. Restricted Party is willing to enter into this Agreement in consideration of (i) the execution and performance by Buyer of the Purchase Agreement and the significant benefits afforded to him thereunder and (ii) the amount to be paid, and the access to confidential information of Buyer and its Affiliates to be granted following the consummation of the Transaction, in respect of Restricted Party’s employment by or on behalf of Buyer or any Affiliates of Buyer.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Intention of Parties. Restricted Party is accepting and agreeing with the restrictive covenant provisions of this Agreement in connection with the transactions contemplated by the Purchase Agreement, and is entering into this Agreement in his individual capacity to protect the confidential information and goodwill relating to the Business being acquired by Buyer. It is therefore the specific intention of the Parties that the provisions of this Agreement shall be enforced as written and to the fullest extent possible.

2. Definitions. As used herein, the following terms shall have the following meanings:

(a) “**Business**” means the business conducted by Seller on and prior to the date hereof as a financial technology company that creates and provides technology solutions to broker dealers, which include a variety of computer infrastructure, hardware and software, trading systems and related technology services created to support and enhance brokerage operations, and includes routing services that provide a variety of electronic routing of orders for publicly traded securities across venues around the world, and all related activities.

(b) “**Prohibited Period**” means the period beginning on the Effective Date and ending on the three-year anniversary of the Effective Date.

(c) “**Restricted Area**” means, in light of the nature of the Business, which involves clients of the Business around the world, the geographic area within a 500-mile radius of 1251 Avenue of the Americas, New York City, New York.

3. Noncompetition and Nonsolicitation.

(a) Restricted Party covenants and agrees that during the Prohibited Period, Restricted Party shall, other than in connection with his employment by or on behalf of Buyer, refrain from, directly or indirectly, carrying on or engaging in the Business in or from the Restricted Area. Restricted Party further covenants and agrees that, because the following conduct would effectively constitute carrying on or engaging in the Business, he will not, in the Restricted Area during the Prohibited Period, directly or indirectly, other than in connection with his employment by or on behalf of Buyer, own, manage, operate, join, become an employee, officer or director of, consultant to, control or participate in, or be connected with any business of any Person (as defined in the Purchase Agreement) that engages in the Business (such Person, a “**Competitor**”). Restricted Party shall not be in violation of this Section 3(a) solely as a result of a passive investment in stock or other securities of any entity if Restricted Party does not, directly or indirectly, hold in the aggregate more than a total of five percent (5%) of all such shares of stock or other securities issued and outstanding.

(b) Restricted Party covenants and agrees that during the Prohibited Period, he will not canvass, solicit, approach or entice away, or cause to be canvassed, solicited, approached or enticed away, any customer that is or was a customer of the Seller or its Affiliates in the Restricted Area as of the Effective Date or at any time within 12 months prior to the Effective Date, with respect to business to be conducted in the Restricted Area.

(c) Restricted Party further covenants and agrees that during the Prohibited Period, he will not engage or employ, or solicit or contact with a view to the engagement or employment of, any Person who is an officer or employee of any of the Seller or its Affiliates.

4. Confidentiality.

(a) Restricted Party hereby acknowledges that during the course of Restricted Party’s association with the Business, Restricted Party has gained and may continue to gain certain confidential and proprietary information and trade secrets of the Business including, without limitation, some or all of the following: information with respect to the Business’ technology, bids; projects; pricing methods; contractors and subcontractors; operations; processes; protocols; products; inventory; ideas; designs, inventions; business practices; finances; potential customers and suppliers; marketing methods; costs; contractual relationships; regulatory status; compensation paid to employees or other terms of employment; dealers; distributors; sales; costs; pricing; strategies; forecasts and long range plans; financial and tax matters; personnel; business, marketing and operational matters; projections; plans and opportunities; and customer, vendor, and supplier data (collectively, “**Proprietary Information**”). During the Prohibited Period, Restricted Party shall maintain in confidence and shall not directly or indirectly disseminate, disclose or publish, or use in any manner materially detrimental to the Business, any Proprietary Information or deliver to any Person any document, record, notebook, computer program or similar repository of or containing any Proprietary Information. Notwithstanding anything to the contrary set forth herein, “**Proprietary**

Information” shall not include: (i) any information which is in or enters the public domain or otherwise becomes generally known within the Business’ industry (other than by means of Restricted Party’s direct or indirect disclosure of such Proprietary Information in violation of his obligations under this Section 4(a)); or (ii) any information disclosed to the Restricted Party from any third Person on a non-confidential basis provided that such third Person is not, to the knowledge of Restricted Party, in violation of any other obligation of confidentiality or non-use. The Parties hereby stipulate and agree that as among them, the Proprietary Information identified herein is important, material and affects the successful conduct of the Business.

(b) Notwithstanding the foregoing, Restricted Party may disclose Proprietary Information if legally required (in response to a lawful and valid subpoena, oral questions, requests for information or documents, civil investigative demand or other legal process) but shall (i) to the extent legally permitted, give Buyer notice thereof as promptly as practicable, (ii) as much in advance of the return date as reasonably possible and to the extent legally permitted, make available to Buyer and its counsel the documents and other information sought and (iii) use reasonable commercial efforts to assist such counsel in resisting or otherwise responding to such process at Buyer’s sole cost and expense.

5. Relief.

(a) Restricted Party agrees that the limitations as to time, geographical area, and scope of activity to be restrained as set forth in Sections 3 and 4 are reasonable in all respects, necessary to protect the confidential information and goodwill of the Business being acquired by Buyer and do not impose any greater restraint than is necessary to protect the legitimate business interests of Buyer. Restricted Party acknowledges that the injury that would be suffered by Buyer as a result of a breach of the provisions of this Agreement would be irreparable and that an award of monetary damages to Buyer for such a breach would be an inadequate remedy. Consequently, Buyer will have the right, in addition to any other rights it may have, to seek specific performance, to obtain injunctive relief to restrain any proposed or actual breach or threatened breach or otherwise to specifically enforce any provision of this Agreement without the obligation to post bond or other security in seeking such relief.

(b) In the event that Buyer commences any action or proceeding hereunder alleging a breach of this Agreement by Restricted Party, then the Prohibited Period, will be extended one month for each month Restricted Party was in breach of this Agreement as determined by a court of competent jurisdiction, so that Buyer is provided the benefit of the full Prohibited Period.

(c) At any time during the Prohibited Period, Restricted Party may provide Buyer with a written request, setting forth with particularity any proposed employment, business arrangement and/or other activities in which Restricted Party proposes to engage, and requesting that Buyer state its position as to whether it considers the proposed activities a violation of the covenants set forth in Sections 3 and 4 hereof. Buyer shall respond in writing to the request within a reasonable period of time after receipt.

6. Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier

service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Buyer:

Cirrus Services LLC
c/o Overstock.com, Inc.
6530 South 3000 East
Salt Lake City, Utah 84121
Attention: Chief Executive Officer
Tel: (801) 947-3100

If to Restricted Party, to the address set forth on the signature page hereto.

7. Governing Law; Venue; Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to any conflict or choice of law provision that would require or permit the application of the laws of any other jurisdiction.

(b) Each Party consents to personal jurisdiction in any action brought in any court, federal or state, within the City of Salt Lake City, Utah, having subject matter jurisdiction arising under this Agreement, and each of the Parties hereto agrees that any Proceeding (as defined in the Purchase Agreement) instituted by either of them against the other with respect to this Agreement shall be instituted exclusively in a court, federal or state, within the City of Salt Lake City, Utah. Each Party to this Agreement hereby irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of such Proceeding. The Parties further agree, to the extent permitted by law, that a final and unappealable judgment against any of them in any Proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.

8. Waiver. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, shall be cumulative and not alternative.

9. Entire Agreement. This Agreement, and the defined terms incorporated by reference from the Purchase Agreement, supersede all prior discussions and agreements among the Parties, both written and oral, with respect to the subject matter hereof, and contain the sole and entire agreement among the Parties with respect to the subject matter hereof.

10. Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party. Any amendment, modification or supplement to this Agreement not made in accordance with this Section 11 shall be void.

11. Assignment, Successors. Neither this Agreement nor any rights, obligations or interests hereunder may be assigned by any Party hereto except with the prior written consent of the other Parties; provided, however, that Buyer may, without the consent of Seller, assign any of its rights, interests and obligations under this Agreement to one or more Affiliate(s) of Buyer, which assignment shall not relieve Buyer of any obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and assigns.

12. Enforceability, Reformation and Severability. The Parties agree that each of the foregoing restrictions is reasonable under the circumstances. Restricted Party understands that the foregoing restrictions limit his ability to engage in the Business in the Restricted Area during the Prohibited Period, but acknowledges that such restrictions shall not prevent him from being able to obtain gainful employment. Nevertheless, if any provision contained in this Agreement is held by a court of competent jurisdiction to be unreasonable, or overly broad as to geographic area, duration or scope, or otherwise unenforceable, the Parties intend for the restrictions herein to be modified by the court making such determination so as to be reasonable and enforceable and, as so modified, to be fully enforced. By agreeing to this contractual modification prospectively at this time, the Parties intend to make this Agreement enforceable under the law or laws of all applicable States and other jurisdictions so that the entire agreement not to compete and this Agreement as prospectively modified shall remain in full force and effect and shall not be rendered void or illegal. If any provision of this Agreement should be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the fullest extent permitted by law, (i) all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intentions of the Parties as nearly as may be possible, and (ii) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction.

13. Section Headings; Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any facsimile or electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

[Signature page immediately follows.]

IN WITNESS WHEREOF, the Parties hereby execute and delivery this Agreement as of the date first above written.

BUYER:

CIRRUS SERVICES LLC

By: _____

Name:

Title:

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RESTRICTED PARTY:

$$[\cdot]$$

Address:

Email:

Attn:

EXHIBIT F
Form of Transition Services Agreement

TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (this “**Agreement**”), dated as of August 26, 2015, is by and among Cirrus Technologies LLC, a New Jersey limited liability company (“**Seller**”), Cirrus Services LLC, a Utah limited liability company (“**Buyer**,” and together with Seller, the “**Parties**” and each, individually, a “**Party**”) and Joseph Cammarata (“**Cammarata**”).

RECITALS

WHEREAS, the Parties are also parties to an Asset Purchase Agreement dated as of August 26, 2015 (the “**Purchase Agreement**”); and

WHEREAS, capitalized terms used but not defined herein have the meanings ascribed to them in the Purchase Agreement; and

WHEREAS, each of the Parties desires to ensure a seamless transition from Seller to Buyer of the Business, and are entering into this Agreement pursuant to the Purchase Agreement in connection with the closing of the transactions contemplated by the Purchase Agreement; and

WHEREAS, Cammarata, who is the Chief Executive Officer, sole Managing Partner and majority owner of the membership interests of Seller, has agreed to guarantee the obligations of Seller under the Purchase Agreement and all agreements entered into in connection with the Purchase Agreement this Agreement and consequently is guaranteeing the obligations of Seller under this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the respective agreements, covenants, representations and warranties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties and Cammarata hereby agree as follows:

1. At all times after the Closing, Seller shall take all actions necessary in order to more effectively effectuate the transactions contemplated by the Purchase Agreement and to enable Buyer to conduct the Business as previously conducted by Seller. Without limiting the foregoing, Seller shall serve as Buyer’s agent to the extent requested by Buyer for the purpose of providing to Buyer the benefit of any contract, agreement or arrangement of any nature intended to be assigned to Buyer at the Closing but not effectively transferred to Buyer at the Closing.

2. Without limiting the foregoing, Seller shall serve as Buyer’s agent for the purposes of ensuring that Buyer obtains the full benefit of all utilities and services arrangements Seller had in place immediately prior to the Closing, including without limitation all telecommunications arrangements, all Internet access arrangements, and all connections and access to all financial,

trading, quotation and other services and arrangements used in the Business as conducted by Seller prior to the Closing (collectively, the “**Services**”).

3. Seller shall promptly take appropriate actions to transfer all of the Services to Buyer. With respect to each of the Services, from and after the Closing, Seller shall serve as Buyer’s agent for the purposes of continuing to procure the Services for the benefit of Buyer, until such time as Seller has effectively caused the transfer of such Services to Buyer.

4. Seller shall also take all such further actions in connection with the foregoing as may be reasonably requested from time to time by Buyer.

5. All actions of Seller pursuant to this Agreement shall be taken at the sole expense of Seller and without additional cost or expense to Buyer.

[Signature page immediately follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

SELLER:

CIRRUS TECHNOLOGIES LLC

By:___

Name: Joseph Cammarata

Title: Manager

CAMMARATA:

Joseph Cammarata

[Signature page to Transition Services Agreement]

BUYER:

CIRRUS SERVICES LLC

By:___

Name: Michael Skirucha

Title: Vice President

[Signature page to Transition Services Agreement]

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EXHIBIT G
Form of Opinion to be Delivered by Counsel to Cirrus Technologies LLC

August 26, 2015

Cirrus Services LLC
6350 South 3000 East
Salt Lake City, Utah 84121

Medici, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

Re: Asset Purchase Agreement dated as of August 26, 2015

Ladies and Gentlemen:

We have acted as counsel for Cirrus Technologies LLC, a New Jersey limited liability company ("Cirrus"), and its members in connection with the transactions contemplated by the Asset Purchase Agreement dated as of August 26, 2015 (the "Agreement"), by and among Cirrus and Cirrus Services LLC, a Utah limited liability company ("Buyer"). This opinion letter is delivered to you pursuant to Section 2.7(h) of the Agreement. Capitalized terms used herein and not otherwise defined herein have the meanings assigned to such terms in the Agreement.

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed necessary for the purposes of such opinions. We have examined (i) the proposed Agreement to be executed by the parties and the other agreements and instruments described therein to which Cirrus is a party, which we assume will be executed and delivered in substantially the form of the drafts we have been provided, with all such agreements and instruments being collectively referred to herein as the "Transaction Documents," and (ii) such other documents and records as we have deemed necessary and relevant for purposes hereof.

We have made such investigations of law and examined such other documents and records as we have deemed necessary and relevant as a basis for the opinions hereinafter expressed. Although the undersigned cannot and does not guarantee the accuracy and completeness of statements contained in this opinion or representations made by the Seller, in connection with this representation, investigation and due inquiry of the Company's present officers and sole manager in the preparation of this opinion, nothing has come to the attention of the undersigned which causes him to believe that this opinion (except as to the financial statements and supporting financial and statistical data included or incorporated therein, as to which such counsel need express no opinion) or the representations by Sellers pursuant to the Agreement, contains an untrue statement of a

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material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading. The foregoing qualification shall apply to all statements hereinafter.

Based upon the foregoing, and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that:

Cirrus is validly existing and in good standing as a limited liability company under the laws of the State of New Jersey and is authorized or qualified to do business and in good standing as a foreign limited liability company in each jurisdiction where it is required to be so authorized or qualified. Cirrus has the limited liability company power and authority to own its properties and to carry on its business as it is now being conducted.

Cirrus has the limited liability company power and authority to execute and deliver the Agreement and each Transaction Document and perform its obligations thereunder. Cirrus has taken all limited liability company action necessary to authorize the execution, delivery and performance of the Agreement and each Transaction Document including but not limited to requisite authorization of the members of Cirrus. Cirrus has duly executed and delivered the Agreement and each Transaction Document.

The execution and delivery by Cirrus of the Agreement and Transaction Documents to which it is a party do not, and the consummation of the transactions contemplated thereby will not (i) result in a violation or breach of any provision of the Cirrus Limited Liability Company Operating Agreement dated June 12, 2014, a copy of which is attached hereto as an Exhibit (the "Cirrus LLC Agreement"); or (ii) result in a violation or breach of any provision of any law, rule or regulation applicable to Cirrus; or (iii) conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any contract, mortgage, indenture, lease, deed of trust, instrument or other agreement, known to us after due inquiry.

The Agreement and each Transaction Document constitutes, with respect to Cirrus, a valid and binding obligation of Cirrus, enforceable against Cirrus in accordance with its terms.

The performance by Cirrus of the transactions contemplated by the Agreement and the Transaction Documents will not result in or require the creation or imposition of any security interest or lien upon its property or any of the assets intended to be acquired by Buyer pursuant to the Agreement (the "Assets") and, assuming due execution and performance of Buyer's obligations under the Agreement and Transaction Documents the Assets will be duly and validly transferred to Buyer free and clear of any liens of record.

The outstanding membership interests of Cirrus are as set forth on Exhibit A to the Cirrus LLC Agreement.

To our knowledge there are no outstanding options, warrants, contracts, commitments, agreements, understandings or other rights of any kind to purchase or subscribe for membership interests of Cirrus, or any securities convertible into or exchangeable for membership interests of Cirrus.

To our knowledge there are no legal proceedings (i) pending before any court or arbitration tribunal or (ii) overtly threatened in writing, in each case, against Cirrus that seek to enjoin or otherwise interfere directly with the transactions contemplated by the Transaction Documents.

No consent, approval, order or authorization by, or filing with, any governmental authority or agency is required in connection with the execution and delivery by Cirrus of the Agreement and the Transaction Documents and the consummation of the transactions contemplated thereby.

To our knowledge, Cirrus is not engaged in any activities that require any consent, approval, order or authorization to be issued by the Financial Industry Regulatory Authority, Inc., its predecessor, the National Association of Securities Dealers, Inc., and any successor thereto, by the Securities and Exchange Commission, or pursuant to the securities laws, and the rules and regulations thereunder, of any jurisdictions in which Cirrus conducts its Business.

We express no opinion as to the effects of (i) bankruptcy, insolvency, fraudulent transfer and conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity) including the possible unavailability of specific performance or injunctive relief and the exercise of discretionary powers by any court before which specific performance or injunctive relief or other equitable remedies may be sought.

The opinions expressed herein are solely for the benefit of the addressees hereof in connection with the transaction referred to herein and may not be relied on by such addressees for any other purpose or in any manner, or furnished to or relied on for any purpose by any other person or entity, in each case without our prior written consent. This opinion letter is rendered as of the date set forth above. We expressly disclaim any obligation to update this opinion letter in any respect after such date. This opinion is strictly limited to the matters stated herein, and no other or more extensive opinion is intended, implied or to be inferred beyond the matters expressly stated herein.

Very truly yours,

EXHIBIT H
Form of Guarantee to be Delivered by Joseph Cammarata

August 26, 2015

Cirrus Services LLC
6350 South 3000 East
Salt Lake City, Utah 84121

Medici, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

Re: Asset Purchase Agreement dated as of August 26, 2015

Ladies and Gentlemen:

H-1

To induce Cirrus Services to enter into the Asset Purchase Agreement dated on or about the date hereof (the “**APA**”) by and between Cirrus Technologies LLC, a New Jersey limited liability company (“**Seller**”), and Cirrus Services LLC, a Utah limited liability company (“**Buyer**”), the undersigned, Joseph Cammarata (the “Guarantor”), as a primary obligor and not merely as a surety, hereby unconditionally and irrevocably guarantees to the Buyer and the Buyer Indemnitees (as defined in the APA), upon demand and at any time, (i) the due and punctual performance of all obligations of Seller under the APA and any agreement or instrument entered into by Seller pursuant to or in connection with the APA or the transactions contemplated thereby, and (ii) the due and punctual payment to the Buyer and the Buyer Indemnitees of all amounts which the Seller is or shall become obliged to pay to the Buyer or the Buyer Indemnitees pursuant to the APA (all such obligations and amounts being herein called the “**Guaranteed Obligations**”).

If and whenever the Seller defaults for any reason whatsoever in the performance of any of the Guaranteed Obligations, the Guarantor shall forthwith upon demand unconditionally perform the obligation or pay or satisfy such Guaranteed Obligation so that the same benefits shall be conferred on the Buyer and the Buyer Indemnitees as would have been received if such Guaranteed Obligation had been duly and punctually performed or paid by the Seller.

The Buyer or the Buyer Indemnitees may proceed directly against the Guarantor without taking any action to enforce any of Guaranteed Obligations under the APA, and without taking any action to enforce the same against the Seller and without filing any claim in any court or other similar governing body.

The Guarantor hereby waives any defences that the Seller may assert or might have asserted with respect to the performance of any of the Guaranteed Obligations. Notice of non-payment, notice of amounts owed but unpaid at any particular time, presentment, protests, demands and prosecution of remedies are hereby expressly waived by the Guarantor, and the obligations of the Guarantor hereunder shall not be terminated, affected or impaired by reason of the assertion by the Buyer or the Buyer Indemnitees against the Seller of any of the rights or remedies of Buyer or the Buyer Indemnitees pursuant to the provisions of the APA.

From time to time from the date hereof, as and when requested by Buyer, the Guarantor shall use his commercially reasonable efforts to take or to cause to be taken, all actions and to do, or cause to be done, or to execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as Buyer may reasonably deem necessary, proper or advisable to vest in Buyer good and valid title to the Purchased Assets (as defined in the APA) and to consummate the Transactions (as defined in the APA), as promptly as practicable, including such actions as are necessary in connection with any regulatory filings as any party to the APA may undertake in connection with the APA or the transactions contemplated thereby.

Any liability of the Guarantor shall not exceed the liability of the Seller under the APA, and shall not exceed the aggregate value of the consideration received by Guarantor, directly or indirectly, by means of payment to SpeedRoute Technologies Inc. (Barbados) or otherwise, upon the closing of the transactions contemplated by the APA, with the stock portion of such consideration being valued at the value ascribed thereto for purposes of such closing, regardless of any subsequent

increase or decrease in the market value of the shares delivered to Guarantor upon the closing of the transactions contemplated by the APA.

Joseph Cammarata

H-2

PRO SECURITIES, LLC

MEMBERSHIP INTEREST PURCHASE AGREEMENT

by and among

JOSEPH CAMMARATA AND JOHN PAUL DEVITO,

as Sellers,

and

MEDICI, INC.,

as Buyer

dated as of August 26, 2015

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MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (this “**Agreement**”), dated as of August 26, 2015, is by and among Joseph Cammarata and John Paul DeVito (“**Sellers**” and each, individually, a “**Seller**”) and Medici, Inc., a Utah corporation (“**Buyer**,” and together with Sellers, the “**Parties**” and each, individually, a “**Party**”).

RECITALS

WHEREAS, Buyer is a majority-owned subsidiary of Overstock.com, Inc., a Delaware corporation (“**Overstock**”);

WHEREAS, Sellers collectively own 75.1% of the issued and outstanding membership interests (the “**Membership Interests**”) in Pro Securities, LLC, a California limited liability company (the “**Company**”);

WHEREAS, each Seller has previously delivered to Overstock a completed and signed Investor Questionnaire;

WHEREAS, Sellers wish to sell to Buyer, and Buyer wishes to purchase from Sellers, the Membership Interests, all upon the terms and subject to the conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and the respective agreements, covenants, representations and warranties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending be legally bound hereby, the Parties hereby agree as follows:

Article 1
DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the capitalized terms included in Schedule 1.1 shall have the meanings specified or referred to therein, other than terms defined elsewhere in this Agreement:

ARTICLE 2
SALE AND PURCHASE OF MEMBERSHIP INTERESTS

2.1 Purchase of Membership Interests. On the terms and subject to the conditions hereof, at the Closing, in consideration of the Purchase Price, Sellers shall sell to Buyer, and Buyer shall purchase from Sellers, all of Sellers' right, title and interest in and to the Membership Interests, free and clear of any Liens, for the consideration specified in Section 2.2.

2.2 Purchase Price. On the terms and subject to the conditions hereof, at the Closing Buyer shall issue to Sellers a total number of shares of common stock, par value \$0.0001 per share (the "**Common Stock**"), of Overstock (the "**Shares**"), the value (calculated as set forth in Section 2.6) of which shall equal One Hundred Seventy Five Thousand Dollars (\$175,000) (the "**Purchase Price**"), in the respective amounts as Sellers shall instruct Overstock in writing on the Closing Date.

2.3 Closing. Subject to the terms and conditions of this Agreement, the sale and purchase of the Membership Interests contemplated by this Agreement shall take place at a closing (the "**Closing**") to be held at the offices of Overstock.com, Inc., 6350 South 3000 East, Salt Lake City, Utah 84121 at 10:00 A.M. local time, no later than two Business Days after the last of the conditions to Closing set forth in Article 7 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date). The date upon which the Closing occurs is referred to as the "**Closing Date**."

2.4 Closing Deliveries by Sellers. At the Closing, Sellers shall deliver (or cause to be delivered) the following documents to Buyer, duly executed by each Seller, as applicable:

(a) one or more assignments of the Membership Interests, each in the form attached hereto as Exhibit A hereto (the "**Assignment**") and duly executed by each Seller, transferring all of Sellers' respective right, title and interest in and to the Membership Interests to Buyer and admitting Buyer as a Substitute Member (as defined in the Company LLC Agreement) of the Company;

(b) a duly executed certificate of non-foreign status from each Seller that meets the requirements of Treasury Regulations Section 1.1445-2(b) and is in a form reasonably satisfactory to Buyer;

(c) a written opinion of counsel for Sellers, dated the date hereof, in substantially the form attached hereto as Exhibit B (the "**Legal Opinion**"); and

(d) such other documents, instruments and certificates as Buyer may reasonably request.

2.5 Closing Deliveries by Buyer. At the Closing, Buyer shall deliver (or cause to be delivered) to Sellers:

(a) the Shares;

(b) such other documents, instruments and certificates as Sellers may reasonably request.

2.6 Purchase Price Calculation. The number of Shares to be issued to Sellers pursuant to Section 2.2 shall be calculated by dividing (i) the Purchase Price by (ii) the average of the closing price per share of the Common Stock on the Nasdaq Global Market over the ten (10) Trading Days prior to the Closing Date (the “**Average Closing Price**”). Notwithstanding the foregoing, if the Average Closing Price shall be less than \$18.00 per share, Buyer, at its sole option, may substitute cash for any portion of the Shares; provided, that in such event, each Seller shall receive the same ratio of cash and Shares; and provided, further, that the total value of any cash paid and any Shares delivered to Sellers shall equal the Purchase Price.

2.7 Withholding. Notwithstanding any other provision in this Agreement, Buyer shall have the right to deduct and withhold from any payments to be made hereunder any Taxes that it is required to deduct and withhold with respect to the making of such payments under the Code or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld and paid to the appropriate Tax Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to the Person in respect of which such deduction and withholding was made.

ARTICLE 3 **REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers hereby represent and warrant to Buyer as of the execution date of this Agreement and as of the Closing as follows:

3.1 Organization and Qualification. The Company is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of California. The Company is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on the Business or Sellers’ ability to perform their obligations hereunder.

3.2 Authority, Due Execution; Binding Effect.

(a) Sellers have full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which any Seller as of the Closing shall be a party, to

perform their obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery by Sellers of this Agreement and the Ancillary Agreements to which any Seller as of the Closing shall be a party when executed and delivered by such Seller, and the performance by Sellers of their obligations hereunder and thereunder, have been or as of the Closing shall be duly and validly authorized by all necessary action.

(b) This Agreement has been duly executed and delivered by Sellers and constitutes the valid and binding obligation of Sellers, enforceable against Sellers in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law). When executed and delivered by Sellers on the Closing Date, each of the Ancillary Agreements to which any Seller is a party shall have been duly executed and delivered by such Seller and shall constitute the valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law).

3.3 Capitalization.

(e) Sellers are the record and beneficial owners of and have good and valid title to the Membership Interests, free and clear of all Liens. The Membership Interests constitute 75.1% of the total issued and outstanding membership interests in the Company, and, effective upon the Closing, Buyer shall be the sole member of the Company. The Membership Interests have been duly authorized and are validly issued, fully paid and non-assessable except as otherwise provided in the Company LLC Agreement. Upon consummation of the Transactions, Buyer shall own all of the Membership Interests, free and clear of all Liens.

(f) The Membership Interests were issued in compliance with applicable Laws. The Membership Interests were not issued in violation of the Organizational Documents of the Company or any other agreement, arrangement or commitment to which any Seller or the Company is a party and are not subject to or in violation of any preemptive or similar rights of any Person.

(g) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to any membership interests in the Company or obligating Sellers or the Company to issue or sell any membership interests (including the Membership Interests), or any other interest, in the Company. Other than the Organizational Documents, there are no voting trusts, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Membership Interests.

3.4 No Subsidiaries. The Company does not own, or have any interest in any shares or have an ownership interest in any other Person.

3.5 No Conflict. Neither the execution and delivery of this Agreement by Sellers, nor the performance by Sellers of the Transactions, shall, directly or indirectly (a) contravene, conflict with or result in (with or without notice or lapse of time) a violation or breach of any Law or Order to which any Seller or the Company may be subject; (b) violate, conflict with or result in the breach of any provision of the Organizational Documents of the Company or (c) conflict in any material respect with, result in a material breach of, constitute a material default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any Consent under or give to others any right of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Lien pursuant to, any Contract to which any Seller or the Company is a party.

3.6 Consents and Approvals. The execution and delivery of this Agreement and the performance of the Transactions by Sellers do not and will not require any Consent of any Governmental Authority or any other Person, other than FINRA.

3.7 Title. The Company has good and valid title to all personal property and other assets reflected in the Financial Statements or acquired after the Balance Sheet Date.

3.8 Financial Statements; Undisclosed Liabilities.

(a) Sellers have made available to Buyer true and complete copies of (i) the audited balance sheet of the Company as of December 31, 2013 and the related audited statement of operations for the year ended December 31, 2013, audited statement of changes in member's equity for the year ended December 31, 2013, and audited statement of cash flows for the year ended December 31, 2013, and (ii) the audited balance sheet of the Company as of December 31, 2014 and the related audited statement of operations for the year ended December 31, 2014, audited statement of changes in member's equity for the year ended December 31, 2014, and audited statement of cash flows for the year ended December 31, 2014 (collectively, the "**Financial Statements**"). The Financial Statements are set forth in Schedule 3.8(a), are consistent with the books and records of the Company, and fairly present in all material respects the financial condition and the results of operations of the Company as of the dates thereof and the results of its operations for the periods covered thereby. The balance sheet of the Company as of December 31, 2014 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**".

(b) Except as set forth on the Financial Statements or on Schedule 3.8(b), the Company does not have any liability or obligation (whether accrued, absolute, contingent or otherwise) which, individually or in the aggregate, would exceed \$10,000.

3.9 Books and Records. The Company (a) makes and keeps books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company and (b) has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements and (B) to maintain accountability for assets, (iii) access to assets is

permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

3.10 Compliance with Laws; Permits; Proceedings. The Company is currently, and since its formation has been, in compliance in all material respects with all Laws and Orders applicable to the Business (other than Environmental Laws, which are addressed in Section 3.15).

3.11 Real Property.

(a) The Company owns no real property and has no interest of any type in any real property other than the Leases.

(b) Schedule 3.13(b) describes each Leased Real Property and each lease of real property, for office use or otherwise, written or unwritten, to which the Company is a party or is in any way bound or obligated (collectively, the "**Leases**"). Other than the Leases, there are no other leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which the Company holds any Leased Real Property. Sellers have delivered to Buyer a true and complete copy of each Lease. With respect to each Lease:

(i) such Lease is valid, binding, enforceable and in full force and effect, and the Company enjoys peaceful and undisturbed possession of the Leased Real Property;

(ii) the Company is not in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and the Company has paid all rent due and payable under such Lease;

(iii) the Company has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by the Company under such Lease and, to the Knowledge of any Seller, no other party is in default thereof, and no party to such Lease has exercised any termination rights with respect thereto;

(iv) the Company has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(v) the Company has not pledged, mortgaged or otherwise granted a Lien on its leasehold interest in any Leased Real Property.

(c) The Company has not received any written notice of (i) material violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Leased Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Leased Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to materially and adversely affect the ability to operate the Leased Real Property as currently operated. Neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or other casualty.

(d) The Leased Real Property is sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the office and other space necessary to conduct the Business as currently conducted.

3.12 Tax Matters. All income and other material Tax Returns required to be filed by the Company or otherwise with respect to the Business have been timely and duly filed. All such Tax Returns were true, correct and complete in all material respects. All Taxes due and owing by the Company or otherwise with respect to the Business (whether or not shown on any Tax Return) have been timely paid in full in accordance with all applicable legal requirements.

3.13 Environmental Matters. Since the date of formation of the Company:

(a) The Company currently is and has been in compliance in all material respects with all Environmental Laws applicable to the Business; The Company holds all material permits, licenses and authorizations arising under applicable Environmental Law necessary for the conduct of the Business in compliance with Environmental Laws, and all such Environmental Permits are valid and in full force and effect, and none is undergoing any form of review or proceeding, whether requested or imposed, whose outcome may be to revoke, restrict, fail to renew or materially modify the Environmental Permit or to issue or require an additional Environmental Permit, compliance plan or Order;

3.14 Intellectual Property.

(a) The Company holds all (i) Intellectual Property Registrations and (ii) Intellectual Property Assets, including software, that are not registered but that are material to the operation of the Business, that the Company needs to conduct the Business. All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing. Sellers have provided Buyer with true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Intellectual Property Registrations.

(b) Sellers have provided Buyer with true and complete copies of all Intellectual Property Agreements that are necessary for the operation of the Business, including all modifications, amendments and supplements thereto and waivers thereunder. Each Intellectual Property Agreement is valid and binding on the Company in accordance with

its terms and is in full force and effect. None of the Company or, to the Knowledge of any Seller, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of breach or default of or any intention to terminate, any Intellectual Property Agreement. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Intellectual Property Agreement or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder.

(c) Except as set forth in Schedule 3.16(c), the Company is the sole and exclusive legal and beneficial, and with respect to the Intellectual Property Registrations, record, owner of all right, title and interest in and to the Intellectual Property Assets, and has the valid right to use all other Intellectual Property used in or necessary for the conduct of the Business as currently conducted, in each case, free and clear of all Liens. Without limiting the generality of the foregoing, the Company has entered into binding, written agreements with every current and former employee of the Company, and with every current and former independent contractor, whereby such employees and independent contractors (i) assign to the Company any ownership interest and right they may have in the Intellectual Property Assets; and (ii) acknowledge the Company's exclusive ownership of all Intellectual Property Assets. Sellers have provided Buyer with true and complete copies of all such agreements.

(d) The Intellectual Property Assets and Intellectual Property licensed under the Intellectual Property Agreements are all of the Intellectual Property necessary to operate the Business as presently conducted. The consummation of the transactions contemplated hereunder will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Buyer's right to own, use or hold for use any Intellectual Property as owned, used or held for use in the conduct of the Business as currently conducted.

(e) The Company's rights in the Intellectual Property Assets are valid, subsisting and enforceable. The Company has taken all reasonable steps to maintain the Intellectual Property Assets and to protect and preserve the confidentiality of all trade secrets included in the Intellectual Property Assets, including requiring all Persons having access thereto to execute written non-disclosure agreements.

(f) The conduct of the Business as currently and formerly conducted, and the Intellectual Property Assets and Intellectual Property licensed under the Intellectual Property Agreements as currently or formerly owned, licensed or used by the Company, have not infringed, misappropriated, diluted or otherwise violated, and have not, do not and will not infringe, dilute, misappropriate or otherwise violate, the Intellectual Property or other rights of any Person. No Person has infringed, misappropriated, diluted or otherwise violated, or is currently infringing, misappropriating, diluting or otherwise violating, any Intellectual Property Assets.

(g) There are no Proceedings (including any oppositions, interferences or re-examinations) settled, pending or threatened (including in the form of offers to obtain a

license): (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by the Company in connection with the Business; (ii) challenging the validity, enforceability, registrability or ownership of any Intellectual Property Assets or the Company's rights with respect to any Intellectual Property Assets; or (iii) by any Seller or any other Person alleging any infringement, misappropriation, dilution or violation by any Person of any Intellectual Property Assets. The Company is not subject to any outstanding or prospective Order (including any motion or petition therefor) that does or would restrict or impair the use of any Intellectual Property Assets.

3.15 Benefit Plans. The Company does not have, and has never had, any Benefit Plans with respect to the Business or any of the Business Employees. No event has occurred and there exists no condition or set of circumstances in connection with which Buyer or any of Buyer's Affiliates could be subject to any liability or obligation of any kind, whether contingent or otherwise, under the terms of, or with respect to, any Benefit Plan or under ERISA.

3.16 Broker-Dealer Representations.

(a) Sellers have delivered to Buyer (i) a true, correct and complete copy of the Company's Uniform Application for Broker-Dealer Registration on Form BD, reflecting all amendments thereto filed with the SEC or FINRA to the date hereof, (ii) true, correct and complete copies of the Uniform Application for Securities Industry Registration or Transfer on Form U-4, as filed on behalf of each current principal and registered representative of the Company, (iii) true, correct and complete copies of any written Business Plan of the Company approved by FINRA, reflecting all amendments thereto, and FINRA has confirmed to BD that the Company does not operate pursuant to any written FINRA Membership Agreement of the Company (CRD No. 6619) (the "**Membership Agreement**") and no such Membership Agreement exists and (iv) true, correct and complete copies of all other material registrations, declarations, reports, notices, forms and other documents filed by the Company with the SEC, FINRA, State securities authorities, or any other Governmental Authority, including FOCUS reports and annual statements of financial condition, and all amendments or supplements to any of the foregoing (together with the documents identified in items (i) through (iii), the "**BD Regulatory Filings**"), since January 1, 2013. Schedule 3.18(a) sets forth a complete list of the identities of each principal and registered representative of the Company, their series licenses, and all BD Regulatory Filings filed since January 1, 2013. The Company has timely filed all BD Regulatory Filings and such filings are, to the extent applicable, in full force and effect and were prepared in all material respects in compliance with applicable Law, including the requirements of the Exchange Act, FINRA rules ("**FINRA Rules**") and State Securities Laws, and all material fees and assessments due and payable in connection with the filing of such BD Regulatory Filings have been paid in a timely manner. The documents identified in items (i) and (iii) in the definition of BD Regulatory Filings and, to the Knowledge of any Seller, the documents identified in items (ii) of the definition of BD Regulatory Filings, do not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Each principal and registered representative of the Company

has at least the minimum series license(s) and experience for the activities which such principal or registered representative performs on behalf of the Company.

(b) The “net capital” (as defined in Rule 15c3-1 under the Exchange Act) of the Company satisfies, and since at least January 1, 2004, has satisfied, the minimum net capital requirements of the Exchange Act and of the applicable Laws of any jurisdiction in which the Company conducts business, and has been sufficient to permit the Company to operate in accordance with its business activities as authorized by FINRA. The Company is not party to, or bound by, the terms of any restriction agreement with FINRA due to the occurrence of a reportable event.

(c) The Company is and has been, since the commencement of its engagement in activities for which registration as a broker-dealer is or was required under the Exchange Act (such activities are defined as “**Broker-Dealer Activities**”), duly registered as a broker-dealer under the Exchange Act and applicable FINRA Rules. The Company is duly registered, licensed and qualified as a broker-dealer in all jurisdictions where such registration, licensing or qualification is so required. The Company is in compliance in all material respects with all federal laws requiring registration, licensing or qualification as a broker-dealer with the SEC and is in material compliance with all other applicable Law requiring registration, licensing or qualification as a broker-dealer. The Company is a member, in good standing, of FINRA and The NASDAQ Stock Market LLC, and an Equity Trading Permit Holder, in good standing, with NYSE Arca, Inc.

(d) Except as set forth on Schedule 3.18(d), there is no governmental or administrative proceeding, investigation, examination, subpoena, audit, sweep letter or other material inquiry, whether written or oral (including by the SEC, FINRA, the Department of Labor or any other Governmental Authority) pending or threatened in writing against the Company or, to the Knowledge of any Seller, against any officer, security holder, employee or associated person (as such term is defined in the Exchange Act) of the Company. Schedule 3.18(d) lists all SEC, FINRA, or other Governmental Authority examinations or litigation, proceedings, settlements, investigations, subpoenas, audits, sweep letters or other material inquiries occurring, arising, or existing during the past three years that (i) were directed to the Company, or any of its officers, security holders, employees or associated persons, or (ii) involved the Company, or any of its officers, security holders, employees or associated persons, as a party.

(e) The Company has implemented policies and procedures that are reasonably designed to comply with all applicable Law, including any applicable Anti-Money Laundering Law or any applicable Law relating to advertising, licensing, sales practices, research, information barriers, market conduct, maintenance of net capital, supervision, books and records, risk assessment and continuing education and the rules of the SEC and any other Governmental Authority having jurisdiction over the Company.

(f) Except as described in Schedule 3.18(d), the Company is not subject to any cease-and-desist or other order or enforcement action issued by, or a party to any written agreement, consent agreement or memorandum of understanding with, or a party to any

commitment letter or similar undertaking to, or subject to any order or directive by, or has been ordered to pay any civil penalty by, or a recipient of any letter of admonition or similar communication from, or has adopted a board resolution at the request or suggestion of, any Governmental Authority that restricts the conduct of its business.

(g) Set forth on Schedule 3.18(g) is each “branch office” and “office of supervisory jurisdiction” (as defined under FINRA Rules) of the Company.

(h) Except as disclosed in the Form BD of the Company in effect as of the date of this Agreement, none of the Company or its officers, employees, or associated persons has received any written notification or written communication from any Governmental Authority (i) asserting that such Person is not in compliance with any applicable Law or is subject to any active regulatory enforcement action, (ii) threatening to revoke any Permit, (iii) requiring such Person to enter into a cease and desist order, agreement or memorandum of understanding materially restricting the activities of such Person, (iv) materially restricting or disqualifying such Person’s present business activities (other than restrictions imposed by rule, regulation or administrative policy on brokers or dealers generally) or (v) threatening to initiate any proceeding or investigation into the business or operations of such Person; provided, that routine regulatory investigations and examinations and customer complaints, claims or arbitration shall not be construed as or deemed to be any investigation, notification, communication, review or disciplinary proceedings for the purposes of this Section 3.18. Since January 1, 2013, the Company has responded to all material deficiencies asserted by any Governmental Authority in connection with any regulatory examination or other similar proceeding and, where required by such response or by such Governmental Authority to take any action to address any such deficiency, has taken any such action that was required to be taken prior to the date hereof. Any such action that has not yet been taken as of the date hereof because the deadline for such action has not passed, as well as the deadline for such action, is set forth on Schedule 3.18(d).

(i) All officers, employees, associated persons and independent contractors of the Company who are, or who at any time during the past three years were, required, under applicable Law, to be registered, licensed or qualified in connection with the Broker-Dealer Activities engaged in by the Company, are or were, at all such times, duly registered as such and such registrations are or were, at all such times, in full force and effect, or are or were, at all such times, in the process of being registered as such within the time periods required by any Governmental Authority, as applicable. All officers, employees, associated persons and independent contractors of the Company are in compliance in all material respects with all applicable Law requiring any such registration, licensing or qualification, and, to the Knowledge of any Seller, are not subject to any material liability or disability by reason of any failure to be so registered.

3.17 Brokers. Neither the Company nor any Affiliate of the Company has or will have any liability or obligation to pay fees or commissions to any Person with respect to the Transactions that could be or become a claim against Buyer or any Affiliate of Buyer.

3.18 Full Disclosure. No representation or warranty by Sellers in this Agreement and no statement contained in any Schedule to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. No investigation by Buyer or its agents or information received by Buyer or any of its agents, including all such investigations performed and information delivered to Buyer or its agents prior to the execution and delivery of this Agreement or prior to the Closing, shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers in this Agreement. Sellers acknowledge that the Parties are entering into this Agreement for the purposes of allocating the economic risks between the Parties, and such entry is predicated on the representations and warranties contained herein being accurate and complete.

3.19 Restricted Shares. Sellers acknowledge that the Shares, when issued, will be restricted securities and must be held indefinitely unless subsequently registered under the Securities Act or Overstock receives an opinion of counsel reasonably satisfactory to Overstock that such registration is not required. The Company is aware of the provisions of Rule 144 promulgated under the Securities Act which provide a safe harbor for the limited resale of stock purchased in a private placement subject to the satisfaction of certain conditions (if applicable), including, among other things, the existence of a public market for the stock, the availability of certain current public information about Overstock, the resale occurring after certain holding periods have been met, the sale being conducted through a “broker’s transaction” or a transaction directly with a “market maker” and the number of shares of the stock being sold during any three-month period not exceeding specified limitations. Sellers further acknowledge and understand that Overstock may not be satisfying the current public information requirement of Rule 144 at the time a Seller wishes to sell Shares and, if so, such Seller may be precluded from selling such Shares under Rule 144 even if the required holding period has been satisfied.

3.20 Stock Legends. Sellers acknowledge that certificates evidencing the Shares shall bear a restrictive legend in substantially the following form (and including related stock transfer instructions and record notations):

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers as of the execution date of this Agreement and as of the Closing Date as follows:

4.1 Organization and Qualification. Buyer is a corporation duly formed, validly existing and in good standing under the Laws of the State of Utah. Buyer is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on Buyer's ability to perform its obligations hereunder.

4.2 Authority; Due Execution; Binding Effect.

(h) Buyer has the requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which Buyer as of the Closing shall be a party, to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which Buyer as of the Closing shall be a party when executed and delivered by Buyer, and the performance by Buyer of its obligations hereunder and thereunder, have been or as of the Closing shall be duly and validly authorized by all necessary corporate action.

(i) This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law). When executed and delivered by Buyer on the Closing Date, each of the Ancillary Agreements to which Buyer as of the Closing shall be a party shall have been duly executed and delivered by Buyer and shall constitute the valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law).

4.3 No Conflict. Neither the execution and delivery of this Agreement by Buyer, nor the performance by Buyer of the Transactions, shall, directly or indirectly (a) contravene, conflict with or result in (with or without notice or lapse of time) a violation or breach of any Law or Order to which Buyer may be subject; (b) violate, conflict with or result in the breach of any provision of the Organizational Documents of Buyer; or (c) conflict in any respect with, result in a breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any Consent under or give to others any right of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Lien pursuant

to, any Contract to which such Buyer is a party or by which any of its assets or properties are bound or affected.

4.4 Consents. The execution and delivery of this Agreement and the performance of the Transactions by Buyer do not and will not require any Consent of any Governmental Authority or any other Person, other than as set forth on Schedule 4.4.

4.5 Proceedings. There are no Proceedings pending or, to Buyer's knowledge, threatened against or involving Buyer before or by any Governmental Authority which are material to Buyer or that could reasonably be expected to prevent, enjoin, alter or materially delay the Transactions.

4.6 Brokers. Neither Buyer nor any Affiliate of Buyer has any liability or obligation to pay fees or commissions to any investment banking firm, broker or finder with respect to the Transactions that could become a liability of Sellers.

ARTICLE 5

COVENANTS

5.1 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Sellers shall, and shall cause the Company to, (x) conduct the business of the Company in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the current organization, business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. Without limiting the foregoing, from the date hereof until the Closing Date, Sellers shall:

- (j) cause the Company to preserve and maintain all of its Permits;
- (k) cause the Company to pay its debts, Taxes and other obligations when due;
- (l) cause the Company to maintain the properties and assets owned, operated or used by the Company in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
- (m) cause the Company to defend and protect its properties and assets from infringement or usurpation;
- (n) cause the Company to perform all of its obligations under all Contracts relating to or affecting its properties, assets or business;
- (o) cause the Company to maintain its books and records in accordance with past practice; and

(p) cause the Company to comply in all material respects with all applicable Laws.

5.2 Access to Information. From the date hereof until the Closing, Sellers shall, and shall cause the Company to, (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, Contracts and other documents and data related to the Company; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Company as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Sellers and the Company to cooperate with Buyer in its investigation of the Company. Any investigation pursuant to this Section 5.2 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of Sellers or the Company. No investigation by Buyer, whether prior to or after the execution and delivery of this Agreement, or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers in this Agreement.

5.3 Notice of Certain Events.

(a) From the date hereof until the Closing, Sellers shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Sellers hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.2 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions;

(iii) any notice or other communication from any Governmental Authority in connection with the Transactions; and

(iv) any Actions commenced or, to the Knowledge of any Seller, threatened against, relating to or involving or otherwise affecting Seller or the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.10 or that relates to the consummation of the Transactions.

(b) Buyer's receipt of information pursuant to this Section 5.3 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement (including Section 8.2 and Section 9.1(b)) and shall not be deemed to amend or supplement the Schedules attached hereto.

5.4 Confidentiality.

(a) From and after the Closing, Sellers shall, and shall cause each of their Affiliates and their Representatives (the “**Restricted Persons**”) to, maintain the confidentiality of, and not use for their own benefit or the benefit of any other Person (except as and to the extent permitted by the terms of this Agreement), any confidential information to the extent relating to the Business.

(b) Neither any Seller nor Buyer shall, and Sellers and Buyer shall cause each of their respective Restricted Persons not to, disclose to any Person any information with respect to the legal, financial or other terms or conditions of this Agreement or the Transactions; provided that the foregoing does not restrict the right of any Party to disclose such information (i) to its respective Restricted Persons to the extent reasonably required to facilitate the negotiation, execution, delivery or performance of this Agreement and the Ancillary Agreements, (ii) to any Governmental Authority in connection with seeking the regulatory approvals in connection with this Agreement or the Ancillary Agreements, (iii) to any Governmental Authority in connection with any Proceeding relating to the enforcement of this Agreement or any Ancillary Agreement, (iv) that is or may (in Overstock’s sole judgment) be required to be disclosed by Overstock pursuant to the Securities Act or the Exchange Act, or (v) in a press release, provided, however, that no Party may issue a press release containing information about the Transactions without the prior consent of the other Party, which consent may not be unreasonably withheld. Each Party shall advise its respective Restricted Persons with respect to the confidentiality obligations under this Section 5.4 and shall be responsible for any breach or violation of such obligations by its Restricted Persons.

(c) If a Party or any of its respective Restricted Persons becomes legally compelled to make any disclosure that is prohibited or otherwise restricted by this Section 5.4, then such Party shall, to the fullest extent legally permissible, (i) give the other Party prompt written notice of such requirement, (ii) consult with and assist the other Party in obtaining an injunction or other appropriate remedy to prevent such disclosure, (iii) use its commercially reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment shall be accorded to any information so disclosed and (iv) consult with the other Party in advance of such disclosure regarding the contents thereof. Subject to the previous sentence, the disclosing Party or such Restricted Persons may make only such disclosure that, in the opinion of its counsel, it is legally compelled or otherwise required to make to avoid standing liable for contempt or suffering other penalties.

5.5 Governmental Approvals and Consents.

(a) Each Party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Agreements. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such

consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Sellers shall use reasonable best efforts to give or cause to be given all notices to, and obtain all consents from, FINRA.

(c) Without limiting the generality of the Parties' undertakings pursuant to subsections (a) and (b) above, each of the Parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or the Ancillary Agreements;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Agreement; and

(iii) in the event any Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Agreement has been issued, to have such Order vacated or lifted.

(d) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which the Company is a party is not obtained prior to the Closing, Sellers shall, subsequent to the Closing, cooperate with Buyer and the Company in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, Sellers shall use their reasonable best efforts to provide the Company with the rights and benefits of the affected Contract for the term thereof, and, if Sellers provide such rights and benefits, the Company shall assume all obligations and burdens thereunder.

(e) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Sellers or the Company with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with

such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(f) Notwithstanding the foregoing, nothing in this Section 5.5 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, the Company or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

5.6 Books and Records.

(c) In order to facilitate the resolution of any claims made against or incurred by Sellers prior to the Closing, or for any other reasonable purpose, for a period of two (2) years after the Closing, Buyer shall:

(i) retain the books and records (including personnel files) of the Company relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company; and

(ii) upon reasonable notice, afford the Representatives of Sellers reasonable access (including the right to make, at Sellers' expense, photocopies), during normal business hours, to such books and records;

provided, however, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in Article 6.

(d) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the Company after the Closing, or for any other reasonable purpose, for a period of two years following the Closing, Sellers shall:

(i) retain the books and records (including personnel files) of Sellers which relate to the Company and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Representatives of Buyer or the Company reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records;

provided, however, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in Article 6.

(e) Neither Buyer nor Sellers shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 5.6 where such access would violate any Law.

5.7 Closing Conditions. From the date hereof until the Closing, each Party shall, and Sellers shall cause the Company to, use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article 7 hereof.

5.8 Further Action. From time to time from the date hereof, as and when requested by any Party hereto, the requested Party shall use its commercially reasonable efforts to take or to cause to be taken, all actions and to do, or cause to be done, or to execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other Party may reasonably deem necessary, proper or advisable to vest in Buyer good and valid title to the Membership Interests and to consummate the Transactions, as promptly as practicable, including such actions as are necessary in connection with any regulatory filings as any Party may undertake in connection herewith.

ARTICLE 6

TAX MATTERS

6.1 Tax Covenants.

(c) Without the prior written consent of Buyer, Sellers (and, prior to the Closing, the Company, its Affiliates and their respective Representatives) shall not, to the extent it may affect, or relate to, the Company, make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Buyer or the Company in respect of any Post-Closing Tax Period. Sellers agree that Buyer is to have no liability for any Tax resulting from any action of Sellers, the Company, its Affiliates or any of their respective Representatives, and agree to indemnify and hold harmless Buyer (and, after the Closing Date, the Company) against any such Tax or reduction of any Tax asset.

(d) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Agreements (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Sellers when due. Sellers shall, at their own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

(e) Buyer shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Company after the Closing Date with respect to a Pre-Closing Tax Period. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and without a change of any election or any accounting method and shall be submitted by Buyer to Sellers (together with schedules, statements and, to the extent requested by Sellers, supporting documentation) at least forty-five (45) days prior to the due date (including extensions) of such Tax Return. If Sellers object to any item on any such Tax Return, they shall, within ten (10) days after delivery of such Tax Return, notify Buyer in writing that they so object, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly

delivered, Buyer and Sellers shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Buyer and Sellers are unable to reach such agreement within ten (10) days after receipt by Buyer of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within twenty (20) days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Buyer and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and Sellers. The preparation and filing of any Tax Return of the Company that does not relate to a Pre-Closing Tax Period shall be exclusively within the control of Buyer.

6.2 Termination of Existing Tax Sharing Agreements. Any and all existing Tax sharing agreements (whether written or not) binding upon the Company shall be terminated as of the Closing Date. After such date neither the Company, Sellers nor any of Sellers' Affiliates and their respective Representatives shall have any further rights or liabilities thereunder.

6.3 Tax Indemnification. Sellers shall indemnify the Company, Buyer, and each Buyer Indemnitee and hold them harmless from and against (a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in Section 3.14; (b) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in this Article 6; (c) all Taxes of the Company or relating to the business of the Company for all Pre-Closing Tax Periods; (d) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor of the Company) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; and (e) any and all Taxes of any person imposed on the Company arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date. In each of the above cases, together with any out-of-pocket fees and expenses (including attorneys' and accountants' fees) incurred in connection therewith. Sellers shall reimburse Buyer for any Taxes of the Company that are the responsibility of Sellers pursuant to this Section 6.3 within ten (10) Business Days after payment of such Taxes by Buyer or the Company.

6.4 Straddle Period. In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "Straddle Period"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(g) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and

(h) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the

period ending on the Closing Date and the denominator of which is the number of days in the entire period.

6.5 Contests. Buyer agrees to give written notice to Sellers of the receipt of any written notice by the Company, Buyer or any of Buyer's Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Buyer pursuant to this Article 6 (a "**Tax Claim**"); provided, that failure to comply with this provision shall not affect Buyer's right to indemnification hereunder. Buyer shall control the contest or resolution of any Tax Claim; provided, however, that Buyer shall obtain the prior written consent of Sellers (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a claim or ceasing to defend such claim; and, provided further, that Sellers shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Sellers.

6.6 Cooperation and Exchange of Information. Sellers and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this Article 6 or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of Sellers and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, Sellers or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

6.7 Tax Treatment of Indemnification Payments. Any indemnification payments pursuant to this Article 6 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

6.8 Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.14 and this Article 6 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus sixty (60) days.

6.9 Overlap. To the extent that any obligation or responsibility pursuant to Article 7 may overlap with an obligation or responsibility pursuant to this Article 6, the provisions of this Article 6 shall govern.

ARTICLE 7

CONDITIONS TO CLOSING

7.1 Conditions to Obligations of All Parties. The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(c) All required filings with FINRA shall have been made.

(d) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(e) Sellers shall have received all necessary consents, authorizations, orders and approvals from FINRA and any other Governmental Authorities referred to in Section 3.6 and Buyer shall have received all necessary consents, authorizations, orders and approvals from FINRA and any other Governmental Authorities referred to in Section 4.4, in each case, in form and substance reasonably satisfactory to Buyer and Sellers, and no such consent, authorization, order and approval shall have been revoked.

7.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the Transactions shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(d) Other than the representations and warranties of Sellers contained in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20, the representations and warranties of Sellers contained in this Agreement, the Ancillary Agreements to which any Seller is a party and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Sellers contained in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(e) Sellers shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the Ancillary Agreements to be performed or complied with by them prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by

materiality, Sellers shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(f) No Proceeding shall have been commenced against Buyer, any Seller or the Company, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(g) All necessary FINRA approvals, consents and waivers shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(h) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(i) Sellers shall have duly executed and delivered the Assignment to Buyer.

(j) The other Ancillary Agreements shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Buyer.

(k) Sellers shall have delivered the Legal Opinion to Buyer;

(l) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of the Company and by each Seller, that each of the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied.

(m) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying that attached thereto are true and complete copies of all resolutions adopted by the managers and members of the Company authorizing the transfers of the Membership Interests contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby.

(n) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying the names and signatures of the officers of the Company authorized to sign any of the Ancillary Agreements and the other documents to be delivered hereunder and thereunder.

(o) Sellers shall have delivered confirmation of share delivery instructions at least two (2) Business Days prior to the Closing Date.

(p) Sellers shall have delivered to Buyer a good standing certificate (or its equivalent) for the Company from the Secretary of State of the State of California dated within five Business Days prior to the Closing.

(q) Each Seller shall have delivered to Buyer a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that such Seller is not a foreign person within the meaning of Section 1445 of the Code.

(r) Sellers shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

7.3 Conditions to Obligations of Sellers. The obligations of Sellers to consummate the Transactions shall be subject to the fulfillment or Sellers' waiver, at or prior to the Closing, of each of the following conditions:

(i) Other than the representations and warranties of Buyer contained in Section 4.1 and Section 4.6, the representations and warranties of Buyer contained in this Agreement, the Ancillary Agreements and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in Section 4.1 and Section 4.6 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(j) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to which Buyer is a party to be performed or complied with by it prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(k) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(l) All necessary FINRA approvals, consents and waivers shall have been received, and executed counterparts thereof shall have been delivered to Sellers at or prior to the Closing.

(m) The Ancillary Agreements shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Sellers.

(n) Sellers shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied.

(o) Sellers shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(p) Sellers shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Ancillary Agreements and the other documents to be delivered hereunder and thereunder.

(q) Overstock shall have instructed its transfer agent to issue to Sellers the Shares having a market value equal to the Purchase Price in accordance with this Agreement.

(r) Buyer shall have delivered to Sellers such other documents or instruments as Sellers reasonably request and are reasonably necessary to consummate the transactions contemplated by this Agreement.

ARTICLE 8

INDEMNIFICATION

8.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date; provided, that the representations and warranties in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20 shall survive indefinitely. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching Party to the breaching Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

8.2 Indemnification by Sellers. Subject to the other terms and conditions of this Article 8, Sellers shall jointly and severally indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(s) any inaccuracy in or breach of any of the representations or warranties of Sellers contained in this Agreement, the Ancillary Agreements or in any certificate or instrument delivered by or on behalf of any Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made

on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(t) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by any Seller pursuant to this Agreement, the Ancillary Agreements or any certificate or instrument delivered by or on behalf of any Seller pursuant to this Agreement; or

(u) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of any Seller or any of its Affiliates conducted, existing or arising on or prior to the Closing Date.

8.3 Indemnification by Buyer. Subject to the other terms and conditions of this Article 8, Buyer shall indemnify and defend each Seller, their Affiliates and their respective Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(f) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(g) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or

(h) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Buyer or any of its Affiliates conducted, existing or arising after the Closing Date.

8.4 Certain Limitations. The indemnification provided for in Section 8.2 and Section 8.3 shall be subject to the following limitations:

(a) Sellers shall not be liable to the Buyer Indemnitees for indemnification under Section 8.2(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.2(a) exceeds ten thousand dollars (\$10,000) (the “**Basket**”), in which event Sellers shall be required to pay or be liable for all such Losses in excess of the Basket. The aggregate amount of all Losses for which Sellers shall be liable pursuant to Section 8.2(a) shall not exceed fifteen percent (15%) of the Purchase Price (the “**Cap**”).

(b) Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 8.3(a) until the aggregate amount of all Losses in respect of indemnification under

Section 8.3(a) exceeds the Basket, in which event Buyer shall be required to pay or be liable for all such Losses in excess of the Basket. The aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 6.3(a) shall not exceed the Cap.

(c) Notwithstanding the foregoing, the limitations set forth in Section 8.4(a) shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20. The aggregate amount of all Losses for which Sellers shall be liable pursuant to Section 8.1(a) based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20 shall not exceed the Purchase Price.

(d) For purposes of this Article 8, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

8.5 Indemnification Procedures. The Party making a claim under this Article 8 is referred to as the “**Indemnified Party**”, and the Party against whom such claims are asserted under this Article 8 is referred to as the “**Indemnifying Party**”.

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Proceeding made or brought by any Person who is not a Party to this Agreement or an Affiliate of a Party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is one or more of Sellers, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Business, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.5(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend,

appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.5(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 8.6) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.5(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.5(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Proceeding initiated by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30)-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

8.6 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article 8, the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The Parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such fifteen (15) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to the lesser of (i) six percent (6%) and (ii) the maximum non-usurious rate allowed by applicable Law. Such interest shall be calculated daily on the basis of a 365-day year and the actual number of days elapsed.

8.7 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

8.8 Exclusive Remedies. Subject to Section 5.4 and Section 10.8, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article 8. In furtherance of the foregoing, each Party hereby waives, to the fullest extent

permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article 6. Nothing in this Section 8.8 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Party's fraudulent, criminal or intentional misconduct.

ARTICLE 9

TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(v) by the mutual written consent of Sellers and Buyer;

(w) by Buyer by written notice to Sellers if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Sellers pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article 7 and such breach, inaccuracy or failure has not been cured by Sellers within ten (10) days of Sellers' receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in Section 7.1 or Section 7.2 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by November 1, 2015, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(x) by Sellers by written notice to Buyer if Sellers are not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article 7 and such breach, inaccuracy or failure has not been cured by Buyer within ten days of Buyer's receipt of written notice of such breach from Sellers; or

(y) by Buyer or Sellers in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued an Order restraining or enjoining the transactions contemplated by this Agreement, and such Order shall have become final and non-appealable.

9.2 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article 9, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

- (i) as set forth in this Article 9 and Section 5.3 and Article 10 hereof; and
- (j) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

ARTICLE 10
MISCELLANEOUS

10.1 Notices.

(k) Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Sellers:

Joseph Cammarata
109 White Oak Lane, Suite 200-P
Old Bridge, New Jersey 08857
Email: joe@joec.com

with a copy (which shall not constitute notice) to:

Stuart Moskowitz
Law Offices of Stuart J. Moskowitz, Esq.
4400 Route 9 South – Suite 1000
Freehold, New Jersey 07728
Email: stuartj@moskovitz.org

If to Buyer:

Medici, Inc.
c/o Overstock.com, Inc.
6530 South 3000 East
Salt Lake City, Utah 84121
Attention: Raj Karkara
Tel: (801) 947-3140

Email: rajkarkara@overstock.com

with a copy (which shall not constitute notice) to:

Bracewell & Giuliani LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701
Attention: Thomas W. Adkins
Tel: (512) 542-2122
Email: thomas.adkins@bgllp.com

(l) Notice given by personal delivery, mail or overnight courier pursuant to this Section 10.1 shall be effective upon physical receipt. Notice given by facsimile pursuant to this Section 10.1 shall be effective as of the date of confirmed delivery if delivered before 5:00 P.M. Eastern Time on any Business Day or the next succeeding Business Day if confirmed delivery is after 5:00 P.M. Eastern Time on any Business Day or during any non-Business Day

10.2 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement shall not be materially and adversely affected thereby, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

10.3 Assignment; Successors. Neither this Agreement nor any rights, obligations or interests hereunder may be assigned by any Party hereto except with the prior written consent of the other Parties; *provided, however*, that Buyer may, without the consent of Sellers, assign any of its rights, interests and obligations under this Agreement to one or more Affiliate(s) of Buyer, which assignment shall not relieve Buyer of any obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and assigns.

10.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any facsimile or electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

10.5 Expenses. Except as otherwise expressly stated otherwise herein, all costs and expenses (including fees and disbursements of counsel, financial advisors and accountants) incurred or to be incurred in connection with this Agreement, the performance of its obligations hereunder

and the consummation of the Transactions shall be paid by the Party incurring such costs and expenses.

10.6 Governing Law; Venue; Jurisdiction.

(b) This Agreement shall be governed by and construed in accordance with the Laws of the State of Utah, without giving effect to any conflict or choice of law provision that would require or permit the application of the Laws of any other jurisdiction.

(a) Each Party consents to personal jurisdiction in any action brought in any court, federal or state, within the City of Salt Lake City, Utah, having subject matter jurisdiction arising under this Agreement, and each of the Parties hereto agrees that any Proceeding instituted by either of them against the other with respect to this Agreement shall be instituted exclusively in a court, federal or state, within the City of Salt Lake City, Utah. Each Party to this Agreement hereby irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of such Proceeding. The Parties further agree, to the extent permitted by law, that a final and unappealable judgment against any of them in any Proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.

10.7 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT WAIVES TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THEM AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR ANY OTHER AGREEMENTS OR CERTIFICATES EXECUTED IN CONNECTION HERewith OR THEREWITH OR THE ADMINISTRATION THEREOF OR ANY OF THE TRANSACTION. NO PARTY TO THIS AGREEMENT SHALL SEEK A JURY TRIAL IN ANY PROCEEDING OR ANY OTHER LITIGATION PROCEDURE BASED UPON, OR ARISING OUT OF, THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY RELATED INSTRUMENTS OR THE RELATIONSHIP BETWEEN THE PARTIES. NO PARTY SHALL SEEK TO CONSOLIDATE ANY SUCH PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EACH PARTY TO THIS AGREEMENT CERTIFIES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY OTHER INSTRUMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH ABOVE IN THIS SECTION 10.7. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO THE OTHER PARTY THAT THE PROVISIONS OF THIS SECTION 10.7 SHALL NOT BE FULLY ENFORCED IN ALL INSTANCES.

10.8 Specific Performance. Each Party acknowledges and agrees that a breach of this Agreement would cause irreparable damage to the other Parties and that the non-breaching Parties shall not have an adequate remedy at law. Therefore, it is agreed that in the event of such a breach, the non-breaching Party shall be entitled to injunctive relief, specific performance or other equitable remedies to enforce the terms and provisions of this Agreement in any state or federal court sitting

in the City of Salt Lake City, Utah, in addition to any other remedies it may have at law or in equity. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any Party may have under this Agreement or otherwise.

10.9 Entire Agreement. This Agreement, including the Schedules and Exhibits, together with the Ancillary Agreements, supersede all prior discussions and agreements among the Parties, both written and oral, with respect to the subject matter hereof, and contain the sole and entire agreement among the Parties with respect to the subject matter hereof.

10.10 Third Party Beneficiaries. This Agreement is not intended to and does not confer upon any Person other than the Parties or their permitted successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

10.11 Interpretive Matters.

(a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated;

(b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

(c) whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation” whether or not they are in fact followed by such words or words of similar import;

(d) the words “hereof,” “hereby,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

(f) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

(g) references to a Person are also to its successors and permitted assigns;

(h) the use of “or” is not intended to be exclusive unless expressly indicated otherwise; *provided* that the use of “or” preceded by the word “either” is intended to be exclusive;

(i) reference to “day” or “days” are to calendar days;

(j) any reference in this Agreement to “writing” or comparable expressions includes a reference to facsimile transmission or comparable means of communication;

(k) when a reference is made in this Agreement to “ordinary course of business,” such reference shall be deemed to be followed by “consistent (in scope and amount) with past practice”;

(l) “made available” with reference to any document or information provided by Sellers hereunder means made available to Buyer or its representatives in the sharefile data room organized and maintained by Buyer’s counsel, as an accommodation to Sellers, or otherwise e-mailed or delivered directly to Buyer or its Representatives; and

(m) any reference to a given Law is a reference to that Law and the rules and regulations adopted or promulgated thereunder, in each case, as amended, modified, supplemented or restated as of the date on which the reference is made and shall include any successor thereto, unless the context otherwise requires.

10.12 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party. Any amendment, modification or supplement to this Agreement not made in accordance with this Section 10.12 shall be void.

10.13 Waiver of Compliance. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, shall be cumulative and not alternative.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date first above written.

SELLERS:

/s/ Joseph Cammarata
Joseph Cammarata

/s/ John Paul DeVito
John Paul DeVito

BUYER:

MEDICI, INC.

By: /s/ Michael Skirucha

Name: Michael Skirucha

Title: Secretary / Treasurer

[Signature Page to Pro Securities, LLC Membership Interest Purchase Agreement]

EXHIBIT A

Form of Assignment

ASSIGNMENT OF MEMBERSHIP INTEREST

This assignment of membership interest (this “**Assignment**”) in PRO SECURITIES, LLC (the “**Company**”) is made as of [1], 2015, by [1] (“**Assignor**”), in favor of MEDICI, INC., a Utah Corporation (“**Assignee**”).

WHEREAS, Assignor and Assignee have entered into that certain Membership Interest Purchase Agreement dated as of August 26, 2015 (the “**Purchase Agreement**”), whereby Assignor agrees to sell and Assignee agrees to purchase all of Assignor’s equity interests in the Company (such interests subject to purchase, the “**Membership Interests**”); and

WHEREAS, all of Assignor’s right, title and interest in the Membership Interests is being assigned and transferred to Assignee pursuant to this Assignment, subject to the terms and conditions of the Purchase Agreement and in accordance with the provisions of that certain Amended and Restated Limited Liability Company Operating Agreement of the Company, dated as of August 10, 2015 (the “**Operating Agreement**”).

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor unconditionally and absolutely assigns, sets over, transfers and conveys to Assignee all of its rights, title and interest in and to the Subject Interests, subject to the representations, warranties, terms and conditions set forth in the Purchase Agreement and in accordance with the provisions of the Operating Agreement, and Assignee shall thereby be admitted as a Substitute Member (as defined in the Operating Agreement) of the Company.

This Assignment may be executed in one or more counterparts, each of which, when executed and delivered to the other parties, shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the date first above written.

ASSIGNOR:

Name:

Title:

ACCEPTED BY ASSIGNEE:

MEDICI, INC.

a Utah corporation

By: _____

Name:

Title:

EXHIBIT B

Form of Opinion to be Delivered by Counsel to Sellers

_____, 2015

Medici, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

Re: Asset Purchase Agreement dated as of August 26, 2015

Ladies and Gentlemen:

We have acted as counsel for Pro Securities, LLC, a California limited liability company (the “Company”), Joseph Cammarata and John Paul DeVito in connection with the transactions contemplated by the Membership Interest Purchase Agreement dated as of August 26, 2015 (the “Agreement”), by and among Joseph Cammarata and John Paul DeVito (collectively, the “Sellers”) and Medici, Inc, a Utah corporation (“Buyer”). This opinion letter is delivered to you pursuant to Section 2.4(c) of the Agreement. Capitalized terms used herein and not otherwise defined herein have the meanings assigned to such terms in the Agreement.

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed necessary for the purposes of such opinions. We have examined (i) the proposed Agreement to be executed by the parties and the other agreements and instruments described therein to which the Sellers are a party, which we assume will be executed and delivered in substantially the form of the drafts we have been provided, with all such agreements and instruments being collectively referred to herein as the “Transaction Documents,” and (ii) such other documents and records as we have deemed necessary and relevant for purposes hereof.

We have made such investigations of law and examined such other documents and records as we have deemed necessary and relevant as a basis for the opinions hereinafter expressed. Although the undersigned cannot and does not guarantee the accuracy and completeness of statements contained in this opinion or representations made by the Sellers, in connection with this representation, investigation and due inquiry of the Company’s present officers and managers in the preparation of this opinion, nothing has come to the attention of the undersigned which causes him to believe that this opinion (except as to the financial statements and supporting financial and statistical data included or incorporated therein, as to which such counsel need express no opinion) or the representations by Sellers pursuant to the Agreement, contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the

statements therein, in light of the circumstances in which they were made, not misleading. The foregoing qualification shall apply to all statements hereinafter.

Based upon the foregoing, and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that:

The Company is validly existing and in good standing as a limited liability company under the laws of the State of California and is authorized or qualified to do business and in good standing as a foreign limited liability company in each jurisdiction where it is required to be so authorized or qualified. The Company has the limited liability company power and authority to own its properties and to carry on its business as it is now being conducted.

The Sellers have full power and authority to execute and deliver the Agreement and each Transaction Document and perform their obligations thereunder. The Sellers have taken all action necessary to authorize the execution, delivery and performance of the Agreement and each Transaction Document. The Sellers have duly executed and delivered the Agreement and each Transaction Document.

The execution and delivery by the Sellers of the Agreement and Transaction Documents to which they are a party do not, and the consummation of the transactions contemplated thereby will not (i) result in a violation or breach of any provision of the Company's Amended and Restated Limited Liability Company Operating Agreement, a copy of which is attached hereto as an Exhibit (the "Company LLC Agreement"); or (ii) result in a violation or breach of any provision of any law, rule or regulation applicable to the Company; or (iii) conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any contract, mortgage, indenture, lease, deed of trust, instrument or other agreement, known to us after due inquiry.

The Agreement and each Transaction Document constitutes, with respect to the Sellers, a valid and binding obligation of the Sellers, enforceable against each Seller in accordance with its terms.

The performance by the Sellers of the transactions contemplated by the Agreement and the Transaction Documents will not result in or require the creation or imposition of any security interest or lien upon the membership interests of the Company owned by the Sellers (the "Membership Interests") and, assuming due execution and performance of Buyer's obligations under the Agreement and Transaction Documents the Membership Interests will be duly and validly transferred to Buyer free and clear of any liens of record.

The outstanding membership interests of the Company are as set forth on Exhibit A to the Company LLC Agreement.

To our knowledge there are no outstanding options, warrants, contracts, commitments, agreements, understandings or other rights of any kind to purchase or subscribe for membership interests of the Company, or any securities convertible into or exchangeable for membership interests of the Company.

To our knowledge there are no legal proceedings (i) pending before any court or arbitration tribunal or (ii) overtly threatened in writing, in each case, against the Company that seek to enjoin or otherwise interfere directly with the transactions contemplated by the Transaction Documents.

No consent, approval, order or authorization by, or filing with, any governmental authority or agency is required in connection with the execution and delivery by the Company of the Agreement and the Transaction Documents and the consummation of the transactions contemplated thereby.

We express no opinion as to the effects of (i) bankruptcy, insolvency, fraudulent transfer and conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity) including the possible unavailability of specific performance or injunctive relief and the exercise of discretionary powers by any court before which specific performance or injunctive relief or other equitable remedies may be sought.

The opinions expressed herein are solely for the benefit of the addressees hereof in connection with the transaction referred to herein and may not be relied on by such addressees for any other purpose or in any manner, or furnished to or relied on for any purpose by any other person or entity, in each case without our prior written consent. This opinion letter is rendered as of the date set forth above. We expressly disclaim any obligation to update this opinion letter in any respect after such date. This opinion is strictly limited to the matters stated herein, and no other or more extensive opinion is intended, implied or to be inferred beyond the matters expressly stated herein.

Very truly yours,

SPEEDROUTE LLC

MEMBERSHIP INTEREST PURCHASE AGREEMENT

by and among

JOSEPH CAMMARATA AND JOHN PAUL DEVITO,

as Sellers,

and

MEDICI, INC.,

as Buyer

dated as of August 26, 2015

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MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (this “**Agreement**”), dated as of August 26, 2015, is by and among Joseph Cammarata and John Paul DeVito (“**Sellers**” and each, individually, a “**Seller**”) and Medici, Inc., a Utah corporation (“**Buyer**,” and together with Sellers, the “**Parties**” and each, individually, a “**Party**”).

RECITALS

WHEREAS, Buyer is a majority-owned subsidiary of Overstock.com, Inc., a Delaware corporation (“**Overstock**”);

WHEREAS, Sellers collectively own 100.0% of the issued and outstanding membership interests (the “**Membership Interests**”) in SpeedRoute LLC, a New York limited liability company (the “**Company**”);

WHEREAS, each Seller has previously delivered to Overstock a completed and signed Investor Questionnaire;

WHEREAS, Sellers wish to sell to Buyer, and Buyer wishes to purchase from Sellers, the Membership Interests, all upon the terms and subject to the conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and the respective agreements, covenants, representations and warranties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending be legally bound hereby, the Parties hereby agree as follows:

Article 1
DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the capitalized terms included in Schedule 1.1 shall have the meanings specified or referred to therein, other than terms defined elsewhere in this Agreement:

ARTICLE 2
SALE AND PURCHASE OF MEMBERSHIP INTERESTS

2.1 Purchase of Membership Interests. On the terms and subject to the conditions hereof, at the Closing, in consideration of the Purchase Price, Sellers shall sell to Buyer, and Buyer shall purchase from Sellers, all of Sellers' right, title and interest in and to the Membership Interests, free and clear of any Liens, for the consideration specified in Section 2.2.

2.2 Purchase Price. On the terms and subject to the conditions hereof, at the Closing Buyer shall issue to Sellers a total number of shares of common stock, par value \$0.0001 per share (the "**Common Stock**"), of Overstock (the "**Shares**"), the value (calculated as set forth in Section 2.6) of which shall equal Four Hundred Twenty Five Thousand Dollars (\$425,000) (the "**Purchase Price**"), in the respective amounts as Sellers shall instruct Overstock in writing on the Closing Date.

2.3 Closing. Subject to the terms and conditions of this Agreement, the sale and purchase of the Membership Interests contemplated by this Agreement shall take place at a closing (the "**Closing**") to be held at the offices of Overstock.com, Inc., 6350 South 3000 East, Salt Lake City, Utah 84121 at 10:00 A.M. local time, no later than two Business Days after the last of the conditions to Closing set forth in Article 7 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date). The date upon which the Closing occurs is referred to as the "**Closing Date**."

2.4 Closing Deliveries by Sellers. At the Closing, Sellers shall deliver (or cause to be delivered) the following documents to Buyer, duly executed by each Seller, as applicable:

(a) one or more assignments of the Membership Interests, each in the form attached hereto as Exhibit A hereto (the "**Assignment**") and duly executed by each Seller, transferring all of Sellers' respective right, title and interest in and to the Membership Interests to Buyer and admitting Buyer as a Substitute Member (as defined in the Company LLC Agreement) of the Company;

(b) a duly executed certificate of non-foreign status from each Seller that meets the requirements of Treasury Regulations Section 1.1445-2(b) and is in a form reasonably satisfactory to Buyer;

(c) a written opinion of counsel for Sellers, dated the date hereof, in substantially the form attached hereto as Exhibit B (the "**Legal Opinion**"); and

(d) such other documents, instruments and certificates as Buyer may reasonably request.

2.5 Closing Deliveries by Buyer. At the Closing, Buyer shall deliver (or cause to be delivered) to Sellers:

(a) the Shares;

(b) such other documents, instruments and certificates as Sellers may reasonably request.

2.6 Purchase Price Calculation. The number of Shares to be issued to Sellers pursuant to Section 2.2 shall be calculated by dividing (i) the Purchase Price by (ii) the average of the closing price per share of the Common Stock on the Nasdaq Global Market over the ten (10) Trading Days prior to the Closing Date (the “**Average Closing Price**”); provided, however, that if the Closing Net Capital of the Company immediately following the Closing shall be less than \$1,400,000, Sellers shall be required to make capital contributions to the Company prior to the Closing in a combined amount sufficient to eliminate such shortfall in Closing Net Capital. Notwithstanding the foregoing, if the Average Closing Price shall be less than \$18.00 per share, Buyer, at its sole option, may substitute cash for any portion of the Shares; provided, that in such event, each Seller shall receive the same ratio of cash and Shares; and provided, further, that the total value of any cash paid and any Shares delivered to Sellers shall equal the Purchase Price.

2.7 Withholding. Notwithstanding any other provision in this Agreement, Buyer shall have the right to deduct and withhold from any payments to be made hereunder any Taxes that it is required to deduct and withhold with respect to the making of such payments under the Code or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld and paid to the appropriate Tax Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to the Person in respect of which such deduction and withholding was made.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby represent and warrant to Buyer as of the execution date of this Agreement and as of the Closing as follows:

3.1 Organization and Qualification. The Company is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of New York. The Company is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on the Business or Sellers’ ability to perform their obligations hereunder.

3.2 Authority, Due Execution; Binding Effect.

(a) Sellers have full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which any Seller as of the Closing shall be a party, to perform their obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery by Sellers of this Agreement and the Ancillary Agreements to which any Seller as of the Closing shall be a party when executed and delivered by such Seller, and the performance by Sellers of their obligations hereunder and thereunder, have been or as of the Closing shall be duly and validly authorized by all necessary action.

(b) This Agreement has been duly executed and delivered by Sellers and constitutes the valid and binding obligation of Sellers, enforceable against Sellers in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law). When executed and delivered by Sellers on the Closing Date, each of the Ancillary Agreements to which any Seller is a party shall have been duly executed and delivered by such Seller and shall constitute the valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law).

3.3 Capitalization.

(e) Sellers are the record and beneficial owners of and have good and valid title to the Membership Interests, free and clear of all Liens. The Membership Interests constitute 100.0% of the total issued and outstanding membership interests in the Company, and, effective upon the Closing, Buyer shall be the sole member of the Company. The Membership Interests have been duly authorized and are validly issued, fully paid and non-assessable except as otherwise provided in the Company LLC Agreement. Upon consummation of the Transactions, Buyer shall own all of the Membership Interests, free and clear of all Liens.

(f) The Membership Interests were issued in compliance with applicable Laws. The Membership Interests were not issued in violation of the Organizational Documents of the Company or any other agreement, arrangement or commitment to which any Seller or the Company is a party and are not subject to or in violation of any preemptive or similar rights of any Person.

(g) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to any membership interests in the Company or obligating Sellers or the Company to issue or sell any membership interests (including the Membership Interests), or any other interest, in the Company. Other than the Organizational Documents, there are no voting trusts, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Membership Interests.

3.4 No Subsidiaries. The Company does not own, or have any interest in any shares or have an ownership interest in any other Person.

3.5 No Conflict. Neither the execution and delivery of this Agreement by Sellers, nor the performance by Sellers of the Transactions, shall, directly or indirectly (a) contravene, conflict with or result in (with or without notice or lapse of time) a violation or breach of any Law or Order to which any Seller or the Company may be subject; (b) violate, conflict with or result in the breach of any provision of the Organizational Documents of the Company or (c) conflict in any material respect with, result in a material breach of, constitute a material default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any Consent under or give to others any right of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Lien pursuant to, any Contract to which any Seller or the Company is a party.

3.6 Consents and Approvals. The execution and delivery of this Agreement and the performance of the Transactions by Sellers do not and will not require any Consent of any Governmental Authority or any other Person, other than FINRA.

3.7 Title. The Company has good and valid title to all personal property and other assets reflected in the Financial Statements or acquired after the Balance Sheet Date.

3.8 Financial Statements; Undisclosed Liabilities.

(a) Sellers have made available to Buyer true and complete copies of (i) the audited balance sheet of the Company as of December 31, 2013 and the related audited statement of operations for the year ended December 31, 2013, audited statement of changes in member's equity for the year ended December 31, 2013, and audited statement of cash flows for the year ended December 31, 2013, and (ii) the audited balance sheet of the Company as of December 31, 2014 and the related audited statement of operations for the year ended December 31, 2014, audited statement of changes in member's equity for the year ended December 31, 2014, and audited statement of cash flows for the year ended December 31, 2014 (collectively, the "**Financial Statements**"). The Financial Statements are set forth in Schedule 3.8(a), are consistent with the books and records of the Company, and fairly present in all material respects the financial condition and the results of operations of the Company as of the dates thereof and the results of its operations for the periods covered thereby. The balance sheet of the Company as of December 31, 2014 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**".

(b) Except as set forth on the Financial Statements or on Schedule 3.8(b), the Company does not have any liability or obligation (whether accrued, absolute, contingent or otherwise) which, individually or in the aggregate, would exceed \$10,000.

3.9 Books and Records. The Company (a) makes and keeps books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company and (b) has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance

with management's general or specific authorization, (ii) transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements and (B) to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

3.10 Compliance with Laws; Permits; Proceedings. The Company is currently, and since its formation has been, in compliance in all material respects with all Laws and Orders applicable to the Business (other than Environmental Laws, which are addressed in Section 3.15).

3.11 Real Property.

(a) The Company owns no real property and has no interest of any type in any real property other than the Leases.

(b) Schedule 3.13(b) describes each Leased Real Property and each lease of real property, for office use or otherwise, written or unwritten, to which the Company is a party or is in any way bound or obligated (collectively, the "**Leases**"). Other than the Leases, there are no other leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which the Company holds any Leased Real Property. Sellers have delivered to Buyer a true and complete copy of each Lease. With respect to each Lease:

(i) such Lease is valid, binding, enforceable and in full force and effect, and the Company enjoys peaceful and undisturbed possession of the Leased Real Property;

(ii) the Company is not in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and the Company has paid all rent due and payable under such Lease;

(iii) the Company has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by the Company under such Lease and, to the Knowledge of any Seller, no other party is in default thereof, and no party to such Lease has exercised any termination rights with respect thereto;

(iv) the Company has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(v) the Company has not pledged, mortgaged or otherwise granted a Lien on its leasehold interest in any Leased Real Property.

(c) The Company has not received any written notice of (i) material violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Leased Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Leased Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to materially and adversely affect the ability to operate the Leased Real Property as currently operated. Neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or other casualty.

(d) The Leased Real Property is sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the office and other space necessary to conduct the Business as currently conducted.

3.12 Tax Matters. All income and other material Tax Returns required to be filed by the Company or otherwise with respect to the Business have been timely and duly filed. All such Tax Returns were true, correct and complete in all material respects. All Taxes due and owing by the Company or otherwise with respect to the Business (whether or not shown on any Tax Return) have been timely paid in full in accordance with all applicable legal requirements.

3.13 Environmental Matters. Since the date of formation of the Company:

(a) The Company currently is and has been in compliance in all material respects with all Environmental Laws applicable to the Business; The Company holds all material permits, licenses and authorizations arising under applicable Environmental Law necessary for the conduct of the Business in compliance with Environmental Laws, and all such Environmental Permits are valid and in full force and effect, and none is undergoing any form of review or proceeding, whether requested or imposed, whose outcome may be to revoke, restrict, fail to renew or materially modify the Environmental Permit or to issue or require an additional Environmental Permit, compliance plan or Order;

3.14 Intellectual Property.

(a) The Company holds all (i) Intellectual Property Registrations and (ii) Intellectual Property Assets, including software, that are not registered but that are material to the operation of the Business, that the Company needs to conduct the Business. All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing. Sellers have provided Buyer with true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Intellectual Property Registrations.

(b) Sellers have provided Buyer with true and complete copies of all Intellectual Property Agreements that are necessary for the operation of the Business, including all modifications, amendments and supplements thereto and waivers thereunder. Each Intellectual Property Agreement is valid and binding on the Company in accordance with

its terms and is in full force and effect. None of the Company or, to the Knowledge of any Seller, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of breach or default of or any intention to terminate, any Intellectual Property Agreement. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Intellectual Property Agreement or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder.

(c) Except as set forth in Schedule 3.16(c), the Company is the sole and exclusive legal and beneficial, and with respect to the Intellectual Property Registrations, record, owner of all right, title and interest in and to the Intellectual Property Assets, and has the valid right to use all other Intellectual Property used in or necessary for the conduct of the Business as currently conducted, in each case, free and clear of all Liens. Without limiting the generality of the foregoing, the Company has entered into binding, written agreements with every current and former employee of the Company, and with every current and former independent contractor, whereby such employees and independent contractors (i) assign to the Company any ownership interest and right they may have in the Intellectual Property Assets; and (ii) acknowledge the Company's exclusive ownership of all Intellectual Property Assets. Sellers have provided Buyer with true and complete copies of all such agreements.

(d) The Intellectual Property Assets and Intellectual Property licensed under the Intellectual Property Agreements are all of the Intellectual Property necessary to operate the Business as presently conducted. The consummation of the transactions contemplated hereunder will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Buyer's right to own, use or hold for use any Intellectual Property as owned, used or held for use in the conduct of the Business as currently conducted.

(e) The Company's rights in the Intellectual Property Assets are valid, subsisting and enforceable. The Company has taken all reasonable steps to maintain the Intellectual Property Assets and to protect and preserve the confidentiality of all trade secrets included in the Intellectual Property Assets, including requiring all Persons having access thereto to execute written non-disclosure agreements.

(f) The conduct of the Business as currently and formerly conducted, and the Intellectual Property Assets and Intellectual Property licensed under the Intellectual Property Agreements as currently or formerly owned, licensed or used by the Company, have not infringed, misappropriated, diluted or otherwise violated, and have not, do not and will not infringe, dilute, misappropriate or otherwise violate, the Intellectual Property or other rights of any Person. No Person has infringed, misappropriated, diluted or otherwise violated, or is currently infringing, misappropriating, diluting or otherwise violating, any Intellectual Property Assets.

(g) There are no Proceedings (including any oppositions, interferences or re-examinations) settled, pending or threatened (including in the form of offers to obtain a

license): (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by the Company in connection with the Business; (ii) challenging the validity, enforceability, registrability or ownership of any Intellectual Property Assets or the Company's rights with respect to any Intellectual Property Assets; or (iii) by any Seller or any other Person alleging any infringement, misappropriation, dilution or violation by any Person of any Intellectual Property Assets. The Company is not subject to any outstanding or prospective Order (including any motion or petition therefor) that does or would restrict or impair the use of any Intellectual Property Assets.

3.15 Benefit Plans. The Company does not have, and has never had, any Benefit Plans with respect to the Business or any of the Business Employees. No event has occurred and there exists no condition or set of circumstances in connection with which Buyer or any of Buyer's Affiliates could be subject to any liability or obligation of any kind, whether contingent or otherwise, under the terms of, or with respect to, any Benefit Plan or under ERISA.

3.16 Broker-Dealer Representations.

(a) Sellers have delivered to Buyer (i) a true, correct and complete copy of the Company's Uniform Application for Broker-Dealer Registration on Form BD, reflecting all amendments thereto filed with the SEC or FINRA to the date hereof, (ii) true, correct and complete copies of the Uniform Application for Securities Industry Registration or Transfer on Form U-4, as filed on behalf of each current principal and registered representative of the Company, (iii) true, correct and complete copies of any written Business Plan of the Company approved by FINRA, reflecting all amendments thereto, and FINRA has confirmed to BD that the Company does not operate pursuant to any written FINRA Membership Agreement of the Company (CRD No. 6619) (the "**Membership Agreement**") and no such Membership Agreement exists and (iv) true, correct and complete copies of all other material registrations, declarations, reports, notices, forms and other documents filed by the Company with the SEC, FINRA, State securities authorities, or any other Governmental Authority, including FOCUS reports and annual statements of financial condition, and all amendments or supplements to any of the foregoing (together with the documents identified in items (i) through (iii), the "**BD Regulatory Filings**"), since January 1, 2013. Schedule 3.18(a) sets forth a complete list of the identities of each principal and registered representative of the Company, their series licenses, and all BD Regulatory Filings filed since January 1, 2013. The Company has timely filed all BD Regulatory Filings and such filings are, to the extent applicable, in full force and effect and were prepared in all material respects in compliance with applicable Law, including the requirements of the Exchange Act, FINRA rules ("**FINRA Rules**") and State Securities Laws, and all material fees and assessments due and payable in connection with the filing of such BD Regulatory Filings have been paid in a timely manner. The documents identified in items (i) and (iii) in the definition of BD Regulatory Filings and, to the Knowledge of any Seller, the documents identified in items (ii) of the definition of BD Regulatory Filings, do not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Each principal and registered representative of the Company

has at least the minimum series license(s) and experience for the activities which such principal or registered representative performs on behalf of the Company.

(b) The “net capital” (as defined in Rule 15c3-1 under the Exchange Act) of the Company satisfies, and since at least January 1, 2004, has satisfied, the minimum net capital requirements of the Exchange Act and of the applicable Laws of any jurisdiction in which the Company conducts business, and has been sufficient to permit the Company to operate in accordance with its business activities as authorized by FINRA. The Company is not party to, or bound by, the terms of any restriction agreement with FINRA due to the occurrence of a reportable event.

(c) The Company is and has been, since the commencement of its engagement in activities for which registration as a broker-dealer is or was required under the Exchange Act (such activities are defined as “**Broker-Dealer Activities**”), duly registered as a broker-dealer under the Exchange Act and applicable FINRA Rules. The Company is duly registered, licensed and qualified as a broker-dealer in all jurisdictions where such registration, licensing or qualification is so required. The Company is in compliance in all material respects with all federal laws requiring registration, licensing or qualification as a broker-dealer with the SEC and is in material compliance with all other applicable Law requiring registration, licensing or qualification as a broker-dealer. The Company is a member, in good standing, of FINRA and The NASDAQ Stock Market LLC, and an Equity Trading Permit Holder, in good standing, with NYSE Arca, Inc.

(d) Except as set forth on Schedule 3.18(d), there is no governmental or administrative proceeding, investigation, examination, subpoena, audit, sweep letter or other material inquiry, whether written or oral (including by the SEC, FINRA, the Department of Labor or any other Governmental Authority) pending or threatened in writing against the Company or, to the Knowledge of any Seller, against any officer, security holder, employee or associated person (as such term is defined in the Exchange Act) of the Company. Schedule 3.18(d) lists all SEC, FINRA, or other Governmental Authority examinations or litigation, proceedings, settlements, investigations, subpoenas, audits, sweep letters or other material inquiries occurring, arising, or existing during the past three years that (i) were directed to the Company, or any of its officers, security holders, employees or associated persons, or (ii) involved the Company, or any of its officers, security holders, employees or associated persons, as a party.

(e) The Company has implemented policies and procedures that are reasonably designed to comply with all applicable Law, including any applicable Anti-Money Laundering Law or any applicable Law relating to advertising, licensing, sales practices, research, information barriers, market conduct, maintenance of net capital, supervision, books and records, risk assessment and continuing education and the rules of the SEC and any other Governmental Authority having jurisdiction over the Company.

(f) Except as described in Schedule 3.18(d), the Company is not subject to any cease-and-desist or other order or enforcement action issued by, or a party to any written agreement, consent agreement or memorandum of understanding with, or a party to any

commitment letter or similar undertaking to, or subject to any order or directive by, or has been ordered to pay any civil penalty by, or a recipient of any letter of admonition or similar communication from, or has adopted a board resolution at the request or suggestion of, any Governmental Authority that restricts the conduct of its business.

(g) Set forth on Schedule 3.18(g) is each “branch office” and “office of supervisory jurisdiction” (as defined under FINRA Rules) of the Company.

(h) Except as disclosed in the Form BD of the Company in effect as of the date of this Agreement, none of the Company or its officers, employees, or associated persons has received any written notification or written communication from any Governmental Authority (i) asserting that such Person is not in compliance with any applicable Law or is subject to any active regulatory enforcement action, (ii) threatening to revoke any Permit, (iii) requiring such Person to enter into a cease and desist order, agreement or memorandum of understanding materially restricting the activities of such Person, (iv) materially restricting or disqualifying such Person’s present business activities (other than restrictions imposed by rule, regulation or administrative policy on brokers or dealers generally) or (v) threatening to initiate any proceeding or investigation into the business or operations of such Person; provided, that routine regulatory investigations and examinations and customer complaints, claims or arbitration shall not be construed as or deemed to be any investigation, notification, communication, review or disciplinary proceedings for the purposes of this Section 3.18. Since January 1, 2013, the Company has responded to all material deficiencies asserted by any Governmental Authority in connection with any regulatory examination or other similar proceeding and, where required by such response or by such Governmental Authority to take any action to address any such deficiency, has taken any such action that was required to be taken prior to the date hereof. Any such action that has not yet been taken as of the date hereof because the deadline for such action has not passed, as well as the deadline for such action, is set forth on Schedule 3.18(d).

(i) All officers, employees, associated persons and independent contractors of the Company who are, or who at any time during the past three years were, required, under applicable Law, to be registered, licensed or qualified in connection with the Broker-Dealer Activities engaged in by the Company, are or were, at all such times, duly registered as such and such registrations are or were, at all such times, in full force and effect, or are or were, at all such times, in the process of being registered as such within the time periods required by any Governmental Authority, as applicable. All officers, employees, associated persons and independent contractors of the Company are in compliance in all material respects with all applicable Law requiring any such registration, licensing or qualification, and, to the Knowledge of any Seller, are not subject to any material liability or disability by reason of any failure to be so registered.

3.17 Brokers. Neither the Company nor any Affiliate of the Company has or will have any liability or obligation to pay fees or commissions to any Person with respect to the Transactions that could be or become a claim against Buyer or any Affiliate of Buyer.

3.18 Full Disclosure. No representation or warranty by Sellers in this Agreement and no statement contained in any Schedule to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. No investigation by Buyer or its agents or information received by Buyer or any of its agents, including all such investigations performed and information delivered to Buyer or its agents prior to the execution and delivery of this Agreement or prior to the Closing, shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers in this Agreement. Sellers acknowledge that the Parties are entering into this Agreement for the purposes of allocating the economic risks between the Parties, and such entry is predicated on the representations and warranties contained herein being accurate and complete.

3.19 Restricted Shares. Sellers acknowledge that the Shares, when issued, will be restricted securities and must be held indefinitely unless subsequently registered under the Securities Act or Overstock receives an opinion of counsel reasonably satisfactory to Overstock that such registration is not required. The Company is aware of the provisions of Rule 144 promulgated under the Securities Act which provide a safe harbor for the limited resale of stock purchased in a private placement subject to the satisfaction of certain conditions (if applicable), including, among other things, the existence of a public market for the stock, the availability of certain current public information about Overstock, the resale occurring after certain holding periods have been met, the sale being conducted through a “broker’s transaction” or a transaction directly with a “market maker” and the number of shares of the stock being sold during any three-month period not exceeding specified limitations. Sellers further acknowledge and understand that Overstock may not be satisfying the current public information requirement of Rule 144 at the time a Seller wishes to sell Shares and, if so, such Seller may be precluded from selling such Shares under Rule 144 even if the required holding period has been satisfied.

3.20 Stock Legends. Sellers acknowledge that certificates evidencing the Shares shall bear a restrictive legend in substantially the following form (and including related stock transfer instructions and record notations):

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers as of the execution date of this Agreement and as of the Closing Date as follows:

4.1 Organization and Qualification. Buyer is a corporation duly formed, validly existing and in good standing under the Laws of the State of Utah. Buyer is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on Buyer's ability to perform its obligations hereunder.

4.2 Authority; Due Execution; Binding Effect.

(h) Buyer has the requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which Buyer as of the Closing shall be a party, to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which Buyer as of the Closing shall be a party when executed and delivered by Buyer, and the performance by Buyer of its obligations hereunder and thereunder, have been or as of the Closing shall be duly and validly authorized by all necessary corporate action.

(i) This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law). When executed and delivered by Buyer on the Closing Date, each of the Ancillary Agreements to which Buyer as of the Closing shall be a party shall have been duly executed and delivered by Buyer and shall constitute the valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law).

4.3 No Conflict. Neither the execution and delivery of this Agreement by Buyer, nor the performance by Buyer of the Transactions, shall, directly or indirectly (a) contravene, conflict with or result in (with or without notice or lapse of time) a violation or breach of any Law or Order to which Buyer may be subject; (b) violate, conflict with or result in the breach of any provision of the Organizational Documents of Buyer; or (c) conflict in any respect with, result in a breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any Consent under or give to others any right of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Lien pursuant

to, any Contract to which such Buyer is a party or by which any of its assets or properties are bound or affected.

4.4 Consents. The execution and delivery of this Agreement and the performance of the Transactions by Buyer do not and will not require any Consent of any Governmental Authority or any other Person, other than as set forth on Schedule 4.4.

4.5 Proceedings. There are no Proceedings pending or, to Buyer's knowledge, threatened against or involving Buyer before or by any Governmental Authority which are material to Buyer or that could reasonably be expected to prevent, enjoin, alter or materially delay the Transactions.

4.6 Brokers. Neither Buyer nor any Affiliate of Buyer has any liability or obligation to pay fees or commissions to any investment banking firm, broker or finder with respect to the Transactions that could become a liability of Sellers.

ARTICLE 5

COVENANTS

5.1 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Sellers shall, and shall cause the Company to, (x) conduct the business of the Company in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the current organization, business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. Without limiting the foregoing, from the date hereof until the Closing Date, Sellers shall:

- (j) cause the Company to preserve and maintain all of its Permits;
- (k) cause the Company to pay its debts, Taxes and other obligations when due;
- (l) cause the Company to maintain the properties and assets owned, operated or used by the Company in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
- (m) cause the Company to defend and protect its properties and assets from infringement or usurpation;
- (n) cause the Company to perform all of its obligations under all Contracts relating to or affecting its properties, assets or business;
- (o) cause the Company to maintain its books and records in accordance with past practice; and

(p) cause the Company to comply in all material respects with all applicable Laws.

5.2 Access to Information. From the date hereof until the Closing, Sellers shall, and shall cause the Company to, (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, Contracts and other documents and data related to the Company; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Company as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Sellers and the Company to cooperate with Buyer in its investigation of the Company. Any investigation pursuant to this Section 5.2 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of Sellers or the Company. No investigation by Buyer, whether prior to or after the execution and delivery of this Agreement, or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers in this Agreement.

5.3 Notice of Certain Events.

(a) From the date hereof until the Closing, Sellers shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Sellers hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.2 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions;

(iii) any notice or other communication from any Governmental Authority in connection with the Transactions; and

(iv) any Actions commenced or, to the Knowledge of any Seller, threatened against, relating to or involving or otherwise affecting Seller or the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.10 or that relates to the consummation of the Transactions.

(b) Buyer's receipt of information pursuant to this Section 5.3 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement (including Section 8.2 and Section 9.1(b)) and shall not be deemed to amend or supplement the Schedules attached hereto.

5.4 Confidentiality.

(a) From and after the Closing, Sellers shall, and shall cause each of their Affiliates and their Representatives (the “**Restricted Persons**”) to, maintain the confidentiality of, and not use for their own benefit or the benefit of any other Person (except as and to the extent permitted by the terms of this Agreement), any confidential information to the extent relating to the Business.

(b) Neither any Seller nor Buyer shall, and Sellers and Buyer shall cause each of their respective Restricted Persons not to, disclose to any Person any information with respect to the legal, financial or other terms or conditions of this Agreement or the Transactions; provided that the foregoing does not restrict the right of any Party to disclose such information (i) to its respective Restricted Persons to the extent reasonably required to facilitate the negotiation, execution, delivery or performance of this Agreement and the Ancillary Agreements, (ii) to any Governmental Authority in connection with seeking the regulatory approvals in connection with this Agreement or the Ancillary Agreements, (iii) to any Governmental Authority in connection with any Proceeding relating to the enforcement of this Agreement or any Ancillary Agreement, (iv) that is or may (in Overstock’s sole judgment) be required to be disclosed by Overstock pursuant to the Securities Act or the Exchange Act, or (v) in a press release, provided, however, that no Party may issue a press release containing information about the Transactions without the prior consent of the other Party, which consent may not be unreasonably withheld. Each Party shall advise its respective Restricted Persons with respect to the confidentiality obligations under this Section 5.4 and shall be responsible for any breach or violation of such obligations by its Restricted Persons.

(c) If a Party or any of its respective Restricted Persons becomes legally compelled to make any disclosure that is prohibited or otherwise restricted by this Section 5.4, then such Party shall, to the fullest extent legally permissible, (i) give the other Party prompt written notice of such requirement, (ii) consult with and assist the other Party in obtaining an injunction or other appropriate remedy to prevent such disclosure, (iii) use its commercially reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment shall be accorded to any information so disclosed and (iv) consult with the other Party in advance of such disclosure regarding the contents thereof. Subject to the previous sentence, the disclosing Party or such Restricted Persons may make only such disclosure that, in the opinion of its counsel, it is legally compelled or otherwise required to make to avoid standing liable for contempt or suffering other penalties.

5.5 Governmental Approvals and Consents.

(a) Each Party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Agreements. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such

consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Sellers shall use reasonable best efforts to give or cause to be given all notices to, and obtain all consents from, FINRA.

(c) Without limiting the generality of the Parties' undertakings pursuant to subsections (a) and (b) above, each of the Parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or the Ancillary Agreements;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Agreement; and

(iii) in the event any Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Agreement has been issued, to have such Order vacated or lifted.

(d) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which the Company is a party is not obtained prior to the Closing, Sellers shall, subsequent to the Closing, cooperate with Buyer and the Company in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, Sellers shall use their reasonable best efforts to provide the Company with the rights and benefits of the affected Contract for the term thereof, and, if Sellers provide such rights and benefits, the Company shall assume all obligations and burdens thereunder.

(e) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Sellers or the Company with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with

such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(f) Notwithstanding the foregoing, nothing in this Section 5.5 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, the Company or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

5.6 Books and Records.

(c) In order to facilitate the resolution of any claims made against or incurred by Sellers prior to the Closing, or for any other reasonable purpose, for a period of two (2) years after the Closing, Buyer shall:

(i) retain the books and records (including personnel files) of the Company relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company; and

(ii) upon reasonable notice, afford the Representatives of Sellers reasonable access (including the right to make, at Sellers' expense, photocopies), during normal business hours, to such books and records;

provided, however, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in Article 6.

(d) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the Company after the Closing, or for any other reasonable purpose, for a period of two years following the Closing, Sellers shall:

(i) retain the books and records (including personnel files) of Sellers which relate to the Company and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Representatives of Buyer or the Company reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records;

provided, however, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in Article 6.

(e) Neither Buyer nor Sellers shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 5.6 where such access would violate any Law.

5.7 Closing Conditions. From the date hereof until the Closing, each Party shall, and Sellers shall cause the Company to, use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article 7 hereof.

5.8 Further Action. From time to time from the date hereof, as and when requested by any Party hereto, the requested Party shall use its commercially reasonable efforts to take or to cause to be taken, all actions and to do, or cause to be done, or to execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other Party may reasonably deem necessary, proper or advisable to vest in Buyer good and valid title to the Membership Interests and to consummate the Transactions, as promptly as practicable, including such actions as are necessary in connection with any regulatory filings as any Party may undertake in connection herewith.

ARTICLE 6

TAX MATTERS

6.1 Tax Covenants.

(c) Without the prior written consent of Buyer, Sellers (and, prior to the Closing, the Company, its Affiliates and their respective Representatives) shall not, to the extent it may affect, or relate to, the Company, make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Buyer or the Company in respect of any Post-Closing Tax Period. Sellers agree that Buyer is to have no liability for any Tax resulting from any action of Sellers, the Company, its Affiliates or any of their respective Representatives, and agree to indemnify and hold harmless Buyer (and, after the Closing Date, the Company) against any such Tax or reduction of any Tax asset.

(d) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Agreements (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Seller when due. Sellers shall, at their own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

(e) Buyer shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Company after the Closing Date with respect to a Pre-Closing Tax Period. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and without a change of any election or any accounting method and shall be submitted by Buyer to Sellers (together with schedules, statements and, to the extent requested by Sellers, supporting documentation) at least forty-five (45) days prior to the due date (including extensions) of such Tax Return. If Sellers object to any item on any such Tax Return, they shall, within ten (10) days after delivery of such Tax Return, notify Buyer in writing that they so object, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly

delivered, Buyer and Sellers shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Buyer and Sellers are unable to reach such agreement within ten (10) days after receipt by Buyer of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within twenty (20) days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Buyer and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and Sellers. The preparation and filing of any Tax Return of the Company that does not relate to a Pre-Closing Tax Period shall be exclusively within the control of Buyer.

6.2 Termination of Existing Tax Sharing Agreements. Any and all existing Tax sharing agreements (whether written or not) binding upon the Company shall be terminated as of the Closing Date. After such date neither the Company, Sellers nor any of Sellers' Affiliates and their respective Representatives shall have any further rights or liabilities thereunder.

6.3 Tax Indemnification. Sellers shall indemnify the Company, Buyer, and each Buyer Indemnitee and hold them harmless from and against (a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in Section 3.14; (b) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in this Article 6; (c) all Taxes of the Company or relating to the business of the Company for all Pre-Closing Tax Periods; (d) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor of the Company) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; and (e) any and all Taxes of any person imposed on the Company arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date. In each of the above cases, together with any out-of-pocket fees and expenses (including attorneys' and accountants' fees) incurred in connection therewith. Sellers shall reimburse Buyer for any Taxes of the Company that are the responsibility of Sellers pursuant to this Section 6.3 within ten (10) Business Days after payment of such Taxes by Buyer or the Company.

6.4 Straddle Period. In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "Straddle Period"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(g) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and

(h) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the

period ending on the Closing Date and the denominator of which is the number of days in the entire period.

6.5 Contests. Buyer agrees to give written notice to Sellers of the receipt of any written notice by the Company, Buyer or any of Buyer's Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Buyer pursuant to this Article 6 (a "**Tax Claim**"); provided, that failure to comply with this provision shall not affect Buyer's right to indemnification hereunder. Buyer shall control the contest or resolution of any Tax Claim; provided, however, that Buyer shall obtain the prior written consent of Sellers (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a claim or ceasing to defend such claim; and, provided further, that Sellers shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Sellers.

6.6 Cooperation and Exchange of Information. Sellers and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this Article 6 or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of Sellers and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, Sellers or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

6.7 Tax Treatment of Indemnification Payments. Any indemnification payments pursuant to this Article 6 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

6.8 Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.14 and this Article 6 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus sixty (60) days.

6.9 Overlap. To the extent that any obligation or responsibility pursuant to Article 7 may overlap with an obligation or responsibility pursuant to this Article 6, the provisions of this Article 6 shall govern.

ARTICLE 7

CONDITIONS TO CLOSING

7.1 Conditions to Obligations of All Parties. The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(c) All required filings with FINRA shall have been made.

(d) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(e) Sellers shall have received all necessary consents, authorizations, orders and approvals from FINRA and any other Governmental Authorities referred to in Section 3.6 and Buyer shall have received all necessary consents, authorizations, orders and approvals from FINRA and any other Governmental Authorities referred to in Section 4.4, in each case, in form and substance reasonably satisfactory to Buyer and Sellers, and no such consent, authorization, order and approval shall have been revoked.

7.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the Transactions shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(d) Other than the representations and warranties of Sellers contained in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20, the representations and warranties of Sellers contained in this Agreement, the Ancillary Agreements to which any Seller is a party and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Sellers contained in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(e) Sellers shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the Ancillary Agreements to be performed or complied with by them prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by

materiality, Sellers shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(f) No Proceeding shall have been commenced against Buyer, any Seller or the Company, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(g) All necessary FINRA approvals, consents and waivers shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(h) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(i) Sellers shall have duly executed and delivered the Assignment to Buyer.

(j) The other Ancillary Agreements shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Buyer.

(k) Sellers shall have delivered the Legal Opinion to Buyer;

(l) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of the Company and by each Seller, that each of the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied.

(m) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying that attached thereto are true and complete copies of all resolutions adopted by the members of the Company authorizing the transfers of the Membership Interests contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby.

(n) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying the names and signatures of the officers of the Company authorized to sign any of the Ancillary Agreements and the other documents to be delivered hereunder and thereunder.

(o) Sellers shall have delivered confirmation of share delivery instructions at least two (2) Business Days prior to the Closing Date.

(p) Sellers shall have delivered to Buyer a good standing certificate (or its equivalent) for the Company from the Secretary of State of the State of New York dated within five Business Days prior to the Closing.

(q) Each Seller shall have delivered to Buyer a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that such Seller is not a foreign person within the meaning of Section 1445 of the Code.

(r) Sellers shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

7.3 Conditions to Obligations of Sellers. The obligations of Sellers to consummate the Transactions shall be subject to the fulfillment or Sellers' waiver, at or prior to the Closing, of each of the following conditions:

(i) Other than the representations and warranties of Buyer contained in Section 4.1 and Section 4.6, the representations and warranties of Buyer contained in this Agreement, the Ancillary Agreements and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in Section 4.1 and Section 4.6 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(j) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to which Buyer is a party to be performed or complied with by it prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(k) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(l) All necessary FINRA approvals, consents and waivers shall have been received, and executed counterparts thereof shall have been delivered to Sellers at or prior to the Closing.

(m) The Ancillary Agreements shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Sellers.

(n) Sellers shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied.

(o) Sellers shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(p) Sellers shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Ancillary Agreements and the other documents to be delivered hereunder and thereunder.

(q) Overstock shall have instructed its transfer agent to issue to Sellers the Shares having a market value equal to the Purchase Price in accordance with this Agreement.

(r) Buyer shall have delivered to Sellers such other documents or instruments as Sellers reasonably request and are reasonably necessary to consummate the transactions contemplated by this Agreement.

ARTICLE 8

INDEMNIFICATION

8.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date; provided, that the representations and warranties in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20 shall survive indefinitely. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching Party to the breaching Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

8.2 Indemnification by Sellers. Subject to the other terms and conditions of this Article 8, Sellers shall jointly and severally indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(s) any inaccuracy in or breach of any of the representations or warranties of Sellers contained in this Agreement, the Ancillary Agreements or in any certificate or instrument delivered by or on behalf of any Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made

on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(t) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by any Seller pursuant to this Agreement, the Ancillary Agreements or any certificate or instrument delivered by or on behalf of any Seller pursuant to this Agreement; or

(u) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of any Seller or any of its Affiliates conducted, existing or arising on or prior to the Closing Date.

8.3 Indemnification by Buyer. Subject to the other terms and conditions of this Article 8, Buyer shall indemnify and defend each Seller, their Affiliates and their respective Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(f) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(g) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or

(h) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Buyer or any of its Affiliates conducted, existing or arising after the Closing Date.

8.4 Certain Limitations. The indemnification provided for in Section 8.2 and Section 8.3 shall be subject to the following limitations:

(a) Sellers shall not be liable to the Buyer Indemnitees for indemnification under Section 8.2(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.2(a) exceeds ten thousand dollars (\$10,000) (the “**Basket**”), in which event Sellers shall be required to pay or be liable for all such Losses in excess of the Basket. The aggregate amount of all Losses for which Sellers shall be liable pursuant to Section 8.2(a) shall not exceed fifteen percent (15%) of the Purchase Price (the “**Cap**”).

(b) Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 8.3(a) until the aggregate amount of all Losses in respect of indemnification under

Section 8.3(a) exceeds the Basket, in which event Buyer shall be required to pay or be liable for all such Losses in excess of the Basket. The aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 6.3(a) shall not exceed the Cap.

(c) Notwithstanding the foregoing, the limitations set forth in Section 8.4(a) shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20. The aggregate amount of all Losses for which Sellers shall be liable pursuant to Section 8.1(a) based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20 shall not exceed the Purchase Price.

(d) For purposes of this Article 8, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

8.5 Indemnification Procedures. The Party making a claim under this Article 8 is referred to as the “**Indemnified Party**”, and the Party against whom such claims are asserted under this Article 8 is referred to as the “**Indemnifying Party**”.

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Proceeding made or brought by any Person who is not a Party to this Agreement or an Affiliate of a Party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is one or more of Sellers, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Business, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.5(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend,

appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.5(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 8.6) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.5(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.5(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Proceeding initiated by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice

thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30)-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

8.6 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this [Article 8](#), the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The Parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such fifteen (15) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to the lesser of (i) six percent (6%) and (ii) the maximum non-usurious rate allowed by applicable Law. Such interest shall be calculated daily on the basis of a 365-day year and the actual number of days elapsed.

8.7 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

8.8 Exclusive Remedies. Subject to [Section 5.4](#) and [Section 10.8](#), the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this [Article 8](#). In furtherance of the foregoing, each Party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Parties hereto and their Affiliates

and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this [Article 6](#). Nothing in this [Section 8.8](#) shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Party's fraudulent, criminal or intentional misconduct.

ARTICLE 9

TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(v) by the mutual written consent of Sellers and Buyer;

(w) by Buyer by written notice to Sellers if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Sellers pursuant to this Agreement that would give rise to the failure of any of the conditions specified in [Article 7](#) and such breach, inaccuracy or failure has not been cured by Sellers within ten (10) days of Sellers' receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in [Section 7.1](#) or [Section 7.2](#) shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by November 1, 2015, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(x) by Sellers by written notice to Buyer if Sellers are not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in [Article 7](#) and such breach, inaccuracy or failure has not been cured by Buyer within ten days of Buyer's receipt of written notice of such breach from Sellers; or

(y) by Buyer or Sellers in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued an Order restraining or enjoining the transactions contemplated by this Agreement, and such Order shall have become final and non-appealable.

9.2 Effect of Termination. In the event of the termination of this Agreement in accordance with this [Article 9](#), this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(i) as set forth in this [Article 9](#) and [Section 5.3](#) and [Article 10](#) hereof; and

(j) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

ARTICLE 10
MISCELLANEOUS

10.1 Notices.

(k) Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Sellers:

Joseph Cammarata
109 White Oak Lane, Suite 200-P
Old Bridge, New Jersey 08857
Email: joe@joec.com

with a copy (which shall not constitute notice) to:

Stuart Moskowitz
Law Offices of Stuart J. Moskowitz, Esq.
4400 Route 9 South – Suite 1000
Freehold, New Jersey 07728
Email: stuartj@moskovitz.org

If to Buyer:

Medici, Inc.
c/o Overstock.com, Inc.
6530 South 3000 East
Salt Lake City, Utah 84121
Attention: Raj Karkara
Tel: (801) 947-3140
Email: rajkarkara@overstock.com

with a copy (which shall not constitute notice) to:

Bracewell & Giuliani LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701
Attention: Thomas W. Adkins
Tel: (512) 542-2122
Email: thomas.adkins@bgllp.com

(l) Notice given by personal delivery, mail or overnight courier pursuant to this Section 10.1 shall be effective upon physical receipt. Notice given by facsimile pursuant to this Section 10.1 shall be effective as of the date of confirmed delivery if delivered before 5:00 P.M. Eastern Time on any Business Day or the next succeeding Business Day if confirmed delivery is after 5:00 P.M. Eastern Time on any Business Day or during any non-Business Day

10.2 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement shall not be materially and adversely affected thereby, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

10.3 Assignment; Successors. Neither this Agreement nor any rights, obligations or interests hereunder may be assigned by any Party hereto except with the prior written consent of the other Parties; *provided, however*, that Buyer may, without the consent of Sellers, assign any of its rights, interests and obligations under this Agreement to one or more Affiliate(s) of Buyer, which assignment shall not relieve Buyer of any obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and assigns.

10.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any facsimile or electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

10.5 Expenses. Except as otherwise expressly stated otherwise herein, all costs and expenses (including fees and disbursements of counsel, financial advisors and accountants) incurred or to be incurred in connection with this Agreement, the performance of its obligations hereunder and the consummation of the Transactions shall be paid by the Party incurring such costs and expenses.

10.6 Governing Law; Venue; Jurisdiction.

(b) This Agreement shall be governed by and construed in accordance with the Laws of the State of Utah, without giving effect to any conflict or choice of law provision that would require or permit the application of the Laws of any other jurisdiction.

(a) Each Party consents to personal jurisdiction in any action brought in any court, federal or state, within the City of Salt Lake City, Utah, having subject matter jurisdiction arising under this Agreement, and each of the Parties hereto agrees that any Proceeding instituted by either of them against the other with respect to this Agreement shall be instituted exclusively in a court, federal or state, within the City of Salt Lake City, Utah. Each Party to this Agreement hereby irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of such Proceeding. The Parties further agree, to the extent permitted by law, that a final and unappealable judgment against any of them in any Proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.

10.7 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT WAIVES TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THEM AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR ANY OTHER AGREEMENTS OR CERTIFICATES EXECUTED IN CONNECTION HERewith OR THEREWITH OR THE ADMINISTRATION THEREOF OR ANY OF THE TRANSACTION. NO PARTY TO THIS AGREEMENT SHALL SEEK A JURY TRIAL IN ANY PROCEEDING OR ANY OTHER LITIGATION PROCEDURE BASED UPON, OR ARISING OUT OF, THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY RELATED INSTRUMENTS OR THE RELATIONSHIP BETWEEN THE PARTIES. NO PARTY SHALL SEEK TO CONSOLIDATE ANY SUCH PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EACH PARTY TO THIS AGREEMENT CERTIFIES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY OTHER INSTRUMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH ABOVE IN THIS SECTION 10.7. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO THE OTHER PARTY THAT THE PROVISIONS OF THIS SECTION 10.7 SHALL NOT BE FULLY ENFORCED IN ALL INSTANCES.

10.8 Specific Performance. Each Party acknowledges and agrees that a breach of this Agreement would cause irreparable damage to the other Parties and that the non-breaching Parties shall not have an adequate remedy at law. Therefore, it is agreed that in the event of such a breach, the non-breaching Party shall be entitled to injunctive relief, specific performance or other equitable remedies to enforce the terms and provisions of this Agreement in any state or federal court sitting in the City of Salt Lake City, Utah, in addition to any other remedies it may have at law or in equity.

Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any Party may have under this Agreement or otherwise.

10.9 Entire Agreement. This Agreement, including the Schedules and Exhibits, together with the Ancillary Agreements, supersede all prior discussions and agreements among the Parties, both written and oral, with respect to the subject matter hereof, and contain the sole and entire agreement among the Parties with respect to the subject matter hereof.

10.10 Third Party Beneficiaries. This Agreement is not intended to and does not confer upon any Person other than the Parties or their permitted successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

10.11 Interpretive Matters.

(a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated;

(b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

(c) whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation” whether or not they are in fact followed by such words or words of similar import;

(d) the words “hereof,” “hereby,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

(f) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

(g) references to a Person are also to its successors and permitted assigns;

(h) the use of “or” is not intended to be exclusive unless expressly indicated otherwise; *provided* that the use of “or” preceded by the word “either” is intended to be exclusive;

(i) reference to “day” or “days” are to calendar days;

(j) any reference in this Agreement to “writing” or comparable expressions includes a reference to facsimile transmission or comparable means of communication;

(k) when a reference is made in this Agreement to “ordinary course of business,” such reference shall be deemed to be followed by “consistent (in scope and amount) with past practice”;

(l) “made available” with reference to any document or information provided by Sellers hereunder means made available to Buyer or its representatives in the sharefile data room organized and maintained by Buyer’s counsel, as an accommodation to Sellers, or otherwise e-mailed or delivered directly to Buyer or its Representatives; and

(m) any reference to a given Law is a reference to that Law and the rules and regulations adopted or promulgated thereunder, in each case, as amended, modified, supplemented or restated as of the date on which the reference is made and shall include any successor thereto, unless the context otherwise requires.

10.12 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party. Any amendment, modification or supplement to this Agreement not made in accordance with this Section 10.12 shall be void.

10.13 Waiver of Compliance. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, shall be cumulative and not alternative.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date first above written.

SELLERS:

/s/ Joseph Cammarata
Joseph Cammarata

/s/ John Paul DeVito
John Paul DeVito

BUYER:

MEDICI, INC.

By: /s/ Michael Skirucha
Name: Michael Skirucha
Title: Secretary / Treasurer

[Signature Page to SpeedRoute, LLC Membership Interest Purchase Agreement]

EXHIBIT A

Form of Assignment

ASSIGNMENT OF MEMBERSHIP INTEREST

This assignment of membership interest (this “**Assignment**”) in SPEEDROUTE LLC (the “**Company**”) is made as of [1], 2015, by [1] (“**Assignor**”), in favor of MEDICI, INC., a Utah Corporation (“**Assignee**”).

WHEREAS, Assignor and Assignee have entered into that certain Membership Interest Purchase Agreement dated as of August 26, 2015 (the “**Purchase Agreement**”), whereby Assignor agrees to sell and Assignee agrees to purchase all of Assignor’s equity interests in the Company (such interests subject to purchase, the “**Membership Interests**”); and

WHEREAS, all of Assignor’s right, title and interest in the Membership Interests is being assigned and transferred to Assignee pursuant to this Assignment, subject to the terms and conditions of the Purchase Agreement and in accordance with the provisions of that certain Limited Liability Company Operating Agreement of the Company, dated as of July 1, 2011 (the “**Operating Agreement**”).

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor unconditionally and absolutely assigns, sets over, transfers and conveys to Assignee all of its rights, title and interest in and to the Subject Interests, subject to the representations, warranties, terms and conditions set forth in the Purchase Agreement and in accordance with the provisions of the Operating Agreement, and Assignee shall thereby be admitted as a Substitute Member (as defined in the Operating Agreement) of the Company.

This Assignment may be executed in one or more counterparts, each of which, when executed and delivered to the other parties, shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the date first above written.

ASSIGNOR:

Name:

Title:

ACCEPTED BY ASSIGNEE:

MEDICI, INC.

a Utah corporation

By: _____

Name:

Title:

EXHIBIT B

Form of Opinion to be Delivered by Counsel to Sellers

_____, 2015

Medici, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

Re: Asset Purchase Agreement dated as of August 26, 2015

Ladies and Gentlemen:

We have acted as counsel for SpeedRoute LLC, a New York limited liability company (the “Company”), Joseph Cammarata and John Paul DeVito in connection with the transactions contemplated by the Membership Interest Purchase Agreement dated as of August 26, 2015 (the “Agreement”), by and among Joseph Cammarata and John Paul DeVito (collectively, the “Sellers”) and Medici, Inc, a Utah corporation (“Buyer”). This opinion letter is delivered to you pursuant to Section 2.4(c) of the Agreement. Capitalized terms used herein and not otherwise defined herein have the meanings assigned to such terms in the Agreement.

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed necessary for the purposes of such opinions. We have examined (i) the proposed Agreement to be executed by the parties and the other agreements and instruments described therein to which the Sellers are a party, which we assume will be executed and delivered in substantially the form of the drafts we have been provided, with all such agreements and instruments being collectively referred to herein as the “Transaction Documents,” and (ii) such other documents and records as we have deemed necessary and relevant for purposes hereof.

We have made such investigations of law and examined such other documents and records as we have deemed necessary and relevant as a basis for the opinions hereinafter expressed. Although the undersigned cannot and does not guarantee the accuracy and completeness of statements contained in this opinion or representations made by the Sellers, in connection with this representation, investigation and due inquiry of the Company’s present officers and managers in the preparation of this opinion, nothing has come to the attention of the undersigned which causes him to believe that this opinion (except as to the financial statements and supporting financial and statistical data included or incorporated therein, as to which such counsel need express no opinion) or the representations by Sellers pursuant to the Agreement, contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the

statements therein, in light of the circumstances in which they were made, not misleading. The foregoing qualification shall apply to all statements hereinafter.

Based upon the foregoing, and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that:

The Company is validly existing and in good standing as a limited liability company under the laws of the State of New York and is authorized or qualified to do business and in good standing as a foreign limited liability company in each jurisdiction where it is required to be so authorized or qualified. The Company has the limited liability company power and authority to own its properties and to carry on its business as it is now being conducted.

The Sellers have full power and authority to execute and deliver the Agreement and each Transaction Document and perform their obligations thereunder. The Sellers have taken all action necessary to authorize the execution, delivery and performance of the Agreement and each Transaction Document. The Sellers have duly executed and delivered the Agreement and each Transaction Document.

The execution and delivery by the Sellers of the Agreement and Transaction Documents to which they are a party do not, and the consummation of the transactions contemplated thereby will not (i) result in a violation or breach of any provision of the Company's Limited Liability Company Operating Agreement, a copy of which is attached hereto as an Exhibit (the "Company LLC Agreement"); or (ii) result in a violation or breach of any provision of any law, rule or regulation applicable to the Company; or (iii) conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any contract, mortgage, indenture, lease, deed of trust, instrument or other agreement, known to us after due inquiry.

The Agreement and each Transaction Document constitutes, with respect to the Sellers, a valid and binding obligation of the Sellers, enforceable against each Seller in accordance with its terms.

The performance by the Sellers of the transactions contemplated by the Agreement and the Transaction Documents will not result in or require the creation or imposition of any security interest or lien upon the membership interests of the Company owned by the Sellers (the "Membership Interests") and, assuming due execution and performance of Buyer's obligations under the Agreement and Transaction Documents the Membership Interests will be duly and validly transferred to Buyer free and clear of any liens of record.

The outstanding membership interests of the Company are as set forth on Exhibit A to the Company LLC Agreement.

To our knowledge there are no outstanding options, warrants, contracts, commitments, agreements, understandings or other rights of any kind to purchase or subscribe for membership interests of the Company, or any securities convertible into or exchangeable for membership interests of the Company.

To our knowledge there are no legal proceedings (i) pending before any court or arbitration tribunal or (ii) overtly threatened in writing, in each case, against the Company that seek to enjoin or otherwise interfere directly with the transactions contemplated by the Transaction Documents.

No consent, approval, order or authorization by, or filing with, any governmental authority or agency is required in connection with the execution and delivery by the Company of the Agreement and the Transaction Documents and the consummation of the transactions contemplated thereby.

We express no opinion as to the effects of (i) bankruptcy, insolvency, fraudulent transfer and conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity) including the possible unavailability of specific performance or injunctive relief and the exercise of discretionary powers by any court before which specific performance or injunctive relief or other equitable remedies may be sought.

The opinions expressed herein are solely for the benefit of the addressees hereof in connection with the transaction referred to herein and may not be relied on by such addressees for any other purpose or in any manner, or furnished to or relied on for any purpose by any other person or entity, in each case without our prior written consent. This opinion letter is rendered as of the date set forth above. We expressly disclaim any obligation to update this opinion letter in any respect after such date. This opinion is strictly limited to the matters stated herein, and no other or more extensive opinion is intended, implied or to be inferred beyond the matters expressly stated herein.

Very truly yours,

TRADERFIELD SECURITIES, INC.

STOCK PURCHASE AGREEMENT

by and between

JOSEPH CAMMARATA,

as Seller,

and

MEDICI, INC.,

as Buyer

dated as of August 26, 2015

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STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (this “**Agreement**”), dated as of August 26, 2015, is by and between Joseph Cammarata (“**Seller**”) and Medici, Inc., a Utah corporation (“**Buyer**,” and together with Seller, the “**Parties**” and each, individually, a “**Party**”).

RECITALS

WHEREAS, Buyer is a majority-owned subsidiary of Overstock.com, Inc., a Delaware corporation (“**Overstock**”);

WHEREAS, Seller owns 80.0% of the issued and outstanding shares of common stock (the “**Shares**”) in TraderField Securities, Inc., a New York corporation (the “**Company**”);

WHEREAS, Seller has previously delivered to Overstock a completed and signed Investor Questionnaire;

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, the Shares, all upon the terms and subject to the conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and the respective agreements, covenants, representations and warranties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending be legally bound hereby, the Parties hereby agree as follows:

Article 1
DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the capitalized terms included in Schedule 1.1 shall have the meanings specified or referred to therein, other than terms defined elsewhere in this Agreement:

ARTICLE 2
SALE AND PURCHASE OF SHARES

2.1 Purchase of Shares. On the terms and subject to the conditions hereof, at the Closing, in consideration of the Purchase Price, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of Seller's right, title and interest in and to the Shares, free and clear of any Liens, for the consideration specified in Section 2.2.

2.2 Purchase Price. On the terms and subject to the conditions hereof, at the Closing Buyer shall issue to Seller a total number of shares of common stock, par value \$0.0001 per share (the "**Common Stock**"), of Overstock (the "**Overstock Shares**"), the value (calculated as set forth in Section 2.6) of which shall equal One Hundred Thousand Dollars (\$100,000) (the "**Purchase Price**").

2.3 Closing. Subject to the terms and conditions of this Agreement, the sale and purchase of the Shares contemplated by this Agreement shall take place at a closing (the "**Closing**") to be held at the offices of Overstock.com, Inc., 6350 South 3000 East, Salt Lake City, Utah 84121 at 10:00 A.M. local time, no later than two Business Days after the last of the conditions to Closing set forth in Article 7 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date). The date upon which the Closing occurs is referred to as the "**Closing Date**."

2.4 Closing Deliveries by Seller. At the Closing, Seller shall deliver (or cause to be delivered) the following documents to Buyer, duly executed by Seller, as applicable:

- (a) an irrevocable stock power with respect to the Shares, in the form attached hereto as Exhibit A hereto (the "**Stock Power**") and duly executed by Seller, transferring all of Seller's right, title and interest in and to the Shares to Buyer;
- (b) a duly executed certificate of non-foreign status from Seller that meets the requirements of Treasury Regulations Section 1.1445-2(b) and is in a form reasonably satisfactory to Buyer;
- (c) a Shareholder Agreement with the holders of the remaining 20.0% of the issued and outstanding shares of common stock of the Company (the "**Shareholder Agreement**"), in form and substance satisfactory to Buyer and Overstock;
- (d) a written opinion of counsel for Seller, dated the date hereof, in substantially the form attached hereto as Exhibit B (the "**Legal Opinion**"); and

(e) such other documents, instruments and certificates as Buyer may reasonably request.

2.5 Closing Deliveries by Buyer. At the Closing, Buyer shall deliver (or cause to be delivered) to Seller:

(a) the Overstock Shares;

(b) such other documents, instruments and certificates as Seller may reasonably request.

2.6 Purchase Price Calculation. The number of Overstock Shares to be issued to Seller pursuant to Section 2.2 shall be calculated by dividing (i) the Purchase Price by (ii) the average of the closing price per share of the Common Stock on the Nasdaq Global Market over the ten (10) Trading Days prior to the Closing Date (the “**Average Closing Price**”). Notwithstanding the foregoing, if the Average Closing Price shall be less than \$18.00 per share, Buyer, at its sole option, may substitute cash for any portion of the Overstock Shares; provided, that in such event, the total value of any cash paid and any Overstock Shares delivered to Seller shall equal the Purchase Price.

2.7 Withholding. Notwithstanding any other provision in this Agreement, Buyer shall have the right to deduct and withhold from any payments to be made hereunder any Taxes that it is required to deduct and withhold with respect to the making of such payments under the Code or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld and paid to the appropriate Tax Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to the Person in respect of which such deduction and withholding was made.

ARTICLE 3 **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer as of the execution date of this Agreement and as of the Closing as follows:

3.1 Organization and Qualification. The Company is a corporation company duly formed, validly existing and in good standing under the Laws of the State of New York. The Company is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on the Business or Seller’s ability to perform their obligations hereunder.

3.2 Authority, Due Execution; Binding Effect.

(a) Seller has full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which Seller as of the Closing shall be a party, to perform his obligations hereunder and thereunder and to consummate the Transactions. The

execution and delivery by Seller of this Agreement and the Ancillary Agreements to which Seller as of the Closing shall be a party when executed and delivered by such Seller, and the performance by Seller of their obligations hereunder and thereunder, have been or as of the Closing shall be duly and validly authorized by all necessary action.

(b) This Agreement has been duly executed and delivered by Seller and constitutes the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law). When executed and delivered by Seller on the Closing Date, each of the Ancillary Agreements to which Seller is a party shall have been duly executed and delivered by such Seller and shall constitute the valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law).

3.3 Capitalization.

(f) Seller is the record and beneficial owners of and have good and valid title to the Shares, free and clear of all Liens. The Shares constitute 80.0% of the total issued and outstanding common stock of the Company, and, effective upon the Closing, Buyer shall own 80.0% of the total issued and outstanding common stock of the Company. The Shares have been duly authorized and are validly issued, fully paid and non-assessable. Upon consummation of the Transactions, Buyer shall own all of the Shares, free and clear of all Liens.

(g) The Shares were issued in compliance with applicable Laws. The Shares were not issued in violation of the Organizational Documents of the Company or any other agreement, arrangement or commitment to which Seller or the Company is a party and are not subject to or in violation of any preemptive or similar rights of any Person.

(h) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to any common stock of the Company or obligating Seller or the Company to issue or sell any common stock (including the Shares), or any other interest, in the Company. Other than the Organizational Documents, there are no voting trusts, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Shares.

3.4 No Subsidiaries. The Company does not own, or have any interest in any shares or have an ownership interest in any other Person.

3.5 No Conflict. Neither the execution and delivery of this Agreement by Seller, nor the performance by Seller of the Transactions, shall, directly or indirectly (a) contravene, conflict

with or result in (with or without notice or lapse of time) a violation or breach of any Law or Order to which Seller or the Company may be subject; (b) violate, conflict with or result in the breach of any provision of the Organizational Documents of the Company or (c) conflict in any material respect with, result in a material breach of, constitute a material default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any Consent under or give to others any right of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Lien pursuant to, any Contract to which Seller or the Company is a party.

3.6 Consents and Approvals. The execution and delivery of this Agreement and the performance of the Transactions by Seller do not and will not require any Consent of any Governmental Authority or any other Person, other than FINRA.

3.7 Title. The Company has good and valid title to all personal property and other assets reflected in the Financial Statements or acquired after the Balance Sheet Date.

3.8 Financial Statements; Undisclosed Liabilities.

(a) Seller has made available to Buyer true and complete copies of the audited balance sheet of the Company, as of December 31, 2014 and the related audited statement of income for the year ended December 31, 2014 (collectively, the “**Financial Statements**”). The Financial Statements are set forth in Schedule 3.8(a), are consistent with the books and records of the Company, and fairly present in all material respects the financial condition and the results of operations of the Company as of the dates thereof and the results of its operations for the periods covered thereby. The balance sheet of the Company as of December 31, 2014 is referred to herein as the “**Balance Sheet**” and the date thereof as the “**Balance Sheet Date**”.

(b) Except as set forth on the Financial Statements or on Schedule 3.8(b), the Company does not have any liability or obligation (whether accrued, absolute, contingent or otherwise) which, individually or in the aggregate, would exceed \$10,000.

3.9 Books and Records. The Company (a) makes and keeps books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company and (b) has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management’s general or specific authorization, (ii) transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements and (B) to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management’s general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

3.10 Compliance with Laws; Permits; Proceedings. The Company is currently, and since its formation has been, in compliance in all material respects with all Laws and Orders applicable to the Business (other than Environmental Laws, which are addressed in Section 3.15).

3.11 **Real Property.**

(a) The Company owns no real property and has no interest of any type in any real property other than the Lease.

(b) Schedule 3.13(b) describes each Leased Real Property and each lease of real property, for office use or otherwise, written or unwritten, to which the Company is a party or is in any way bound or obligated (collectively, the “**Leases**”). Other than the Leases, there are no other leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which the Company holds any Leased Real Property. Seller has delivered to Buyer a true and complete copy of each Lease. With respect to the Lease:

(i) such Lease is valid, binding, enforceable and in full force and effect, and the Company enjoys peaceful and undisturbed possession of the Leased Real Property;

(ii) the Company is not in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and the Company has paid all rent due and payable under such Lease;

(iii) the Company has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by the Company under such Lease and, to the Knowledge of Seller, no other party is in default thereof, and no party to such Lease has exercised any termination rights with respect thereto;

(iv) the Company has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(v) the Company has not pledged, mortgaged or otherwise granted a Lien on its leasehold interest in any Leased Real Property.

(c) The Company has not received any written notice of (i) material violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Leased Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Leased Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to materially and adversely affect the ability to operate the Leased Real Property as currently operated. Neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or other casualty.

(d) The Leased Real Property is sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing

and constitutes all of the office and other space necessary to conduct the Business as currently conducted.

3.12 Tax Matters. All income and other material Tax Returns required to be filed by the Company or otherwise with respect to the Business have been timely and duly filed. All such Tax Returns were true, correct and complete in all material respects. All Taxes due and owing by the Company or otherwise with respect to the Business (whether or not shown on any Tax Return) have been timely paid in full in accordance with all applicable legal requirements.

3.13 Environmental Matters. Since the date of formation of the Company:

(a) The Company currently is and has been in compliance in all material respects with all Environmental Laws applicable to the Business; The Company holds all material permits, licenses and authorizations arising under applicable Environmental Law necessary for the conduct of the Business in compliance with Environmental Laws, and all such Environmental Permits are valid and in full force and effect, and none is undergoing any form of review or proceeding, whether requested or imposed, whose outcome may be to revoke, restrict, fail to renew or materially modify the Environmental Permit or to issue or require an additional Environmental Permit, compliance plan or Order;

3.14 Intellectual Property.

(a) The Company holds all (i) Intellectual Property Registrations and (ii) Intellectual Property Assets, including software, that are not registered but that are material to the operation of the Business, that the Company needs to conduct the Business. All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing. Seller has provided Buyer with true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Intellectual Property Registrations.

(b) Seller has provided Buyer with true and complete copies of all Intellectual Property Agreements that are necessary for the operation of the Business, including all modifications, amendments and supplements thereto and waivers thereunder. Each Intellectual Property Agreement is valid and binding on the Company in accordance with its terms and is in full force and effect. None of the Company or, to the Knowledge of Seller, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of breach or default of or any intention to terminate, any Intellectual Property Agreement. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Intellectual Property Agreement or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder.

(c) Except as set forth in Schedule 3.16(c), the Company is the sole and exclusive legal and beneficial, and with respect to the Intellectual Property Registrations, record, owner

of all right, title and interest in and to the Intellectual Property Assets, and has the valid right to use all other Intellectual Property used in or necessary for the conduct of the Business as currently conducted, in each case, free and clear of all Liens. Without limiting the generality of the foregoing, the Company has entered into binding, written agreements with every current and former employee of the Company, and with every current and former independent contractor, whereby such employees and independent contractors (i) assign to the Company any ownership interest and right they may have in the Intellectual Property Assets; and (ii) acknowledge the Company's exclusive ownership of all Intellectual Property Assets. Seller has provided Buyer with true and complete copies of all such agreements.

(d) The Intellectual Property Assets and Intellectual Property licensed under the Intellectual Property Agreements are all of the Intellectual Property necessary to operate the Business as presently conducted. The consummation of the transactions contemplated hereunder will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Buyer's right to own, use or hold for use any Intellectual Property as owned, used or held for use in the conduct of the Business as currently conducted.

(e) The Company's rights in the Intellectual Property Assets are valid, subsisting and enforceable. The Company has taken all reasonable steps to maintain the Intellectual Property Assets and to protect and preserve the confidentiality of all trade secrets included in the Intellectual Property Assets, including requiring all Persons having access thereto to execute written non-disclosure agreements.

(f) The conduct of the Business as currently and formerly conducted, and the Intellectual Property Assets and Intellectual Property licensed under the Intellectual Property Agreements as currently or formerly owned, licensed or used by the Company, have not infringed, misappropriated, diluted or otherwise violated, and have not, do not and will not infringe, dilute, misappropriate or otherwise violate, the Intellectual Property or other rights of any Person. No Person has infringed, misappropriated, diluted or otherwise violated, or is currently infringing, misappropriating, diluting or otherwise violating, any Intellectual Property Assets.

(g) There are no Proceedings (including any oppositions, interferences or re-examinations) settled, pending or threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by the Company in connection with the Business; (ii) challenging the validity, enforceability, registrability or ownership of any Intellectual Property Assets or the Company's rights with respect to any Intellectual Property Assets; or (iii) by Seller or any other Person alleging any infringement, misappropriation, dilution or violation by any Person of any Intellectual Property Assets. The Company is not subject to any outstanding or prospective Order (including any motion or petition therefor) that does or would restrict or impair the use of any Intellectual Property Assets.

3.15 Benefit Plans. The Company does not have, and has never had, any Benefit Plans with respect to the Business or any of the Business Employees. No event has occurred and there

exists no condition or set of circumstances in connection with which Buyer or any of Buyer's Affiliates could be subject to any liability or obligation of any kind, whether contingent or otherwise, under the terms of, or with respect to, any Benefit Plan or under ERISA.

3.16 Broker-Dealer Representations.

(a) Seller has delivered to Buyer (i) a true, correct and complete copy of the Company's Uniform Application for Broker-Dealer Registration on Form BD, reflecting all amendments thereto filed with the SEC or FINRA to the date hereof, (ii) true, correct and complete copies of the Uniform Application for Securities Industry Registration or Transfer on Form U-4, as filed on behalf of each current principal and registered representative of the Company, (iii) true, correct and complete copies of any written Business Plan of the Company approved by FINRA, reflecting all amendments thereto, and FINRA has confirmed to BD that the Company does not operate pursuant to any written FINRA Membership Agreement of the Company (CRD No. 6619) (the "**Membership Agreement**") and no such Membership Agreement exists and (iv) true, correct and complete copies of all other material registrations, declarations, reports, notices, forms and other documents filed by the Company with the SEC, FINRA, State securities authorities, or any other Governmental Authority, including FOCUS reports and annual statements of financial condition, and all amendments or supplements to any of the foregoing (together with the documents identified in items (i) through (iii), the "**BD Regulatory Filings**"), since January 1, 2013. Schedule 3.18(a) sets forth a complete list of the identities of each principal and registered representative of the Company, their series licenses, and all BD Regulatory Filings filed since January 1, 2013. The Company has timely filed all BD Regulatory Filings and such filings are, to the extent applicable, in full force and effect and were prepared in all material respects in compliance with applicable Law, including the requirements of the Exchange Act, FINRA rules ("**FINRA Rules**") and State Securities Laws, and all material fees and assessments due and payable in connection with the filing of such BD Regulatory Filings have been paid in a timely manner. The documents identified in items (i) and (iii) in the definition of BD Regulatory Filings and, to the Knowledge of Seller, the documents identified in items (ii) of the definition of BD Regulatory Filings, do not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Each principal and registered representative of the Company has at least the minimum series license(s) and experience for the activities which such principal or registered representative performs on behalf of the Company.

(b) The "net capital" (as defined in Rule 15c3-1 under the Exchange Act) of the Company satisfies, and since at least January 1, 2004, has satisfied, the minimum net capital requirements of the Exchange Act and of the applicable Laws of any jurisdiction in which the Company conducts business, and has been sufficient to permit the Company to operate in accordance with its business activities as authorized by FINRA. The Company is not party to, or bound by, the terms of any restriction agreement with FINRA due to the occurrence of a reportable event.

(c) The Company is and has been, since the commencement of its engagement in activities for which registration as a broker-dealer is or was required under the Exchange Act (such activities are defined as “**Broker-Dealer Activities**”), duly registered as a broker-dealer under the Exchange Act and applicable FINRA Rules. The Company is duly registered, licensed and qualified as a broker-dealer in all jurisdictions where such registration, licensing or qualification is so required. The Company is in compliance in all material respects with all federal laws requiring registration, licensing or qualification as a broker-dealer with the SEC and is in material compliance with all other applicable Law requiring registration, licensing or qualification as a broker-dealer. The Company is a member, in good standing, of FINRA and The NASDAQ Stock Market LLC, and an Equity Trading Permit Holder, in good standing, with NYSE Arca, Inc.

(d) Except as set forth on Schedule 3.18(d), there is no governmental or administrative proceeding, investigation, examination, subpoena, audit, sweep letter or other material inquiry, whether written or oral (including by the SEC, FINRA, the Department of Labor or any other Governmental Authority) pending or threatened in writing against the Company or, to the Knowledge of Seller, against any officer, security holder, employee or associated person (as such term is defined in the Exchange Act) of the Company. Schedule 3.18(d) lists all SEC, FINRA, or other Governmental Authority examinations or litigation, proceedings, settlements, investigations, subpoenas, audits, sweep letters or other material inquiries occurring, arising, or existing during the past three years that (i) were directed to the Company, or any of its officers, security holders, employees or associated persons, or (ii) involved the Company, or any of its officers, security holders, employees or associated persons, as a party.

(e) The Company has implemented policies and procedures that are reasonably designed to comply with all applicable Law, including any applicable Anti-Money Laundering Law or any applicable Law relating to advertising, licensing, sales practices, research, information barriers, market conduct, maintenance of net capital, supervision, books and records, risk assessment and continuing education and the rules of the SEC and any other Governmental Authority having jurisdiction over the Company.

(f) Except as described in Schedule 3.18(d), the Company is not subject to any cease-and-desist or other order or enforcement action issued by, or a party to any written agreement, consent agreement or memorandum of understanding with, or a party to any commitment letter or similar undertaking to, or subject to any order or directive by, or has been ordered to pay any civil penalty by, or a recipient of any letter of admonition or similar communication from, or has adopted a board resolution at the request or suggestion of, any Governmental Authority that restricts the conduct of its business.

(g) Set forth on Schedule 3.18(g) is each “branch office” and “office of supervisory jurisdiction” (as defined under FINRA Rules) of the Company.

(h) Except as disclosed in the Form BD of the Company in effect as of the date of this Agreement, none of the Company or its officers, employees, or associated persons has received any written notification or written communication from any Governmental

Authority (i) asserting that such Person is not in compliance with any applicable Law or is subject to any active regulatory enforcement action, (ii) threatening to revoke any Permit, (iii) requiring such Person to enter into a cease and desist order, agreement or memorandum of understanding materially restricting the activities of such Person, (iv) materially restricting or disqualifying such Person's present business activities (other than restrictions imposed by rule, regulation or administrative policy on brokers or dealers generally) or (v) threatening to initiate any proceeding or investigation into the business or operations of such Person; provided, that routine regulatory investigations and examinations and customer complaints, claims or arbitration shall not be construed as or deemed to be any investigation, notification, communication, review or disciplinary proceedings for the purposes of this Section 3.18. Since January 1, 2013, the Company has responded to all material deficiencies asserted by any Governmental Authority in connection with any regulatory examination or other similar proceeding and, where required by such response or by such Governmental Authority to take any action to address any such deficiency, has taken any such action that was required to be taken prior to the date hereof. Any such action that has not yet been taken as of the date hereof because the deadline for such action has not passed, as well as the deadline for such action, is set forth on Schedule 3.18(d).

(i) All officers, employees, associated persons and independent contractors of the Company who are, or who at any time during the past three years were, required, under applicable Law, to be registered, licensed or qualified in connection with the Broker-Dealer Activities engaged in by the Company, are or were, at all such times, duly registered as such and such registrations are or were, at all such times, in full force and effect, or are or were, at all such times, in the process of being registered as such within the time periods required by any Governmental Authority, as applicable. All officers, employees, associated persons and independent contractors of the Company are in compliance in all material respects with all applicable Law requiring any such registration, licensing or qualification, and, to the Knowledge of Seller, are not subject to any material liability or disability by reason of any failure to be so registered.

3.17 Brokers. Neither the Company nor any Affiliate of the Company has or will have any liability or obligation to pay fees or commissions to any Person with respect to the Transactions that could be or become a claim against Buyer or any Affiliate of Buyer.

3.18 Full Disclosure. No representation or warranty by Seller in this Agreement and no statement contained in any Schedule to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. No investigation by Buyer or its agents or information received by Buyer or any of its agents, including all such investigations performed and information delivered to Buyer or its agents prior to the execution and delivery of this Agreement or prior to the Closing, shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement. Seller acknowledges that the Parties are entering into this Agreement for the purposes of allocating the economic risks between the Parties,

and such entry is predicated on the representations and warranties contained herein being accurate and complete.

3.19 Restricted Shares. Seller acknowledges that the Overstock Shares, when issued, will be restricted securities and must be held indefinitely unless subsequently registered under the Securities Act or Overstock receives an opinion of counsel reasonably satisfactory to Overstock that such registration is not required. The Company is aware of the provisions of Rule 144 promulgated under the Securities Act which provide a safe harbor for the limited resale of stock purchased in a private placement subject to the satisfaction of certain conditions (if applicable), including, among other things, the existence of a public market for the stock, the availability of certain current public information about Overstock, the resale occurring after certain holding periods have been met, the sale being conducted through a “broker’s transaction” or a transaction directly with a “market maker” and the number of shares of the stock being sold during any three-month period not exceeding specified limitations. Seller further acknowledges and understands that Overstock may not be satisfying the current public information requirement of Rule 144 at the time Seller wishes to sell Overstock Shares and, if so, Seller may be precluded from selling such Overstock Shares under Rule 144 even if the required holding period has been satisfied.

3.20 Stock Legends. Seller acknowledges that certificates evidencing the Overstock Shares shall bear a restrictive legend in substantially the following form (and including related stock transfer instructions and record notations):

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as of the execution date of this Agreement and as of the Closing Date as follows:

4.1 Organization and Qualification. Buyer is a corporation duly formed, validly existing and in good standing under the Laws of the State of Utah. Buyer is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on Buyer's ability to perform its obligations hereunder.

4.2 Authority; Due Execution; Binding Effect.

(i) Buyer has the requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which Buyer as of the Closing shall be a party, to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which Buyer as of the Closing shall be a party when executed and delivered by Buyer, and the performance by Buyer of its obligations hereunder and thereunder, have been or as of the Closing shall be duly and validly authorized by all necessary corporate action.

(j) This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law). When executed and delivered by Buyer on the Closing Date, each of the Ancillary Agreements to which Buyer as of the Closing shall be a party shall have been duly executed and delivered by Buyer and shall constitute the valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a Proceeding in equity or at law).

4.3 No Conflict. Neither the execution and delivery of this Agreement by Buyer, nor the performance by Buyer of the Transactions, shall, directly or indirectly (a) contravene, conflict with or result in (with or without notice or lapse of time) a violation or breach of any Law or Order to which Buyer may be subject; (b) violate, conflict with or result in the breach of any provision of the Organizational Documents of Buyer; or (c) conflict in any respect with, result in a breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any Consent under or give to others any right of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Lien pursuant to, any Contract to which such Buyer is a party or by which any of its assets or properties are bound or affected.

4.4 Consents. The execution and delivery of this Agreement and the performance of the Transactions by Buyer do not and will not require any Consent of any Governmental Authority or any other Person, other than as set forth on Schedule 4.4.

4.5 Proceedings. There are no Proceedings pending or, to Buyer's knowledge, threatened against or involving Buyer before or by any Governmental Authority which are material to Buyer or that could reasonably be expected to prevent, enjoin, alter or materially delay the Transactions.

4.6 Brokers. Neither Buyer nor any Affiliate of Buyer has any liability or obligation to pay fees or commissions to any investment banking firm, broker or finder with respect to the Transactions that could become a liability of Seller.

ARTICLE 5 **COVENANTS**

5.1 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall, and shall cause the Company to, (x) conduct the business of the Company in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the current organization, business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. Without limiting the foregoing, from the date hereof until the Closing Date, Seller shall:

- (k) cause the Company to preserve and maintain all of its Permits;
- (l) cause the Company to pay its debts, Taxes and other obligations when due;
- (m) cause the Company to maintain the properties and assets owned, operated or used by the Company in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
- (n) cause the Company to defend and protect its properties and assets from infringement or usurpation;
- (o) cause the Company to perform all of its obligations under all Contracts relating to or affecting its properties, assets or business;
- (p) cause the Company to maintain its books and records in accordance with past practice; and
- (q) cause the Company to comply in all material respects with all applicable Laws.

5.2 Access to Information. From the date hereof until the Closing, Seller shall, and shall cause the Company to, (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, Contracts and other documents and data related to the Company; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Company as Buyer or

any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller and the Company to cooperate with Buyer in its investigation of the Company. Any investigation pursuant to this Section 5.2 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of Seller or the Company. No investigation by Buyer, whether prior to or after the execution and delivery of this Agreement, or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement.

5.3 Notice of Certain Events.

(a) From the date hereof until the Closing, Seller shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.2 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions;

(iii) any notice or other communication from any Governmental Authority in connection with the Transactions; and

(iv) any Actions commenced or, to the Knowledge of Seller, threatened against, relating to or involving or otherwise affecting Seller or the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.10 or that relates to the consummation of the Transactions.

(b) Buyer's receipt of information pursuant to this Section 5.3 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement (including Section 8.2 and Section 9.1(b)) and shall not be deemed to amend or supplement the Schedules attached hereto.

5.4 Confidentiality.

(a) From and after the Closing, Seller shall, and shall cause its Affiliates and their Representatives (the "**Restricted Persons**") to, maintain the confidentiality of, and not use for their own benefit or the benefit of any other Person (except as and to the extent permitted by the terms of this Agreement), any confidential information to the extent relating to the Business.

(b) Neither Seller nor Buyer shall, and Seller and Buyer shall cause each of their respective Restricted Persons not to, disclose to any Person any information with respect to the legal, financial or other terms or conditions of this Agreement or the Transactions; provided that the foregoing does not restrict the right of any Party to disclose such information (i) to its respective Restricted Persons to the extent reasonably required to facilitate the negotiation, execution, delivery or performance of this Agreement and the Ancillary Agreements, (ii) to any Governmental Authority in connection with seeking the regulatory approvals in connection with this Agreement or the Ancillary Agreements, (iii) to any Governmental Authority in connection with any Proceeding relating to the enforcement of this Agreement or any Ancillary Agreement, (iv) that is or may (in Overstock's sole judgment) be required to be disclosed by Overstock pursuant to the Securities Act or the Exchange Act, or (v) in a press release, provided, however, that no Party may issue a press release containing information about the Transactions without the prior consent of the other Party, which consent may not be unreasonably withheld. Each Party shall advise its respective Restricted Persons with respect to the confidentiality obligations under this Section 5.4 and shall be responsible for any breach or violation of such obligations by its Restricted Persons.

(c) If a Party or any of its respective Restricted Persons becomes legally compelled to make any disclosure that is prohibited or otherwise restricted by this Section 5.4, then such Party shall, to the fullest extent legally permissible, (i) give the other Party prompt written notice of such requirement, (ii) consult with and assist the other Party in obtaining an injunction or other appropriate remedy to prevent such disclosure, (iii) use its commercially reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment shall be accorded to any information so disclosed and (iv) consult with the other Party in advance of such disclosure regarding the contents thereof. Subject to the previous sentence, the disclosing Party or such Restricted Persons may make only such disclosure that, in the opinion of its counsel, it is legally compelled or otherwise required to make to avoid standing liable for contempt or suffering other penalties.

5.5 Governmental Approvals and Consents.

(a) Each Party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Agreements. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Seller shall use reasonable best efforts to give or cause to be given all notices to, and obtain all consents from, FINRA.

(c) Without limiting the generality of the Parties' undertakings pursuant to subsections (a) and (b) above, each of the Parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or the Ancillary Agreements;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Agreement; and

(iii) in the event any Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Agreement has been issued, to have such Order vacated or lifted.

(d) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which the Company is a party is not obtained prior to the Closing, Seller shall, subsequent to the Closing, cooperate with Buyer and the Company in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, Seller shall use its reasonable best efforts to provide the Company with the rights and benefits of the affected Contract for the term thereof, and, if Seller provides such rights and benefits, the Company shall assume all obligations and burdens thereunder.

(e) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Seller or the Company with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(f) Notwithstanding the foregoing, nothing in this Section 5.5 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, the Company or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which,

in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

5.6 Books and Records.

(c) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of two (2) years after the Closing, Buyer shall:

(i) retain the books and records (including personnel files) of the Company relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company; and

(ii) upon reasonable notice, afford the Representatives of Seller reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such books and records;

provided, however, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in Article 6.

(d) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the Company after the Closing, or for any other reasonable purpose, for a period of two years following the Closing, Seller shall:

(i) retain the books and records (including personnel files) of Seller which relate to the Company and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Representatives of Buyer or the Company reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records;

provided, however, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in Article 6.

(e) Neither Buyer nor Seller shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 5.6 where such access would violate any Law.

5.7 Closing Conditions. From the date hereof until the Closing, each Party shall, and Seller shall cause the Company to, use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article 7 hereof.

5.8 Further Action. From time to time from the date hereof, as and when requested by any Party hereto, the requested Party shall use its commercially reasonable efforts to take or to cause to be taken, all actions and to do, or cause to be done, or to execute and deliver, or cause to be

executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other Party may reasonably deem necessary, proper or advisable to vest in Buyer good and valid title to the Shares and to consummate the Transactions, as promptly as practicable, including such actions as are necessary in connection with any regulatory filings as any Party may undertake in connection herewith.

ARTICLE 6

TAX MATTERS

6.1 Tax Covenants.

(c) Without the prior written consent of Buyer, Seller (and, prior to the Closing, the Company, its Affiliates and their respective Representatives) shall not, to the extent it may affect, or relate to, the Company, make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Buyer or the Company in respect of any Post-Closing Tax Period. Seller agrees that Buyer is to have no liability for any Tax resulting from any action of Seller, the Company, its Affiliates or any of their respective Representatives, and agree to indemnify and hold harmless Buyer (and, after the Closing Date, the Company) against any such Tax or reduction of any Tax asset.

(d) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Agreements (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Seller when due. Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

(e) Buyer shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Company after the Closing Date with respect to a Pre-Closing Tax Period. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and without a change of any election or any accounting method and shall be submitted by Buyer to Seller (together with schedules, statements and, to the extent requested by Seller, supporting documentation) at least forty-five (45) days prior to the due date (including extensions) of such Tax Return. If Seller objects to any item on any such Tax Return, they shall, within ten (10) days after delivery of such Tax Return, notify Buyer in writing that they so object, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, Buyer and Seller shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Buyer and Seller are unable to reach such agreement within ten (10) days after receipt by Buyer of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within twenty (20) days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such

Tax Return, the Tax Return shall be filed as prepared by Buyer and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and Seller. The preparation and filing of any Tax Return of the Company that does not relate to a Pre-Closing Tax Period shall be exclusively within the control of Buyer.

6.2 Termination of Existing Tax Sharing Agreements. Any and all existing Tax sharing agreements (whether written or not) binding upon the Company shall be terminated as of the Closing Date. After such date neither the Company, Seller nor any of Seller's Affiliates and their respective Representatives shall have any further rights or liabilities thereunder.

6.3 Tax Indemnification. Seller shall indemnify the Company, Buyer, and each Buyer Indemnitee and hold them harmless from and against (a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in Section 3.14; (b) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in this Article 6; (c) all Taxes of the Company or relating to the business of the Company for all Pre-Closing Tax Periods; (d) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor of the Company) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; and (e) any and all Taxes of any person imposed on the Company arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date. In each of the above cases, together with any out-of-pocket fees and expenses (including attorneys' and accountants' fees) incurred in connection therewith. Seller shall reimburse Buyer for any Taxes of the Company that are the responsibility of Seller pursuant to this Section 6.3 within ten (10) Business Days after payment of such Taxes by Buyer or the Company.

6.4 Straddle Period. In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "**Straddle Period**"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(g) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and

(h) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

6.5 Contests. Buyer agrees to give written notice to Seller of the receipt of any written notice by the Company, Buyer or any of Buyer's Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Buyer pursuant to this Article 6 (a "**Tax Claim**"); provided, that failure to comply with this provision

shall not affect Buyer's right to indemnification hereunder. Buyer shall control the contest or resolution of any Tax Claim; provided, however, that Buyer shall obtain the prior written consent of Seller (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a claim or ceasing to defend such claim; and, provided further, that Seller shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Seller.

6.6 Cooperation and Exchange of Information. Seller and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this Article 6 or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of Seller and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, Seller or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

6.7 Tax Treatment of Indemnification Payments. Any indemnification payments pursuant to this Article 6 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

6.8 Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.14 and this Article 6 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus sixty (60) days.

6.9 Overlap. To the extent that any obligation or responsibility pursuant to Article 7 may overlap with an obligation or responsibility pursuant to this Article 6, the provisions of this Article 6 shall govern.

ARTICLE 7

CONDITIONS TO CLOSING

7.1 Conditions to Obligations of All Parties. The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

- (c) All required filings with FINRA shall have been made.

(d) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(e) Seller shall have received all necessary consents, authorizations, orders and approvals from FINRA and any other Governmental Authorities referred to in Section 3.6 and Buyer shall have received all necessary consents, authorizations, orders and approvals from FINRA and any other Governmental Authorities referred to in Section 4.4, in each case, in form and substance reasonably satisfactory to Buyer and Seller, and no such consent, authorization, order and approval shall have been revoked.

7.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the Transactions shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(d) Other than the representations and warranties of Seller contained in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20, the representations and warranties of Seller contained in this Agreement, the Ancillary Agreements to which Seller is a party and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Seller contained in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(e) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the Ancillary Agreements to be performed or complied with by them prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, Seller shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(f) No Proceeding shall have been commenced against Buyer, Seller or the Company, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(g) All necessary FINRA approvals, consents and waivers shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(h) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(i) Seller shall have duly executed and delivered the Stock Power to Buyer.

(j) The other Ancillary Agreements shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Buyer.

(k) Seller shall have delivered the Shareholder Agreement, duly executed by the shareholders party thereto.

(l) Seller shall have delivered the Legal Opinion to Buyer.

(m) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of the Company and by Seller, that each of the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied.

(n) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying the names and signatures of the officers of the Company authorized to sign any of the Ancillary Agreements and the other documents to be delivered hereunder and thereunder.

(o) Seller shall have delivered confirmation of share delivery instructions at least two (2) Business Days prior to the Closing Date.

(p) Seller shall have delivered to Buyer a good standing certificate (or its equivalent) for the Company from the Secretary of State of the State of New York dated within five Business Days prior to the Closing.

(q) Seller shall have delivered to Buyer a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that such Seller is not a foreign person within the meaning of Section 1445 of the Code.

(r) Seller shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

7.3 Conditions to Obligations of Seller. The obligations of Seller to consummate the Transactions shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(i) Other than the representations and warranties of Buyer contained in Section 4.1 and Section 4.6, the representations and warranties of Buyer contained in this Agreement, the Ancillary Agreements and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in Section 4.1 and Section 4.6 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(j) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to which Buyer is a party to be performed or complied with by it prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(k) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(l) All necessary FINRA approvals, consents and waivers shall have been received, and executed counterparts thereof shall have been delivered to Seller at or prior to the Closing.

(m) The Ancillary Agreements shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Seller.

(n) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied.

(o) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(p) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers

of Buyer authorized to sign this Agreement, the Ancillary Agreements and the other documents to be delivered hereunder and thereunder.

(q) Overstock shall have instructed its transfer agent to issue to Seller the Overstock Shares having a market value equal to the Purchase Price in accordance with this Agreement.

(r) Buyer shall have delivered to Seller such other documents or instruments as Seller reasonably request and are reasonably necessary to consummate the transactions contemplated by this Agreement.

ARTICLE 8

INDEMNIFICATION

8.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date; provided, that the representations and warranties in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20 shall survive indefinitely. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching Party to the breaching Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

8.2 Indemnification by Seller. Subject to the other terms and conditions of this Article 8, Seller shall indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(s) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, the Ancillary Agreements or in any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(t) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement, the Ancillary Agreements or any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement; or

(u) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller or any of its Affiliates conducted, existing or arising on or prior to the Closing Date.

8.3 Indemnification by Buyer. Subject to the other terms and conditions of this Article 8, Buyer shall indemnify and defend Seller, its Affiliates and their respective Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(f) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(g) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or

(h) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Buyer or any of its Affiliates conducted, existing or arising after the Closing Date.

8.4 Certain Limitations. The indemnification provided for in Section 8.2 and Section 8.3 shall be subject to the following limitations:

(a) Seller shall not be liable to the Buyer Indemnitees for indemnification under Section 8.2(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.2(a) exceeds ten thousand dollars (\$10,000) (the “**Basket**”), in which event Seller shall be required to pay or be liable for all such Losses in excess of the Basket. The aggregate amount of all Losses for which Seller shall be liable pursuant to Section 8.2(a) shall not exceed fifteen percent (15%) of the Purchase Price (the “**Cap**”).

(b) Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 8.3(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.3(a) exceeds the Basket, in which event Buyer shall be required to pay or be liable for all such Losses in excess of the Basket. The aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 6.3(a) shall not exceed the Cap.

(c) Notwithstanding the foregoing, the limitations set forth in Section 8.4(a) shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20. The aggregate amount of all Losses for which Seller shall be liable pursuant to Section 8.1(a) based upon, arising out of,

with respect to or by reason of any inaccuracy in or breach of any representation or warranty in Section 3.1, Section 3.2, Section 3.3, Section 3.10, Section 3.14, Section 3.18 and Section 3.20 shall not exceed the Purchase Price.

(d) For purposes of this Article 8, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

8.5 Indemnification Procedures. The Party making a claim under this Article 8 is referred to as the “**Indemnified Party**”, and the Party against whom such claims are asserted under this Article 8 is referred to as the “**Indemnifying Party**”.

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Proceeding made or brought by any Person who is not a Party to this Agreement or an Affiliate of a Party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Business, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.5(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses

of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.5(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 8.6) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.5(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.5(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Proceeding initiated by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow

the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30)-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

8.6 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article 8, the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The Parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such fifteen (15) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to the lesser of (i) six percent (6%) and (ii) the maximum non-usurious rate allowed by applicable law. Such interest shall be calculated daily on the basis of a 365-day year and the actual number of days elapsed.

8.7 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

8.8 Exclusive Remedies. Subject to Section 5.4 and Section 10.8, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article 8. In furtherance of the foregoing, each Party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article 6. Nothing in this Section 8.8 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Party's fraudulent, criminal or intentional misconduct.

ARTICLE 9

TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(v) by the mutual written consent of Seller and Buyer;

(w) by Buyer by written notice to Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article 7 and such breach, inaccuracy or failure has not been cured by Seller within ten (10) days of Seller's receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in Section 7.1 or Section 7.2 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by November 1, 2015, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(x) by Seller by written notice to Buyer if Seller are not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article 7 and such breach, inaccuracy or failure has not been cured by Buyer within ten days of Buyer's receipt of written notice of such breach from Seller; or

(y) by Buyer or Seller in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued an Order restraining or enjoining the transactions contemplated by this Agreement, and such Order shall have become final and non-appealable.

9.2 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article 9, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(i) as set forth in this Article 9 and Section 5.3 and Article 10 hereof; and

(j) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

ARTICLE 10 **MISCELLANEOUS**

10.1 Notices.

(k) Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Seller:

Joseph Cammarata
109 White Oak Lane, Suite 200-P
Old Bridge, New Jersey 08857
Email: joe@joec.com

with a copy (which shall not constitute notice) to:

Stuart Moskowitz
Law Offices of Stuart J. Moskowitz, Esq.
4400 Route 9 South – Suite 1000
Freehold, New Jersey 07728
Email: stuartj@moskovitz.org

If to Buyer:

Medici, Inc.
c/o Overstock.com, Inc.
6530 South 3000 East
Salt Lake City, Utah 84121
Attention: Raj Karkara
Tel: (801) 947-3140
Email: rajkarkara@overstock.com

with a copy (which shall not constitute notice) to:

Bracewell & Giuliani LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701
Attention: Thomas W. Adkins
Tel: (512) 542-2122
Email: thomas.adkins@bgllp.com

(l) Notice given by personal delivery, mail or overnight courier pursuant to this Section 10.1 shall be effective upon physical receipt. Notice given by facsimile pursuant to this Section 10.1 shall be effective as of the date of confirmed delivery if delivered before 5:00 P.M. Eastern Time on any Business Day or the next succeeding Business Day if confirmed delivery is after 5:00 P.M. Eastern Time on any Business Day or during any non-Business Day

10.2 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement shall not be materially and adversely affected thereby, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

10.3 Assignment; Successors. Neither this Agreement nor any rights, obligations or interests hereunder may be assigned by any Party hereto except with the prior written consent of the other Parties; *provided, however*, that Buyer may, without the consent of Seller, assign any of its rights, interests and obligations under this Agreement to one or more Affiliate(s) of Buyer, which assignment shall not relieve Buyer of any obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and assigns.

10.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any facsimile or electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

10.5 Expenses. Except as otherwise expressly stated otherwise herein, all costs and expenses (including fees and disbursements of counsel, financial advisors and accountants) incurred or to be incurred in connection with this Agreement, the performance of its obligations hereunder and the consummation of the Transactions shall be paid by the Party incurring such costs and expenses.

10.6 Governing Law; Venue; Jurisdiction.

(b) This Agreement shall be governed by and construed in accordance with the Laws of the State of Utah, without giving effect to any conflict or choice of law provision that would require or permit the application of the Laws of any other jurisdiction.

(a) Each Party consents to personal jurisdiction in any action brought in any court, federal or state, within the City of Salt Lake City, Utah, having subject matter jurisdiction arising under this Agreement, and each of the Parties hereto agrees that any Proceeding instituted by either of them against the other with respect to this Agreement shall be instituted exclusively in a court, federal or state, within the City of Salt Lake City, Utah. Each Party to this Agreement hereby irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of such Proceeding. The Parties further agree, to the extent permitted by law, that a final and unappealable judgment against any of them in any Proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.

10.7 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT WAIVES TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THEM AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR ANY OTHER AGREEMENTS OR CERTIFICATES EXECUTED IN CONNECTION HERewith OR THEREWITH OR THE ADMINISTRATION THEREOF OR ANY OF THE TRANSACTION. NO PARTY TO THIS AGREEMENT SHALL SEEK A JURY TRIAL IN ANY PROCEEDING OR ANY OTHER LITIGATION PROCEDURE BASED UPON, OR ARISING OUT OF, THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY RELATED INSTRUMENTS OR THE RELATIONSHIP BETWEEN THE PARTIES. NO PARTY SHALL SEEK TO CONSOLIDATE ANY SUCH PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EACH PARTY TO THIS AGREEMENT CERTIFIES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY OTHER INSTRUMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH ABOVE IN THIS SECTION 10.7. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO THE OTHER PARTY THAT THE PROVISIONS OF THIS SECTION 10.7 SHALL NOT BE FULLY ENFORCED IN ALL INSTANCES.

10.8 Specific Performance. Each Party acknowledges and agrees that a breach of this Agreement would cause irreparable damage to the other Parties and that the non-breaching Parties shall not have an adequate remedy at law. Therefore, it is agreed that in the event of such a breach, the non-breaching Party shall be entitled to injunctive relief, specific performance or other equitable remedies to enforce the terms and provisions of this Agreement in any state or federal court sitting in the City of Salt Lake City, Utah, in addition to any other remedies it may have at law or in equity.

Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any Party may have under this Agreement or otherwise.

10.9 Entire Agreement. This Agreement, including the Schedules and Exhibits, together with the Ancillary Agreements, supersede all prior discussions and agreements among the Parties, both written and oral, with respect to the subject matter hereof, and contain the sole and entire agreement among the Parties with respect to the subject matter hereof.

10.10 Third Party Beneficiaries. This Agreement is not intended to and does not confer upon any Person other than the Parties or their permitted successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

10.11 Interpretive Matters.

(a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated;

(b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

(c) whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation” whether or not they are in fact followed by such words or words of similar import;

(d) the words “hereof,” “hereby,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

(f) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

(g) references to a Person are also to its successors and permitted assigns;

(h) the use of “or” is not intended to be exclusive unless expressly indicated otherwise; *provided* that the use of “or” preceded by the word “either” is intended to be exclusive;

(i) reference to “day” or “days” are to calendar days;

(j) any reference in this Agreement to “writing” or comparable expressions includes a reference to facsimile transmission or comparable means of communication;

(k) when a reference is made in this Agreement to “ordinary course of business,” such reference shall be deemed to be followed by “consistent (in scope and amount) with past practice”;

(l) “made available” with reference to any document or information provided by Seller hereunder means made available to Buyer or its representatives in the sharefile data room organized and maintained by Buyer’s counsel, as an accommodation to Seller, or otherwise e-mailed or delivered directly to Buyer or its Representatives; and

(m) any reference to a given Law is a reference to that Law and the rules and regulations adopted or promulgated thereunder, in each case, as amended, modified, supplemented or restated as of the date on which the reference is made and shall include any successor thereto, unless the context otherwise requires.

10.12 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party. Any amendment, modification or supplement to this Agreement not made in accordance with this Section 10.12 shall be void.

10.13 Waiver of Compliance. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, shall be cumulative and not alternative.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date first above written.

SELLER:

/s/ Joseph Cammarata
Joseph Cammarata

BUYER:

MEDICI, INC.

By: /s/ Michael Skirucha
Name: Michael Skirucha
Title: Secretary / Treasurer

[Signature Page to TraderField Securities, Inc. Stock Purchase Agreement]

EXHIBIT A

Form of Irrevocable Stock Power

IRREVOCABLE STOCK POWER

For value received, the undersigned hereby assigns and transfers to Medici, Inc., a Utah corporation, an aggregate of 160 shares of common stock of TraderField Securities, Inc., a New York corporation (the “Corporation”), currently held by the undersigned (the “Common Stock”), which represents 80% of the outstanding Common Stock of the Company, and the undersigned does hereby irrevocably constitute and appoint _____ as attorney-in-fact to transfer the Common Stock on the books of the Corporation, with full power of substitution in the premises, and ratifies and confirms all lawful actions taken by said attorney-in-fact by virtue hereof.

[Signature page immediately follows.]

Effective as of this ____ day of _____, 2015.

Joseph Cammarata

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EXHIBIT B

Form of Opinion to be Delivered by Counsel to Seller

_____, 2015

Medici, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

Re: Asset Purchase Agreement dated as of August 26, 2015

Ladies and Gentlemen:

We have acted as counsel for TraderField Securities Inc., a New York corporation (the “Company”) and Joseph Cammarata in connection with the transactions contemplated by the Stock Purchase Agreement dated as of August 26, 2015 (the “Agreement”), by and among Joseph Cammarata (the “Seller”) and Medici, Inc, a Utah corporation (“Buyer”). This opinion letter is delivered to you pursuant to Section 2.4(d) of the Agreement. Capitalized terms used herein and not otherwise defined herein have the meanings assigned to such terms in the Agreement.

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed necessary for the purposes of such opinions. We have examined (i) the proposed Agreement to be executed by the parties and the other agreements and instruments described therein to which the Seller is a party, which we assume will be executed and delivered in substantially the form of the drafts we have been provided, with all such agreements and instruments being collectively referred to herein as the “Transaction Documents,” and (ii) such other documents and records as we have deemed necessary and relevant for purposes hereof.

We have made such investigations of law and examined such other documents and records as we have deemed necessary and relevant as a basis for the opinions hereinafter expressed. Although the undersigned cannot and does not guarantee the accuracy and completeness of statements contained in this opinion or representations made by the Seller, in connection with this representation, investigation and due inquiry of the Company’s present officers and directors in the preparation of this opinion, nothing has come to the attention of the undersigned which causes him to believe that this opinion (except as to the financial statements and supporting financial and statistical data included or incorporated therein, as to which such counsel need express no opinion) or the representations by Seller pursuant to the Agreement, contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements

therein, in light of the circumstances in which they were made, not misleading. The foregoing qualification shall apply to all statements hereinafter.

Based upon the foregoing, and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that:

The Company is validly existing and in good standing as a corporation under the laws of the State of New York and is authorized or qualified to do business and in good standing as a foreign limited liability company in each jurisdiction where it is required to be so authorized or qualified. The Company has the limited liability company power and authority to own its properties and to carry on its business as it is now being conducted.

The Seller has full power and authority to execute and deliver the Agreement and each Transaction Document and perform his obligations thereunder. The Seller has taken all action necessary to authorize the execution, delivery and performance of the Agreement and each Transaction Document. The Seller has duly executed and delivered the Agreement and each Transaction Document.

The execution and delivery by the Seller of the Agreement and Transaction Documents to which he is a party do not, and the consummation of the transactions contemplated thereby will not (i) result in a violation or breach of any provision of the Company's Bylaws, a copy of which is attached hereto as an Exhibit; or (ii) result in a violation or breach of any provision of any law, rule or regulation applicable to the Company; or (iii) conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any contract, mortgage, indenture, lease, deed of trust, instrument or other agreement, known to us after due inquiry.

The Agreement and each Transaction Document constitutes, with respect to the Seller, a valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms.

The performance by the Seller of the transactions contemplated by the Agreement and the Transaction Documents will not result in or require the creation or imposition of any security interest or lien upon the shares of common stock of the Company owned by the Seller (the "Shares") and, assuming due execution and performance of Buyer's obligations under the Agreement and Transaction Documents the Shares will be duly and validly transferred to Buyer free and clear of any liens of record.

To our knowledge there are no outstanding options, warrants, contracts, commitments, agreements, understandings or other rights of any kind to purchase or subscribe for shares of common stock of the Company, or any securities convertible into or exchangeable for shares of common stock of the Company.

To our knowledge there are no legal proceedings (i) pending before any court or arbitration tribunal or (ii) overtly threatened in writing, in each case, against the Company that seek to enjoin or otherwise interfere directly with the transactions contemplated by the Transaction Documents.

No consent, approval, order or authorization by, or filing with, any governmental authority or agency is required in connection with the execution and delivery by the Company of the Agreement and the Transaction Documents and the consummation of the transactions contemplated thereby.

We express no opinion as to the effects of (i) bankruptcy, insolvency, fraudulent transfer and conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity) including the possible unavailability of specific performance or injunctive relief and the exercise of discretionary powers by any court before which specific performance or injunctive relief or other equitable remedies may be sought.

The opinions expressed herein are solely for the benefit of the addressees hereof in connection with the transaction referred to herein and may not be relied on by such addressees for any other purpose or in any manner, or furnished to or relied on for any purpose by any other person or entity, in each case without our prior written consent. This opinion letter is rendered as of the date set forth above. We expressly disclaim any obligation to update this opinion letter in any respect after such date. This opinion is strictly limited to the matters stated herein, and no other or more extensive opinion is intended, implied or to be inferred beyond the matters expressly stated herein.

Very truly yours,

**AMENDED AND RESTATED
BYLAWS
OF
OVERSTOCK.COM, INC.**

(a Delaware corporation)

(as of October 28, 2015)

AMENDED AND RESTATED

BYLAWS

OF

OVERSTOCK.COM, INC.

(a Delaware corporation)

(As of October 28, 2015)

ARTICLE I

CORPORATE OFFICES

1.1 REGISTERED OFFICE

The registered office of the corporation shall be fixed in the Certificate of Incorporation of the corporation.

1.2 OTHER OFFICES

The corporation may at any time establish additional offices at any place or places where the corporation is qualified to do business.

ARTICLE II

MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS

Meetings of stockholders shall be held at any place within or outside the State of Delaware designated from time to time by the board of directors. In the absence of any such designation, stockholders' meetings shall be held at the registered office of the corporation.

2.2 ANNUAL MEETING

The annual meeting of stockholders shall be held each year on a date and at a time designated from time to time by the board of directors. At the meeting, directors shall be elected, and any other proper business may be transacted.

2.3 SPECIAL MEETING

A special meeting of the stockholders may be called at any time only by the board of directors, the chairman of the board, the chief executive officer, or the president, but may not be called by any other person or persons.

If a special meeting is called by any person or persons other than the board of directors, the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the chairman of the board, the president, chief executive officer, or the

secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in the notice of such special meeting delivered to stockholders (or any supplement thereto).

2.4 NOTICE OF STOCKHOLDERS' MEETINGS

All notices of meetings of stockholders shall be sent or otherwise given in accordance with Section 2.5 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice shall specify the place, date, and hour of the meeting and (i) in the case of a special meeting, the purpose or purposes for which the meeting is called (no business other than that specified in the notice (or in any supplement thereto) may be transacted) or (ii) in the case of the annual meeting, those matters which the board of directors, at the time of giving the notice, intends to present for action by the stockholders. The notice of any meeting at which directors are to be elected shall include the name of any nominee or nominees who, at the time of the notice, the board intends to present for election.

2.5 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE

Written notice of any meeting of stockholders shall be given by first-class mail or by facsimile, telegraphic or other written communication or in such other manner as permitted by law. Notices shall be sent charges prepaid and shall be addressed to the stockholder at the address of that stockholder appearing on the books of the corporation or given by the stockholder to the corporation for the purpose of notice. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by telegram or other means of written communication.

If any notice addressed to a stockholder at the address of that stockholder appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the stockholder at that address, then all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available to the stockholder on written demand of the stockholder at the principal executive office of the corporation for a period of one (1) year from the date of the giving of the notice.

An affidavit of the mailing or other means of giving any notice (or supplement thereto) of any stockholders' meeting, executed by the secretary, assistant secretary or any transfer agent of the corporation giving the notice, shall be prima facie evidence of the giving of such notice (or supplement thereto).

2.6 QUORUM

The presence in person or by proxy of the holders of a majority of the shares entitled to vote thereat constitutes a quorum for the transaction of business at all meetings of stockholders. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business for which such meeting is called until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

2.7 ADJOURNED MEETING; NOTICE

Any stockholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the shares represented at that meeting, either in person or by proxy. In the absence of a quorum, no other business may be transacted at that meeting except as has been transacted while a quorum was present, if any, as provided in Section 2.6 of these bylaws.

When any meeting of stockholders, either annual or special, is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place are announced at the meeting at which the adjournment is taken. However, if a new record date for the adjourned meeting is fixed or if the adjournment is for more than thirty (30) days from the date set for the original meeting, then notice of the adjourned meeting shall be given. Notice of any such adjourned meeting shall be given to each stockholder of record entitled to vote at the adjourned meeting in accordance with the provisions of Sections 2.4 and 2.5 of these bylaws. At any adjourned meeting the corporation may transact any business which might have been transacted at the original meeting.

2.8 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of these bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners, and to voting trusts and other voting agreements).

Except as may be otherwise provided in the Certificate of Incorporation, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote of the stockholders.

If a quorum is present, the affirmative vote of the majority of the shares represented and voting at a duly held meeting (which shares voting affirmatively also constitute at least a majority of the required quorum) shall be the act of the stockholders, unless the vote of a greater number or a vote by classes is required by law, by the Certificate of Incorporation or by these bylaws. The board of directors, in its discretion, or the officer of the corporation presiding at a meeting of stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Unless otherwise provided in the Amended and Restated Certificate of Incorporation (as amended and restated from time to time, the "Restated Certificate of Incorporation"), a stockholder shall not be entitled to cumulate votes at any meeting.

2.9 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Stockholders of the corporation may not take action by written consent in lieu of a meeting.

2.10 RECORD DATE FOR STOCKHOLDER NOTICE AND VOTING

For purposes of determining the stockholders entitled to notice of any meeting or to vote thereat, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten (10) days before the date of any such meeting, and in such event only stockholders of record on the date so fixed are entitled to notice and to vote, notwithstanding any transfer of any shares on the books of the corporation after the record date.

If the board of directors does not so fix a record date, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting. The record date for any purpose other than

determining entitlement to notice of and to vote at a meeting of stockholders shall be as provided in Article VIII of these bylaws.

2.11 PROXIES

Every person entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the secretary of the corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The provisions of Section 212(e) of the General Corporation Law of Delaware shall govern the revocability of a proxy that states on its face that it is irrevocable.

2.12 INSPECTORS OF ELECTION

The board of directors of the corporation may adopt by resolution such rules and regulations for the conduct of the meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the board of directors, the chairman of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the board of directors or prescribed by the chairman of the meeting, and such acts may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; (vi) limitations on the time allotted to questions or comments by participants; (vii) determination of the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies; (viii) counting and tabulation of all votes or consents; (ix) hearing and determining all challenges and questions in any way arising in connection with the right to vote; (x) any other acts that may be proper to conduct the election or vote with fairness to all stockholders and (xi) the appointment of an inspector or inspectors of election to act at the meeting or its adjournment in respect of one or more of the foregoing matters. The board of directors or chairman may hear and determine all challenges and questions in any way arising in connection with the right to vote.

2.13 NOTICE OF STOCKHOLDER BUSINESS TO BE BROUGHT BEFORE A MEETING.

(a) Business Properly Brought Before a Meeting. At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) brought before the meeting by the corporation and specified in the notice of meeting given by or at the direction of the Board of Directors, (ii) brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the corporation) both at the time of giving the

notice provided for in this Section 2.13 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 2.13 as to such business. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the “*Exchange Act*”), and included in the notice of meeting given by or at the direction of the Board of Directors, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. Stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders, and the only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Section 2.3 of these Bylaws. Stockholders seeking to nominate persons for election to the Board must comply with Section 2.14 of these Bylaws, and this Section 2.13 shall not be applicable to nominations except as expressly provided in Section 2.14 of these Bylaws.

(b) Requirement of Timely Notice of Stockholder Business. Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.13. To be timely, a stockholder’s notice must be delivered to, or mailed and received at, the principal executive offices of the corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one year anniversary of the preceding year’s annual meeting; *provided, however*, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not earlier than the one hundred twentieth (120th) day prior to such annual meeting and not later than the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, “*Timely Notice*”). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.

(c) Requirements for Proper Form of Stockholder Notice of Proposed Business. To be in proper form for purposes of this Section 2.13, a stockholder’s notice to the Secretary shall set forth:

(i) Stockholder Information. As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the corporation’s books and records) and (B) the class or series and number of shares of the corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (A) and (B) are referred to as “*Stockholder Information*”);

(ii) Information Regarding Disclosable Interests. As to each Proposing Person, (A) any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar to ownership of shares of any class or series of the corporation, including due to the fact that the value of such derivative, swap or other transactions is determined by reference to the price, value or volatility of any shares of any class or series of the corporation, or which derivative, swap or

other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the corporation (“*Synthetic Equity Interests*”), which Synthetic Equity Interests shall be disclosed without regard to whether (x) such derivative, swap or other transactions convey any voting rights in such shares to such Proposing Person, (y) the derivative, swap or other transactions are required to be, or are capable of being, settled through delivery of such shares or (z) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transactions, (B) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of the corporation, (C) any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to the shares of any class or series of the corporation, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the corporation (“*Short Interests*”), (D) any pending or threatened litigation in which such Proposing Person is a party or material participant or has an economic interest, (E) any performance related fees (other than an asset based fee) that such Proposing Person is entitled to based on any increase or decrease in the price or value of shares of any class or series of the corporation, or any Synthetic Equity Interests or Short Interests, if any, and (F) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (F) are referred to as “*Disclosable Interests*”); *provided, however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder of record directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner; and

(iii) Description of Proposed Business. As to each item of business the stockholder proposes to bring before the annual meeting, (A) a reasonably brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration), and (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder.

(iv) Definition of Proposing Person. For purposes of this Section 2.13, the term “*Proposing Person*” shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner.

(d) Update and Supplement of Stockholder Notice of Proposed Business. A stockholder providing notice of business proposed to be brought before an annual meeting shall further

update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.13 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or any adjournment or postponement thereof, if practicable (or, if not practicable, on the first practicable date prior to the date for the meeting or such adjournment or postponement thereof) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof, as applicable).

(e) Business Not Properly Brought Before A Meeting. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with this Section 2.13. The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.13, and if he or she should so determine, he or she shall so declare to the meeting and any such business shall not be transacted.

(f) Rule 14a-8; Exchange Act Compliance. This Section 2.13 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made pursuant to Rule 14a-8 under the Exchange Act. In addition to the requirements of this Section 2.13 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 2.13 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(g) Definition of Public Disclosure. For purposes of these Bylaws, "*public disclosure*" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

2.14 NOMINATIONS.

(a) Who May Make Nominations. Nominations of any person for election to the Board of Directors at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (i) by or at the direction of the Board of Directors, including by any committee or persons appointed by the Board of Directors, or (ii) by a stockholder who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such nomination is proposed to be made, only if such beneficial owner was the beneficial owner of shares of the corporation) both at the time of giving the notice provided for in this Section 2.14 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 2.14 as to such nomination. The foregoing clause (ii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting or special meeting.

(b) Requirement of Timely Notice of Stockholder Nominations. Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting, the stockholder must (i) provide Timely Notice (as defined in Section 2.13 of these Bylaws) thereof in writing and in proper form to the Secretary of the corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.14. Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board of Directors at a special meeting, the stockholder must (i) provide timely notice thereof in writing and in proper form to the Secretary of the corporation at the principal executive offices of the corporation, and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.14. To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the ninetieth (90th) day prior to such special meeting or, if later, the tenth (10th) day following the day on which public disclosure (as defined in Section 2.13 of these Bylaws) of the date of such special meeting was first made. In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) Requirements for Proper Form of Notice of Stockholder Nominations. To be in proper form for purposes of this Section 2.14, a stockholder's notice to the Secretary shall set forth:

(i) Stockholder Information. As to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 2.13(c)(i), except that for purposes of this Section 2.14, the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.13(c)(i));

(ii) Information Regarding Disclosable Interests. As to each Nominating Person, any Disclosable Interests (as defined in Section 2.13(c)(ii), except that for purposes of this Section 2.14 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.13(c)(ii)), and the disclosure in clause (F) of Section 2.13(c)(ii) shall be made with respect to the election of directors at the meeting;

(iii) Information Regarding Proposed Nominees. As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to this Section 2.14 if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), and (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Nominating Person, on the one hand, and each proposed nominee, his or her respective affiliates and associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant; and

(iv) Other Information to be Furnished by Proposed Nominees. The corporation may require any proposed nominee to furnish such other information (A) as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director of the corporation in accordance with applicable requirements or (B) that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee.

(v) Definition of Nominating Person. For purposes of this Section 2.14, the term "*Nominating Person*" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and (iii) any affiliate or associate of such stockholder or beneficial owner.

(d) Update and Supplement of Stockholder Notice of Nominations. A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.14 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to the date for the meeting or such adjournment or postponement thereof) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof, as applicable).

(e) Defective Nominations. Notwithstanding anything in these Bylaws to the contrary, no person shall be eligible for election as a director of the corporation unless nominated in accordance with this Section 2.14. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 2.14, and if he or she should so determine, he or she shall so declare such determination to the meeting and the nomination shall be disregarded.

(f) Compliance with Exchange Act. In addition to the requirements of this Section 2.15 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

ARTICLE III

DIRECTORS

3.1 POWERS

Subject to the provisions of the General Corporation Law of Delaware and to any limitations in the Restated Certificate of Incorporation or these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

3.2 NUMBER AND TERM OF OFFICE

The authorized number of directors shall be established from time to time by resolution of the board of directors.

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 RESIGNATION AND VACANCIES

Any director may resign effective on giving notice in writing or by electronic transmission to the chairman of the board, the president, the secretary or the board of directors, unless the notice specifies a later time for that resignation to become effective. If the resignation of a director is effective at a future time, the board of directors (including such director whose resignation is to be effective at a later time) may elect a successor to take office when the resignation becomes effective.

Unless otherwise required by law or the Restated Certificate of Incorporation, vacancies arising through death, resignation, removal, an increase in the number of directors or otherwise may be filled only by a majority of the directors then in office, though less than a quorum, or by a sole remaining director. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified, or until such director's earlier death, resignation or removal. No decrease in the number of directors constituting the board of directors shall shorten the term of any incumbent director.

3.4 REMOVAL

Any director may be removed from office at any time only with cause by the affirmative vote of the holders of at least a majority of the then outstanding shares of the capital stock of the corporation entitled to vote at an election of directors.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

Regular meetings of the board of directors may be held at any place within or outside the State of Delaware that has been designated from time to time by resolution of the board. In the absence of such a designation, regular meetings shall be held at the principal executive office of the corporation. Special meetings of the board may be held at any place within or outside the State of Delaware that has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, at the principal executive office of the corporation.

Any meeting, regular or special, may be held by conference telephone or other communication equipment, so long as all directors participating in the meeting can hear one another; and all such directors shall be deemed to be present in person at the meeting.

3.6 REGULAR MEETINGS

Regular meetings of the board of directors may be held without notice if the board of directors fixes the times of such meetings.

3.7 SPECIAL MEETINGS; NOTICE

The chairman of the board, the president, or any two directors may call special meetings of the board of directors for any purpose or purposes at any time.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail, facsimile, electronic transmission or telegram, charges prepaid, addressed to each director at that director's address or, in the case of notice delivered by electronic mail, the director's electronic mail address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by notice, facsimile or electronic transmission, it shall be delivered personally or by telephone, facsimile machine or appropriate means of electronic communication at least forty-eight (48) hours before the time of the holding of the meeting or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. An affidavit of the secretary or an assistant secretary of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

3.8 QUORUM

Except as otherwise required by law, a majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 3.11 of these bylaws. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the board of directors, subject to the provisions of the Certificate of Incorporation and applicable law.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

3.9 WAIVER OF NOTICE

Notice of a meeting need not be given to any director (a) who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or (b) who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such directors. All such waivers, consents, and approvals shall be filed with the corporate records or made part of the minutes of the meeting. A waiver of notice need not specify the purpose of any regular or special meeting of the board of directors.

3.10 ADJOURNMENT

A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

3.11 NOTICE OF ADJOURNMENT

Notice of the time and place of holding an adjourned meeting need not be given unless the meeting is adjourned for more than twenty-four (24) hours. If the meeting is adjourned for more than twenty-four (24) hours, then notice of the time and place of the adjourned meeting shall be given before

the adjourned meeting takes place, in the manner specified in Section 3.7 of these bylaws, to the directors who were not present at the time of the adjournment.

3.12 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Any action required or permitted to be taken by the board of directors may be taken without a meeting, provided that all the members of the board individually or collectively consent in writing or by electronic transmission to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the board of directors. Such written consent and any counterparts thereof or electronic transmission or transmissions shall be filed with the minutes of the proceedings of the board. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

3.13 FEES AND COMPENSATION OF DIRECTORS

Directors and members of committees may receive such compensation, if any, for their services and such reimbursement of expenses as may be fixed or determined by resolution of the board of directors. This Section 3.13 shall not be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee or otherwise and receiving compensation for those services.

3.14 APPROVAL OF LOANS TO EMPLOYEES

To the extent permitted by law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any employee of the corporation or of its subsidiaries, including any employee who is a director of the corporation or one of its subsidiaries, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this section shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

3.15 INTERESTED DIRECTORS

No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board of directors or committee thereof which authorizes the contract or transaction, or solely because the director or officer's vote is counted for such purpose if (a) the material facts as to the director or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (b) the material facts as to the director or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the corporation as of the time it

is authorized, approved or ratified by the board of directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

ARTICLE IV

COMMITTEES

4.1 COMMITTEES OF DIRECTORS

The board of directors may designate one (1) or more committees, each consisting of one (1) or more directors, to serve at the pleasure of the board. The board may designate one (1) or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the board of directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; provided, however, that no such committee shall have the power or authority to (i) amend the Restated Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of directors as provided in Section 151(a) of the General Corporation Law of Delaware, fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation), (ii) adopt an agreement of merger or consolidation under Sections 251 or 252 of the General Corporation Law of Delaware, (iii) recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, (iv) recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution, or (v) amend the bylaws of the corporation; and, unless the board resolution establishing the committee, the bylaws or the Restated Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law of Delaware. Each committee shall keep regular minutes and report to the board of directors when required

4.2 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these bylaws, Section 3.5 (place of meetings), Section 3.6 (regular meetings), Section 3.7 (special meetings and notice), Section 3.8 (quorum), Section 3.9 (waiver of notice), Section 3.10 (adjournment), Section 3.11 (notice of adjournment), and Section 3.12 (action without meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the board of directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the board of directors, and that notice of special meetings of committees shall also be given to all alternate

members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V

OFFICERS

5.1 OFFICERS

The officers of the corporation shall be a president, a secretary, and a chief financial officer. The corporation may also have, at the discretion of the board of directors, a chairman of the board, a chief executive officer, a treasurer, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws. The same person may hold any number of offices.

5.2 ELECTION OF OFFICERS

The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 or Section 5.5 of these bylaws, shall be chosen by the board of directors, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS

The board of directors may appoint, or may empower the chief executive officer or president to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the board of directors at any regular or special meeting of the board or, except in case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to that office.

5.6 CHAIRMAN OF THE BOARD

The chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be

assigned to him by the board of directors or as may be prescribed by these bylaws. If there is no chief executive officer, then the chairman of the board shall also be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 5.7 of these bylaws.

5.7 CHIEF EXECUTIVE OFFICER

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, if there be such an officer, the chief executive officer shall be subject to the control of the board of directors and have general supervision, direction and control of the business. He or she shall preside at all meetings of the stockholders and, in the absence or non-existence of the chairman of the board, at all meetings of the board of directors. He or she shall have the general powers and duties of management usually vested in the office of the chief executive officer of a corporation, and shall have such other powers and perform such other duties as from time to time may be prescribed by the board of directors or these bylaws.

5.8 PRESIDENT

In the absence or disability of the chief executive officer, and if there is no chairman of the board, the president shall perform all the duties of the chief executive officer and when so acting shall have the power of, and be subject to all the restrictions upon, the chief executive officer. The president shall have such other powers and perform such other duties as from time to time may be prescribed for the president by the board of directors, these bylaws, the chief executive officer or the chairman of the board.

5.9 VICE PRESIDENTS

In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors, these bylaws, the president or the chairman of the board.

5.10 SECRETARY

The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required to be given by law or by these bylaws. He shall keep the seal of the

corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these bylaws.

5.11 CHIEF FINANCIAL OFFICER

The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all money and other valuables in the name and to the credit of the corporation with such depositaries as may be designated in accordance with procedures established by the board of directors. He shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his transactions as chief financial officer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS,

OFFICERS, EMPLOYEES, AND OTHER AGENTS

6.1 POWER TO INDEMNIFY IN ACTIONS, SUITS OR PROCEEDINGS OTHER THAN THOSE BY OR IN THE RIGHT OF THE CORPORATION

Subject to Section 6.3 of this Article VI, the corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director or officer of the corporation, or is or was a director or officer of the corporation serving at the request of the corporation as a director or officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

6.2 POWER TO INDEMNIFY IN ACTIONS, SUITS OR PROCEEDINGS BY OR IN THE RIGHT OF THE CORPORATION

Subject to Section 6.3 of this Article VI, the corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or

in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the corporation, or is or was a director or officer of the corporation serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

6.3 AUTHORIZATION OF INDEMNIFICATION

Any indemnification under this Article VI (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 6.1 or Section 6.2 of this Article VI, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (a) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (b) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (d) by the stockholders (but only if a majority of the directors who are not parties to such action, suit or proceeding, if they constitute a quorum of the board of directors, presents the issue of entitlement to indemnification to the stockholders for their determination). Any person or persons having the authority to act on the matter on behalf of the corporation shall make such determination, with respect to former directors and officers. To the extent, however, that a present or former director or officer of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

6.4 GOOD FAITH DEFINED

For purposes of any determination under Section 6.3 of this Article VI, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the corporation or another enterprise, or on information supplied to such person by the officers of the corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the corporation or another enterprise or on information or records given or reports made to the corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the corporation or another enterprise. The term "another enterprise" as used in this Section 6.4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the corporation as a director, officer, employee or agent. The provisions of this Section 6.4

shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 6.1 or 6.2 of this Article VI, as the case may be.

6.5 INDEMNIFICATION BY A COURT

Notwithstanding any contrary determination in the specific case under Section 6.3 of this Article VI, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery in the State of Delaware for indemnification to the extent otherwise permissible under Sections 6.1 and 6.2 of this Article VI. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 6.1 or 6.2 of this Article VI, as the case may be. Neither a contrary determination in the specific case under Section 6.3 of this Article VI nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 6.5 shall be given to the corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

6.6 EXPENSES PAYABLE IN ADVANCE

Expenses incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this Article VI.

6.7 NONEXCLUSIVITY OF INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

The indemnification and advancement of expenses provided by or granted pursuant to this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Restated Certificate of Incorporation, any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the corporation that indemnification of the persons specified in Sections 6.1 and 6.2 of this Article VI shall be made to the fullest extent permitted by law. The provisions of this Article VI shall not be deemed to preclude the indemnification of any person who is not specified in Section 6.1 or 6.2 of this Article VI but whom the corporation has the power or obligation to indemnify under the provisions of the General Corporation Law of the State of Delaware, or otherwise.

6.8 INSURANCE

The corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation, or is or was a director or officer of the corporation serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VI.

6.9 CERTAIN DEFINITIONS

For purposes of this Article VI, references to “the corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VI, references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Article VI.

6.10 SURVIVAL OF INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

6.11 LIMITATION ON INDEMNIFICATION

Notwithstanding anything contained in this Article VI to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 6.5 hereof), the corporation shall not be obligated to indemnify any director or officer in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the board of directors of the corporation.

6.12 INDEMNIFICATION OF EMPLOYEES AND AGENTS

The corporation may, to the extent authorized from time to time by the board of directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the corporation similar to those conferred in this Article VI to directors and officers of the corporation.

ARTICLE VII

RECORDS AND REPORTS

7.1 MAINTENANCE AND INSPECTION OF RECORDS

The corporation shall, either at its principal executive office or at such place or places as designated by the board of directors, keep a record of its stockholders listing their names and addresses

and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this Section shall require the corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

7.2 INSPECTION BY DIRECTORS

Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

7.3 REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The chairman of the board, the chief executive officer, the president or any other person authorized by the board of directors or the chief executive officer or president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

ARTICLE VIII

GENERAL MATTERS

8.1 RECORD DATE FOR PURPOSES OTHER THAN NOTICE AND VOTING

For purposes of determining the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any other lawful action (other than as provided in Article II hereof), the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days before any such action. In that case, only stockholders of record at the close of business on the date so fixed are entitled to receive the dividend, distribution or allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date so fixed, except as otherwise provided by law.

If the board of directors does not so fix a record date, then the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board adopts the applicable resolution or the sixtieth (60th) day before the date of that action, whichever is later.

8.2 CHECKS; DRAFTS; EVIDENCES OF INDEBTEDNESS

From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

8.3 CORPORATE CONTRACTS AND INSTRUMENTS: HOW EXECUTED

The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.4 STOCK CERTIFICATES

The shares of a corporation shall be represented by certificates; provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of the stock of the corporation shall be uncertificated shares; provided further, however, that no shares of the corporation designated or otherwise identified by the board of directors or by the corporation prior to the issuance thereof as digital or cryptographic shares or as shares to be issued in digital or cryptographic form (any such shares being herein called "*Digital Shares*") shall be represented by certificates. Any such resolution of the board of directors providing for uncertificated shares shall not apply to shares then represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates, and upon request every holder of uncertificated shares (other than any holder of Digital Shares, with respect to such Digital Shares), shall be entitled to have a certificate signed in the name of the corporation by (a) the chairman or vice-chairman of the board of directors, or the chief executive officer, president or any vice-president of the corporation, and by (b) the chief financial officer,

treasurer, assistant treasurer, secretary or an assistant secretary of the corporation representing the number of then uncertificated shares to be registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

8.5 SPECIAL DESIGNATION ON CERTIFICATES

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

8.6 LOST CERTIFICATES

Except as provided in this Section 8.6, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and canceled at the same time. The board of directors may, in case any share certificate or certificate for any other security is lost, stolen or destroyed, authorize the issuance of replacement certificates on such terms and conditions as the board may require; the board may require indemnification of the corporation secured by a bond or other adequate security sufficient to protect the corporation against any claim that may be made against it, including any expense or liability, on account of the alleged loss, theft or destruction of the certificate or the issuance of the replacement certificate.

8.7 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the General Corporation Law of Delaware shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “person” includes both a corporation and a natural person. Also without limiting the generality of this provision, for purposes of these Bylaws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

ARTICLE IX

AMENDMENTS

These bylaws of the corporation may be altered, amended or repealed, in whole or in part, or new bylaws may be adopted, by the stockholders entitled to vote or by the board of directors. All such amendments must be approved by either the holders of sixty-six and two thirds percent (66-2/3%) of the

voting power of outstanding capital stock entitled to vote at an election of directors or by a majority of the board of directors then in office. The fact that such power has been so conferred upon the board of directors shall not divest the stockholders of the power, nor limit their power to adopt, alter, amend or repeal bylaws.

ARTICLE X.

EXCLUSIVE FORUM

Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the corporation to the corporation or the corporation's stockholders, (iii) any action asserting a claim against the corporation or any director or officer or other employee of the corporation arising pursuant to any provision of the Delaware General Corporation Law or the corporation's Certificate of Incorporation or Bylaws (as either may be amended from time to time), or (iv) any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware), in all cases to the fullest extent permitted by applicable law and subject to the court's having personal jurisdiction over the indispensable parties named as defendants.

CERTIFICATION

I, Patrick M. Byrne, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Overstock.com, 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(s) 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 Rules 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. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. 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
 - d. 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(s) 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.

Date: November 9, 2015

/s/ PATRICK M. BYRNE

Patrick M. Byrne

Chief Executive Officer

(principal executive officer)

CERTIFICATION

I, Robert P. Hughes, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Overstock.com, 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(s) 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 Rules 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. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. 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
 - d. 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(s) 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.

Date: November 9, 2015

/s/ ROBERT P. HUGHES

Robert P. Hughes

Senior Vice President, Finance and Risk Management
(principal financial officer)

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Patrick M. Byrne, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Overstock.com, Inc. on Form 10-Q for the quarter ended September 30, 2015 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Overstock.com, Inc.

Date: November 9, 2015

/s/ PATRICK M. BYRNE

Patrick M. Byrne

Chief Executive Officer

(principal executive officer)

CERTIFICATION OF CHIEF FINANCIAL OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Robert P. Hughes, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Overstock.com, Inc. on Form 10-Q for the quarter ended September 30, 2015 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Overstock.com, Inc.

Date: November 9, 2015

/s/ ROBERT P. HUGHES

Robert P. Hughes

Senior Vice President, Finance and Risk Management

(principal financial officer)