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

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended January 3, 2020

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission File Number: 001-36040



Fox Factory Holding Corp.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

26-1647258

(I.R.S. Employer Identification No.)

6634 Hwy 53, Braselton GA 30517

(Address of Principal Executive Offices) (Zip Code)

(831) 274-6500

(Registrant's Telephone Number, Including Area Code)

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, par value \$0.001 per share	FOXF	The NASDAQ Stock Market LLC (NASDAQ Global Select Market)

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

None

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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), and (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 every Interactive Data File required to be submitted 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 such files). Yes No

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

If any emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

Based upon the closing price of the registrant's common stock on the NASDAQ Global Select Market on June 28, 2019 (the last business day of the registrant's most recently completed second fiscal quarter), the approximate aggregate market value of the common stock held by non-affiliates of the registrant was approximately \$1,991,818,000. As of February 28, 2020, there were 38,602,699 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Definitive Proxy Statement for the 2020 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K are incorporated by reference in Part III, Items 10-14 of this Annual Report on Form 10-K.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K includes forward-looking statements, which are subject to the “safe harbor” created by Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). We may make forward-looking statements in our U.S. Securities and Exchange Commission (“SEC”) filings, press releases, news articles, earnings presentations and when we are speaking on behalf of the Company. Forward-looking statements generally relate to future events or our future financial or operating performance that involve substantial risks and uncertainties. In some cases, you can identify forward-looking statements because they contain words such as “may,” “might,” “will,” “would,” “should,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplate,” “believe,” “estimate,” “predict,” “likely,” “potential” or “continue” or the negative of these words or other similar terms or expressions that concern our expectations, strategy, plans or intentions. Forward-looking statements contained in this Annual Report on Form 10-K are subject to numerous risks and uncertainties, including but not limited to risks related to:

- *our ability to develop new and innovative products in our current end-markets;*
 - *our ability to leverage our technologies and brand to expand into new categories and end-markets;*
 - *our ability to increase our aftermarket penetration;*
 - *our ability to accelerate international growth;*
 - *our exposure to exchange rate fluctuations;*
 - *the loss of key customers;*
 - *our ability to improve operating and supply chain efficiencies;*
 - *our ability to enforce our intellectual property rights;*
 - *our future financial performance, including our sales, cost of sales, gross profit or gross margins, operating expenses, ability to generate positive cash flow and ability to maintain our profitability;*
 - *our ability to maintain our premium brand image and high-performance products;*
 - *our ability to maintain relationships with the professional athletes and race teams we sponsor;*
 - *our ability to selectively add additional dealers and distributors in certain geographic markets;*
 - *the growth of the markets in which we compete, our expectations regarding consumer preferences and our ability to respond to changes in consumer preferences;*
 - *changes in demand for performance-defining products;*
 - *the loss of key personnel, management and skilled engineers;*
 - *our ability to successfully identify, evaluate and manage potential or completed acquisitions and to benefit from such acquisitions;*
 - *the outcome of pending litigation;*
 - *future disruptions in the operations of our manufacturing facilities;*
 - *our ability to adapt our business model to mitigate the impact of certain changes in tax laws including those enacted in the U.S. in December 2017;*
 - *changes in the relative proportion of profit earned in the numerous jurisdictions in which we do business and in tax legislation, case law and other authoritative guidance in those jurisdictions;*
 - *products recalls and product liability claims; and*
 - *future economic or market conditions.*
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You should not rely upon forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this Annual Report on Form 10-K primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition, results of operations, and prospects and the outcomes of any of the events described in any forward-looking statements are subject to risks, uncertainties, and other factors. In addition to the risks, uncertainties and other factors discussed above and elsewhere in this Annual Report on Form 10-K, the risks, uncertainties and other factors expressed or implied discussed in Item 1A. "Risk Factors" of this Annual Report on Form 10-K could cause or contribute to actual results differing materially from those set forth in any forward-looking statement. Moreover, we operate in a very competitive and challenging environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this Annual Report on Form 10-K. We cannot assure you that the results, events, and circumstances reflected in the forward-looking statements will be achieved or occur. Actual results, events, or circumstances could differ materially from those contemplated by, set forth in, or underlying any forward-looking statements.

For all of these forward-looking statements, we claim the protection of the safe harbor for forward-looking statements in Section 27A of the Securities Act and Section 21E of the Exchange Act.

The forward-looking statements made in this Annual Report on Form 10-K relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this Annual Report on Form 10-K to reflect events or circumstances after the date of this Annual Report on Form 10-K or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions, or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make.

Fox Factory Holding Corp.
FORM 10-K
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PART I

ITEM 1. BUSINESS

Our company, Fox Factory Holding Corp., designs, engineers, manufactures and markets performance-defining products and systems for customers worldwide. Fox Factory Holding Corp. is the holding company of Fox Factory, Inc. As used herein, "Fox Factory," "FOX," the "Company," "we," "our," and similar terms refer to Fox Factory Holding Corp. and its subsidiaries, unless the context indicates otherwise. Our premium brand, performance-defining products and systems are used primarily on bicycles ("bikes"), side-by-side vehicles ("Side-by-Sides"), on-road vehicles with and without off-road capabilities, off-road vehicles and trucks, all-terrain vehicles ("ATVs"), snowmobiles, specialty vehicles and applications, motorcycles and commercial trucks. Some of our products are specifically designed and marketed to some of the leading cycling and powered vehicle original equipment manufacturers ("OEMs"), while others are distributed to consumers through a global network of dealers and distributors.

Fox Factory, Inc., our operating subsidiary, was incorporated in California in 1978. Fox Factory Holding Corp. was incorporated in Delaware on December 28, 2007. In October 2018, we announced the relocation of our corporate headquarters from Scotts Valley, California to Braselton, Georgia, which was effective on December 31, 2018.

In August 2013, we completed an initial public offering ("IPO") of our common stock. Our common stock is traded on the NASDAQ Global Select Market (the "NASDAQ") under the symbol "FOXF."

Description of our business

We are a designer, manufacturer and marketer of performance-defining products and systems used primarily on bikes, Side-by-Sides, on-road vehicles with and without off-road capabilities, off-road vehicles and trucks, ATVs, snowmobiles, specialty vehicles and applications, motorcycles, and commercial trucks. We believe our products offer innovative design, performance, durability and reliability. Our brand is associated with high-performance and technologically advanced products, by which we generally mean products that provide users with improved control and comfort while riding over rough terrain in varied environments, or providing improved control and responsiveness for on-road only vehicles. We believe that the performance of our products has been demonstrated by, and our brand benefits from, the success of professional athletes who use our products in elite competitive events, such as the Union Cycliste Internationale Mountain Bike World Cup and the X Games. We believe the exposure our products receive when used by successful professional athletes positively influences the purchasing habits of enthusiasts and other consumers seeking high-performance products. We believe that our strategic focus on the performance and racing segments in our markets influences many aspiring and enthusiast consumers who we believe seek to emulate the performance of professional and other elite athletes. We believe our products are generally sold at premium prices, which to us means manufacturer suggested retail sale prices that are generally in the upper quartile of their respective product categories.

We design our products for, and market our products to, some of the world's leading cycling and automotive OEMs and to consumers through the aftermarket channel. Many of our OEM customers, including Giant, Pivot, Santa Cruz Bicycles, Specialized, Scott, Trek, Yeti Cycles and YT in Specialty Sports and BRP, Ford, Honda, Jeep, Kawasaki, Polaris, Toyota, Triumph, and Yamaha in Powered Vehicles, are among the market leaders in their respective product categories, and help shape, as well as respond to, consumer trends in their respective categories. We believe that OEMs often prominently display and incorporate our products to improve the marketability and consumer demand for their performance models, which reinforces our brand image. In addition, consumers select our products in the aftermarket channel where we market through a global network of dealers and distributors.

Industry

We participate in large global markets for bikes and powered vehicles used by recreational and professional users. Today, our products for bicycles are primarily for mountain bikes, road bikes, and e-bikes. Our products for powered vehicles are used primarily on Side-by-Sides, on-road vehicles with and without off-road capabilities, off-road vehicles and trucks, ATVs, snowmobiles, specialty vehicles and applications, motorcycles, and commercial trucks.

We focus on premium-priced products within each of these categories, which we consider to be the high-end segment because of their higher retail sale prices, where we believe consumers prefer well-designed, performance-oriented equipment. We believe that performance-defining products, which include suspension systems, as well as wheels, cranks, and other components, are critical to the performance of the bikes and powered vehicles in the product categories in which we focus and that technical features, component performance, product design, durability, reliability, and brand recognition strongly influence consumer-purchasing decisions.

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We believe the high-end segments in which we participate are well positioned for growth due to several factors, including:

- increasing consumer appetite for performance-defining products;
- increasing average retail sales prices, which we believe are driven by differentiated and feature-rich products with advanced technologies;
- continuing product cycle innovation, which we have observed often motivates consumers to upgrade and purchase new products for enhanced performance; and
- increased sales opportunities for high-end bikes and powered vehicles in international markets.

As vehicles in our end-markets evolve and grow more capable, performance-defining products and systems have become, and we believe will continue to become, increasingly more important for improved performance and control. Additionally, we believe there are opportunities to continue to leverage our technical know-how of suspension products to provide solutions beyond our current applications and end-markets.

Our competitive strengths

Broad offering of performance-defining products across multiple consumer markets

Our performance-defining products enhance vehicle performance across multiple consumer markets. Through the use of adjustable suspension, position sensitive damping, multiple air spring technologies, lightweight and rigid materials, and other technologies and methods, our products improve the performance and control of the vehicles used by our consumers. We believe our reputation for performance-defining products is reinforced by the successful finishes in world class competitive events by athletes incorporating our products in their vehicles.

Premium brand with strong consumer loyalty

We believe that we have developed a reputation for performance-defining products and that we own and license established trademarks, such as FOX[®], FOX RACING SHOX[®], and RACE FACE[®] which are perceived as premium brands. As such, our performance-defining products are generally sold at premium prices. We take great effort to maintain our brands in the eyes of consumers. For instance, our FOX[®] logo is prominently displayed on our FOX[®] branded products used on bikes and powered vehicles sold by our OEM customers, which helps further reinforce our brand image. We believe that our brands have achieved strong loyalty from our consumers. To support our brands, we introduce new products that we believe feature innovative technologies designed to improve vehicle performance and enhance our brand loyalty with consumers.

Track record of innovation and new product introductions

Innovation, including new product development, is a key component of our growth strategy. Due to our experience in suspension engineering and design in multiple markets and with a variety of vehicles, solutions we develop for use in one market can ultimately be deployed across multiple markets. For example, we believe that our success in the high-end ATV category led to the widespread adoption of our suspension technology in the Side-by-Side market. Our innovative product development and speed to market are supported by:

- our racing culture, including on-site technical race support of professional athletes, which provides us with unique real-time insights as to the evolving performance-defining product needs of those participating in challenging world-class events and is an integral part of our research and development efforts;
- ongoing research and development through a team of full-time engineers and numerous other technicians and employees who spend at least part of their time testing and using our products and helping develop engineering-based solutions to enhance our product offerings;
- feedback from professional athletes, race teams, enthusiasts and other consumers who use our products;
- strategic and collaborative relationships with OEM customers, which furthers our ability to extend technologies and applications across end-markets; and
- our integrated manufacturing facilities and performance testing centers, which allow us to quickly move from concept to product.

Over the past several years, we have developed multiple new products, such as:

- Live Valve, our proprietary semi-active, electronic suspension that processes data from multiple vehicle sensors to adjust the suspension virtually instantaneously to the demands of changing terrain. This technology is currently in use on Side-by-Sides, off-road capable, on-road trucks, and mountain bikes;

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- 32, 34 and 36 Factory Series FLOAT FIT4, which reduces overall fork weight, provides external adjustability with our fourth-generation FOX Isolated Technology (FIT) closed-cartridge damper, and includes the self-adjusting negative chamber air spring for quieter operation and ease of adjustment;
- The GRIP2 fork damper, which is our next-evolution sealed cartridge FIT system, our highest performing gravity-focused damper. GRIP2 shares its roots with the original GRIP architecture, but has been enhanced with all-new technology: four-way adjustability, VVC high-speed rebound circuit, high-performance mid-valve, and overall friction-reducing treatments;
- X2 technology used in our Factory Series FLOAT and DH rear shocks, which allows the rider to independently tune high- and low-speed compression and high- and low-speed rebound;
- DPX2 rear shock technology that combines the character of our DPS damping and X2 damping circuits to provide a lightweight trail-tuned adjustable shock;
- Rhythm series fork products developed to address a lower price point offering without compromising proven FOX performance;
- PODIUM Internal Bypass, introduced into the Side-by-Side market, which through its internal bypass technology, allows the vehicle to be plush on small bumps and deliver excellent chassis control while providing progressive bottoming resistance with each increment of travel used;
- X2 technology used in our 2.5 PODIUM shocks for side-by-sides that feature high- and low-speed rebound adjustment, high- and low-speed compression adjustment, and a dual-rate spring for the rear shocks to allow drivers to tune for many different terrain types and driving styles;
- Race Face Vault Hub, a new 120-point high-engagement mountain bike hubset featuring tool-free end caps that simplify conversion among all major axle standards and is approved for e-bike applications;
- Race Face Next R31 Carbon Wheels featuring a single spoke length throughout and an offset rim design for improved spoke balance and strength; and
- Easton EC90 SL Crankset with Cinch Power Meter spindle, a versatile road bike crankset that allows quick conversion between 1x and 2x road and gravel chainring configurations. The Cinch Power Meter spindle, through a one-time connection to a smart phone, automatically works with ride-recording and power-measurement applications.

Strategic brand for OEMs, dealers and distributors

Through our strategic relationships, we are often sought out by our OEM customers and work closely with them to develop and design new products and product enhancements. We believe our collaborative approach and product development processes strengthen our relationships with our OEM customers. We believe consumers value our branded products when selecting performance bikes and powered vehicles, and as a result, OEMs purchase and incorporate our products in their bikes and powered vehicles in order to increase the sales of their premium-priced products. In addition, we believe the inclusion of our products on high-end bikes and powered vehicles reinforces our premium brand image which helps to drive our sales in the aftermarket channel where dealers and distributors sell our products to consumers.

Experienced management team

We have an experienced senior management team led by Michael C. Dennison, our Chief Executive Officer. Many members of our management team and many of our employees are avid users of our products, which further extends their knowledge of, and expertise in, our products and end-markets. We are able to attract and retain highly trained and specialized employees who enhance our Company culture and serve as strong brand advocates.

Our strategy

Our goal is to expand our leadership position as a designer, manufacturer and marketer of performance-defining products designed to enhance ride dynamics and performance. We intend to focus on the following key strategies in pursuit of this goal:

Continue to develop new and innovative products in current end-markets

We intend to continue to develop and introduce new and innovative products in our current end-markets to improve ride dynamics and performance for our consumers. For example, our patented position-sensitive damping systems provide terrain optimized ride characteristics across many of our product lines. We believe that performance and control are important to our consumer base, and that our frequent introduction of products with innovative and improved technologies increases both OEM and aftermarket demand as consumers seek out products for their vehicles that can deliver these characteristics. We also believe evolving market trends, such as changing bike wheel and tire sizes and increasing adoption rates of off-road capable, on-road trucks should increase demand for vehicles in our end-markets, which, in turn, should increase demand for our suspension products.

Leverage technology and brand to expand into new categories and end-markets

We believe we have developed a reputation as a leader in performance-defining products and that our reputation combined with our ability to improve vehicle performance by incorporating performance suspension products and other components results in us frequently being approached by OEM product development teams, athletes and others looking to improve the performance of their vehicles, including in end-markets in which we have not previously offered products. We believe our performance-defining technologies have applications in end-markets in which we do not currently participate in a meaningful way, and we intend to selectively develop products for and forge relationships with customers in additional markets. These markets may include military, recreational vehicles (RVs), and "performance street" cars.

Opportunistically expand our business platform through acquisitions

Over the past several years, we have completed acquisitions that we believe enhance our business and strategically expand our product offerings. In 2014, we acquired the business of Sport Truck, a full-service distributor of aftermarket suspension solutions. Sport Truck designs, markets, and distributes lift kit solutions primarily through its brands, BDS Suspension and Zone Offroad Products. In 2014, we acquired the businesses of Race Face/Easton. Known for its unique carbon technology, Race Face/Easton designs, manufactures, and distributes performance bike wheels and other performance cycling components including cranks, bars, stems, and seat posts, globally to OEMs and the aftermarket. In 2015, we continued to expand our opportunities through the acquisition of certain assets of Marzocchi's bike product lines. In November 2017, through our subsidiary FF U.S. Holding Corp. d/b/a Tuscany Motor Company ("Tuscany") we acquired the majority interest in the business of Flagship, Inc., a designer, manufacturer and distributor of premium aftermarket powered vehicle performance packages and personal-use specialty vehicles based on OEM vehicle chassis. In May 2019, we acquired substantially all of the assets of Air Ride Technologies, Inc., d/b/a Ridetech, a manufacturer of suspension systems that enhance the handling and ride quality of muscle cars, trucks, sports cars and hot rods. The Company believes that this acquisition aligns with its focus on improving vehicle performance and provides it with an opportunity to enter the street performance market.

We also believe that our passionate customer base has a desire for other types of performance products beyond those that attach to a vehicle or bike. We believe there is opportunity to expand our total available market by broadening our acquisition focus to include a more diverse range of performance products that add to or increase our customers' enjoyment of their activities of choice.

Our business development group is responsible for identifying and assessing inorganic and organic potential growth opportunities of our ride dynamics platform and other specialty sports technology platforms. Specifically, our business development group: (i) identifies and assesses potential acquisition opportunities; (ii) aids the business in analyzing growth alternatives; and (iii) manages critical projects and programs as determined by senior management.

Increase our aftermarket penetration

We currently have a broad aftermarket distribution network of thousands of retail dealers and distributors worldwide. We intend to further penetrate the aftermarket channel by selectively adding dealers and distributors in certain geographic markets, increasing our internal sales force and strategically expanding aftermarket-specific products and services to existing vehicle platforms.

Accelerate international growth

While a significant percentage of our current sales are to OEMs and dealers and distributors located outside the United States, we believe international expansion represents a significant opportunity for us and we have, and intend to continue to, selectively increase infrastructure investments and focus on identified geographic regions. We believe that rising consumer discretionary income in a number of developing markets and increasing consumer preferences for premium, performance bikes and powered vehicles should contribute to increasing demand for our products. In addition, we believe increasing international viewership of racing and extreme sports and other outdoor events, such as the X Games, is contributing to the growth of international participation in activities in which our products are used. We intend to leverage the recognition of our brands to capitalize on these trends by globally increasing our sales to both OEMs and dealers and distributors, particularly in markets where we perceive significant opportunities.

Improve operating and supply chain efficiencies

During 2017, we completed the process of moving all bike suspension component manufacturing to our facility in Taichung, Taiwan. In connection with this move, we are using, and expect to continue to use, suppliers that are located closer to our Taichung, Taiwan facility for a number of materials and components. This transition has shortened production lead times to our bike OEM customers, improved supply chain efficiencies, and reduced manufacturing costs. With the transition of all of our bike suspension component manufacturing to Taichung, Taiwan, we have converted the Watsonville, California manufacturing facility to exclusively manufacture powered vehicle suspension products. And during 2019, we also completed the process of relocating our Specialty Sports Group's U.S. aftermarket bike products distribution, sales, and service operations to Reno, Nevada.

In addition, we are currently constructing an approximately 336,000 square foot state-of-the-art facility in Hall County, Georgia to diversify our manufacturing platform and provide additional long-term capacity to support growth in our Powered Vehicles Group.

Seasonality

Certain portions of our business are seasonal; we believe this seasonality is due to the delivery of new products. Generally, our quarterly sales have been the lowest in the first quarter and highest in the third quarter of the year. For example, our sales in our first and third quarters of 2019 represented 22% and 28% of our total sales for the year, respectively.

Competition

The markets for performance-defining products, including suspension components, wheels, and cranks, are highly competitive. We compete with other companies that produce products for sale to OEMs, dealers and distributors, as well as with OEMs that produce their own line of products for their own use. Some of our competitors may have greater financial, research and development or marketing resources than we do. Competition in the high-end segment of the performance-defining market revolves around technical features, performance, product design, innovation, reliability and durability, brand, time to market, customer service and reliable order execution. While the pricing of competing products is always a factor, we believe the performance of our products helps justify our premium pricing. Within our markets, we compete with several large companies and numerous small companies that provide branded and unbranded products across many of our product lines. These competitors can be divided into the following categories:

Powered Vehicles

Within the market for powered vehicle suspension components, we compete with several companies in different submarkets. In the snowmobile market we compete with KYB (Kayaba Industry Co., Ltd.), Öhlins Racing AB (a wholly-owned subsidiary of Tenneco), Walker Evans Racing, Works Performance Products, Inc., and Penske Racing Shocks / Custom Axis, Inc. In the ATV and Side-by-Side markets, outside of vertically-integrated OEMs, we compete with ZF Sachs (ZF Friedrichshafen AG), Polaris, and Walker Evans Racing for OEM business and Elka Suspension Inc., Öhlins Racing AB, Works Performance Products, and Penske Racing Shocks / Custom Axis, Inc. for aftermarket business.

Within the market for off-road and specialty vehicle suspension components, we compete with ThyssenKrupp Bilstein Suspension GmbH (commonly known as Bilstein), and King Shock Technology, Inc. (commonly known as King Shocks), Icon Vehicle Dynamics, Sway-A-Way, Pro Comp USA Suspension, and Rancho (Tenneco). In the market for suspension systems, or lift kits, we compete with TransAmerican Wholesale/Pro Comp USA, Rough Country Suspension Systems, TeraFlex, ReadyLIFT Suspension, Tuff Country EZ-Ride Suspension, and Rusty's Off-Road. In the market for up-fitted vehicles, we compete with SCA Performance, Rocky Ridge Trucks, and DSI Custom Vehicles.

Specialty Sports

Within the market for bike suspension components, we compete with several companies that manufacture front and rear suspension products, including RockShox (a subsidiary of SRAM Corp.), X-Fusion Shox (a wholly owned subsidiary of A-Pro), Manitou (a subsidiary of HB Performance Systems), SR Suntour, DT Swiss (a subsidiary of Vereinigte Drahtwerke AG), Cane Creek Cycling, DVO Suspension, Bos-Mountain Bike Suspensions, and Öhlins Racing AB. In the market for other bike components, we compete with SRAM, Truvativ and Zipp (all subsidiaries of SRAM Corp.), DT Swiss (a subsidiary of Vereinigte Drahtwerke AG), Mavic (a subsidiary of Amer Sports Corp.), and Shimano.

Our products

We design and manufacture performance-defining products, of which a significant portion is suspension products. These suspension products dissipate the energy and force generated by bikes and powered vehicles while they are in motion. Suspension products allow wheels or skis (in the case of snowmobiles) to move up and down to absorb bumps and shocks while maintaining contact with the ground for better control. Our products use adjustable suspension, position-sensitive damping, electronically controllable damping, multiple air spring technologies, low weight and structural rigidity, all of which improve user control for greater performance.

We use high-grade materials in our products and have developed a number of sophisticated assembly processes to maintain quality across all product lines. Our suspension products are assembled according to precise specifications throughout the assembly process to create consistently high-performance levels and customer satisfaction.

Powered Vehicles

In our powered vehicle product categories, we offer premium products under the FOX, BDS Suspension, Zone Offroad, JKS Manufacturing, RT Pro UTV, 4x4 Posi-Lok, Tuscany, and Ridetech brands for Side-by-Sides, on-road vehicles with and without off-road capabilities, off-road vehicles and trucks, ATVs, snowmobiles, specialty vehicles and applications, motorcycles, and commercial trucks. In each of the years ended January 3, 2020, December 28, 2018 and December 29, 2017, approximately 60%, 54% and 48%, respectively, of our sales were attributable to sales of powered vehicles related products.

Products for these vehicles are designed for use on roads, for trail riding, in racing, and to help provide performance and comfort. Our products have also been used on limited quantities of off-road military vehicles and other small-scale select military applications. Our aftermarket truck suspension component products in the powered vehicles category range from two-inch aluminum bolt-on shocks to our patented position sensitive internal bypass shocks. We also offer lift kits and components with our shock products and aftermarket accessory packages for use in trucks. We up-fit trucks to be off-road capable, on-road vehicles with components and products such as lift kits, shock products, superchargers, interior accessories, wheel, tires, lighting, and body enhancements. In addition, we manufacture suspension systems that enhance the handling and ride quality of muscle cars, trucks, sports cars and hot rods.

Specialty Sports

As a result of our acquisitions in recent years, our bike product offerings have expanded and are used on a wide range of performance mountain bikes and road bikes under the FOX, Race Face, Easton Cycling and Marzocchi brands. Given this wide range of bike products and brands, as well as the potential to expand our offerings to include other types of performance-defining products, we have changed the name of the group from Bike Division to Specialty Sports Group. In each of the years ended January 3, 2020, December 28, 2018 and December 29, 2017, approximately 40%, 46% and 52%, respectively, of our sales were attributable to sales of bike-related products. Primarily for the mountain bike market, we offer mid-end and high-end front fork and rear suspension products designed for cross-country, trail, all-mountain, free-ride and downhill riding. Our mountain bike suspension products are sold in five series and under the Marzocchi brand: (i) our Marzocchi BOMBER series, designed for a rider who values ease of use over adjustability; (ii) our FOX Rhythm series, designed to provide FOX performance at the entry price point of the high-end mountain bikes segment; (iii) our FOX Performance series, designed for demanding enthusiasts; (iv) our FOX Performance Elite series, designed for experienced and expert riders; and (v) our FOX Factory series, designed for maximum performance at a professional level.

We also offer mountain and road bike wheels and other performance-defining cycling components under the Race Face and Easton Cycling brands including cranks, chainrings, pedals, bars, stems, and seat posts.

Research and development

Research and development is at the core of our product innovation and market leadership strategy. We have a growing team of engineers and technicians focused on designing innovative products and developing engineering-based solutions to enhance our product offerings. In addition, a large number of our other employees, many of whom use our products in their recreational activities, contribute to our research and development and product innovation initiatives. Their involvement in the development of new products ranges from participating in initial brainstorming sessions to test riding products in development. Product development also includes collaborating with OEM customers across end-markets, field testing by professional athletes and sponsored race teams and working with enthusiasts and other users of our products. This feedback helps us to develop innovative products that meet our demanding standards as well as the evolving needs of professional and recreational end users and to quickly commercialize these products.

Our research and development activities are supported by state-of-the-art engineering software design tools, integrated manufacturing facilities and a performance-testing center equipped to enhance product safety, durability and performance. Our testing center collects data and tests products prior to and after commercial introduction. Suspension products undergo a variety of rigorous performance and accelerated life tests before they are introduced into the market. Research and development expenses totaled approximately \$31.8 million, \$25.8 million and \$20.2 million in fiscal years 2019, 2018 and 2017, respectively.

Intellectual property

Intellectual property is an important aspect of our business. We rely upon a combination of patents, trademarks, trade names, licensing arrangements, trade secrets, know-how and proprietary technology and we secure and protect our intellectual property rights.

Our intellectual property counsel diligently protects our new technologies with patents and trademarks and defends against patent infringement allegations. We patent our proprietary technologies related to vehicle suspension and other products in the U.S. and various foreign patent offices. Our principal intellectual property also includes our registered trademarks in the U.S. and a number of international jurisdictions, including the marks FOX[®], FOX RACING SHOX[®] and REDEFINE YOUR LIMITS[®]. Although our intellectual property is important to our business operations and constitutes a valuable asset in the aggregate, we do not believe that any single patent, trademark or trade secret is critical to the success of our business as a whole. We cannot be certain that our patent applications will be issued or that any issued patents will provide us with any competitive advantages or will not be challenged by third parties.

In addition to the foregoing protections, we generally control access to and use of our proprietary and other confidential information using internal and external controls, including contractual protections with employees, OEMs, distributors and others.

Customers

Our OEM customers include market leaders in their respective categories, and they help define, as well as respond to, consumer trends in their respective industries. These OEM customers include our products on a number of their performance models. We believe OEMs often use our products to improve the marketability and demand of their own products, which, in turn, strengthens our brand image. In addition, consumers select our performance-defining products in the aftermarket channel, where we market through a global network of dealers and distributors. We currently sell to more than 200 OEMs and distribute our products to more than 5,000 retail dealers and distributors worldwide. In 2019, 63% of our sales resulted from sales to OEM customers and 37% resulted from sales to dealers and distributors for resale in the aftermarket channel. No material portion of our business is subject to renegotiation of profits or termination of contracts or subcontracts at the election of the U.S. government.

Sales attributable to our 10 largest OEM customers, which can vary from year-to-year, collectively accounted for approximately 44%, 43% and 42% of our sales in 2019, 2018 and 2017. Our sales to Ford, a powered vehicles OEM, accounted for approximately 11%, 8% and 8% in 2019, 2018 and 2017, respectively.

Although we refer to the branded bike OEMs that use our products throughout this document as "our customers," "our OEM customers" or "our bike OEM customers," branded bike OEMs often use contract manufacturers to manufacture and assemble their bikes. As a result, even though we typically negotiate price and volume requirements directly with our bike OEM customers, the contract manufacturer may place the purchase order and therefore assumes the payment responsibilities.

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Our North American sales totaled \$502.3 million, \$388.7 million, and \$280.9 million, or 67%, 63% and 59%, of our total sales in 2019, 2018 and 2017, respectively. Our international sales totaled \$248.8 million, \$230.5 million and \$194.8 million or 33%, 37% and 41% of our total sales in 2019, 2018 and 2017, respectively. Sales attributable to countries outside the United States are based on shipment location. Our international sales, however, do not necessarily reflect the location of the end users of our products, as many of our products are incorporated into bikes and powered vehicles that are assembled at international locations and then shipped back to the United States. Additional information about our product revenues and certain geographical information is available in [Note 2 - Revenues](#) of the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K.

Additional information regarding our sales, income, and total assets is available in Item 6. "[Selected Financial Information](#)."

Powered Vehicles

We sell our powered vehicle-suspension products to OEMs, including Arctic Cat, BRP, Ford, Honda, Indian Motorcycles, Jeep, Kawasaki, Polaris, Toyota, and Yamaha. We also are continually nurturing and developing relationships with our existing and new OEMs, as the powered vehicles market continues to grow. After incorporating our products on their powered vehicles, OEMs typically sell their powered vehicles to independent dealers, which then sell directly to consumers.

In the aftermarket, we typically sell to dealers and distributors, both domestically and internationally. Our dealers sell directly to consumers. When we sell to our distributors, they sell to independent dealers, which then sell directly to consumers.

Specialty Sports

We sell our bike suspension and components products to a broad network of domestic and international bike OEMs, including Cannondale, Canyon, Cube, Giant, Lapierre, Merida, Pivot, Santa Cruz Bicycles, Scott, Specialized, Trek, Yeti Cycles and YT. We have long-standing relationships with many of the top bike OEMs. After incorporating our products on their bikes, OEMs typically sell their bikes to independent dealers, which then sell directly to consumers.

In the aftermarket, we typically sell to U.S. dealers and through distributors internationally. Our dealers sell directly to aftermarket consumers. Our overseas distributors sell to independent dealers, which then sell directly to consumers.

Sales and marketing

We employ specialized and dedicated sales professionals. Each sales professional is fully responsible for servicing either OEM or aftermarket customers within our product categories, which ensures that our customers are in contact with capable and knowledgeable sales professionals to address their specific needs. We strongly believe that providing a high level of service to our end customers is essential to maintaining our reputational excellence in the marketplace. Our sales professionals receive training on the brands' latest products and technologies and attend trade shows and events to increase their market knowledge.

Our marketing strategy focuses on strengthening and promoting our brands in the marketplace. We strategically focus our marketing efforts on enthusiasts seeking high-end, performance-defining products and systems through promotions at destination riding locations and individual and team sponsorships. We believe the performance of our products has been demonstrated by, and our brands benefit from, the success of professional athletes who use our products in elite competitive events such as the Union Cycliste Internationale Mountain Bike World Cup and the X Games. We also believe these successes positively influence the purchasing habits of enthusiasts and other consumers seeking performance-defining products.

We believe that our strategic focus on the performance and racing segments in our markets, including our sponsorships of a number of professional athletes and race teams, influences many aspiring and enthusiast consumers and enables our products to be sold at premium price points. In order to continue to enhance our brand image, we will need to maintain our position in the suspension products industry and to continue to provide high-quality products and services.

We have also been able to develop long-term strategic relationships with leading OEMs. Our reputation for performance-defining products plays a critical role in our aftermarket sales to consumers.

In addition to our web properties and traditional marketing channels, such as print advertising and tradeshow, we maintain an active social media presence, including an Instagram feed, Facebook page, YouTube channel, Vimeo channel and Twitter feed to increase brand awareness, foster loyalty and build a community of users. As strategies and marketing plans are developed for our products, our internal marketing and communications group works to ensure brand cohesion and consistency.

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Manufacturing and backlog

We manufacture and complete final assembly on most of our products. By controlling the manufacturing process of our products, we can maintain our strict quality standards, customize our machines and processes for the specific requirements of our products, and quickly respond to feedback we receive on our products in development and otherwise. Furthermore, manufacturing our own products enables us to adjust our labor and production inputs to meet seasonal demands and the customized requirements of some of our customers.

During 2018, we moved our corporate headquarters from Scotts Valley, California to our offices in Braselton, Georgia. We are also currently constructing an approximately 336,000 square foot state-of-the-art facility in Hall County, Georgia to diversify our manufacturing platform and provide additional long-term capacity to support growth in our Powered Vehicles Group. The first phase of the Hall County, Georgia project is expected to be completed late in the second quarter of 2020 and will be used for manufacturing, warehousing, distribution and office space. Our Scotts Valley, California location will remain an essential shared services facility housing certain corporate functions.

We had approximately \$65.1 million and \$72.9 million in firm backlog orders at January 3, 2020 and December 28, 2018, respectively. The decrease in 2019 backlog, as compared to 2018, was due to changes in the seasonality and timing of order placement.

Suppliers and raw materials

The primary raw materials used in the production of our products are aluminum, magnesium, carbon and steel. We generally use multiple suppliers for our raw materials and believe that our raw materials are in adequate supply and available from many suppliers at competitive prices. Prices for our raw materials fluctuate from time to time, but historically, price fluctuations have not materially impacted our business.

We work closely with our supply base, and depend upon certain suppliers to provide raw inputs, such as forgings, castings and molded polymers that have been optimized for weight, structural integrity, wear and cost. In certain circumstances, we depend upon a limited number of suppliers for such raw inputs. We typically have no firm contractual sourcing agreements with our suppliers other than purchase orders.

Miyaki is the exclusive producer of the Kashima coating for our suspension component tubes. As part of our agreement with Miyaki, or the Kashima Agreement, we have been granted the exclusive right to use the trademark "KASHIMACOAT" on products comprising the aluminum finished parts for suspension components (e.g., tubes) and on related sales and marketing material worldwide, subject to a minimum model year order and certain other exclusions. The Kashima Agreement does not contain minimum purchase obligations.

Employees

As of January 3, 2020, we had approximately 2,600 full-time employees in the United States, Canada, Europe and Taiwan. We also use part-time employees at our manufacturing facilities to help us meet seasonal demands. None of our employees are subject to collective bargaining agreements.

Practices related to working capital items

The Company does not believe that it, or the industry in general, has any special practices or special conditions affecting working capital items that are material to understanding our business. Information about the Company's working capital is incorporated herein by reference to Item 7. "[Management's Discussion and Analysis of Financial Condition](#)" and "[Results of Operations](#)," and to the "[Consolidated Statements of Cash Flows](#)" within Item 8 of this Annual Report on Form 10-K.

Government regulation

Environmental

Our manufacturing operations, facilities and properties in the United States, Canada and Taiwan are subject to evolving foreign, international, federal, state and local environmental and occupational health and safety laws and regulations, including those governing air emissions, wastewater discharge and the storage and handling of chemicals and hazardous substances. If we fail to comply with such laws and regulations, we could be subject to significant fines, penalties, costs, liabilities or restrictions on operations, which could negatively affect our financial condition.

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We believe that our operations are in compliance, in all material respects, with applicable environmental and occupational health and safety laws and regulations, and our compliance with such laws and regulations has not had, nor is it expected to have, a material impact on our earnings or competitive position. However, new requirements, more stringent application of existing requirements or the discovery of previously unknown environmental conditions could result in material environmental related expenditures in the future.

Employment

We are subject to numerous foreign, federal, state and local government laws and regulations governing our relationships with our employees, including those relating to minimum wage, overtime, working conditions, hiring and firing, non-discrimination, work permits and employee benefits. We believe that our operations are conducted in compliance, in all material respects, with such laws and regulations. We have never experienced a material work stoppage or disruption to our business relating to employee matters. We believe that our relationship with our employees is good.

Consumer safety

We are subject to the jurisdiction of the United States Consumer Product Safety Commission ("CPSC"), and other federal, state and foreign regulatory bodies including the National Highway Traffic Safety Administration ("NHTSA"), which enforces the Federal Motor Vehicle Safety standards. Under CPSC regulations, a manufacturer of consumer goods is obligated to notify the CPSC, if, among other things, the manufacturer becomes aware that one of its products has a defect that could create a substantial risk of injury. If the manufacturer has not already undertaken to do so, the CPSC may require a manufacturer to recall a product, which may involve product repair, replacement or refund. During the past three years, we initiated two voluntary product recalls. For additional information, see Item 1A. "[Risk Factors](#)" below.

Government contracts

No material portion of our business is subject to renegotiation of profits or termination of contracts or subcontracts at the election of the U.S. government.

Financial information about segments and geographic areas

We operate in one reportable segment: manufacturing, sale and service of performance-defining products. Additional information about our product segment and certain geographic information is available in [Note 2 - Revenues](#) of the "Notes to Consolidated Financial Statements" in this Annual Report on Form 10-K.

Corporate and available information

Our principal executive offices are located at 6634 Hwy 53, Braselton, GA 30517, and our telephone number is (831) 274-6500. Our website address is www.ridefox.com.

We file reports with the SEC, including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and any other filings required by the SEC. We make available through the Investor Relations section of our website, free of charge, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and all amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The information on our website is not incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC.

The public may read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site (<http://www.sec.gov>) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC.

ITEM 1A. RISK FACTORS

Our business, financial condition, operating results and prospects could be materially and adversely affected by various risks and uncertainties that are described herein. In addition to the risks and uncertainties discussed elsewhere in this Annual Report on Form 10-K, you should carefully consider the risks and uncertainties described below. If any of these risks actually occur, our business, financial condition, operating results and prospects could be materially and adversely affected. In that event, the trading price of our common stock could decline.

Risks related to our business

If we are unable to continue to enhance existing products and develop, manufacture and market new products that respond to consumer needs and preferences and achieve market acceptance, we may experience a decrease in demand for our products, and our business and financial results could suffer.

Our growth strategy involves the continuous development of innovative performance-defining products. We may not be able to compete as effectively with our competitors, and ultimately satisfy the needs and preferences of our customers and the end users of our products, unless we can continue to enhance existing products and develop new, innovative products in the global markets in which we compete. In addition, we must continuously compete for not only end users who purchase our products through the dealers and distributors who are our customers, but also for the OEMs, which incorporate our products into their bikes and powered vehicles. These OEMs regularly evaluate our products against those of our competitors to determine if they are allowing the OEMs to achieve higher sales and market share on a cost-effective basis. Should one or more of our OEM customers determine that they could achieve overall better financial results by incorporating a competitor's new or existing product, they would likely do so, which could harm our business, financial condition or results of operations.

Product development requires significant financial, technological and other resources. While we expended approximately \$31.8 million, \$25.8 million and \$20.2 million for our research and development efforts in 2019, 2018 and 2017, respectively, there can be no assurance that this level of investment in research and development will be sufficient in the future to maintain our competitive advantage in product innovation, which could cause our business, financial condition or results of operations to suffer.

Product improvements and new product introductions require significant planning, design, development and testing at the technological, product and manufacturing process levels, and we may experience unanticipated delays in our introduction of product improvements or new products. Our competitors' new products may beat our products to market, be more effective and/or less expensive than our products, obtain better market acceptance or render our products obsolete. Any new products that we develop may not receive market acceptance or otherwise generate any meaningful sales or profits for us relative to our expectations. In addition, one of our competitors could develop an unforeseen and entirely new product or technology that renders our products less desirable or obsolete, which could negatively affect our business, financial condition or results of operations.

We face intense competition in all product lines, including from some competitors that may have greater financial and marketing resources. Failure to compete effectively against competitors would negatively impact our business and operating results.

The industries in which we operate are highly competitive. We compete with a number of other manufacturers that produce and sell performance-defining products to OEMs and aftermarket dealers and distributors, including OEMs that produce their own lines of products for their own use. Our continued success depends on our ability to continue to compete effectively against our competitors, some of which have significantly greater financial, marketing and other resources than we have. In addition, several of our competitors offer broader product lines to OEMs, which they may sell in connection with suspension products as part of a package offering. In the future, our competitors may be able to maintain and grow brand strength and market share more effectively or quickly than we do by anticipating the course of market developments more accurately than we do, developing products that are superior to our products, creating manufacturing or distribution capabilities that are superior to ours, producing similar products at a lower cost than we can or adapting more quickly than we do to new technologies or evolving regulatory, industry or customer requirements, among other possibilities. In addition, we may encounter increased competition if our current competitors broaden their product offerings by beginning to produce additional types of performance-defining products or through competitor consolidations. We could also face competition from well-capitalized entrants into these product markets, as well as aggressive pricing tactics by other manufacturers trying to gain market share. As a result, our products may not be able to compete successfully with our competitors' products, which could negatively affect our business, financial condition or results of operations.

Our business is sensitive to economic conditions that impact consumer spending. Our performance-defining products, and the bike and powered vehicles into which they are incorporated, are discretionary purchases and may be adversely impacted by changes in the economy.

Our business depends substantially on global economic and market conditions. In particular, we believe that currently a significant majority of the end users of our products live in the United States and countries in Europe. These areas have historically experienced recessions, disruptions in banking and/or financial systems, economic weakness and uncertainty. In addition, our products are recreational in nature and are generally discretionary purchases by consumers. Consumers are usually more willing to make discretionary purchases during periods of favorable general economic conditions and high consumer confidence. Discretionary spending may also be affected by many other factors, including interest rates, the availability of consumer credit, taxes and consumer confidence in future economic conditions. During periods of unfavorable economic conditions, or periods when other negative market factors exist, consumer discretionary spending is typically reduced, which in turn could reduce our product sales and have a negative effect on our business, financial condition or results of operations.

There could also be a number of secondary effects resulting from an economic downturn, such as insolvency of our suppliers resulting in product delays, an inability of our OEM and distributor and dealer customers to obtain credit to finance purchases of our products, customers delaying payment to us for the purchase of our products due to financial hardship or an increase in bad debt expense. Any of these effects could negatively affect our business, financial condition or results of operations.

If we are unable to maintain our premium brand image, our business may suffer.

OEMs dealers and distributors select our products in part because of the premium brand reputation we hold with them and our end users. Therefore, our success depends on our ability to maintain and build the image of our brands. We have focused on building our brands through producing products or acquiring businesses that produce products that we believe are innovative, high in performance and highly reliable. In addition, our brands benefit from our strong relationships with our OEM customers and dealers and distributors and through marketing programs aimed at bike and powered vehicle enthusiasts in various media and other channels. For example, we sponsor a number of professional athletes and professional race teams. In order to continue to enhance our brand image, we will need to maintain our position in the performance-defining products industry and continue to provide high-quality products and services. In addition, we will need to continue to invest in sponsorships, marketing and public relations.

There can be no assurance, however, that we will be able to maintain or enhance the strength of our brands in the future. Our brands could be adversely impacted by, among other things:

- failure to develop new products that are innovative, performance-oriented, and reliable;
- internal product quality control issues;
- product quality issues on the bikes and powered vehicles on which our products are installed;
- product recalls;
- high profile component failures (such as a component failure during a race on a mountain bike ridden by an athlete that we sponsor);
- negative publicity regarding our sponsored athletes;
- high profile injury or death to one of our sponsored athletes;
- inconsistent uses of our brand and our other intellectual property assets, as well as failure to protect our intellectual property; and
- changes in consumer trends and perceptions.

Any adverse impact on our brand could in turn negatively affect our business, financial condition or results of operations.

Our growth in the powered vehicle category is dependent upon our continued ability to expand our product sales into powered vehicles that require performance-defining products and the continued expansion of the market for these powered vehicles.

Our growth in the powered vehicle category is in part attributable to the expansion of the market for powered vehicles that require performance-defining products. Such market growth includes the creation of new classes of vehicles that need our products, such as trucks that are up-fitted to be off-road capable, and our ability to create products for these vehicles. In the event these markets stopped expanding or contracted, or we are unsuccessful in creating new products for these markets or other competitors successfully enter into these markets, we may fail to achieve future growth or our sales could decrease, and our business, financial condition or results of operations could be negatively affected.

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A significant portion of our sales are highly dependent on the demand for high-end bikes and a material decline in the demand for these bikes or their suspension components could have a material adverse effect on our business or results of operations.

During 2019, approximately 40% of our sales were generated from the sale of bike products. Part of our success has been attributable to the growth in the high-end bike industry, including increases in average retail sales prices, as better-performing product designs and technologies have been incorporated into these products. If the popularity of high-end or premium-priced bikes does not increase or declines, the number of bike enthusiasts seeking such bikes or premium-priced suspension products, wheels, cranks and other specialty components for their bikes does not increase or declines, or the average price point of these bikes declines, we may fail to achieve future growth or our sales could decrease, and our business, financial condition or results of operations could be negatively affected. In addition, if current bike enthusiasts stop purchasing our products due to changes in preferences, we may fail to achieve future growth or our sales could be decreased, and our business, financial condition or results of operations could be negatively affected.

Changes in our customer, channel and product mix could place demands that are more rigorous on our infrastructure and cause our profitability percentages to fluctuate.

From time to time, we may experience changes in our customer, channel and product mix from changes in demands from existing customers due to shifts in their products and markets. Additionally, the Company may pursue new customers and markets. Such changes in customers, channel and product mix could place demands that are more rigorous on our infrastructure and supply chain and could result in changes to our profitability and profitability percentages. If customers begin to require more lower-margin products from us and fewer higher-margin products, or place demands on our performance that increase our costs, our business, results of operations and financial condition may suffer.

A disruption in the operations of our facilities, or delays in our planned expansion of certain facilities, could have a negative effect on our business, financial condition or results of operations.

During 2017, we completed the process of moving all of the manufacturing of our bike suspension component products to our facility in Taichung, Taiwan. In connection with this move, we are utilizing, and expect to continue to use, suppliers who are located closer to our facility in Taichung, Taiwan for a number of materials and components. With the transition of our entire bike suspension component manufacturing to Taichung, Taiwan, we converted the Watsonville manufacturing facility to be a powered vehicle suspension products manufacturing location exclusively.

In addition, we are currently constructing an approximately 336,000 square foot state-of-the-art facility in Hall County, Georgia to diversify our manufacturing platform and provide additional long-term capacity to support growth in our Powered Vehicles Group. In the future, we may move additional manufacturing operations as we re-balance existing facilities or expand to new manufacturing locations. As a result, we have incurred, and expect to continue to incur, costs associated with some duplication of facilities, equipment and personnel, the amount of which could vary materially from our projections. Significant construction delays or other unforeseen difficulties in our Georgia expansion project and future expansion projects, whatever the cause, could have a material adverse effect on our business, customer relationships, financial condition, operating results, cash flow, and liquidity.

Equipment failures, delays in deliveries or catastrophic loss at any of our facilities could lead to production or service disruptions, curtailments or shutdowns. In the event of a stoppage in production or a slowdown in production due to high employee turnover or a labor dispute at any of our facilities, even if only temporary, or if we experience delays as a result of events that are beyond our control, delivery times to our customers could be severely affected. If there was a manufacturing disruption in any of our manufacturing facilities, we might be unable to meet product delivery requirements and our business, financial condition or results of operations could be negatively affected, even if the disruption was covered in whole or in part by our business interruption insurance. Any significant delay in deliveries to our customers could lead to increased returns or cancellations, expose us to damage claims from our customers or damage our brand and, in turn, negatively affect our business, financial condition or results of operations.

Our facilities or operations could be adversely affected by events outside of our control, such as natural disasters, wars or health epidemics.

We may be impacted by natural disasters, wars, health epidemics or other events outside of our control. For example, we have facilities located in seismically active regions in Northern California and Nevada, and our bike suspension manufacturing is located in Taiwan, which is prone to typhoons. If major disasters such as earthquakes, typhoons or other events occur, our facilities or those of our suppliers or customers may be seriously damaged, which could result in the disruption of our production and shipment of our products. In addition, beginning in late 2019, the media has reported a public health epidemic originating in China, prompting precautionary government-imposed closures of certain travel and business. It is unknown whether and how global supply chains may be affected if such an epidemic persists for an extended period of time. We may incur additional expenses, production delays, or reductions in customer orders relating to such events outside of our control, which could have a material adverse impact on our business, operating results and financial condition.

Work stoppages or other disruptions at seaports could adversely affect our operating results.

A significant portion of our goods move through ports on the Western Coast of the United States. We have a global supply chain and we import products from our third-party vendors as well as our Fox Taiwan facility into the United States largely through ports on the West Coast. Longshoremen, none of whom are our employees, must offload freight from ships arriving at West Coast ports. We do not control the activities of these employees or seaports and we could suffer supply chain disruptions due to any disputes, capacity shortages, slowdowns or shutdowns that may occur, as was experienced in February 2015, in relation to certain West Coast ports. While the West Coast ports labor dispute ended with a five-year agreement, it lasted longer than we forecasted, and any similar labor dispute in the future could potentially have a negative effect on both our financial condition and results of operations.

Our business depends substantially on our ability to attract and retain experienced and qualified talent, including our senior management team.

We are dependent upon the contributions, talent and leadership of our senior management team, particularly our Chief Executive Officer, Michael C. Dennison. We do not have a "key person" life insurance policy on Mr. Dennison or any other key employees. We believe that the top nine members of our senior management team are key to establishing our focus and executing our corporate strategies as they have extensive knowledge of our systems and processes. Given our senior management team's knowledge of our industry and the limited number of direct competitors in the industry, we believe that it could be difficult to find replacements should any of the members of our senior management team leave. For example, our former Chief Financial Officer, Zvi Glasman, resigned effective November 1, 2019, and, although we have named an interim replacement, we have not yet designated a permanent replacement for Mr. Glasman. If we are unable to designate a permanent Chief Financial Officer in a timely manner, there may be an adverse effect on our financial reporting processes, our financial controls and procedures and our ability to raise additional capital.

We could also be adversely affected if we fail to attract and retain talent throughout our organization. For instance, we rely on skilled and well-trained engineers for the design and production of our products, as well as in our research and development functions. Competition for such individuals is intense, particularly in California where several of our facilities are located. Our inability to attract or retain qualified employees in our design, production or research and development functions or elsewhere in our Company could result in diminished quality of our products and delinquent production schedules or impede our ability to develop new products.

Our failure to adequately address any of these issues could have a material adverse effect on our business, operating results and financial condition.

We may not be able to sustain our past growth or successfully implement our growth strategy, which may have a negative effect on our business, financial condition or results of operations.

We grew our sales from approximately \$619.2 million in 2018 to approximately \$751.0 million in 2019. This growth rate may be unsustainable. Our future growth will depend upon various factors, including the strength of the image of our brands, our ability to continue to produce innovative performance-defining products, consumer acceptance of our products, competitive conditions in the marketplace, our ability to make strategic acquisitions, the growth in emerging markets for products requiring high-end suspension products and, in general, the continued growth of the high-end bike and powered vehicle markets into which we sell our products. Our beliefs regarding the future growth of markets for high-end suspension products are based largely on qualitative judgments and limited sources and may not be reliable. If we are unable to sustain our past growth or successfully implement our growth strategy, our business, financial condition or results of operations could be negatively affected.

The professional athletes and race teams who use our products are an important aspect of the image of our brands. The loss of the support of professional athletes for our products or the inability to attract new professional athletes may harm our business.

If current or future professional athletes and race teams do not use our products, our brands could lose value and our sales could decline. While our sponsorship agreements typically restrict our sponsored athletes and race teams from promoting, endorsing or using competitors' products that compete directly within our product categories during the term of the sponsorship agreements, we do not typically have long-term contracts with any of the athletes or race teams whom we sponsor.

If we are unable to maintain our current relationships with these professional athletes and race teams, these professional athletes and race teams are no longer popular, our sponsored athletes and race teams fail to have success or we are unable to continue to attract the endorsement of new professional athletes and race teams in the future, the value of our brands and our sales could decline.

We depend on our relationships with dealers and distributors and their ability to sell and service our products. Any disruption in these relationships could harm our sales.

We sell our aftermarket products to dealers and distributors, and we depend on their willingness and ability to market and sell our products to consumers and provide customer and product service as needed. We also rely on our dealers and distributors to be knowledgeable about our products and their features. If we are not able to educate our dealers and distributors so that they may effectively sell our products as part of a positive buying experience, or if they fail to implement effective retail sales initiatives, focus selling efforts on our competitors' products, reduce the quantity of our products that they sell or reduce their operations due to financial difficulties or otherwise, our brand and business could suffer.

We do not control our dealers or distributors and many of our contracts allow these entities to offer our competitors' products. Our competitors may incentivize our dealers and distributors to favor their products. In addition, we do not have long-term contracts with a majority of our dealers and distributors, and our dealers and distributors are not obligated to purchase specified amounts of our products. In fact, the majority of our dealers and distributors buy from us on a purchase order basis. Consequently, with little or no notice, many of these dealers and distributors may terminate their relationships with us or materially reduce their purchases of our products. If we were to lose one or more of our dealers or distributors, we would need to obtain a new dealer or distributor to cover the particular location or product line, which may not be possible on favorable terms or at all.

Alternatively, we could use our own sales force to replace such a dealer or distributor, but expanding our sales force into new locations takes a significant amount of time and resources and may not be successful. Further, many of our international distribution contracts contain exclusivity arrangements, which may prevent us from replacing or supplementing our current distributors under certain circumstances.

We are a supplier in the high-end bike and powered vehicles markets, and our business is dependent in large part on the orders we receive from our OEM customers and from their success.

As a supplier to OEM customers, we are dependent in large part on the success of the business of our OEM customers. Model year changes by our OEM customers may adversely impact our sales or cause our sales to vary from quarter to quarter. In addition, losses in market share individually or a decline in the overall market of our OEM customers or the discontinuance by our OEM customers of their products which incorporate our products could negatively impact our business, financial condition or results of operations. For example, if our bike producing OEM customers reduce production of their high-end bikes, their orders to us for our products would in turn be reduced, which could negatively affect our business, financial condition or results of operations.

A relatively small number of customers account for a substantial portion of our sales. The loss of all or a substantial portion of our sales to any of these customers, whether through the temporary or permanent discontinuation of their products which incorporate our products or otherwise, or the loss of market share by these customers could have a material adverse impact on us and our results of operations.

Sales attributable to our five largest OEM customers, which can vary from year to year, collectively accounted for approximately 32% of our sales in fiscal years 2019, 2018 and 2017. The loss of all or a substantial portion of our sales to any of these OEM customers, whether through the temporary or permanent discontinuation of their products which incorporate our products or otherwise, or the loss of market share by these customers could have a material adverse impact on our business, financial condition or results of operations.

In particular, sales to Ford, a powered vehicles OEM, accounted for approximately 11%, 8% and 8% in 2019, 2018 and 2017, respectively. In the event that Ford were to experience manufacturing or other problems, or were to fail to pay us, it could have a material impact on our business, financial condition or results of operations.

Currency exchange rate fluctuations could impact gross margins and expenses.

Foreign currency fluctuations could in the future have an adverse effect on our business, financial condition or results of operations. We sell our products inside and outside of the United States primarily in U.S. Dollars and New Taiwan Dollars. However, some of the OEMs purchasing products from us sell their products in Europe and other foreign markets using the Euro and other foreign currencies. As a result, as the U.S. Dollar appreciates against these foreign currencies, our products will become relatively more expensive for these OEMs. Accordingly, competitive products that our OEM customers can purchase in other currencies may become more attractive and we could lose sales as these OEMs seek to replace our products with cheaper alternatives. In addition, should the U.S. Dollar depreciate significantly, this could have the effect of decreasing our gross margins and adversely impact our business, financial condition or results of operations.

With a majority of our manufacturing operations for our bike products occurring in Taiwan, a percentage of our sales and expenses are denominated in the New Taiwan Dollar. Should the New Taiwan Dollar appreciate against the U.S. Dollar, this could have the effect of decreasing our sales, increasing our expenses, and decreasing our profitability.

Additionally, certain of our operations take place in Canada and a percentage of our sales and expenses are denominated in Canadian Dollars. Our operating profitability could be negatively impacted as a result of changes in the exchange rate between the U.S. Dollar and the Canadian Dollar.

Our international operations are exposed to risks associated with conducting business globally.

As a result of our international presence, we are exposed to increased risks inherent in conducting business outside of the United States. In addition to foreign currency risks, these risks include:

- difficulty in transporting materials internationally, including labor disputes at West Coast ports, which handle a large amount of our products;
- increased difficulty in protecting our intellectual property rights and trade secrets;
- changes in tax laws and the interpretation of those laws;
- exposure to local economic conditions;
- unexpected government action or changes in legal or regulatory requirements;
- geopolitical regional conflicts, terrorist activity, political unrest, civil strife, acts of war and other political uncertainty;
- changes in tariffs, quotas, trade barriers and other similar restrictions on sales;
- the effects of any anti-American sentiments on our brands or sales of our products;

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- increased difficulty in ensuring compliance by employees, agents and contractors with our policies as well as with the laws of multiple jurisdictions, including but not limited to the U.S. Foreign Corrupt Practices Act, local international environmental, health and safety laws, and increasingly complex regulations relating to the conduct of international commerce;
- increased difficulty in controlling and monitoring foreign operations from the United States, including increased difficulty in identifying and recruiting qualified personnel for our foreign operations; and
- increased difficulty in staffing and managing foreign operations or international sales.

An adverse change in any of these conditions could have a negative effect upon our business, financial condition or results of operations.

U.S. policies related to global trade and tariffs could have a material adverse effect on our results of operations.

The current domestic and international political environment, including existing and potential changes to U.S. policies related to global trade and tariffs, have resulted in uncertainty surrounding the future state of the global economy. In 2018, the U.S. imposed tariffs of 25 percent on steel and 10 percent on aluminum, with only a handful of countries exempt from the increase. Since the beginning of the Trump Administration, the United States and China have imposed a variety of tariffs on most goods traded between the two countries, though a recent trade deal has lessened the threat of further escalation. The United States has imposed tariffs on products from the European Union as a result of a dispute at the World Trade Organization. Plans by the United States to impose tariffs on global imports of automobiles and auto parts appear to be on hold for now. While we have limited exposure to implemented tariffs at this time, any expansion in the types of tariffs implemented has the potential to negatively impact our supply chain costs as well as the operating performance of our customers, thus negatively affecting our sales, gross margin and operating performance. Additionally, there is a risk that the U.S. tariffs on imports could be met with additional retaliatory tariffs on U.S. produced exports and that the broader trade uncertainty could intensify. This has the potential to significantly impact global trade and economic conditions in many of the regions where we do business and have a material adverse effect on our results of operations.

Our sales could be adversely impacted by the disruption or cessation of sales by other bike component manufacturers or if other bike component manufacturers enter into the specialty bike component market.

Most of the bikes incorporating our suspension products also use products and components manufactured by other bike component manufacturers. If such component manufacturers were to cease selling their products and components on a standalone basis, their sales are disrupted, or their competitive market position or reputation is diminished, customers could migrate to competitors that sell complementary bike products that we do not sell. Moreover, such bike component manufacturers could begin manufacturing bike suspension products, wheels, or cranks, or bundle their bike components with suspension products, wheels or cranks manufactured by competitors. If any of the foregoing were to occur, our sales could decrease and our business, financial condition or results of operations could suffer.

We have been and may become subject to intellectual property disputes that could cause us to incur significant costs or pay significant damages or that could prohibit us from selling our products.

As we develop new products or attempt to use our brands in connection with new products, we seek to avoid infringing the valid patents and other intellectual property rights of our competitors. However, from time to time, third parties have alleged, or may allege in the future, that our products and/or trademarks infringe upon their proprietary rights. We will evaluate any such claims and, where appropriate, may obtain or seek to obtain licenses or other business arrangements. To date, there have been no significant interruptions in our business as a result of any claims of infringement, and we do not hold patent infringement insurance. Any claim, regardless of its merit, could be expensive, time consuming to defend and distract management from our business. Moreover, if our products or brands are found to infringe third-party intellectual property rights, we may be unable to obtain a license to use such technology or associated intellectual property rights on acceptable terms. A court determination that our brands, products or manufacturing processes infringe the intellectual property rights of others could result in significant liability and/or require us to make material changes to our products and/or manufacturing processes or preclude our ability to use certain brands. In most circumstances, we are not indemnified for our use of a licensor's intellectual property, if such intellectual property is found to be infringing. Any of the foregoing results could cause us to redesign our products or defend legal actions, which could cause us to incur substantial costs that could negatively affect our business, financial condition or results of operations.

If we are unable to enforce our intellectual property rights, our reputation and sales could be adversely affected.

Intellectual property is an important component of our business. We patent our proprietary technologies related to vehicle suspension and other products in the U.S. and various foreign patent offices. Additionally, we have registered or have applied for trademarks and service marks with the United States Patent and Trademark Office and a number of foreign countries, including the marks FOX[®], FOX RACING SHOX[®], RACE FACE[®] and REDEFINE YOUR LIMITS[®], to be used with certain goods and services. When appropriate, we may from time to time assert our rights against those who infringe on our patents, trademarks, trade dress, or other intellectual property. However, we may not be successful in enforcing our patents or asserting trademark, trade name or trade dress protection with respect to our brand names and our product designs, and third parties may seek to oppose or challenge our patents or trademark registrations. Further, these legal efforts may not be successful in reducing sales of suspension products by those infringing. In addition, our pending patent applications may not result in the issuance of patents, and even issued patents may be contested, circumvented or invalidated and may not provide us with proprietary protection or competitive advantages. If our efforts to develop and enforce our intellectual property are unsuccessful, or if a third party misappropriates our rights, this may adversely affect our business, financial condition or results of operations. Additionally, intellectual property protection may be unavailable or limited in some foreign countries where laws or law enforcement practices may not protect our proprietary rights as fully as in the United States, and it may be more difficult for us to successfully challenge the use of our proprietary rights by other parties in these countries. Furthermore, other competitors may be able to successfully produce products that imitate certain of our products without infringing upon any of our patents, trademarks or trade dress. The failure to prevent or limit infringements and imitations could have a permanent negative impact on the pricing of our products or reduce our product sales and product margins, even if we are ultimately successful in limiting the distribution of a product that infringes our rights, which in turn may affect our business, financial condition or results of operations.

Although we enter into non-disclosure agreements with employees, OEMs, distributors and others to protect our confidential information and trade secrets, we may be unable to prevent such parties from breaching these agreements with us and using our intellectual property in an unauthorized manner. If our efforts to protect our intellectual property are unsuccessful, or if a third party misappropriates our rights, our business may be adversely affected. Defending our intellectual property rights can be very expensive and time consuming, and there is no assurance that we will be successful.

If we inaccurately forecast demand for our products, we may manufacture insufficient or excess quantities or our manufacturing costs could increase, which could adversely affect our business.

We plan our manufacturing capacity based upon the forecasted demand for our products. In the OEM channel, our forecasts are based in large part on the number of our product specifications for new bikes and powered vehicles and on projections from our OEM customers. In the aftermarket channel, our forecasts are based partially on discussions with our dealers and distributors as well as our own assessment of markets. If we incorrectly forecast demand, we may incur capacity issues in our manufacturing plant and supply chain, increased material costs, increased freight costs, additional overtime, and costs associated with excess inventory, all of which in turn adversely impact our cost of sales and our gross margin. Economic weakness and uncertainty in the United States, Europe and other countries may make accurate forecasting particularly challenging.

In the future, if actual demand for our products exceeds forecasted demand, the margins on our incremental sales in excess of anticipated sales may be lower due to temporary higher costs, which could result in a decrease in our overall margins. While we generally manufacture our products upon receipt of customer orders, if actual demand is less than the forecasted demand for our products and we have already manufactured the products or committed to purchase materials in support of forecasted demand, we could be forced to hold excess inventories. In short, either excess or insufficient production due to inaccurate forecasting could have a negative effect on our business, financial condition or results of operations.

Product recalls, and significant product repair and/or replacement due to product warranty costs and claims have had, and in the future, could have, a material adverse impact on our business.

Unless otherwise required by law, we generally provide a limited warranty for our products for a one or two-year period beginning on: (i) in the case of OEM sales, the date the bike or powered vehicle is purchased from an authorized OEM where our product is incorporated as original equipment on the purchased bike or powered vehicle; or (ii) in the case of aftermarket sales, the date the product is originally purchased from an authorized dealer. From time to time, our customers may negotiate for longer or different warranty coverage. In the ordinary course of business, we incur warranty costs and reserve against such costs in our financial statements. However, there is a risk that we could become aware of an underperforming product and be forced to adjust our warranty reserves or incur costs in excess of these reserves, which could adversely affect our results of operations.

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If any of our products are or are alleged to be defective, we may be required to participate in a recall involving such products. Our products and items where our product is incorporated as original equipment on the purchased item are subject to regulation by various agencies, including the NHTSA, the CPSC and similar state and international regulatory authorities. We have had in the past, and may have in the future, recalls (both voluntary and involuntary) of our products or of items that incorporate our products. For example, in October 2016, we initiated a voluntary recall of certain bicycle Float X2 shock absorber products. Most recently, in May 2017, we announced a voluntary recall of approximately 2,500 of FOX's Harley Davidson specific aftermarket motorcycle shock absorbers. In the case of OEM sales, each manufacturer has its own practices regarding product recalls and other product liability actions that could involve its suppliers. Additionally, as suppliers become more integrally involved in the design process and assume a greater role in the overall system design, OEMs could potentially look to us to share in the cost if faced with recalls and product liability claims.

Although we carry product liability and product recall insurance, no assurance can be made that such insurance will provide adequate coverage against any potential claims, such insurance is available in the appropriate markets or that we will be able to obtain such insurance on acceptable terms in the future. In addition to the direct costs related to these or other recalls, our aftermarket and OEM sales could be adversely affected if we do not have a ready replacement product for such recalled products. Such recall events could also adversely affect our brand image and have a negative effect on our relationships with our OEMs, sponsored athletes and race teams, or otherwise have a negative effect on our business, financial condition or results of operations.

An adverse determination in any material product liability claim against us could adversely affect our operating results or financial condition.

The use of our products by consumers, often under extreme conditions, exposes us to risks associated with product liability claims. If our products are defective or used incorrectly by our customers, bodily injury, property damage or other injury, including death, may result in, and could give rise to product liability claims against us, which could adversely affect our brand image or reputation. We have encountered product liability claims in the past and carry product liability insurance to help protect us against the costs of such claims, although our insurance may not be sufficient to cover all losses. Any losses that we may suffer from any product liability claims, and the effect that any product liability litigation may have upon the reputation and marketability of our products, may have a negative impact on our business, financial condition or results of operations.

Our credit facility places operating restrictions on us and creates default risks.

Our credit facility contains covenants that place restrictions on our operating activities. These covenants, among other things, limit our ability to:

- pay dividends or make distributions to our stockholders or redeem our stock;
- incur additional indebtedness or permit additional encumbrances on our assets; and
- make acquisitions or complete mergers or sales of assets, or engage in new businesses.

These restrictions may interfere with our ability to obtain financing or to engage in other business activities, which may have a material adverse effect on our business, financial condition or results of operations.

If we are unable to comply with the covenants contained in our credit facility, it could constitute an event of default and our lenders could declare all borrowings outstanding, together with accrued and unpaid interest, to be immediately due and payable. If we are unable to repay or otherwise refinance these borrowings when due, our lenders could sell the collateral securing our credit facility, which constitutes substantially all of our assets.

We will continue to have the ability to incur debt and our levels of debt may affect our operations and our ability to pay the principal of and interest on our debt.

In the future, we and our subsidiaries may be able to incur substantial additional debt from amendments to our credit facility with Bank of America and other named lenders (the "Credit Facility"), additional lending sources subject to the restrictions contained in the Credit Facility, or because of certain debt instruments we may issue.

As of January 3, 2020, we had \$68.0 million of indebtedness and \$177.0 million in revolving credit available to borrow under the Credit Facility. Our ability to borrow under the Credit Facility fluctuates from time to time due to, among other factors, our borrowings under the Credit Facility.

Our indebtedness could be costly or have adverse consequences, such as:

- requiring us to dedicate a substantial portion of our cash flows from operations to payments on our debt;
- limiting our ability to obtain future financing for working capital, capital expenditures, acquisitions, debt obligations and other general corporate requirements;

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- making us more vulnerable to adverse conditions in the general economy or our industry and to fluctuations in our operating results, including affecting our ability to comply with and maintain any financial tests and ratios required under our indebtedness;
- limiting our flexibility to engage in certain transactions or to plan for, or react to, changes in our business and industry;
- putting us at a disadvantage compared to competitors that have less relative and/or less restrictive debt; and
- subjecting us to additional restrictive financial and other covenants.

If we incur substantial additional indebtedness in the future, these higher levels of indebtedness may affect our ability to pay the principal of and interest on existing indebtedness and our creditworthiness generally.

Our outstanding indebtedness under the Credit Facility bears interest at a variable rate, which makes us more vulnerable to increases in interest rates and could cause our interest expense to increase and decrease cash available for operations and other purposes.

Borrowings under our Credit Facility bear interest on a variable rate, which increases and decreases based upon changes in the underlying interest rate and/or our leverage ratio. Any such increases in the interest rate or increases of our borrowings under the Credit Facility will increase our interest expense.

As of January 3, 2020, we had \$68.0 million of indebtedness, bearing interest at a variable rate, outstanding under the Credit Facility. Recent interest rates in the United States have been at historically low levels, and any increase in these rates would increase our interest expense and reduce our funds available for operations and other purposes. Although from time to time we may enter into agreements to hedge a portion of our interest rate exposure, these agreements may be costly and may not protect against all interest rate fluctuations. Accordingly, we may experience material increases in our interest expense as a result of increases in interest rate levels generally. Based on the \$68.0 million of variable interest rate indebtedness that was outstanding as of January 3, 2020, a hypothetical 100 basis point increase or decrease in the interest rate would have resulted in an approximately \$0.7 million change to our interest expense for the year ended January 3, 2020.

Unanticipated changes in our tax provisions, the adoption of new tax legislation or exposure to additional tax liabilities could affect our financial performance.

Recently enacted U.S. tax legislation has significantly changed the U.S. federal income taxation of U.S. corporations by reducing the U.S. corporate income tax rate, adopting elements of a territorial tax system, imposing a one-time transition tax (or "deemed repatriation tax") on all undistributed earnings and profits of certain U.S. owned foreign corporations, revising the rules governing net operating losses and the rules governing foreign tax credits, repealing the performance-based compensation exception to the \$1 million deduction limit on executive compensation and expanding the scope of employees to whom the limit applies, eliminating the deductibility of certain fringe benefits, permitting immediate expensing of certain capital expenditures, limiting interest deductions, modifying the tax treatment of like kind exchanges, and introducing new anti-base erosion provisions. Many of these changes were effective immediately upon the passage of the legislation, without any transition periods or grandfathering for existing transactions. The legislation is unclear in many respects and will continue to be subject to potential amendments and technical corrections, as well as notices, interpretations and implementation of regulations by the Treasury and IRS, any of which could lessen or increase certain adverse impacts of the legislation. For example, the interpretation the IRS Notice regarding the deduction limitation on executive compensation resulted in a \$1.4 million increase in our tax provision in the third quarter of 2018. Likewise, regulations regarding the deduction for foreign derived intangible income and our estimates of amounts deductible resulted in a \$1.5 million decrease in our tax provision in the third quarter of 2019 and a \$1.8 million reduction of tax expense in the fourth quarter of 2019 related to such deduction in our 2018 tax returns. In addition, it remains unclear in some cases how these U.S. federal income tax changes will affect state and local taxation, which often uses federal taxable income as a starting point for computing state and local tax liabilities, or how foreign governments will view the changes.

Our analysis and interpretation of this legislation is ongoing. We asserted permanent reinvestment of the earnings of certain of our foreign subsidiaries in 2016 and 2017, and discontinued this assertion as a result of the December 2017 changes in legislation. As a result, the deemed repatriation tax, the accrual of state income and foreign withholding taxes on unremitted earnings, and certain other changes to U.S. taxation of amounts earned abroad have impacted our financial statements. Additionally, the reduction in the U.S. corporate tax rate, the revision of rules governing foreign tax credits, and changes in the rules regarding the sourcing of income are expected to have an impact on our ability to utilize our existing and future foreign tax credits, and as such, we have provided a partial valuation allowance on these tax assets. A full valuation allowance was avoided primarily due to the decision to implement a prudent and feasible tax planning strategy to restructure business functions. However, there can be no assurance that we will be able to implement such a plan. Changes in our estimates regarding our ability to utilize our foreign tax credits could have a material impact on our tax provision, net income and cash flows.

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There may be other material adverse effects resulting from the legislation that will become apparent as regulations are issued, and practice evolves through interpretation and case law. While some of the changes made by the tax legislation may adversely affect the Company in one or more reporting periods and prospectively, other changes may be beneficial. We continue to work with our tax advisors to determine the full impact that the recent tax legislation as a whole will have on us.

We are subject to income and other taxes in the United States and numerous foreign jurisdictions. Our tax liabilities in the United States and abroad are affected by the amounts we charge in intercompany transactions for inventory, services, licenses, funding and other items. We are subject to ongoing tax audits in various jurisdictions. Tax authorities may disagree with our intercompany charges, cross-jurisdictional transfer pricing or other matters, and may assess additional taxes as a result. We regularly assess the likely outcomes of these audits in order to determine the appropriateness of our tax provision. However, there can be no assurance that we will accurately predict the outcomes of these audits, and the amounts ultimately paid upon resolution of audits could be materially different from the amounts previously included in our income tax expense and therefore could have a material impact on our tax provision, net income and cash flows.

We are subject to certain risks in our manufacturing and in the testing of our products.

As of January 3, 2020, we employed approximately 2,600 full-time employees worldwide, a large percentage of which work at our manufacturing facilities. Our business involves complex manufacturing processes that can be inherently dangerous. Although we employ safety procedures in the design and operation of our facilities, there is a risk that an accident or death could occur in one of our facilities. In addition, prior to the introduction of new products, our employees test the products under rigorous conditions, which involve the risk of injury or death. Any accident could result in manufacturing or product delays, which could negatively affect our business, financial condition or results of operations. The outcome of litigation is difficult to assess or quantify and the cost to defend litigation can be significant. As a result, the costs to defend any action or the potential liability resulting from any such accident or death or arising out of any other litigation, and any negative publicity associated therewith, could have a negative effect on our business, financial condition or results of operations.

We are subject to extensive United States federal and state, foreign and international safety, environmental, employment practices and other government regulations that may require us to incur expenses or modify product offerings in order to maintain compliance with such regulation, which could have a negative effect on our business and results of operations.

We are subject to extensive laws and regulations relating to safety, environmental, and other laws and regulations promulgated by the United States federal and state governments, as well as foreign and international regulatory authorities. Although we believe that our products, policies and processes comply with applicable safety, environmental, and other standards and related regulations, future regulations may require additional safety standards that would require additional expenses and/or modification of product offerings in order to maintain such compliance. Failure to comply with applicable regulations could result in fines, increased expenses to modify our products and harm to our reputation, all of which could have an adverse effect on our business, financial condition or results of operations.

Moreover, certain of our product offerings require us to comply with the rules and regulations of various standards of standard-setting organizations, such as the CPSC, the NHTSA, and the European Committee for Standardization ("CEN"). Failure to comply with the requirements of such organizations could result in the loss of certain customer contracts, fines and penalties, or both, which could have an adverse effect on our business, financial condition or results of operations.

Unpredictability in the adoption, implementation and enforcement of increasingly stringent emission standards by multiple jurisdictions could adversely affect our business.

Certain of our products are subject to extensive statutory and regulatory requirements governing emission and noise, including standards imposed by the EPA, the EU, state regulatory agencies (such as the CARB) and other regulatory agencies around the world. We have made, and continue to make, capital and research expenditures to ensure our certain of our products comply with these emission standards. Developing products to meet numerous changing government regulatory requirements, with different implementation timelines and emission requirements, makes developing products efficiently for multiple markets complicated and could result in additional costs that may be difficult to recover in certain markets. In some cases, we may be required to develop new products to comply with new regulations, particularly those relating to air emissions. The successful development and introduction of new and enhanced products in order to comply with new regulatory requirements are subject to other risks, such as delays in product development, cost over-runs and unanticipated technical and manufacturing difficulties.

In addition to these risks, the nature and timing of government implementation and enforcement of increasingly stringent emission standards is unpredictable. Any delays in implementation or enforcement could result in the products we developed or modified to comply with these standards becoming unnecessary or becoming necessary later than expected, which in turn could delay, diminish or eliminate the expected return and may adversely affect our business.

Increasing focus on environmental, social and governance responsibility may impose additional costs on us and expose us to new risks.

Regulators, stockholders and other interested constituencies have focused increasingly on the environmental, social and governance practices of companies. Our customers may require us to implement environmental, social or governance responsibility procedures or standards before they will continue to do business with us. Additionally, we may face reputational challenges in the event our environmental, social or governance responsibility procedures or standards do not meet the standards set by certain constituencies. The occurrence of any of the foregoing could have a material adverse effect on the price of our shares and our business, financial condition and results of operations.

Climate change and related regulatory responses may adversely impact our business.

There is increasing concern that a gradual increase in global average temperatures due to increased concentration of carbon dioxide and other greenhouse gases in the atmosphere will cause significant changes in weather patterns around the globe and an increase in the frequency and severity of natural disasters. Changes in weather patterns and an increased frequency, intensity and duration of extreme weather conditions could, among other things, disrupt the operation of our supply chain, since our bike suspension manufacturing is entirely located in Taiwan, which is prone to typhoons, increase our product costs and impact the types and amounts of products that consumers purchase, since the majority of our products are used in outdoor recreation. As a result, the effects of climate change could have a long-term adverse impact on our business and results of operations.

In many of the countries in which we operate, governmental bodies are increasingly enacting legislation and regulations in response to the potential impacts of climate change. These laws and regulations, which may be mandatory, have the potential to impact our operations directly or indirectly as a result of required compliance by our suppliers and us. In addition, we may choose to take voluntary steps to mitigate our impact on climate change. As a result, we may experience increases in energy, production, transportation and raw material costs, capital expenditures or insurance premiums and deductibles. Inconsistency of legislation and regulations among jurisdictions may also affect the costs of compliance with such laws and regulations. Any assessment of the potential impact of future climate change legislation, regulations or industry standards, as well as any international treaties and accords, is uncertain given the scope of potential regulatory change in the countries in which we operate.

We are subject to employment practice laws and regulations, and, as such, are exposed to litigation risks.

We are subject to extensive laws and regulations relating employment practices, including wage and hour, wrongful termination and discrimination. Complying with such laws and regulations, and defending against allegations of our failure to comply (including meritless allegations), can be expensive and time consuming. We believe that our policies and processes comply with applicable employment standards and related regulations, however, we are subject to risks of litigation by employees and others that might involve allegations of illegal, unfair or inconsistent employment practices, including wage and hour violations and employment discrimination, misclassification of independent contractors as employees, wrongful termination and other concerns, which could require additional expenditures.

We are subject to environmental laws and regulation and potential exposure for environmental costs and liabilities.

Our operations, facilities and properties are subject to a variety of foreign, federal, state and local laws and regulations relating to health, safety and the protection of the environment. These environmental laws and regulations include those relating to the use, generation, storage, handling, transportation, treatment and disposal of solid and hazardous materials and wastes, emissions to air, discharges to waters and the investigation and remediation of contamination. Many of these laws impose strict, retroactive, joint and several liability upon owners and operators of properties, including with respect to environmental matters that occurred prior to the time the party became an owner or operator. In addition, we may have liability with respect to third party sites to which we send waste for disposal. Failure to comply with such laws and regulations can result in significant fines, penalties, costs, liabilities or restrictions on operations that could negatively affect our business, financial condition or results of operations. From time to time, we have been involved in administrative or legal proceedings relating to environmental, health or safety matters and have incurred expenditures relating to such matters in the past.

We believe that our operations are in substantial compliance with applicable environmental laws and regulations. However, additional environmental issues relating to presently known or unknown matters could give rise to currently unanticipated investigation, assessment or expenditures. Compliance with laws or regulations that are more stringent, as well as different interpretations of existing laws, more vigorous enforcement by regulators or unanticipated events, could require additional expenditures that may materially affect our business, financial condition or results of operations.

Federal, state, local, foreign and international laws and regulations relating to land-use, and noise and air pollution may have a negative impact on our future sales and results of operations.

The products in our powered vehicles line are used in vehicles that are subject to numerous federal, state, local, foreign and international laws and regulations relating to noise and air pollution. Powered vehicles, and even bikes, have become subject to laws and regulations prohibiting their use on certain lands and trails. For example, in San Mateo County, California, mountain bikes are not allowed on county trails, and ATV and Side-by-Side riding is not allowed in Zion National Park, among many other national and state parks. In addition, recreational snowmobiling has been restricted in some national parks and federal lands in Canada, the United States and other countries. If more of these laws and regulations are passed and the users of our products lose convenient locations to ride their mountain bikes and powered vehicles, our sales could decrease and our business, financial condition or results of operations could suffer.

Fuel shortages, or high prices for fuel, could have a negative effect on the use of powered vehicles that use our products.

Gasoline or diesel fuel is required for the operation of the powered vehicles that use our products. There can be no assurance that the supply of these fuels will continue uninterrupted, that rationing will not be imposed or that the price of or tax on these petroleum products will not significantly increase in the future. Future shortages of gasoline and diesel fuel and substantial increases in the price of fuel could have a material adverse effect on our powered vehicle product category, which could have a negative effect on our business, financial condition or results of operations.

We do not control our suppliers, OEMs, other customers or partners, or require them to comply with a formal code of conduct, and actions that they might take could harm our reputation and sales.

We do not control our suppliers, OEMs, other customers or partners, or their labor, environmental or other practices. A violation of labor, environmental, intellectual property or other laws by our suppliers, OEMs, other customers or partners, or a failure of these parties to follow generally accepted ethical business practices, could create negative publicity and harm our reputation. In addition, we may be required to seek alternative suppliers or partners if these violations or failures were to occur. We do not inspect or audit compliance of our suppliers, OEMs, customers or partners with these laws or practices, and we do not require our suppliers, OEMs, customers or partners to comply with a formal code of conduct. Any conduct or actions that our suppliers could take could reduce demand for our products, harm our ability to meet demand or harm our reputation, brand image, business, financial condition or results of operations.

We depend on a limited number of suppliers for our materials and component parts for some of our products, and the loss of any of these suppliers or an increase in cost of raw materials could harm our business.

We depend on a limited number of suppliers for certain components. If our current suppliers, in particular the minority of those that are "single-source" suppliers, are unable to timely fulfill orders, or if we are required to transition to other suppliers, we could experience significant production delays or disruption to our business. We define a single-source supplier as a supplier from which we purchase all of a particular raw material or input used in our manufacturing operations, although other suppliers are available from which to purchase the same raw material or input or an equivalent substitute. We do not maintain long-term supply contracts with any of our suppliers and instead purchase these components on a purchase order basis. As a result, we cannot force any supplier to sell us the necessary components we use in creating our products and we could face significant supply disruptions should they refuse to do so. As the majority of our bike component manufacturing occurs in Taiwan, we could experience difficulties locating qualified suppliers geographically located closer to these facilities. Furthermore, such suppliers could experience difficulties in providing us with some or all of the materials we require, which could result in disruptions in our manufacturing operations. If we experience difficulties with our suppliers or manufacturing delays caused by our suppliers, whether in connection with our manufacturing operations in the United States or in Taiwan, our business, financial condition or results of operations could be materially and adversely impacted.

We also purchase various raw materials in order to manufacture our products. The main commodity items purchased for production include aluminum, magnesium, steel and carbon. Historically, price fluctuations for these components and raw materials have not had a material impact on our business. In the future, however, if we experience material increases in the price of components or raw materials and are unable to pass on those increases to our customers, or there are shortages in the availability of such component parts or raw materials, it could negatively affect our business, financial condition or results of operations.

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In addition to our various single-source suppliers, we also rely on one "sole-source" supplier, Miyaki Corporation, or Miyaki. We define a sole-source supplier as a supplier of a raw material or input for which there is no other supplier of the same product or an equivalent substitute. Miyaki is the exclusive producer of the Kashima coating for our suspension component tubes. As part of our agreement with Miyaki, we have been granted the exclusive right to use the trademark "KASHIMACOAT" on products comprising the aluminum finished parts for suspension components (e.g., tubes) and on related sales and marketing material worldwide, subject to certain exclusions. Although we believe we could obtain other coatings of comparable utility from other sources if necessary, we could no longer obtain this specific Kashima coating or use the trademark "KASHIMACOAT" if Miyaki were to stop supplying us with this coating. The need to replace the Kashima coating could temporarily disrupt our business and harm our business, financial condition or results of operations.

Regulations related to conflict minerals may force us to continue to incur additional expenses and otherwise adversely impact our business.

The SEC rules regarding disclosure of the use of tin, tantalum, tungsten and gold, known as conflict minerals, in products manufactured by public companies require ongoing due diligence to determine whether such minerals originated from the Democratic Republic of Congo ("DRC"), or an adjoining country and whether such minerals helped finance the armed conflict in the DRC. As a public company, we are required to comply with the reporting obligations annually. There are costs associated with complying with these disclosure requirements, including costs to determine the origin of conflict minerals in our products. The effect of such rules on customer, supplier and/or consumer behavior could adversely affect the sourcing, supply and pricing of materials used in our products. As a result, we may also incur costs with respect to potential changes to products, processes or sources of supply. We may face disqualification as a supplier for customers and reputational challenges if our due diligence procedures do not enable us to verify the origins for all conflict minerals used in our products or to determine if such conflict minerals are conflict-free. Accordingly, these rules could have a material adverse effect on our business, results of operations or financial condition.

We may incur higher employee costs in the future.

We are subject to government-mandated wage and benefit laws and regulations in many varying countries and jurisdictions. For example, the State of California, where a substantial number of our employees are located, has passed legislation designed to raise the statewide minimum wage gradually until it reaches \$15.00 per hour in 2022. Under the California law, signed on April 4, 2016, the minimum wage increased to \$11.00 per hour effective January 1, 2018, and will gradually increase each calendar year through January 1, 2022, when it will reach \$15.00 per hour. As we expand internationally, we are also subject to applicable laws in each such jurisdiction. Increases in the mandated wage in any or all of the jurisdictions in which we operate could subject us to increased costs, thereby impacting our business, financial condition, or results of operations.

We maintain a self-insured healthcare plan for our employees based in the United States. We have insurance coverage in place for individual claims above a specified amount in any year. Inflation in healthcare costs, as well as additional costs we may incur as a result of current or future federal or state healthcare legislation and regulations, could significantly increase our employee healthcare costs in the future. Continued increases in our employee costs could adversely affect our earnings, financial condition and liquidity.

We rely on increasingly complex information systems for management of our manufacturing, distribution, sales and other functions. If our information systems fail to perform these functions adequately or if we experience an interruption in our operations, our business could suffer.

All of our major operations, including manufacturing, distribution, sales and accounting, are dependent upon our complex information systems. Our information systems are vulnerable to damage or interruption from, among other things:

- earthquake, fire, flood, hurricane and other natural disasters;
- power loss, computer systems failure, internet and telecommunications or data network failure; and
- hackers, computer viruses, software bugs or glitches.

Any damage or significant disruption in the operation of such systems or the failure of our information systems to perform as expected could disrupt our operations, reduce our efficiency, delay our fulfillment of customer orders or require significant unanticipated expenditures to correct, and thereby have a negative effect on our business, financial condition or results of operations.

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In 2015, we began the process of implementing a global enterprise resource planning system ("ERP"). The pilot phase of the new ERP was completed in fiscal year 2016 and additional phases were completed in 2018 and 2019. Remaining operations will be phased in over the next few fiscal years. ERP implementations are complex and time-consuming projects that involve substantial expenditures on system software and implementation activities. ERP implementations also require transformation of business and financial processes in order to reap the benefits of the ERP system. Any such transformation involves risks inherent in the conversion to a new computer system, including loss of information and potential disruption to our normal operations. Our business and results of operations may be adversely affected if we experience operating problems or cost overruns during the ERP implementation process, or if the ERP system and the associated process changes do not give rise to the benefits that we expect.

Additionally, if we do not effectively implement the ERP system as planned or the system does not operate as intended, the effectiveness of our internal control over financial reporting could be adversely affected.

We could be negatively impacted by cybersecurity attacks.

We use a variety of information technology systems in the ordinary course of business, which are potentially vulnerable to unauthorized access, computer viruses and cyber-attacks, including cyber-attacks to our information technology infrastructure and attempts by others to gain access to our proprietary or sensitive information, and ranging from individual attempts to advanced persistent threats. The procedures and controls we use to monitor these threats and mitigate our exposure may not be sufficient to prevent cybersecurity incidents. The results of these incidents could include misstated financial data, theft of trade secrets or other intellectual property, liability for disclosure of confidential customer, supplier or employee information, increased costs arising from the implementation of additional security protective measures, litigation and reputational damage, which could materially adversely affect our financial condition, business or results of operations. Any remedial costs or other liabilities related to cybersecurity incidents may not be fully insured or indemnified by other means.

Additionally, security breaches could result in a violation of applicable U.S. and international privacy and other laws and subject us to governmental investigations and proceedings, which could result in our exposure to material civil or criminal liability. For example, the European Union adopted a new regulation that became effective in May 2018, called the General Data Protection Regulation ("GDPR"). GDPR requires companies to meet new requirements regarding the handling of personal data, including its use, protection and the ability of persons whose data is stored to correct or delete such data about themselves. Similarly, the California Consumer Privacy Act ("CCPA"), which took effect on January 1, 2020, imposes additional obligations on businesses to make new disclosures about data collection, use, and sharing practices and affords consumers new rights with respect to their data. It also provides a new private right of action for data breaches. Failure to meet GDPR and CCPA requirements could result in financial penalties.

Our vendors' and commercial partners' information technology systems may fail or suffer security breaches, which could result in a material disruption of our operations.

Despite the implementation of security measures, the information technology systems of our vendors or commercial partners are vulnerable to damage from computer viruses, unauthorized access, natural disasters, and electrical failures. Such events could cause disruptions in our operations. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data, or inappropriate disclosure of confidential or proprietary information, we could be subject to litigation and reputational harm, which could materially adversely affect our financial condition, business or results of operations.

We retain certain personal information about individuals and are subject to various privacy and consumer protection laws.

We collect personal information for various purposes and through various methods, including from third parties and directly from consumers through our website, at events and sales, and via telephone and email. Certain individuals may object to the processing of this data, request the deletion of this data, or opt out of the sharing of this data, any of which may negatively impact our ability to provide effective customer service or otherwise impact our operations. Collection and use of personal information in conducting our business may be subject to federal and/or state laws and regulations in the United States and foreign jurisdictions including, in particular, various jurisdictions in Europe, and such laws and regulations may restrict our processing of such personal information and may hinder our ability to attract new customers or market to existing customers. We may incur significant expenses to comply with privacy, consumer protection, and security standards and protocols imposed by law, regulation, industry standards or contractual obligations.

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Our vendors and any potential commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements.

Our vendors and any potential commercial partners expose us to the risk of fraud or other misconduct. Misconduct by these parties could include intentional, reckless, and/or negligent conduct or disclosure of unauthorized activities to us that violate federal and/or state data privacy, security, and consumer protection laws and regulations in the United States and abroad. Such misconduct could result in regulatory sanctions and cause serious harm to our reputation.

Our operations may be impaired if our information technology systems fail to perform adequately or if they are the subject of a data breach or cyber-attack.

Information technology systems are critically important to operating our business. We rely on information technology systems to manage business data, communications, supply chain, order entry and fulfillment, and other business processes. The failure of any of the information technology systems to perform as anticipated could disrupt our business and could result in transaction errors, processing inefficiencies and the loss of sales and customers, which could materially adversely affect our business, financial condition, or results of operations.

We have grown and may continue to grow in the future through acquisitions. Growth by acquisitions involves risks and we may not be able to effectively integrate businesses we acquire or we may not be able to identify or consummate any future acquisitions on favorable terms, or at all.

We intend to selectively evaluate additional acquisitions in the future. Any acquisitions that we might make are subject to various risks and uncertainties and could have a negative impact on our business, financial condition or results of operations. These risks include the inability to integrate effectively the operations, products, technologies and personnel of the acquired companies (some of which may be spread out in different geographic regions), the inability to achieve anticipated cost savings or operating synergies, the earn-outs we may contractually obligate ourselves to pay, and the risk we may not be able to effectively manage our operations at an increased scale of operations resulting from such acquisitions. In the event we do complete acquisitions in the future, such acquisitions could affect our cash flows and net income as we expend funds, increase indebtedness and incur additional expenses in connection with pursuing acquisitions. We may also issue shares of our common stock or other securities from time to time as consideration for future acquisitions and investments. We may not be able to identify or consummate any future acquisitions on favorable terms, or at all.

Our operating results are subject to quarterly variations in our sales, which could make our operating results difficult to predict and could adversely affect the price of our common stock.

We have experienced, and expect to continue to experience, substantial quarterly variations in our sales and net income. Our quarterly results of operations fluctuate, in some cases significantly, as a result of a variety of other factors, including, among other things:

- the timing of new product releases or other significant announcements by us or our competitors;
- new advertising initiatives;
- fluctuations in raw materials and component costs; and
- changes in our practices with respect to building inventory.

As a result of these quarterly fluctuations, comparisons of our operating results between different quarters within a single year are not necessarily meaningful and may not be accurate indicators of our future performance. Any future quarterly fluctuations that we report may differ from the expectations of market analysts and investors, which could cause the price of our common stock to fluctuate significantly. We also believe that the seasonal nature of our business may have been overshadowed throughout the past few years due to the rapid growth in sales we have experienced during those periods.

Our beliefs regarding the future growth of the performance-defining product market are supported by qualitative data and limited sources and may not be reliable. A reduction or lack of continued growth in the popularity of high-end bikes, bikes or powered vehicles or in the number of consumers who are willing to pay premium prices for well-designed, performance-oriented equipment in the markets in which we sell our products could adversely affect our product sales and profits, financial condition or results of operations.

We generate virtually all of our revenues from sales of performance-defining products. Our beliefs regarding the outlook of the performance-defining product market come from qualitative data and limited sources, which may not be reliable. If our beliefs regarding the opportunities in the market for our products are incorrect or the number of consumers who we believe are willing to pay premium prices for well-designed, performance-oriented equipment in the markets in which we sell our products does not increase, or declines, we may fail to achieve future growth and our business, financial condition or results of operations could be negatively affected.

Failure of our internal control over financial reporting could adversely affect our business and financial results.

Our management is responsible for establishing and maintaining effective internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"). Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting for external purposes in accordance with GAAP. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that we would prevent or detect a misstatement of our financial statements or fraud. Any failure to maintain an effective system of internal control over financial reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud. The identification of a material weakness could indicate a lack of controls adequate to generate accurate financial statements that, in turn, could cause a loss of investor confidence and decline in the market price of our common stock. We cannot assure you that we will be able to timely remediate any material weaknesses that may be identified in future periods or maintain all of the controls necessary for continued compliance. Likewise, we cannot assure you that we will be able to retain sufficient skilled finance and accounting personnel, especially in light of the increased demand for such personnel among publicly traded companies.

Risks related to ownership of our common stock

The trading price of our common stock may be volatile, and you might not be able to sell your shares at or above the price you pay for the shares.

The trading price of our common stock could be volatile, and you could lose all or part of your investment in our common stock. Since our IPO in 2013, our stock price has fluctuated between \$86.91 and \$13.35 per share and such volatility may continue in the future. Factors affecting the trading price of our common stock could include:

- variations in our operating results or those of our competitors;
- new product or other significant announcements by us or our competitors;
- changes in our product mix;
- changes in consumer preferences;
- fluctuations in currency exchange rates;
- the gain or loss of significant customers;
- recruitment or departure of key personnel;
- changes in the estimates of our operating results or changes in recommendations by any securities analysts that elect to follow our common stock;
- changes in general economic conditions as well as conditions affecting our industry in particular; and
- sales of our common stock by us, our significant stockholders or our directors or executive officers.

In addition, in recent years, the stock market has experienced significant price fluctuations. Fluctuations in the stock market generally or with respect to companies in our industry could cause the trading price of our common stock to fluctuate for reasons unrelated to our business, operating results or financial condition. Further, some companies that have had volatile market prices for their securities have had securities class actions filed against them. A lawsuit filed against us, regardless of its merits or outcome, could cause us to incur substantial costs and could divert management's attention.

Future issuances and sales of our shares, or the perception that such sales may occur, could cause our stock price to decline.

The issuance of additional shares of our common stock could dilute the ownership interest of our common stockholders and could depress the market price of shares of our common stock.

Our Amended and Restated Certificate of Incorporation authorizes us to issue 90,000,000 shares of common stock, 38,558,515 of which shares were outstanding as of January 3, 2020. In the future, we may issue additional shares of common stock or other equity or debt securities convertible into common stock in connection with financings, acquisitions, registration statements or otherwise.

After our IPO in 2013, we filed a registration statement under the Securities Act to register shares of our common stock that we may issue under our equity plans. As a result, all such shares can be freely sold in the public market upon issuance, subject to any vesting or contractual lock-up agreements.

We also have a number of institutional stockholders that own significant blocks of our common stock. If one or more of these stockholders were to sell large portions of their holdings in a relatively short time, for liquidity or other reasons, the prevailing price of shares of our common stock could be negatively affected.

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

The trading market for our common stock depends in part on the research and reports that securities or industry analysts publish about our business or us. If one or more of the analysts who covers us downgrades our stock or publishes unfavorable research about our business or our industry, our stock price would likely decline. If one or more of these analysts ceases coverage of our Company or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

Anti-takeover provisions in our charter documents and Delaware law could discourage, delay or prevent a change in control of our Company.

Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws (together, our "Charter Documents"), as well as Delaware law, contain provisions that may discourage, delay or prevent a change in our management or control over us that stockholders may consider favorable. Among other things, these provisions:

- authorize the issuance of "blank check" preferred stock that could be issued by our Board of Directors to discourage a takeover attempt;
- establish a classified Board of Directors, as a result of which the successors to the directors whose terms have expired will be elected to serve from the time of election and qualification until the third annual meeting following their election;
- require that directors be removed from office only for cause;
- provide that vacancies on our Board of Directors, including newly created directorships, may be filled only by a majority vote of directors then in office;
- provide that no action be taken by stockholders by written consent;
- provide that special meetings of our stockholders may be called only by our Board of Directors, our Chairperson of the Board of Directors, our Lead Director (if we do not have a Chairperson or the Chairperson is disabled), our Chief Executive Officer or our President (in the absence of a Chief Executive Officer);
- require supermajority stockholder voting for our stockholders to effect certain amendments to our Charter Documents; and
- establish advance notice requirements for nominations for elections to our Board of Directors or for proposing other matters that can be acted upon by stockholders at stockholder meetings.

In addition, we are subject to Section 203 of the General Corporation Law of the State of Delaware ("DGCL"), which generally prohibits a Delaware corporation from engaging in a broad range of business combinations with a stockholder owning 15% or more of such corporation's outstanding voting stock for a period of three years following the date on which such stockholder became an "interested" stockholder. In order for us to consummate a business combination with an interested stockholder within three years of the date on which the stockholder became interested, either: (i) the business combination or the transaction that resulted in the stockholder becoming interested must be approved by our Board of Directors prior to the date the stockholder became interested; (ii) the interested stockholder must own at least 85% of our outstanding voting stock at the time the transaction commences (excluding voting stock owned by directors who are also officers and certain employee stock plans); or (iii) the business combination must be approved by our Board of Directors and authorized by at least two-thirds of our stockholders (excluding the interested stockholder) at a special or annual meeting (not by written consent). This provision could have the effect of delaying or preventing a change in control, whether or not it is desired by or beneficial to our stockholders. Any delay or prevention of a change in control transaction or changes in our Board of Directors and management could deter potential acquirers or prevent the completion of a transaction in which our stockholders could receive a substantial premium over the then-current market price for their shares of our common stock.

Our Amended and Restated Certificate of Incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or other employees.

Our Amended and Restated Certificate of Incorporation provides that, with certain limited exceptions, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for: (i) any derivative action or proceeding brought on our behalf; (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of our Company owed to us or our stockholders; (iii) any action asserting a claim against us arising pursuant to any provision of the DGCL or our Charter Documents; (iv) any action to interpret, apply, enforce or determine the validity of our Charter Documents; or (v) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock is deemed to have received notice of and consented to the foregoing provisions. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and employees. Alternatively, if a court were to find this choice of forum provision inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, financial condition or results of operations.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

At January 3, 2020, we occupied the following square footage by location:

	United States	Other Countries	Total
Leased facilities	559,086	197,788	756,874
Owned facilities	704,884	44,347	749,231
Total	1,263,970	242,135	1,506,105

During 2018, we relocated our corporate headquarters from Scotts Valley, California to our offices in Braselton, Georgia. We are also currently constructing an approximately 336,000 square foot state-of-the-art facility in Hall County, Georgia to diversify our manufacturing platform and provide additional long-term capacity to support growth in our Powered Vehicles Group. The first phase of the Hall County, Georgia project is expected to be completed late in the second quarter of 2020 and will be used for manufacturing, warehousing, distribution and office space.

Certain administrative, research and development and manufacturing operations are located in California. We also manufacture in the U.S. States of Michigan and Indiana, and internationally in Taiwan and Canada, and maintain sales and service offices in the U.S. and Europe.

We believe that our properties are generally suitable to meet our needs for the foreseeable future. In addition, to the extent we require additional space in the future, we believe that it would be readily available on commercially reasonable terms.

ITEM 3. LEGAL PROCEEDINGS

A lawsuit was filed on December 17, 2015 by SRAM Corporation ("SRAM") in the U.S. District Court, Northern District of Illinois, against the Company's wholly-owned subsidiary, RFE Canada Holding Corp. ("RFE Canada"). The lawsuit alleges patent infringement of U.S. Patent number 9,182,027 ("027 Patent") and violation of the Lanham Act. SRAM filed a second lawsuit in the same court against RFE Canada on May 16, 2016, alleging patent infringement of U.S. Patent number 9,291,250 ("250 Patent"). The Company believes that the lawsuits are without merit and intends vigorously to defend itself. As such, the Company has filed, before the U. S. Patent and Trademark Appeals Board ("PTAB"), for Interparties Reviews ("IPR") of the '027 Patent and separately the same for the '250 Patent. In April 2018, the PTAB issued opinions in the '027 Patent petition cases stating that the Company has not shown the claims of the '027 Patent to be obvious. Regarding the PTAB '027 opinions, the Company has filed an Appeal to the Court of Appeals for the Federal Circuit. The CAFC found in favor of the Company and has vacated and remanded all of the PTAB findings with the exception of their finding that the '027 patent met the prima facie test for obviousness, which was affirmed. SRAM has appealed to the CAFC to rehear the case en banc and that appeal is pending. The PTAB has issued an opinion in the '250 Patent petition case stating that the Company has not shown the claims of the '250 Patent to be obvious.

In a separate action, the Company filed a lawsuit on January 29, 2016 in the U.S. District Court, Northern District of California against SRAM. That lawsuit alleges SRAM's infringement of two separate Company owned patents, specifically U.S. Patent numbers 6,135,434 and 6,557,674. The Company filed a second lawsuit on July 1, 2016 in the U.S. District Court, Northern District of California against SRAM alleging infringement of the Company's U.S. Patent numbers 8,226,172 and 8,974,009. These lawsuits have been moved to U.S. District Court, District of Colorado and are otherwise proceeding. The U.S. District Court, Northern District of Illinois, has lifted the stay of the SRAM lawsuits against the Company. The Company filed and SRAM filed lawsuits are now moving forward in the respective courts.

Due to the inherent uncertainties of litigation, the Company is not able to predict either the outcome or a range of reasonably possible losses, if any, at this time. Accordingly, no amounts have been recorded in the consolidated financial statements for the settlement of these matters. Were an unfavorable ruling to occur, or if factors indicate that a loss is probable and reasonably estimable, the Company's business, financial condition or results of operations could be materially and adversely affected. The Company is involved in other legal matters that arise in the ordinary course of business. Based on information currently available, management does not believe that the ultimate resolution of these matters will have a material adverse effect on the Company's financial condition, results of operations or cash flows.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Market Information**

Our common stock has been listed on the NASDAQ Global Select Market under the symbol "FOXF" since August 8, 2013. Our IPO was priced at \$15.00 per share on August 8, 2013. Prior to that date, there was no public trading market for our common stock.

The following table sets forth, for the periods indicated, the high and low sales prices per share of our common stock as reported on the NASDAQ Global Select Market.

	<u>High</u>	<u>Low</u>
Year Ending December 28, 2018		
Quarter ended March 30, 2018	\$ 40.20	\$ 34.35
Quarter ended June 29, 2018	47.40	33.25
Quarter ended September 28, 2018	72.10	47.75
Quarter ended December 28, 2018	75.17	50.66
Year Ending January 3, 2020		
Quarter ended March 29, 2019	\$ 71.70	\$ 54.21
Quarter ended June 28, 2019	83.74	65.07
Quarter ended September 27, 2019	86.91	59.63
Quarter ended January 3, 2020	71.07	59.01

On February 28, 2020, the closing price per share of our common stock as reported on the NASDAQ Global Select Market was \$63.40 per share.

Stockholders

As of February 28, 2020, there were approximately six holders of record of our common stock. The actual number of stockholders is greater than this number of record holders, and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

Dividend Policy

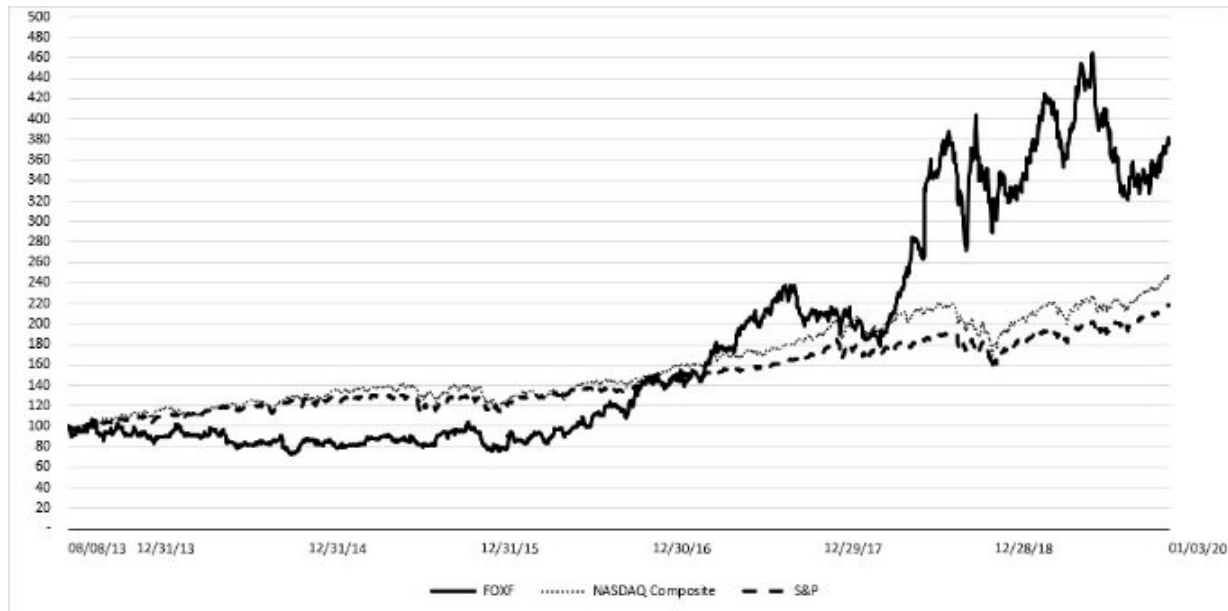
We did not declare or pay any dividends in the years ended January 3, 2020 and December 28, 2018. In addition, our Credit Facility contains covenants limiting our ability to pay dividends to our stockholders. See "[Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources - Former Second Amended and Restated Credit Facility and New Credit Facility](#)" for additional information. While we currently intend to reinvest our earnings, any future determination to declare cash dividends will be made at the discretion of our Board of Directors, subject to applicable laws, and will depend on a number of factors, including our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions and any other factors that our Board of Directors may deem relevant. We do not intend to pay dividends in the foreseeable future.

Equity Compensation Plan Information

For equity compensation plan information, refer to Item 12. "[Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters](#)" of this Annual Report on Form 10-K.

Performance Graph

The following graph shows a comparison from August 8, 2013 (the date our common stock commenced trading on the NASDAQ) through January 3, 2020 of the total cumulative return of our common stock with the total cumulative return of the NASDAQ Composite Index (the "NASDAQ Composite") and S&P 500 Index ("S&P 500"). The figures represented below assume an investment of \$100 in our common stock at the closing price of \$18.61 on August 8, 2013 and in the NASDAQ Composite and S&P 500. Data for the NASDAQ Composite and S&P 500 assume reinvestment of dividends. The comparisons in the graph are historical and are not intended to forecast or be indicative of possible future performance of our common stock.



This performance graph shall not be deemed to be "soliciting material" or "filed" or incorporated by reference in future filings with the SEC, or subject to the liabilities of Section 18 of the Exchange Act except as shall be expressly set forth by specific reference in such filing.

Issuer Purchases of Equity Securities

The table below sets forth information regarding repurchases of our common stock by us during the quarter ended January 3, 2020:

Period	Total Number of Shares Purchased (1)	Weighted Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs
9/28 - 11/1	1,554	\$ 60.94	—
11/2 - 11/29	652	66.82	—
11/30 - 1/3	—	—	—
Total	2,206	\$ 62.68	—

(1) Includes shares acquired from holders of restricted stock unit awards and option exercises to satisfy tax withholding obligations.

ITEM 6. SELECTED FINANCIAL DATA

The following selected consolidated financial and other data should be read in conjunction with, and are qualified by reference to, Item 7 "[Management's Discussion and Analysis of Financial Condition and Results of Operations](#)" and our audited consolidated financial statements and the accompanying notes included elsewhere in this Annual Report on Form 10-K. The consolidated statements of income data for the years ended January 3, 2020, December 28, 2018 and December 29, 2017, and the consolidated balance sheet data as of January 3, 2020 and December 28, 2018 are derived from the audited consolidated financial statements that are included elsewhere in this Annual Report on Form 10-K. We have included, in our opinion, all adjustments, consisting only of normal recurring adjustments that we consider necessary for a fair presentation of the financial information set forth in those statements. The consolidated statements of income data for the years ended December 30, 2016 and December 31, 2015 as well as the consolidated balance sheet data as of December 29, 2017, December 30, 2016 and December 31, 2015, are derived from audited consolidated financial statements that are not included in this Annual Report on Form 10-K. Our historical results are not necessarily indicative of the results to be expected in the future.

Consolidated Statement of Income Data:

(in thousands, except per share data)	For the fiscal years ended					
	(1)	2019	2018	2017	2016	2015
Sales	\$	751,020	\$ 619,225	\$ 475,633	\$ 403,077	\$ 366,798
Cost of sales (2)		508,285	413,729	321,143	276,689	254,756
Gross profit		242,735	205,496	154,490	126,388	112,042
Operating expenses:						
Sales and marketing (2)		42,794	37,296	27,905	25,796	23,182
Research and development (2)		31,789	25,847	20,178	18,459	17,001
General and administrative (2)		48,999	41,756	34,933	27,693	21,053
Amortization of purchased intangibles		6,344	6,065	2,986	2,988	8,525
Fair value adjustment of contingent consideration and acquisition-related compensation		—	—	1,447	5,911	6,937
Total operating expenses		129,926	110,964	87,449	80,847	76,698
Income from operations		112,809	94,532	67,041	45,541	35,344
Other expense, net:						
Interest expense		3,173	3,059	2,396	2,088	1,549
Other expense (income), net		1,067	583	360	363	(449)
Total other expense, net		4,240	3,642	2,756	2,451	1,100
Income before income taxes		108,569	90,890	64,285	43,090	34,244
Provision for income taxes		14,099	5,523	21,102	7,415	9,290
Net income		94,470	85,367	43,183	35,675	24,954
Less: net income attributable to non-controlling interest		1,437	1,327	55	—	—
Net income attributable to FOX stockholders	\$	93,033	\$ 84,040	\$ 43,128	\$ 35,675	\$ 24,954
Earnings per share:						
Basic	\$	2.43	\$ 2.22	\$ 1.15	\$ 0.97	\$ 0.67
Diluted	\$	2.38	\$ 2.16	\$ 1.11	\$ 0.94	\$ 0.66
Weighted average shares used to compute earnings per share:						
Basic		38,333	37,805	37,373	36,799	36,989
Diluted		39,155	38,956	38,738	37,801	37,894

(1) The Company operates on a 52 to 53 week fiscal calendar. The 2019 fiscal year, which ended on January 3, 2020, had 53 weeks and the 2018, 2017, 2016 and 2015 fiscal years, which ended on December 28, 2018, December 29, 2017, December 30, 2016 and December 31, 2015, each had 52 weeks, respectively.

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(2) Includes stock-based compensation as follows:

(in thousands)	For the fiscal years ended				
	2019	2018	2017	2016	2015
Cost of sales	\$ 802	\$ 482	\$ 429	\$ 139	\$ 82
Sales and marketing	506	556	587	598	430
Research and development	721	640	442	357	178
General and administrative	4,835	5,644	7,269	5,129	4,217
Total	<u>\$ 6,864</u>	<u>\$ 7,322</u>	<u>\$ 8,727</u>	<u>\$ 6,223</u>	<u>\$ 4,907</u>

Consolidated Balance Sheet Data:

(in thousands)	For the fiscal years ended				
	2019	2018	2017	2016	2015
Cash and cash equivalents	\$ 43,736	\$ 27,958	\$ 35,947	\$ 35,280	\$ 6,944
Inventory	128,505	107,140	84,841	71,243	68,202
Working capital	190,000	135,162	116,702	95,876	57,971
Property, plant and equipment, net	108,379	64,788	43,636	32,262	26,094
Total assets	609,316	485,254	428,286	335,600	277,716
Total debt, including current portion (1)	68,000	59,426	98,643	66,683	47,881
Total stockholders' equity	\$ 422,200	\$ 321,205	\$ 234,835	\$ 184,937	\$ 152,260

(1) In 2014, in connection with our acquisitions, we entered into amendments to our credit facility, borrowing \$80.0 million under a secured term loan. In 2016, we entered into the Second Amended and Restated Credit Facility, with a refinanced term loan principal balance of \$75.0 million. We paid off the Second Amended and Restated Credit Facility in June 2019 upon entering into a new Credit Facility with Bank of America, N.A. ("Bank of America").

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the section titled "Selected Financial Data" and the consolidated financial statements and related notes thereto included elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed below. You should review the "Risk Factors" and "Special Note Regarding Forward-Looking Statements" sections of this Annual Report on Form 10-K for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

We are a designer, manufacturer and marketer of performance-defining component products used primarily on bikes, side-by-side vehicles, or Side-by-Sides, on-road and off-road vehicles and trucks, all-terrain vehicles or ATVs, snowmobiles, specialty vehicles and applications, motorcycles and commercial trucks. Virtually all of our revenues were from our product sales; miscellaneous sources of revenue such as royalty income and service related repair work and the associated sale of parts represented less than 1% of our sales in each of the years ended January 3, 2020, December 28, 2018 and December 29, 2017.

We have determined that we operate in one reportable segment, which is the manufacturing, sale and service of performance-defining products. Our products fall into the following two categories:

- powered vehicles, including Side-by-Sides, certain on-road vehicles with off-road capabilities, off-road vehicles and trucks, ATVs, snowmobiles, specialty vehicles and applications, motorcycles, and commercial trucks; and
- specialty sports products, which consist primarily of bike suspension and component products.

In each of the years ended January 3, 2020, December 28, 2018 and December 29, 2017, approximately 60%, 54% and 48%, respectively, of our sales were attributable to sales of products for powered vehicles and approximately 40%, 46% and 52%, respectively, of our sales were attributable to sales of specialty sports products.

Our North American sales totaled \$502.3 million, \$388.7 million and \$280.9 million, or 67%, 63% and 59% of our total sales in fiscal years 2019, 2018 and 2017, respectively. Our international sales totaled \$248.8 million, \$230.5 million and \$194.8 million, or 33%, 37% and 41% of our total sales in fiscal years 2019, 2018 and 2017, respectively. Sales attributable to countries outside the United States are based on shipment location. Our international sales, however, do not necessarily reflect the location of the end users of our products as many of our products are incorporated into bikes that are assembled at international locations and then shipped back to the United States. We estimate, based on our internal projections, that approximately one-third of the end users of our products are located outside the United States.

Opportunities, challenges and risks

We intend to focus on generating sales of our performance-defining products through OEMs and in the aftermarket channel. To do this, we intend to continue to develop and introduce new and innovative products in our current end-markets and we intend to selectively develop products for applications and end-markets in which we do not currently participate. Currently, the majority of our sales are dependent on the demand for performance-defining products.

Our aftermarket distribution network currently consists of more than 5,000 retail dealers and distributors worldwide. To further penetrate the aftermarket channel, we intend to selectively add additional dealers and distributors in certain geographic markets, expand our internal sales force and strategically increase the number of aftermarket specific products and services that we offer for existing vehicle platforms. In addition, we believe international expansion represents a significant opportunity for us and we intend to selectively increase infrastructure investments and focus on identified geographic regions.

As a supplier to OEM customers, we are largely dependent on the success of the business of our OEM customers. Model year changes by our OEM customers may adversely impact our sales or cause our sales to vary from quarter to quarter. Losses in market share or a decline in the overall market of our OEM customers or the discontinuance by our OEM customers of their products that incorporate our products could negatively impact our business and our results of operations.

During 2018, we moved our corporate headquarters from Scotts Valley, California to our offices in Braselton, Georgia. We are also currently constructing an approximately 336,000 square foot state-of-the-art facility in Hall County, Georgia to diversify our manufacturing platform and provide additional long-term capacity to support growth in our Powered Vehicles Group. The first phase of the Hall County, Georgia project is expected to be completed late in the second quarter of 2020 and will be used for manufacturing, warehousing, distribution and office space. Our Scotts Valley, California location will remain an essential shared services facility housing certain corporate functions.

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In addition, we relocated our aftermarket bike products distribution, sales and service operations from Watsonville and Scotts Valley, California to Reno, Nevada to better serve our customers.

From time to time, we have experienced, and may continue to experience, warranty costs and claims relating to our products. In the ordinary course of business, we reserve for such costs and claims in our financial statements. There is a risk, however, that in the future we will experience higher than expected warranty costs and claims, as well as other related costs.

We intend to evaluate selective potential acquisition opportunities for performance-defining products and technologies that we believe will help us extend our performance-defining product platform. Any acquisitions that we might make are subject to various risks and uncertainties and could have a negative impact on our results of operations. In addition, we may contractually obligate ourselves to contingent consideration or acquisition related compensation payments in conjunction with such acquisitions, which could have a negative impact on our cash flow and results of operations. See Item 7. "[Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources - Contractual obligations and commitments](#)" for additional information.

Basis of presentation

Sales are primarily comprised of:

Sales from:

- *Product sales:* consist of sales of performance-defining products and systems to customers worldwide. Sales are measured based on the consideration specified in a contract with a customer. We recognize sales when a performance obligation is satisfied by transferring control of a product to a customer, generally at the time of shipment. Contracts are generally in the form of purchase orders and are governed by standard terms and conditions. For larger OEMs, we may also enter into master agreements; and
- *Shipping and handling fees:* consists of shipping and handling fees billed to customers.

Net of:

- *Rebates:* consists of incentives we provide to customers based on sales of eligible products; and
- *Sales returns allowances:* consists of an estimate of our sales returns. This allowance is based upon estimates of the projected returns in future periods based on our experience with returns recorded in previous periods. Sales returns have not been significant to date.

We attribute our past growth in sales predominantly to continued higher demand for on and off-road suspension products, acquisitions, and the success of our current product lines including new products within those lines.

Cost of sales

The cost of sales includes the cost of purchased parts and manufactured products (raw materials consumed, the cost to procure materials, labor costs, including wages, and employee benefits, and factory overhead to produce finished good products), including:

- the costs to inspect and repair products;
- shipping costs associated with inbound freight. These costs are capitalized as part of inventory and included in cost of sales as the inventory is sold;
- royalty expenses, including payments to certain parties for our use of licensed technology incorporated into our products;
- freight expenses incurred for certain shipments to customers;
- warranty costs associated with the repair or replacement of products under warranty; and
- reductions in the cost of inventory to its net realizable value, if required, for estimated excess, obsolescence or impaired balances.

Gross profit/gross margin

Our gross profit equals our sales minus cost of sales. Our gross margin measures our gross profit as a percentage of sales.

Our gross margins fluctuate based on production volumes, product, customer and channel mix and overall supply chain and manufacturing efficiencies. Generally, we earn higher gross margins on our products sold to the aftermarket channel.

Operating expenses

Our operating expenses consist of the following:

- sales and marketing;
- research and development;
- general and administrative;
- amortization of purchased intangibles; and
- fair value adjustment of contingent consideration and acquisition-related compensation.

Our sales and marketing expenses include costs related to our sales, customer service and marketing personnel, including their wages, employee benefits and related stock-based compensation, and occupancy related expenses. Other significant sales and marketing expenses include race support and sponsorships of events and athletes, advertising and promotions related to trade shows, travel and entertainment, promotional materials and products and our sales office costs.

Our research and development expenses consist primarily of salaries and personnel costs, including wages, employee benefits and related stock-based compensation for our engineering, research and development teams, occupancy related expenses, fees for third party consultants, service fees, and expenses for prototype tooling and materials, travel, and supplies. We expense research and development costs as incurred and such costs are included as research and development expenses on our consolidated statements of income.

Our general and administrative expenses include costs related to our executive, finance, information technology, business development, human resources and administrative personnel, including wages, employee benefits and related stock-based compensation expenses. We record professional and contract service expenses, occupancy related expenses associated with corporate locations and equipment, and legal expenses in general and administrative expenses.

Our amortization of purchased intangibles includes amortization over their respective useful lives of our purchased intangible assets, such as customer lists and our core technology. Our intangible assets are evaluated for impairment whenever events or changes in circumstances indicate that the carrying value of the assets may not be fully recoverable. No impairments of intangible assets were identified in the years ended January 3, 2020, December 28, 2018 and December 29, 2017.

Our fair value adjustments of contingent consideration and acquisition-related compensation related primarily to adjustments to our contingent consideration liability arising from the acquisition of Sport Truck as well as accruals for earn-outs related to our acquisition of Race Face/Easton. Our contingent consideration and acquisition-related compensation for the Sport Truck and Race Face/Easton acquisitions have been fully recognized and paid as of January 3, 2020.

Income from operations

We define income from operations as gross profit less our operating expenses. We use income from operations as an indicator of the profitability of our business and our ability to manage costs.

Other expense, net

Other expense, net consists of interest expense and other expense, net. Interest expense consists of interest charged to us under our credit facility.

Other expense, net consists of foreign currency transaction gains and losses, gains and losses on the disposal of fixed assets, and other miscellaneous items.

Income taxes

We are subject to income taxes in the United States (federal and state) and various other foreign jurisdictions. Our effective tax rate could be affected by numerous factors such as change in our business operations, acquisitions, investments, entry into new businesses and geographies, intercompany transactions, the relative amount of our foreign earnings, losses incurred in jurisdictions for which we are not able to realize related tax benefits, changes in our deferred tax assets and liabilities and their valuation, changes in the laws, regulations, administrative practices, principles, and interpretations related to tax, including changes to the global tax framework and other laws and accounting rules in various jurisdictions.

For the years ended January 3, 2020, December 28, 2018 and December 29, 2017, we had effective tax rates of 13.0%, 6.1% and 32.8%, respectively. We have concluded certain elements of our international restructuring in response to the Tax Cuts Jobs Act (the "TCJA"), and expect that certain other changes will be carried out over a number of years.

The TCJA significantly changed how the U.S. taxes corporations. As a result of the enactment of the TCJA in December 2017, our unremitted earnings became subject to a transition tax, which we paid with existing foreign tax credits. We therefore no longer consider our unremitted earnings to be permanently reinvested.

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As of January 3, 2020, our deferred tax assets included foreign tax credits of approximately \$33.3 million, which begin to expire in 2025 unless utilized.

Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. As of January 3, 2020, we recorded a valuation allowance of \$6.5 million, as we anticipate that the TCJA will partially limit our ability to utilize our foreign tax credits. In the future, our effective tax rate could vary as we update our assessment of valuation allowances for our deferred tax assets, including those associated with credit carryforwards. It is reasonably possible that we could record a material adjustment to the valuation allowance in the next twelve months as we assess the progress and outcome of our restructuring activities.

We also have federal and state research credit carryforwards of approximately \$2.8 million and \$2.9 million, respectively. The federal research credits will begin to expire in 2036 unless utilized; the state research credits do not expire.

Stock-based compensation gives rise to deferred tax assets to the extent of the compensation expense recognized on non-qualified stock options that have not been exercised or expired and restricted stock awards that have not vested. As of January 3, 2020, our deferred tax assets included \$1.0 million associated with stock-based compensation expense. We adopted ASU 2016-09, Improvements to Employee Share-Based Payment Accounting in 2016, and as a result, record the difference between the deferred tax asset and the actual tax deduction for stock-based compensation as a component of our income tax expense. Prior to adoption, such differences were recorded as a component of equity. In the three years ended January 3, 2020, and in future periods, our effective tax rate will vary based on such differences.

We are subject to examination of our income tax returns by the U.S. IRS and other tax authorities. We regularly assess the likelihood of adverse outcomes resulting from these examinations to determine the adequacy of our income tax liabilities and expense. Should actual events or results differ from our current expectations, charges or credits to our income tax expense may become necessary. Any such adjustments could have a significant impact on our effective tax rate.

In 2018, we received a no change letter from the Internal Revenue Service ("IRS") related to the audit of our 2015 federal tax return. Additionally, we entered into a closing agreement with the IRS that resolved the uncertainty about the deductibility of amortization and depreciation arising from the Compass Group Diversified Holdings LLC's acquisition of us in 2008 (the "Compass Acquisition") for all open tax years. The favorable conclusion resulted in a decrease in the unrecognized tax benefits of \$6.2 million, of which \$5.6 million favorably impacted the effective tax rate. Including the reversal of the amounts presented as net of deferred tax assets and accrued interest and penalties, the favorable conclusion resulted in a benefit of \$9.8 million to the provision for income tax for the year ended December 28, 2018. The deductibility of acquisition-related amortization and depreciation for state tax purposes remains uncertain.

Results of operations

The table below summarizes our results of operations for the fiscal years ended January 3, 2020, December 28, 2018, and December 29, 2017:

(in thousands)	For the fiscal years ended		
	January 3, 2020	December 28, 2018	December 29, 2017
Sales	\$ 751,020	\$ 619,225	\$ 475,633
Cost of sales	508,285	413,729	321,143
Gross profit	242,735	205,496	154,490
Operating expenses:			
Sales and marketing	42,794	37,296	27,905
Research and development	31,789	25,847	20,178
General and administrative	48,999	41,756	34,933
Amortization of purchased intangibles	6,344	6,065	2,986
Fair value adjustment of contingent consideration and acquisition-related compensation	—	—	1,447
Total operating expenses	129,926	110,964	87,449
Income from operations	112,809	94,532	67,041
Other expense, net:			
Interest expense	3,173	3,059	2,396
Other expense	1,067	583	360
Total other expense, net	4,240	3,642	2,756
Income before income taxes	108,569	90,890	64,285
Provision for income taxes	14,099	5,523	21,102
Net income	94,470	85,367	43,183
Less: net income attributable to non-controlling interest	1,437	1,327	55
Net income attributable to FOX stockholders	\$ 93,033	\$ 84,040	\$ 43,128

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The following table sets forth statement of income data as a percentage of sales for the years indicated:

	For the fiscal years ended		
	January 3, 2020	December 28, 2018	December 29, 2017
Sales	100.0 %	100.0 %	100.0 %
Cost of sales	67.7	66.8	67.5
Gross profit	32.3	33.2	32.5
Operating expenses:			
Sales and marketing	5.7	6.0	5.9
Research and development	4.2	4.2	4.2
General and administrative	6.5	6.7	7.3
Amortization of purchased intangibles	0.8	1.0	0.6
Fair value adjustment of contingent consideration and acquisition-related compensation	—	—	0.3
Total operating expenses	17.3	17.9	18.4
Income from operations	15.0	15.3	14.1
Other expense, net:			
Interest expense	0.4	0.5	0.5
Other expense	0.1	0.1	0.1
Other expense, net	0.6	0.6	0.6
Income before income taxes	14.5	14.7	13.5
Provision for income taxes	1.9	0.9	4.4
Net income	12.6	13.8	9.1
Less: net income attributable to non-controlling interest	0.2	0.2	0.1
Net income attributable to FOX stockholders	12.4 %	13.6 %	9.0 %

**Percentages may not foot due to rounding.*

Fiscal year ended January 3, 2020 compared to fiscal year ended December 28, 2018
Sales

(in millions)	For the fiscal years ended		Change (\$)	Change (%)
	2019	2018		
Sales	\$ 751.0	\$ 619.2	\$ 131.8	21.3 %

Sales for the year ended January 3, 2020 increased approximately \$131.8 million, or 21.3%, compared to the year ended December 28, 2018. The sales increase reflects 33.8% growth in Powered Vehicle products as well as a 6.3% increase in Specialty Sports products for the year ended January 3, 2020 compared to the prior year. The increase in sales of Powered Vehicle product sales was primarily due to the continued success of our product lineup, particularly in the OEM channel, as well as the inclusion of Ridetech's results. The increase in Specialty Sports product sales reflects new product introductions and strong sell through with certain higher growth OEMs.

Cost of sales

(in millions)	For the fiscal years ended		Change (\$)	Change (%)
	2019	2018		
Cost of sales	\$ 508.3	\$ 413.7	\$ 94.6	22.9 %

Cost of sales for the year ended January 3, 2020 increased approximately \$94.6 million, or 22.9%, compared to the year ended December 28, 2018. The increase in cost of sales was driven primarily by an increase in product sales, as well as certain business factors affecting gross margin, which are discussed below.

For the year ended January 3, 2020, our gross margin was 32.3% compared to 33.2% for the year ended December 28, 2018. The decrease in our gross profit margin was primarily due to a shift in customer and product mix as the Company's larger North American OEMs represented a higher portion of sales. Additionally, we incurred manufacturing and supply chain inefficiencies associated with a higher than anticipated increase in customer demand.

Operating expenses

(in millions)	For the fiscal years ended		Change (\$)	Change (%)
	2019	2018		
Operating expenses:				
Sales and marketing	\$ 42.8	\$ 37.3	\$ 5.5	14.7 %
Research and development	31.8	25.8	6.0	23.3 %
General and administrative	49.0	41.8	7.2	17.2 %
Amortization of purchased intangibles	6.3	6.1	0.2	3.3 %
Total operating expenses	\$ 129.9	\$ 111.0	\$ 18.9	17.0 %

Total operating expenses for the year ended January 3, 2020 increased approximately \$18.9 million, or 17.0%, over the comparable period in 2018. When expressed as a percentage of sales, operating expenses decreased to 17.3% of sales for the year ended January 3, 2020 compared to 17.9% of sales in 2018.

Within operating expenses, our sales and marketing expense increased by approximately \$5.5 million primarily due to wages and related expenses of \$2.2 million, costs related to our recently acquired Ridetech subsidiary of \$1.7 million, and various other promotional expenses to expand our marketing team and continue to grow our brand. Research and development expenses increased approximately \$6.0 million primarily due to headcount investments of \$4.6 million as we continue to pursue product innovation, facilities related costs and cost associated with Ridetech. General and administrative expenses increased approximately \$7.2 million due to payroll related costs of \$4.0 million, facility and depreciation expense of \$2.4 million, costs associated with Ridetech of \$0.6 million and various other items, partially offset by a decrease of \$1.3 million in litigation expenses.

Amortization of purchased intangible assets for the year ended January 3, 2020 increased by approximately \$0.2 million as compared to the year ended December 28, 2018, due to the amortization of Ridetech's intangible assets.

[Table of Contents](#)*Income from operations*

(in millions)	For the fiscal years ended			
	2019	2018	Change (\$)	Change (%)
Income from operations	\$ 112.8	\$ 94.5	\$ 18.3	19.4 %

As a result of the factors discussed above, income from operations for the year ended January 3, 2020 increased approximately \$18.3 million, or 19.4%, compared to income from operations in the same period in 2018.

Other expense, net

(in millions)	For the fiscal years ended			
	2019	2018	Change (\$)	Change (%)
Other expense, net:				
Interest expense	\$ 3.2	\$ 3.1	\$ 0.1	3.2 %
Other expense, net	1.0	0.5	0.5	100.0 %
Other expense, net	\$ 4.2	\$ 3.6	\$ 0.6	16.7 %

Other expense, net for the year ended January 3, 2020 increased by approximately \$0.6 million to \$4.2 million compared to \$3.6 million for the year ended December 28, 2018. The increase in other expense, net is primarily due to a \$0.5 million increase in foreign exchange losses in the year ended January 3, 2020.

Income taxes

(in millions)	For the fiscal years ended			
	2019	2018	Change (\$)	Change (%)
Provision for income taxes	\$ 14.1	\$ 5.5	\$ 8.6	156.4 %

Income tax expense for the year ended January 3, 2020 increased by approximately \$8.6 million to \$14.1 million compared to income tax expense of \$5.5 million in the same period in 2018. The increase in expense resulted primarily from the non-recurring Compass Acquisition uncertain tax position which was reflected in 2018, partially offset by the benefit of U.S. foreign derived earnings and the benefit of excess deductions on stock-based compensation.

The effective tax rates were 13.0% and 6.1% for the years ended January 3, 2020 and December 28, 2018, respectively.

For the year ended January 3, 2020, the difference between our effective tax rate and the 21% federal statutory rate resulted primarily from the benefit of excess deductions on stock-based compensation, the benefit of a lower tax rate on U.S. foreign derived earnings, partially offset by non-deductible executive compensation and state taxes.

For the year ended December 28, 2018, the difference between our effective tax rate and the 21% federal statutory rate resulted primarily from the favorable result of the uncertain tax position related to the Compass Acquisition, the benefit of excess deductions on stock-based compensation, the benefit of a lower tax rate on U.S. foreign derived earnings, partially offset by non-deductible executive compensation and state taxes.

Net income

(in millions)	For the fiscal years ended			
	2019	2018	Change (\$)	Change (%)
Net income	\$ 94.5	\$ 85.4	\$ 9.1	10.7 %

As a result of the factors described above, our net income increased \$9.1 million, or 10.7%, to \$94.5 million in the year ended January 3, 2020 from \$85.4 million for the same period in 2018.

Fiscal year ended December 28, 2018 compared to fiscal year ended December 29, 2017

Sales

(in millions)	For the fiscal years ended		Change (\$)	Change (%)
	2018	2017		
Sales	\$ 619.2	\$ 475.6	\$ 143.6	30.2 %

Sales for the year ended December 28, 2018 increased approximately \$143.6 million, or 30.2%, compared to the year ended December 29, 2017. The sales increase reflects 46.5% growth in Powered Vehicle products as well as a 14.9% increase in Specialty Sports products for the year ended December 28, 2018 compared to the prior year. The increase in sales of Powered Vehicle products was primarily due to continued higher demand for on and off-road suspension products, including increased OEM sales, as well as the inclusion of Tuscany's results. The increase in Specialty Sports product sales was primarily due to the success of our current bike product lines including new products within those lines.

Cost of sales

(in millions)	For the fiscal years ended		Change (\$)	Change (%)
	2018	2017		
Cost of sales	\$ 413.7	\$ 321.1	\$ 92.6	28.8 %

Cost of sales for the year ended December 28, 2018 increased approximately \$92.6 million, or 28.8%, compared to the year ended December 29, 2017. The increase in cost of sales was driven primarily by an increase in product sales, as well as certain business factors affecting gross margin, which are discussed below.

For the year ended December 28, 2018, our gross margin was 33.2% compared to 32.5% for the year ended December 29, 2017. The increase in our gross profit margin was primarily attributable to increased operating leverage on higher volume and improved manufacturing efficiencies.

Operating expenses

(in millions)	For the fiscal years ended		Change (\$)	Change (%)
	2018	2017		
Operating expenses:				
Sales and marketing	\$ 37.3	\$ 27.9	\$ 9.4	33.7 %
Research and development	25.8	20.2	5.6	27.7 %
General and administrative	41.8	34.9	6.9	19.8 %
Amortization of purchased intangibles	6.1	3.0	3.1	103.3 %
Fair value adjustment of contingent consideration and acquisition related compensation	—	1.4	(1.4)	(100.0)%
Total operating expenses	\$ 111.0	\$ 87.4	\$ 23.6	27.0 %

Total operating expenses for the year ended December 28, 2018 increased approximately \$23.6 million, or 27.0%, over the comparable period in 2017. When expressed as a percentage of sales, operating expenses decreased to 17.9% of sales for the year ended December 28, 2018 compared to 18.3% of sales in 2017.

Within operating expenses, our sales and marketing expense increased by approximately \$9.4 million primarily due to costs incurred at our recently acquired Tuscany subsidiary of \$6.9 million, as well as increased headcount and promotional expenses in our existing business lines to expand our marketing team and continue to grow our brand. Research and development expenses increased approximately \$5.6 million primarily due to headcount investments of \$3.3 million, prototyping and equipment costs of \$0.9 million, higher patent costs of \$0.6 million, costs incurred at Tuscany of \$0.2 million, and various other items. General and administrative expenses increased approximately \$6.9 million due to higher legal costs related to ongoing litigation of \$2.1 million, expenses of \$1.7 million incurred at Tuscany, higher facility-related costs of \$0.6 million, higher professional fees of \$1.3 million related to our ERP project, general legal and compliance costs, consulting resources, and various other items, partially offset by lower acquisition-related expenses.

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Amortization of purchased intangible assets for the year ended December 28, 2018 increased by approximately \$3.1 million as compared to the year ended December 29, 2017. This increase is due to the amortization of Tuscany's customer relationship assets.

We incurred \$1.4 million in acquisition-related compensation in connection with management earn-out arrangements during the year ended December 29, 2017. Earn-out arrangements were completed during the fiscal year 2017.

Income from operations

(in millions)	For the fiscal years ended			
	2018	2017	Change (\$)	Change (%)
Income from operations	\$ 94.5	\$ 67.0	\$ 27.5	41.0 %

As a result of the factors discussed above, income from operations for the year ended December 28, 2018 increased approximately \$27.5 million, or 41.0%, compared to income from operations in the same period in 2017.

Other expense, net

(in millions)	For the fiscal years ended			
	2018	2017	Change (\$)	Change (%)
Other expense, net:				
Interest expense	\$ 3.1	\$ 2.4	\$ 0.7	29.2 %
Other expense, net	0.5	0.4	0.1	25.0 %
Other expense, net	\$ 3.6	\$ 2.8	\$ 0.8	28.6 %

Other expense, net for the year ended December 28, 2018 increased by approximately \$0.8 million to \$3.6 million compared to \$2.8 million for the year ended December 29, 2017. The increase in other expense, net is primarily due to a \$0.7 million increase in interest expense in the year ended December 28, 2018 due to additional borrowings and higher interest rates as compared to the year ended December 29, 2017.

Income taxes

(in millions)	For the fiscal years ended			
	2018	2017	Change (\$)	Change (%)
Provision for income taxes	\$ 5.5	\$ 21.1	\$ (15.6)	(73.9)%

Income tax expense for the year ended December 28, 2018 decreased by approximately \$15.6 million to \$5.5 million compared to income tax expense of \$21.1 million in the same period in 2017. The decrease in expense resulted primarily from the decrease in U.S. corporate tax rate, the recognition of \$9.8 million in uncertain tax positions incurred as a result of the Compass Acquisition, and the non-recurrence of transition items related to the TCJA, which resulted in a net expense of \$9.3 million in 2017, partially offset by additional taxes associated with a 41.4% increase in pre-tax income and loss of deductibility of certain components of performance-based executive compensation. Additionally, our 2018 income tax expense increased by \$3.4 million as a result of a reduction in the excess benefit of stock-based compensation.

The effective tax rates were 6.1% and 32.8% for the years ended December 28, 2018 and December 29, 2017, respectively.

For the year ended December 28, 2018, the difference between our effective tax rate and the 21% federal statutory rate resulted primarily from the favorable result of the uncertain tax position related to the Compass Acquisition, the benefit of excess deductions on stock-based compensation, the benefit of a lower tax rate on U.S. foreign derived earnings, partially offset by non-deductible executive compensation and state taxes.

For the year ended December 29, 2017, the difference between our effective tax rate and the 35% federal statutory rate resulted primarily from the benefit of excess deductions on stock-based compensation, lower rates on foreign earnings, the impact of the TCJA on our net deferred tax liabilities, our research and development credits, and the reversal of our liability for uncertain tax positions as a result of the expiration of the statute of limitations for certain tax filings. These positive rate impacts were partially offset by the valuation allowance on foreign tax credits and the taxes on unremitted foreign earnings as a result of the TCJA.

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Net income

(in millions)	For the fiscal years ended			
	2018	2017	Change (\$)	Change (%)
Net income	\$ 85.4	\$ 43.2	\$ 42.2	97.7 %

As a result of the factors described above, our net income increased \$42.2 million, or 97.7%, to \$85.4 million in the year ended December 28, 2018 from \$43.2 million for the same period in 2017.

Liquidity and Capital Resources

Our primary cash needs are to support working capital, capital expenditures, acquisitions and acquisition-related compensation, debt repayments and share repurchases. We have generally financed our historical needs with operating cash flows and borrowings under our credit facilities. These sources of liquidity may be impacted by various factors, including demand for our products, investments made by us in acquired businesses, our plant and equipment and other capital expenditures, and expenditures on general infrastructure and information technology.

As of January 3, 2020, we held \$40.6 million of our \$43.7 million of cash and cash equivalents in accounts of our subsidiaries outside of the U.S., which we may repatriate, subject to withholding taxes in some jurisdictions. We manage our foreign cash, intercompany payables and intercompany debt to provide a foreign currency hedge against U.S. dollar-denominated trade receivable balances held by our Taiwan location.

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

(in thousands)	For the years ended		
	January 3,	December 28,	December 29,
	2020	2018	2017
Net cash provided by operating activities	\$ 74,830	\$ 65,392	\$ 48,172
Net cash used in investing activities	(60,330)	(30,203)	(70,456)
Net cash provided by (used in) financing activities	859	(43,431)	22,007
Effect of exchange rate changes on cash and cash equivalents	419	253	944
Increase (decrease) in cash and cash equivalents	\$ 15,778	\$ (7,989)	\$ 667

We expect that cash on hand, cash flow from operations and availability under our credit facility will be sufficient to fund our operations during the next twelve months from the date of this Annual Report on Form 10-K. See [Note 18 - Subsequent Events](#) of the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K for additional discussion related to acquisitions and our credit facility.

Operating activities

Cash provided by operating activities primarily consists of net income, adjusted for certain non-cash items primarily, depreciation and amortization, stock-based compensation, and deferred income taxes, offset by net cash invested in working capital.

In the year ended January 3, 2020, cash provided by operating activities was \$74.8 million and consisted of net income of \$94.5 million plus non-cash items and other adjustments totaling \$14.5 million less changes in operating assets and liabilities totaling \$34.2 million. Non-cash items and other adjustments consisted primarily of depreciation and amortization of \$17.7 million, stock-based compensation of \$6.9 million, and loss on the extinguishment of debt of \$0.5 million, offset by a \$10.6 million change in deferred taxes. Cash invested in operating assets and liabilities is primarily the result of increases in inventory of \$17.0 million, and accounts receivable of \$12.1 million, decreases in income taxes of \$3.6 million and accrued expenses of \$2.3 million, partially offset by a decrease in prepaids and other assets of \$1.7 million. The changes in inventory, accounts receivable, accrued expenses and prepaids and other assets are primarily due to seasonal impacts on working capital. The decrease in income taxes is primarily due to the timing of estimated tax payments and refunds.

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In the year ended December 28, 2018, cash provided by operating activities was \$65.4 million and consisted of net income of \$85.4 million plus non-cash items and other adjustments totaling \$2.8 million less changes in operating assets and liabilities totaling \$22.7 million. Non-cash items and other adjustments consisted primarily of depreciation and amortization of \$14.7 million, and stock-based compensation of \$7.3 million, offset by a \$19.3 million change in deferred taxes. Cash invested in operating assets and liabilities is primarily the result of increases in inventory of \$23.0 million, and accounts receivable of \$19.0 million, partially offset by increases in accounts payable of \$15.2 million, and accrued expenses of \$4.2 million. The increases in inventory, accounts receivable, accounts payable and accrued expenses reflect the growth of our business, changes in customer mix and timing, and the expansion of our manufacturing facilities.

In the year ended December 29, 2017, cash provided by operating activities was \$48.2 million and consisted of net income of \$43.2 million plus non-cash items totaling \$17.9 million less changes in operating assets and liabilities and other adjustments totaling \$13.0 million. Non-cash items and other adjustments consisted primarily of depreciation and amortization of \$10.3 million, and stock-based compensation of \$8.7 million, offset by a \$1.2 million change in deferred taxes. Cash invested in operating assets and liabilities is primarily the result of increases in inventory of \$8.3 million and prepaids and other assets of \$6.4 million, and a decrease in accrued expenses of \$10.5 million, partially offset by a decrease in accounts receivable of \$3.6 million, and increases in accounts payable of \$2.2 million and income taxes net payable of \$6.4 million. The increases in inventory and accounts payable reflects the growth of our business, and the expansion of our manufacturing facilities. The decrease in accounts receivable reflects changes in customer mix and timing. The decrease in accrued expenses is primarily due to payments of our acquisition-related compensation and timing of payments for certain other non-vendor liabilities. The increase in prepaid and other assets is a result of advanced payments to vendors and the timing of insurance and benefits payments. The change in net current income tax accounts is primarily due to timing of estimated tax payments and refunds.

Investing activities

Cash used in investing activities primarily relates to strategic acquisitions of businesses and other assets, and investments in our manufacturing and general infrastructure through the acquisition of property and equipment.

In the year ended January 3, 2020, cash used in investing activities was \$60.3 million which primarily consisted of \$53.5 million in property and equipment additions and \$6.8 million of cash consideration for our acquisition of Ridetech.

In the year ended December 28, 2018, cash used in investing activities was \$30.2 million which consisted entirely of property and equipment additions.

In the year ended December 29, 2017, cash used in investing activities was \$70.5 million which consisted primarily of \$53.6 million invested in the Tuscany acquisition and \$16.9 million in property and equipment additions.

Financing activities

Cash provided by or used in financing activities primarily relates to changes in our capital structure, including the various forms of debt and equity instruments used to finance our business.

In the year ended January 3, 2020, net cash provided by financing activities was \$0.9 million, which consisted primarily of \$7.7 million in net proceeds from our credit facility offset by \$6.8 million in payments to repurchase shares to cover tax withholding related to the vesting of restricted stock awards, net of proceeds from the exercise of stock options.

In the year ended December 28, 2018, net cash used in financing activities was \$43.4 million, which consisted primarily of \$39.3 million in net payments on our credit facility and \$4.1 million in payments to repurchase shares to cover tax withholding related to the vesting of restricted stock awards, net of proceeds from the exercise of stock options.

In the year ended December 29, 2017, net cash provided by financing activities was \$22.0 million, which consisted primarily of \$31.4 million in net proceeds from our credit facility used to finance acquisitions, partially offset by a payment of \$5.4 million in contingent consideration related to our 2014 acquisition of Sport Truck, and \$4.0 million in payments to repurchase shares to cover tax withholding related to the vesting of restricted stock awards, net of proceeds from the exercise of stock options.

Former Second Amended and Restated Credit Facility

In August 2013, we entered into the 2013 Credit Facility with SunTrust Bank and other named lenders. The 2013 Credit Facility provided a revolving line of credit. On March 31, 2014, in connection with our asset purchase of Sport Truck, we amended and restated the 2013 Credit Facility. The Amended and Restated 2013 Credit Facility provided a maturing secured term loan in the principal amount of \$50.0 million, subject to quarterly amortization payments, and extended the term of the 2013 Credit Facility through March 31, 2019. The proceeds of the term loan were used, in part, to fund the acquisition of Sport Truck and to pay down the revolving line of credit provided under the 2013 Credit Facility. On December 12, 2014, we amended the existing Amended and Restated 2013 Credit Facility. The First Amendment increased the term loan by the principal amount of \$30.0 million to a total of \$56.8 million, subject to quarterly amortization payments, and extended the maturity of the Amended and Restated 2013 Credit Facility through December 12, 2019. The additional proceeds of the term loan made available through the First Amendment were used to partially fund the acquisition of Race Face/Easton. Additional amendments entered into on May 29, 2015 and March 31, 2016, respectively, made minor technical changes to the Amended and Restated 2013 Credit Facility. On May 11, 2016, we amended and restated the existing Amended and Restated 2013 Credit Facility. Further technical amendments were made on August 11, 2016, June 12, 2017, November 30, 2017 and November 14, 2018 (as most recently amended and restated and as further amended, the "Second Amended and Restated Credit Facility"). The Second Amended and Restated Credit Facility provided a maturing secured term loan in the principal amount of \$75.0 million, subject to quarterly amortization payments, increased the availability on the line of credit to \$100.0 million, and extended the maturity of the Second Amended and Restated Credit Facility through May 11, 2021. We paid off the Second Amended and Restated Credit Facility in June 2019 upon entering into the new credit facility with Bank of America.

New Credit Facility

In June 2019, we entered into a credit facility with Bank of America and other named lenders (the "Credit Facility"). The Credit Facility, which matures on June 3, 2024, provides a senior secured revolving line of credit with a maximum borrowing capacity of \$250.0 million.

The Credit Facility provides for interest at a rate either based on the London Interbank Offered Rate, or LIBOR, plus a margin ranging from 1.00% to 1.50%, or based on the base rate offered by Bank of America plus a margin ranging from 0.00% to 0.50%. At January 3, 2020, the one-month LIBOR and prime rates were 1.71% and 4.75%, respectively. At January 3, 2020, our weighted average interest rate on outstanding borrowing was 2.80%. The Credit Facility is secured by substantially all of the Company's assets, restricts the Company's ability to make certain payments and engage in certain transactions, and requires that the Company satisfy customary financial ratios. The Company was in compliance with the covenants as of January 3, 2020.

Contractual obligations and commitments

As of January 3, 2020, we had the following contractual obligations (in thousands):

Payments due by period	Total	Less than 1			More than 5
		year	1-3 years	4-5 years	
Long-term borrowings	\$ 68,000	\$ —	\$ —	\$ 68,000	\$ —
Operating lease obligations	19,351	6,242	7,442	3,948	1,719
Purchase obligations and other	5,136	4,136	1,000	—	—
Total	\$ 92,487	\$ 10,378	\$ 8,442	\$ 71,948	\$ 1,719

As of January 3, 2020, we had a liability of approximately \$0.9 million associated with uncertain tax positions, which is classified as a current liability in our consolidated balance sheet because it is reasonably possible that certain federal, foreign, and state tax matters could be concluded in the next twelve months. However, our liability for uncertain tax positions has been excluded from our summary of contractual obligations as we cannot make a reliable estimate of the period of cash settlement with the respective taxing authorities, nor the amount of the final cash settlement. See [Note 13 - Income Taxes](#) of the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K.

Seasonality

Certain portions of our business are seasonal; we believe this seasonality is due to the delivery of new products. Generally, our quarterly sales have been the lowest in the first quarter and highest in the third quarter of the year. For example, our sales in our first and third quarters of 2019 represented 22% and 28% of our total sales for the year, respectively.

Off-Balance Sheet Arrangements

We have no material off-balance sheet arrangements.

Inflation

Historically, inflation has not had a material effect on our results of operations. However, significant increases in inflation, particularly those related to wages and increases in the cost of raw materials could have an adverse impact on our business, financial condition and results of operations.

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with GAAP. The preparation of these consolidated financial statements requires us to make estimates, judgments, and assumptions that affect the reported amounts of assets, liabilities, sales, expenses and related disclosures. We evaluate our estimates, judgments, and assumptions on an ongoing basis. Our estimates are based on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Our actual results could differ from these estimates.

We believe that the assumptions, judgments, and estimates associated with the following have the greatest potential impact on, and are critical to the understanding of, our results of operations: revenue recognition, provision for doubtful accounts receivable, inventory, goodwill and intangible assets, earn-out arrangements, warranty, income taxes and stock-based compensation. For further information see [Note 1 - Description of the Business, Basis of Presentation and Summary of Significant Accounting Policies](#) of the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K.

Critical Accounting Policies

Revenue recognition

Revenue is measured based on the consideration specified in a contract with a customer. The Company recognizes revenue when it satisfies a performance obligation by transferring control over a product to a customer, generally at the time of shipment. Contracts are generally in the form of purchase orders and are governed by standard terms and conditions. For larger OEMs, the Company may also enter into master agreements.

Provisions for discounts, rebates, sales incentives, returns, and other adjustments are generally provided for in the period the related sales are recorded, based on management's assessment of historical trends and projection of future results. Certain pricing provisions that provide the customer with future discounts are considered a material right. Such material rights result in the deferral of revenue that are recognized when the rights are exercised by the customer. Measuring the material rights requires judgments including forecasts of future sales and product mix. Effective December 30, 2017, we adopted ASC 606, *Revenue from Contracts with Customers*. Refer to [Note 1 - Description of the Business, Basis of Presentation and Summary of Significant Accounting Policies](#) of the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K for additional details of this new accounting pronouncement.

Allowance for doubtful accounts

We record a provision for doubtful accounts deemed not collectible based on historical experience and a detailed assessment of the collectability of our accounts receivable. In estimating the allowance for doubtful accounts, we consider, among other factors, the aging of the accounts receivable, historical write-offs, and the credit-worthiness of each customer. If circumstances change, such as higher-than-expected defaults or an unexpected material adverse change in a major customer's ability to meet its financial obligations, we estimate if the recoverability of the amounts due could be reduced by a material amount.

Inventories

Inventories are stated at the lower of actual cost (or standard cost which generally approximates actual costs on a first-in first-out basis) or net realizable value. Cost includes raw materials, as well as direct labor and manufacturing overhead for products we manufacture. Net realizable value is based on current replacement cost for raw materials and on a net realizable value for finished goods. Adjustments to reduce the cost of inventory to its net realizable value are made, if required, for estimated excess, obsolete or impaired balances.

We regularly monitor inventory quantities on hand and on order and record write-downs for excess and obsolete inventories based on our estimate of the demand for our products, potential obsolescence of technology, product life cycles, and when pricing trends or forecasts indicate that the carrying value of inventory exceeds our estimated selling price. These factors are affected by market and economic conditions, technology changes, and new product introductions and require estimates that may include elements that are uncertain. Actual demand may differ from forecasted demand and may have a material effect on our gross margin. If inventory is written down, a new cost basis will be established that cannot be increased in future periods.

Goodwill, intangible assets and long-lived assets

Goodwill

Goodwill represents the excess of purchase price over the fair value of the net assets of businesses acquired. On an annual basis, the Company makes a qualitative assessment to determine if it is more likely than not that the fair value of the reporting unit is less than its carrying amount, including goodwill. If the Company determines that the fair value of the reporting unit is less than its carrying amount, it will perform a quantitative analysis; otherwise, no further evaluation is necessary.

For the quantitative impairment test, the Company compares the fair value of the reporting unit to its carrying value, including goodwill. The Company determines the fair value of the reporting unit based on a weighting of income and market approaches. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is not impaired and no further testing is performed. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then the Company will recognize a loss equal to the excess, limited to the total amount of goodwill allocated to that reporting unit. Impairments, if any, are charged directly to earnings. We completed our most recent annual impairment test in the third quarter of 2019 at which time we had a single reporting unit for purposes of assessing goodwill impairment. No impairment charges have been incurred to date.

Indefinite-lived intangible assets

Certain trademarks and trade names are considered to be indefinite life intangibles, and are not amortized but are subject to testing for impairment annually.

Finite-lived intangible assets

We assess the recoverability of identifiable finite-lived intangible assets whenever events or changes in circumstances indicate that an asset or asset group's carrying amount may be impaired. Impairment of certain finite-lived intangible assets, particularly customer relationships, certain trade names and core technology, is measured by comparing the carrying amount of the asset group to which the assets are assigned to the sum of the undiscounted estimated future cash flows the asset group is expected to generate. If the asset or asset group is considered to be impaired, the amount of such impairment would be measured by the difference between the carrying amount of the asset and its fair value.

Warranty

Unless otherwise required by law, the Company generally offers limited warranties on its products for one to four years. We accrue estimated costs related to warranty activities as a component of cost of sales upon product shipment or when information becomes available indicating that an adjustment to the warranty reserves is appropriate. Management estimates are based upon historical and projected product failure rates and historical costs incurred in correcting product failures. The warranty reserve is assessed from time to time for adequacy and adjusted as necessary for specifically identified warranty exposures. Actual warranty expenses are charged against our estimated warranty liability when incurred. Factors that affect our liability include the number of units, historical and anticipated rates of warranty claims, and the cost per claim. An increase in warranty claims or the related costs associated with satisfying these warranty obligations could increase our cost of sales and negatively affect our operating results.

Income taxes

We are subject to income taxes in the U.S. (federal and state) and foreign jurisdictions. We compute our provision for income taxes using the asset and liability method, under which deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax bases of assets and liabilities. Deferred tax assets and liabilities are measured using the currently enacted tax rates that are expected to apply to taxable income for the years in which those tax assets and liabilities are expected to be realized or settled. The income tax effects of these differences are classified as long-term deferred tax assets and liabilities in our consolidated balance sheets.

Significant judgments are required in order to determine the realizability of these deferred tax assets. In assessing the need for a valuation allowance, we evaluate all significant available positive and negative evidence, including but not limited to, historical operating results, forecasted earnings, estimates of future taxable income of a character necessary to realize the deferred asset, relative proportions of revenue and pre-tax income in the various domestic and jurisdictions in which we operate, and the existence of prudent and feasible tax planning strategies. Changes in the expectations regarding the realization of deferred tax assets could materially impact income tax expense in future periods.

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Additionally, our judgments, assumptions, and estimates relative to the provision for income taxes take into account enacted tax laws, regulations, administrative practices, interpretations in various jurisdictions and possible outcomes of current and future audits conducted by tax authorities. Our effective tax rates could be affected by numerous factors, such as changes in our business operations, acquisitions, investments, entry into new businesses and geographies, intercompany transactions, the relative amount of our foreign earnings, losses incurred in jurisdictions for which we are not able to realize related tax benefits, changes in our deferred tax assets and liabilities and their valuation, changes in the laws, regulations, administrative practices, principles, and interpretations related to tax, including changes to the global tax framework and other laws and accounting rules in various jurisdictions.

We utilize a two-step approach to recognizing and measuring uncertain income tax positions. The first step is to determine if the weight of available evidence indicates that it is more likely than not that the tax position will be sustained on audit, including resolution of any related appeals or litigation processes. The second step is to measure the tax benefit as the largest amount that is more than 50% likely to be realized upon ultimate settlement. We consider many factors when evaluating tax positions such as the closing of a tax audit, the refinement of estimates, and the expiration of a statute of limitations that may require periodic adjustments that impact our tax provision in our consolidated statements of income. Interest and penalties associated with income taxes are recorded as income tax expense.

The TCJA significantly changed how the U.S. taxes corporations. The TCJA requires complex computations to be performed that were not previously required by U.S. tax law, significant judgments to be made in interpretation of the provisions of the TCJA, significant estimates in calculations, and the preparation and analysis of information not previously relevant or regularly produced. The U.S. Treasury Department, the IRS, and other standard-setting bodies will continue to interpret or issue guidance on how provisions of the TCJA will be applied or otherwise administered. As future guidance is issued, we may adjust amounts that we have previously recorded that may materially impact our provision for income taxes in the period in which the adjustments are made.

Our provision for income tax expense also considers our assertions regarding the indefinite reinvestment of earnings of our foreign subsidiaries. We consider the following matters, among others, in evaluating our plans for indefinite reinvestment: (i) the financial requirements of both the Company and its foreign operations, both for the long term and for the short term; (ii) the ability to manage cash globally through intercompany activities; (iii) the tax consequences of any decision to reinvest the earnings of foreign subsidiaries, including any changes in U.S. tax law relating to the treatment of these unremitted earnings; and (iv) any U.S. and foreign government programs or regulations relating to the repatriation of these unremitted earnings. As a result of the enactment of the TCJA in December 2017, our unremitted earnings became subject to a transition tax, which we paid with existing foreign tax credits. We therefore no longer consider our unremitted earnings to be permanently reinvested.

Stock-based compensation

The Company measures stock-based compensation for all stock-based awards, including stock options and restricted stock units ("RSUs"), based on their estimated fair values on the date of the grant and recognizes the stock-based compensation cost for time-vested awards on a straight-line basis over the requisite service period. For performance-based RSUs, the number of shares ultimately expected to vest is estimated at each reporting date based on management's expectations regarding the relevant performance criteria. To the extent shares are expected to vest, the stock-based compensation cost is recognized on a straight-line basis over the requisite service period. The fair value of each stock option granted is estimated using the Black-Scholes option-pricing model. The Company does not estimate forfeitures in recognizing stock-based compensation expense.

The determination of the grant date fair value of options using an option-pricing model is affected by our common stock fair value as well as assumptions including our expected stock price volatility over the expected term of the options, stock option exercise and cancellation behaviors, risk-free interest rates and expected dividends.

Prior to our IPO in August of 2013, our Board of Directors considered numerous objective and subjective factors to determine the fair market value of our common stock at each meeting at which stock options were granted and approved.

Stock-based compensation expenses are classified in the statements of income based on the department to which the related employee reports. Our stock-based awards subsequent to our IPO have been comprised principally of restricted stock unit awards.

Fair value measurement and financial instruments

ASC 820, *Fair Value Measurements and Disclosures*, requires the valuation of assets and liabilities required or permitted to be either recorded or disclosed at fair value based on hierarchy of available inputs as follows:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices for similar assets and liabilities in active markets, quoted prices for identical assets and liabilities in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability; and

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

We apply fair value accounting for all financial assets and liabilities and non-financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis. We define fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities, which are required to be recorded at fair value, we consider the principal or most advantageous market in which we would transact and the market-based risk measurements or assumptions that market participants would use in pricing the asset or liability, such as risks inherent in valuation techniques, transfer restrictions and credit risk.

We used Level 2 inputs to determine the fair value of our Second Amended and Restated Credit Facility. As of December 28, 2018, the carrying amount of the principal under the Second Amended and Restated Credit Facility approximated fair value because it had a variable interest rate that reflected market changes in interest rates and changes in the Company's net leverage ratio. We paid off the Second Amended and Restated Credit Facility in June 2019 upon entering into the new revolving Credit Facility with Bank of America.

As of January 3, 2020, we used Level 3 inputs to determine the fair value of our potential obligations to purchase the non-controlling interests held by third parties in the Tuscany subsidiary. These obligations are in the form of put provisions and are exercisable at the third-party owners' discretion within the specified periods outlined in the put provision within the Tuscany stockholders' agreement (see [Note 16 - Acquisitions](#) of the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K). If these put provisions were exercised, we would be required to purchase the third-party owners' non-controlling interests at the appraised fair value. The initial non-controlling interest value was implicit in the purchase price. The Level 3 methodology we use to estimate the fair value of the non-controlling interests subject to these put provisions is based on an average multiple of earnings, taking into consideration historical earnings and other factors.

Recent Accounting Pronouncements

In May 2014, the FASB and International Accounting Standards Board issued their converged standard on revenue recognition, ASU 2014-09, updated December 2016 with the release of ASU 2016-20. This standard outlines a single comprehensive model for companies to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. The core principle of the revenue model is that an entity recognizes revenue to depict the transfer of promised goods and services in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for those goods and services. In addition, the new standard requires that reporting companies disclose the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers.

The Company adopted this guidance as of the beginning of the first quarter of fiscal year 2018 using the modified retrospective implementation method. The Company applied the guidance to all open contracts at the date of initial application. Additionally, the Company used the practical expedient to omit the disclosure of remaining performance obligations for contracts with an original expected duration of one year or less. The primary impact of adopting the standard resulted from certain pricing provisions within contracts that provide the customer with a material right. Under the new standard, revenue attributed to such pricing provisions is deferred and recognized when the right is exercised by the customer. The Company recorded a cumulative effect adjustment of \$0.4 million gross and \$0.3 million net of taxes to the opening balance of retained earnings to reflect the cumulative effect of the adoption of the standard.

In February 2016, the FASB issued ASU 2016-02, Leases, which supersedes the existing guidance for lease accounting. To meet the objective of enabling users of financial statements to assess the amount, timing, and uncertainty of cash flows arising from leases, this ASU requires lessees to recognize most leases on the balance sheet as right-of-use assets and lease liabilities.

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The Company adopted this guidance as of the beginning of the first quarter of fiscal year 2019, with a cumulative effect adjustment to the opening balance of retained earnings at December 28, 2018 with no restatement of comparative periods' financial information ("current-period adjustment method"). Additionally, the Company adopted this guidance using practical expedients with respect to the assessment of embedded leases, lease classification, and initial indirect costs for expired and existing leases. The Company also elected the practical expedient related to treating lease and non-lease components as a single lease component for all of its leases and elected a policy exclusion permitting leases with an original lease term of less than one year to be excluded from the right-of-use assets and lease liabilities. The Company did not use the hindsight practical expedient to adopt this guidance. The Company recorded a cumulative effect adjustment of \$13.6 million to operating lease right-of-use assets, \$13.9 million to operating lease liabilities, and \$0.3 million gross (\$0.2 million net of taxes) to the opening balance of the Company's retained earnings to reflect the cumulative effect of the adoption of the standard. This standard did not have a material impact on our consolidated income statements.

In June 2016, the FASB issue ASU 2016-13, Financial Instruments: Credit Losses, which adds an impairment model that is based on expected losses rather than incurred losses. Under this standard, an entity recognizes as an allowance its estimate of expected credit losses, which the FASB believes will result in more timely recognition of such losses. This standard is effective for public companies for fiscal years beginning after December 15, 2019, including interim reporting periods within those years and early adoption is permitted. The Company does not expect the impact of this adoption to be material.

In August 2016, the FASB issued ASU 2016-15, Statement of Cash Flows: Classification of Certain Cash Receipts and Cash Payments, which clarifies the presentation of certain transactions, including but not limited to contingent consideration payments made after a business combination and debt prepayment and extinguishment costs in the cash flow statement. The Company adopted ASU 2016-16 effective in the first quarter of fiscal year 2019. The adoption of ASU 2016-15 did not have a material impact on the Company's consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13, Fair Value Measurement, which modifies the disclosure requirements of fair value measurements in Topic 820. This standard is effective for fiscal years beginning after December 15, 2019. The Company is currently assessing the impact this guidance will have on its consolidated financial statements.

In August 2018, the FASB issued ASU 2018-15, Intangibles - Goodwill and Other: Internal-Use Software, which helps simplify how entities evaluate the accounting for costs paid by a customer in a cloud computing arrangement that is a service contract. This standard is effective for fiscal years beginning after December 15, 2019 and early adoption is permitted. The Company is currently assessing the impact this guidance will have on its consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, Simplifying the Accounting for Income Taxes, which helps simplify how entities account for income taxes by removing various exceptions related to the recognition of deferred tax liabilities and updating other tax computation requirements. This standard is effective for fiscal years beginning after December 15, 2020 and early adoption is permitted. The Company is currently assessing the impact this guidance will have on its consolidated financial statements.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest rate sensitivity

We are exposed to market risk in the normal course of our business operations due to our ongoing investing and financing activities. The risk of loss can be assessed from the perspective of adverse changes in fair values, cash flows and future earnings. We have established policies and procedures governing our management of market risks and the use of financial instruments to manage exposure to such risks. We generally do not hedge our interest rate exposure. We had \$68.0 million of debt, bearing interest at a variable rate, outstanding under our Credit Facility as of January 3, 2020. A hypothetical 100 basis point increase or decrease in the interest rate on our variable debt would have resulted in an approximately \$0.7 million change to our interest expense for the year ended January 3, 2020.

Exchange rate sensitivity

As of January 3, 2020, we are exposed to changes in foreign currency exchange rates. While historically this exposure to changes in foreign currency exchange rates has not had a material effect on our financial condition or results of operations, foreign currency fluctuations could have an adverse effect on our business and results of operations in the future. Historically, our primary exposure has been related to transactions denominated in the Euro, New Taiwanese Dollar, and Canadian Dollar. The majority of our sales, both domestically and internationally, are denominated in U.S. Dollars. Historically, the majority of our expenses have also been in U.S. Dollars and we have been somewhat insulated from currency fluctuations. However, we may be exposed to greater exchange rate sensitivity in the future. Currently, we do not hedge our foreign currency exposure; however, we may consider strategies to mitigate our foreign currency exposure in the future if deemed necessary.

Credit and other risks

We are exposed to credit risk associated with cash and cash equivalents and trade receivables. As of January 3, 2020, the majority of our cash and cash equivalents consisted of cash balances in non-interest bearing checking accounts which significantly exceed the insurance coverage provided on such deposits. We do not believe that our cash equivalents present significant credit risks because the counterparties to the instruments consist of major financial institutions. Substantially all trade receivable balances of our businesses are unsecured. The credit risk with respect to trade receivables is concentrated by the number of significant customers that we have in our customer base and a prolonged economic downturn could increase our exposure to credit risk on our trade receivables. To manage our exposure to such risks, we perform ongoing credit evaluations of our customers and maintain an allowance for potential credit losses.

We do not currently hedge our exposure to increases in the prices for our primary raw materials.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Our financial statements and the report of our independent registered public accounting firm are included in Part IV. "[Report of Independent Registered Public Accounting Firm](#)" of this Annual Report on Form 10-K. The index to these reports and our financial statements is included in Item 15. "[Exhibits, Financial Statement Schedules](#)" below.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Our management, under the direction and with the participation of our Chief Executive Officer and our Interim Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of January 3, 2020. Based on the evaluation of our disclosure controls and procedures as of January 3, 2020, our Chief Executive Officer and Interim Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Management's Report on Internal Control Over Financial Reporting

The Management's Report on Internal Control Over Financial Reporting is contained in Part IV. "[Management's Report on Internal Control Over Financial Reporting](#)" of this Annual Report on Form 10-K and is incorporated herein by reference.

Attestation Report of Independent Registered Public Accounting Firm

Grant Thornton, LLP, the independent registered public accounting firm that audited the Company's consolidated financial statements, has issued an attestation report on the Company's internal control over financial reporting. A report of independent registered public accounting firm is contained in Part IV. "[Report of Independent Registered Public Accounting Firm](#)" of this Annual Report on Form 10-K.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) identified in connection with the evaluation required by Rules 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended January 3, 2020 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and Interim Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include, but are not limited to, the realities that judgments in decision making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information required by this Item regarding our directors and executive officers is incorporated by reference to the sections of our proxy statement to be filed with the SEC in connection with our 2020 Annual Meeting of Stockholders (the "Proxy Statement") entitled "Election of Class I Directors" and "Corporate Governance."

Information required by this Item regarding our corporate governance, including our audit committee and code of ethics, is incorporated by reference to the sections of the Proxy Statement entitled "Corporate Governance" and "The Board of Directors."

Information required by this Item regarding compliance with Section 16(a) of the Exchange Act required by this Item is incorporated by reference to the section of the Proxy Statement entitled "Delinquent Section 16(a) Reports."

ITEM 11. EXECUTIVE COMPENSATION

Information required by this item regarding executive compensation is incorporated by reference to the information set forth under the captions "Executive Compensation," "Director Compensation" and "Corporate Governance" in our Proxy Statement.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information regarding security ownership of certain beneficial owners and management is incorporated by reference to the section of the Proxy Statement entitled "Security Ownership of Certain Beneficial Owners and Management."

Information required by this item regarding securities authorized for issuance under our equity compensation plans is incorporated by reference to the information set forth under the caption "Executive Compensation" in our Proxy Statement.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required by this Item is incorporated by reference to the section of the Proxy Statement entitled "Certain Relationships and Related Transactions and Director Independence."

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Information required by this Item is incorporated by reference to the section of the Proxy Statement entitled "Ratification of Appointment of Independent Registered Public Accounting Firm."

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) Financial Statements

Management's Report on Internal Control Over Financial Reporting	62
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Consolidated Statements of Income for the years ended January 3, 2020, December 28, 2018 and December 29, 2017	68
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Consolidated Statements of Stockholders' Equity for the years ended January 3, 2020, December 28, 2018 and December 29, 2017	70
Consolidated Statements of Cash Flows for the years ended January 3, 2020, December 28, 2018 and December 29, 2017	71
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(b) Exhibits

See " Index to Exhibits "	57
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ITEM 16. FORM 10-K SUMMARY

None.

Index to Exhibits

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed or Furnished Herewith
		Form	File No.	Filing Date	
3.1	Amended and Restated Certificate of Incorporation	10-Q	001-36040	September 19, 2013	
3.2	Amended and Restated Bylaws	10-Q	001-36040	September 19, 2013	
4.1	Form of Common Stock Certificate	S-1	333-189841	July 8, 2013	
4.2	Form of Indenture	S-3	333-203146	March 31, 2015	
4.3	Description of Securities				X
10.1†	Employment Agreement, dated July 22, 2013, by and between Fox Factory Holding Corp. and Larry L. Enterline	S-1/A	333-189841	July 25, 2013	
10.2†	Employment Agreement, dated July 22, 2013, by and between Fox Factory Holding Corp. and Zvi Glasman	S-1/A	333-189841	July 25, 2013	
10.3†	Employment Agreement, dated August 29, 2013, by and between Fox Factory Holding Corp. and Wes Allinger	10-Q	001-36040	May 4, 2016	
10.4†	Amendment, dated May 2, 2016, to the Employment Agreement, dated July 22, 2013, by and between Fox Factory Holding Corp. and Larry Enterline	10-Q	001-36040	August 3, 2016	
10.5†	Amendment, dated May 2, 2016, to the Employment Agreement, dated July 22, 2013, by and between Fox Factory Holding Corp. and Zvi Glasman	10-Q	001-36040	August 3, 2016	
10.6†	Employment Agreement, dated May 1, 2018, by and between Fox Factory Holding Corp. and Wes Allinger	10-Q	001-36040	May 2, 2018	
10.7†	Employment Agreement, dated May 1, 2018, by and between Fox Factory Holding Corp. and Chris Tutton	10-K	001-36040	February 26, 2019	
10.8†	Employment Agreement, dated August 29, 2018, by and between Fox Factory Holding Corp. and Michael C. Dennison	10-K	001-36040	February 26, 2019	
10.9†	Amended and Restated Employment Agreement, dated June 26, 2019, by and between Fox Factory Holding Corp. and Larry L. Enterline	8-K	001-36040	July 1, 2019	
10.10†	Amended and Restated Employment Agreement, dated June 26, 2019, by and between Fox Factory Holding Corp. and Michael C. Dennison	8-K	001-36040	July 1, 2019	
10.11†	Transition Services, Separation and Release Agreement, dated October 2, 2019, by and between Fox Factory Holding Corp. and Zvi Glasman	8-K	001-36040	October 10, 2019	
10.12†	Employment Agreement, dated December 2, 2019, by and between Fox Factory Holding Corp. and John E. Blocher	8-K/A	001-36040	December 3, 2019	
10.13†	Non-Employee Director Compensation Policy	S-1/A	333-189841	July 25, 2013	
10.14†	Form of Indemnification Agreement, by and between Fox Factory Holding Corp. and certain of its officers, directors and/or advisors	10-Q	001-36040	October 31, 2018	
10.15†	2008 Stock Option Plan, as amended	S-1	333-189841	July 8, 2013	
10.16†	2008 Non-Statutory Stock Option Plan, as amended	S-1/A	333-189841	August 2, 2013	
10.17†	2013 Omnibus Plan	S-1/A	333-189841	July 29, 2013	
10.18†	2013 Omnibus Plan, as amended by the First Amendment, approved by stockholders on May 4, 2017	8-K	001-36040	May 8, 2017	
10.19†	Form of Restricted Stock Unit Award Agreement under 2013 Omnibus Plan	S-1/A	333-189841	July 25, 2013	

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10.20	Air Commercial Real Estate Association Standard Industrial / Commercial Single-Tenant Lease – Gross, dated October 31, 2011, by and between Fox Factory, Inc. and Sammie Rae Abitbol, LLC, and related addendum	S-1	333-189841	July 8, 2013	
10.21	Air Commercial Real Estate Association Standard Industrial / Commercial Single-Tenant Lease-Gross, dated March 24, 2010, by and between Fox Factory, Inc. and Scarborough Gilbert Partners, and related addenda	S-1	333-189841	July 8, 2013	
10.22	Air Commercial Real Estate Association Standard Industrial / Commercial Multi-Tenant Lease – Net, dated April 19, 2012, by and between Fox Factory, Inc. and North Johnson Vernon Property, LLC, and related addendum	S-1	333-189841	July 8, 2013	
10.23	Asset Purchase and Contribution Agreement, by and among FF US Acquisition Corp., FF US Holding Corp., Flagship, Inc. d/b/a Tuscany, and Michael Graber and Jeff Burttschell, dated November 30, 2017	8-K	001-36040	December 4, 2017	
10.24	Credit Agreement, among Fox Factory Holding Corp., Bank of America, N.A. and the other financial institutions party thereto, dated June 3, 2019	8-K	001-36040	June 4, 2019	
10.25	Standard Form of Agreement between Owner and Design-Builder, dated July 24, 2019 (the “Standard Form of Agreement”), by and between Fox Factory, Inc. and Carroll Daniel Construction Company	8-K	001-36040	December 30, 2019	
10.26	Amendment No. 1 to the Standard Form of Agreement, dated December 23, 2019	8-K	001-36040	December 30, 2019	
10.27	Stock Purchase Agreement, by and among Fox Factory, Inc., Southern Rocky Holdings, LLC, and SCA Performance Holdings, Inc., dated February 11, 2019				X
10.28	Commitment Letter, among Fox Factory Holding Corp., Bank of America, N.A. and BofA Securities, Inc., dated February 11, 2019				X
21.1	List of Subsidiaries				X
22.1	Consent of Independent Registered Public Accounting Firm				X
23.1	Power of Attorney (contained in signature page to this Annual Report on Form 10-K)				X
31.1	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended				X
31.2	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended				X
32.1*	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended				X
32.2*	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended				X
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document				X
101.SCH	Inline XBRL Taxonomy Extension Schema Document				X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document				X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document				X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document				X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document				X

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104	Cover page formatted as Inline XBRL and contained in Exhibit 101	X
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† Management contract or compensatory plan.

* In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release Nos. 33-8238 and 34-47986, Final Rule: Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Annual Report on Form 10-K and will not be deemed "filed" for purposes of Section 18 of the Exchange Act. Such certifications will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

SIGNATURES

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

FOX FACTORY HOLDING CORP.

March 3, 2020

By: /s/ John E. Blocher

**John E. Blocher, Interim Chief Financial Officer and Interim
Treasurer**

**(Interim Principal Financial and Accounting Officer & Duly
Authorized Signatory)**

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John E. Blocher and Michael C. Dennison, and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution for him or her, and in his or her name in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the U.S. Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and either of them, his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

Signature	Title	Date
<u>/s/ Michael C. Dennison</u> Michael C. Dennison	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	March 3, 2020
<u>/s/ John E. Blocher</u> John E. Blocher	Interim Chief Financial Officer and Interim Treasurer <i>(Interim Principal Financial and Interim Accounting Officer)</i>	March 3, 2020
<u>/s/ Larry L. Enterline</u> Larry L. Enterline	Executive Chairman of the Board	March 3, 2020
<u>/s/ Dudley Mendenhall</u> Dudley Mendenhall	Lead Independent Director	March 3, 2020
<u>/s/ Tom Duncan</u> Tom Duncan	Director	March 3, 2020
<u>/s/ Elizabeth A. Fetter</u> Elizabeth A. Fetter	Director	March 3, 2020
<u>/s/ Jean Hlay</u> Jean Hlay	Director	March 3, 2020
<u>/s/ Ted Waitman</u> Ted Waitman	Director	March 3, 2020

Management's Report on Internal Control Over Financial Reporting

The management of Fox is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Fox's internal control over financial reporting is a process designed to provide reasonable assurances regarding the reliability of financial reporting and the preparation and fair presentation of financial statements issued for external purposes in accordance with accounting principles generally accepted in the United States of America (GAAP). Under the supervision of our management, including our Chief Executive Officer and Interim Chief Financial Officer, Fox conducted an evaluation of the effectiveness of our internal control over financial reporting.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect all misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In making its assessment of internal control over financial reporting as of January 3, 2020, management has excluded RT Acquisition Corp. ("Ridetech"), which was formed in May 2019 to acquire the business of Air Ride Technologies, Inc. d/b/a Ridetech. The Company is currently assessing the control environment of the acquired business. The acquired business represented approximately 3% of the Company's consolidated total assets as of January 3, 2020 and approximately 1% of the Company's consolidated net sales for the year ended January 3, 2020.

In making its assessment of internal control over financial reporting, management used criteria issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework (2013). Based on the evaluation, our management concluded that its internal control over financial reporting was effective as of January 3, 2020.

Grant Thornton LLP, the independent registered public accounting firm that audited the Company's consolidated financial statements, has issued an attestation report on the Company's internal control over financial reporting, which is included elsewhere in this Annual Report on Form 10-K.

March 3, 2020

/s/ Michael C. Dennison

Michael C. Dennison
Chief Executive Officer

/s/ John E. Blocher

John E. Blocher
Interim Chief Financial Officer and Interim Treasurer

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of
Fox Factory Holding Corp.

Opinion on the financial statements

We have audited the accompanying consolidated balance sheets of Fox Factory Holding Corp. (a Delaware corporation) and subsidiaries (the “Company”) as of January 3, 2020 and December 28, 2018, the related consolidated statements of income, comprehensive income, stockholders’ equity and redeemable non-controlling interest, and cash flows for each of the three years in the period ended January 3, 2020, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of January 3, 2020 and December 28, 2018, and the results of its operations and its cash flows for each of the three years in the period ended January 3, 2020, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the Company’s internal control over financial reporting as of January 3, 2020, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”), and our report dated March 3, 2020 expressed an unqualified opinion.

Change in accounting principle

As discussed in [Note 1 - Description of the Business, Basis of Presentation and Summary of Significant Accounting Policies](#) to the consolidated financial statements, the Company has changed its method of accounting for leases due to the adoption of the Accounting Standards Update (“ASU”) No. 2016 – 02, Leases. The Company adopted this new standard on December 29, 2018.

Basis for opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical audit matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Net realizable value of inventory

As discussed in [Note 1 - Description of the Business, Basis of Presentation and Summary of Significant Accounting Policies](#), adjustments are made to reduce the cost of inventory to its net realizable value, if required, for estimated excess, obsolete or impaired balances. Management monitors inventory quantities on hand and on order and records write-downs for estimated excess or obsolescence based on estimated demand for products, obsolescence of technology, product life cycles, and when pricing trends or forecasts indicate that the carrying value of inventory exceeds estimated selling price. We identified the net realizable value of inventory as a critical audit matter.

The principal considerations for our determination that the net realizable value of inventory represents a critical audit matter are that the assessment of the valuation of inventory is complex and includes an estimate of forecast demand. The demand estimate is subjective and requires the Company to consider significant assumptions such as economic conditions, consumer and pricing trends, product acceptance and competition, all of which are subject to significant uncertainty and therefore require significant auditor judgement.

Our audit procedures related to the net realizable value of inventory included the following, among others:

- We obtained management's analysis of parts in inventory and expected customer demand, recalculated inputs into the analysis and tested for completeness. This included, among other inputs, forecast demand, age, and general ledger balances.
- We tested selected inventory items by making inquiries of management and evaluating the appropriateness of judgments, assumptions and documentation supporting adjustments to the reserve estimate.
- We compared selected 2020 forecast information to actual sales orders and demand information as provided by customers in order to test the accuracy of demand information included in the calculation.
- We obtained historic sales invoices in order to test the accuracy of past selling data included in the analysis for selected items.
- We inquired with management and various staff members outside of the finance team including members of the Supply Chain team, Production Planners, Product Innovation team and Plant Managers to obtain support for selected forecast demand inputs as well as to understand macroeconomic and customer specific trends.
- We tested the design and operating effectiveness of controls related to the forecast demand for the Company's products as well as management's review of the reserve estimate.

Realizability of Deferred Tax Assets

As discussed in Note 1 to the financial statements, deferred tax assets and liabilities are determined based on the temporary differences between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are provided when necessary to reduce net deferred tax assets to an amount that is more likely than not to be realized. We identified the realizability of deferred tax assets as a critical audit matter.

The principal considerations for our determination that the realizability of deferred tax assets represents a critical audit matter are the significance of the Company's foreign tax credits and the use of forecasted profitability by jurisdiction and source. The forecasts, including future sales and expenses by jurisdiction, are subject to a high level of estimation uncertainty and subjectivity. Additionally, realizability depends on continued implementation of a tax planning strategy. As a result, significant auditor judgment is necessary to audit management's judgments and assumptions.

Our audit procedures related to the realizability of deferred tax assets included the following, among others:

- Our tax specialists evaluated the cross border arrangements within the Company's corporate structure to determine whether they complied with local laws and requirements.
- We tested the accuracy of the underlying data used in the forecasts by agreeing the baseline 2019 results for selected jurisdictions to general ledger balances.
- We compared the previous year's forecast of future taxable income with the 2019 actual results to assess management's ability to accurately estimate future growth.
- We evaluated the appropriateness of the assumptions supporting the future revenue growth rate by jurisdiction.
- We evaluated management's assumptions with respect to anticipated relief from withholding on intercompany charges paid by selected jurisdictions for consistency and credibility.
- We tested the design and operating effectiveness of controls related to the generation of the forecasts and assumptions that underpin the assessment of the realizability of deferred tax assets.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2008.
San Francisco, California
March 3, 2020

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of
Fox Factory Holding Corp.

Opinion on internal control over financial reporting

We have audited the internal control over financial reporting of Fox Factory Holding Corp. (a Delaware corporation) and subsidiaries (the “Company”) as of January 3, 2020, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of January 3, 2020, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the consolidated financial statements of the Company as of and for the year ended January 3, 2020, and our report dated March 3, 2020 expressed an unqualified opinion on those financial statements.

Basis for opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s report on Internal Control Over Financial Reporting (“Management’s Report”). Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and limitations of internal control over financial reporting

A company’s internal control over financial reporting is a process designed 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. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ GRANT THORNTON LLP

San Francisco, California
March 3, 2020

FOX FACTORY HOLDING CORP.
Consolidated Balance Sheets
(in thousands, except par value)

	January 3,	December 28,
	2020	2018
Assets		
Current assets:		
Cash and cash equivalents	\$ 43,736	\$ 27,958
Accounts receivable (net of allowances of \$810 and \$600 at January 3, 2020 and December 28, 2018, respectively)	91,632	78,882
Inventory	128,505	107,140
Prepays and other current assets	17,940	17,967
Total current assets	281,813	231,947
Property, plant and equipment, net	108,379	64,788
Lease right-of-use assets	17,472	—
Deferred tax assets	25,725	15,328
Goodwill	93,527	88,850
Intangibles, net	81,949	83,974
Other assets	451	367
Total assets	\$ 609,316	\$ 485,254
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 55,144	\$ 55,086
Accrued expenses	35,744	33,607
Reserve for uncertain tax positions	925	1,169
Current portion of long-term debt	—	6,923
Total current liabilities	91,813	96,785
Line of credit	68,000	—
Long-term debt, less current portion	—	52,503
Other liabilities	11,584	479
Total liabilities	171,397	149,767
Commitments and contingencies (Refer to Note 10 - Commitments and Contingencies)		
Redeemable non-controlling interest	15,719	14,282
Stockholders' equity		
Preferred stock, \$0.001 par value — 10,000 authorized and no shares issued or outstanding as of January 3, 2020 and December 28, 2018	—	—
Common stock, \$0.001 par value — 90,000 authorized; 39,448 shares issued and 38,559 outstanding as of January 3, 2020; 38,881 shares issued and 37,991 outstanding as of December 28, 2018	39	38
Additional paid-in capital	123,274	116,019
Treasury stock, at cost; 890 common shares as of January 3, 2020 and December 28, 2018	(13,754)	(13,754)
Accumulated other comprehensive income (loss)	150	(784)
Retained earnings	312,491	219,686
Total stockholders' equity	422,200	321,205
Total liabilities, redeemable non-controlling interest and stockholders' equity	\$ 609,316	\$ 485,254

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

FOX FACTORY HOLDING CORP.
Consolidated Statements of Income
(in thousands, except per share data)

	For the fiscal years ended		
	January 3,	December 28,	December 29,
	2020	2018	2017
Sales	\$ 751,020	\$ 619,225	\$ 475,633
Cost of sales	508,285	413,729	321,143
Gross profit	242,735	205,496	154,490
Operating expenses:			
Sales and marketing	42,794	37,296	27,905
Research and development	31,789	25,847	20,178
General and administrative	48,999	41,756	34,933
Amortization of purchased intangibles	6,344	6,065	2,986
Fair value adjustment of contingent consideration and acquisition-related compensation	—	—	1,447
Total operating expenses	129,926	110,964	87,449
Income from operations	112,809	94,532	67,041
Other expense, net:			
Interest expense	3,173	3,059	2,396
Other expense	1,067	583	360
Other expense, net	4,240	3,642	2,756
Income before income taxes	108,569	90,890	64,285
Provision for income taxes	14,099	5,523	21,102
Net income	94,470	85,367	43,183
Less: net income attributable to non-controlling interest	1,437	1,327	55
Net income attributable to Fox stockholders	\$ 93,033	\$ 84,040	\$ 43,128
Earnings per share:			
Basic	\$ 2.43	\$ 2.22	\$ 1.15
Diluted	\$ 2.38	\$ 2.16	\$ 1.11
Weighted average shares used to compute earnings per share:			
Basic	38,333	37,805	37,373
Diluted	39,155	38,956	38,738

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

FOX FACTORY HOLDING CORP.
Consolidated Statements of Comprehensive Income
(in thousands)

	For the fiscal years ended		
	January 3,	December 28,	December 29,
	2020	2018	2017
Net income	\$ 94,470	\$ 85,367	\$ 43,183
Other comprehensive income (loss)			
Foreign currency translation adjustments, net of tax effects	934	(616)	2,025
Other comprehensive income (loss)	934	(616)	2,025
Comprehensive income	95,404	84,751	45,208
Less: comprehensive income attributable to non-controlling interest	1,437	1,327	55
Comprehensive income attributable to Fox stockholders	\$ 93,967	\$ 83,424	\$ 45,153

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

FOX FACTORY HOLDING CORP.
Consolidated Statements of Stockholders' Equity and Redeemable Non-controlling Interest
(in thousands, except per share amounts)

	Common Stock		Treasury		Additional paid-in capital	Accumulated other comprehensive (loss) income	Retained earnings	Total stockholders' equity	Redeemable non-controlling interest
	Shares	Amount	Shares	Amount					
Balance- December 30, 2016	37,781	\$ 37	890	\$ (13,754)	\$ 108,049	\$ (2,193)	\$ 92,798	\$ 184,937	\$ —
Issuance of common stock under equity compensation plans, net of shares repurchased for income tax withholding	716	1	—	—	(3,983)	—	—	(3,982)	—
Acquisition of redeemable non-controlling interest	—	—	—	—	—	—	—	—	12,900
Stock-based compensation expense	—	—	—	—	8,727	—	—	8,727	—
Foreign currency translation adjustment	—	—	—	—	—	2,025	—	2,025	—
Net Income	—	—	—	—	—	—	43,128	43,128	55
Balance - December 29, 2017	38,497	\$ 38	890	\$ (13,754)	\$ 112,793	\$ (168)	\$ 135,926	\$ 234,835	\$ 12,955
Issuance of common stock under equity compensation plans, net of shares repurchased for income tax withholding	384	—	—	—	(4,096)	—	—	(4,096)	—
Stock-based compensation expense	—	—	—	—	7,322	—	—	7,322	—
Foreign currency translation adjustment	—	—	—	—	—	(616)	—	(616)	—
Adoption of new accounting standard, net of taxes	—	—	—	—	—	—	(280)	(280)	—
Net Income	—	—	—	—	—	—	84,040	84,040	1,327
Balance - December 28, 2018	38,881	\$ 38	890	\$ (13,754)	\$ 116,019	\$ (784)	\$ 219,686	\$ 321,205	\$ 14,282
Issuance of common stock under equity compensation plans, net of shares repurchased for income tax withholding	469	1	—	—	(6,776)	—	—	(6,775)	—
Issuance of stock for business acquisition	98	—	—	—	7,167	—	—	7,167	—
Stock-based compensation expense	—	—	—	—	6,864	—	—	6,864	—
Foreign currency translation adjustment	—	—	—	—	—	934	—	934	—
Adoption of new accounting standard, net of taxes	—	—	—	—	—	—	(228)	(228)	—
Net Income	—	—	—	—	—	—	93,033	93,033	1,437
Balance - January 3, 2020	39,448	\$ 39	890	\$ (13,754)	\$ 123,274	\$ 150	\$ 312,491	\$ 422,200	\$ 15,719

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

FOX FACTORY HOLDING CORP.
Consolidated Statements of Cash Flows
(in thousands)

	For the fiscal years ended		
	January 3,	December 28,	December 29,
	2020	2018	2017
OPERATING ACTIVITIES:			
Net income	\$ 94,470	\$ 85,367	\$ 43,183
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	17,736	14,729	10,280
Stock-based compensation	6,864	7,322	8,727
Deferred taxes and uncertain tax positions	(10,615)	(19,286)	(1,160)
Change in fair value of contingent consideration	—	—	(150)
Loss on extinguishment of debt	516	—	—
Changes in operating assets and liabilities:			
Accounts receivable	(12,061)	(19,034)	3,554
Inventory	(17,009)	(22,998)	(8,074)
Income taxes	(3,586)	281	6,421
Prepays and other assets	1,709	(377)	(6,378)
Accounts payable	(869)	15,193	2,243
Accrued expenses and other liabilities	(2,325)	4,195	(10,474)
Net cash provided by operating activities	<u>74,830</u>	<u>65,392</u>	<u>48,172</u>
INVESTING ACTIVITIES:			
Acquisition of businesses	(6,804)	—	(53,592)
Purchases of property and equipment	(53,526)	(30,203)	(16,864)
Net cash used in investing activities	<u>(60,330)</u>	<u>(30,203)</u>	<u>(70,456)</u>
FINANCING ACTIVITIES:			
Proceeds from line of credit	67,500	25,000	42,120
Payments on line of credit	(57,053)	(60,585)	(7,000)
Payment of contingent consideration liability	—	—	(5,382)
Repayment of debt	(2,813)	(3,750)	(3,750)
Cash from stock compensation program, net	(6,775)	(4,096)	(3,981)
Net cash provided by (used in) financing activities	<u>859</u>	<u>(43,431)</u>	<u>22,007</u>
EFFECT OF EXCHANGE RATE CHANGES ON CASH AND CASH EQUIVALENTS	419	253	944
CHANGE IN CASH AND CASH EQUIVALENTS	15,778	(7,989)	667
CASH AND CASH EQUIVALENTS—Beginning of year	27,958	35,947	35,280
CASH AND CASH EQUIVALENTS—End of year	<u>\$ 43,736</u>	<u>\$ 27,958</u>	<u>\$ 35,947</u>
SUPPLEMENTAL CASH FLOW INFORMATION:			
Cash paid during the period for:			
Income taxes	\$ 28,293	\$ 24,610	\$ 15,951
Cash paid for interest, net of capitalized interest	\$ 2,762	\$ 2,756	\$ 2,012
Non-cash investing and financing activities:			
Acquisition of business in exchange for equity	\$ 7,167	\$ —	\$ —
Refinancing of the Second Amended and Restated Credit Facility	\$ 88,875	\$ —	\$ —
Capital expenditures included in accounts payable	\$ 1,718	\$ 1,557	\$ 1,639
Non-controlling interests in acquired business	\$ —	\$ —	\$ 12,900
Debt assumed in acquisition of Tuscany	\$ —	\$ —	\$ 465

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

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements
January 3, 2020
(in thousands, except per share amounts)

1. Description of the Business, Basis of Presentation and Summary of Significant Accounting Policies

Fox Factory Holding Corp. (the "Company") designs and manufactures performance-defining products primarily for bicycles ("bikes"), side-by-side vehicles ("Side-by-Sides"), on-road and off-road vehicles and trucks, all-terrain vehicles, or ATVs, snowmobiles, specialty vehicles and applications, motorcycles and commercial trucks. The Company is a direct supplier to leading power vehicle original equipment manufacturers ("OEMs") and provides aftermarket products to retailers, dealerships, and distributors. Additionally, the Company supplies top bicycle OEMs and their current contract manufacturers, and provides aftermarket products to retailers and distributors.

Throughout this Annual Report on Form 10-K, unless stated otherwise or as the context otherwise requires, the "Company," "FOX," "Fox Factory," "we," "us," "our," and "ours" refer to Fox Factory Holding Corp. and its operating subsidiaries on a consolidated basis.

Basis of Presentation - The accompanying consolidated financial statements have been prepared in accordance with United States of America ("U.S.") generally accepted accounting principles ("GAAP").

Fiscal Year Calendar - The Company operates using a 52-53 week fiscal year calendar ending on the Friday nearest to December 31. Therefore, the financial results of certain fiscal years and quarters, which will contain 53 and 14 weeks, respectively, will not be exactly comparable to the prior and subsequent fiscal years and quarters, which contain 52 and 13 weeks, respectively. For the fiscal years 2019, 2018 and 2017, the Company's fiscal year ended on January 3, 2020, December 28, 2018 and December 29, 2017 and had 53, 52 and 52 weeks, respectively.

Principles of Consolidation - The consolidated financial statements include the Company and its subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

Use of Estimates - The preparation of the Company's consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of income and expenses during the reporting period. These estimates are based on information available as of the date of the financial statements; therefore, actual results could differ from management's estimates.

Foreign Currency Translation and Transaction - The functional currency of the Company's non-U.S. entities is the local currency of the respective operations. The Company translates the financial statements of its non-U.S. entities into U.S. Dollars each reporting period for purposes of consolidation. Assets and liabilities of the Company's foreign subsidiaries are translated at the period-end currency exchange rates while sales and expenses are translated at the average currency exchange rates in effect for the period. The effects of these translation adjustments are a component of other comprehensive income.

Foreign currency transaction losses of \$881, \$420, and \$181 for the years ended January 3, 2020, December 28, 2018 and December 29, 2017, respectively, are included as a component of other income or expense.

Cash and Cash Equivalents - Cash consists of cash maintained in a checking account. All highly liquid investments purchased with an original maturity date of 90 days or less at the date of purchase are considered to be cash equivalents.

Accounts Receivable - Accounts receivable are unsecured customer obligations which generally require payment within various terms from the invoice date. The receivables are stated at the invoice amount. Financing terms vary by customer. Invoices are considered past due when payment is not received within the terms stated within the contract. Payments of accounts receivable are applied to the specific invoices identified on the customer's remittance advice or if unspecified, generally to the earliest unpaid invoices.

The carrying amount of accounts receivable is reduced by a valuation allowance that reflects management's best estimate of amounts that may not be collected. All accounts or portions thereof deemed to be uncollectible or that may require an excessive collection cost are written off to the allowance for doubtful accounts.

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements - Continued
January 3, 2020
(in thousands, except per share amounts)

Concentration of Credit Risk - Financial instruments, which potentially subject the Company to significant concentrations of credit risk, consist primarily of cash and accounts receivable. As of January 3, 2020 the Company held \$3,118 in cash at U.S. subsidiaries and \$40,618 at subsidiaries outside the U.S. The account balances may significantly exceed the insurance coverage provided on such deposits. Generally, these deposits may be redeemed upon demand and are maintained with financial institutions with reputable credit and therefore bear minimal credit risk. The Company has not experienced any losses in its uninsured accounts.

The Company mitigates its credit risk with respect to accounts receivable by performing ongoing credit evaluations and monitoring of its customers' accounts receivable balances. The following customers accounted for 10% or more of the Company's accounts receivable balance:

	January 3, 2020	December 28, 2018
Customer A	11%	13%
Customer B	11%	12%
Customer C	10%	6%

During the years ended January 3, 2020, December 28, 2018 and December 29, 2017, Customer A from the table above represented 11%, 8%, and 8% of sales, respectively. No other customers were individually significant in any of these periods.

The Company depends on a limited number of vendors to supply component parts for its products. The Company purchased 35%, 30%, and 35% of its product components for the years ended January 3, 2020, December 28, 2018 and December 29, 2017, respectively, from ten vendors. As of January 3, 2020 and December 28, 2018, amounts due to these vendors represented 29% and 23% of accounts payable, respectively.

Allowance for Doubtful Accounts - The Company records a provision for doubtful accounts based on historical experience and a detailed assessment of the collectability of its accounts receivable. In estimating the allowance for doubtful accounts, management considers, among other factors, the aging of the accounts receivable, historical write-offs, and the credit-worthiness of each customer. If circumstances change, such as higher-than-expected defaults or an unexpected material adverse change in a major customer's ability to meet its financial obligations, the Company's estimate of the recoverability of the amounts due could be reduced by a material amount.

The following table presents the activity in the allowance for doubtful accounts:

	For the fiscal years ended		
	2019	2018	2017
Allowance for doubtful accounts:			
Balance, beginning of year	\$ 600	\$ 676	\$ 397
Add: bad debt expense	335	189	327
Less: write-offs, net of recoveries	(125)	(265)	(48)
Balance, end of year	<u>\$ 810</u>	<u>\$ 600</u>	<u>\$ 676</u>

Inventories - Inventories are stated at the lower of actual cost (or standard cost which generally approximates actual costs on a first-in first-out basis) or net realizable value. Cost includes raw materials, as well as direct labor and manufacturing overhead for products we manufacture. Net realizable value is based on current replacement cost for raw materials and on a net realizable value for finished goods. Adjustments to reduce the cost of inventory to its net realizable value are made, if required, for estimated excess, obsolescence or impaired balances.

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements - Continued
January 3, 2020
(in thousands, except per share amounts)

Property and Equipment - Property and equipment are stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets. Maintenance and repairs are charged to expense as incurred, and improvements and betterments are capitalized. When assets are retired or otherwise disposed of, the cost and accumulated depreciation and amortization are removed from the balance sheet and any resulting gain or loss is reflected in operations in the period realized.

Leasehold improvements are amortized on a straight-line basis over the terms of the lease, or the useful lives of the assets, whichever is shorter. The value assigned to land associated with buildings we own is not amortized. Depreciation and amortization periods for the Company's property and equipment are as follows:

<u>Asset Classification</u>	<u>Estimated useful life</u>
Building and building improvements	10-39 years
Information systems, office equipment and furniture	3-5 years
Internal-use computer software	10 years
Machinery and equipment	10-15 years
Manufacturing equipment	5-10 years
Transportation equipment	5 years

Internal-use Computer Software Costs - Costs incurred to purchase and develop computer software for internal use are capitalized during the application development and implementation stages. These software costs have been for enterprise-level business and finance software that is customized to meet the Company's operational needs. Capitalized costs are included in property and equipment and are amortized on a straight-line basis over the estimated useful life of the software beginning when the software project is substantially complete and placed in service. The Company capitalized \$2,445 in internal use computer software costs during the year ended January 3, 2020. Costs incurred during the preliminary project stage and costs for training, data conversion, and maintenance are expensed as incurred.

Impairment of Long-lived Assets -The Company periodically reviews property and equipment for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset is impaired or the estimated useful lives are no longer appropriate. If indicators of impairment exist and the undiscounted projected cash flows associated with such assets are less than the carrying amount of the assets, an impairment loss is recorded to write the assets down to their estimated fair values. Fair value is estimated based on discounted future cash flows. No impairment charges were recorded during the years ended January 3, 2020, December 28, 2018 and December 29, 2017.

Business Combinations - The Company accounts for acquisitions of entities that include inputs and processes and have the ability to create outputs as business combinations. The Company allocates the purchase price of the acquisition to the tangible assets acquired, liabilities assumed and identifiable intangible assets acquired based on their estimated fair values. The excess of the purchase price over those fair values is recorded as goodwill. Acquisition-related expenses and restructuring costs are expensed as incurred. During the measurement period, the Company records adjustments to provisional amounts recorded for assets acquired and liabilities assumed with the corresponding offset to goodwill. After the measurement period, which could be up to one year after the transaction date, subsequent adjustments are recorded to the Company's consolidated statements of income.

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements - Continued
January 3, 2020
(in thousands, except per share amounts)

Goodwill and Intangible Assets - Goodwill represents the excess of purchase price over the fair value of the net assets of businesses acquired. On an annual basis, the Company makes a qualitative assessment to determine if it is more likely than not that the fair value of the reporting unit is less than its carrying amount, including goodwill. If the Company determines that the fair value of the reporting unit is less than its carrying amount, it will perform a quantitative analysis; otherwise, no further evaluation is necessary. For the quantitative impairment assessment, the Company compares the fair value of the reporting unit to its carrying value, including goodwill. The Company determines the fair value of the reporting unit based on a weighting of income and market approaches. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is not impaired and no further testing is performed. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then the Company will recognize a loss equal to the excess, limited to the total amount of goodwill allocated to that reporting unit. Impairments, if any, are charged directly to earnings. We completed our most recent annual impairment test in the third quarter of 2019 at which time we had a single reporting unit for purposes of assessing goodwill impairment. No impairment charges have been incurred to date.

Intangible assets include customer relationships and the Company's core technology, are subject to amortization over their respective useful lives, and are classified in intangibles, net in the accompanying consolidated balance sheet. These intangibles are evaluated for impairment whenever events or changes in circumstances indicate that the carrying value of the assets may not be fully recoverable. If facts and circumstances indicate that the carrying value might not be recoverable, projected undiscounted net cash flows associated with the related asset or group of assets over their estimated remaining useful lives is compared against their respective carrying amounts. If an asset is found to be impaired, the impairment charge will be measured as the amount by which the carrying amount of an entity exceeds its fair value. Trademarks and brands are considered to be indefinite life intangibles, and are not amortized but are subject to testing for impairment annually. No impairments of intangible assets were identified in the years ended January 3, 2020, December 28, 2018 and December 29, 2017.

Self-Insurance - The Company is partially self-insured for its U.S. employee health and welfare benefits. The Company's liability for self-insurance is based on claims filed and an estimate of claims incurred but not yet reported. The Company considers a number of factors, including historical claims information, when determining the amount of the accrual. Costs related to the administration of the plan and related claims are expensed as incurred. The Company has third-party insurance coverage to limit exposure for individually significant claims. The estimates for unpaid claims incurred as of January 3, 2020 and December 28, 2018 are \$842 and \$801 respectively, and are recorded within accrued expenses on the consolidated balance sheets.

Revenue Recognition - Revenues are generated from the sale of performance-defining products and systems to customers worldwide. The Company's performance-defining products and systems are solutions that improve performance of powered vehicles and bikes. Powered vehicles include Side-by-Sides, on-road vehicles with off-road capabilities, off-road vehicles and trucks, ATVs, snowmobiles, specialty vehicles and applications, and motorcycles.

Revenue is measured based on the consideration specified in a contract with a customer. The Company recognizes revenue when it satisfies a performance obligation by transferring control of a product to a customer, generally at the time of shipment. Contracts are generally in the form of purchase orders and are governed by standard terms and conditions. For larger OEMs, the Company may also enter into master agreements.

Provisions for discounts, rebates, sales incentives, returns, and other adjustments are generally provided for in the period the related sales are recorded, based on management's assessment of historical trends and projection of future results. Certain pricing provisions that provide the customer with future discounts are considered a material right. Such material rights result in the deferral of revenue that are recognized when the rights are exercised by the customer. Measuring the material rights requires judgments including forecasts of future sales and product mix. At January 3, 2020, the balance of deferred revenue related to pricing provisions was \$172. These amounts are expected to be recognized over the next 12 months. Revenues exclude sales tax.

Cost of Sales - Cost of sales primarily consists of materials and labor expense in the manufacturing of the Company's products sold to customers. Cost of sales also includes provisions for excess and obsolete inventory, warranty costs, certain allocated costs for facilities, depreciation and other manufacturing overhead. Additionally, it includes stock-based compensation for personnel directly involved with manufacturing the Company's product offerings.

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements - Continued
January 3, 2020
(in thousands, except per share amounts)

Shipping and Handling Fees and Costs - The Company includes shipping and handling fees billed to customers in sales. Shipping costs associated with inbound freight are capitalized as part of inventory and included in cost of sales as products are sold.

Sales and Marketing - Sales and marketing expenses include costs related to sales, customer service and marketing personnel, including their wages, employee benefits and related stock-based compensation, and occupancy related expenses. Other significant sales and marketing expenses include race support and sponsorships of events and athletes, advertising and promotions related to trade shows, travel and entertainment, and promotional materials, products and sales offices costs.

Research and Development - Research and development expenses consist primarily of salaries and personnel costs, including wages, employee benefits and related stock-based compensation for the Company's engineering, research and development teams, occupancy related expenses, fees for third party consultants, service fees, and expenses for prototype tooling and materials, travel, and supplies. The Company expenses research and development costs as incurred.

General and Administrative - General and administrative expenses include costs related to executive, finance, information technology, human resources and administrative personnel, including wages, employee benefits and related stock-based compensation expenses. The Company records professional and contract service expenses, occupancy related expenses associated with corporate locations and equipment, and legal expenses in general and administrative expenses.

Stock-Based Compensation - The Company measures stock-based compensation for all stock-based awards, including stock options and restricted stock units ("RSUs"), based on their estimated fair values on the date of the grant and recognizes the stock-based compensation cost for time-vested awards on a straight-line basis over the requisite service period. For performance-based RSUs, the number of shares ultimately expected to vest is estimated at each reporting date based on management's expectations regarding the relevant performance criteria. To the extent shares are expected to vest, the stock-based compensation cost is recognized on a straight-line basis over the requisite service period. The fair value of each stock option granted is estimated using the Black-Scholes option-pricing model. The Company does not estimate forfeitures in recognizing stock-based compensation expense. The fair value of the RSUs is equal to the fair value of the Company's common stock on the grant date of the award.

Income Taxes - Income taxes are computed using the asset and liability method, under which deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Operating loss and tax credit carryforwards are measured by applying currently enacted tax laws. Valuation allowances are provided when necessary to reduce net deferred tax assets to an amount that is more likely than not to be realized.

The Company has elected to account for global intangible low-taxed income ("GILTI") in the year the tax is incurred, rather than recognize deferred taxes for temporary basis differences expected to reverse as GILTI in future years. The net GILTI inclusion for the year ended January 3, 2020 was partially offset by foreign tax credits associated with the income and resulted in a net tax charge of \$316.

The Company recognizes the tax effects of an uncertain tax position only if it is more likely than not to be sustained based solely on its technical merits as of the reporting date and then only in an amount more likely than not to be sustained upon review by the tax authorities. The Company considers many factors when evaluating and estimating its tax positions and tax benefits, which may require periodic adjustments and which may not accurately anticipate actual outcomes.

Advertising - Advertising costs are expensed as incurred and recognized as sales and marketing expenses on our Consolidated Statements of Income. Costs incurred for advertising totaled \$1,413, \$902, and \$1,070 for the years ended January 3, 2020, December 28, 2018 and December 29, 2017, respectively.

Warranties - The Company offers limited warranties on its products generally for one to four years. The Company recognizes estimated costs related to warranty activities as a component of cost of sales upon product shipment. The estimates are based upon historical product failure rates and historical costs incurred in correcting product failures. The recorded amount is adjusted from time to time for specifically identified warranty exposures. Actual warranty expenses are charged against the Company's estimated warranty liability when incurred. Factors that affect the Company's liability include the number of units, historical and anticipated rates of warranty claims, and the cost per claim.

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements - Continued
January 3, 2020
(in thousands, except per share amounts)

Segments - The Company has determined that it has a single operating and reportable segment. The Company considers operating segments to be components of the Company in which separate financial information is available that is evaluated regularly by the Company's chief operating decision maker in deciding how to allocate resources and in assessing performance. The chief operating decision maker for the Company is the Chief Executive Officer. The Chief Executive Officer reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance.

Fair Value Measurements and Financial Instruments - The Financial Accounting Standards Board ("FASB") has issued Accounting Standards Codification 820, *Fair Value Measurements and Disclosures*, that requires the valuation of assets and liabilities required or permitted to be either recorded or disclosed at fair value based on hierarchy of available inputs as follows:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices for similar assets and liabilities in active markets, quoted prices for identical assets and liabilities in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability; and

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

The carrying amounts of the Company's financial instruments, including cash, receivables, accounts payable, and accrued liabilities approximate their fair values due to their short-term nature. Amounts owed under the Company's credit facility approximate fair value due to the variable interest rate features embedded in both the line of credit and term debt.

Certain Significant Risks and Uncertainties - The Company is subject to those risks common in manufacturing-driven markets, including, but not limited to, competitive forces, dependence on key personnel, customer demand for its products, the successful protection of its proprietary technologies, compliance with government regulations, and the possibility of not being able to obtain additional financing when needed.

Recent Accounting Pronouncements - In May 2014, the FASB and International Accounting Standards Board issued their converged standard on revenue recognition, ASU 2014-09, updated December 2016 with the release of ASU 2016-20. This standard outlines a single comprehensive model for companies to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. The core principle of the revenue model is that an entity recognizes revenue to depict the transfer of promised goods and services in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for those goods and services. In addition, the new standard requires that reporting companies disclose the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers.

The Company adopted this guidance as of the beginning of the first quarter of fiscal year 2018 using the modified retrospective implementation method. The Company applied the guidance to all open contracts at the date of initial application. Additionally, the Company used the practical expedient to omit the disclosure of remaining performance obligations for contracts with an original expected duration of one year or less. The primary impact of adopting the standard resulted from certain pricing provisions within contracts that provide the customer with a material right. Under the new standard, revenue attributed to such pricing provisions is deferred and recognized when the right is exercised by the customer. The Company recorded a cumulative effect adjustment of \$368 gross and \$281 net of taxes to the opening balance of retained earnings to reflect the cumulative effect of the adoption of the standard.

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Notes to Consolidated Financial Statements - Continued
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In February 2016, the FASB issued ASU 2016-02, Leases, which supersedes the existing guidance for lease accounting. To meet the objective of enabling users of financial statements to assess the amount, timing, and uncertainty of cash flows arising from leases, this ASU requires lessees to recognize most leases on the balance sheet as right-of-use assets and lease liabilities.

The Company adopted this guidance as of the beginning of the first quarter of fiscal year 2019, with a cumulative effect adjustment to the opening balance of retained earnings at December 28, 2018 with no restatement of comparative periods' financial information ("current-period adjustment method"). Additionally, the Company adopted this guidance using practical expedients with respect to the assessment of embedded leases, lease classification, and initial indirect costs for expired and existing leases. The Company also elected the practical expedient related to treating lease and non-lease components as a single lease component for all of its leases and elected a policy exclusion permitting leases with an original lease term of less than one year to be excluded from the right-of-use assets and lease liabilities. The Company did not use the hindsight practical expedient to adopt this guidance. The Company recorded a cumulative effect adjustment of \$13,637 to operating lease right-of-use assets, \$13,937 to operating lease liabilities, and \$300 gross (\$228 net of taxes) to the opening balance of the Company's retained earnings to reflect the cumulative effect of the adoption of the standard. This standard did not have a material impact on our consolidated income statements.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments: Credit Losses, which adds an impairment model that is based on expected losses rather than incurred losses. Under this standard, an entity recognizes as an allowance its estimate of expected credit losses, which the FASB believes will result in more timely recognition of such losses. This standard is effective for public companies for fiscal years beginning after December 15, 2019, including interim reporting periods within those years and early adoption is permitted. The Company does not expect the impact of this adoption to be material.

In August 2016, the FASB issued ASU 2016-15, Statement of Cash Flows: Classification of Certain Cash Receipts and Cash Payments, which clarifies the presentation of certain transactions, including but not limited to contingent consideration payments made after a business combination and debt prepayment and extinguishment costs in the cash flow statement. The Company adopted ASU 2016-16 effective in the first quarter of fiscal year 2019. The adoption of ASU 2016-15 did not have a material impact on the Company's consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13, Fair Value Measurement, which modifies the disclosure requirements of fair value measurements in Topic 820. This standard is effective for fiscal years beginning after December 15, 2019. The Company is currently assessing the impact this guidance will have on its consolidated financial statements.

In August 2018, the FASB issued ASU 2018-15, Intangibles - Goodwill and Other: Internal-Use Software, which helps simplify how entities evaluate the accounting for costs paid by a customer in a cloud computing arrangement that is a service contract. This standard is effective for fiscal years beginning after December 15, 2019 and early adoption is permitted. The Company is currently assessing the impact this guidance will have on its consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, Simplifying the Accounting for Income Taxes, which helps simplify how entities account for income taxes by removing various exceptions related to the recognition of deferred tax liabilities and updating other tax computation requirements. This standard is effective for fiscal years beginning after December 15, 2020 and early adoption is permitted. The Company is currently assessing the impact this guidance will have on its consolidated financial statements.

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements - Continued
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2. Revenues

The following table summarizes total sales by product category:

	For the fiscal years ended		
	2019	2018	2017
Powered Vehicles	\$ 451,253	\$ 337,284	\$ 230,255
Specialty Sports	299,767	281,941	245,378
Total sales	<u>\$ 751,020</u>	<u>\$ 619,225</u>	<u>\$ 475,633</u>

The following table summarizes total sales by sales channel:

	For the fiscal years ended		
	2019	2018	2017
OEM	\$ 473,969	\$ 368,580	\$ 288,733
Aftermarket	277,051	250,645	186,900
Total sales	<u>\$ 751,020</u>	<u>\$ 619,225</u>	<u>\$ 475,633</u>

The following table summarizes total sales generated by geographic location of the customer:

	For the fiscal years ended		
	2019	2018	2017
North America	\$ 502,263	\$ 388,702	\$ 280,860
Asia	120,839	119,142	101,079
Europe	120,272	101,217	86,405
Rest of the World	7,646	10,164	7,289
Total sales	<u>\$ 751,020</u>	<u>\$ 619,225</u>	<u>\$ 475,633</u>

3. Inventory

Inventory consisted of the following:

	January 3, 2020	December 28, 2018
Raw materials	\$ 87,779	\$ 75,652
Work-in-process	7,075	5,880
Finished goods	33,651	25,608
Total inventory	<u>\$ 128,505</u>	<u>\$ 107,140</u>

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Notes to Consolidated Financial Statements - Continued
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4. Property, Plant and Equipment, net

Property, plant and equipment consisted of the following:

	January 3, 2020	December 28, 2018
Building and building improvements	\$ 42,343	\$ 17,622
Information systems, office equipment and furniture	10,102	7,262
Internal-use computer software	16,860	14,416
Land	5,414	1,356
Leasehold improvements	13,841	10,386
Machinery and manufacturing equipment	57,331	41,332
Transportation equipment	5,006	3,932
Total	150,897	96,306
Less: accumulated depreciation and amortization	(42,518)	(31,518)
Property, plant and equipment, net	\$ 108,379	\$ 64,788

Depreciation expense was \$11,261, \$8,143, and \$6,923 for the years ended January 3, 2020, December 28, 2018 and December 29, 2017, respectively, including \$1,861, \$869, and \$565 of internal-use software amortization for the years ended January 3, 2020, December 28, 2018 and December 29, 2017, respectively. The Company capitalized \$2,445 in internal use computer software costs during the year ended January 3, 2020.

The Company's long-lived assets by geographic location are as follows:

	January 3, 2020	December 28, 2018
United States	\$ 100,508	\$ 59,056
International	7,871	5,732
Total long-lived assets	\$ 108,379	\$ 64,788

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Notes to Consolidated Financial Statements - Continued
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5. Leases

The Company has operating lease agreements for administrative, research and development, manufacturing, and sales and marketing facilities. These leases have remaining lease terms ranging from one to eight years, some of which include options to extend the lease term for up to five years, and some of which include options to terminate the leases within one year. Certain leases are subject to annual escalations as specified in the lease agreements. The Company considered these options in determining the lease term used to establish its right-of-use assets and lease liabilities. These lease agreements do not contain any material residual value guarantees or material restrictive covenants.

As most of the Company's leases do not provide an interest rate, the Company used the incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. The weighted-average remaining lease term for the Company's operating leases was 4.33 years and the weighted-average incremental borrowing rate was 3.75% as of January 3, 2020.

Operating lease costs consisted of the following:

	<u>For the fiscal year ended</u>
	<u>2019</u>
Operating lease cost	\$ 5,706
Other lease costs (1)	1,489
Total	<u>\$ 7,195</u>

(1) Includes short-term leases and variable lease costs. The Company elected a policy exclusion permitting leases with an original lease term of less than one year to be excluded from the right-of-use assets and lease liabilities.

Lease costs for the twelve months ended December 28, 2018 and December 29, 2017 were \$6,445 and \$6,040, respectively.

Supplemental balance sheet information related to the Company's operating leases is as follows:

	Balance Sheet Classification		January 3, 2020
Operating lease right-of-use assets	Lease right-of-use assets	\$	17,472
Current lease liabilities	Accrued expenses	\$	6,242
Non-current lease liabilities	Other liabilities	\$	11,584

Supplemental cash flow information related to the Company's operating leases is as follows:

	<u>For the fiscal year ended</u>
	<u>2019</u>
Right-of-use assets obtained in exchange for lease obligations	\$ 8,691
Cash paid for amounts included in the measurement of lease liabilities	\$ 5,630

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Notes to Consolidated Financial Statements - Continued
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Maturities of lease liabilities by fiscal year for the Company's operating leases are as follows:

For fiscal year	Total future payments
2020	\$ 6,242
2021	4,522
2022	2,920
2023	2,532
2024	1,416
Thereafter	1,719
Total lease payments	19,351
Less: imputed interest	(1,525)
Present value of lease liabilities	17,826
Less: current portion	(6,242)
Lease liabilities less current portion	\$ 11,584

6. Goodwill and Intangible Assets

Intangible assets, excluding goodwill, are comprised of the following:

	Gross carrying amount	Accumulated amortization	Net carrying amount	Weighted average life (years)
January 3, 2020				
Customer relationships	\$ 70,473	\$ (30,114)	\$ 40,359	11
Core technology	34,400	(33,309)	1,091	8
Patents	1,859	(1,430)	429	4
Total	\$ 106,732	\$ (64,853)	41,879	
Trademarks and brands, not subject to amortization			40,070	
Total			\$ 81,949	
December 28, 2018				
Customer relationships	\$ 67,624	\$ (24,134)	\$ 43,490	11
Core technology	33,400	(33,031)	369	8
Patents	1,389	(1,344)	45	4
Total	\$ 102,413	\$ (58,509)	43,904	
Trademarks and brands, not subject to amortization			40,070	
Total			\$ 83,974	

	For the fiscal years ended		
	2019	2018	2017
Amortization of intangibles	\$ 6,344	\$ 6,065	\$ 2,986

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Notes to Consolidated Financial Statements - Continued
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Goodwill activity consisted of the following:

Balance as of December 28, 2018	\$	88,850
Acquisitions (Refer to Note 16 - Acquisitions)		4,692
Currency translation and other adjustments		(15)
Balance as of January 3, 2020	\$	<u>93,527</u>

Future amortization expense for finite-lived intangibles as of January 3, 2020 is as follows:

For fiscal year:	Amortization Expense	
2020	\$	5,868
2021		5,765
2022		5,641
2023		5,000
2024		4,829
Thereafter		14,776
Total expected future amortization	\$	<u>41,879</u>

7. Accrued Expenses

Accrued expenses consisted of the following:

	January 3, 2020	December 28, 2018
Payroll and related expenses	\$ 14,595	\$ 15,870
Current portion of lease liabilities	6,242	—
Warranty	5,649	6,433
Income tax payable	4,295	6,691
Other accrued expenses	4,963	4,613
Total	<u>\$ 35,744</u>	<u>\$ 33,607</u>

Activity related to warranties is as follows:

	For the fiscal years ended		
	2019	2018	2017
Beginning warranty liability	\$ 6,433	\$ 6,481	\$ 4,593
Charge to cost of sales	4,064	4,621	5,904
Fair value of warranty assumed in acquisition	100	200	1,016
Costs incurred	(4,948)	(4,869)	(5,032)
Ending warranty liability	<u>\$ 5,649</u>	<u>\$ 6,433</u>	<u>\$ 6,481</u>

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Notes to Consolidated Financial Statements - Continued
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8. Related Party Transactions

On May 3, 2019, the Company acquired the substantially all the assets of Air Ride Technologies, Inc., d/b/a Ridetech. Ridetech has a building lease for its manufacturing and office facilities in Jasper, Indiana. The buildings are owned by the former owner of Ridetech, who is now an employee of the Company. Rent expense under this lease was \$125 for the year ended January 3, 2020. The lease is effective from May 3, 2019 through April 1, 2024, with monthly rent payments of \$16.

Fox Factory, Inc. has a triple-net building lease for its manufacturing and office facilities in Watsonville, California. The building is owned by a former member of our Board of Directors who retired on August 28, 2018. Payments made under this lease were \$656 and \$715 for the years ended December 28, 2018 and December 29, 2017, respectively.

On September 28, 2018, the Company purchased Tuscany's facilities from certain non-controlling interest stockholders who are also employees of the Company. The total purchase price was \$3,750. The Company leased these properties prior to being purchased. Rent expense under these leases was \$257 and \$29 for the years ended December 28, 2018 and December 29, 2017, respectively.

9. Debt**Former Second Amended and Restated Credit Facility**

In August 2013, the Company entered into a credit facility with SunTrust Bank, N.A. and other named lenders, which was periodically amended and restated (the "Second Amended and Restated Credit Facility"). The Company paid off the Second Amended and Restated Credit Facility in June 2019 upon entering into the new Credit Facility with Bank of America, N.A. ("Bank of America"). The Company expensed \$516 of remaining debt issuance costs, which are included in other expense, net on the [Consolidated Statements of Income](#).

New Credit Facility

In June 2019, the Company entered into a credit facility with Bank of America and other named lenders (the "Credit Facility"). The Credit Facility, which matures on June 3, 2024, provides a senior secured revolving line of credit with a maximum borrowing capacity of \$250,000. The Company paid \$510 in loan costs that will be deferred and amortized on a straight-line basis over the term of the Credit Facility.

The Credit Facility provides for interest at a rate either based on the London Interbank Offered Rate, or LIBOR, plus a margin ranging from 1.00% to 1.50%, or based on the base rate offered by Bank of America plus a margin ranging from 0.00% to 0.50%. At January 3, 2020, the one-month LIBOR and prime rates were 1.71% and 4.75%, respectively. At January 3, 2020, our weighted average interest rate on outstanding borrowing was 2.80%. The Credit Facility is secured by substantially all of the Company's assets, restricts the Company's ability to make certain payments and engage in certain transactions, and requires that the Company satisfy customary financial ratios. The Company was in compliance with the covenants as of January 3, 2020.

The Credit Facility permits up to \$15,000 of the aggregate revolving commitment to be used by the Company for issuance of letters of credit, of which \$5,000 was outstanding at January 3, 2020.

The following table summarizes our line of credit:

	January 3, 2020	December 28, 2018
Amount outstanding	\$ 68,000	\$ —
Standby letter of credit	\$ 5,000	\$ 5,000
Available borrowing capacity	\$ 177,000	\$ 95,000
Maximum borrowing capacity	\$ 250,000	\$ 100,000
Maturity date	June 3, 2024	

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Notes to Consolidated Financial Statements - Continued
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10. Commitments and Contingencies

Indemnification Agreements - In the ordinary course of business, the Company may provide indemnifications of varying scope and terms to customers, vendors, lessors, business partners, and other parties with respect to certain matters, including, but not limited to, losses arising out of breach of such agreements, services to be provided by the Company or intellectual property infringement claims made by third parties. In addition, the Company has entered into indemnification agreements with directors and certain officers and employees that will require the Company, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers or employees. While the outcome of these matters cannot be predicted with certainty, the Company does not believe that the outcome of any claims under indemnification arrangements will have a material effect on the Company's results of operations, financial position or liquidity.

Legal Proceedings - A lawsuit was filed on December 17, 2015 by SRAM Corporation ("SRAM") in the U.S. District Court, Northern District of Illinois, against the Company's wholly-owned subsidiary, RFE Canada Holding Corp. ("RFE Canada"). The lawsuit alleges patent infringement of U.S. Patent number 9,182,027 ("027 Patent") and violation of the Lanham Act. SRAM filed a second lawsuit in the same court against RFE Canada on May 16, 2016, alleging patent infringement of U.S. Patent number 9,291,250 ("250 Patent"). The Company believes that the lawsuits are without merit and intends vigorously to defend itself. As such, the Company has filed, before the U. S. Patent and Trademark Appeals Board ("PTAB"), for Interparties Reviews ("IPR") of the '027 Patent and separately the same for the '250 Patent. In April 2018, the PTAB issued opinions in the '027 Patent petition cases stating that the Company has not shown the claims of the '027 Patent to be obvious. Regarding the PTAB '027 opinions, the Company has filed an Appeal to the Court of Appeals for the Federal Circuit. The CAFC found in favor of the Company and has vacated and remanded all of the PTAB findings with the exception of their finding that the '027 patent met the prima facie test for obviousness, which was affirmed. SRAM has appealed to the CAFC to rehear the case en banc and that appeal is pending. The PTAB has issued an opinion in the '250 Patent petition case stating that the Company has not shown the claims of the '250 Patent to be obvious.

In a separate action, the Company filed a lawsuit on January 29, 2016 in the U.S. District Court, Northern District of California against SRAM. That lawsuit alleges SRAM's infringement of two separate Company owned patents, specifically U.S. Patent numbers 6,135,434 and 6,557,674. The Company filed a second lawsuit on July 1, 2016 in the U.S. District Court, Northern District of California against SRAM alleging infringement of the Company's U.S. Patent numbers 8,226,172 and 8,974,009. These lawsuits have been moved to U.S. District Court, District of Colorado and are otherwise proceeding. The U.S. District Court, Northern District of Illinois, has lifted the stay of the SRAM lawsuits against the Company. The Company filed and SRAM filed lawsuits are now moving forward in the respective courts.

Due to the inherent uncertainties of litigation, the Company is not able to predict either the outcome or a range of reasonably possible losses, if any, at this time. Accordingly, no amounts have been recorded in the consolidated financial statements for the settlement of these matters. Were an unfavorable ruling to occur, or if factors indicate that a loss is probable and reasonably estimable, the Company's business, financial condition or results of operations could be materially and adversely affected. The Company is involved in other legal matters that arise in the ordinary course of business. Based on information currently available, management does not believe that the ultimate resolution of these matters will have a material adverse effect on the Company's financial condition, results of operations or cash flows.

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Other Commitments - On November 30, 2017, the Company acquired an 80% interest in Tuscany. The stockholders' agreement provides the Company with a call option (the "Call Option") to acquire the remaining 20% of Tuscany any time from November 30, 2019 through November 30, 2024 at a value that approximates fair market value. In addition, if the Call Option has not been exercised as of November 30, 2024, the non-controlling owners shall be entitled to exercise a put option (the "Put Option") on November 30, 2024 and for a 180-day period thereafter, which would require the Company to purchase all of the remaining shares held by the non-controlling owners at a price that approximates fair market value. See [Note 16 - Acquisitions](#) of the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K for additional information on this commitment.

On July 24, 2019 the Company entered into a Standard Form of Agreement between with Design-Builder Carroll Daniel Construction Company to provide design and construction services related to an approximately 336,000 square foot facility located in Gainesville, Georgia. The Company plans to use the facility for the manufacture of its products including vehicle shock absorbers. This agreement was amended on December 23, 2019. The Design-Build Agreement contains several design and construction milestone dates that began in June 2019. The Company expects to pay a total of approximately \$36.5 million for the Design-Builder's performance of the Design-Build Agreement. Any additional costs will be addressed as they arise until the completion of the facility, which is currently expected to occur on or around August 31, 2020.

Other Contingencies - On June 21, 2018, the U.S. Supreme Court (the "Court") decided *South Dakota v. Wayfair, Inc., et al.*, holding that internet retailers do not have to maintain a physical presence in a state in order to be required to collect the state's sales and use tax. Ultimately, the Court remanded the case to the South Dakota Supreme Court on the question of "whether some other principle in the Court's Commerce Clause doctrine might invalidate the Act," which may delay federal legislation on the issue. However, as a result of the Court's decision, additional states may now begin requiring all remote sellers, primarily those engaged in e-commerce, to register, collect and remit sales and use taxes on transactions with in-state customers. Numerous states have either enacted legislation or informally indicated that they will not assert liability for uncollected taxes on a retroactive basis. Nevertheless, the Company believes that it is possible that it will incur a liability for uncollected sales tax on some portion of its e-commerce sales through January 3, 2020. Any retroactively imposed liability is not expected to be material to the Company's results of operations or financial position because direct end-user sales in states where the Company is not registered comprise a small portion of total revenues.

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11. Stockholders' Equity**Secondary Stock Offerings and Share Repurchase Program**

In March 2017, the Company closed a secondary offering, whereby the selling stockholders, including Compass Group Diversified Holdings LLC ("Compass"), sold 5,574 shares of the Company's common stock at a price of \$26.65 per share, less underwriting discounts and commissions. The total shares sold included 466 shares, which were also sold by certain selling stockholders, in connection with the underwriters' option to purchase additional shares. The Company did not sell shares or receive any proceeds from the sales of shares by the selling stockholders. As a result of the March 2017 secondary offering, Compass no longer holds any equity interest in the Company.

The Company incurred approximately \$113 of expenses in connection with the secondary offerings during the fiscal years ended December 29, 2017. The Company did not incur any expenses related to secondary offerings during the fiscal years ended January 3, 2020 and December 28, 2018.

Equity Incentive Plans

The Company has outstanding awards under the following equity incentive plans: the 2008 Stock Option Plan (the "2008 Plan"), the 2008 Non-Statutory Stock Option Plan (the "2008 Non-Statutory Plan") and the 2013 Omnibus Plan (the "2013 Plan"). No further awards will be granted pursuant to the 2008 Plan or the 2008 Non-Statutory Plan. Under the 2013 Plan, the Company has the ability to issue incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock awards, RSUs, performance units and/or performance shares.

The equity incentive plans are administered by the Compensation Committee of the Board of Directors of the Company, which has the authority to determine the type of incentive award, as well as the terms and conditions of the awards. Options granted under the plans have vesting periods ranging from one to five years and expire no later than 10 years from the date of grant. RSUs generally vest over a four-year period with 25% vesting at the end of one year and the remaining vesting annually thereafter. In addition to time-based vesting criteria, certain of our RSUs include performance-based vesting criteria. As of January 3, 2020, there were 2,491 shares reserved for issuance under the Company's equity incentive plans and 1,639 shares available for grant under the 2013 Plan. The Company generally issues new shares in connection with awards under its equity incentive plans.

Stock-Based Compensation

Compensation expense related to the Company's share-based awards for the fiscal years ended January 3, 2020 and December 28, 2018 was \$6,864 and \$7,322, respectively, all of which related to RSUs. No compensation expense related to stock options was incurred during the fiscal years ended January 3, 2020 and December 28, 2018. Compensation expense related to the Company's share-based awards for the year ended December 29, 2017 was \$8,727, of which \$8,641 related to RSUs and \$86 related to stock options.

The following table summarizes the allocation of stock-based compensation in the accompanying consolidated statements of income:

	For the fiscal years ended		
	2019	2018	2017
Cost of sales	\$ 802	\$ 482	\$ 429
Sales and marketing	506	556	587
Research and development	721	640	442
General and administrative	4,835	5,644	7,269
Total	<u>\$ 6,864</u>	<u>\$ 7,322</u>	<u>\$ 8,727</u>

Stock-based compensation expense capitalized to inventory was not material for the years ended January 3, 2020, December 28, 2018 and December 29, 2017.

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Notes to Consolidated Financial Statements - Continued
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Restricted Stock Units

The Company grants both time-based and performance-based stock awards, which also include a time-based vesting feature. Compensation expense for time-based stock awards is measured at the grant date based on the closing market price of the Company's common stock, and recognized ratably over the vesting period.

For performance-based stock awards, compensation expense is measured based on estimates of the number of shares ultimately expected to vest at each reporting date based on management's expectations regarding the relevant performance criteria. The recognition of compensation expense associated with performance-based stock awards requires defined criteria for assessing achievement and judgment in assessing the probability of meeting the performance goals.

The following table summarizes RSU activity:

	Unvested RSUs	
	Number of shares outstanding	Weighted-average grant date fair value
Unvested at December 30, 2016	811	\$ 16.53
Granted	411	31.38
Canceled	(55)	17.45
Vested	(367)	16.93
Unvested at December 29, 2017	800	23.91
Granted	223	37.07
Canceled	(30)	25.16
Vested	(338)	21.98
Unvested at December 28, 2018	655	29.34
Granted	131	74.70
Canceled	(67)	32.29
Vested	(292)	26.06
Unvested at January 3, 2020	427	\$ 44.98

The fair value of vested RSUs was \$21,793, \$13,874 and \$12,587 for the years ended January 3, 2020, December 28, 2018 and December 29, 2017, respectively. As of January 3, 2020, the Company had approximately \$14,190 of unrecognized stock-based compensation expense related to RSUs, which will be recognized over the remaining weighted-average vesting period of approximately 2.84 years.

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Notes to Consolidated Financial Statements - Continued
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Stock Options

The following table summarizes stock option activity:

	Number of shares outstanding	Weighted- average exercise price	Weighted-average remaining contractual life (years)	Aggregate intrinsic value
Balance at December 30, 2016	1,450	\$ 5.33	5	\$ 32,528
Options exercised	(541)	5.51		13,588
Options forfeited	(14)	6.20		—
Options expired	(9)	6.38		—
Balance at December 29, 2017	886	5.19	4	29,840
Options exercised	(166)	5.25		9,384
Balance at December 28, 2018	720	5.17	3	39,403
Options exercised	(289)	5.03		17,422
Balance at January 3, 2020	431	5.27	2	27,814
Options vested and expected to vest - January 3, 2020	431	5.27	2	27,814
Options exercisable - January 3, 2020	431	\$ 5.27	2	\$ 27,814

Aggregate intrinsic value represents the difference between the closing price of the Company's common stock on NASDAQ and the exercise price of outstanding, in-the-money options. No options vested during the year ended January 3, 2020. As of January 3, 2020, stock-based compensation expense related to stock options has been fully recognized.

During the years ended January 3, 2020, December 28, 2018 and December 29, 2017, 289, 166, and 541 shares of common stock, respectively, were issued due to the exercise of stock options, resulting in proceeds to the Company of approximately \$1,451, \$875, and \$2,981, respectively.

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12. Earnings Per Share

Basic earnings per share ("EPS") amounts are computed by dividing net income attributable to Fox Factory Holding Corp. stockholders for the period by the weighted average number of common shares outstanding during the period. Diluted EPS amounts are computed by dividing net income for the period by the weighted average number of shares of common stock and potentially dilutive common stock outstanding during the period. Potentially dilutive common shares include shares issuable upon the exercise of outstanding stock options and vesting of restricted stock units, which are reflected in diluted earnings per share by application of the treasury stock method.

The following table presents the calculation of basic and diluted earnings per share:

	For the fiscal years ended		
	2019	2018	2017
Net income attributable to FOX stockholders	\$ 93,033	\$ 84,040	\$ 43,128
Weighted average shares used to compute basic earnings per share	38,333	37,805	37,373
Dilutive effect of employee stock plans	822	1,151	1,365
Weighted average shares used to compute diluted earnings per share	39,155	38,956	38,738
Earnings per share:			
Basic	\$ 2.43	\$ 2.22	\$ 1.15
Diluted	\$ 2.38	\$ 2.16	\$ 1.11

The Company did not exclude any potentially dilutive shares from the calculation of diluted earnings per share for the years ended January 3, 2020, December 28, 2018 and December 29, 2017, as none of these shares would have been antidilutive.

13. Income Taxes**Provision for Income Taxes**

The components of income tax expense are as follows:

	For the fiscal years ended		
	2019	2018	2017
Current:			
Federal	\$ 16,670	\$ 10,330	\$ 13,483
State	256	604	648
Foreign	7,567	7,248	8,148
Total	24,493	18,182	22,279
Deferred:			
Federal	(11,158)	(11,462)	(923)
State	586	(671)	387
Foreign	178	(526)	(641)
Total	(10,394)	(12,659)	(1,177)
Provision for income taxes	\$ 14,099	\$ 5,523	\$ 21,102

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements - Continued
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The Company's income before provision for income taxes was subject to taxes in the following jurisdictions for the following periods:

	For the fiscal years ended		
	2019	2018	2017
United States	\$ 77,810	\$ 63,138	\$ 36,555
Foreign	30,759	27,752	27,730
	<u>\$ 108,569</u>	<u>\$ 90,890</u>	<u>\$ 64,285</u>

The following table presents a reconciliation of the statutory federal rate and the Company's effective tax rate for the periods presented:

	For the fiscal years ended		
	2019	2018	2017
Tax at federal statutory rate	21.0 %	21.0 %	35.0 %
State taxes, net of federal benefit	1.8	1.8	2.0
Change in liability for unrecognized tax benefits	0.2	(10.8)	(1.7)
Stock-based compensation	(6.3)	(3.8)	(10.6)
Foreign derived income benefit	(3.0)	(1.6)	—
Research and development tax credit	(0.8)	(1.2)	(2.2)
Change in tax rates	—	(0.8)	(3.8)
California business development tax credit	—	(0.8)	—
Executive compensation deduction limitation	1.2	2.2	—
Foreign rate differential	—	0.4	(4.6)
Valuation allowance on deferred tax assets	0.2	0.4	9.4
Tax on unremitted foreign earnings	0.3	0.4	8.9
Other	(1.6)	(1.1)	0.4
Total provision	<u>13.0 %</u>	<u>6.1 %</u>	<u>32.8 %</u>

The Tax Cuts and Jobs Act (the "TCJA") was enacted on December 22, 2017. The TCJA reduced the U.S. federal corporate tax rate from 35% to 21%, required companies to pay a one-time transition tax on unremitted earnings of certain foreign subsidiaries that were previously tax deferred, created a new minimum tax on certain foreign earnings, and provided incentives for U.S. companies to sell and license goods and services abroad, among other changes. In 2017, the Company recorded provisional amounts for certain enactment-date effects of the Act by applying the guidance of the SEC's Staff Accounting Bulletin 118 ("SAB 118") because the enactment-date accounting for these effects had not yet been completed.

Effective January 1, 2016, the Company sold the net assets of its Taiwan branch operations and its shares of Fox Factory IP Holding Corp. to Fox Factory Switzerland GmbH. The Company's Taiwan operations were, as a result, organized as a branch of the Swiss entity (together, "Fox Switzerland"). Fox Switzerland generates earnings that prior to the enactment of the TCJA, were not subject to payment of U.S. income taxes or accrual of deferred tax expense because the Company asserted that such earnings were permanently invested outside the U.S. The unremitted earnings of Fox Switzerland through 2017 became subject to U.S. tax as a result of the one-time transition tax, which approximated \$3,706. As a result of the change in U.S. taxation, the Company no longer considers the unremitted earnings of Fox Switzerland to be permanently reinvested, and as such recorded a deferred withholding tax liability of approximately \$2,026 in 2017. In 2018, the Company restructured its foreign operations to provide operational and treasury management efficiencies, while potentially permitting relief from dividend withholding on profits earned in 2018 forward.

The Company has obtained tax incentives in Switzerland that are effective on a formal basis through March 2019, and indefinitely on a statutory basis, as long as the Company's operations meet specified criteria. The effect of the tax incentive was not material to the Company's income tax provision for the years ended December 28, 2018 and December 29, 2017.

During the year ended December 28, 2018, the Company met certain in-state growth requirements in order to earn the final three tranches of a four-year, \$1,700 tax credit from the State of California for a benefit of \$950, or \$751 net of federal income tax. The Company did not recognize any benefit for the year ended December 29, 2017.

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements - Continued
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Deferred Income Taxes

	January 3, 2020	December 28, 2018
Deferred tax assets:		
Foreign tax credits, including amounts associated with accrued charges	\$ 33,320	\$ 23,920
Inventory	3,542	3,086
Accrued liabilities	2,862	2,815
Lease liability	4,304	—
Research and development tax credits	4,369	2,536
Stock-based compensation	961	1,067
Other	975	787
Total deferred tax asset	50,333	34,211
Valuation allowance	(6,548)	(6,609)
Net deferred tax asset	43,785	27,602
Deferred tax liabilities:		
Depreciation	(6,924)	(7,012)
Accrued withholding tax on unremitted foreign dividends	(2,318)	(2,164)
Lease right-of-use asset	(4,215)	—
Intangible assets	(4,283)	(2,220)
Other	(320)	(878)
Total deferred tax liability	(18,060)	(12,274)
Net deferred tax asset	\$ 25,725	\$ 15,328

As of January 3, 2020, the Company had foreign tax credits of \$33,320 that begin to expire in 2025, unless previously utilized, and foreign net operating loss carryforwards of \$3,036, of which \$2,940 begin to expire in 2025 if not utilized and \$96 which do not expire. The Company also had federal and state research and development credit carryforwards of approximately \$2,817 and \$2,876 respectively. The federal research and development credits begin to expire in 2036 unless previously utilized, and the state research credits do not expire.

As of January 3, 2020, the Company assessed the realizability of deferred tax assets and evaluated the need for a valuation allowance for deferred tax assets for each jurisdiction based on the framework of ASC 740. As a result of the TCJA, the Company believes that it is more likely than not that a portion of its foreign tax credits will not be realizable, and as such, provided an allowance of \$6,287 as of December 28, 2018. For the year ended January 3, 2020, the valuation allowance decreased by \$61, due to a release of the valuation allowance against the Company's Canadian subsidiary. The valuation allowance for foreign tax credits was \$6,466 as of January 3, 2020. It is reasonably possible that the Company could record a material adjustment to the valuation allowance in the next twelve months as management assesses the progress and outcome of its restructuring activities.

Additionally, based on available evidence, it was concluded on a more likely than not basis that deferred tax assets of the Company's UK subsidiary and Austrian branch are not realizable. Accordingly, a valuation allowance of \$82 has been recorded to offset the deferred tax assets in these jurisdictions, which includes a partial valuation allowance for Switzerland.

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Notes to Consolidated Financial Statements - Continued
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Unrecognized Tax Benefits

	For the fiscal years ended		
	2019	2018	2017
Balance - beginning of period	\$ 1,996	\$ 8,154	\$ 7,440
Increase related to current year tax positions	557	457	460
Increase related to prior year tax positions	313	36	1,770
Decrease related to prior year tax positions	—	(6,480)	—
Decrease due to expiration of statute of limitations	(566)	(171)	(1,516)
Balance - end of period	<u>\$ 2,300</u>	<u>\$ 1,996</u>	<u>\$ 8,154</u>

As of January 3, 2020, the Company had \$2,300 of unrecognized tax benefits, of which approximately \$1,805, if recognized, would favorably impact the effective tax rate. The Company regularly engages in discussions and negotiations with tax authorities regarding tax matters in various jurisdictions. In 2018, the Company received a no change letter from the Internal Revenue Service ("IRS") related to the audit of the Company's 2015 federal tax return. Additionally, the IRS and the Company entered into a closing agreement that resolved the uncertainty about the deductibility of amortization and depreciation arising from the acquisition of the Company in 2008 for all open tax years. The favorable conclusion resulted in a decrease in the unrecognized tax benefits of \$6,198, of which \$5,648 favorably impacted the effective tax rate. Including the reversal of the amounts presented net of deferred tax assets and accrued interest and penalties, the favorable conclusion resulted in a benefit of \$9,838 to the provision for income tax for the year ended December 28, 2018. The deductibility of acquisition-related amortization and depreciation for state tax purposes remains uncertain.

The Company believes that it is reasonably possible that unrecognized tax benefits at January 3, 2020 could be reduced by an additional \$340 in the next twelve months as a result of expiration of statute of limitations.

As of January 3, 2020 and December 28, 2018, the Company had approximately \$36 and \$73, respectively, of cumulative interest and penalties related to the uncertain tax positions, and has elected to treat interest and penalties as a component of income tax expense.

The Company's 2017 forward federal tax returns, state tax returns from 2015 and forward, and foreign tax returns from 2017 and forward are subject to examination by tax authorities. There are ongoing U.S. state audits covering fiscal years 2015-2017. We do not expect the results from any ongoing income tax audit to have a material impact on our consolidated financial condition, results of operations, or cash flows.

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14. Fair Value Measurement and Financial Instruments

The FASB's Accounting Standards Codification 820, "Fair Value Measurements and Disclosures" requires the valuation of assets and liabilities required or permitted to be either recorded or disclosed at fair value based on hierarchy of available inputs as follows:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices for similar assets and liabilities in active markets, quoted prices for identical assets and liabilities in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability; and

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

The following table presents the Company's hierarchy for its assets and liabilities measured at fair value on a recurring basis as of the following periods:

	January 3, 2020				December 28, 2018			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Liabilities:								
Term debt	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 59,426	\$ —	\$ 59,426
Non-controlling interest subject to put provisions	—	—	15,719	15,719	—	—	14,282	14,282
Total liabilities measured at fair value	\$ —	\$ —	\$ 15,719	\$ 15,719	\$ —	\$ 59,426	\$ 14,282	\$ 73,708

There were no transfers of assets or liabilities between Level 1, Level 2 and Level 3 categories of the fair value hierarchy during the years ended January 3, 2020, and December 28, 2018.

As of December 28, 2018, the carrying amount of the principal under the Company's Second Amended and Restated Credit Facility approximated fair value because it had a variable interest rate that reflected market changes in interest rates and changes in the Company's net leverage ratio. The Company paid off the Second Amended and Restated Credit Facility in June 2019 upon entering into the new revolving Credit Facility with Bank of America.

The Company has potential obligations to purchase the non-controlling interests held by third parties in the Tuscany subsidiary. These obligations are in the form of put provisions and are exercisable at the third-party owners' discretion within the specified periods outlined in the put provision within the Tuscany stockholders' agreement (see [Note 16 - Acquisitions](#) of the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K). If these put provisions were exercised, the Company would be required to purchase the third-party owners' non-controlling interests at the appraised fair value. The initial non-controlling interest value was implicit in the purchase price and is revalued each quarter, with the adjustment being recorded directly as a component of retained earnings. The methodology the Company uses to estimate the fair value of the non-controlling interests subject to these put provisions is based on an average multiple of earnings before income taxes, depreciation and amortization ("EBITDA"), taking into consideration historical earnings and other factors. The estimated fair value is then compared to the carrying value based on the initial valuation and the cumulative net earnings attributable to the non-controlling interest. At January 3, 2020, the estimated fair value was lower than the carrying value and in accordance with applicable guidance, the non-controlling interest has been adjusted to the carrying value. The estimated fair values of the non-controlling interests subject to put provisions can fluctuate and the implicit multiple of earnings at which these non-controlling interest obligations may ultimately be settled could vary significantly from our future estimates depending upon market conditions.

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Notes to Consolidated Financial Statements - Continued
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The following table provides a reconciliation of the beginning and ending balances for the Company's obligations measured at fair value using Level 3 inputs:

	Obligations (measured with level 3 inputs)
Balance at December 28, 2018	\$ 14,282
Net income ascribed to non-controlling interest	1,437
Balance at January 3, 2020	<u>\$ 15,719</u>

15. Retirement Plan

The Company established a 401(k) plan to provide tax deferred salary deductions for all eligible employees. Participants may make voluntary contributions to the 401(k) plan, limited by certain IRS restrictions. The Company made matching contributions of \$1,153, \$850, and \$437 for each of the years ended January 3, 2020, December 28, 2018 and December 29, 2017, respectively.

16. Acquisitions

Ridetech

On May 3, 2019, the Company acquired substantially all of the assets of Air Ride Technologies, Inc., d/b/a Ridetech, a manufacturer of suspension systems that enhance the handling and ride quality of muscle cars, trucks, sports cars and hot rods in an asset purchase accounted for as a business combination. In connection with the acquisition, the Company paid approximately \$13,971, of which \$6,804 was cash on hand and \$7,167 was from newly issued unregistered shares of common stock. During the year ended January 3, 2020, the Company finalized the allocation of the purchase price to the assets acquired and liabilities assumed based on their estimated respective fair values as of May 3, 2019, with the excess purchase price allocated to goodwill.

Identifiable intangible assets were valued at \$4,320. The Company will amortize the acquired customer relationships asset of \$2,850 over its expected useful life of 8 years, the core technologies assets of \$1,000 over a weighted average expected useful life of 6 years and the trademarks and brand name asset of \$470 over an expected useful life of 5 years. The goodwill of \$4,692 is expected to have an indefinite life and will be subject to impairment testing. The acquired goodwill is expected to be deductible for income tax purposes. The acquisition was not material to the Company's financial statements.

Tuscany

On November 30, 2017, the Company acquired an 80% interest in Tuscany, a designer, manufacturer and distributor of premium aftermarket powered vehicle performance packages in an asset purchase accounted for as a business combination, pursuant to ASC 805. In connection with the acquisition, the Company paid \$53,350 in cash financed through a combination of its existing credit facility and cash on hand. This purchase included \$242 in intercompany accounts payable, resulting in a total purchase price of \$53,592.

The stockholders' agreement executed in association with the acquisition provides the Company with a call option to acquire the remaining 20% of Tuscany any time from November 30, 2019 through November 30, 2024 at a value that approximates fair market value as defined in the purchase agreement. In addition, if the call option has not been exercised as of November 30, 2024, the non-controlling owners shall be entitled to exercise a put option on November 30, 2024 and for a 180-day period thereafter, which would require the Company to purchase all of the remaining shares held by the non-controlling owners at a price that approximates fair market value as defined in the purchase agreement.

In accordance with ASC 805, the Company recognized a non-controlling interest in Tuscany and measured the non-controlling interest at fair value on the acquisition date. The Company concluded that the put feature embedded in the agreement causes the non-controlling interest to be redeemable, pursuant to ASC 480, because the put option requires cash settlement. Therefore, the Company has classified the non-controlling interest as temporary (mezzanine) equity in the consolidated balance sheets.

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Notes to Consolidated Financial Statements - Continued
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The purchase price of Tuscany is allocated to the assets acquired and liabilities assumed based on their estimated respective fair values as of November 30, 2017, with the excess purchase price allocated to goodwill. During the year ended, December 28, 2018, the Company finalized the allocation of the purchase price and recorded adjustments to Goodwill of \$440 related to the completion of the Company's validation of working capital, intangible valuation procedures, and analysis of opening warranty provisions. Goodwill represents the value of synergies from combining operations Tuscany and the Company, as well as intangibles that do not qualify for separate recognition. Intangibles and goodwill related to the Company's 80% interest are deductible for tax purposes.

The Company incurred \$900 of transaction costs in conjunction with the Tuscany acquisition for the year ended December 29, 2017, which is included in general and administrative expense in the accompanying consolidated statement of income.

The Company's allocation of the purchase price to the net tangible and intangible assets acquired and liabilities assumed is as follows:

Acquisition consideration

Cash consideration	\$	53,350
Settlement of pre-existing accounts		242
Total consideration at closing	\$	<u>53,592</u>

Fair market values

Other current and non-current assets	\$	5,966
Property, plant and equipment		1,416
Customer relationships		28,600
Trademarks and brand		6,500
Goodwill		30,392
Total assets acquired		<u>72,874</u>

Accounts payable and accrued expenses		3,329
Debt assumed in acquisition		465
Deferred tax liability for tax free rollover of non-controlling interest		2,588
Total liabilities assumed		<u>6,382</u>
Redeemable non-controlling interest		<u>12,900</u>
Purchase price allocation	\$	<u>53,592</u>

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17. Selected Quarterly Financial Data (Unaudited)

Selected summarized quarterly financial information for 2019 and 2018 is as follows:

	Quarter Ended							
	Jan 3, 2020	Sep 27, 2019	Jun 28, 2019	Mar 29, 2019	Dec 28, 2018	Sep 28, 2018	Jun 29, 2018	Mar 30, 2018
Sales	\$ 185,881	\$ 211,317	\$ 192,122	\$ 161,700	\$ 156,810	\$ 175,798	\$ 156,825	\$ 129,792
Gross profit	59,641	69,817	62,220	51,057	50,953	60,486	52,413	41,644
Income from operations	26,159	35,360	29,471	21,819	22,853	31,452	24,275	15,952
Net income attributable to Fox Stockholders	22,522	29,487	22,921	18,103	20,135	24,312	18,369	21,224
Earnings per share:								
Basic	\$ 0.58	\$ 0.77	\$ 0.60	\$ 0.48	\$ 0.53	\$ 0.64	\$ 0.49	\$ 0.56
Diluted	\$ 0.58	\$ 0.75	\$ 0.59	\$ 0.46	\$ 0.52	\$ 0.62	\$ 0.47	\$ 0.55

18. Subsequent Events

On February 11, 2020 the Company entered into an agreement to acquire substantially all the issued and outstanding capital stock of SCA Performance Holdings, Inc. ("SCA") from Southern Rocky Holdings, LLC for \$328,000, exclusive of vehicle inventory. SCA is a leading OEM authorized specialty vehicle manufacturer ("SVM") for light duty trucks and sports utility vehicles with headquarters in Trussville, Alabama. The Company expects this acquisition to expand its North American geographic manufacturing footprint and broaden its product offerings in the automotive industry. The transaction will be financed through an expanded and syndicated Credit Facility led by Bank of America. The Company also agreed to an additional \$13,000 of contingent, performance-based retention incentives for key SCA management payable over the next two years. The transaction is expected to close late in the first quarter of fiscal 2020.

Exhibit 4.3

DESCRIPTION OF SECURITIES

The following description of the terms of the common stock of Fox Factory Holding Corp. (“FOX”) is not complete and is qualified in its entirety by reference to our Amended and Restated Certificate of Incorporation (the “Certificate of Incorporation”), and our Amended and Restated Bylaws (the “Bylaws” and together with the Certificate of Incorporation, our “Charter Documents”), both of which are exhibits to our Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q.

Our authorized capital stock consists of 90,000,000 shares of common stock, \$0.001 par value per share, and 10,000,000 shares of undesignated preferred stock, \$0.001 par value per share. The common stock of FOX is listed on the NASDAQ Global Select Market under the symbol “FOXF.”

Dividend rights

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our common stock are entitled to receive dividends out of funds legally available if our board of directors, in its discretion, subject to applicable law, determines to issue dividends and then only at the times and in the amounts that our board of directors may determine.

Voting rights

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders. We have not provided for cumulative voting for the election of directors in our Certificate of Incorporation. Our Certificate of Incorporation establishes a classified board of directors that is divided into three classes with staggered three-year terms. Only the directors in one class are subject to election at each annual meeting of our stockholders, with the directors in the other classes continuing for the remainder of their respective three-year terms.

No preemptive or similar rights

Our common stock is not entitled to preemptive rights, and is not subject to conversion, redemption or sinking fund provisions.

Right to receive liquidation distributions

If we become subject to a liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our common stock and any participating preferred stock outstanding at that time, subject to prior satisfaction of all outstanding debt and liabilities and the preferential rights of and the payment of liquidation preferences, if any, on any outstanding shares of preferred stock.

Preferred stock

Our board of directors is authorized, subject to limitations prescribed by Delaware law, to issue preferred stock in one or more series, to establish from time to time the number of shares to be included in each series, and to fix the designation, powers, preferences, and rights of the shares of each series and any of its qualifications, limitations or restrictions, in each case, without further vote or action by our stockholders. Our board of directors can also increase or decrease the number of shares of any series of preferred stock, but not above the total number of authorized shares of a series or below the number of shares of that series then outstanding, without any further vote or action by our stockholders. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock.

Options

As of January 3, 2020, we had outstanding options to purchase an aggregate of 431,178 shares of our common stock, with a weighted average exercise price of \$5.27, pursuant to our 2008 Stock Option Plan and our 2008 Non-Statutory Stock Option Plan. Of these options, the options to purchase an aggregate of 431,178 shares of our common stock were exercisable as of January 3, 2020.

Restricted Stock Units

As of January 3, 2020, we had 426,872 shares of common stock issuable upon vesting of restricted stock units granted to our directors, officers and other employees pursuant to our 2013 Omnibus Plan.

Anti-Takeover Effects

The provisions of our Charter Documents, which are summarized below, may have the effect of delaying, deferring, or discouraging another person from acquiring control of our company. These provisions are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed, in part, to encourage persons seeking to acquire control of our company to first negotiate with our board of directors. However, these provisions could have the effect of delaying, discouraging or preventing attempts to acquire us, which could deprive our stockholders of opportunities to sell their securities at prices higher than prevailing market prices.

Our Charter Documents include a number of provisions that could deter hostile takeovers or delay or prevent changes relating to the control of our board of directors or management team, including the following:

- *Board of directors vacancies.* Our Charter Documents authorize only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors is permitted to be set only by a resolution adopted by a majority vote of our entire board of directors. These provisions prevent a stockholder from increasing the size of our board of directors and then gaining control of our board of directors by filling the resulting vacancies with its own nominees. This makes it more difficult to change the composition of our board of directors and promotes continuity of management.
- *Classified board.* Our Charter Documents provide that our board of directors is classified into three classes of directors. A third party may be discouraged from making a tender offer or otherwise attempting to obtain control of us as it is more difficult and time consuming for stockholders to replace a majority of the directors on a classified board of directors.
- *Advance notice requirements for stockholder proposals and director nominations.* Our Amended and Restated Bylaws provides advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our Amended and Restated Bylaws also specify certain requirements regarding the form and content of a stockholder's notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. We expect that these provisions may also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company.
- *No cumulative voting.* The Delaware General Corporate Law provides that stockholders may cumulate votes in the election of directors if the corporation's certificate of incorporation allows for such mechanism. Our Amended and Restated Certificate of Incorporation does not permit cumulative voting.
- *Directors removed only for cause.* Our Amended and Restated Certificate of Incorporation provides that stockholders may remove directors only for cause.
- *Issuance of undesignated preferred stock.* Our board of directors has the authority, without further action by the stockholders, to issue up to 10,000,000 shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock would enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest, or other means.
- *Amendment of Charter Document provisions.* Our Amended and Restated Certificate of Incorporation currently requires any amendment or repeal of the above provisions in our Charter Documents, with the exception of the ability of our board of directors to issue shares of preferred stock and designate any rights, powers and preferences thereto, will require approval by holders of at least two-thirds of the voting power of all then outstanding shares of our capital stock entitled to vote generally in the election of directors.

STOCK PURCHASE AGREEMENT

BY AND AMONG

SOUTHERN ROCKY HOLDINGS, LLC,

SCA PERFORMANCE HOLDINGS, INC.

AND

FOX FACTORY, INC.

DATED AS OF FEBRUARY 11, 2020

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EXHIBITS

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STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this "Agreement"), dated as of February 11, 2020, is made by and among SCA Performance Holdings, Inc., a Delaware corporation (the "Company"), Southern Rocky Holdings, LLC, a Delaware limited liability company ("Seller"), Fox Factory, Inc., a California corporation ("Buyer"), and solely for purposes of Section 6.9(f), SCA Performance Group, LLC a Delaware limited liability company ("SCA Performance Group"). The Company, Seller and Buyer shall be referred to herein from time to time collectively as the "Parties".

RECITALS:

WHEREAS, as of the date hereof, Seller owns 100% of the issued and outstanding capital stock of the Company, consisting of 100 shares of common stock, par value \$0.01 per share, of the Company (the "Common Shares") and 21 shares of Class A preferred stock, par value \$0.01 per share, of the Company (the "Preferred Shares", and collectively with the Common Shares, the "Shares");

WHEREAS, the Parties desire that, upon the terms and subject to the conditions hereof, Buyer will purchase from Seller, and Seller will sell to Buyer, all of the Shares; and

WHEREAS as of the date hereof, the Restrictive Covenant Agreement with Kinderhook, which will also provide for the termination upon Closing of the Management Services Agreement, has also been entered into, which will become effective upon the Closing.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby intending to be legally bound agree as follows:

ARTICLE 1

CERTAIN DEFINITIONS

Section 1.1 Certain Definitions. As used in this Agreement, the following terms have the respective meanings set forth below.

"Accounting Firm" has the meaning set forth in Section 2.4(b)(ii).

"Accounting Principles" means the principles, practices, methodologies and procedures used by the Company in the preparation of the Example Statement of Net Working Capital.

“Accrued Taxes” means an amount (not less than zero (\$0) dollars) equal to the sum of the amount of the aggregate amount of any unpaid Taxes of each Group Company for any Pre-Closing Tax Period ending on or after December 31, 2019 and prior to the Closing Date and the Pre-Closing Tax Period (or portion thereof) that ends on the Closing Date in each case in respect of solely those jurisdictions in which the Company or its applicable Subsidiary is currently filing Tax Returns or in which the Company or its applicable Subsidiary commences operations after the date of this Agreement, less the aggregate current Tax assets of each Group Company for any Pre-Closing Tax Period (or portion thereof) that ends on the Closing Date, determined (i) by including the Transaction Tax Deductions and assuming such Transaction Tax Deductions are accrued and deductible in the Pre-Closing Tax Period (or the portion of any Straddle Period) that ends on the Closing Date, (ii) by excluding any Liabilities for accruals or reserves established or required to be established under GAAP methodologies for contingent Taxes or with respect to uncertain Tax positions, (iii) by excluding any Taxes attributable to any action taken by Purchaser or any of its Affiliates (including the Company) after the Closing outside the Ordinary Course, (iv) in accordance with past practices (including reporting positions, elections and Tax accounting methods) of the Company and its Subsidiaries in preparing its Tax Returns, (v) excluding any deferred Tax assets and Liabilities and (vi) taking into account any estimated Tax payments and overpayments of Taxes with respect any Pre-Closing Tax Period as reductions of the Liability for Taxes for such period.

“Acquisition Transaction” has the meaning set forth in Section 6.6.

“Actual Adjustment” means an amount, which may be a negative number, equal to (i) the Purchase Price as finally determined pursuant to Section 2.4(b), minus (ii) the Estimated Purchase Price.

“Adjustment Escrow Account” has the meaning set forth in Section 2.4(a)(i).

“Adjustment Escrow Amount” has the meaning set forth in Section 2.4(a)(i).

“Adjustment Escrow Funds” means, at any time, the portion of the Adjustment Escrow Amount then remaining in the Adjustment Escrow Account.

“Affiliate” means, with respect to any Person, any other Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Affordable Care Act” means that Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, and regulatory and other guidance promulgated thereunder.

“Agreement” has the meaning set forth in the preamble to this Agreement.

“Anti-Corruption Laws” means all U.S. and non-U.S. Legal Requirements relating to the prevention of corruption and bribery, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, as amended.

“Bailment Agreements” means the following agreements: (1) Ford Authorized Converter Pool Agreement dated April 9, 2018 between Ford Motor Company and SCA Performance, Inc., as amended by the Amendment to the Ford Authorized Converter Pool Agreement dated May 14, 2019 between Ford Motor Company and SCA Performance, Inc.; (2) the Special Vehicle Manufacturer Converters Agreement dated August 28, 2018 between General Motors LLC and SCA performance Inc.; (3) the Special Vehicle Manufacturer Converters Agreement dated August 23, 2018 between General Motors LLC and RR Manufacturing Dyad, LLC, as amended by the Assignment and Assumption of Special Vehicle Manufacturer Converters Agreement dated March 25, 2019 by and among RR Manufacturing Dyad, LLC, Rocky Ridge Trucks, Inc. and General Motors LLC; (4) the Special Vehicle Manufacturer Converters Agreement dated February 27, 2019 between General Motors LLC and Rocky Mountain Truckworks, Inc.; (5) the FCA US LLC Bailment Pool Agreement dated April 18, 2018 between FCA US LLC and SCA Performance Inc.; (6) the FCA US LLC Bailment Pool Agreement dated April 3, 2019 between FCA US LLC and Rocky Ridge Trucks, Inc.; (7) the FCA US LLC Bailment Pool Agreement dated March 4, 2019 between FCA US LLC and Rocky Mountain Truckworks, Inc.; and (8) the Nissan Bailment Agreement dated September 24, 2018 between Nissan North America, Inc. and RR Manufacturing, LLC, as amended by the Assignment and Assumption Agreement dated February 25, 2019 by and among RR Manufacturing, LLC, Rocky Ridge Trucks, Inc. and Nissan North America, Inc.

“Business Day” means a day, other than a Saturday or Sunday, on which commercial banks in New York City are open for the general transaction of business.

“Buyer” has the meaning set forth in the preamble to this Agreement.

“Buyer Indemnitee” has the meaning set forth in Section 9.2(a).

“Buyer Related Party” means (i) Buyer, (ii) any Group Company after Closing, (iii) the current and future direct or indirect holders of any equity, general or limited partnership or limited liability company interest, controlling persons, management companies, portfolio companies, financing sources, incorporators, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders, representatives, successors or assignees of Buyer or any Group Company after Closing and (iv) any current or future direct or indirect holders of any equity, general or limited partnership or limited liability company interest, controlling persons, management companies, portfolio companies, financing sources, incorporators, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders, successors or assignees of any of the Persons described in clause (iii) above.

“Capital Lease” means a lease of personal property which is required to be classified as a capital lease in accordance with GAAP.

“Cash and Cash Equivalents” means the sum of (i) the aggregate amount (expressed in United States dollars) of all cash and (ii) the aggregate fair market value (expressed in United States dollars) of all cash equivalents (including marketable securities, checks, bank deposits, lease deposits and short term investments), in each case, of the Group Companies as of immediately prior to the Closing on the Closing Date and calculated in accordance with GAAP. Notwithstanding anything to the contrary contained herein, “Cash and Cash Equivalents” shall (A) exclude amounts that are included in Net Working Capital and (B) include any amounts paid in respect of the “tail” policy if purchased by a Group Company prior to the Closing.

“Closing” has the meaning set forth in Section 2.2.

“Closing Date” has the meaning set forth in Section 2.2.

“Closing Date Indebtedness” means the aggregate amount of Indebtedness of the Group Companies as of immediately prior to the Closing on the Closing Date.

“COBRA” means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code and any similar state law.

“Code” means the Internal Revenue Code of 1986, as amended.

“Common Shares” has the meaning set forth in the recitals to this Agreement.

“Company” has the meaning set forth in the preamble to this Agreement.

“Company 401(k) Plan” means the SCA Performance, Inc. Retirement Plan, Plan No. 001.

“Company Intellectual Property Rights” has the meaning set forth in Section 3.13.

“Company IT Assets” means the Company Software and all other computer, communications and other information technology systems and related documents that are owned, purported to be owned or controlled by the Group Companies, that are used in the operation of the Group Companies’ business, including all such computer hardware and peripherals, telecommunications equipment, servers, workstations, routers, hubs, switches, data communication lines, networks, databases, software, communication facilities and other information technology-related equipment, infrastructure and assets.

“Company Material Adverse Effect” means any event, change, effect, occurrence, circumstance, state of facts or development that, when considered either individually or in the aggregate, is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the ability of Seller or the Group Companies to consummate the transactions contemplated by this Agreement or (b) the condition (financial or otherwise), business, properties, assets or results of operations of the Group Companies; provided, however, that none of the following (or the results thereof) shall be taken into account, either alone or in combination, in determining whether a Company Material Adverse Effect has occurred: (i) conditions generally affecting the United States economy or credit, securities, currency, financial, banking or capital markets (including any disruption thereof and any decline in the price of any security or any market index) in the United States or elsewhere in the world, (ii) any national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, (iii) changes in GAAP, (iv) changes in any laws, rules, regulations, orders, or other binding directives issued by any Governmental Entity or any action required to be taken under any law, rule, regulation, order or existing contract by which any Group Company (or any of their respective assets or properties) is bound, (v) any change that is generally applicable to the industries or markets in which the Group Companies operate, (vi) the public announcement of the transactions contemplated by this Agreement (including by reason of the identity of Buyer or any communication by Buyer or any of its Affiliates regarding its plans or intentions with respect to the business of any Group Company, and including the impact thereof on relationships with customers, suppliers, distributors, partners, employees, or others having relationships with any Group Company) or litigation arising from or relating to this Agreement or the transactions contemplated hereby, (vii) the taking of any action contemplated by this Agreement and the other agreements contemplated hereby, including the completion of the transactions contemplated hereby and

thereby or (viii) any matter set forth on the Schedules; provided, that, in the case of the foregoing clauses (i), (ii), (iii), (iv) or (v), if such event, change, effect, occurrence, circumstance, state of facts or development disproportionately affects the Group Companies as compared to other Persons or businesses that operate in the industries or markets in which the Group Companies operate, then such disproportionate event, change, effect, occurrence, circumstance, state of facts or development may be taken into account in determining whether a Company Material Adverse Effect has occurred or would reasonably be expected to occur. Notwithstanding the foregoing exclusions, (A) the receipt by any Group Company during the period beginning on the date hereof and ending as of the Closing of notice from any of Ford Motor Company, General Motors LLC or FCA US LLC (an “Applicable OEM”) specifically stating that such Applicable OEM will (1) have no ongoing business relationship, or (2) materially and adversely change the business relationship, with the Group Companies and Buyer for the sale of personal use up-fitted vehicles of such Applicable OEM will be deemed to be a “Company Material Adverse Effect” solely for purposes of Section 7.2(c) of this Agreement until such time (if any) at which such Applicable OEM retracts such notice, in which case, upon such retraction no such Company Material Adverse Effect will be deemed to have occurred and (B) a Proceeding being filed in a court of competent jurisdiction against a Party during the period beginning on the date hereof and ending as of the Closing that both (i) if successful, would be reasonably likely to have a material adverse effect on the transactions contemplated by this Agreement and (ii) is reasonably likely to be successful on the merits, will be deemed to be a “Company Material Adverse Effect” solely for purposes of Section 7.2(c) of this Agreement until such time (if any) at which such Proceeding is either dismissed or withdrawn, in which case, upon such dismissal or withdrawal no such Company Material Adverse Effect will be deemed to have occurred (provided that, at all times, the condition set forth in Section 7.1(a) shall remain applicable); provided, notwithstanding the foregoing, a Party shall have the right to terminate this Agreement prior to such Proceeding being dismissed or withdrawn so long as (and only if) such termination is otherwise permitted pursuant to the express terms of Section 8.1 hereof.

“Company Products” has the meaning set forth in Section 3.21(a).

“Company Software” has the meaning set forth in Section 3.13(e).

“Company’s Knowledge” means, as it relates to the Company or any other Group Company, as of the applicable date, the actual knowledge or constructive knowledge of Michael McSweeney, Matthew McSweeney, Alisha Onushko, Deidre Allman, Todd Gunter and Chris Ritter after due inquiry. For the avoidance of doubt, such individuals shall have no personal liability or obligations regarding such knowledge.

“Confidentiality Agreement” means the confidentiality agreement, dated October 14, 2019, by and between SCA Performance, and Fox Factory Holding Corp.

“Continuing Employees” has the meaning set forth in Section 3.14(c).

“Contract” means any agreement, instrument, document, lease, sublease, license, sublicense, concession, contract, purchase order, statement of work, note, bond, indenture, mortgage, assignment or other arrangement, understanding, permission or commitment (in each case, whether written or oral and including any extension, renewal, amendment or other modification thereof).

“Controlling Party” has the meaning set forth in Section 6.10(f).

“Credit Facilities” means that certain Amended and Restated Credit Agreement, dated as of March 4, 2019, by and among SCA Performance, as the borrower, the Company, as Holdings (as defined therein), Regions Bank, as Administrative Agent (as defined therein) and Collateral Agent (as defined therein), and each lender from time to time party thereto, as amended by that certain First Amendment to Amended and Restated Credit Agreement, dated as of May 20, 2019, that certain Second Amendment to Amended and Restated Credit Agreement, dated as of July 2, 2019, and that Third Amendment to Amended and Restated Credit Agreement, dated as of October 8, 2019.

“Data Protection Requirements” means all of the following: (a) all Legal Requirements relating to the privacy or security of Personal Data; (b) Payment Card Industry Data Security Standard (PCI DSS) (if applicable to the Group Companies); and (c) obligations of the Group Companies relating to the privacy or security of Personal Data under any Contract into which the Group Companies have entered or by which the Group Companies are otherwise bound.

“Debt Payoff Letters” has the meaning set forth in Section 6.11.

“Developed IP” has the meaning set forth in Section 3.13(d).

“Employee Benefit Plan” means each “employee benefit plan” (within the meaning of Section 3(3) of ERISA), whether or not subject to ERISA, and each employment, individual consulting, individual independent contractor, bonus, incentive, commission, equity purchase, option, equity or other equity-based, retirement or supplemental retirement, pension, profit sharing, deferred compensation, loan, educational assistance, perquisite, sabbatical, relocation, severance, termination, retention, change of control, Code Section 125, life, disability or other insurance, paid-time off, vacation, fringe benefit, post-retirement or retiree welfare, or other benefit or compensation plan, agreement, program, policy or other arrangement, (i) that is maintained, sponsored, contributed to or obligated to be contributed to by any Group Company for the benefit of any current or former employee, officer, director or independent contractor of any Group Company, or the beneficiaries or dependents of any such individual, or (ii) under which any Group Company has any Liability.

“Enterprise Value” means \$341,000,000.

“Environmental Laws” means all applicable federal, state, local and foreign laws (including common laws), rules, regulations, codes, orders and ordinances as are in effect on or prior to the Closing Date concerning: (a) public or occupational health and safety, including industrial hygiene standards (regarding Hazardous Materials), (b) pollution or the protection of natural resources, endangered or threatened species, human health or safety (regarding Hazardous Materials), or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (c) the presence of, exposure to, or the management, manufacture, import, export, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, Release, transportation, processing, production, disposal or remediation of any Hazardous Materials.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any trade or business, whether or not incorporated, that, together with one or more of the Group Companies, is or would have been, at any date of determination, treated as a single employer within the meaning of Code Section 414 or Section 4001 of ERISA.

“Escrow Agent” has the meaning set forth in Section 2.4(a)(i).

“Escrow Agreement” has the meaning set forth in Section 2.4(a)(i).

“Escrow Amount” has the meaning set forth in Section 2.4(a)(i).

“Estimated Purchase Price” means a good faith estimate of the Purchase Price, as determined by the Company.

“Estimated Purchase Price Calculation” has the meaning set forth in Section 2.4(a).

“Example Statement of Net Working Capital” means the statement of Net Working Capital as of October 31, 2019, attached hereto as Exhibit A.

“Ex-Im Laws” means all U.S. and non-U.S. Legal Requirements relating to export, re-export, transfer, and import controls, including, without limitation, the Export Administration Regulations, the International Traffic in Arms Regulations, and the Legal Requirements related to customs and imports administered by U.S. Customs and Border Protection.

“Federal Rules of Evidence” means the Federal Rules of Evidence of the United States as in effect on the date of this Agreement.

“Financial Statements” has the meaning set forth in Section 3.4.

“Floor Plan Financing Agreements” means the following agreements: (1) Inventory Loan and Security Agreement, dated as of February 18, 2019, by and between Ally Bank and Rocky Mountain Truckworks, Inc.; (2) Inventory Loan and Security Agreement, dated as of March 20, 2019, by and between Ally Bank and Rocky Ridge Trucks, Inc.; (3) Ally Financial Master Manufacturer’s Finance Plan Agreement, dated as of 2018, by and between Ally Financial and SCA Performance, Inc.; and (4) Master Loan and Security Agreement, dated April 17, 2018, by and between SCA Performance, Inc. and Ford Motor Credit Company, LLC, as well as each Continuing Guaranty entered into for the benefit of Ford Motor Credit Company, LLC in connection therewith. As a point of clarity and by way of example, all of the amounts set forth as outstanding as of December 31, 2019 under the subheadings of “Bailment” and “Floor Plan” within Note 11 of the Unaudited Financial Statements for the Company that are attached hereto as Schedule 3.4 represent the amounts outstanding pursuant to the Floor Plan Financing Agreements as of December 31, 2019.

“Floor Plan Indebtedness” means, as of any time, the outstanding principal amount of, accrued and unpaid interest on, and other payment obligations pursuant to any Floor Plan Financing Agreement.

“Floor Plan Vehicles” means all vehicles, vehicle chassis, limousines, truck or camper bodies and/or other goods related thereto of the business of the Group Companies, which are held at, or are in transit from or to, the locations at which the Group Companies operate, which are used or held for use by the Group Companies, including any of the foregoing obtained under the Floor Plan Financing Agreements or the Bailment Agreements.

“Fundamental Representations” means Section 3.1(a) (Organization), Section 3.2 (Capitalization of the Group Companies), Section 3.3 (Authority), Section 3.17 (Brokers), Section 3.19, (Transactions with Affiliates), Section 4.1 (Organization), Section 4.2 (Authority), Section 4.4 (Title to the Shares; Ownership of Seller) and Section 5.2 (Authority).

“Funded Indebtedness” means, as of any time, without duplication, the outstanding principal amount of, accrued and unpaid interest on, and other payment obligations (including any prepayment premiums payable as a result of the consummation of the transactions contemplated by this Agreement) arising under, any obligations of any Group Company consisting of (i) indebtedness for borrowed money or indebtedness issued in substitution or exchange for borrowed money, (ii) indebtedness evidenced by any note, bond, debenture or other debt security, in each case, as of such time, or (iii) indebtedness under all Capital Leases. Notwithstanding the foregoing, “Funded Indebtedness” shall not include any (A) undrawn letters of credit (including any that are outstanding under the Credit Facilities), (B) obligations under any interest rate, currency or other hedging agreements (other than breakage costs payable upon termination thereof on the Closing Date), (C) amounts included as Seller Expenses, or (D) Floor Plan Indebtedness.

“GAAP” means United States generally accepted accounting principles consistently applied, as in effect from time to time.

“Governing Documents” means the legal document(s) by which any Person (other than an individual) establishes its legal existence or which govern its internal affairs. For example, the “Governing Documents” of a corporation include its certificate of incorporation and by-laws, the “Governing Documents” of a limited partnership include its limited partnership agreement and certificate of limited partnership and the “Governing Documents” of a limited liability company include its operating agreement and certificate of formation.

“Governmental Entity” means any (i) nation, state, county, city, district or other similar jurisdiction, (ii) federal, state, local or foreign government, (iii) governmental, regulatory or administrative authority, agency, division, instrumentality, bureau, governmental department or commission or (iv) judicial or arbitral or other body (including, without limitation, accreditation agencies or licensure boards) entitled by applicable Legal Requirement to exercise, any arbitrate, administrative, executive, judicial, legislative, police, regulatory or taxing authority or power.

“Grant Agreement” means (1) each Grant Agreement between a grantee and Seller under the Southern Rocky Holdings, LLC 2019 Incentive Equity Plan or (2) each Grant Agreement between a grantee and SCA Performance Group, LLC under the SCA Performance Group, LLC 2018 Incentive Equity Plan.

“Group Companies” means, collectively, the Company and each of its Subsidiaries.

“Hazardous Materials” means any material or substance that (a) is defined as hazardous, acutely hazardous, toxic or is otherwise regulated under any Environmental Laws, including due to its dangerous or deleterious properties or characteristics; or (b) contains any petroleum or hydrocarbons in any form, and any derivative or by-product thereof, natural gas or natural gas products, asbestos and asbestos-containing materials, or polychlorinated biphenyls.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Indebtedness” means, as of any time, without duplication, (i) Funded Indebtedness, (ii) all obligations of the type referred to in the definition of “Funded Indebtedness” of any Person other than any Group Company the payment of which any Group Company is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including any guarantee of such obligations (other than obligations of the Company in respect of any of its Subsidiaries and obligations of any Subsidiary in respect of any other Subsidiary), (iii) any capitalized lease obligations of any Group Company (iv) breakage costs payable upon termination on the Closing Date of any obligations of any Group Company under interest rate swap, currency swap, forward currency or interest rate contracts or other interest rate or currency hedging arrangements, (v) the deferred purchase price of property or services (including any seller notes and any earn-out obligations whether or not contingent and regardless of when due, but excluding any trade payables and accrued expenses arising in the ordinary course of business) of any Group Company, and (vi) all outstanding reimbursement obligations in respect of drawn letters of credit issued for the account of any Group Company (but for the avoidance of doubt excluding any obligations in respect of undrawn letters of credit), in each case, outstanding as of such time. For the avoidance of doubt “Indebtedness” shall not include any (A) amounts included Other Liabilities, (B) amounts included as Seller Expenses, (C) amounts otherwise taken into account in the calculation of Net Working Capital, (D) Floor Plan Indebtedness or (E) item that would otherwise constitute “Indebtedness” that is an obligation between the Company and any Subsidiary of the Company or between any two Subsidiaries of the Company.

“Indemnified Party” means a Buyer Indemnitee or Seller Indemnitee, as the case may be.

“Indemnity Escrow Account” has the meaning set forth in Section 2.4(a)(i).

“Indemnity Escrow Amount” has the meaning set forth in Section 2.4(a)(i).

“Indemnity Escrow Funds” means, at any time, the portion of the Indemnity Escrow Amount then remaining in the Indemnity Escrow Account.

“Insurance Policies” has the meaning set forth in Section 3.15.

“Intellectual Property Rights” means all domestic and foreign patents, copyrights, trademarks, service marks, trade names and other designations of origin, all goodwill associated therewith and all registrations and applications therefor, Internet domain names, trade secrets, and know-how, and any and all other rights in any intellectual or industrial property, in each case, to the full extent protectable by applicable Legal Requirement.

“Inventory” means all inventories of the Group Companies, which are held at, or are in transit from or to, the locations at which the Group Companies operate, or located at suppliers remises on consignment, including the Group Companies interest in the Floor Plan Vehicles, raw materials, works in progress and finished goods, in each case, which are used or held for use by the Group Companies, including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person, together with all rights of the Group Companies against suppliers of such inventories

“Latest Balance Sheet” has the meaning set forth in Section 3.4(b).

“Latest Balance Sheet Date” has the meaning set forth in Section 3.4(b).

“Legal Requirement” means all federal, state and local laws, statutes, codes, rules, regulations, ordinances, measures, judgments, determinations, orders, decrees, writs, injunctions, and acts of any Governmental Entity, including common law.

“Liability” means any liability or obligation of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due and regardless of when asserted.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge. For the avoidance of doubt, the term “Lien” shall not be deemed to include any license, option, or covenant of, or other contractual obligations with respect to Intellectual Property Rights.

“Loss” has the meaning set forth in Section 9.2(a).

“Management Services Agreement” means that certain Management Services Agreement, dated as of April 13, 2018, by and between SCA Performance and Kinderhook Industries V, L.P., a Delaware limited partnership (“Kinderhook”), as amended by that certain First Amendment to Management Services Agreement, dated as of March 4, 2019.

“Material Contracts” has the meaning set forth in Section 3.6(a).

“Material Customer” has the meaning set forth in Section 3.23.

“Material Supplier” has the meaning set forth in Section 3.24.

“MCM Lease” means that certain Commercial Lease entered into by and between MCM Properties 8220, LLC and SCA Performance, Inc., dated April 12, 2018 for the property located at 7769 Gadsden Hwy, Trussville, AL 35173.

“Multiemployer Plan” has the meaning set forth in Section 3(37) of ERISA or Section 4001(a)(3) of ERISA.

“Net Working Capital” means the aggregate value of the current assets of the Group Companies less the aggregate value of the current liabilities of the Group Companies, in each case, determined on a consolidated basis without duplication, as of immediately prior to the Closing on the Closing Date and calculated in accordance with the Accounting Principles and (i) including only current assets and current liabilities to the extent that such assets and liabilities are of the type and kind included in the Example Statement of Net Working Capital, and (ii) establishing levels of reserves and materiality using the same principles, practices, methodologies and procedures and in the same manner as such levels were established in preparing the Example Statement of Net Working Capital; provided, that for the avoidance of doubt, Net Working Capital shall exclude any Tax assets and any Tax liabilities. Notwithstanding the foregoing, “Net Working Capital” shall exclude any amounts related to (1) Cash and Cash Equivalents, (2) Funded Indebtedness, (3) Seller Expenses, and (4) Other Liabilities.

“Net Working Capital Adjustment” means (i) the amount by which Net Working Capital exceeds the Target Net Working Capital or (ii) the amount by which Net Working Capital is less than the Target Net Working Capital, in either case, if applicable; provided that any amount which is calculated pursuant to clause (ii) above shall be deemed to be, and shall be, expressed as a negative number.

“New Plans” has the meaning set forth in Section 6.9.

“Notice of Claim” means a written notice that specifies with reasonable specificity and detail the breach of representation or warranty set forth in this Agreement or any certificate furnished under this Agreement or any other basis for indemnification hereunder (including the Sections of this Agreement that are the subject of such breach) pursuant to which Losses are being claimed by the Indemnified Party and whether such Losses are liquidated in nature.

“Ordinary Course” means, with respect to any Person, any action taken by such Person in the ordinary course of that Person’s business consistent with past practice (including as to quantity, quality, and frequency) and in the ordinary course of the normal day-to-day operations of such Person.

“Other Liabilities” means, as of the Closing, without duplication, the sum of (i) the aggregate amount of liabilities of the Group Companies related to the matters set forth on Schedule 1.1(b), in each case calculated in accordance with GAAP, and (ii) Accrued Taxes.

“Owned Real Property” has the meaning set forth in Section 3.18(a).

“Parties” has the meaning set forth in the preamble to this Agreement.

“Permitted Liens” means (i) lessor’s, mechanic’s, materialmen’s, carriers’, repairers’ and other similar Liens arising or incurred in the Ordinary Course for amounts that are not yet delinquent or are being contested in good faith, (ii) Liens for Taxes, assessments or other governmental charges not yet due and payable as of the Closing Date or which are being contested in good faith, (iii) encumbrances and restrictions on real property (including easements, covenants, rights of way and similar restrictions of record) that do not materially interfere with the Group Companies’ present uses or occupancy of such real property, (iv) Liens securing the obligations of the Group Companies under the Credit Facilities, (v) Liens on inventory that secure obligations of the Group Companies under any Floor Plan Financing Agreement, (vi) zoning, building codes and other land use laws regulating the use or occupancy of real property or the activities conducted thereon which are imposed by any Governmental Entity having jurisdiction over such real property and which are not violated by the current use or occupancy of such real property or the operation of the businesses of the Group Companies or any violation of which would not have a Company Material Adverse Effect, and (vii) Liens described on Schedule 1.1(a).

“Person” means an individual, partnership, corporation, limited liability company, joint stock company, unincorporated organization or association, trust, joint venture, association, Governmental Entity or other similar entity, whether or not a legal entity.

“Personal Data” means any information (including a person’s name, street address, telephone number, e-mail address, photograph, social security number, tax identification number, driver’s license number, passport number, bank account information and other financial information, customer or account numbers, account access codes and passwords, Internet Protocol address, geographic location, Social Security Number, persistent identifier, order histories, amounts spent, platform behavior, conduct, preferences, demographic data and any other data and information) which, whether alone or in combination with other information, identifies or can be used to identify an identified natural person.

“Pre-Closing Tax Period” means any tax period ending on or prior to the Closing Date and the pre-closing portion of any Straddle Period.

“Pre-Closing Tax Returns” has the mean set forth in Section 6.10(b).

“Preferred Shares” has the meaning set forth in the recitals to this Agreement.

“Privacy/Security Obligations” has the meaning set forth in Section 3.27(a).

“Proceeding” means any action, arbitration, audit, charge, claim, complaint, decree, demand, dispute, inquiry, hearing, investigation, litigation, judgment, mediation, order, proceeding or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Entity or arbitrator.

“Proposed Closing Date Calculations” has the meaning set forth in Section 2.4(b)(i).

“Purchase Price” means (i) the Enterprise Value, plus (ii) the Net Working Capital Adjustment (which may be a negative number), plus (iii) Cash and Cash Equivalents, minus (iv) Closing Date Indebtedness, minus (v) Unpaid Seller Expenses, minus (vi) Other Liabilities.

“Purchase Price Dispute Notice” has the meaning set forth in Section 2.4(b)(ii).

“R&W Insurance Policy” means an insurance policy that certain Buyer-side representations and warranties policy obtained by Buyer attached hereto as Exhibit C.

“Real Property Lease” has the meaning set forth in Section 3.18(b).

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or migrating into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Responsible Party” has the meaning set forth in Section 9.3(a).

“Review Period” has the meaning set forth in Section 2.4(b)(ii).

“SCA Performance” means SCA Performance, Inc., a Delaware corporation and wholly-owned Subsidiary of the Company

“Schedules” means the disclosure schedules to this Agreement.

“Seller” has the meaning set forth in the preamble to this Agreement.

“Seller Expenses” means, without duplication, the aggregate amount of all out of pocket costs and expenses incurred or otherwise payable by Seller, any Group Company, or any of their respective Affiliates (to the extent such amounts are a Liability of any Group Company) as a result of the entry by Seller into this Agreement and the other Transaction Documents or as a result of the consummation of the transactions contemplated by this Agreement including (a) fees, costs and expenses of legal counsel, investment bankers, accountants, brokers or other representatives and consultants incurred in connection with the transactions contemplated by this Agreement and (b) any change of control, severance, retention, transaction bonus or other compensatory payments payable to, or in respect of, any current or former employees, independent contractors, officers or directors solely as a result of the transactions contemplated by this Agreement (including all transaction bonuses payable pursuant to the Transaction Bonus Agreements) and (c) any fees payable by a Group Company in connection with the termination of the Management Services Agreement; provided, however, that “Seller Expenses” shall (A) include fifty percent (50%) of the amounts payable by the Group Companies in connection with the “tail” policy pursuant to and in accordance with Section 6.5(c); (B) include (i) fifty percent (50%) of the filing fees associated with the HSR Act filing and (ii) fifty percent (50%) of the premium of the R&W Insurance Policy; and (C) include fifty percent (50%) of the Transfer Taxes pursuant to and in accordance with Section 6.10(a).

“Seller Indemnitee” has the meaning set forth in Section 9.2(c).

“Seller Related Party” means (i) Seller, (ii) any Group Company prior to Closing, (iii) the former, current and future direct or indirect holders of any equity, general or limited partnership or limited liability company interest, controlling persons, management companies, portfolio companies, financing sources, incorporators, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders, representatives, successors or assignees of Seller or any Group Company prior to Closing and (iv) any former, current or future direct or indirect holders of any equity, general or limited partnership or limited liability company interest, controlling persons, management companies, portfolio companies, financing sources, incorporators, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders, successors or assignees of any of the Persons described in clause (iii) above.

“Shares” has the meaning set forth in the recitals to this Agreement.

“Sponsor” has the meaning set forth in Section 3.13(d).

“Straddle Period” means any Tax period including, but not ending on or before, the Closing Date.

“Subsidiary” means, with respect to any Person, any corporation, company, limited liability company, partnership, association, or other business entity of which (i) if a corporation or a company, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof or (ii) if a limited liability company, partnership, association, or other business entity (other than a corporation or a company), a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof and for this purpose, a Person or Persons own a majority ownership interest in such a business entity (other than a corporation or a company) if such Person or Persons shall be allocated a majority of such business entity’s gains or losses or shall be a, or control any, managing director or general partner of such business entity (other than a corporation or a company). The term “Subsidiary” shall include all Subsidiaries of such Subsidiary.

“Survival Period Termination Date” has the meaning set forth in Section 9.1.

“Target Net Working Capital” means \$5,263,992.

“Tax” means any federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, real property gains, registration, value added, excise, severance, stamp, occupation, windfall profits, customs, duties, real property, personal property, capital stock, social security (or similar), unemployment, disability, payroll, license, employee or other withholding, or other tax, of any kind whatsoever and any interest, penalties or additions to tax in respect of the foregoing.

“Tax Claim” has the meaning set forth in Section 6.10(f).

“Tax Benefit” has the meaning set forth in Section 6.10(g)(ii).

“Tax Refund” has the meaning set forth in Section 6.10(g)(i).

“Tax Return” means any return, report or similar statement filed or required to be filed with respect to any Tax (including any attached schedules), including any information return, claim for refund, amended return or declaration of estimated Tax.

“Termination Date” has the meaning set forth in Section 8.1(d).

“Third Party Claims” has the meaning set forth in Section 9.3(a).

“Trade Control Laws” has the meaning set forth in Section 3.10(a).

“Transaction Bonus Agreements” each Transaction Bonus Agreement that has been entered into by SCA Performance, Inc. on or prior to the date hereof with a current officer or employee of SCA Performance, Inc. or another Group Company as further disclosed on Schedule 1.1(c).

“Transaction Documents” means, collectively, this Agreement, the Escrow Agreement, and each agreement, document, instrument and/or certificate contemplated by this Agreement to be executed in connection with the transactions contemplated hereby.

“Transaction Tax Deductions” means, to the extent “more likely than not” deductible under applicable Tax law, any income Tax deductions resulting from the following, calculated without duplication: (a) the fees and expenses (including any breakage fees or accelerated deferred financing fees) incurred by any Group Company with respect to the payment of Indebtedness in connection with the transactions contemplated by this Agreement; (b) the amount of Seller Expenses and the amount of any expenses paid by any Group Company prior to the Closing that would be treated as Seller Expenses if paid on or after the Closing; and (c) the amount of any employment Taxes of any Group Company attributable to items described in clause (b) hereof; provided that, in connection with the foregoing, Buyer shall be assumed to cause the Group Companies to make an election under Revenue Procedure 2011-29, 2011-18 IRB (and analogous state or local Tax procedure), to treat 70% of any success-based fees that were paid by or on behalf of the Group Companies as an amount that did not facilitate the transactions contemplated under this Agreement.

“Transfer Taxes” has the meaning as set forth in Section 6.10(a).

“Unaudited Financial Statements” has the meaning set forth in Section 3.4(b).

“Unpaid Seller Expenses” means the aggregate amount of Seller Expenses incurred and unpaid as of immediately prior to the Closing on the Closing Date.

“WARN Act” has the meaning set forth in Section 3.14(a).

Section 1.2 Interpretation. Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, “herein,” “hereto,” “hereof” and words of similar import refer to this Agreement as a whole, including the Schedules and Exhibits, and not to any particular section, subsection, paragraph, subparagraph or clause contained in this Agreement; (ii) masculine gender shall also include the feminine and neutral genders, and vice versa; (iii) words importing the singular shall also include the plural, and vice versa; (iv) the words “include”, “includes” or “including” shall be deemed to be followed by the words “without limitation”; (v) the words “party” or “parties” shall refer to parties to this Agreement; (vi) all references to Articles, Sections, Exhibits or Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement; (vii) the word “or” is disjunctive but not necessarily exclusive; (viii) terms used herein that are not defined herein but are defined in GAAP have the meanings ascribed to them therein; (ix) the words “writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form; (x) references to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof; (xi) references to any Person include the successors and permitted assigns of that Person; (xii) references from or through any date mean, unless otherwise specified, from and including or through and including, respectively; (xiii) the words “dollar” or “\$” shall mean U.S. dollars; and (xiv) the word “day” means calendar day unless Business Day is expressly specified. If any action under this Agreement is required to be done or taken on a day that is not a Business Day, then such action shall be required to be done or taken not on such day but on the first succeeding Business Day thereafter.

ARTICLE 2

PURCHASE AND SALE

Section 2.1 Purchase and Sale of the Shares. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer will purchase, acquire and accept from Seller, and Seller will sell, assign, transfer, convey and deliver to Buyer, the Shares free and clear of all Liens (other than Permitted Liens).

Section 2.2 Closing of the Transactions Contemplated by this Agreement. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place on a date to be specified by the Parties, which shall be no later than two (2) Business Days after satisfaction (or waiver by the Party entitled to waive the same) of the conditions set forth in ARTICLE 7 (other than those conditions which are to be satisfied by the delivery of documents or taking of any other action at the Closing by any Party, but subject to the satisfaction or waiver of such conditions) (such date, the “Closing Date”), remotely by electronic or facsimile transmission, unless another time, date or place is agreed to in writing by Buyer and Seller. For accounting purposes, the Closing will be deemed to have occurred at 11:59 P.M. Eastern Standard Time on the Closing Date.

Section 2.3 Deliveries at the Closing.

(a) Deliveries by Seller. At the Closing, Seller shall deliver to Buyer all certificate(s) representing the Shares, duly endorsed in blank or accompanied by any other proper instrument of assignment endorsed in blank in proper form for transfer.

(b) Deliveries by Buyer. At the Closing, Buyer shall pay the Estimated Purchase Price in accordance with the provisions set forth in Section 2.4. The Parties agree that (i) the portion of the Estimated Purchase Price equal to (A) \$21,000,000 plus (B) compounded interest of 8.5% per annum (calculated on the applicable Business Date) calculated from March 4, 2019 through the Closing Date shall be allocated to the Preferred Shares (with no other portion of the Purchase Price, whether paid at or after the Closing, being allocated to the Preferred Shares) and (ii) the remainder of the Estimated Purchase Price (as well as any other portion of the Purchase Price) after taking into account the foregoing clause (i) shall be allocated to the Common Shares.

(c) Other Deliveries. The closing certificates and other documents required to be delivered pursuant to this Agreement with respect to the Closing pursuant to ARTICLE 7 will be exchanged.

Section 2.4 Purchase Price.

(a) Estimated Purchase Price. No later than two (2) Business Days prior to the Closing, Seller shall deliver to Buyer a good faith calculation of the Estimated Purchase Price (the "Estimated Purchase Price Calculation"). In determining the Estimated Purchase Price, the Company shall use the Enterprise Value and set forth good faith estimates of the (i) Closing Date Indebtedness, (ii) Cash and Cash Equivalents, (iii) Unpaid Seller Expenses, (iv) Net Working Capital (and the related Net Working Capital Adjustment, if any), and (v) the Other Liabilities and, in each case, the components thereof and in a manner consistent with the definitions thereof. Seller agrees to prepare the Estimated Purchase Price Calculation in a manner consistent with the Accounting Principles, and Seller shall not make any changes to the assumptions underlying the Accounting Principles. At the Closing, Buyer shall pay or cause to be paid, in cash by wire transfer of immediately available funds, the Estimated Purchase Price as follows:

(i) (A) \$1,278,750 of cash (such amount, the "Indemnity Escrow Amount") shall be deposited into an escrow account (the "Indemnity Escrow Account") as security for Seller's obligations pursuant to ARTICLE 9, and (B) \$1,000,000 of cash (such amount, the "Adjustment Escrow Amount" and together with the Indemnity Escrow Amount, the "Escrow Amount") shall be deposited into an escrow account (the "Adjustment Escrow Account") as security for Seller's obligations pursuant to Section 2.4(c) (ii), which shall be established pursuant to an escrow agreement (the "Escrow Agreement"), which Escrow Agreement shall be (x) entered into on the Closing Date by and among Seller, Buyer and CitiGroup, N.A. (the "Escrow Agent") and (y) substantially in the form of Exhibit B attached hereto;

(ii) on behalf of Seller and the Group Companies, (A) the portion of the Closing Date Indebtedness that is Funded Indebtedness and (B) the Seller Expenses that are included in the Estimated Purchase Price, each in accordance with the Debt Payoff Letters, invoices or other documents evidencing such amounts delivered to Buyer at least one Business Day prior to the Closing Date; and

(iii) to Seller, an amount equal to (A) the Estimated Purchase Price, minus (B) the Escrow Amount.

(b) Determination of the Final Purchase Price.

(i) As soon as practicable, but no later than ninety (90) days following the Closing Date, Buyer shall prepare, or cause to be prepared, and deliver to Seller, a statement setting forth Buyer's good faith proposed calculation of (A) Net Working Capital (and the related Net Working Capital Adjustment, if any), (B) Cash and Cash Equivalents, (C) Closing Date Indebtedness, (D) Unpaid Seller Expenses, (E) the Other Liabilities and (F) the Purchase Price, and, in each case, the components thereof

and in a manner consistent with the definitions thereof. The proposed calculations described in the previous sentence shall collectively be referred to herein from time to time as the “Proposed Closing Date Calculations”. Buyer agrees to prepare the Proposed Closing Date Calculations in a manner consistent with the Accounting Principles, and Buyer shall not make any changes to the assumptions underlying the Accounting Principles (including levels of reserves used by the Group Companies with respect thereto).

(ii) Seller shall have thirty (30) days following receipt of the Proposed Closing Date Calculations to review such calculations (the “Review Period”). Seller may, on or prior to the last day of the Review Period, give to Buyer a written notice of dispute, which sets forth its objections to Buyer’s calculation of the Proposed Closing Date Calculations (a “Purchase Price Dispute Notice”). To be effective, a Purchase Price Dispute Notice must (x) specify in reasonable detail the nature and amount of any disagreement so asserted (and an alternative amount for each such disputed item) and (y) shall include a proposed calculation by Seller of the Proposed Closing Date Calculations in dispute. Any item not specifically disputed by Seller in the Purchase Price Dispute Notice shall be deemed final and binding on the Parties as set forth in the Proposed Closing Date Calculations. Seller and the other Parties agree that, unless Seller gives a Purchase Price Dispute Notice to Buyer on or before the last day of the Review Period the Proposed Closing Date Calculations shall be deemed to set forth the final Net Working Capital (and the related Net Working Capital Adjustment, if any), Cash and Cash Equivalents, Closing Date Indebtedness, Unpaid Seller Expenses, the Other Liabilities and the Purchase Price, in each case, for all purposes hereunder (including the determination of the Actual Adjustment). Prior to the end of the Review Period, Seller may accept the Proposed Closing Date Calculations by delivering written notice to that effect to Buyer, in which case the Purchase Price will be deemed to have been finally determined when such notice is given. If Seller gives a Purchase Price Dispute Notice to Buyer on or prior to the last day of the Review Period, then Buyer and Seller shall use commercially reasonable efforts to resolve in writing any disputes set forth in the Purchase Price Dispute Notice during the 30-day period commencing on the date Buyer receives the applicable Purchase Price Dispute Notice from Seller. During such 30-day consultation period, Buyer shall have full access to the working papers of Seller’s accountants prepared in connection with the Purchase Price Dispute Notice. If Seller and Buyer do not agree upon a final resolution with respect to any disputed items set forth in the Purchase Price Dispute Notice within such 30-day period, then the remaining items in dispute shall be submitted promptly by Buyer and Seller to KPMG US LLP (the “Accounting Firm”). The Accounting Firm shall be requested to render a written determination of the applicable dispute (acting as an expert and not as an arbitrator) within 45 days after referral of the matter to such Accounting Firm, which determination must be in writing and must set forth, in reasonable detail, the basis therefor and must be based solely on (i) the definitions and other applicable provisions of this Agreement, (ii) a single presentation (which presentations shall be limited to the remaining items in dispute set forth in the Proposed Closing Date Calculations and Purchase Price Dispute Notice) submitted by each of Buyer and Seller to the Accounting Firm within 15 days after the engagement thereof (which the Accounting Firm shall forward to the other Party) and (iii) one written response submitted to the Accounting Firm within 5 Business Days after receipt of each such presentation (which the Accounting Firm shall forward to the other Party), and not on independent review, which such determination shall be conclusive and binding on Buyer and Seller. The terms of appointment and engagement of the Accounting Firm shall be as reasonably agreed upon between Seller and Buyer, and any associated engagement fees shall initially be borne 50% by Seller and 50% by Buyer; provided that such fees shall ultimately be borne by Seller and Buyer in the same proportion as the aggregate amount of the disputed items that is unsuccessfully disputed by each such Party (as determined by the Accounting Firm) bears to the total amount of the disputed items submitted to the Accounting Firm. Except as provided in the preceding sentence, all other costs and expenses incurred by the Parties in connection with resolving any dispute hereunder before the Accounting Firm shall be borne by the Party incurring such cost and expense. The Accounting Firm shall resolve each disputed item by choosing a value not in

excess of, nor less than, the greatest or lowest value, respectively, set forth in the presentations (and, if applicable, the responses) delivered to the Accounting Firm pursuant to this Section 2.4(b)(ii). Such determination of the Accounting Firm shall be conclusive and binding upon the Parties absent fraud or manifest error. The Proposed Closing Date Calculations shall be revised as appropriate to reflect the resolution of any objections thereto pursuant to this Section 2.4(b)(ii), and, as so revised, such Proposed Closing Date Calculations shall be deemed to set forth the final Net Working Capital, Cash and Cash Equivalents, Closing Date Indebtedness, Unpaid Seller Expenses, the Other Liabilities and Purchase Price, in each case, for all purposes hereunder (including the determination of the Actual Adjustment).

(iii) During the Review Period, Buyer shall, and shall cause each Group Company to, upon reasonable written request of Seller, promptly provide Seller, its accountants and other representatives (including the Accounting Firm) reasonable access to the Group Company's working papers and books and records relating to the Proposed Closing Date Calculations, provided that any such access or furnishing of such information shall be conducted at Seller's sole expense, during normal business hours under the reasonable supervision of Buyer's agents and in such a manner as not to interfere in any material respect with the normal operations of Buyer (or any of the Group Companies); and provided, further, that the recipients of such information shall treat all such information as confidential and, to the extent reasonably required by Buyer shall execute and deliver a customary non-disclosure agreement.

(iv) Buyer and Seller agree that the procedures set forth in this Section 2.4 for resolving disputes with respect to the Proposed Closing Date Calculations shall be the sole and exclusive method for resolving any such disputes; provided, that this provision shall not prohibit either Party from instituting litigation to enforce any final determination of the Purchase Price pursuant to Section 2.4(b)(ii) in any court of competent jurisdiction in accordance with Section 10.12. The substance of any determination of the Accounting Firm shall not be subject to review or appeal, absent a showing of fraud or manifest error. It is the intent of the Parties to have any final determination of the Purchase Price by the Accounting Firm proceed in an expeditious manner; however, any deadline or time period contained herein may be extended or modified by the written agreement of the Parties and the Parties agree that the failure of the Accounting Firm to strictly conform to any deadline or time period contained herein shall not be a basis for seeking to overturn any determination rendered by the Accounting Firm which otherwise conforms to the terms of this Section 2.4.

(c) Adjustment to Estimated Purchase Price.

(i) If the Actual Adjustment is a positive amount, then (A) Buyer shall pay, or shall cause to be paid, to Seller an amount equal to such positive amount by wire transfer of immediately available funds within three (3) Business Days after the date on which the Purchase Price is finally determined pursuant to Section 2.4(b) above and (B) the Parties shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to deliver to Seller the Adjustment Escrow Funds.

(ii) If the Actual Adjustment is a negative amount, then within three (3) Business Days after the date on which the Purchase Price is finally determined pursuant to Section 2.4(b), then the Parties shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to deliver (A) to the Company an amount equal to the absolute value of such negative amount from the Adjustment Escrow Funds and (B) to the Seller the amount remaining of the Adjustment Escrow Funds after taking into account the payment pursuant to the foregoing clause (A). If the absolute value of the Actual Adjustment is an amount that exceeds the Adjustment Escrow Amount, then the Seller shall pay, or cause to be paid, to the Company an amount equal to the absolute value of the Actual Adjustment minus

the Adjustment Escrow Amount by wire transfer of immediately available funds within three (3) Business Days after the date on which the Purchase Price is finally determined pursuant to Section 2.4(b) above.

(iii) Any amount which becomes payable pursuant to this Section 2.4(c) will constitute an adjustment to the Purchase Price for all purposes hereunder.

Section 2.5 Withholding. Buyer and any applicable withholding agent shall be entitled to deduct and withhold from any and all payments made under this Agreement to the extent such amounts that are required to be deducted and withheld under applicable Tax law, it being agreed that in such case, except with respect to (x) payments in the nature of compensation to be made under this Agreement, (y) any backup withholding requirements or (z) the failure to satisfy the requirements of Section 7.2(d)(iv), Buyer shall use commercially reasonable efforts to provide Seller with a written notice of such party's intention to withhold at least five (5) Business Days prior to any such withholding. To the extent that such amounts are so withheld and paid over to the proper Governmental Entity, such withheld and deducted amounts will be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction or withholding was made. The Parties shall cooperate in good faith to reduce or otherwise eliminate any amount required to be deducted and withheld under applicable Tax law.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Buyer as follows:

Section 3.1 Organization and Qualification; Subsidiaries.

(a) The Company is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware. Each Subsidiary of the Company is a corporation, partnership, limited liability company or other business entity, as the case may be, duly organized, validly existing and in good standing (or the equivalent thereof) under the laws of its respective jurisdiction of formation. Schedule 3.1(a) sets forth each Group Company and the jurisdiction in which each Group Company is licensed or qualified to do business. Each Group Company has the requisite corporate, partnership, limited liability company or other applicable entity power and authority to own, lease and operate its material assets and properties and to carry on its businesses as presently conducted.

(b) Except as set forth on Schedule 3.1(b), each Group Company is duly qualified or licensed to transact business and is in good standing (or the equivalent thereof) in each jurisdiction in which the property owned, leased or operated by it, or the nature of the business conducted by it, makes such qualification or licensing necessary.

Section 3.2 Capitalization of the Group Companies.

(a) The Shares comprise all of the Company's equity interests that are issued and outstanding and are held beneficially and of record by Seller, and the Shares have been duly authorized and validly issued. Except for the Shares, there are no outstanding (i) equity or equity-based securities of the Company, (ii) securities of the Company convertible into or exchangeable for, at any time, equity securities of the Company or (iii) options, warrants, phantom interests, rights (including conversion or preemptive rights and rights of first refusal or similar rights) or agreements, orally or in writing, to acquire from the Company, and no obligations of the Company to issue, any equity securities or securities convertible into or exchangeable for equity securities of the Company.

(b) Except as set forth on Schedule 3.2(b), no Group Company directly or indirectly owns any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, at any time, any equity or similar interest in, any corporation, partnership, limited liability company, joint venture or other business association or entity. Except as set forth on Schedule 3.2(b) or as set forth in its Governing Documents, all outstanding equity securities of each Group Company (except to the extent such concepts are not applicable under the applicable Legal Requirement of such Group Company's jurisdiction of formation or other applicable Legal Requirement) have been duly authorized and validly issued, are, to the extent applicable, fully paid and non-assessable, are free and clear of any Liens (other than Permitted Liens) and are owned, beneficially and of record, by another Group Company. Except as set forth on Schedule 3.2(b), there are no outstanding (i) equity or equity-based securities of any Subsidiary of the Company, (ii) equity securities of any Subsidiary of the Company convertible into or exchangeable for, at any time, equity securities of any Subsidiary of the Company, or (iii) options, warrants, phantom interests, rights (including conversion or preemptive rights and rights of first refusal or similar rights) or agreements, orally or in writing, to acquire from any Subsidiary of the Company, and no obligation of any Subsidiary of the Company to issue, any equity securities or securities convertible into or exchangeable for, at any time, equity securities of any Subsidiary of the Company.

Section 3.3 Authority. The Company has the requisite corporate power and authority to execute and deliver each Transaction Document to which it is a party and to consummate the transactions contemplated thereby. The execution, delivery and performance by the Company of each Transaction Document to which it is a party and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of the Company. Each Transaction Document to which it is a party has been duly executed and delivered by the Company and constitutes a valid, legal and binding agreement of the Company (assuming that each such Transaction Document has been duly and validly authorized, executed and delivered by the other parties thereto), enforceable against the Company in accordance with its terms, except (i) to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (ii) that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding thereof may be brought. Each Transaction Document to be executed and delivered at Closing by each other Group Company will, at Closing, constitute a valid, legal and binding agreement of such Group Company (assuming that each such Transaction Document has been duly and validly authorized, executed and delivered by the other parties thereto), enforceable against such Group Company in accordance with its terms, except (A) to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (B) that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding thereof may be brought.

Section 3.4 Financial Statements. Attached hereto as Schedule 3.4 are true and complete copies of the following financial statements (such financial statements, collectively, the "Financial Statements"):

(a) the audited consolidated balance sheet of the Company as of December 31, 2018 and the related audited consolidated statements of operations and comprehensive income and cash flows for the respective periods then ended; and

(b) the unaudited consolidated balance sheet of the Company as of December 31, 2019 (the "Latest Balance Sheet Date") (the "Latest Balance Sheet") and the related consolidated statements of operations and comprehensive income and cash flows for the one year period then ended (collectively, the "Unaudited Financial Statements").

(c) Except as set forth on Schedule 3.4, the Financial Statements (i) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, except as may be indicated in the notes thereto and except, in the case of Unaudited Financial Statements, for the absence of footnotes and subject to year-end adjustments (the effect of which are not material to the Group Companies taken as a whole), and (ii) fairly present, in all material respects, the consolidated financial position of the Group Companies as of the dates thereof and their consolidated results of operations for the periods then ended (subject, in the case of the Unaudited Financial Statements, to the absence of footnotes and to normal year-end adjustments, which adjustments are not material to the Group Companies taken as a whole). No accountant of Seller or the Group Companies has notified Seller or the Group Companies in writing of any material weaknesses in internal accounting or other controls of the Group Companies.

Section 3.5 Consents and Approvals; No Violations. Except as set forth on Schedule 3.5, assuming the truth and accuracy of the representations and warranties of Buyer set forth in Section 5.3, no notice to, filing with, or authorization, consent or approval of any Governmental Entity is necessary for the execution, delivery or performance of this Agreement by the Group Companies or the consummation by the Group Companies of the transactions contemplated hereby, except for (i) compliance with and filings under the HSR Act, (ii) those the failure of which to obtain or make would not have a Company Material Adverse Effect, and (iii) those that may be required solely by reason of Buyer's (as opposed to any other third party's) participation in the transactions contemplated hereby. Neither the execution, delivery and performance by any Group Company of any Transaction Document to which such Group Companies is a party nor the consummation by any Group Company of the transactions contemplated thereby will (a) conflict with or result in any breach of any provision of such Group Company's Governing Documents, (b) except as set forth on Schedule 3.5, result in a violation or breach of, or cause acceleration, constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration), create a material payment obligation or loss of material benefit under, or require any material action by the Group Companies (including any notice, authorization, consent or approval) under the terms, conditions or provisions of any Material Contract, Material Permit or Real Property Lease to which any Group Company is a party, (c) violate any order, writ, injunction, decree, law, statute, rule or regulation of any Governmental Entity having jurisdiction over any Group Company or any of their respective material properties or assets, (d) except as contemplated by this Agreement or with respect to Permitted Liens, result in the creation of any Lien upon any of the material assets of any Group Company, or (e) give rise to any payment or compensation to any employee or other service provider to any Group Company, which in the case of any of clauses (b) and (d) above, would have a Company Material Adverse Effect.

Section 3.6 Material Contracts.

(a) Except as set forth on Schedule 3.6(a) (collectively, the "Material Contracts") and except for this Agreement and any Real Property Lease, as of the date of this Agreement, no Group Company is a party to or bound by any:

(i) (A) Contract for the employment or engagement of any individual or other Person on a full-time, part-time, consulting or other basis, other than any such Contract that may be terminated at the will of the employing or engaging Person, or (B) Contract to provide severance or similar benefits (other than, for the avoidance of doubt, any accrued payments or benefits) upon any termination of employment or other engagement, or (C) any Contract with any staffing agency, labor agency, or similar provider of contingent workers;

(ii) Contract relating to Indebtedness for an amount in excess of \$50,000 or pursuant to which any Group Company has pledged any material assets or subjected them to any Lien (other than Permitted Liens);

(iii) Contract under which any Group Company is lessee of or holds or operates, in each case, any tangible property (other than real property), owned by any other Person, except for any lease or agreement under which the aggregate annual rental payments do not exceed \$50,000;

(iv) Contract that provides for any Person to be the exclusive provider of any product or service to the Group Companies, or the exclusive recipient of any product or service of the Group Companies during any period of time or that otherwise involves the granting of exclusive rights of any kind;

(v) Contract that is a settlement, conciliation, or similar agreement imposing any monetary or non-monetary obligations on any of the Group Companies after the Closing Date;

(vi) Contract (or group of related Contracts) for the purchase or sale of raw materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, the performance of which (A) will extend over a period of more than one (1) year from the date hereof and is not terminable by the Group Company's upon ninety (90) days or less notice without penalty or other Liability, or (B) has or will involve consideration in excess of \$50,000 in any twelve (12) month period;

(vii) Contract under which any Group Company is lessor of or permits any third party to hold or operate, in each case, any tangible property (other than real property), owned or controlled by any Group Company, except for any lease or agreement under which the aggregate annual rental payments do not exceed \$50,000;

(viii) partnership or joint venture Contract (other than the Governing Documents) to which any Group Company is a party;

(ix) Contract restricting any Group Company with respect to non-competition, or that otherwise restricts or limits any Group Company, or any officer or key employee of the Group Companies (in each case, acting on behalf of the Group Companies) from engaging in any line of business or in any geographic area (including any agreement with provisions regarding non-solicitation of employees, co-existence agreements, and settlement agreements);

(x) Contract under which any Group Company has advanced or loaned an amount to any of the officers or employees of the Group Companies, other than participant loans under the Company 401(k) Plan;

(xi) manufacturer, development or supply agreement or other Contract which involves a sharing of revenues, profits, costs or losses by any Group Company with the other Person;

(xii) Contract that relates to the future disposition or acquisition of material assets or properties by any Group Company, or any merger or business combination with respect to any Group Company;

(xiii) Contract pursuant to which any Group Company grants any Person, or receives from any Person, a license to use any material Company Intellectual Property Rights (other than (x) non-exclusive licenses of Intellectual Property Rights granted by or to customers, suppliers, vendors, contractors or similar Persons in the Ordinary Course and (y) licenses of generally or commercially available software or equipment);

(xiv) Contract with any Governmental Entity;

(xv) agent, sales representative, sales or distribution Contract;

(xvi) power of attorney or other similar agreement or grant of agency;

(xvii) Contract with any Material Supplier or Material Customer;

(xviii) Contract that contains any “most-favored nation” or minimum commitment terms;

(xix) Contract pursuant to which the Group Companies subcontracts work to a third party in connection with any of the Group Companies’ business;

(xx) other Contract under which the consequences of a default could have a Company Material Adverse Effect; or

(xxi) any Contract to enter into any of the foregoing.

(b) Each Material Contract is valid and binding on each Group Company that is a party thereto and enforceable in accordance with its terms against such Group Company (subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting generally the enforcement of creditors’ rights and subject to general principles of equity) and, to the Company’s Knowledge, the other parties thereto. Except as set forth on Schedule 3.6(b), each Material Contract shall be in full force and effect without penalty in accordance with its terms immediately following consummation of the transactions contemplated by this Agreement. The Group Companies are not currently in default under or in breach of, or in receipt of any written notice of default or breach under, any Material Contract, and, to the Company’s Knowledge, the other parties thereto are not in default or breach thereunder. No event has occurred which (with the passage of time or the giving of notice or both) could be reasonably expected to result in a default or breach by the Group Companies under any Material Contract. No Group Company has received any notice that (and, to the Company’s Knowledge, no facts or circumstances exist that would reasonably be expected to result in) any other party to a Material Contract intends not to renew, or to breach, cancel, terminate or renegotiate the existing terms of, any Material Contract. No Group Company has, within the previous twelve (12) months, received any indication from any other party to any Material Contract that such other party intends to stop or materially decrease the rate of business done with the Group Companies, or materially increase the cost to the Group Companies for the goods, services or rights delivered or provided to the Group Companies, in each case, pursuant to such Material Contract.

(c) Seller has made available to Buyer a true, complete, correct and executed copy of each written Material Contract together with all amendments, extensions, renewals, waivers or other changes thereto.

Section 3.7 Absence of Changes. Except as set forth on Schedule 3.7, since the Latest Balance Sheet Date and ending on the date of this Agreement, (i) there have not occurred any events, circumstances or facts that would reasonably be expected to cause any Company Material Adverse Effect and (ii) the Company and the Group Companies have conducted the business materially in the Ordinary Course. Without limiting the foregoing, since the Latest Balance Sheet Date, no Group Company has:

(a) issued any notes, bonds or other debt securities or any capital stock or other equity securities or any securities convertible, exchangeable or exercisable into any capital stock or other equity securities, or amended any term of any outstanding equity securities;

(b) incurred any Indebtedness;

(c) declared, set aside or made any payment or distribution of cash or other property to its stockholders or equityholders (other than to any Group Company) with respect to its capital stock or other equity securities or purchased or redeemed any shares of its capital stock or other equity securities (including, without limitation, any warrants, options or other rights to acquire its capital stock or other equity securities);

(d) mortgaged or pledged any of its properties or assets (tangible or intangible) or subjected them to any Lien, except to the extent such mortgage or pledge results in a Permitted Lien;

(e) sold, assigned, transferred, leased, subleased, licensed, sublicensed, abandoned, permitted the cancellation of, or otherwise disposed of or failed to take reasonable steps to maintain, enforce and protect any portion of its material tangible or intangible assets, except in the Ordinary Course;

(f) acquired (other than as a result of a capital expenditure), disposed of or transferred any asset with a value in excess of \$50,000 individually or \$100,000 in the aggregate;

(g) paid, discharged or satisfied any claims or liabilities in excess of \$100,000 or forgave, cancelled, compromised, waived or released any debts, claims or rights in excess of \$50,000, other than in the Ordinary Course;

(h) issued, sold, granted, conferred, awarded, pledged or otherwise encumbered, any equity interests of any Group Company;

(i) acquired (by merger, consolidation, acquisition of stock or assets or otherwise) any Person or enterprise;

(j) made any capital expenditures or commitments therefor that aggregate in excess of \$100,000;

(k) made any loans or advances to, guarantees for the benefit of, or any investments in, any Persons in excess of \$50,000 in the aggregate;

(l) suffered any damage, destruction or casualty loss exceeding in the aggregate \$50,000, whether or not covered by insurance;

(m) amended or authorized any amendment to the Governing Documents of any Group Company;

(n) materially changed or authorized any material change in its accounting practices or method of accounting for any items in the preparation of the financial statements of any Group Company;

(o) entered into any settlement, conciliation or similar agreement involving claims (i) not fully covered by insurance in excess of \$50,000, (ii) requiring waiver by the Company of any rights having a value in excess of \$50,000, or (iii) containing an admission of Liability or consenting to any non-monetary relief that would be material to the Group Companies taken as a whole;

(p) entered into, amended or terminated any Material Contract, Real Property Lease (or any agreement that would have been a Material Contract or Real Property Lease if in effect as of the date hereof);

(q) suffered any losses or waived any rights of material value (whether or not in the Ordinary Course) in excess of \$100,000 in the aggregate or \$50,000 in any one instance;

(r) wrote-off or otherwise reduced the amount of any receivables, except in the Ordinary Course and at levels which are consistent with reserves for uncollectible amounts included in the Latest Balance Sheet; or

(s) agreed to take any of the actions described above.

Buyer acknowledges that the announcement by Seller of its intention to sell the Company (as well as the negotiation and execution of this Agreement and the consummation of the transactions contemplated hereby) might affect one or more of the Group Companies' customer relationships, and that such effects do not and will not constitute a breach of this Section 3.7.

Section 3.8 Litigation. Except as set forth on Schedule 3.8(i), as of the date of this Agreement there are no, and for the last three (3) years there have been no material Proceedings pending, or, to the Company's Knowledge, threatened, in each case, against (i) any of the Group Companies, or (ii) any of its directors, officers, managers, employees, agents or Affiliates acting on behalf of the Group Companies relating to the business of the Group Companies, in each case, at law or in equity, or before or by any Governmental Entity. Except as set forth on Schedule 3.8(ii), as of the date of this Agreement, no Group Company is subject to any material outstanding order, writ, judgment, award, injunction or decree.

Section 3.9 Compliance with Legal Requirements; Prohibited Payments.

(a) The Group Companies, and to the Company's Knowledge, each officer, director, employee and independent contractor of the Group Companies and each agent or other third party acting on behalf of the Group Companies is currently in compliance in all material respects with all applicable Legal Requirements which are required to operate the Group Companies' business, and except as set forth in Schedule 3.9 in the last three (3) years no claim has been filed against, and no notice has been given to, Seller, or any Group Company alleging a violation of any such Legal Requirement. No Group Company is now subject (nor has any Group Company been subject in the last three (3) years) to any investigation, penalty assessment, audit or other Proceeding by any Governmental Entity or to any other allegation that any Group Company has violated the regulations of any such Governmental Entity or made a material false statement or omission to any Governmental Entity.

Section 3.10 International Trade & Anti-Corruption Matters.

(a) No Group Company nor any officer, director, employee or independent contractor of any Group Company (or, to the Company's Knowledge, any agent or other third parties acting on behalf of any Group Company) nor the Seller: (x) is currently, or has been in the last three (3) years: (i) a Sanctioned Person, (ii) organized, resident or located in a Sanctioned Country, (iii) engaging in any dealings or transactions with any Sanctioned Person or in any Sanctioned Country, to the extent such activities violate applicable Sanctions Laws or Ex-Im Laws, or (iv) otherwise in violation of applicable Sanctions Laws, Ex-Im Laws, or the anti-boycott Legal Requirements administered by the U.S. Department of Commerce and the U.S. Department of Treasury's Internal Revenue Service (collectively, "Trade Control Laws"); or (y) has, directly or indirectly, (i) made or agreed to make any contribution, payment or gift or thing of value to any official, employee or agent (in each case, whether of a Governmental Entity, private entity or otherwise) in violation of any applicable Anti-Corruption Laws or the Legal Requirements of any federal, state, local or foreign jurisdiction, (ii) established or maintained any unrecorded fund or asset for any purpose or made any false entries on the books and records of the Group Companies for any reason, (iii) made or agreed to make any contribution, or reimbursed any political gift or contribution made by any other Person, to any candidate for federal, state, local or foreign public office, (iv) paid or delivered any fee, commission or any other sum of money or item of property or thing of value, however characterized, to any finder, agent, government official or other party, in the United States or any other country, which in any manner relates to the assets, business or operations of the Group Companies; or (v) has otherwise been in violation any applicable Anti-Corruption Laws.

(b) No Group Company has imported any merchandise into the United States that has been or is covered by an anti-dumping duty order or countervailing duty order or is subject to or otherwise covered by any pending anti-dumping or countervailing duty investigation by agencies of the United States government.

(c) During the three (3) years prior to the date hereof, no Group Company nor the Seller has, in connection with or relating to any Group Company, received from any Governmental Entity or any other Person any notice or inquiry; made any voluntary or involuntary disclosure to a Governmental Entity; or conducted any internal investigation or audit concerning any actual or potential violation or wrongdoing related to Trade Control Laws or Anti-Corruption Laws.

Section 3.11 Employee Plans.

(a) Schedule 3.11 contains a true and complete list of each material Employee Benefit Plan. With respect to each material Employee Benefit Plan, the Company has provided or made available to Buyer true and complete copies of: (i) such Employee Benefit Plan, and (ii) to the extent applicable to such Employee Benefit Plan: all administrative agreements, insurance contracts or other funding arrangements; the most recent Forms 5500 required to have been filed and all schedules thereto; the most recent IRS determination or opinion letter; all current employee handbooks or manuals; all current summary plan descriptions and any summaries of material modifications; all amendments and modifications to any such document currently in effect; the most recent plan year's nondiscrimination testing; and all material correspondence to or from a Governmental Entity since April 13, 2018.

(b) Except as disclosed in the Schedule 3.11(b):

(i) Each Employee Benefit Plan has been operated and administered in compliance in all material respects with its terms and with all applicable Legal Requirements, including ERISA and the Code and the Affordable Care Act; and all contributions and premiums required to have been paid by the Group Companies to any Employee Benefit Plan under the terms of any such Employee Benefit Plan or its related trust, insurance contract or other funding arrangement, or pursuant to any applicable Legal Requirements have been paid within the time prescribed by any such Employee Benefit Plan, arrangement or applicable Legal Requirements. There is no action, claim, complaint, investigation, petition, suit, or other proceeding in law or in equity pending or, to the Company's Knowledge, threatened against, or arising out of, any Employee Benefit Plan or the assets of any Employee Benefit Plan (other than routine claims for benefits).

(ii) Each Employee Benefit Plan intended to be qualified under Code Section 401(a), and the trust (if any) forming a part thereof, has received a favorable determination letter, where applicable, from the Internal Revenue Service as to its qualification under the Code or is the subject of a favorable Internal Revenue Service opinion letter issued to a prototype or volume submitter plan sponsor; and, to the Company's Knowledge, nothing has occurred since the date of such determination or opinion letter that could reasonably be expected to adversely affect such qualification or tax-exempt status.

(iii) No Employee Benefit Plan is (1) a "multiple employer plan" for purposes of Section 4063, Section 4064 or Section 4066 of ERISA or Code Section 413, (2) a Multiemployer Plan, (3) subject to Code Section 412 or Section 302 or Title IV of ERISA, or (4) a "multiple employer welfare arrangement" as defined in Section 3(40) of ERISA. None of the Group Companies has incurred any Liability (including as a result of any indemnification obligation or as a result of being treated as an ERISA Affiliate with any other Person) under Title I or Title IV of ERISA for which any of the Group Companies could be liable.

(iv) No current or former employee, officer, director or independent contractor of any of the Group Companies is or will become entitled (or any dependent thereof) to death or post-employment death, insurance or medical benefits by reason of service to any of the Group Companies, other than coverage mandated by COBRA. None of the Group Companies have incurred (whether or not assessed) or is subject to any material payment, Tax, penalty or other liability under the Affordable Care Act, including under Code Sections 4980D and 4980H or with respect to the reporting requirements under Code Section 6055 and Code Section 6056.

(v) The consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event or events, (1) entitle any employee, officer, director or individual independent contractor of the Group Companies to severance pay or any other payments or benefits under any Employee Benefit Plan; (2) accelerate the time of payment or vesting, increase the amount of compensation, or otherwise enhance any Employee Benefit Plan benefit due any such individual; (3) directly or indirectly require any contributions or payments to fund any obligations under any Employee Benefit Plan; (4) otherwise give rise to any material liability of any of the Group Companies under any Employee Benefit Plan; or (5) limit or restrict the right of any of the Group Companies to terminate or amend any Employee Benefit Plan on or following the Closing.

(vi) Each Employee Benefit Plan that is a "nonqualified deferred compensation plan" (within the meaning of Treasury Regulation Section 1.409A-1) has been and is in compliance, in all material respects, both in form and operation, with Section 409A of the Code and the Treasury Regulations and guidance promulgated thereunder. There is no Contract, Employee Benefit Plan or other arrangement which requires any of the Group Companies to pay a Tax gross-up, indemnification payment or reimbursement for Taxes under Code Section 409A or Code Section 4999 or otherwise.

(vii) No Employee Benefit Plan covers or otherwise provides benefits to any employee or other individual service provider working or residing outside of the United States.

(c) No Group Company has engaged in any non-exempt prohibited transaction (as defined in Section 4975 of the Code or Section 406 of ERISA) with respect to any Employee Benefit Plan that would be reasonably likely to subject any Group Company to any Tax or penalty (civil or otherwise) imposed by ERISA, the Code or other applicable Legal Requirement. There are no pending or, to the Company's Knowledge, threatened Proceedings (other than ordinary course claims for benefits) with respect to any Employee Benefit Plan that would be reasonably likely to subject any Group Company to any Liability.

(d) No amount that could be received (whether in cash or property or the vesting of property), as a result of the consummation of the transactions contemplated by this Agreement, by any employee, officer, director or stockholder or other service provider of any Group Company under any Employee Benefit Plan would not be deductible by reason of Section 280G of the Code or would be subject to an excise tax under Section 4999 of the Code, determined without regard to any arrangements entered into or negotiated with Buyer or any of its Affiliates.

(e) This Section 3.11 contains the sole and exclusive representations and warranties of the Company with respect to the Group Companies' Employee Benefit Plans.

Section 3.12 Environmental Matters.

(a) Except as set forth in Schedule 3.12(a):

(i) Each of the Group Companies are, and for the past three (3) years have been, in material compliance with all applicable Environmental Laws.

(ii) Without limiting the generality of the foregoing, the Group Companies hold, and are and for the past three (3) years have been in material compliance with, all material permits, licenses and other authorizations that are required pursuant to Environmental Laws for the lawful conduct of their respective businesses.

(iii) During the past three (3) years, no Group Company has received any written notice of any material violation of, or any material investigatory, corrective or remedial obligation under, any Environmental Laws and no unresolved such notices or obligations exist regardless of when received.

(iv) There are no material Proceedings pending before, conducted by, or otherwise involving any Governmental Entity or, to the Company's Knowledge, threatened in writing against any Group Company under any Environmental Laws.

(v) In the past three (3) years, no Group Company has received written notice regarding any actual or alleged material violation of Environmental Laws, or any material or potential Liabilities, including any investigatory, remedial or corrective obligations, relating to any Group Company and no unresolved such notices exist regardless of when received.

(vi) There has been no Release, treatment, storage, disposal or arrangement for disposal, transportation, handling, manufacturing, distribution of, or exposure of any person to any Hazardous Materials by any Group Company (1) at any property currently or to the Company's Knowledge formerly owned, leased or operated by any Group Company; or (2) to the Company's Knowledge at any other location by any Group Company, except, as with respect to both subsections (1) and (2) above, in compliance in all material respects with Environmental Law or as would not reasonably be expected to create any material Liability of any Group Company thereunder.

(vii) Except as set forth in any Real property Lease, no Group Company has expressly assumed, undertaken, become subject to, or provided an indemnity with respect to any material Liability of any other Person relating to Environmental Laws.

(viii) Sellers have provided Buyers copies of all material environmental reports, assessments, sampling data, and audits and other material documents regarding matters arising under Environmental Laws relating to each Group Company and their current or former properties or operations, in each case prepared in the past three (3) years and in their possession, custody or reasonable control.

Section 3.13 Intellectual Property.

(a) The Group Companies own, free and clear of all Liens (other than Permitted Liens), or license under a valid and enforceable license or otherwise have the right to use, all Intellectual Property Rights that are material to the conduct of the business of the Group Companies as currently conducted (collectively, the "Company Intellectual Property Rights"). Schedule 3.13(a) sets forth a complete and accurate list of all (i) patents, trademark registrations and copyright registrations and material domain name registrations owned by any Group Company and (ii) patent applications, trademark applications and copyright applications owned by any Group Company. The Company Intellectual Property Rights cover all Intellectual Property that is material to and necessary for the conduct and continued operation of the businesses of the Group Companies.

(b) Except as set forth on Schedule 3.13(b), (A) there is not pending against any Group Company before any Governmental Entity any Proceeding brought by any Person contesting the validity, enforceability, use or ownership of any Company Intellectual Property Rights owned by such Group Company, or alleging that any Group Company is infringing or misappropriating any Intellectual Property Rights of any Person in any material respect, and (B) there are no Proceedings pending before any Governmental Entity that have been brought by any Group Company against any Person alleging infringement or misappropriation of any Company Intellectual Property Rights owned by such Group Company. Except as set forth on Schedule 3.13(b), (i) no Group Company has infringed or misappropriated any Intellectual Property Rights of any third party in the past three (3) years, and exercise of the Company Intellectual Property Rights owned by each Group Company does not infringe any such third party rights, and (ii) to the Company's Knowledge, no third party is infringing or misappropriating any Company Intellectual Property Rights owned by any Group Company in any material respect. The Group Companies' rights in the Intellectual Property Rights set forth on Schedule 3.13(a) are subsisting and valid. No Intellectual Property owned by any Group Company is now involved in any interference, reissue, re-examination, inter-partes review, post-grant review, or opposition proceeding.

(c) Neither the execution, delivery or performance of this Agreement shall result in, or give any other Person the right to cause, (i) a loss of any Company Intellectual Property Rights; (ii) a material breach of any Company Intellectual Property Rights or related license rights; (iii) the grant, assignment or transfer to any other Person of any material rights or interest under any Company Intellectual Property Rights owned by any Group Company; or (iv) the loss or impairment, or imposition of any Lien (other than Permitted Liens) on any of the Company Intellectual Property Rights owned by any Group Company.

(d) The Group Companies have taken commercially reasonable actions under the circumstances to protect the material trade secrets owned by the Group Companies. In the past three (3) years, no trade secret included in the Intellectual Property owned by a Group Company has been authorized to be disclosed to or, to the Company's Knowledge, has been actually disclosed to, any Person who does not have any confidentiality obligation with respect to the disclosure and use thereof. All employees and contractors of the Group Companies who have since April 13, 2018 participated in or contributed to the creation, modification or development of any material Intellectual Property Rights for or on behalf of each Group Company (collectively, "Developed IP") have executed and delivered to such Group Company a valid and enforceable agreement providing for (i) the nondisclosure by such Person of any confidential information related thereto and (ii) the assignment (via a present grant of assignment) by such Person to such Group Company of all such Person's right, title and interest in and to such Developed IP (unless ownership of such Developed IP automatically vested with a Group Company under applicable Legal Requirement). None of the Developed IP were developed by or on behalf of, or using grants or any other subsidies of, any Governmental Entity, university, college or other educational institution or research center (collectively, a "Sponsor") and no funding, facilities, or resources, of a Sponsor was used in the development of any Developed IP.

(e) No Sponsor has any right, title or interest in or to any Intellectual Property Rights owned by any Group Company. No proprietary software owned by any Group Company and included in any Company Products ("Company Software") and tangible embodiments thereof have been placed in escrow or licensed to any third party. No Company Software is subject to any "copyleft" license that requires or purports to require the Company to grant any license with respect to the source code to such Company Software. Each Group Company has taken reasonable steps to secure the ownership and maintain the confidentiality (in each case, if applicable) of the Company Software.

(f) Each Group Company complies in all material respects with all applicable Legal Requirements and regulations regarding the protection of Personal Data and related privacy protection and data security rights. Since April 13, 2018, no Group Company has experienced any material breach of security, phishing incident, ransomware or malware attack, or other incident in which confidential or sensitive information, payment card data, personally identifiable information, or other protected information relating to individuals was accessed, disclosed, or exfiltrated in an unauthorized manner, and no Group Company has received any written notices or complaints from any Person or been the subject of any claim, proceeding, or investigation with respect thereto.

(g) Each Group Company uses commercially reasonable efforts to protect the security of the Company IT Assets and to prevent any unauthorized use, access, interruption, or modification of the Company IT Assets. Such Company IT Assets (i) are sufficient in all material respects for the immediate needs of each Group Company, and (ii) are in sufficiently good working condition to effectively perform all information technology operations as required by each Group Company in the Ordinary Course. Since April 13, 2018, there have been no material failures, or other material adverse events affecting any such Company IT Assets that (x) have caused any substantial disruption of or interruption in or to the use of such Company IT Assets and (y) have not been remedied in all material respects. Each Group Company maintains commercially reasonable disaster recovery and business continuity plans, procedures and facilities in connection with the operation of the Group Company's business and acts in material compliance therewith.

(h) Notwithstanding any other provisions of this Agreement, other than under this Section 3.13 and Section 3.6(a)(xiii), the Group Companies make no representations or warranties with respect to Intellectual Property Rights.

Section 3.14 Labor Matters.

(a) Except as set forth on Schedule 3.14(a), (i) no Group Company is bound by any collective bargaining agreement or collective bargaining relationship with respect to its employees, (ii) there is no labor strike, concerted refusal to work overtime, or work stoppage or walkout pending or, to the Company's Knowledge, threatened in writing against any Group Company, (iii) to the Company's Knowledge, no union organization campaign is, or during the previous three (3) years, has been, in progress with respect to any employees of any Group Company, and (iv) there are no material pending charges in connection with any Group Company before the Equal Employment Opportunity Commission, Department of Labor or any state or local agency responsible for the prevention of unlawful employment practices, and to the Company's Knowledge, none of the foregoing have been threatened in writing during the previous three (3) years. No Group Company has engaged in any plant closing or employee mass layoff activities in the past ninety (90) days without complying in all material respects with the Worker Adjustment Retraining and Notification Act of 1988, as amended, or any similar state or local plant closing or mass layoff statute, rule or regulation (collectively, the "WARN Act").

(b) The Group Companies are in material compliance with all applicable Legal Requirements respecting employment and employment practices, including, without limitation, applicable Legal Requirements relating to compensation, employment Tax, social security, the collection and payment of tax withholding, terms and conditions of employment, wages and hours, collective bargaining, non-discrimination, affirmative action, plant closing and mass layoff, family and medical leave, immigration, health and safety, worker classification and workers' compensation. All independent contractors of any Group Company are properly classified as such under Law, and all employees of the Group Companies who are classified as exempt from overtime under federal, state or local law are properly classified as such under applicable Legal Requirements.

(c) Set forth on Schedule 3.14(c) (which schedule will be updated three (3) days prior to the Closing Date) is each employee of the Group Companies (the "Continuing Employees") (i) name and current job title or position, (ii) employer, (iii) hire date, (iv) current base salary or the base hourly rate, (v) bonus eligibility and bonus payments, (vi) accrued, unused paid time off, (vii) status (e.g., full-time, part-time, on leave) and if on leave, the type of leave (e.g., short-term disability or Family and Medical Leave Act leave), (viii) exempt or non-exempt from overtime classification, and (ix) work location.

Section 3.15 Insurance. Schedule 3.15 contains a list of all policies of fire, liability, workers' compensation, property, casualty and other forms of insurance owned or held by or for the benefit of the Group Companies as of the date of this Agreement (the "Insurance Policies"). All such Insurance Policies are, as of the date of this Agreement, in full force and effect, all premiums with respect thereto covering all periods up to and including the Closing Date will have been paid, and no notice of cancellation or termination has been received by any Group Company with respect to any such Insurance Policy or that any such Insurance Policy will not be renewed on substantially the same terms as are now in effect or that the premium of any such Insurance Policy shall be materially increased. A claims history relating to each Insurance Policy covering the time period from April 13, 2018 through the date of this Agreement has been provided to Buyer.

Section 3.16 Tax Matters. Except as set forth on Schedule 3.16:

(a) each Group Company has prepared and filed all income and all other material Tax Returns required to be filed under applicable Legal Requirement with respect to each Group Company, each such Tax Return is true and correct in all material respects and each Group Company has timely paid all material Taxes owed or payable by it (whether or not shown on any Tax Return), including material Taxes which any Group Company is obligated to withhold;

(b) no Group Company is currently the subject of any federal, state or other material Tax audit or examination;

(c) no Group Company has consented to extend the time in which any Tax may be assessed or collected by any taxing authority (other than extensions of time to file Tax Returns obtained in the Ordinary Course);

(d) no Group Company has received from any taxing authority any written notice of proposed adjustment, deficiency or underpayment of any amount of Taxes which has not been satisfied or been withdrawn;

(e) Within the past three (3) years, no written claim has been made by any taxing authority in a jurisdiction where any Group Company does not file Tax Returns that any such Group Company is subject to a material amount of Tax by that jurisdiction, which claim has not been satisfied or been withdrawn;

(f) no Group Company (i) has engaged in or otherwise been a party to any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b), (ii) is a party to, is bound by or has an obligation under any Tax indemnity, Tax sharing, Tax allocation or similar agreement with any other Person (other than any Group Company), in each case, other than provisions contained in commercial agreements the principal subject matter of which does not relate to Taxes, (iii) has any liability for the Taxes of any other Person (other than any other Group Company) payable by reason of operation of law (including Treasury Regulations Section 1.1502-6), assumption, transferee or successor liability, (iv) is or has been a member of any affiliated, consolidated, combined or unitary group for purposes of filing Tax Returns or paying Taxes (other than a group of which the Company is the common parent), (v) is subject to any private letter ruling from the Internal Revenue Service or any comparable or similar ruling of any taxing authority that is still in force or (vi) has been either a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock qualifying in whole or in part for tax-free treatment under Section 355 (or so much of Section 356 as relates to Section 355) or 361 of the Code since April 13, 2018;

(g) no Group Company has any material assets that may constitute unclaimed property under applicable law, and the Group Companies have complied in all material respects with all applicable unclaimed property laws;

(h) no Group Company will be required to include any material item of income in, or be required to exclude any material item of deduction or loss from, any period (or any portion thereof) ending after the Closing Date as a result of any (i) change in accounting method made prior to the Closing, (ii) closing or similar agreement with any taxing authority entered into prior to the Closing, (iii) deferred intercompany gain or any excess loss account described in the Treasury Regulations under Code Section 1502 (or any corresponding provision of state or local tax law), (iv) prepaid amount received on or prior to the Closing, or (v) installment sale or open transaction disposition made prior to the Closing; and

(i) There are no liens with respect to material Taxes upon any of the assets of the Group Companies other than Permitted Liens.

For the avoidance of doubt, no representation or warranty is made with respect to the existence, amount or usability of any net operating loss, capital loss, Tax basis or other Tax attributes.

Section 3.17 Brokers. No broker, finder, financial advisor or investment banker, is entitled to any broker's, finder's, financial advisor's or investment banker's fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company, Seller, or any of their Affiliates or to which any of the foregoing Persons is subject, in each case, that will not be included in Seller Expenses as of the Closing Date.

Section 3.18 Real Property.

(a) Schedule 3.18(a) sets forth the address of each real property owned by any Group Company (such real property, the "Owned Real Property"). Seller has provided Buyer with copies of any title insurance policies (or commitments for title insurance in a policy has not been issued), and surveys in the possession or control of any Group Company with respect to each parcel of Owned Real Property. With respect to each Owned Real Property: (i) a Group Company has good and marketable title to such Owned Real Property, which shall be free and clear of all Liens as of the Closing Date, except Permitted Liens; (ii) except as set forth on Schedule 3.18(a), the applicable Group Company has not leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof; (iii) other than the rights of Buyer pursuant to this Agreement, there are no outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein; (iv) no Group Company is a party to any agreement or option to purchase any real property or interest therein relating to the business of the Group Companies; (v) to the Company's Knowledge, there are no pending or threatened condemnation proceedings relating to the Owned Real Property; (vi) no Group Company has received written notice that any piece of Owned Real Property or the Group Company's use thereof is in or, with the passage of time, will be in violation of any Legal Requirement; (vii) except for any Permitted Liens, there are no covenants, easements, encroachments, restrictive covenants, rights-of-way or servitudes encumbering any piece of Owned Real Property that would reasonably be considered to have a Company Material Adverse Effect on such Owned Real Property or the Group Company's use thereof; (viii) each piece of Owned Real Property abuts on and has direct access to a public road or access to a public road via a permanent, irrevocable appurtenant easement; (ix) the Group Companies enjoy peaceful and undisturbed possession of all of their respective Owned Real Property; and (x) neither the whole nor any portion of any Owned Real Property has been damaged or destroyed by fire or other casualty that has not been repaired.

(b) Schedule 3.18(b) sets forth (whether as lessee or lessor) the address and a list of all leases (each a “Real Property Lease”) of real property to which any Group Company is a party or by which any of them is bound, in each case, as of the date of this Agreement. The Company has delivered to Buyer a true and complete copy of each such Real Property Lease agreement, in each case, as amended or otherwise modified and in effect as of the date hereof. Except as set forth on Schedule 3.18(b), (i) each Real Property Lease is legal, valid, binding and enforceable in accordance with its terms and is in full force and effect with respect to the Group Company that is a party thereto and, to the Company’s Knowledge, with respect to each other party thereto; (ii) no Group Company is in breach or default under any Real Property Lease, or, to the Company’s Knowledge, any other party to any Real Property Lease is in breach or default under any Real Property Lease, and no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such Real Property Lease; (iii) no Group Company has subleased, licensed or otherwise granted any Person the right to use or occupy any real property under any Real Property Lease or any portion thereof; and (iv) except for any Permitted Liens, there are no covenants, easements, encroachments, restrictive covenants, rights-of-way or servitudes encumbering any Real Property Lease that would reasonably be considered to have a Company Material Adverse Effect on such Real Property Lease or the Group Company's, or any other party to any Real Property Lease, use thereof. No Group Company has received written notice that the use of the real property subject to each Real Property Lease is not permitted as of right under Legal Requirements. Each piece of real property subject to a Real Property Lease has direct or indirect access to a public road or access to a public road via a permanent, irrevocable appurtenant easement. Neither the whole nor any portion of any property subject to a Real Property Lease has been damaged or destroyed by fire or other casualty that has not been repaired.

Section 3.19 Transactions with Affiliates. Schedule 3.19 sets forth all contracts or arrangements (other than employment agreements and Governing Documents) between any Group Company, on the one hand, and any officer, director or Affiliate of the Group Companies, on the other hand, that will not be terminated effective as of the Closing Date.

Section 3.20 No Undisclosed Liabilities. Except as set forth on Schedule 3.20, no Group Company has any liabilities of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, other than (a) liabilities disclosed or provided for in the Financial Statements (including the notes thereto), (b) liabilities existing as of the Latest Balance Sheet Date but that are not required under GAAP to be reserved against or reflected in the Latest Balance Sheet, (c) liabilities disclosed in the Schedules, (d) liabilities incurred in the Ordinary Course since the Latest Balance Sheet Date (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, environmental matter, infringement, misappropriation, lawsuit or violation of any Legal Requirement), (e) liabilities that would not individually or in the aggregate be material to the Group Companies taken as a whole, or (f) liabilities incurred in connection with the transactions contemplated by this Agreement or any other Transaction Document.

Section 3.21 Product Warranty; Product Recalls.

(a) All products or services designed, marketed, sold, distributed or delivered by or on behalf of the Group Companies (the “Company Products”) for the past three (3) years have been in conformity in all material respects with all applicable contractual commitments, Legal Requirements, and all express and implied warranties. Except as set forth on Schedule 3.21(a), the Group Companies do not have any material Liability in connection with any Group Company’s business (or has received written notice of any Proceeding giving rise to any such material Liability) for replacement of any Company Product, or for other damages related to any Company Product, other than Liabilities for warranty claims arising in the Ordinary Course which are consistent with the historical experience of the Group Companies. To the Company’s Knowledge, there exist no facts or circumstances that would reasonably be expected to result in or form the basis of any claim against any Group Company’s business for material Liability on account of any express or implied warranty to any third party in connection with the Company Products or services rendered by the Group Companies. Except as set forth on Schedule 3.21(a), no Company Product and no services rendered by the Group Companies are subject to any guarantee, warranty or other indemnity beyond the applicable industry standard terms and conditions of such sale or service.

(b) Except as set forth on Schedule 3.21(b) and except for Ordinary Course recalls and Ordinary Course post-sale warnings, in each case, given by vehicle manufactures, no Company Product is, and in the past three (3) years, no Company Product has been, subject to any recall or post-sale warnings by the Group Companies, or to the Company’s Knowledge, any recall or post-sale warning by any third party retained by the Group Companies, Seller or any distributor or wholesaler of such products. To the Company’s Knowledge, there exist no facts or circumstances that would reasonably be expected to result in or form the basis of any such recalls or post-sale warnings.

Section 3.22 Product Liability. Except as set forth on Schedule 3.22, all Company Products are, and for the last three (3) years have been, without design defects or manufacturing defects and in the last three (3) years there have not been any, and there currently are no, Proceedings pending or, to the Company’s knowledge, threatened against or involving any Company Product, or against any of the Group Companies, or any class of claims or lawsuits involving a Company Product, in each case, resulting from an alleged defect in any Company Product or any alleged failure to warn. Except as set forth on Schedule 3.22, none of the Group Companies have any material Liability in connection with any of the Group Companies business (and to the Company’s Knowledge, there is no basis for any present or future Proceeding giving rise to any Liability in connection with the Group Companies business) arising out of any injury to individuals or property as a result of the ownership, possession or use of any Company Product.

Section 3.23 Material Customers. Schedule 3.23 sets forth a true, complete and correct list of the top twenty (20) customers with whom the Group Companies have a relationship (each, a “Material Customer”) by dollar value of sales, respectively, since January 1, 2019. Since January 1, 2019, the Group Companies have not received any notice from any Material Customer to the effect that (and, to the Company’s Knowledge, there are no facts or circumstances indicating that) any Material Customer has stopped, materially decreased the rate of or materially changed the terms (whether related to payment, price or otherwise) with respect to, or will stop, materially decrease the rate of, or materially change the terms (whether related to payment, price or otherwise) with respect to, purchasing products or services from the Group Companies. Except as set forth in Schedule 3.23, the terms under which each Material Customer purchases products and services from the Group Companies are at market rates and are the result of arm’s length transactions. There are no unresolved disputes between the Group Companies and any Material Customer that would be material to the Group Companies taken as a whole.

Section 3.24 Material Suppliers. Schedule 3.24 sets forth a true, complete and correct list of the top twenty (20) suppliers and vendors (each, a “Material Supplier”) of the Group Companies by dollar of sales, respectively, since January 1, 2019. Since January 1, 2019, the Group Companies have not received any notice from any Material Supplier to the effect that (and to the Company’s Knowledge, there are no facts or circumstances indicating that) any Material Supplier has stopped, materially decreased the rate of or materially changed the terms (whether related to payment, price or otherwise) with respect to, supplying materials, products or services to the Group Companies. The terms under which each Material Supplier supplies materials, products or services to the Group Companies are at market rates and are the result of arm’s length transactions. There are no unresolved disputes between the Group Companies and any Material Supplier that would be material to the Group Companies taken as a whole.

Section 3.25 Accounts Receivable. All accounts receivable in the Latest Balance Sheet (the “Accounts Receivable”), (a) have been legally and validly incurred pursuant to bona fide transactions in the Ordinary Course and (b) represent bona fide indebtedness incurred by the applicable account debtor for goods sold or services performed by one or more of the Group Companies. Except as set forth on Schedule 3.25, none of the Group Companies have received written notice of any claim or dispute with respect to any of the Accounts Receivable.

Section 3.26 Inventory. The Inventory is merchantable and fit for the purpose for which it was procured or manufactured, and is not damages, defective or obsolete, subject only to the customary reserves (which reserves are adequate and were calculated on a basis consistent with GAAP). The Inventory consists of a quality and quantity usable and saleable in the Ordinary Course at a level sufficient to maintain the requirements of the Group Companies business. None of the Inventory has been consigned (that is, delivered but not sold or sold with an unlimited right of return) to any Person. Since January 1, 2019, the Group Companies have maintained its Inventory levels consistent with past practices. Since January 1, 2019, the Group Companies have not sold, used or otherwise transferred any portion of the Inventory except in the Ordinary Course to a bona fide purchaser.

Section 3.27 Data Privacy.

(a) The Group Companies have used commercially reasonable efforts to implement policies, procedures and training programs intended to ensure ongoing compliance with applicable Data Protection Requirements. The Company is in material compliance with all Data Protection Requirements

and the Group Companies' publicly available privacy policies (collectively, "Privacy/Security Obligations") applicable to the Group Companies.

(b) Except as set forth on Schedule 3.27(b), since April 13, 2018, there has been no loss, damage or unauthorized access, use, modification or other misuse of any of (i) the Company IT Assets or any information or transactions stored or contained therein or transmitted thereby (including without limitation Personal Data), or (ii) to the Company's Knowledge, any Personal Data of the Group Companies stored on third party systems or other Company data stored on third party systems.

(c) In the past three (3) years no notices have been received by, and no claim, charge or complaint has been made in writing against the Group Companies alleging a violation of any Data Protection Requirements or Privacy/Security Obligations by any Group Company, and no suit, action, Proceeding, arbitration, claim, review or investigation is pending or, to the Company's Knowledge, is threatened against the Group Companies relating to the Group Companies' collection, use or disclosure of Personal Data. In the past three (3) years, there have not been any material actual or alleged incidents of data security breaches involving Personal Data or other confidential information in the possession or under the control of the Group Companies. In the past three (3) years, no third party with whom the Group Companies have shared Personal Data has notified any Group Company in writing of (i) any unauthorized acquisition, access, use or disclosure of any Personal Data received from or on behalf of any Group Company that would trigger a notification or reporting requirement under any Data Protection Requirement; (ii) any attempted or successful unauthorized access, use, disclosure, modification or destruction of Personal Data received from or on behalf of the Company; or (iii) any interference with Company IT Assets that could materially affect the privacy or security of such Personal Data.

(d) The consummation of the transactions contemplated by this Agreement will not violate any Data Protection Requirements or Privacy/Security Obligations of the Group Companies. All Personal Data used in or necessary for the operation of the Group Companies' business as currently conducted in any material respect shall be available for use by the Group Companies immediately after the Closing Date on terms and conditions substantially the same as those under which the Group Companies used such Personal Data immediately prior to the Closing Date.

Section 3.28 Title to and Sufficiency of Assets.

(a) The Group Companies have good and marketable title to their tangible properties and assets and, to the Company's Knowledge, good title to its leasehold estates, in each case subject to no Liens other than Permitted Liens.

(b) With respect to the tangible property and assets leased by the Group Companies, the Group Companies are in material compliance with such leases and, to the Company's Knowledge, holds a valid leasehold interest free of any Liens other than Permitted Liens.

(c) Except as set forth on Schedule 3.28(c), the Group Companies own, lease or employ (with respect to employees) all of the tangible properties, employees, tangible assets and rights to tangible properties or assets currently used in, pertaining to or necessary for the operation of the business of the Group Companies as conducted on the date hereof and such properties, employees, assets and rights are sufficient for the continued conduct of the business of the Group Companies after the Closing in substantially the same manner as conducted prior to the Closing, it being understood that this Section 3.28 is not, and shall not be interpreted, deemed or construed as, any representation or warranty with respect to the infringement, misappropriation or other violation of any Intellectual Property Rights. Other than with respect to the MCM Lease, neither Seller nor any of its Affiliates (other than the Group Companies) have

any interest in any property (real or personal, tangible or intangible) or Contract used in or necessary for the operation of the business of the Group Companies as conducted as of the date hereof.

Section 3.29 EXCLUSIVITY OF REPRESENTATIONS AND WARRANTIES. WITHOUT IN ANY WAY LIMITING ANY RECOURSE FOR FRAUD, THE REPRESENTATIONS AND WARRANTIES MADE BY THE COMPANY IN THIS ARTICLE 3 ARE IN LIEU OF AND ARE EXCLUSIVE OF ALL OTHER REPRESENTATIONS AND WARRANTIES OF THE COMPANY, INCLUDING ANY IMPLIED WARRANTIES; AND NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER IN LAW OR EQUITY, UNDER STATUTE OR CONTRACT, OR OTHERWISE, SHALL APPLY. THE GROUP COMPANIES HEREBY DISCLAIM ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, LEGAL OR CONTRACTUAL, EXPRESS OR IMPLIED, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO BUYER OR ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA).

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

Section 4.1 Organization. Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to carry on its business as now being conducted, except where the failure to have such power or authority would not prevent or materially delay the consummation of the transactions contemplated hereby.

Section 4.2 Authority. Seller has the requisite limited liability company power and authority to execute and deliver each Transaction Document to which it is a party and to consummate the transactions contemplated thereby. The execution and delivery of each Transaction Document to which Seller is a party and the consummation of the transactions contemplated thereby have been duly authorized by all necessary limited liability company action on the part of Seller. Each Transaction Document to which Seller is a party has been duly executed and delivered by Seller and constitutes a valid, legal and binding agreement of Seller (assuming that each such Transaction Document to which Seller is a party has been duly and validly authorized, executed and delivered by the other parties thereto), enforceable against Seller in accordance with its terms, except (i) to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (ii) that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding thereof may be brought.

Section 4.3 Consents and Approvals; No Violations. Except as set forth on Schedule 4.3, assuming the truth and accuracy of the representations and warranties of Buyer set forth in Section 5.3, no notice to, filing with, or authorization, consent or approval of any Governmental Entity is necessary for the execution, delivery or performance of this Agreement by Seller or the consummation by Seller of the transactions contemplated hereby, except for (i) compliance with and filings under the HSR Act, (ii) those the failure of which to obtain or make would not interfere in any material respect with Seller's ownership of the Shares, or otherwise prevent or materially delay the Closing and (iii) those that may be required solely by reason of Buyer's (as opposed to any other third party's) participation in the transactions contemplated hereby. Neither the execution, delivery and performance of each Transaction Document to which Seller is a party nor the consummation by Seller of the transactions contemplated hereby will (A) conflict with or result in any breach of any provision of Seller's Governing Documents, (B) result in a violation or breach of, cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration), create a material payment obligation or loss of material benefit under, or require any material action taken by Seller (including any notice, authorization, consent or approval) under any of the terms, conditions or provisions of any material agreement to which Seller is a party or (C) violate any Legal Requirement having jurisdiction over Seller, which in the case of clauses (B) and (C) above, would not have a material adverse effect on Seller's ownership of the Shares, or otherwise prevent or materially delay the Closing.

Section 4.4 Title to the Shares; Ownership of Seller. Seller owns of record and beneficially all of the Shares, and Seller has good and marketable title to the Shares, free and clear of all Liens (other than Permitted Liens). Seller has full power and authority to sell, transfer, assign and deliver the Shares to Buyer, and such delivery will convey to Buyer at the Closing good and valid title to the Shares free and clear of all Liens (other than Permitted Liens).

Section 4.5 Litigation. As of the date of this Agreement, there is no Proceeding pending or, to Seller's knowledge, threatened against Seller which would have a material adverse effect on Seller's ownership of the Shares, or otherwise prevent or materially delay the Closing. Seller is not subject to any outstanding order, writ, injunction or decree that would have a material adverse effect on Seller's ownership of the Shares, or otherwise prevent or materially delay the Closing.

Section 4.6 EXCLUSIVITY OF REPRESENTATIONS AND WARRANTIES. WITHOUT IN ANY WAY LIMITING ANY RECOURSE FOR FRAUD, THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER IN THIS ARTICLE 4 ARE IN LIEU OF AND ARE EXCLUSIVE OF ALL OTHER REPRESENTATIONS AND WARRANTIES OF SELLER, INCLUDING ANY IMPLIED WARRANTIES; AND NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER IN LAW OR EQUITY, UNDER STATUTE OR CONTRACT, OR OTHERWISE, SHALL APPLY. SELLER HEREBY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, LEGAL OR CONTRACTUAL, EXPRESS OR IMPLIED, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO BUYER OR ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA).

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

Section 5.1 Organization. Buyer is a corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to carry on its business as now being conducted, except where the failure to have such power or authority would not prevent or materially delay the consummation of the transactions contemplated hereby.

Section 5.2 Authority. Buyer has all necessary power and authority to execute and deliver each Transaction Document to which it is a party and to consummate the transactions contemplated thereby. The execution, delivery and performance of each Transaction Document to which Buyer is a party and the consummation of the transactions contemplated thereby have been duly authorized by all necessary action on the part of Buyer and no other proceeding (including by its equityholders) on the part of Buyer is necessary to authorize each Transaction Document to which Buyer is a party or to consummate the transactions contemplated thereby. No vote of Buyer's equityholders is required to approve this Agreement or for Buyer to consummate the transactions contemplated hereby. Each Transaction Document to which Buyer is a party has been duly and validly executed and delivered by Buyer and constitutes a valid, legal and binding agreement of Buyer (assuming that each such Transaction Document has been duly and validly authorized, executed and delivered by the other parties thereto), enforceable against Buyer in accordance with its terms, except (i) to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (ii) that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding thereof may be brought.

Section 5.3 Consents and Approvals; No Violations. No notices to, filings with, or authorizations, consents or approvals of any Governmental Entity is necessary for the execution, delivery or performance of any of the Transaction Documents to which Buyer is a party or the consummation by Buyer of the transactions contemplated thereby, except for (i) compliance with and filings under the HSR Act and (ii) those set forth on Schedule 5.3. Neither the execution, delivery and performance of any of the Transaction Documents to which Buyer is a party nor the consummation by Buyer of the transactions contemplated thereby will (A) conflict with or result in any breach of any provision of Buyer's Governing Documents, (B) except as set forth on Schedule 5.3, result in a violation or breach of, or cause acceleration, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration), create a payment obligation or loss of material benefit under, or require any action by Buyer (including any notice, authorization, consent or approval) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which Buyer is or will be a party or by which any of them or any of their respective properties or assets may be bound, or (C) violate any Legal Requirement applicable to Buyer or any of Buyer's Subsidiaries or any of their respective material properties or assets, except in the case of clauses (B) and (C) above, for violations which would not prevent or materially delay the consummation of the transactions contemplated thereby.

Section 5.4 Brokers. Except for Jefferies Group LLC, no broker, finder, financial advisor or investment banker is entitled to any brokerage, finder's, financial advisor's or investment banker's fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by and on behalf of Buyer or any of its respective Affiliates for which Seller or any Group Company may become liable.

Section 5.5 Acquisition of Equity For Investment. Buyer has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its purchase of the Shares. Buyer confirms that it can bear the economic risk of its investment in the Shares and can afford to lose its entire investment in the Shares, has been furnished the materials relating to the purchase of the Shares which Buyer has requested, and the Company has provided Buyer and its representatives the opportunity to ask questions of the officers and management employees of the business and to acquire additional information about the business and financial condition of the Group Companies. Buyer is acquiring the Shares for investment and not with a view toward or for sale in connection with any distribution thereof, or with any present intention of distributing or selling such Shares. Buyer agrees that the Shares may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without compliance with applicable United States prospectus and registration requirements, except pursuant to an exemption therefrom under applicable United States securities laws.

Section 5.6 Financial Capacity. As of the date hereof Buyer has, and as of the Closing Buyer will have, sufficient funds readily available or accessible to enable Buyer to consummate the transactions contemplated by this Agreement, and to satisfy Buyer's monetary and other obligations contemplated by this Agreement, including to pay at Closing the Estimated Purchase Price and to make the other payments required to be made by Buyer at Closing pursuant to Section 2.4(a).

ARTICLE 6

COVENANTS

Section 6.1 Conduct of Business of the Company. Except as contemplated by this Schedule 6.1 or elsewhere in this Agreement, from and after the date hereof until the earlier of the Closing Date and the termination of this Agreement in accordance with its terms, the Company shall and shall cause each other Group Company to, except as consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), (i) conduct its business in the Ordinary Course and (ii) not take or omit to take any action which would have a Company Material Adverse Effect. Without limiting the generality of the immediately preceding sentence and except as set forth on Schedule 6.1, from and after the date hereof until the earlier of the Closing Date and the termination of this Agreement in accordance with its terms, the Company shall not and shall cause each other Group Company not to, except as consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed):

(a) issue any notes, bonds or other debt securities or any capital stock or other equity securities or any securities convertible, exchangeable or exercisable into any capital stock or other equity securities;

(b) mortgage or pledge any of its properties or assets (tangible or intangible) or subject them to any Lien, except to the extent such mortgage or pledge results in a Permitted Lien;

(c) sell, assign, transfer, lease or license any of its material tangible or intangible assets, except in the Ordinary Course;

(d) form a Subsidiary;

(e) settle any material Proceeding or (ii) waive or release any material rights or material claims;

(f) commence any Proceeding (other than to enforce the terms of this Agreement);

(g) acquire (other than as a result of a capital expenditure), dispose of or transfer any asset with a value in excess of \$50,000 individually or \$100,000 in the aggregate;

(h) pay, discharge or satisfy any claims or liabilities in excess of \$50,000 or forgive, cancel, compromise, waive or release any debts, claims or rights in excess of \$50,000, in each case, other than in the Ordinary Course;

(i) effect any restructuring, reorganization or complete or partial liquidation;

(j) acquire (by merger, consolidation, acquisition of stock or assets or otherwise) any Person or enterprise;

(k) make any capital expenditures or commitments therefor that aggregate in excess of \$100,000;

(l) make any loans or advances to, guarantees for the benefit of, or any investments in, any Persons in excess of \$50,000 in the aggregate;

(m) amend or authorize any amendment to the Governing Documents of any Group Company;

(n) materially change or authorize any material change in its financial accounting practices or method of accounting for any items in the preparation of the financial statements of any Group Company;

(o) enter into any settlement, conciliation or similar agreement involving claims not fully covered by insurance in excess of \$50,000 or waived any rights having a value in excess of \$50,000;

(p) enter into, amend or terminate any Material Contract or Real Property Lease (or any agreement that would be a Material Contract or Real Property Lease if in effect as of the date hereof);

(q) write-off or otherwise reduce the amount of any receivables, except in the Ordinary Course and at levels which are consistent with reserves for uncollectible amounts included in the Latest Balance Sheet;

(r) make, change or revoke any material Tax election, change any material method of Tax accounting, settle any Tax claim without giving Buyer prior written notice of the material terms of such settlement, waive or extend the statute of limitations with respect to a material amount of Taxes (other than in connections with extensions of time to file Tax Returns obtained in the Ordinary Course), or enter into any private letter ruling or closing agreement with any taxing authority;

(s) (i) except as may be required by applicable Legal Requirement or the terms of an Employee Benefit Plan in existence on the date hereof, increase the compensation or benefits payable or provided to any employee, officer, director, individual consultant or individual independent contractor of any Group Company (other than for non-officer employees or independent contractors with annual base salary of less than \$50,000) or (ii) except as required by applicable Legal Requirement, terminate, adopt, enter into, or amend any material Employee Benefit Plans or any plan, policy, program or agreement that would have constituted a material Employee Benefit Plan if it had been in effect on the date of this Agreement;

(t) engage in (i) any practice that would have the effect of accelerating pre-Closing periods collections of receivables that would otherwise be expected (based on past practice) to be made in post-Closing periods, (ii) any practice which would have the effect of postponing to post-Closing periods payments by the Group Companies that would otherwise be expected (based on past practice) to be made in pre-Closing periods or (iii) any other promotional, sales, discount activity or deferred revenue activity, in each case in this clause (iii), in a manner outside the Ordinary Course;

(u) agree in writing to take any of the actions described above in clauses (a) through (m) of this Section 6.1;

(v) create any easement, restriction or other encumbrance (other than Permitted Liens) on the Owned Real Property that would have a Company Material Adverse Effect on the Owned Real Property; or

(w) fail to use commercially reasonable efforts to preserve any permits required for the conduct of the business as currently conducted or the ownership and use of the assets, other than such failures that would not be expected to be material to the Group Companies taken as a whole.

Section 6.2 Access to Information. From and after the date hereof until the earlier of the Closing Date or the termination of this Agreement in accordance with its terms, from time to time at Buyer's request upon reasonable notice and at reasonable times through the Closing, and subject to restrictions contained in any confidentiality agreement to which Seller or any Group Company is subject, Seller and each Group Company shall provide to Buyer, Buyer's potential debt financing sources and each of their respective agents, employees and accounting, tax, legal and other advisors: (a) reasonable access to all accounts, insurance policies, Tax Returns and Tax records, Contracts, systems, properties, and other books and records concerning the Group Companies and their operations and such other relevant information and materials as may be reasonably requested (including the ability to make copies and abstracts thereof); provided, that access to the Group Companies properties shall not include any sampling or testing of environmental media and (b) the opportunity to discuss the affairs, finances and accounts of the Group Companies with senior management employees so long as such access does not unreasonably interfere with the Group Companies operations. Any such information disclosed pursuant to this Section 6.3 shall be treated as "Confidential Information" pursuant to the terms of the Confidentiality Agreement, the provisions of which are by this reference hereby incorporated herein.

Section 6.3 Efforts to Consummate.

(a) Subject to the terms and conditions herein provided, each of Seller and Buyer shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Legal Requirements and regulations to consummate and make effective as promptly as practicable the transactions contemplated hereby (including the satisfaction, but not waiver, of the closing conditions set forth in ARTICLE 7 and obtaining consents of all Governmental Entities necessary to consummate the transactions contemplated hereby).

(b) In the event any Proceeding by a Governmental Entity or other Person is commenced which questions the validity or legality of the transactions contemplated hereby or seeks damages in connection therewith, the Parties agree to cooperate and use all commercially reasonable efforts to defend against such Proceeding and, if an injunction or other order is issued in any such action, suit or other proceeding, to use all commercially reasonable efforts to have such injunction or other order lifted, and to cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated hereby.

(c) Seller and Buyer shall permit counsel for the other Party reasonable opportunity to review in advance, and consider in good faith the views of the other Party in connection with, any proposed written material communication to any Governmental Entity relating to the transactions contemplated by this Agreement, subject to appropriate confidentiality protections. Each of Seller and Buyer agrees not to participate in any material substantive meeting or discussion, either in person or by telephone with any Governmental Entity in connection with the transactions contemplated by this Agreement unless it consults with the other Party in advance and, to the extent not prohibited by such Governmental Entity and reasonably practicable, gives the other Party the opportunity to attend and participate in such meeting or discussion.

(d) During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing, except as required by this Agreement or any Legal Requirements, Buyer and its Affiliates shall not engage in any action or enter into any transaction, that would be reasonably foreseen to materially impair or delay Buyer's ability to consummate the transactions contemplated by this Agreement or perform its obligations hereunder. Without limiting the generality of the foregoing, none of Buyer, the Subsidiaries of Buyer or their respective Affiliates shall acquire (whether by merger, consolidation, stock or asset purchase or otherwise), or agree to so acquire, any amounts of assets of or any equity in any other Person or any business or division thereof, unless that acquisition or agreement would not reasonably be expected to (i) increase the risk of not obtaining any authorizations, consents, orders, declarations or approvals of any Governmental Entity necessary to consummate the transactions contemplated by this Agreement, or (ii) increase the risk of any Governmental Entity entering an order prohibiting the consummation of the transactions contemplated by this Agreement, or increase the risk of not being able to remove any such order on appeal or otherwise.

Section 6.4 Public Announcements. Buyer (and the Company, if following the Closing), on the one hand, and Seller (and the Company, if prior to the Closing), on the other hand, shall consult with one another and seek one another's approval (not to be unreasonably withheld, conditioned or delayed) before issuing any press release, or otherwise making any public statements, with respect to the transactions contemplated by this Agreement and shall not issue any such press release or make any such public statement prior to such consultation and approval; provided that each Party may make any such announcement which it in good faith believes, based on advice of counsel, is necessary or advisable in connection with any Legal Requirement, it being understood and agreed that each Party shall provide the other Parties with copies of any such announcement in advance of such issuance and consider in good faith the comments provided to such disclosing Party by the other Party; provided, further, that Seller shall be able to communicate with its and its Affiliates investors relating to publicly available information regarding this Agreement and the transactions contemplated herein at any time after Buyer has made a press release regarding the transactions contemplated by this Agreement.

Section 6.5 Indemnification; Directors' and Officers' Insurance.

(a) Buyer agrees that all rights to indemnification, exculpation and advancement of expenses now existing in favor of the directors, officers, employees, fiduciaries, trustees and agents of each Group Company, as provided in the Group Companies' Governing Documents or otherwise in effect as of the date hereof with respect to any matters occurring prior to the Closing Date, shall survive the transactions contemplated by this Agreement and shall continue in full force and effect and that Buyer shall cause the Group Companies (on their own or on Seller's behalf) to perform and discharge the Group Companies' obligations to provide such indemnification, exculpation and advancement of expenses. To the maximum extent permitted by applicable Legal Requirement, such indemnification shall be mandatory rather than permissive, and Buyer shall cause the Group Companies to advance expenses in connection with such indemnification as provided in the applicable Group Company's Governing Documents or other applicable agreements. The indemnification, liability limitation, exculpation or advancement of expenses provisions of the Group Companies' Governing Documents shall not be amended, repealed or otherwise modified after the Closing Date in any manner that would adversely affect the rights thereunder of individuals who, as of the Closing Date or at any time prior to the Closing Date, were directors, officers, employees, fiduciaries, trustees or agents of Seller or any Group Company, unless such modification is required by applicable Legal Requirement.

(b) Without limiting any additional rights that any director, officer, employee, fiduciary, trustee or agent may have under any agreement, arrangement, Employee Benefit Plan or under any Group Company's Governing Documents, from and after the Closing, Buyer shall, and shall cause the applicable Group Company, to the fullest extent permitted under applicable Legal Requirement as in effect from time to time, to indemnify and hold harmless each present and former director, officer, employee, fiduciary, trustee or agent of any Group Company against any and all Losses in connection with any Proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that such Person is or was a director, officer, employee, fiduciary, trustee or agent of any Group Company or arising out of actions taken (or failed to be taken) by such Person at the request of any Group Company, including any and all such Losses arising out of or relating to this Agreement or the transactions contemplated hereby, for a period of six (6) years after the Closing Date. Buyer or the Group Companies shall promptly advance expenses to any such director, officer, employee, fiduciary, trustee or agent of any Group Company, as incurred, to the fullest extent permitted under applicable Legal Requirement as in effect from time to time. Neither Buyer nor any Group Company shall settle, compromise or consent to the entry of any judgment in any actual or threatened Proceeding or investigation in respect of which indemnification has been or could be sought by a Person hereunder unless such settlement, compromise or judgment includes an unconditional release of such Person from all liability arising out of such Proceeding or investigation. Neither Buyer nor any Group Company shall have any obligation hereunder to any Person when and if a court of competent jurisdiction shall ultimately determine (and such determination shall have become final and non-appealable) that the indemnification of such Person in the manner contemplated hereby is prohibited by applicable Legal Requirement.

(c) The Group Companies shall purchase, prior to the Closing, with Buyer and Seller each being responsible for 50% of such costs and expenses, a “tail” policy providing, effective as of the Closing Date, employees’, fiduciaries’, trustees’, directors’ and officers’ liability insurance coverage for a period of six (6) years after the Closing Date for the benefit of those Persons who are covered by any Group Company’s employees’, fiduciaries’, trustees’, directors’ and officers’ liability insurance policies as of the date hereof or at the Closing, with respect to matters occurring prior to the Closing. Prior to the Closing Date, Seller shall deliver to Buyer policy documents establishing that tail coverage has been acquired so as to ensure the continuation of such insurance coverages for no less than six (6) years after Closing. Such a “tail” policy shall provide coverage that is at least equal to the coverage provided under Seller’s or the Group Companies’ current employees’, fiduciaries’, trustees’, directors’ and officers’ liability insurance policies; provided that the Group Companies may substitute therefor policies of at least the same coverage containing terms and conditions which are no less advantageous to the beneficiaries thereof so long as such substitution does not result in gaps or lapses in “tail” coverage with respect to matters occurring prior to the Closing Date.

(d) Buyer agrees, and will cause the Group Companies, not to take any action that would have the effect of limiting the aggregate amount of insurance coverage required to be maintained for the individuals referred to in this Section 6.5. If Buyer, any Group Company or any of their respective successors or assigns (i) shall merge or consolidate with or merge into any other corporation or entity and shall not be the surviving or continuing corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets as an entity in one or a series of related transactions to any individual, corporation or other entity, then in each such case, proper provisions shall be made so that the successors or assigns of Buyer or such Group Company shall assume all of the obligations set forth in this Section 6.5; provided that neither Buyer nor such Group Company shall be relieved from such obligation. In addition, neither Buyer nor any Group Company shall distribute, sell, transfer or otherwise dispose of any of its assets in a manner that would reasonably be expected to render Buyer or such Group Company unable to satisfy its obligations under this Section 6.5.

(e) The directors, officers, employees, fiduciaries, trustees and agents of Seller and each Group Company entitled to the indemnification, liability limitation, exculpation and insurance set forth in this Section 6.5 are intended to be third party beneficiaries of this Section 6.5. This Section 6.5 shall survive the consummation of the transactions contemplated by this Agreement and shall be binding on all successors and assigns of Buyer.

Section 6.6 Exclusive Dealing. During the period from the date of this Agreement until the earlier of the Closing Date or the termination of this Agreement in accordance with its terms, the Company shall not, nor shall it permit any of its Affiliates, officers, directors, employees, representatives, consultants, financial advisors, attorneys, accountants or other agents to directly or indirectly: (i) solicit, initiate or encourage the submission of any proposal or offer from any Person (whether such negotiations are initiated by the Company, an Affiliate, a third party or otherwise), other than Buyer or its Affiliates, relating to any (A) liquidation, dissolution or recapitalization of, (B) merger or consolidation with or into, (C) acquisition or purchase of any material asset (or any material portion of the assets) of, or any equity interest in, or (D) similar transaction or business combination involving, the Seller or the Group Companies (an “Acquisition Transaction”); (ii) provide non-public information or documentation with respect to the Group Companies to any Person, other than Buyer or its Affiliates or its or their representatives, relating to an Acquisition Transaction; (iii) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any other Person to do or seek an Acquisition Transaction; or (iv) enter into any definitive agreement with any Person, other than Buyer or its Affiliates effecting an Acquisition Transaction; provided, however, that Buyer hereby acknowledges that prior to the date of this Agreement, the Company provided information relating to the Group Companies and has afforded access to, and engaged in discussions with, other Persons in connection with a proposed Acquisition Transaction and that such information, access and discussions could reasonably allow the Person to form a basis for an Acquisition Transaction without any breach by the Company of this Section 6.6. Seller shall promptly notify Buyer if any proposal with respect to any of the foregoing, or any inquiry or contact with any Person with respect thereto, is made.

Section 6.7 Documents and Information. After the Closing Date, Buyer and the Company shall, and shall cause the Group Companies to, until the seventh anniversary of the Closing Date, retain the books, records and other documents pertaining to the business of the Group Companies in existence on the Closing Date in accordance with the Buyer’s recordkeeping policies in place from time to time.

Section 6.8 Contact with Customers and Other Business Relations. During the period from the date of this Agreement until the earlier of the Closing or the termination of this Agreement in accordance with its terms, Buyer hereby agrees that it is not authorized to and shall not (and shall not permit any of its employees, agents, representatives or Affiliates to) contact any employee, independent contractor or other material business relation of any Group Company regarding any Group Company or the transactions contemplated by this Agreement without the prior consent of the Company, which consent shall not be unreasonably withheld, conditioned, or delayed, provided, however, the Parties acknowledge that the Buyer, Seller and/or the Group Companies (as applicable) shall be permitted to jointly contact Ford, General Motors LLC, FCA US LLC, Nissan, and Jeep regarding the Company Group’s business relationship with such parties after the Closing Date. Seller acknowledges that Buyer has its own business relations which may be with the same third parties as those of Seller and the Group Companies, and nothing contained in this Section 6.8 shall restrict the operations or communications of Buyer or any of its Affiliates in the Ordinary Course, provided, that such business operations and communications do not explicitly discuss any Group Company, this Agreement or the transactions contemplated hereby.

Section 6.9 Employee Benefit Matters; 280G.

(a) During the period beginning on the Closing Date and ending on the first anniversary of the Closing Date, Buyer shall, or cause the Group Companies to, provide each Continuing Employee with base compensation that is no less favorable in the aggregate than the compensation provided to such employees immediately prior to the Closing Date (including with respect to opportunities for bonus compensation and post-termination severance pay but without regard to participation in any equity incentive plan) and with employee benefits that are at least substantially comparable in the aggregate to the employee benefits offered to similarly situated employees of Buyer. Buyer further agrees that, from and after the Closing Date, Buyer shall and shall cause each Group Company to grant each Continuing Employee credit for any service with any Group Company earned and recognized by such Group Company prior to the Closing Date (i) for eligibility and vesting purposes other than those related to incentive equity and (ii) for purposes of vacation accrual and severance benefit determinations under any benefit or compensation plan, program, agreement or arrangement that may be established or maintained by Buyer or a Group Company or any of its or their Subsidiaries on or after the Closing Date (the “New Plans”). In addition, Buyer hereby agrees that Buyer shall use commercially reasonable efforts to (A) cause to be waived all pre-existing condition exclusion and actively-at-work requirements and similar limitations, eligibility waiting periods and evidence of insurability requirements under any New Plans to the extent waived or satisfied by a Continuing Employee (or covered dependent thereof) under any Employee Benefit Plan as of the Closing Date and (B) cause any deductible, co-insurance and out-of-pocket covered expenses paid on or before the Closing Date by Continuing Employee (or covered dependent thereof) to be taken into account for purposes of satisfying applicable deductible, coinsurance and maximum out-of-pocket provisions after the Closing Date under any applicable New Plan in the year of initial participation. Nothing contained herein, express or implied, is intended to confer upon any employee of any Group Company any right to continued employment for any period. Nothing in this Section 6.9 shall be deemed to limit the right of Buyer, the Company or any of their respective Affiliates to terminate the employment of any employee at any time.

(b) Prior to the Closing, the Company shall use its reasonable best efforts to obtain a stockholder approval that complies with the requirements of Section 280G(b)(5) of the Code and Treasury Regulations § 1.280G-1, with respect to payments and benefits that will be made or provided to any Person who, with respect to the Company, is a “disqualified individual” (as such term is defined for purposes of Section 280G of the Code) and that, absent such approval, would constitute “excess parachute payments,” within the meaning of Section 280G(b)(1) of the Code (such vote, the “Requisite Section 280G Approval”). Prior to the date hereof, Buyer hereby confirms to the Company that Buyer has provided to the Company a summary of the material compensation related terms of any agreement, contract or arrangement that Buyer or its Affiliates are providing or entering into on or prior to the Closing Date with respect to any disqualified individual in connection with the transactions contemplated hereby that would reasonably be expected to be treated as a “parachute payment” (either alone or together with any other payments to a disqualified individual disclosed to Buyer prior to the date hereof). All materials and information that are prepared by the Company to be used in connection with any effort to obtain the Requisite Section 280G Approval shall be provided to Buyer at least two (2) days in advance of the distribution of such materials and information to the applicable stockholders that will be provided with such materials and information for the Requisite Section 280G Approval, Buyer shall be provided with a reasonable opportunity to comment thereon and the Company shall consider in good faith any comments with respect to the same as are provided by Buyer.

(c) Prior to the Closing Date, the Company shall cause the Company 401(k) Plan to be terminated effective at least one (1) day prior to the Closing Date. The Company shall provide Buyer with evidence that such Company 401(k) Plan has been terminated (the form and substance of which shall be subject to review and approval by Buyer (not to be unreasonably withheld or delayed) not later than the day immediately preceding the Closing Date).

(d) Prior to the Closing Date, the Company shall have responsibility for making any and all necessary employee notifications under the WARN Act with any terminations of employment of Employees, and for any financial obligations and liabilities in connection therewith or otherwise required in connection with any terminations of employment of Employees. Buyer shall have such responsibility with respect to Continuing Employees to the extent such responsibility arises after the Closing Date.

(e) The Parties acknowledge and agree that all provisions contained in this Section 6.9 are included for the sole benefit of the Parties and nothing contained herein shall (i) be construed as an amendment to any Employee Benefit Plan or New Plan or the creation of any new employee benefit plan, (ii) create any third-party beneficiary or other rights in any other Person, including any employee or former employee of the Group Companies or their respective Affiliates, or any dependent or beneficiary thereof, or (iii) otherwise obligate Buyer, the Group Companies, or any Affiliates thereof, to maintain any particular Employee Benefit Plan, New Plan or other employee benefit plan following the Closing Date.

(f) Seller and SCA Performance Group, LLC acknowledge and agree that any Continuing Employee who has entered into a Grant Agreement will not be in violation of the Grant Agreement, including but not limited to the restrictive covenants or confidential information sections, in connection with any employment with or services to the Buyer, the Company or one of its Subsidiaries.

Section 6.10 Tax Matters.

(a) Transfer Taxes. Notwithstanding anything to the contrary, any real property transfer Taxes, sales Taxes, use Taxes, stamp Taxes, direct or indirect stock transfer Taxes, or other similar Taxes (including any withholding obligation with respect thereto) imposed on the transactions contemplated by this Agreement (the "Transfer Taxes") shall be borne one-half by Buyer and one-half by Seller. Buyer shall file all Tax Returns required to be filed with respect to such Transfer Taxes; provided that Seller shall reasonably cooperate with Buyer to reduce or otherwise eliminate any such Transfer Taxes.

(b) Tax Returns. With respect to any Tax Returns of the Group Companies for any Pre-Closing Tax Period due after the Closing Date (the "Pre-Closing Tax Returns"), Buyer shall prepare the Pre-Closing Tax Returns in accordance with the prior positions and practices of the Group Companies (unless otherwise required by law), and all Transaction Tax Deductions shall be claimed as deductions on the Pre-Closing Tax Returns for the Tax period ending on the Closing Date to the extent such Transaction Tax Deductions are "more likely than not" deductible in such Tax period. Buyer shall provide a draft of each Pre-Closing Tax Return to Seller at least thirty (30) days prior to the due date of such Tax Return (or in the case of a non-income Tax Return, ten (10) days) for Seller's review, and Buyer shall accept any reasonable comments to such Tax Returns provided by Seller. With respect to any Tax Returns of the Company and its Subsidiaries for any Straddle Period, the portion of such Tax Return that relates to any Pre-Closing Tax Period shall be treated as a Pre-Closing Tax Return to which the procedures of this Section 6.10 shall apply.

(c) Straddle Period Allocation. For purposes of this Agreement, in the case of any Tax (or Tax refund or credit) imposed with respect to a Straddle Period, the portion of such Tax (or Tax refund or credit) that is allocable to a Pre-Closing Tax Period shall be (i) in the case of any Taxes, other than income Taxes and Taxes based on receipts, sales or payments and other Taxes that are transaction-based, deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period prior to and ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period, and (ii) in the case of all other Taxes, deemed equal to the amount which would be payable if the relevant Straddle Period ended on the Closing Date, provided that all permitted allowances, credits, exemptions and deductions that are normally computed on the basis of an entire year period (such as depreciation and amortization deductions) shall accrue on a daily basis and shall be allocated between the pre-Closing portion of the Straddle Period and the post-Closing portion of the Straddle Period in proportion to the number of days in each portion.

(d) Pre-Closing Tax Matters. Without the prior written consent of Seller (not to be unreasonably withheld, conditioned or delayed), Buyer and its Affiliates shall not, and Buyer and its Affiliates shall not permit the Group Companies to, take the following actions in each case only to the extent such action could result in an indemnification claim pursuant to ARTICLE 9) or reduce any amount otherwise payable to Seller pursuant to Section 6.10(g): (i) amend or otherwise modify any Tax Return relating to a Pre-Closing Tax Period, (ii) extend or waive, or cause to be extended or waived, any statute of limitations or other period for the assessment of any Tax or deficiency related to a Pre-Closing Tax Period, (iii) make or change any Tax election or accounting method or practice with respect to, or that has retroactive effect to, any Pre-Closing Tax Period or (iv) make or initiate any voluntary contact with a taxing authority regarding any Pre-Closing Tax Period.

(e) Closing Tax Period. The parties hereto shall, to the maximum extent permitted under applicable Legal Requirement, treat the Closing Date as the last day of the taxable period of the Group Companies for all Tax purposes, and Buyer shall cause the Group Companies to join Buyer's "consolidated group" (as defined in Treasury Regulations Section 1.1502-76(h)) (and analogous state and local income Tax law) effective on the day after the Closing Date.

(f) Tax Claims. Buyer shall promptly notify Seller upon receipt by Buyer any Group Company or any of their respective Affiliates, of any notice of any tax audit, claim, litigation or other proceeding with respect to Taxes that could result in a claim for indemnification under ARTICLE 9 or reduce any amount otherwise payable to Seller pursuant to Section 6.10(g) (a "Tax Claim"). Seller shall have the right, at its election and expense, to control a Tax Claim solely relating to a Tax period ending on or before the Closing Date, and if Seller does not elect, or does not have the right to elect, to control a Tax Claim, then Buyer shall control the Tax Claim (such person that controls the Tax Claim, the "Controlling Party"); provided, that (i) the non-Controlling Party shall have the right to participate in such Tax Claim, (ii) the Controlling Party shall keep the non-Controlling Party reasonably informed with respect to any material issue or development relating to such Tax Claim, and (iii) the Controlling Party shall not settle any Tax Claim without the non-Controlling Party's prior written consent (not to be unreasonably withheld, conditioned or delayed).

(g) Transaction Tax Deductions.

(i) Seller shall be entitled to the amount of any Tax refunds (or any Tax credits received in lieu thereof) that are actually received in respect of a Pre-Closing Tax Period by Buyer, any Group Company, or any of their respective Affiliates after the Closing for (A) the overpayment of estimated Taxes for any Pre-Closing Tax Period resulting from the Transaction Tax Deductions or (B) the carryback of any net operating loss resulting from the Transaction Tax Deductions, in each case, excluding any Transaction Tax Deductions to the extent included in the final computation of Accrued Taxes and net of any Taxes and reasonable out-of-pocket expenses incurred in connection with obtaining such Tax refunds (or credits) (any such income Tax refund or credit, a "Tax Refund").

(ii) Seller shall be entitled to the amount of any actual reduction in cash Tax payments that Buyer, any Group Company, or any of their respective Affiliates would have been required to make for any Tax period (or portion thereof) beginning after the Closing Date and ending on or before the third anniversary of the Closing Date to the extent such reduction results directly from the Transaction Tax Deductions (excluding any Transaction Tax Deductions included in the final computation of Accrued Taxes, and net of any Taxes and reasonable out-of-pocket expenses incurred in connection with obtaining such cash Tax savings) (such reduction, a "Tax Benefit").

(iii) For purposes of determining whether any reduction in post-Closing Taxes results from a Transaction Tax Deduction pursuant to this Section 6.10(g) it shall be assumed that Buyer, the Group Companies and each of their respective Affiliates recognize all other items of income, gain, loss, deduction or credit and use all other net operating loss carryforwards and carrybacks and all other carryforwards, carrybacks and other tax attributes, whether now existing or hereafter available, before receiving any Tax Benefit.

(iv) Buyer shall promptly pay over to Seller any such amounts that Seller is entitled to pursuant to this Section 6.10(g) within twenty (20) Business Days after the actual filing of the Income Tax Return related to such Tax Benefit or the actual receipt of such Tax Refund (or with respect to any Tax Refund that is an income Tax credit received in lieu of a cash Income Tax refund, on the filing of the applicable income Tax Return).

(v) Buyer shall use commercially reasonable efforts to promptly obtain any Tax Refund or Tax Benefit.

(vi) Upon receipt of a reasonable written request from Seller, Buyer shall provide Seller with a calculation and supporting work papers setting forth the computation of any Tax Refunds or Tax Benefits after Buyer prepares and files the applicable income Tax Return.

(vii) If the amount of any Tax Refund or Tax Benefit is subsequently reduced or eliminated as a result of an examination of a Tax Return of a Group Company by an applicable Governmental Entity and pursuant to a final determination under Section 1313(a) of the Code, Buyer shall be repaid, solely from the remaining funds (if any) in the Indemnity Escrow Account, any such reduced or eliminated amounts that have already been paid to Seller, and Seller shall have no further obligations to Buyer with respect to such amounts; provided that (i) as a condition to any such payment to Buyer from the Indemnity Escrow Account, Buyer shall notify Seller in writing of such examination before the Survival Period Termination Date and (ii) Buyer's recovery under this Section 6.10(g)(vii) shall be limited to remaining funds (if any) in the Indemnity Escrow Account, subject to the limitations and procedures under ARTICLE 9.

(h) Disputes. If any dispute arises concerning substantive Tax matters or payments under this Section 6.10 and such dispute cannot be resolved through good faith negotiations among the Parties, such dispute shall be resolved promptly by the Accounting Firm, and the cost of the Accounting Firm shall be borne equally by Buyer and Seller; provided that, if any dispute with respect to a Pre-Closing Tax Return is not resolved prior to the due date for filing such Tax Return, such Pre-Closing Tax Return shall be filed in the manner which the party responsible for preparing such Tax Return deems correct, but the content of such Tax Return shall not prejudice, control or otherwise resolve the dispute hereunder and the liability, if any, of either party under this Agreement.

(i) Intermediary Transaction Tax Shelter. Buyer shall not take any action or cause any action to be taken with respect to the Company subsequent to the Closing that would cause the transactions contemplated by this Agreement to constitute part of a transaction that is the same as, or substantially similar to, the “Intermediary Transaction Tax Shelter” described in IRS Notice 2001-16 and/or IRS Notice 2008-111.

(j) Section 338(g) Elections. No election shall be made under Section 338(g) of the Code or any comparable provision of state or local law with respect to the transaction contemplated by this Agreement.

Section 6.11 Debt Payoff Letters. The Company shall, and shall cause each other Group Company to, use commercially reasonable efforts to (i) obtain payoff letters in a customary form (collectively, the “Debt Payoff Letters”) from the (1) lenders under the Credit Facilities, (2) lenders under the Floor Plan Financing Agreements, and (3) lessors under the Capital Leases, and (ii) provide Buyer with a copy of such Debt Payoff Letters at least one (1) Business Day prior to the Closing Date. At the Closing, Buyer will cause all amounts then outstanding pursuant to the Floor Plan Financing Agreements to be assumed or paid in full as set forth in the applicable Debt Payoff Letters, in such a manner so that all guarantees that have been provided in connection with any of the Floor Plan Financing Agreements will terminate.

Section 6.12 R&W Insurance Policy. The R&W Insurance Policy obtained by Buyer shall provide that (i) the insurer shall have no, and shall waive and not pursue, any and all subrogation rights against Seller except for fraud; (ii) Seller is a third party beneficiary of such waiver; and (iii) following the Closing, Buyer shall not amend the R&W Insurance Policy in any manner adverse to Seller (including with respect to the subrogation provisions or the exclusion provisions) without Seller’s express written consent.

ARTICLE 7

CONDITIONS TO CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT

Section 7.1 Conditions to the Obligations of the Company, Buyer and Seller. The obligations of the Company, Buyer and Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or, if permitted by applicable Legal Requirement, waiver by the Party for whose benefit such condition exists) of the following condition:

(a) no order, decree or ruling (including by temporary restraining order or preliminary or permanent injunction) issued by any court of competent jurisdiction or other Governmental Entity or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement shall be in effect.

Section 7.2 Other Conditions to the Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Buyer of the following further conditions:

(a) the representations and warranties of the Company set forth in ARTICLE 3 hereof and Seller set forth in ARTICLE 4 hereof shall be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date, except (i) to the extent such representations and warranties are made on and as of a specified date, in which case the same shall continue on the Closing Date to be true and correct as of the specified date and (ii) to the extent the failure of such representations and warranties to be true and correct as of such dates would not have a Company Material Adverse Effect.

(b) Seller and the Group Companies shall have performed and complied in all material respects with all obligations, covenants and agreements required to be performed or complied with by Seller and the Group Companies under this Agreement on or prior to the Closing Date.

(c) Since the date of this Agreement, there shall have not occurred any event, occurrence, development or state of circumstances or facts that has had or could reasonably be expected to have (with or without the passage of time) a Company Material Adverse Effect.

(d) prior to or at the Closing, the Buyer shall have received, reviewed and approved the following documents:

(i) a certificate of an authorized officer of the Company, dated as of the Closing Date, to the effect that the conditions specified in Section 7.2(a), Section 7.2(b), and Section 7.2(c) have been satisfied by the Company;

(ii) written resignations of, or evidence of the removal of, (A) each of the directors of the Company and (B) those officers of the Company designated in writing by Buyer at least ten (10) Business Days prior to the Closing Date;

(iii) audited consolidated financial statements of the Company as of and for the year ended December 31, 2019 and an unqualified opinion of the independent auditor;

(iv) a duly executed affidavit of non-foreign status from Seller, sworn under penalty of perjury, that complies with Treasury Regulations Section 1.1445-2(b), in a form and substance reasonably satisfactory to Buyer, and a properly completed and executed IRS Form W-9 from Seller in a form and substance reasonably acceptable to Buyer, dated as of the Closing Date;

(v) a copy of each Debt Payoff Letter duly executed by the applicable lender;

(vi) With respect to Seller and each Group Company, a copy of the articles of incorporation or certificate of formation, certified (as of a date not more than twenty (20) days prior to Closing) by the Secretary of State (or equivalent governmental officer) of the state of incorporation or formation, as the case may be;

(vii) With respect to Seller and each Group Company, a certificate, dated not earlier than the tenth (10th) Business Day prior to the Closing Date, of the Secretary of State of the applicable state under the laws of which Seller and each Group Company is incorporated or organized, stating that Seller or the Group Company, as the case may be, is in good standing, and with respect to each Group Company that is qualified to conduct business in a state (other than its state of incorporation or organization) as set forth on Schedule 3.1(a), a certificate, dated after the date hereof, of the Secretary of State of such state, stating that the applicable Group Company is in good standing; and

(viii) the Escrow Agreement executed by Seller.

Section 7.3 Other Conditions to the Obligations of the Company and Seller. The obligations of the Company and Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by the Company and Seller of the following further conditions:

(a) the representations and warranties of Buyer set forth in ARTICLE 5 hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except to the extent such representations and warranties are made on and as of a specified date, in which case the same shall continue on the Closing Date to be true and correct as of the specified date;

(b) Buyer shall have performed and complied in all material respects with all covenants required to be performed or complied with by it under this Agreement on or prior to the Closing Date; and

(c) prior to or at the Closing, Seller shall have received, reviewed and approved the following documents:

(i) a certificate of an authorized officer of Buyer, dated as of the Closing Date, to the effect that the conditions specified in Section 7.3(a) and Section 7.3(b) have been satisfied by Buyer; and

(ii) the Escrow Agreement executed by Buyer.

Section 7.4 Frustration of Closing Conditions. No Party may rely on the failure of any condition set forth in this ARTICLE 7 to be satisfied if such failure was caused by such Party's failure to use commercially reasonable efforts to cause the Closing to occur, as required by Section 6.3.

ARTICLE 8

TERMINATION

Section 8.1 Termination. This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Buyer and Seller;

(b) by Buyer, if any of the representations and warranties of the Group Companies set forth in ARTICLE 3 or Seller set forth in ARTICLE 4 shall not be true and correct or the Group Companies or Seller shall have failed to perform any covenant or agreement on the part of the Group Companies or Seller, as applicable, set forth in this Agreement (including an obligation to consummate the Closing) such that the condition to Closing set forth in Section 7.2(a) or Section 7.2(b) would not be satisfied and, to the extent curable, the breach or breaches causing such representations or warranties not to be so true and correct, or the failures to perform any covenant or agreement, as applicable, is not cured within 15 days after written notice thereof is delivered to Seller by Buyer; provided, that Buyer is not then

in breach of this Agreement so as to cause the conditions to Closing set forth in Section 7.3(a) or Section 7.3(b) to be unsatisfied;

(c) by Seller, if any of the representations and warranties of Buyer set forth in ARTICLE 5 shall not be true and correct or if Buyer shall have failed to perform any covenant or agreement on the part of Buyer set forth in this Agreement (including an obligation to consummate the Closing) such that the condition to Closing set forth in Section 7.3(a) or Section 7.3(b) would not be satisfied and, to the extent curable, the breach or breaches causing such representations or warranties not to be so true and correct, or the failures to perform any covenant or agreement, as applicable, is not cured within 15 days after written notice thereof is delivered to Buyer by Seller; provided, that neither Seller nor the Company is then in breach of this Agreement so as to cause the conditions to Closing set forth in Section 7.2(a) or Section 7.2(b) to be unsatisfied;

(d) by Buyer, if the transactions contemplated by this Agreement shall not have been consummated within ninety (90) days following the date of this Agreement (the "Termination Date"), unless the failure to consummate the transactions contemplated by this Agreement is solely the result of a breach by Buyer of its representations, warranties, obligations or covenants under this Agreement or if Buyer has an obligation to consummate the Closing and has failed to do so;

(e) by Seller, if the transactions contemplated by this Agreement shall not have been consummated by the Termination Date, unless the failure to consummate the transactions contemplated by this Agreement is solely the result of a breach by either Seller or the Company of its representations, warranties, obligations or covenants under this Agreement or if Seller has an obligation to consummate the Closing and has failed to do so;

(f) by Buyer, if Buyer does not receive audited consolidated financial statements of the Company that satisfy the condition set forth in Section 7.2(d)(iii) by March 13, 2020; or

(g) by either Buyer or Seller, if any Governmental Entity shall have issued an order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree or ruling or other action shall have become final and nonappealable; provided that the Party seeking to terminate this Agreement pursuant to this Section 8.1(g) shall have used commercially reasonable efforts to remove such order, decree, ruling, judgment or injunction and shall have complied in all respects and taken all actions required by Section 6.3 hereof.

Section 8.2 Effect of Termination.

(a) In the event of the termination of this Agreement pursuant to Section 8.1, this entire Agreement shall forthwith become void and there shall be no Liability or obligation on the part of Buyer, Seller or the Company or their respective officers, directors or equityholders with the exception of (i) the provisions of this Section 8.2, Section 6.4 and ARTICLE 10, and (ii) any Liability of any Party for any breach of this Agreement prior to such termination. Nothing herein shall limit or prevent any Party from exercising any rights or remedies it may have under Section 10.13 prior to termination of this Agreement.

ARTICLE 9

SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS; INDEMNIFICATION

Section 9.1 Survival of Representations, Warranties and Covenants. The representations and warranties of the Company, Seller and Buyer contained in this Agreement or in any certificate delivered pursuant hereto shall survive the Closing until the date that is twenty-four (24) months after the Closing Date (the “Survival Period Termination Date”). All covenants and agreements contained herein which by their terms are to be performed in whole on or prior to the Closing Date shall terminate upon the Closing and any claim made with respect to any such covenant or agreement must be made prior to the Survival Period Termination Date. All covenants and agreements of Buyer, Seller and the Company, except for those covenants which by their terms are to be performed in whole on or prior to the Closing Date, shall survive the Closing until fully discharged and performed. Claims for fraud by any Party regarding the representations and warranties contained in this Agreement shall not expire.

Section 9.2 General Indemnification.

(a) Subject to the other provisions of this ARTICLE 9, after and subject to the occurrence of the Closing, Seller shall indemnify, defend and hold Buyer and its Affiliates and Buyer’s and its Affiliates’ respective officers, directors, employees, partners, lenders, representatives, successors, agents and permitted assigns (each a “Buyer Indemnitee”) harmless from and against and in respect of all damages, losses, Liabilities, obligations, disbursements, injuries, demands, Proceedings, judgments, awards, settlements, assessments, deficiencies, Taxes, fines, penalties, fees, costs, reductions in value, claims of any kind, interest or expenses (including reasonable attorneys’ fees and expenses), (each a “Loss”) which Buyer Indemnitee has actually incurred as a result of or in connection with: (i) any facts or circumstances which constitute an inaccuracy or breach of any representation or warranty made by the Company contained in this Agreement, and (ii) any nonfulfillment or breach by the Company of any covenant, obligation or agreements set forth in this Agreement which are to be performed by any Group Company on or before the Closing Date.

(b) Subject to the other provisions of this ARTICLE 9, after and subject to the occurrence of the Closing, Seller shall indemnify, defend and hold each Buyer Indemnitee harmless from any Loss actually incurred as a result of or in connection with: (i) any facts or circumstances which constitute an inaccuracy or breach of any representation or warranty made by Seller contained in this Agreement, and (ii) any nonfulfillment or breach by Seller of any covenant, obligation or agreements set forth in this Agreement which are to be performed by Seller.

(c) Subject to the other provisions of this ARTICLE 9, after and subject to the occurrence of the Closing, Buyer agrees to, and shall, after the Closing, cause the Group Companies to, indemnify, defend and hold Seller and its Affiliates, and Seller’s and its Affiliates’ respective officers, directors, employees, partners, lenders, representatives, successors, agents and permitted assigns (each a “Seller Indemnitee”) harmless from and against and in respect of, and pay on behalf of or reimburse such Seller indemnitee as and when incurred for, any Loss which Seller Indemnitee has actually incurred as a result of or in connection with: (i) any facts or circumstances which constitute an inaccuracy or breach of any representation or warranty made by Buyer contained in this Agreement, (ii) any nonfulfillment or breach by Buyer of any covenant, obligation or agreements set forth in this Agreement which are to be performed by Buyer and (iii) any nonfulfillment or breach by the Company of any covenant, obligation or agreements set forth in this Agreement which are to be performed by any Group Company after the Closing Date.

(d) The obligations to indemnify and hold harmless pursuant to this Section 9.2 shall survive the consummation of the transactions contemplated hereby for the applicable period set forth in Section 9.1, except for claims for indemnification asserted by written notice to Seller or Buyer, as applicable, prior to the end of such applicable period (which claims shall survive until final resolution thereof and so long as the Party making such claim is contesting such claim in good faith).

Section 9.3 Third Party Claims.

(a) If a Proceeding by a Person who is not a Party, a Group Company or an Affiliate of a Party or a Group Company (other than a Tax Claim, the conduct of which shall be governed by Section 6.10) (a “Third Party Claim”) is made, commenced or threatened in writing against any Person entitled to indemnification pursuant to Section 9.2 (an “Indemnified Party”), and if such Person intends to seek indemnity with respect thereto under this ARTICLE 9, such Indemnified Party shall promptly give a Notice of Claim to the Party obligated to indemnify such Indemnified Party (such notified Party, the “Responsible Party”); provided, that the failure to give such Notice of Claim shall not relieve the Responsible Party of its obligations hereunder, except to the extent that the Responsible Party is prejudiced thereby. The Indemnified Party shall conduct and control, at the expense of the Indemnified Party, the settlement or defense thereof, and the Responsible Party shall cooperate with the Indemnified Party in connection therewith (it being acknowledged and agreed that the Indemnified Party shall have the exclusive right to settle and defend such Proceeding); provided, that the Indemnified Party shall permit the Responsible Party to participate in such settlement or defense through counsel chosen by such Responsible Party (the fees and expenses of such counsel shall be borne by such Responsible Party); provided, further, that the Indemnified Party shall not, except with the consent of the Responsible Party (which shall not be unreasonably withheld, conditioned or delayed), enter into any settlement that does not include as a term thereof the giving by the Person(s) asserting such claim to all Indemnified Parties of a release from all liability with respect to such claim or consent to entry of any judgment.

(b) Each Party shall, and Buyer shall cause the Group Companies to, reasonably cooperate in the defense or prosecution of any Third Party Claim in respect of which indemnity may be sought hereunder and each of Buyer and Seller (or a duly authorized representative of such Party) shall (and Buyer shall cause the Group Companies to) furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

Section 9.4 Limitations on Indemnification Obligations. Notwithstanding anything to the contrary contained herein, the rights of the Buyer Indemnitees to indemnification pursuant to the provisions of Section 9.2(a) and Section 9.2(b) are subject to the following limitations:

(a) the amount of any and all Losses shall be determined net of any amounts actually recovered by any Buyer Indemnitees under insurance policies (net of any Taxes and other expenses incurred in connection with obtaining such amounts, as well as any increased premium costs associated therewith) with respect to such Losses, provided, however, that the Buyer Indemnitees and their Affiliates shall treat such amounts recovered under insurance policies as an adjustment to the Purchase Price for U.S. federal and applicable state and local income Tax purposes to the maximum extent permitted under applicable Legal Requirements;

(b) the Buyer Indemnitees shall not be entitled to recover Losses pursuant to Section 9.2(a)(i) or Section 9.2(b)(i) (other than with respect to breaches of Fundamental Representations and Section 3.16) until the total amount which the Buyer Indemnitees would recover under Section 9.2(a)(i) or Section 9.2(b)(i) (as limited by the provisions of Section 9.4(a)), but for this Section 9.4(b), exceeds \$1,278,750, in which case, the Buyer Indemnitees shall only be entitled to recover Losses in excess of such amount, subject to the other limitations set forth herein;

(c) the Indemnity Escrow Funds remaining at any given time shall be the sole source of recovery with respect to Losses indemnifiable pursuant to Section 9.2(a) or Section 9.2(b), and in no event shall the Buyer Indemnitees be entitled to recover more than the amount of the funds available in the Indemnity Escrow Account pursuant to Section 9.2(a) or Section 9.2(b) in the aggregate;

(d) in no event shall a Buyer Indemnitee be entitled to indemnification pursuant to this ARTICLE 9 with respect to a specific Loss to the extent such Loss is specifically included as a line-item deduction in the calculation of the Purchase Price, as finally determined in accordance with Section 2.4(b); and

(e) Notwithstanding anything herein to the contrary, no Buyer Indemnitee shall have any right to indemnification hereunder for any Losses attributable to Taxes (i) of any Group Company for a post-Closing Tax period (or portion thereof) (other than as a result of breach of representations contained in Section 3.16(f)(ii), 3.16(f)(iii), 3.16(f)(iv), 3.16(f)(v) or 3.16(h)), (ii) as a result of any transaction occurring on the Closing Date after the Closing outside the Ordinary Course or (iii) attributable to any breach by Buyer and/or its Affiliates of any covenant in this Agreement.

Notwithstanding anything contained herein to the contrary, after the Closing, on the date that the Indemnity Escrow Funds are reduced to zero, the Buyer Indemnitees shall have no further rights to indemnification under Section 9.2(a) or Section 9.2(b).

Section 9.5 Exclusive Remedy. Except with respect to the remedies available pursuant to Section 10.13, (a) indemnification pursuant to the provisions of this ARTICLE 9 shall be the exclusive remedy for the Parties for any misrepresentation or breach of any representation, warranty, covenant or other provision contained in this Agreement or in any certificate or other instrument or document delivered pursuant hereto, including with respect to the Comprehensive Environmental Response, Compensation, and Liability Act and any other Environmental Law; provided that nothing herein shall operate to limit liability of Seller to Buyer for fraud in the event Seller is finally determined by a court of competent jurisdiction to have committed fraud against Buyer regarding the representations and warranties contained in this Agreement.

Section 9.6 Manner of Payment; Escrow.

(a) Any indemnification of the Buyer Indemnitees or the Seller Indemnitees pursuant to this ARTICLE 9 shall be effected by wire transfer of immediately available funds from the applicable Persons to an account designated in writing by the applicable Buyer Indemnitees or Seller Indemnitees, as the case may be, within ten (10) days after the final determination thereof; provided, however, that any indemnification owed by Seller to the Buyer Indemnitees pursuant to Section 9.2(a) or Section 9.2(b) may only be satisfied from the funds then remaining in the Indemnity Escrow Account.

(b) Any funds remaining in the Indemnity Escrow Account as of the Survival Period Termination Date (minus the aggregate amount claimed by the Buyer Indemnitees pursuant to claims made against such funds, not fully resolved prior to such date and continued to be contested in good faith by a Buyer Indemnitee) shall be released to Seller by the Escrow Agent within two (2) Business Days following the Survival Period Termination Date. At any time following the Survival Period Termination Date, to the extent the funds held in the Indemnity Escrow Account exceed the aggregate amount claimed by the Buyer Indemnitees pursuant to claims made prior to such Survival Period Termination Date, not fully resolved prior to the time of determination and continued to be contested in good faith by a Buyer Indemnitee, the excess funds shall be promptly released to Seller.

(c) Seller and Buyer shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to make any distributions from the Indemnity Escrow Account expressly provided for herein.

Section 9.7 Mitigation. Each Party shall take commercially reasonable actions to mitigate all Losses incurred by it or any Indemnified Party it controls (including incurring costs to the minimum extent necessary to remedy the circumstances giving rise, or reasonably expected to give rise, to such Losses and pursuing all rights of recovery of Losses under or pursuant to any applicable insurance coverage, including submission of any applicable notice of claim and taking any additional action reasonably necessary to enforce the rights of the applicable insured under such coverage) upon becoming aware of any fact, event or circumstance which has resulted in any such Loss. The Parties shall cooperate with each other with respect to resolving any claim or liability underlying any Loss with respect to which one party is obligated to indemnify any Person hereunder.

Section 9.8 Materiality Scrape. For purposes of determining whether there has been a breach of any representation, warranty or covenant contained in this Agreement (and for purposes of determining the amount of Losses resulting therefrom), all qualifications or exceptions therein referring to the terms “material”, “materiality”, “in all material respects” or “Company Material Adverse Effect” shall be disregarded in all respects and given no effect for purposes of determining whether any inaccuracy or breach of any representation or warranty, or any nonfulfillment or breach of any covenant, obligation or agreement, has occurred pursuant to this Agreement, and for purposes of determining whether any Loss has occurred and the amount of any such Loss; provided, that (i) the reference to “in all material respects” in Section 3.4(c) and (ii) the reference to “Company Material Adverse Effect” in Section 3.7, in each case, shall not be disregarded.

Section 9.9 Subrogation. If a Responsible Party makes an indemnification payment to an Indemnified Party with respect to any Loss, then such Responsible Party will be subrogated, to the extent of such payment, to all related rights and remedies of such Indemnified Party under any insurance policy, acquisition agreement or other agreement or right (excluding the R&W Insurance Policy (if any)) against or with respect to such Loss, except with respect to amounts not yet recovered by such Indemnified Party (or any other such Person entitled to indemnification hereunder) under any such insurance policy, acquisition agreement or other agreement or right that already have been netted against such Loss for purposes of determining the indemnifiable amount of such Loss. Promptly following such Responsible Party’s request, such Indemnified Party will take all reasonably necessary, proper or desirable actions (including the execution and delivery of any document reasonably requested) to accomplish the foregoing at the sole cost of the Responsible Party.

ARTICLE 10

MISCELLANEOUS

Section 10.1 Entire Agreement; Assignment; Amendment. This Agreement, together with all Exhibits and Schedules hereto, the Transaction Documents, and all agreements contemplated hereby and thereby as the same may from time to time be amended, modified, supplemented or restated in accordance with the terms hereof, and together with the Confidentiality Agreement, (a) constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all other prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof and (b) shall not be assigned, in whole or in part, by any Party (whether by operation of law or otherwise) without the prior written consent of Buyer and Seller; provided, that Buyer may assign its rights under this Agreement, without the prior written consent of Seller, in whole or in part, (i) to any Affiliate of Buyer, or (ii) any subsequent purchaser of Buyer (whether by merger, consolidation, sale of stock or other equity interest or otherwise) or substantially all of the assets of Buyer, provided, further, that, for the avoidance of doubt, such assignment will not relieve Buyer of any of its obligations under this Agreement or any Transaction Documents. Any attempted assignment of this Agreement not in accordance with the terms of this Section 10.1 shall be void. This Agreement may be amended or modified only by a written agreement executed and delivered by duly authorized officers of the Parties. This Agreement may not be modified or amended except as provided in the immediately preceding sentence and any amendment by any Party or Parties effected in a manner which does not comply with this Section 10.1 shall be void.

Section 10.2 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery (a) in person, (b) via electronic transmission (including by facsimile or electronic mail), or (c) via reputable overnight courier service (charges prepaid) or certified mail (postage prepaid, return receipt requested). Such notices, demands and other communications shall be sent to Buyer, Seller, and the Group Companies at the addresses indicated below or to such other address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party.

To Buyer or to the Company (after the Closing):

Fox Factory, Inc.
6634 GA-53
Braselton, GA 30517
Attention: Michael Dennison
Address on file.

with copies (which shall not constitute notice to Buyer) to:

Fox Factory, Inc.
6634 GA-53
Braselton, GA 30517
Attention: Legal Department
Address on file.

Squire Patton Boggs (US) LLP
1230 Peachtree Street NE Suite 1700
Atlanta, GA 30309
Attention: Ann-Marie McGaughey
Address on file.

To Seller or to the Company (prior to the Closing):

Southern Rocky Holdings, LLC
c/o Kinderhook Industries, LLC
505 Fifth Avenue, 25th Floor
New York, NY 10017
Attention: Tom Tuttle
Address on file.

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

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Brian Raftery
Address on file.

To the Company (prior to the Closing):

SCA Performance Holdings, Inc.
7769 Gadsden Highway
Trussville, AL 35173
Attention: Michael McSweeney
Address on file.

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

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Brian Raftery
Address on file.

Section 10.3 Governing Law. All issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement and the exhibits and schedules hereto, and all claims and disputes arising hereunder or thereunder or in connection herewith or therewith, whether purporting to sound contract or tort, or at law or in equity, shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State of Delaware.

Section 10.4 Fees and Expenses; Cost of R&W Insurance Policy. Except as otherwise set forth in this Agreement (including, for the avoidance of doubt, the fees and expenses to be borne by the Parties in accordance with Section 6.3, Section 6.5 and Section 6.10), all fees and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement, including the fees and disbursements of counsel, financial advisors and accountants, shall be paid by the Party incurring such fees or expenses; provided, that in the event that the transactions contemplated by this Agreement are consummated, Buyer shall, or shall cause the Company to, pay all Unpaid Seller Expenses in accordance with Section 2.4(a)(ii)(B). The Buyer and Seller shall split the premium of the R&W Insurance Policy.

Section 10.5 Construction. The headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. No Party, nor its counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions hereof, and all provisions of this Agreement shall be construed according to their fair meaning and not strictly for or against any Party and no presumption or burden of proof will arise favoring or disfavoring any Person by virtue of its authorship of any provision of this Agreement.

Section 10.6 Exhibits and Schedules. All Exhibits and Schedules, or documents expressly incorporated into this Agreement, are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full in this Agreement. Any item disclosed in any Schedule referenced by a particular Section in this Agreement shall be deemed to have been disclosed with respect to every other Section in this Agreement where the relevance of such disclosure to such other section is reasonably apparent on its face. The specification of any dollar amount in the representations or warranties contained in this Agreement or the inclusion of any specific item in any Schedule is not intended to imply that such amount, or any higher or lower amount or the item so included or any other item, is or is not material, and no Party shall use the fact of the setting of such amount or the inclusion of any such item in any dispute or controversy as to whether any obligation, items or matter not described herein or included in a Schedule is or is not material for purposes of this Agreement. Any capitalized term used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning given to such term in this Agreement.

Section 10.7 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each Party and its successors and permitted assigns and, except as provided in Section 6.5, nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

Section 10.8 Extension; Waiver. At any time prior to the Closing, Seller may, on behalf of itself and the Company, (i) extend the time for the performance of any of the obligations or other acts of Buyer contained herein, (ii) waive any inaccuracies in the representations and warranties of Buyer contained herein or in any document, certificate or writing delivered by Buyer pursuant hereto, or (iii) waive compliance by Buyer with any of the agreements or conditions contained herein. At any time prior to the Closing, Buyer may (A) extend the time for the performance of any of the obligations or other acts of the Company or Seller contained herein, (B) waive any inaccuracies in the representations and warranties of the Company and Seller contained herein or in any document, certificate or writing delivered by the Company or Seller pursuant hereto, or (C) waive compliance by the Company or Seller with any of the agreements or conditions contained herein. Any agreement on the part of any Party to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such Party. The failure of any Party to assert any of its rights hereunder shall not constitute a waiver of such rights.

Section 10.9 Severability. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable Legal Requirements, but if any provision of this Agreement is held to be invalid, illegal or unenforceable under applicable Legal Requirement, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement. Upon such determination that any provision of this Agreement is invalid, illegal or unenforceable under applicable Legal Requirement, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 10.10 Counterparts; Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or scanned pages shall be effective as delivery of a manually executed counterpart to this Agreement.

Section 10.11 WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. EACH PARTY HEREBY FURTHER AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT A PARTY MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 10.12 Jurisdiction and Venue. Each Party (i) submits to the exclusive jurisdiction of the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) in any action or proceeding arising out of or relating to this Agreement, (ii) agrees that all claims in respect of such action or proceeding may be heard and determined in any such court and (iii) agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each Party waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Each Party agrees that service of summons and complaint or any other process that might be served in any action or proceeding may be made on such Party by sending or delivering a copy of the process to the Party to be served at the address of the Party and in the manner provided for the giving of notices in Section 10.2. Nothing in this Section 10.12, however, shall affect the right of any Party to serve legal process in any other manner permitted by law. Each Party agrees that a final, non-appealable judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law.

Section 10.13 Remedies. Any and all remedies provided herein will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon any Party, and the exercise by a Party of any remedy will not preclude the exercise of any other remedy. The Parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the Parties do not fully and timely perform their respective obligations under or in connection with the provisions of this Agreement (including failing to take such actions as are required of them hereunder to consummate the transactions contemplated by this Agreement) in accordance with their specific terms or otherwise breach such provisions. It is accordingly agreed that, prior to the valid termination of this Agreement pursuant to Section 8.1, the Parties shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in each case without posting a bond or undertaking and without proof of damages and this being in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that the other parties have an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity.

Section 10.14 Non-Recourse. All claims or causes of action (whether in contract or in tort, at law or in equity) that may be based upon, arise out of or relate to this Agreement or the other Transaction Documents, or the negotiation, execution or performance of this Agreement or the other Transaction Documents (including any representation or warranty made in or in connection with this Agreement or the other Transaction Documents or as an inducement to enter into this Agreement or the other Transaction Documents), may be made only against the entities that are expressly identified as parties hereto and thereto. Except to the extent named in this Agreement or any other Transaction Document (then only to the extent of the specific obligations of such parties set forth in this Agreement or such other Transaction Document), no Buyer Related Party or Seller Related Party shall have any liability (whether in contract or in tort, in law or in equity, or based upon any theory that seeks to impose liability of an entity party against its owners or affiliates) for any obligations or liabilities arising under, in connection with or related to this Agreement or such other Transaction Document or any transactions contemplated hereby or thereby or for any claim based on, in respect of, or by reason of this Agreement or such other Transaction Document (as the case may be), the transactions contemplated hereby and thereby or the negotiation or execution hereof or thereof; and each Party waives and releases all such liabilities, claims and obligations against any Buyer Related Party or Seller Related Party. The Buyer Related Parties and the Seller Related Parties are expressly intended as third party beneficiaries of this provision of this Section 10.14.

Section 10.15 Waiver of Conflicts. Recognizing that Kirkland & Ellis LLP has acted as legal counsel to Seller and its Affiliates and the Group Companies prior to the Closing, and that Kirkland & Ellis LLP intends to act as legal counsel to Seller and its Affiliates (which will no longer include the Group Companies) after the Closing, each of Buyer and the Company hereby waives, on its own behalf and agrees to cause its Affiliates to waive, any conflicts that may arise in connection with Kirkland & Ellis LLP representing Seller and/or its Affiliates after the Closing as such representation may relate to Buyer, any Group Company or the transactions contemplated herein. In addition, all communications involving attorney-client confidences between Seller, its Affiliates or any Group Company and Kirkland & Ellis LLP solely related to the negotiation, documentation and consummation of the transactions contemplated hereby shall be deemed to be attorney-client confidences that belong solely to Seller and its Affiliates (and not the Group Companies). Accordingly, the Group Companies shall not, without Seller's consent, have access to any files of Kirkland & Ellis LLP relating to its engagement, whether or not the Closing shall have occurred.

IN WITNESS WHEREOF, each of the Parties has caused this Stock Purchase Agreement to be duly executed on its behalf as of the day and year first above written.

SOUTHERN ROCKY HOLDINGS, LLC

By: /s/ Michael McSweeney
Name: Michael McSweeney
Title: Chief Executive Officer

SCA PERFORMANCE HOLDINGS, INC.

By: /s/ Michael McSweeney
Name: Michael McSweeney
Title: Chief Executive Officer

FOX FACTORY, INC.

By: /s/ Michael Dennison
Name: Michael Dennison
Title: Chief Executive Officer

and solely for purposes of Section 6.9(f) of this Agreement:

SCA PERFORMANCE GROUP, LLC

By: /s/ Michael McSweeney

Name: Michael McSweeney

Title: Chief Executive Officer

Exhibit 10.28

February 11, 2020

Fox Factory Holding Corp.
6634 Hwy-53
Braselton, GA 30517
Attention: John E. Blocher, Interim Chief Financial Officer

Commitment Letter \$550 million Senior Secured Credit Facility

Ladies and Gentlemen:

Fox Factory Holding Corp., a Delaware corporation (“*you*” or the “*Borrower*”) has advised Bank of America, N.A. (“*Bank of America*”) and BofA Securities, Inc. (or any of its designated affiliates, “*BofA Securities*”) that the Borrower’s subsidiary, Fox Factory, Inc. intends to acquire (the “*Acquisition*”) all of the equity interests of SCA Performance Holdings, Inc. a Delaware corporation (the “*Target*”) from Southern Rocky Holdings, LLC (the “*Seller*”). This letter, together with the Summary of Terms and Conditions attached as Exhibit A hereto (“*Summary of Terms*”), and incorporated herein by this reference, may be hereinafter referred to as the “*Commitment Letter*”.

You have also advised Bank of America and BofA Securities that you intend to finance the Acquisition, the costs and expenses related to the Transactions (as defined below), and the ongoing working capital and other lawful general corporate purposes of the Borrower and its subsidiaries after consummation of the Acquisition, in each case, with an amendment to and syndication of the Borrower’s existing \$250 million revolving credit facility and a new \$300 million term loan facility (together, the “*Senior Credit Facility*”) subject to the terms of this Commitment Letter and the Summary of Terms. The Acquisition, the entering into and funding of the Senior Credit Facility, and all related transactions are hereinafter referred to, collectively, as the “*Transactions*”. The Senior Credit Facility may be documented as an amendment and restatement of the Credit Agreement (the “*Existing Credit Agreement*”) dated as of June 3, 2019 among, *inter alios*, the Borrower and Bank of America, as administrative agent.

In connection with the foregoing, Bank of America is pleased to advise you of its commitment to provide all of the Senior Credit Facility, and to act as the sole administrative agent for the Senior Credit Facility (in such capacity, the “*Administrative Agent*”), all upon and subject to the terms and conditions set forth in this Commitment Letter. BofA Securities is pleased to advise you of its willingness in connection with the foregoing commitment, as sole lead arranger and sole bookrunner for the Senior Credit Facility (in such capacities, the “*Lead Arranger*”), to form a syndicate of financial institutions (including Bank of America) (collectively, the “*Lenders*”) in consultation with you for the Senior Credit Facility, all upon and subject to the terms and conditions set forth in this Commitment Letter. No additional agents, co-agents or lead arrangers will be appointed, and no other titles will be awarded, in each case, without our prior written approval.

The commitment of Bank of America hereunder, and the undertaking of the Lead Arranger to provide the services described herein, are each subject to the conditions precedent set forth in the “Conditions Precedent to Closing” section in Exhibit A attached hereto and the conditions set forth in Addendum III thereof.

Notwithstanding anything in this Commitment Letter, the Fee Letter, the Loan Documents, or any other letter agreement or other undertaking concerning the financing of the Transactions to the contrary, the only representations relating to the Borrower, the Target, their respective subsidiaries and their businesses, the accuracy of which shall be a condition to the availability of the Senior Credit Facility on the Closing Date, shall be: (a) the representations made by, or with respect to, the Target and its subsidiaries in the Acquisition Agreement (as defined in the Summary of Terms), as are material to the interests of the Lenders, but *only* to the extent that your subsidiary Fox Factory, Inc., has the right to terminate its obligations under the Acquisition Agreement, or to decline to consummate the Acquisition pursuant to the Acquisition Agreement, as a result of a breach of such representations in the Acquisition Agreement (the “Acquisition Agreement Representations”); and (b) the Specified Representations (as defined below). For purposes hereof, “Specified Representations” means the representations and warranties relating to corporate status, corporate power and authority to enter into the Loan Documents (as defined in the Summary of Terms), due authorization, execution, delivery and enforceability of the Loan Documents, no conflicts with or consents under laws, charter documents or material agreements (other than consents that have been obtained), solvency, absence of litigation with respect to the Senior Credit Facility, Federal Reserve margin regulations, the Act (as defined below), Office of Foreign Assets Control, the Foreign Corrupt Practices Act, the Investment Company Act, accuracy of financial statements, status of the Senior Credit Facility as senior debt, the creation, validity, priority and perfection of the security interests granted in the Collateral (as defined in the Summary of Terms) (it being understood that, to the extent any security interest in the Collateral (other than any Collateral the security interest in which may be perfected by the filing of a UCC financing statement, the filing of a short-form security agreement with the United States Patent and Trademark Office or the United States Copyright Office, or the delivery of certificates evidencing equity interests) is not provided on the Closing Date after your use of best efforts to do so, the provision of such perfected security interest(s) shall not constitute a condition precedent to the availability of the Senior Credit Facility on the Closing Date, but shall be required to be delivered no later than thirty (30) days (or such longer period of time as may be agreed by the Administrative Agent in its sole discretion) after the Closing Date pursuant to arrangements to be mutually agreed). This paragraph, and the provisions herein, shall be referred to as the “Certain Funds Provisions”.

The Lead Arranger intends to commence syndication of the Senior Credit Facility promptly upon your acceptance of this Commitment Letter and the Fee Letter, and the commitment of Bank of America hereunder shall be reduced dollar-for-dollar as and when corresponding commitments are received from the Lenders; provided that notwithstanding the Lead Arranger’s right to syndicate the Senior Credit Facility and receive commitments with respect thereto, (i) Bank of America shall not be relieved, released or novated from its obligations hereunder (including, subject to the satisfaction of the conditions set forth herein, its obligation to fund the Senior Credit Facility on the Closing Date) in connection with any syndication, assignment or participation of the Senior Credit Facility, including its commitments in respect thereof, until after the Closing Date has occurred and (ii) unless you otherwise agree in writing, Bank of America shall retain exclusive control over all rights and obligations with respect to its commitments in respect of the Senior Credit Facility, including all rights with respect to consents, modifications, supplements, waivers and amendments, until after the Closing Date has occurred. You agree to actively assist, and to use your commercially reasonable efforts to cause the Target to actively assist, the Lead Arranger in achieving a syndication of the Senior Credit Facility that is satisfactory to the Lead Arranger and you. Such assistance shall include your: (a) providing, and causing your advisors to provide, Bank of America, the Lead Arranger, and the other Lenders, upon request, with all information reasonably deemed necessary by Bank of America and the Lead Arranger to complete syndication, including, but not limited to, information and evaluations prepared by you, the Target, and your and its respective advisors, or on your or its behalf, relating to the Transactions (including the Projections (as defined below), the “Information”); (b) upon the request of the Lead Arranger, assisting in the preparation of a confidential information memorandum and other materials to be used in connection with the syndication of the Senior Credit Facility (collectively with the Summary of Terms, the “Information Materials”); (c) using your commercially reasonable efforts to ensure that the syndication efforts of the Lead Arranger benefit materially from your existing banking relationships and the existing banking relationships of the Target; and (d) otherwise assisting Bank of America and the Lead Arranger in their syndication efforts, including by making your officers and advisors, and the officers and advisors of the Target and its subsidiaries, available from time to time to attend and make presentations regarding the business and prospects of the Borrower, the Target and their respective subsidiaries, as appropriate, at one (1) or more meetings of prospective Lenders.

It is understood and agreed that the Lead Arranger will manage and control all aspects of the syndication in consultation with you, including decisions as to the selection of prospective Lenders and any titles offered to proposed Lenders, when commitments will be accepted, and the final allocations of the commitments among the Lenders. It is understood that no Lender participating in the Senior Credit Facility will receive compensation from you in order to obtain its commitment, except on the terms contained herein, in the Summary of Terms, and in the Fee Letter. It is also understood and agreed that the amount and distribution of the fees among the Lenders will be at the sole and absolute discretion of Bank of America and the Lead Arranger.

You represent, warrant and covenant that: (a) all financial projections concerning the Borrower, the Target and their respective subsidiaries that have been, or are hereafter, made available to Bank of America, BofA Securities, or the Lenders by you or any of your representatives (or on your or their behalf), or by the Target or any of its subsidiaries or representatives (or on any of their behalf) (the "Projections"), have been or will be prepared in good faith based upon reasonable assumptions; and (b) all Information, other than Projections, which has been, or is hereafter, made available to Bank of America, BofA Securities, or the Lenders by you or any of your representatives (or on your or their behalf), or by the Target or any of its subsidiaries or representatives (or on any of their behalf), in connection with any aspect of the Transactions, as and when furnished, is and will be complete and correct in all material respects, and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading. You agree to furnish us with further and supplemental information from time to time until the date of the initial borrowing under the Senior Credit Facility (the "Closing Date"), and, if requested by us, for a reasonable period (not to exceed forty-five (45) days) thereafter as is necessary to complete the syndication of the Senior Credit Facility, so that the representation, warranty and covenant in the immediately preceding sentence is correct on the Closing Date, and on such later date on which the syndication of the Senior Credit Facility is completed, as if the Information were being furnished, and such representation, warranty and covenant were being made, on such date. In issuing this commitment and in arranging and syndicating the Senior Credit Facility, Bank of America and the Lead Arranger are, and will be, using and relying on the Information without independent verification thereof.

You acknowledge that the Lead Arranger and/or Bank of America, on your behalf, will make available Information Materials to the proposed syndicate of Lenders by posting the Information Materials on IntraLinks, SyndTrak, or another similar electronic system. In connection with the syndication of the Senior Credit Facility, unless the parties hereto otherwise agree in writing, you shall be under no obligation to provide Information Materials suitable for distribution to any prospective Lender (each, a "Public Lender") that has personnel who do not wish to receive material non-public information (within the meaning of the United States federal securities laws, "MNPI") with respect to the Borrower, the Target, any of their respective affiliates, or any other entity, or the respective securities of any of the foregoing. You agree, however, that: (a) the Loan Documents will contain provisions concerning Information Materials to be provided to Public Lenders and the absence of MNPI therefrom; (b) Information Materials made available to prospective Public Lenders in accordance with this Commitment Letter shall not contain MNPI, whether or not any Information Materials are marked "PUBLIC"; and (c) the Lead Arranger and/or Bank of America, on your behalf, may distribute the following documents to all prospective Lenders, (i) administrative materials for prospective Lenders, such as lender meeting invitations and funding and closing memoranda, (ii) notifications of changes to the Senior Credit Facility's terms, and (iii) other materials intended for prospective Lenders after the initial distribution of the Information Materials, including drafts and final versions of the Loan Documents. Upon request of the Lead Arranger, prior to distribution of Information Materials to prospective Lenders, you shall provide us with a customary letter authorizing the dissemination thereof.

By executing this Commitment Letter, you agree to reimburse Bank of America and the Lead Arranger, from time to time on demand, for all reasonable out-of-pocket fees and expenses (including, but not limited to: (a) the reasonable fees, disbursements and other charges of Moore & Van Allen PLLC, as counsel to the Lead Arranger and the Administrative Agent, and of special and local counsel to the Lenders (limited to one counsel per jurisdiction) retained by the Lead Arranger or the Administrative Agent; and (b) due diligence expenses) incurred in connection with the Senior Credit Facility, the syndication thereof, the preparation of the Loan Documents, and any other aspect of the Transactions or any other transactions contemplated hereby. You acknowledge that we may receive a benefit, including, without limitation, a discount, credit or other accommodation, from any of such counsel based on the fees such counsel may receive on account of their relationship with us, including, without limitation, fees paid pursuant hereto.

You agree to indemnify and hold harmless Bank of America, the Lead Arranger, each Lender, and each of their respective affiliates, and each of the respective officers, directors, employees, agents, advisors, and other representatives of each of the foregoing (each, an "Indemnified Party"), from and against (and will reimburse each Indemnified Party as the same are incurred for) any and all claims, damages, losses, liabilities and expenses (including, without limitation, the reasonable fees, disbursements and other charges of counsel) that may be incurred by, or asserted or awarded against, any Indemnified Party, in each case, arising out of, or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding, or preparation of a defense in connection therewith), (a) any aspect of the Transactions or any other transactions contemplated by this Commitment Letter or the Fee Letter, (b) any other matters contemplated by this Commitment Letter or the Fee Letter, (c) the Senior Credit Facility and any other financings, or (d) any use made, or proposed to be made, with the proceeds thereof, except to the extent that such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from: (i) such Indemnified Party's gross negligence or willful misconduct; (ii) such Indemnified Party's breach in bad faith of its obligations under this Commitment Letter; or (iii) disputes solely between and among Indemnified Parties to the extent such disputes do not arise from any act or omission of you or any of your affiliates (other than claims against an Indemnified Party acting in its capacity as an agent or arranger or similar role under the Senior Credit Facility). In the case of an investigation, litigation or proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by you, your equityholders or creditors, or an Indemnified Party, whether or not an Indemnified Party is otherwise a party thereto, and whether or not any aspect of the Transactions, or any other transactions contemplated hereby, are consummated. You also agree that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to you or your subsidiaries or affiliates, or to your or their respective equity holders or creditors, arising out of, related to, or in connection with any aspect of the Transactions or any other transactions contemplated hereby, except to the extent of direct, as opposed to special, indirect, consequential or punitive, damages determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. Notwithstanding any other provision of this Commitment Letter, no Indemnified Party shall be liable for any damages arising from the use by others of information or other materials obtained through electronic telecommunications or other information transmission systems.

This Commitment Letter and that certain fee letter, of even date herewith, by and among you, Bank of America, and the Lead Arranger (the "Fee Letter"), and the contents hereof and thereof, are confidential, and, except for disclosure hereof or thereof on a confidential basis to your accountants, attorneys and other professional advisors retained by you in connection with the Transactions, or as otherwise required by law, may not be disclosed by you, in whole or in part, to any person or entity without our prior written consent; provided, that, it is understood and agreed that you may disclose this Commitment Letter but not the Fee Letter, (a) on a confidential basis to the board of directors or managers (or equivalent governing body) and advisors of the Seller and the Target in connection with their consideration of the Transactions, and (b) after your acceptance of this Commitment Letter and the Fee Letter, in filings with the Securities and Exchange Commission and other applicable regulatory authorities and stock exchanges; provided, further, that, to the extent portions thereof have been redacted in a customary manner (including the portions thereof addressing fees payable to the Administrative Agent, the Lead Arranger and/or the Lenders and economic flex terms) reasonably satisfactory to the Lead Arranger, you may disclose the Fee Letter and the contents thereof to the Seller and the Target and the Target's and the Seller's respective officers, directors, agents, employees, attorneys, accountants, advisors, or controlling persons or equity holders, in each case, on a confidential and need-to-know basis. Bank of America and BofA Securities hereby notify you that, pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "Act"), each of them is required to obtain, verify and record information that identifies you, which information includes your name and address and other information that will allow Bank of America or BofA Securities, as applicable, to identify you in accordance with the Act.

Each of Bank of America and the Lead Arranger shall use all confidential information provided to them by, or on behalf of, you hereunder solely for the purpose of providing the services which are the subject of this letter agreement, and otherwise in connection with the Transactions, and shall treat confidentially all such information; provided, that, nothing herein shall prevent either Bank of America or the Lead Arranger from disclosing any such information: (a) pursuant to the order of any court or administrative agency, or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case, Bank of America and the Lead Arranger agree to inform you promptly thereof prior to such disclosure to the extent not prohibited by law, rule or regulation); (b) upon the request or demand of any regulatory authority having jurisdiction over Bank of America, the Lead Arranger, or any of their respective affiliates; (c) to the extent that such information becomes publicly available other than by reason of disclosure in violation of this agreement by Bank of America or the Lead Arranger; (d) to Bank of America's and the Lead Arranger's respective affiliates, and their and such affiliates' respective employees, legal counsel, independent auditors, and other experts or agents who need to know such information in connection with the Transactions and are informed of the confidential nature of such information; (e) for purposes of establishing a "due diligence" defense; (f) to the extent that such information is or was received by Bank of America or the Lead Arranger from a third party that is not, to Bank of America's or the Lead Arranger's knowledge, subject to confidentiality obligations to you; (g) to the extent that such information is independently developed by Bank of America or the Lead Arranger; or (h) to potential Lenders, participants, assignees, or potential counterparties to any swap or derivative transaction relating to the Borrower or any of its subsidiaries, or any of their respective obligations, in each case, who agree to be bound by the terms of this paragraph (or language substantially similar to this paragraph contained in a click-through screen on any electronic platform, or as otherwise reasonably acceptable to you, Bank of America and the Lead Arranger, including as may be agreed in any confidential information memorandum or other marketing material). This paragraph shall terminate on the second (2nd) anniversary of the date hereof.

You acknowledge that Bank of America, the Lead Arranger, and/or their respective affiliates may be providing financing or other services to parties whose interests conflict with yours. Bank of America and BofA Securities agree that they will not furnish confidential information obtained from you to any of their other customers, and that they will treat confidential information relating to you, the Target, and your and its respective affiliates with the same degree of care as they treat their own confidential information. Bank of America and BofA Securities further advise you that they will not make available to you confidential information that they have obtained, or may obtain, from any other customer. In connection with the services contemplated hereby and the Transactions, you agree that Bank of America and BofA Securities are permitted to access, use and share with any of their bank or non-bank affiliates, agents, advisors (legal or otherwise), or representatives any information concerning you, the Target or any of your or their respective affiliates that is, or may come, into the possession of Bank of America, BofA Securities, or any of such affiliates.

In connection with all aspects of each transaction contemplated by this Commitment Letter, you acknowledge and agree that: (a) (i) the arranging and other services described herein regarding the Senior Credit Facility are arm's-length commercial transactions between you and your affiliates, on the one hand, and Bank of America and the Lead Arranger, on the other hand, (ii) you have consulted your own legal, accounting, regulatory and tax advisors to the extent you have deemed appropriate, and (iii) you are capable of evaluating, and understand and accept, the terms, risks and conditions of the Transactions; (b) (i) Bank of America and the Lead Arranger each has been, is, and will be acting solely as a principal, and, except as otherwise expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for you, any of your affiliates, or any other person or entity, and (ii) neither Bank of America nor the Lead Arranger has any obligation to you or your affiliates with respect to the Transactions, except those obligations expressly set forth herein; and (c) Bank of America and the Lead Arranger and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from yours and those of your affiliates, and Bank of America and the Lead Arranger have no obligation to disclose any of such interests to you or your affiliates. To the fullest extent permitted by law, you hereby waive and release any claims that you may have against Bank of America and the Lead Arranger with respect to any breach, or alleged breach, of agency or fiduciary duty in connection with any aspect of any transaction contemplated by this Commitment Letter.

This Commitment Letter and the Fee Letter shall be governed by, and construed in accordance with, the laws of the State of New York; provided, however, that (a) the interpretation of the definition of “*Company Material Adverse Effect*” (as defined in the Acquisition Agreement) (and whether or not a Material Adverse Effect has occurred under the Acquisition Agreement), (b) the determination of the accuracy of any Acquisition Agreement Representation and whether, as a result of any inaccuracy thereof, you and any of your affiliates have the right to terminate your and its obligations thereunder or decline to consummate the Acquisition (in accordance with the terms thereof) as a result of a breach of such representations in the Acquisition Agreement and (c) the determination of whether the Acquisition has been consummated in accordance with the terms of the Acquisition Agreement, shall, in each case, be governed by, and construed in accordance with, the laws of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Each of you, Bank of America, and BofA Securities hereby irrevocably waives any and all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of, or relating to, this Commitment Letter, the Fee Letter, the Transactions, or the actions of Bank of America and BofA Securities in the negotiation, performance or enforcement hereof. Each of Bank of America, BofA Securities, and you hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan in New York, New York, in respect of any suit, action or proceeding arising out of, or relating to, the provisions of this Commitment Letter, the Fee Letter, and the Transactions, and irrevocably agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court. Nothing in this Commitment Letter, the Summary of Terms, or the Fee Letter shall affect any right that Bank of America, BofA Securities, or any affiliate thereof may otherwise have to bring any claim, action or proceeding relating to this Commitment Letter, the Fee Letter, and/or the Transactions, in any court of competent jurisdiction, to the extent necessary or required as a matter of law to assert such claim, action or proceeding against any assets of the Borrower or any of its subsidiaries, or to enforce any judgment arising out of any such claim, action or proceeding. Each of Bank of America, BofA Securities, and you agree that service of any process, summons, notice or document by registered mail addressed to you shall be effective service of process against you for any suit, action or proceeding relating to any such dispute. Each of Bank of America, BofA Securities, and you waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceedings brought in any such court, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment in any such suit, action or proceeding brought in any such court may be enforced in any other courts to whose jurisdiction you are, or may be, subject by suit upon judgment. The commitments and undertakings of Bank of America and the Lead Arranger may be terminated by us if you fail to perform your obligations under this Commitment Letter or the Fee Letter on a timely basis.

The provisions of the immediately preceding seven (7) paragraphs shall remain in full force and effect, regardless of whether any definitive documentation for the Senior Credit Facility shall be executed and delivered, and notwithstanding the termination of this Commitment Letter or any commitment or undertaking of Bank of America or the Lead Arranger hereunder.

This Commitment Letter and the Fee Letter may be in the form of an electronic record (in “.pdf” form or otherwise) and may be executed using electronic signatures, which shall be considered as originals and shall have the same legal effect, validity and enforceability as a paper record. This Commitment Letter and the Fee Letter may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts shall be one and the same Commitment Letter or Fee Letter, as applicable. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by Bank of America and/or BofA Securities of a manually signed Commitment Letter and/or Fee Letter which has been converted into electronic form (such as scanned into “.pdf” format), or an electronically signed Commitment Letter and/or Fee Letter converted into another format, for transmission, delivery and/or retention.

This Commitment Letter and the Fee Letter embody the entire agreement and understanding among Bank of America, the Lead Arranger, you, and your and their respective affiliates with respect to the Senior Credit Facility, and supersede all prior agreements and understandings relating to the specific matters hereof and thereof. However, please note that the terms and conditions of the commitment of Bank of America, and the undertaking of the Lead Arranger, hereunder are not limited to those set forth herein or in the Summary of Terms. Those matters that are not covered or made clear herein, or in the Summary of Terms or the Fee Letter, are subject to the mutual agreement of the parties. No party has been authorized by Bank of America or BofA Securities to make any oral or written statements that are inconsistent with this Commitment Letter. This Commitment Letter is not assignable by you without our prior written consent, and is intended to be *solely* for the benefit of the parties hereto and the Indemnified Parties.

This Commitment Letter, and all commitments and undertakings of Bank of America and the Lead Arranger hereunder, will expire at 11:59 p.m. (Pacific time) on February 11, 2020 unless you execute this Commitment Letter and the Fee Letter and return them both to us prior to that time (which may be by fax transmission or other electronic mail transmission), whereupon this Commitment Letter and the Fee Letter (each of which may be signed in one (1) or more counterparts) shall become binding agreements. Thereafter, all commitments and undertakings of Bank of America and the Lead Arranger hereunder (except to the extent that any provisions expressly survive termination of this Commitment Letter) will expire on the *earliest of*: (a) May 11, 2020, unless the Loan Documents are executed and delivered prior to such date; (b) the closing of the Acquisition without the use of the Senior Credit Facility; (c) the acceptance by the Target or any of its affiliates of an offer for all, or any substantial part, of the capital stock or property and assets of the Target and its subsidiaries, other than as part of the Transactions; and (d) the termination of the Acquisition Agreement prior to the consummation of the Transactions. In consideration of the time and resources that the Lead Arranger and Bank of America will devote to the Senior Credit Facility, you agree that, until such expiration, you will not, and will cause the Target not to, solicit, initiate, entertain or permit, or enter into any discussions in respect of, any offering, placement or arrangement of any competing senior credit facility or facilities for the Borrower and its subsidiaries with respect to the matters addressed in this Commitment Letter.

We are pleased to have the opportunity to work with you in connection with this important financing.

Very truly yours,

BANK OF AMERICA, N.A.

By: /s/ David R. Barney
Name: David R. Barney
Title: Senior Vice President

BOFA SECURITIES, INC.

By: /s/ Mark N. Post
Name: Mark N. Post
Title: Managing Director

Accepted and agreed to as of the date first above written:

FOX FACTORY HOLDING CORP., a Delaware corporation

By: /s/ John E. Blocher

Name: John Blocher

Title: Interim Chief Financial Officer

Exhibit 21.1

Fox Factory Holding Corp.
List of Subsidiaries as of January 3, 2020

Company Name	State or Other Jurisdiction of Incorporation or Organization	Name under which Business is Conducted
Fox Factory, Inc.	California	Fox Factory, Inc.
FF US Holding Corp.	Delaware	FF US Holding Corp.
FF US Acquisition Corp.	Delaware	Tuscany
ST USA Holding Corp.	Delaware	Sport Truck, USA
RT Acquisition Corp.	Indiana	Ridetech
Fox Factory Austria GmbH	Austria	Fox Factory Austria GmbH
Fox Factory GmbH	Germany	Fox Factory GmbH
Fox Factory Switzerland GmbH	Switzerland	Fox Factory Switzerland GmbH LLC
Fox Factory UK Limited	United Kingdom	Fox Factory UK Limited
RFE Holding (Canada) Corp.	British Columbia, Canada	Race Face / Easton
FF US Holding LLC	Georgia	FF US Holding LLC
FF Indiana Holding LLC	Indiana	FF Indiana Acquisition Corp.

Exhibit 22.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our reports dated March 3, 2020, with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report of Fox Factory Holding Corp. on Form 10-K for the year ended January 3, 2020. We consent to the incorporation by reference of said reports in the Registration Statement of Fox Factory Holding Corp. on Form S-8 (File No. 333-192238).

/s/ GRANT THORNTON LLP

San Francisco, California
March 3, 2020

EXHIBIT 31.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Michael C. Dennison, certify that:

1. I have reviewed this Annual Report on Form 10-K of Fox Factory Holding Corp.;
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.

/s/ Michael C. Dennison

Michael C. Dennison
Chief Executive Officer
March 3, 2020

EXHIBIT 31.2

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, John E. Blocher, certify that:

1. I have reviewed this Annual Report on Form 10-K of Fox Factory Holding Corp.;
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.

/s/ John E. Blocher

John E. Blocher

Interim Chief Financial Officer and Interim Treasurer

March 3, 2020

EXHIBIT 32.1

**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**

In connection with the Annual Report on Form 10-K for the fiscal year ended January 3, 2020 of Fox Factory Holding Corp. (the "Company") as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael C. Dennison, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Michael C. Dennison

Michael C. Dennison

Chief Executive Officer

(Principal Executive Officer)

March 3, 2020

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Fox Factory Holding Corp. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

EXHIBIT 32.2

**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**

In connection with the Annual Report on Form 10-K for the fiscal year ended January 3, 2020 of Fox Factory Holding Corp. (the "Company") as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John E. Blocher, Interim Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ John E. Blocher

John E. Blocher

Interim Chief Financial Officer

(Interim Principal Financial Officer)

March 3, 2020

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Fox Factory Holding Corp. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.