

# FRANCESCA'S HOLDINGS CORP

## **FORM 8-K** (Current report filing)

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Address	8760 CLAY ROAD Houston, TX 77080
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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

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

Date of Report (Date of earliest event reported): **September 16, 2016**

**FRANCESCA'S HOLDINGS CORPORATION**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation)

**001-35239**

(Commission File Number)

**20-8874704**

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

**8760 Clay Road,**

**Houston, Texas**

(Address of Principal Executive  
Offices)

**77080**

(Zip Code)

**(713) 864-1358**

(Registrant's Telephone Number, Including Area Code)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers**

On September 16, 2016, the Board of Directors (the “Board”) of Francesca’s Holdings Corporation (the “Company”) appointed Mr. Steven P. Lawrence as President and Chief Executive Officer of the Company, effective as of October 10, 2016. On September 16, 2016, the Board also appointed Mr. Lawrence to serve as a Class II director of the Board, effective as of October 10, 2016. At such time, Mr. Richard Kunes, who has been serving as the Company’s Interim Chairman of the Board, President and Chief Executive Officer since May 16, 2016, will become the Company’s Chairman of the Board.

Prior to joining the Company, Mr. Lawrence, 49, served as Chief Merchandising Officer of Stage Stores, Inc. since May 2012. Prior to such time, Mr. Lawrence served as General Merchandising Manager, Executive Vice President Men’s of J.C. Penney Company from September 2000 to March 2012.

The terms of Mr. Lawrence’s employment are outlined in an employment letter agreement among the Company and its subsidiaries, Francesca’s Collections, Inc. and Francesca’s Services Corporation, and Mr. Lawrence, effective as of Mr. Lawrence’s first day of employment (the “Employment Letter”). The following summary of the Employment Letter is qualified in its entirety by the text of the Employment Letter, a copy of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

The Employment Letter has an indefinite term and provides for Mr. Lawrence to receive an annual base salary of \$775,000 and to be eligible to participate in the Company’s annual bonus plan as in effect from time to time, with a target annual bonus opportunity of 100% of Mr. Lawrence’s annual base salary for the applicable fiscal year. In addition, Mr. Lawrence will receive a signing bonus of \$300,000 that he will be required to repay to the Company if he voluntarily resigns or is terminated by the Company for “cause” (as defined in the Employment Letter) within 12 months after his start date. He will also receive a “make-whole” payment to compensate him for the annual bonus opportunity with his prior employer that he will forfeit in connection with his joining the Company (to be determined based on a pro-rated target bonus amount and his prior employer’s actual performance for the current fiscal year). Mr. Lawrence will also be granted two performance-based stock awards. The first award will be subject to the same performance vesting requirements as the awards granted to the Company’s other senior executives for fiscal year 2016 (i.e. achievement of specified performance targets over a period of three fiscal years), with the target number of shares determined by pro-rating \$1,500,000 for the period of Mr. Lawrence’s employment during fiscal year 2016 and dividing that amount by the Company’s stock price as of the grant date. The second award will cover a number of shares determined by dividing \$1,500,000 by the Company’s stock price on the grant date, with one-third of the award vesting if Mr. Lawrence’s employment continues through the first anniversary of his start date and the Company’s earnings per share is greater than \$0.75 for fiscal year 2017, and the remaining two-thirds of the award vesting if Mr. Lawrence’s employment continues through the third anniversary of his start date and the Company’s earnings per share is greater than \$0.75 for fiscal year 2019. Commencing with fiscal year 2017, Mr. Lawrence will also be eligible for annual equity awards, with the grant levels and terms of the awards to be determined by the Compensation Committee of the Board in its discretion and the expectation being that the grant date value of these awards will not be less than \$1,500,000. The Employment Letter also provides for Mr. Lawrence to participate in the Company’s employee savings and welfare benefit plans made available to the Company’s employees generally, in accordance with the provisions of such programs as in effect from time to time.

The Employment Letter also includes certain restrictive covenants, including the provision that, during the period of Mr. Lawrence’s employment and for a period of 12 months following a termination of his employment for any reason, he will not compete with the Company or its affiliates or solicit any Company employees or customers. If Mr. Lawrence’s employment is terminated by the Company without “cause” or by Mr. Lawrence for “good reason” (as defined in the Employment Letter), he will be entitled to cash severance equal to his annual base salary at the rate in effect at the time of his termination, with such amount to become payable in substantially equal monthly installments over the 12-month period following the termination date, subject to his providing a release of claims in favor of the Company and compliance with his covenants under the Employment Letter noted above.

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There was no arrangement or understanding between Mr. Lawrence and any other person pursuant to which Mr. Lawrence was appointed Chief Executive Officer, President or as a director. There are no family relationships between Mr. Lawrence and any director or executive officer of the Company, and Mr. Lawrence has no direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

The Board also appointed Mr. Kunes as a member of the Nominating and Corporate Governance Committee, effective October 10, 2016.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On September 16, 2016, the Board approved amendments to the Company's Amended and Restated Bylaws (the "Bylaws"). Specifically, the Board amended Article II, Section 2.04 of the Bylaws to clarify that the Chairman of the Board is not required to be an officer of the Company. The foregoing summary of the Bylaws is qualified in its entirety by reference to the full text of the Bylaws, which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

**Item 7.01. Regulation FD Disclosure.**

On September 20, 2016, the Company issued a press release announcing the management changes set forth in Item 5.02 of this Current Report on Form 8-K.

A copy of the press release is furnished as Exhibit 99.1 to this report. This information shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

**Item 9.01. Financial Statements and Exhibits.**

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| 3.1   | Amended and Restated Bylaws of Francesca's Holdings Corporation.   |
| 10.1+ | Employment Letter Agreement, dated September 16, 2016, between Francesca's Collections, Inc., Francesca's Services Corporation, Francesca's Holdings Corporation and Steven P. Lawrence. |
| 99.1  | Press Release issued by Francesca's Holdings Corporation on September 20, 2016.  |

+ Indicates a management contract or compensatory plan or arrangement.

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## EXHIBIT INDEX

<b>Exhibit No.</b>	<b>Description</b>
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**AMENDED AND RESTATED BYLAWS  
OF  
FRANCESCA'S HOLDINGS CORPORATION  
(a Delaware Corporation)**

**Effective September 16, 2016**

**ARTICLE I  
STOCKHOLDERS**

Section 1.01 Annual Meetings. The annual meeting of the stockholders of the Corporation for the election of Directors and for the transaction of such other business as properly may come before such meeting shall be held at such place, either within or without the State of Delaware, or, within the sole discretion of the Board of Directors, and subject to such guidelines and procedures as the Board of Directors may adopt, by means of remote communication and at such date and at such time, as may be fixed from time to time by resolution of the Board of Directors and set forth in the notice or waiver of notice of the meeting.

Section 1.02 Special Meetings. Special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called at any time, but only by or at the direction of a majority of the Directors then in office or the Chief Executive Officer of the Corporation. Such special meetings of the stockholders shall be held at such places, within or without the State of Delaware, or, within the sole discretion of the Board of Directors, and subject to such guidelines and procedures as the Board of Directors may adopt, by means of remote communication, as shall be specified in the respective notices or waivers of notice thereof. The ability of stockholders to call a special meeting of stockholders is specifically denied.

Section 1.03 No Stockholder Action by Consent. Subject to the terms of any one or more series or classes of Preferred Stock, if CCMP Capital Advisors, LLC and its affiliates (collectively, "CCMP") collectively, beneficially own (as determined in accordance with Rules 13d-3 and 13d-5 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) less than fifty percent (50.0%) of the then outstanding shares of the common stock, then any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such stockholders of the Corporation and may not be effected by any written consent in lieu of a meeting by such stockholders, unless the directors then in office unanimously recommend that such action be permitted to be taken by written consent of stockholders. In the event that an action is permitted to be taken by written consent of stockholders in accordance with this Section 1.03 and a signed written consent(s) (and any related revocation(s)) is (are) delivered to the Corporation in the manner provided by applicable law, the Corporation may engage independent inspectors of elections for the purpose of performing promptly a ministerial review of the validity of the consents and revocations. In the event the Corporation engages such inspectors, then for the purpose of permitting the inspectors to perform such review no action by written consent in lieu of a meeting of stockholders shall be effective until such inspectors have completed their review, determined that the requisite number of valid and unrevoked consents delivered to the Corporation in accordance with applicable law have been obtained to take the action specified in the consents, and certified such determination for entry in the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders, and such action by written consent will take effect as of the date and time of the certification of the written consents and will not relate back to the date the written consents to take action were delivered to the Corporation. For purposes of this Article I, "affiliates" shall mean, with respect to a given person, all other persons that, directly or indirectly, control, are controlled by or are under common control with, such person; provided, however, that for the purposes of this definition, (i) none of the Corporation, its subsidiaries and any entities (including corporations, partnerships, limited liability companies or other persons) in which the Corporation or its subsidiaries hold, directly or indirectly, an ownership interest, on the one hand, or (ii) CCMP and its affiliates (excluding the Corporation, its subsidiaries or other entities described in clause (i)), on the other hand, shall be deemed to be "affiliates" of one another. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as applied to any person shall mean the possession, directly or indirectly, of beneficial ownership of, or the power to vote, ten percent (10%) or more of the securities having voting power for the election of directors (or other persons acting in similar capacities) of such person or the power otherwise to direct or cause the direction of the management and policies of such person, whether through the ownership of securities, by contract or otherwise.

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Section 1.04 Notice of Meetings; Waiver.

(a) The Secretary of the Corporation or any Assistant Secretary shall cause written notice of the place, if any, date and hour of each meeting of the stockholders, and, in the case of a special meeting, the purpose or purposes for which such meeting is called, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, to be given personally by mail or by electronic transmission, or as otherwise provided in these Amended and Restated Bylaws, not fewer than ten (10) nor more than sixty (60) days prior to the meeting, to each stockholder of record entitled to vote at such meeting. If such notice is mailed, it shall be deemed to have been given personally to a stockholder when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the record of stockholders of the Corporation, or, if a stockholder shall have filed with the Secretary of the Corporation a written request that notices to such stockholder be mailed to some other address, then directed to such stockholder at such other address. Such further notice shall be given as may be required by law.

(b) A written waiver of any notice of any annual or special meeting signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders need be specified in a written waiver of notice. Attendance of a stockholder at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) For notice given by electronic transmission to a stockholder to be effective, such stockholder must consent to the Corporation's giving notice by that particular form of electronic transmission. A stockholder may revoke consent to receive notice by electronic transmission by written notice to the Corporation. A stockholder's consent to notice by electronic transmission is automatically revoked if the Corporation is unable to deliver two consecutive electronic transmission notices and such inability becomes known to the Secretary of the Corporation, any Assistant Secretary, the transfer agent or other person responsible for giving notice.

(d) Notices are deemed given (i) if by facsimile, when faxed to a number where the stockholder has consented to receive notice; (ii) if by electronic mail, when mailed electronically to an electronic mail address at which the stockholder has consented to receive such notice; (iii) if by posting on an electronic network (such as a website or chatroom) together with a separate notice to the stockholder of such specific posting, upon the later to occur of (A) such posting or (B) the giving of the separate notice of such posting; or (iv) if by any other form of electronic communication, when directed to the stockholder in the manner consented to by the stockholder.

(e) If a stockholder meeting is to be held by means of remote communication and stockholders will take action at such meeting, the notice of such meeting must: (i) specify the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present and vote at such meeting; and (ii) provide the information required to access the stockholder list. A waiver of notice may be given by electronic transmission.

Section 1.05 Quorum. Except as otherwise required by law or by the Amended and Restated Certificate of Incorporation of Francesca's Holdings Corporation (the "Amended and Restated Certificate of Incorporation"), at each meeting of stockholders the presence in person or by proxy of the holders of record of a majority in voting power of the shares entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business at such meeting. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any subsidiary of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.06 Voting. If, pursuant to Section 5.05 of these Amended and Restated Bylaws, a record date has been fixed, every holder of record of shares entitled to vote at a meeting of stockholders shall, subject to the terms of any one or more series or classes of Preferred Stock, be entitled to one (1) vote for each share outstanding in his or her name on the books of the Corporation at the close of business on such record date. If no record date has been fixed, then every holder of record of shares entitled to vote at a meeting of stockholders shall, subject to the terms of any one or more series or classes of Preferred Stock, be entitled to one (1) vote for each share of stock standing in his or her name on the books of the Corporation at the close of business on the day next preceding the day on which notice of the meeting is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. Except as otherwise required by law, the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws, Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at a meeting and voting for nominees in the election of Directors, and in all other matters, the affirmative vote of the majority of shares present in person or represented by proxy at a meeting and voting on the subject matter shall be the act of the stockholders.

Section 1.07 Voting by Ballot. No vote of the stockholders on an election of Directors need be taken by written ballot or by electronic transmission unless otherwise required by law. Any vote not required to be taken by ballot or by electronic transmission may be conducted in any manner approved by the Board of Directors prior to the meeting at which such vote is taken.

Section 1.08 Postponement and Adjournment. Any meeting of stockholders may be postponed by action of the Board of Directors at any time in advance of such meeting. If a quorum is not present at any meeting of the stockholders, the chairman of such meeting shall have the power to adjourn the meeting without a vote of the stockholders. Notice of any adjourned meeting of the stockholders of the Corporation need not be given if the place, if any, date and hour thereof are announced at the meeting at which the adjournment is taken, provided, however, that if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date for the adjourned meeting is fixed pursuant to Section 5.05 of these Amended and Restated Bylaws, a notice of the adjourned meeting, conforming to the requirements of Section 1.04 of these Amended and Restated Bylaws, shall be given to each stockholder of record entitled to vote at such meeting. At any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted on the original date of the meeting.

Section 1.09 Proxies. Any stockholder entitled to vote at any meeting of the stockholders may authorize another person or persons to vote at any such meeting and express such vote on behalf of him or her by proxy. A stockholder may authorize a valid proxy by executing a written instrument signed by such stockholder, or by causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature, or by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person designated as the holder of the proxy, a proxy solicitation firm or a like authorized agent. No such proxy shall be voted or acted upon after the expiration of three (3) years from the date of such proxy, unless such proxy provides for a longer period. Every proxy shall be revocable at the pleasure of the stockholder executing it, except in those cases where applicable law provides that a proxy shall be irrevocable. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing with the Secretary of the Corporation either an instrument in writing revoking the proxy or another duly executed proxy bearing a later date. Proxies by telegram, cablegram or other electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. Any copy, facsimile telecommunication or other reliable reproduction of a writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 1.10 Organization; Procedure. At every meeting of stockholders the chairman of such meeting shall be the Chairman of the Board or, if no Chairman of the Board has been elected or in the event of his or her absence or disability, a chairman chosen by the Board of Directors. The Secretary of the Corporation, or in the event of his or her absence or disability, an Assistant Secretary, if any, or if there be no Assistant Secretary, in the absence of the Secretary of the Corporation, an appointee of the chairman of the meeting, shall act as Secretary of the meeting. The order of business and all other matters of procedure at every meeting of stockholders may be determined by the chairman of such meeting.

Section 1.11 Business at Annual and Special Meetings. No business may be transacted at an annual or special meeting of shareholders other than business that is:

- (a) specified in a notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or a duly authorized committee thereof,
- (b) otherwise brought before the meeting by or at the direction of the Board of Directors or a duly authorized committee thereof or any authorized officer of the Corporation to whom the Board of Directors or such committee shall have delegated such authority, or
- (c) otherwise brought before the meeting by a "Noticing Shareholder" who complies with the notice procedures set forth in Section 1.12 of these Amended and Restated Bylaws.

A "Noticing Shareholder" must be either a "Record Holder" or a "Nominee Holder." A "Record Holder" is a shareholder that holds of record stock of the Corporation entitled to vote at the meeting on the business (including any election of a director) to be appropriately conducted at the meeting. A "Nominee Holder" is a shareholder that holds such stock through a nominee or "street name" holder of record and can demonstrate to the Corporation such indirect ownership of such stock and such Nominee Holder's entitlement to vote such stock on such business. Clause (c) of this Section 1.11 shall be the exclusive means for a Noticing Shareholder to make director nominations or submit other business before a meeting of shareholders (other than proposals brought under Rule 14a-8 under the Exchange Act and included in the Corporation's notice of meeting, which proposals are not governed by these Amended and Restated Bylaws). Notwithstanding anything in these Amended and Restated Bylaws to the contrary, no business shall be conducted at a shareholders' meeting except in accordance with the procedures set forth in Section 1.11 and Section 1.12 of these Amended and Restated Bylaws.

Section 1.12 Notice of Stockholder Business and Nominations. In order for a Noticing Shareholder to properly bring any item of business before a meeting of shareholders, the Noticing Shareholder must give timely notice thereof in writing to the Secretary of the Corporation in compliance with the requirements of this Section 1.12. Section 1.12 shall constitute an "advance notice provision" for annual meetings for purposes of Rule 14a-4(c)(1) under the Exchange Act.

- (a) To be timely, a Noticing Shareholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation:

(i) in the case of an annual meeting of shareholders, not earlier than the close of business on the 150th day and not later than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the shareholder to be timely must be so delivered not earlier than the close of business on the 150th day prior to the date of such annual meeting and not later than the close of business on the later of the 120th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation; and

(ii) in the case of a special meeting of shareholders called for the purpose of electing directors, not earlier than the close of business on the one-hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the date on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs. In no event shall any adjournment or postponement of an annual or special meeting, or the announcement thereof, commence a new time period for the giving of a shareholder's notice as described above.

(b) To be in proper form, whether in regard to a nominee for election to the Board of Directors or other business, a Noticing Shareholder's notice to the Secretary must:

(i) set forth, as to the Noticing Shareholder and, if the Noticing Shareholder holds for the benefit of another, the beneficial owner on whose behalf the nomination or proposal is made, the following information together with a representation as to the accuracy of the information:

(A) the name and address of the Noticing Shareholder as they appear on the Corporation's books and, if the Noticing Shareholder holds for the benefit of another, the name and address of such beneficial owner (collectively "Holder");

(B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned beneficially and/or of record, and the date such ownership was acquired;

(C) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not the instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") that is directly or indirectly owned beneficially by the Holder or any Shareholder Associated Person of the Noticing Shareholder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation;

(D) any proxy, contract, arrangement, understanding, or relationship pursuant to which the Holder has a right to vote or has granted a right to vote any shares of any security of the Corporation;

(E) any short interest in any security of the Corporation (for purposes of these Amended and Restated Bylaws a person shall be deemed to have a short interest in a security if the Holder or any Shareholder Associated Person of the Noticing Shareholder directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security);

(F) any rights to dividends on the shares of the Corporation owned beneficially by the Holder that are separated or separable from the underlying shares of the Corporation;

(G) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or limited liability company or similar entity in which the Holder or any Shareholder Associated Person of the Noticing Shareholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, is the manager, managing member or directly or indirectly beneficially owns an interest in the manager or managing member of a limited liability company or similar entity;

(H) any performance-related fees (other than an asset-based fee) that the Holder or any Shareholder Associated Person of the Noticing Shareholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any;

(I) any arrangements, rights, or other interests described in Sections 1.12(b)(i)(C)–(H) held by members of such Holder’s immediate family sharing the same household;

(J) a representation that the Noticing Shareholder intends to appear in person or by proxy at the meeting to nominate the person(s) named or propose the business specified in the notice and whether or not such shareholder intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation’s outstanding shares required to approve the nomination(s) or the business proposed and/or otherwise to solicit proxies from shareholders in support of the nomination(s) or the business proposed;

(K) a certification regarding whether or not such shareholder and Shareholder Associated Persons have complied with all applicable federal, state and other legal requirements in connection with such shareholder’s and/or Shareholder Associated Persons’ acquisition of shares or other securities of the Corporation and/or such shareholder’s and/or Shareholder Associated Persons’ acts or omissions as a shareholder of the Corporation;

(L) any other information relating to the Holder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder; and

(M) any other information as reasonably requested by the Corporation.

Such information shall be provided as of the date of the notice and shall be supplemented by the Holder not later than 10 days after the record date for the meeting to disclose such ownership as of the record date.

(ii) If the notice relates to any business other than a nomination of a director or directors that the shareholder proposes to bring before the meeting, the notice must set forth:

(A) a brief description of the business desired to be brought before the meeting (including the text of any resolutions proposed for consideration), the reasons for conducting such business at the meeting, and any material direct or indirect interest of the Holder or any Shareholder Associated Persons in such business; and

(B) a description of all agreements, arrangements and understandings, direct and indirect, between the Holder, and any other person or persons (including their names) in connection with the proposal of such business by the Holder.

(iii) set forth, as to each person, if any, whom the Holder proposes to nominate for election or reelection to the Board of Directors:

(A) all information relating to the nominee (including, without limitation, the nominee's name, age, business and residence address and principal occupation or employment and the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by the nominee) that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

(B) a description of any agreements, arrangements and understandings between or among such shareholder or any Shareholder Associated Person, on the one hand, and any other persons (including any Shareholder Associated Person), on the other hand, in connection with the nomination of such person for election as a director; and

(C) a description of all direct and indirect compensation and other material monetary agreements, arrangements, and understandings during the past three years, and any other material relationships, between or among the Holder and respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K if the Holder making the nomination or on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of Item 404 and the nominee were a director or executive officer of such registrant.

(iv) with respect to each nominee for election or reelection to the Board of Directors, the Noticing Shareholder shall include a completed and signed questionnaire, representation, and agreement required by Section 1.13 of these Amended and Restated Bylaws. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of the proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of the nominee.

(c) Notwithstanding anything in Section 1.12(a) to the contrary, if the number of directors to be elected to the Board of Directors is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a shareholder's notice required by these Amended and Restated Bylaws shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which the public announcement naming all nominees or specifying the size of the increased Board of Directors is first made by the Corporation.

(d) For purposes of these Amended and Restated Bylaws:

(i) "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the Exchange Act and the rules and regulations thereunder;

(ii) "Shareholder Associated Person" means, with respect to any shareholder, (i) any person acting in concert with such shareholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such shareholder (other than a shareholder that is a depository) and (iii) any person controlling, controlled by or under common control with any shareholder, or any Shareholder Associated Person identified in clauses (i) or (ii) above; and

(iii) "Affiliate" and "Associate" are defined by reference to Rule 12b-2 under the Securities Exchange Act of 1934. An "affiliate" is any "person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." "Control" is defined as the "possession, direct or indirect, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract, or otherwise." The term "associate" of a person means: (i) any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (ii) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(e) Only those persons who are nominated in accordance with the procedures set forth in these Amended and Restated Bylaws shall be eligible to serve as directors. Only such business shall be conducted at a meeting of shareholders as shall have been brought before the meeting in accordance with the procedures set forth in these Amended and Restated Bylaws, provided, however, that, once business has been properly brought before the meeting in accordance with Section 1.12, nothing in this Section 1.12(e) shall be deemed to preclude discussion by any shareholder of such business. If any information submitted pursuant to this Section 1.12 by any shareholder proposing a nominee(s) for election as a director at a meeting of shareholders is inaccurate in any material respect, such information shall be deemed not to have been provided in accordance with Section 1.12. Except as otherwise provided by law, the Amended and Restated Certificate of Incorporation, or these Amended and Restated Bylaws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in compliance with the procedures set forth in these Amended and Restated Bylaws and, if he or she should determine that any proposed nomination or business is not in compliance with these Amended and Restated Bylaws, he or she shall so declare to the meeting and any such nomination or business not properly brought before the meeting shall be disregarded or not be transacted.

(f) Notwithstanding the foregoing provisions of these Amended and Restated Bylaws, a Noticing Shareholder also shall comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in these Amended and Restated Bylaws; provided, however, that any references in these Amended and Restated Bylaws to the Exchange Act or the rules thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 1.11 or Section 1.12 of these Amended and Restated Bylaws.

(g) Nothing in these Amended and Restated Bylaws shall be deemed to affect any rights of (A) stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (B) the holders of any series or class of Preferred Stock, if any, if so provided under any applicable certificate of designation for such Preferred Stock.

Section 1.13 Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation by a Holder, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under Section 1.12 of these Amended and Restated Bylaws) to the Secretary at the principal executive offices of the Corporation a written questionnaire providing the information requested about the background and qualifications of such person and the background of any other person or entity on whose behalf the nomination is being made and a written representation and agreement (the questionnaire, representation, and agreement to be in the form provided by the Secretary upon written request) that such person:

(a) is not and will not become a party to:

(i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how the person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation, or

(ii) any Voting Commitment that could limit or interfere with the person's ability to comply, if elected as a director of the Corporation, with the person's fiduciary duties under applicable law,

(b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a director that has not been disclosed therein, and

(c) in the person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines of the Corporation.

Section 1.14 Inspectors of Elections. Preceding any meeting of the stockholders, the Board of Directors shall appoint one (1) or more persons to act as "inspectors" of elections, and may designate one (1) or more alternate inspectors. In the event no inspector or alternate is able to act, the chairman of such meeting shall appoint one (1) or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the duties of an inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector shall:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at a meeting and the validity of proxies and ballots;

(c) specify the information relied upon to determine the validity of electronic transmissions in accordance with Section 1.09 of these Amended and Restated Bylaws;

(d) count all votes and ballots;

(e) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors;

(f) certify his or her determination of the number of shares represented at the meeting, and his or her count of all votes and ballots;

(g) appoint or retain other persons or entities to assist in the performance of the duties of inspector; and

(h) when determining the shares represented and the validity of proxies and ballots, be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Section 1.09 of these Amended and Restated Bylaws, ballots and the regular books and records of the Corporation. The inspector may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers or their nominees or a similar person which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspector considers other reliable information as outlined in this section, the inspector, at the time of his or her certification pursuant to paragraph (f) of this section, shall specify the precise information considered, the person or persons from whom the information was obtained, when this information was obtained, the means by which the information was obtained, and the basis for the inspector's belief that such information is accurate and reliable.

Section 1.15 Opening and Closing of Polls. The date and time for the opening and the closing of the polls for each matter to be voted upon at a stockholder meeting shall be announced at the meeting. The inspector shall be prohibited from accepting any ballots, proxies or votes or any revocations thereof or changes thereto after the closing of the polls, unless the Delaware Court of Chancery upon application by a stockholder shall determine otherwise.

Section 1.16 List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting either (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 1.17 Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 1.16 of this Article I or the books of the Corporation, or to vote in person or by proxy at any meeting of the stockholders.

## **ARTICLE II**

### **BOARD OF DIRECTORS**

Section 2.01 General Powers. Except as may otherwise be provided by law, the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by applicable law or by the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws of the Corporation, the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, except as otherwise specifically required by law or as otherwise provided in the Amended and Restated Certificate of Incorporation.

Section 2.02      Number of Directors. Upon the Amended and Restated Certificate of Incorporation becoming effective pursuant to the General Corporation Law of the State of Delaware (the “Effective Time”), the total number of directors constituting the entire Board of Directors shall be seven (7). The Board shall consist of one or more members, the number thereof to be determined from time to time by resolution of the Board. Directors need not be stockholders. Thereafter, subject to the terms of any one or more series or classes of Preferred Stock, the total number of directors constituting the entire Board of Directors shall consist of not less than one nor more than fifteen members, the exact number of which shall be fixed from time to time exclusively by resolution adopted by the affirmative vote of a majority of the entire Board of Directors.

Section 2.03      Classified Board of Directors; Election of Directors. Effective upon the Effective Time, the directors of the Corporation shall be divided into three classes designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. The Board of Directors may assign members of the Board of Directors already in office to such classes as of the Effective Time. The term of office of the initial Class I directors shall expire at the first annual meeting of the stockholders following the Effective Time; the term of office of the initial Class II directors shall expire at the second annual meeting of the stockholders following the Effective Time; and the term of office of the initial Class III directors shall expire at the third annual meeting of the stockholders following the Effective Time. At each annual meeting of stockholders, commencing with the first annual meeting of stockholders following the Effective Time, successors to the class of directors whose term expires at that annual meeting shall be elected to hold office until the third annual meeting next succeeding his or her election and until his or her respective successor shall have been duly elected and qualified. If the number of directors is changed, any increase or decrease shall be apportioned among the classes in such a manner as the Board of Directors shall determine so as to maintain the number of directors in each class as nearly equal as possible, but in no case will a decrease in the number of directors shorten the term of any incumbent director.

Section 2.04      The Chairman of the Board. The Directors may elect from among the members of the Board a “Chairman of the Board.” The Chairman of the Board may be an officer of the Corporation if determined by the Board of Directors in its discretion. The Chairman of the Board shall have such duties and powers as set forth in these Amended and Restated Bylaws or as shall otherwise be conferred upon the Chairman of the Board from time to time by the Board of Directors. Except where by law the signature of the Chief Executive Officer is required, the Chairman of the Board shall possess the same power as the Chief Executive Officer to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. The Chairman of the Board may be the Chief Executive Officer of the Corporation. The Chairman of the Board shall, if present, preside over all meetings of the stockholders and of the Board of Directors. The Board of Directors shall by resolution establish a procedure to provide for an acting Chairman of the Board in the event the most recently elected Chairman of the Board is unable to serve or act in that capacity.

Section 2.05 Annual and Regular Meetings. The annual meeting of the Board of Directors for the purpose of electing officers and for the transaction of such other business as may come before the meeting shall be held after the annual meeting of the stockholders and may be held at such places within or without the State of Delaware and at such times as the Board may from time to time determine, and if so determined notice thereof need not be given. Notice of such annual meeting of the Board of Directors need not be given. The Board of Directors from time to time may by resolution provide for the holding of regular meetings and fix the place (which may be within or without the State of Delaware) and the date and hour of such meetings. Notice of regular meetings need not be given, provided, however, that if the Board of Directors shall fix or change the time or place of any regular meeting, notice of such action shall be mailed promptly, or sent by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail or other electronic means, to each Director who shall not have been present at the meeting at which such action was taken, addressed to him or her at his or her usual place of business, or shall be delivered to him or her personally. Notice of such action need not be given to any Director who attends the first regular meeting after such action is taken without protesting the lack of notice to him or her, prior to or at the commencement of such meeting, or to any Director who submits a signed waiver of notice, whether before or after such meeting.

Section 2.06 Special Meetings: Notice. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, Chief Executive Officer (or, in the event of his or her absence or disability, by the President or any Executive Vice President), or by the Board of Directors pursuant to the following sentence, at such place (within or without the State of Delaware), date and hour as may be specified in the respective notices or waivers of notice of such meetings. Special meetings of the Board of Directors also may be held whenever called pursuant to a resolution approved by a majority of the entire Board of Directors. Special meetings of the Board of Directors may be called on twenty-four (24) hours' notice, if notice is given to each Director personally or by telephone, including a voice messaging system, or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail or other electronic means, or on five (5) days' notice, if notice is mailed to each Director, addressed to him or her at his or her usual place of business or to such other address as any Director may request by notice to the Secretary. Notice of any special meeting need not be given to any Director who attends such meeting without protesting the lack of notice to him or her, prior to or at the commencement of such meeting, or to any Director who submits a signed waiver of notice, whether before or after such meeting, and any business may be transacted thereat.

Section 2.07 Quorum: Voting. At all meetings of the Board of Directors, the presence of at least a majority of the total authorized number of Directors shall constitute a quorum for the transaction of business. Except as otherwise required by law or by the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws, the vote of at least a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors.

Section 2.08 Adjournment. A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting of the Board of Directors to another time or place. No notice need be given of any adjourned meeting unless the time and place of the adjourned meeting are not announced at the time of adjournment, in which case notice conforming to the requirements of Section 2.05 of these Amended and Restated Bylaws shall be given to each Director.

Section 2.09 Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing or by electronic transmission, and such writing, writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.10 Regulations; Manner of Acting. To the extent consistent with applicable law, the Amended and Restated Certificate of Incorporation and these Amended and Restated Bylaws, the Board of Directors may adopt by resolution such rules and regulations for the conduct of meetings of the Board of Directors and for the management of the property, affairs and business of the Corporation as the Board of Directors may deem appropriate. The Directors shall act only as a Board of Directors and the individual Directors shall have no power in their individual capacities unless expressly authorized by the Board of Directors.

Section 2.11 Action by Telephonic Communications. Members of the Board of Directors may participate in a meeting of the Board of Directors by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 2.12 Resignations. Any Director may resign at any time by submitting an electronic transmission or by delivering a written notice of resignation, signed by such Director, to the Chairman of the Board or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 2.13 Removal of Directors. Subject to the terms of any one or more series or classes of Preferred Stock, any director or the entire Board of Directors may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least a majority of the voting power of the Corporation's outstanding shares of stock entitled to vote generally in the election of directors, voting together as a single class. For purposes of this Article II, "cause" shall mean, with respect to any director, (i) the willful failure by such director to perform, or the gross negligence of such director in performing, the duties of a director, (ii) the engaging by such director in willful or serious misconduct that is injurious to the Corporation or (iii) the conviction of such director of, or the entering by such director of a plea of *nolo contendere* to, a crime that constitutes a felony.

Section 2.14 Vacancies and Newly Created Directorships. Subject to the terms of any one or more series or classes of Preferred Stock, any vacancies in the Board of Directors for any reason and any newly created directorships resulting by reason of any increase in the number of directors shall be filled only by the Board of Directors (and not by the stockholders), acting by a majority of the remaining directors then in office, even if less than a quorum, or by a sole remaining director, and any directors so appointed shall hold office until the next election of the class of directors to which such directors have been appointed and until their successors are duly elected and qualified.

Section 2.15 Compensation. The amount, if any, which each Director shall be entitled to receive as compensation for such Director's services, shall be fixed from time to time by resolution of the Board of Directors or any committee thereof. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for service as committee members.

Section 2.16 Reliance on Accounts and Reports, Etc. A Director, or a member of any committee designated by the Board of Directors, shall, in the performance of such Director's or member's duties, be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees designated by the Board of Directors, or by any other person as to the matters the Director or the member reasonably believes are within such other person's professional or expert competence and who the Director or member reasonably believes or determines has been selected with reasonable care by or on behalf of the Corporation.

Section 2.17 Director Elections by Holders of Preferred Stock. Notwithstanding the foregoing, whenever the holders of any one or more series or classes of Preferred Stock shall have the right, voting separately by series or class, to elect one or more directors at an annual or special meeting of stockholders, the election, filling of vacancies, removal of directors and other features of such one or more directorships shall be governed by the terms of such one or more series or classes of Preferred Stock to the extent permitted by law.

### **ARTICLE III** **COMMITTEES**

Section 3.01 Committees. The Board of Directors, by resolution adopted by the affirmative vote of a majority of Directors then in office, may designate from among its members one (1) or more committees of the Board of Directors, each committee to consist of such number of Directors as from time to time may be fixed by the Board of Directors. Any such committee shall serve at the pleasure of the Board of Directors. Each such committee shall have the powers and duties delegated to it by the Board of Directors, subject to the limitations set forth in applicable Delaware law. The Board of Directors may appoint a Chairman of any committee, who shall preside at meetings of any such committee. The Board of Directors may elect one (1) or more of its members as alternate members of any such committee who may take the place of any absent member or members at any meeting of such committee, upon request of the Chairman of the Board or the Chairman of such committee.

Section 3.02 Powers. Each committee shall have and may exercise such powers of the Board of Directors as may be provided by resolution or resolutions of the Board of Directors. No committee shall have the power or authority: to approve or adopt, or recommend to the stockholders, any action or matter expressly required by the General Corporation Law of the State of Delaware to be submitted to the stockholders for approval; or to adopt, amend or repeal the Amended and Restated Bylaws of the Corporation.

Section 3.03 Proceedings. Each committee may fix its own rules of procedure and may meet at such place (within or without the State of Delaware), at such time and upon such notice, if any, as it shall determine from time to time. Each committee shall keep minutes of its proceedings and shall report such proceedings to the Board of Directors at the meeting of the Board of Directors next following any such proceedings.

Section 3.04 Quorum and Manner of Acting. Except as may be otherwise provided in the resolution creating such committee or in the rules of such committee, at all meetings of any committee, the presence of members (or alternate members) constituting a majority of the total authorized membership of such committee shall constitute a quorum for the transaction of business. The act of the majority of the members present at any meeting at which a quorum is present shall be the act of such committee. Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting, if all members of such committee shall consent to such action in writing or by electronic transmission and such writing, writings or electronic transmission or transmissions are filed with the minutes of the proceedings of the committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. The members of any committee shall act only as a committee, and the individual members of such committee shall have no power in their individual capacities unless expressly authorized by the Board of Directors.

Section 3.05 Action by Telephonic Communications. Unless otherwise provided by the Board of Directors, members of any committee may participate in a meeting of such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 3.06 Absent or Disqualified Members. In the absence or disqualification of a member of any committee, if no alternate member is present to act in his or her stead, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Section 3.07 Resignations. Any member (and any alternate member) of any committee may resign at any time by delivering a written notice of resignation, signed by such member, to the Board of Directors or the Chairman of the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 3.08 Removal. Any member (and any alternate member) of any committee may be removed at any time, either for or without cause, by resolution adopted by a majority of the entire Board of Directors.

Section 3.09 Vacancies. If any vacancy shall occur in any committee, by reason of disqualification, death, resignation, removal or otherwise, the remaining members (and any alternate members) shall continue to act, and any such vacancy may be filled by the Board of Directors.

#### **ARTICLE IV OFFICERS**

Section 4.01 Chief Executive Officer. The Board of Directors shall select a Chief Executive Officer to serve at the pleasure of the Board of Directors. The Chief Executive Officer shall (a) supervise the implementation of policies adopted or approved by the Board of Directors, (b) exercise a general supervision and superintendence over all the business and affairs of the Corporation, and (c) possess such other powers and perform such other duties as may be assigned to him or her by these Amended and Restated Bylaws, as may from time to time be assigned by the Board of Directors and as may be incident to the office of Chief Executive Officer of the Corporation. The Chief Executive Officer shall have general authority to execute bonds, deeds and contracts in the name of the Corporation and affix the corporate seal thereto, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these Amended and Restated Bylaws, the Board of Directors or the Chief Executive Officer.

Section 4.02 Secretary of the Corporation. The Board of Directors shall appoint a Secretary of the Corporation to serve at the pleasure of the Board of Directors. The Secretary of the Corporation shall (a) keep minutes of all meetings of the stockholders and of the Board of Directors, (b) authenticate records of the Corporation, (c) give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and (d) in general, have such powers and perform such other duties as may be assigned to him or her by these Amended and Restated Bylaws, as may from time to time be assigned to him or her by the Board of Directors or the Chief Executive Officer and as may be incident to the office of Secretary of the Corporation. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then the Board of Directors may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 4.03 Other Officers Elected by Board Of Directors. At any meeting of the Board of Directors, the Board of Directors may elect a President, Vice Presidents, a Chief Financial Officer, a Treasurer, Assistant Treasurers, Assistant Secretaries, or such other officers of the Corporation as the Board of Directors may deem necessary, to serve at the pleasure of the Board of Directors. Other officers elected by the Board of Directors shall have such powers and perform such duties as may be assigned to such officers by or pursuant to authorization of the Board of Directors or by the Chief Executive Officer.

Section 4.04 Removal and Resignation; Vacancies. Any officer may be removed for or without cause at any time by the Board of Directors. Any officer may resign at any time by delivering a written notice of resignation, signed by such officer, to the Board of Directors, the Chief Executive Officer or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise, shall be filled by or pursuant to authorization of the Board of Directors.

Section 4.05 Authority and Duties of Officers. The officers of the Corporation shall have such authority and shall exercise such powers and perform such duties as may be specified in these Amended and Restated Bylaws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

Section 4.06 Salaries of Officers. The salaries of all officers of the Corporation shall be fixed by the Board of Directors or any duly authorized committee thereof.

## **ARTICLE V**

### **CAPITAL STOCK**

Section 5.01 Certificates of Stock. The Board of Directors may authorize that some or all of the shares of any or all of the Corporation's classes or series of stock be evidenced by a certificate or certificates of stock. The Board of Directors may also authorize the issue of some or all of the shares of any or all of the Corporation's classes or series of stock without certificates. The rights and obligations of shareholders with the same class and/or series of stock shall be identical whether or not their shares are represented by certificates.

(a) Shares with Certificates. If the Board of Directors chooses to issue shares of stock evidenced by a certificate or certificates, each individual certificate shall include the following on its face: (i) the Corporation's name, (ii) the fact that the Corporation is organized under the laws of Delaware, (iii) the name of the person to whom the certificate is issued, (iv) the number of shares represented thereby, (v) the class of shares and the designation of the series, if any, which the certificate represents, and (vi) such other information as applicable law may require or as may be lawful. If the Corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations determined for each series (and the authority of the Board of Directors to determine variations for future series) shall be summarized on the front or back of each certificate. Alternatively, each certificate shall state on its front or back that the Corporation will furnish the shareholder this information in writing, without charge, upon request. Each certificate of stock issued by the Corporation shall be signed (either manually or in facsimile) by any two officers of the Corporation. If the person who signed a certificate no longer holds office when the certificate is issued, the certificate is nonetheless valid.

(b) Shares without Certificates. If the Board of Directors chooses to issue shares of stock without certificates, the Corporation, if required by the Exchange Act, shall, within a reasonable time after the issue or transfer of shares without certificates, send the shareholder a written notice containing the information required to be set forth or stated on certificates pursuant to the laws of the General Corporation Law of the State of Delaware. The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

Section 5.02 Signatures; Facsimile. All signatures on the certificate referred to in Section 5.01 of these Amended and Restated Bylaws may be in facsimile, engraved or printed form, to the extent permitted by law. In case any officer, transfer agent or registrar who has signed, or whose facsimile, engraved or printed signature has been placed upon a certificate, shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 5.03 Lost, Stolen or Destroyed Certificates. The Board of Directors may direct that a new certificate be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon delivery to the Corporation of an affidavit of the owner or owners of such certificate, setting forth such allegation. The Corporation may require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

Section 5.04 Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, the Corporation shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Within a reasonable time after the transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to the laws of the General Corporation Law of the State of Delaware. Subject to the provisions of the Amended and Restated Certificate of Incorporation and these Amended and Restated Bylaws, the Board of Directors may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, transfer and registration of shares of the Corporation.

Section 5.05 Record Date. In order to determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty (60) nor fewer than ten (10) days before the date of such meeting. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, provided, however, that the Board of Directors may fix a new record date for the adjourned meeting. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights of the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5.06 Registered Stockholders. Prior to due surrender of a certificate for registration of transfer of any certificated shares, the Corporation may treat the registered owner as the person exclusively entitled to receive dividends and other distributions, to vote, to receive notice and otherwise to exercise all the rights and powers of the owner of the shares represented by such certificate, and the Corporation shall not be bound to recognize any equitable or legal claim to or interest in such shares on the part of any other person, whether or not the Corporation shall have notice of such claim or interests. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the Corporation for transfer or uncertificated shares are requested to be transferred, both the transferor and transferee request the Corporation to do so.

Section 5.07 Transfer Agent and Registrar. The Board of Directors may appoint one (1) or more transfer agents and one (1) or more registrars, and may require all certificates representing shares to bear the signature of any such transfer agents or registrars.

## **ARTICLE VI** **INDEMNIFICATION**

Section 6.01 Mandatory Indemnification and Advancement of Expenses. The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives. The right to indemnification conferred by this Article VI shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition upon receipt by the Corporation of an undertaking by or on behalf of the director or officer receiving advancement to repay the amount advanced if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation under this Article VI.

Section 6.02 Directors. The Corporation hereby acknowledges that the directors of the Corporation may have certain rights to indemnification, advancement of expenses and/or insurance provided by stockholders or affiliates of stockholders of the Corporation (other than the subsidiaries of the Corporation) (collectively, "Stockholder Affiliates") separate from the indemnification obligations of the Corporation under these Amended and Restated Bylaws or otherwise. The Corporation hereby agrees (i) that it is the indemnitor of first resort and that its obligations to the directors of the Corporation under these Amended and Restated Bylaws (or any other indemnity provided by the Corporation) are primary and any obligation of any Stockholder Affiliate to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the directors of the Corporation are secondary, (ii) that the Corporation shall be required to advance the full amount of expenses incurred by the directors of the Corporation and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by these Amended and Restated Bylaws (or any other indemnity provided by the Corporation), without regard to any rights the directors of the Corporation may have against any Stockholder Affiliate, and (iii) that the Corporation irrevocably waives, relinquishes and releases the Stockholder Affiliates from any and all claims against the Stockholder Affiliates for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by any Stockholder Affiliate on behalf of a director of the Corporation with respect to any claim for which the director of the Corporation has sought indemnification from the Corporation pursuant to these Amended and Restated Bylaws (or any other indemnity provided by the Corporation) shall affect the foregoing and the Stockholder Affiliates shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of the director of the Corporation against the Corporation.

Section 6.03      Non-Exclusivity; Insurance.

(a)            The rights of indemnification and to receive advancement of expenses as provided by this Article VI shall not be deemed exclusive of any other rights to which Indemnatee may at any time be entitled under applicable law, the Amended and Restated Certificate of Incorporation, these Amended and Restated Bylaws, any agreement, a vote of stockholders, a resolution of directors or otherwise. No right or remedy conferred in this Article VI is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given in this Article VI or now or hereafter existing at law or in equity or otherwise. All rights to indemnification under this Article VI shall be deemed to be a contract between the Corporation and each director of the Corporation or any of its subsidiaries who serves or served in such capacity at any time while this Article VI is in effect. The assertion or employment of any right or remedy in this Article VI, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy; and

(b)            The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director, officer, employee or agent of the Corporation against any liability asserted against him or her and incurred by him or her or on his or her behalf in such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability.

Section 6.04      Reliance. Persons who after the date of the adoption of this provision become or remain directors or officers of the Corporation or who, while a director or officer of the Corporation, become or remain a director, officer, employee or agent of a subsidiary, shall be conclusively presumed to have relied on the rights to indemnity, advance of expenses and other rights contained in this Article VI in entering into or continuing such service. The rights to indemnification and to the advance of expenses conferred in this Article VI shall apply to claims made against an indemnatee arising out of the acts or omissions which occurred or occur both prior and subsequent to the adoption hereof.

**ARTICLE VII**  
**OFFICES**

Section 7.01 Initial Registered Office. The registered office of the Corporation in the State of Delaware shall be located at The Corporation Trust Company, 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801.

Section 7.02 Other Offices. The Corporation may maintain offices or places of business at such other locations within or without the State of Delaware as the Board of Directors may from time to time determine or as the business of the Corporation may require.

**ARTICLE VIII**  
**GENERAL PROVISIONS**

Section 8.01 Dividends. Subject to any applicable provisions of law and the Amended and Restated Certificate of Incorporation, dividends upon the shares of the Corporation may be declared by the Board of Directors at any regular or special meeting of the Board of Directors and any such dividend may be paid in cash, property, or shares of the Corporation's capital stock. A member of the Board of Directors, or a member of any committee designated by the Board of Directors, shall be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors, or by any other person as to matters the Director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities and/or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

Section 8.02 Execution of Instruments. The Board of Directors may authorize, or provide for the authorization of, officers, employees or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. Any such authorization must be in writing or by electronic transmission and may be general or limited to specific contracts or instruments.

Section 8.03 Voting as Stockholder. Unless otherwise determined by resolution of the Board of Directors, the Chief Executive Officer, the President, if any, the Chief Financial Officer, any Executive Vice President or any other person authorized by the Board of Directors shall have full power and authority on behalf of the Corporation to attend any meeting of stockholders of any corporation in which the Corporation may hold stock, and to act, vote (or execute proxies to vote) and exercise in person or by proxy all other rights, powers and privileges incident to the ownership of such stock. Such officers acting on behalf of the Corporation shall have full power and authority to execute any instrument expressing consent to or dissent from any action of any such corporation without a meeting. The Board of Directors may by resolution from time to time confer such power and authority upon any other person or persons.

Section 8.04 Corporate Seal. The corporate seal shall be in such form as the Board of Directors shall prescribe.

Section 8.05 Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

**ARTICLE IX**  
**AMENDMENT OF BYLAWS**

Subject to the provisions of the Amended and Restated Certificate of Incorporation, these Amended and Restated Bylaws, or any of them, may be altered, amended, added to or repealed, or any provision inconsistent therewith may be adopted (i) by the Board of Directors, by resolution adopted by a majority of the directors then in office, or (ii) by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the Corporation's then outstanding shares entitled to vote generally in the election of directors, voting together as a single class.

**ARTICLE X**  
**CONSTRUCTION**

In the event of any conflict between the provisions of these Amended and Restated Bylaws as in effect from time to time and the provisions of the Amended and Restated Certificate of Incorporation of the Corporation as in effect from time to time, the provisions of such Amended and Restated Certificate of Incorporation shall be controlling.

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**FRANCESCA'S SERVICES CORPORATION**

September 16, 2016

Re: Employment Letter Agreement

Dear Steve:

Subject to the terms and conditions of this letter agreement (this "Agreement"), Francesca's Services Corporation, a Delaware corporation ("FSC"), Francesca's Holdings Corporation, a Delaware corporation ("Parent"), and Francesca's Collections, Inc., a Texas corporation ("FCL") and, collectively with FSC and Parent, the "Company") desires to employ you on the terms and conditions of this Agreement. This Agreement is subject to the Company completing a satisfactory background check and shall be effective as of the Effective Date.

1. **Employment; Compensation and Benefits.**

(a) Position and Duties. You shall serve as the Company's President and Chief Executive Officer. During your Period of Employment (as defined below) with the Company, you agree to (i) devote substantially all of your business time, energy and skill to the performance of your duties for the Company, (ii) perform such duties in a faithful, effective and efficient manner and (iii) hold no other employment.

(b) Period of Employment. Your start date will be October 10, 2016 (the "Effective Date"). Your "Period of Employment" begins on the Effective Date and is for an indefinite term, until terminated as provided in Section 2(a).

(c) Base Salary. Your base salary (the "Base Salary") shall be at an annualized rate of Seven Hundred Seventy-Five Thousand Dollars (\$775,000.00) and shall be paid in accordance with the Company's regular payroll practices in effect from time to time.

(d) Annual Bonus. You may be eligible for an annual incentive bonus based on the Company's annual bonus plan that may exist from time to time. Your target annual incentive bonus amount for a particular fiscal year of the Company during the Period of Employment shall equal One Hundred Percent (100%) of your Base Salary for that fiscal year. With respect to the fiscal year in which the Effective Date occurs, you will be eligible for a bonus for such fiscal year, prorated to reflect the number of calendar days of your employment with the Company from the Effective Date through the end of the fiscal year and the Company's performance for such period as determined by the Compensation Committee of the Parent's Board of Directors (the "Compensation Committee") relative to performance goals previously established by the Compensation Committee for fiscal 2016 bonuses for the Company's other senior executives.

(e) Signing Bonus. In connection with your execution of this Agreement, you will be entitled to payment of a signing bonus of Three Hundred Thousand Dollars (\$300,000) (the "Signing Bonus"). The Signing Bonus will be paid to you within ten (10) business days after the Effective Date. If, at any time prior to the first anniversary of the Effective Date, either you voluntarily terminate your employment with the Company or the Company terminates your employment for Cause (as defined below), you agree that you will promptly (and in all cases within thirty (30) days following your termination of employment) repay to the Company the gross (pre-tax) amount of the Signing Bonus.

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(f) Make-Whole Bonus. You will also be entitled to receive a payment from the Company (the “Make-Whole Bonus”) to compensate you for the bonus opportunity granted to you by your prior employer (the “Prior Employer”) with respect to the Prior Employer’s 2016 fiscal year (the “Prior Employer Bonus”) that you actually forfeited as a result of your accepting and commencing employment with the Company. The amount of such payment (if any) will be determined as set forth in Exhibit A attached herewith and incorporated herein for all purposes; subject to the final approval of the Compensation Committee. The Compensation Committee shall confirm the amount of the Make-Whole Bonus as soon as practicable after the end of the Prior Employer’s 2016 fiscal year and the Make-Whole Bonus shall be paid to you within ten (10) business days after the Compensation Committee’s determination; provided, however, that your right to receive any Make-Whole Bonus is subject to your continued employment with the Company through the date the Make-Whole Bonus is paid.

(g) Retirement, Welfare and Fringe Benefits. During the Period of Employment you shall be entitled to participate in all employee savings and welfare benefit plans and programs, and fringe benefit plans and programs, made available by the Company to the Company’s employees generally, in accordance with the eligibility and participation provisions of such plans and as such plans or programs may be in effect from time to time. You will be eligible for twenty (20) days of paid-time-off each year in accordance with the Company’s policies.

(h) RSA Grants. In connection with your actual commencement of employment with the Company as of the Effective Date, you will be granted the following awards of performance shares of Parent’s common stock in accordance with the Francesca’s Holdings Corporation 2015 Equity Incentive Plan (the “Plan”):

- (i) An award on the same terms and conditions as the annual awards of performance shares granted to the Company’s other executive officers in March 2016 for the Company’s 2016 fiscal year (including the performance metrics, goals and weightings applicable to such awards), with the target number of shares subject to such award to be determined by dividing (A) the product obtained by multiplying (x) One Million Five Hundred Thousand Dollars (\$1,500,000), by (y) a fraction, the numerator of which is the number of calendar days between the Effective Date and the last day of the Company’s 2016 fiscal year and the denominator of which is three hundred sixty-five (365), by (B) the closing price of a share of Parent’s common stock on The Nasdaq Stock Market on the last trading day prior to the Effective Date.
- (ii) An award of a number of performance shares determined by dividing (A) One Million Five Hundred Thousand Dollars (\$1,500,000), by (B) the closing price of a share of Parent’s common stock on The Nasdaq Stock Market on the last trading day prior to the Effective Date, such award to vest (x) with respect to one-third (1/3<sup>rd</sup>) of the shares on the last day of the Company’s 2017 fiscal year if both your employment with the Company continues through the first anniversary of the Effective Date and the Company’s earnings per share for the 2017 fiscal year is greater than \$0.75, and (y) with respect to the remaining two-thirds (2/3<sup>rd</sup>) of the shares on the last day of the Company’s 2019 fiscal year if both your employment with the Company continues through the third anniversary of the Effective Date and the Company’s earnings per share for the 2019 fiscal year is greater than \$0.75.

Each of these grants will be evidenced by a Restricted Stock Award Agreement to be effective as of the Effective Date, be subject to the approval of the Compensation Committee, and in accordance with the terms and conditions of the Plan.

(i) Future Long-Term Incentive Grants. During the Period of Employment, you shall be eligible to be granted an award under the Company's long-term incentive program for the Company's fiscal year that begins in February 2017 and each fiscal year thereafter. The grant level and terms for each such grant shall be established by the Compensation Committee in its sole discretion. It is expected that the grant date fair value (as determined by the Company based on its usual equity award valuation methodology and assumptions) of the target number of shares subject to the award or awards that you are granted in each year will have a value, in the aggregate, of not less than One Million Five Hundred Thousand Dollars (\$1,500,000).

## 2. Termination and Severance

(a) Termination. Your employment by the Company may be terminated by the Company: (i) immediately upon notice, with Cause (as defined below), or (ii) with no less than thirty (30) days' advance written notice to you, without Cause, or (iii) immediately in the event of your Disability (as defined below) or your death. In the event that you are provided with notice of termination without Cause pursuant to clause (ii) above, the Company will have the option to place you on administrative leave during the notice period. You may terminate your employment by the Company: (x) with Good Reason (as defined below) with no less than seven (7) days' advance written notice to the Company or (y) for any reason with no less than thirty (30) days' advance written notice to the Company. Any termination of your employment (by you or by the Company) must be communicated by written notice from the terminating party to the other party. Such notice of termination must be hand delivered (if to the Company, to the Company's General Counsel) and must indicate the specific provision(s) of this Agreement relied upon in effecting the termination. The date your employment by the Company terminates is referred to herein as your "Severance Date."

(b) Benefits upon Termination. Regardless of the reason for the termination of your employment with the Company, in connection with such termination the Company will pay you (on or within 30 days following your Severance Date) your accrued and unused vacation (if any) and you will be entitled to any benefits that are due to you under the Company's 401(k) plan in accordance with the terms of that plan. If you hold any stock options or other equity or equity-based awards granted by the Company, the terms and conditions applicable to those awards will control as to the consequences of a termination of your employment on those awards. In addition to the foregoing, if your employment with the Company terminates as a result of a termination by the Company of your employment without Cause (as defined below) or if you terminate your employment with Good Reason, you will (subject to the other conditions set forth in Section 2(c) below) be entitled to receive, subject to tax withholding and other authorized deductions, an aggregate amount equal to one (1) times your Base Salary as in effect on the Severance Date (the "Severance Benefit"). Subject to Section 5, the Company will pay this benefit to you in substantially equal installments (each in the applicable fraction of the aggregate benefit) in accordance with the Company's standard payroll practices over a period of twelve (12) months, with the first installment payable in the month following the month in which your Separation from Service (as such term is defined below) occurs.

(c) Conditions for Receipt of Severance Benefit. Notwithstanding anything to the contrary herein, if the Severance Benefit is otherwise due to you and, at any time, you breach any obligation under Section 6 of this Agreement, from and after the date of such breach and not in any way in limitation of any right or remedy otherwise available to the Company, you will no longer be entitled to, and the Company will no longer be obligated to pay, any remaining unpaid portion of the Severance Benefit. In addition, in order to receive any Severance Benefit, you must, upon or promptly following (and in all events, within twenty-one (21) days of, unless a longer period of time is required by applicable law) your Separation Date, provide the Company with a separation agreement which shall contain a valid, executed general release agreement in a form acceptable to the Company, and such release shall have not been revoked. In the event a period longer than twenty-one (21) days is required by applicable law, then the first installment of the Severance Benefit shall remain payable in the month following the month in which your Separation from Service (as such term is defined below) occurs, provided that if you fail to provide the Company with the executed general release agreement described above (or have otherwise revoked the release), any further installments of the Severance Benefit shall cease at such time and shall no longer be payable to you. You agree and acknowledge that such separation agreement may contain additional restrictive covenants, including, without limitation, non-solicitation covenants and non-disparagement covenants.

(d) Exclusive Remedy. You agree that should your employment by the Company terminate for any reason, the payments and benefits contemplated by this Agreement with respect to the circumstances of such termination shall constitute the exclusive and sole remedy for any such termination of your employment and you agree not to assert or pursue any other remedies, at law or in equity, with respect to any termination of employment. You agree that, in the event of a termination of your employment, you are not and will not be entitled to severance benefits under any other agreement, plan, program, or policy of the Company.

3. Certain Defined Terms. As used in this Agreement, the following terms shall be defined as follows:

(a) “Cause” shall mean that one or more of the following has occurred: (i) you have been convicted of or pleaded no contest to a felony (under the laws of the United States or any relevant state, or a similar crime or offense under the applicable laws of any relevant foreign jurisdiction); (ii) you have engaged in acts of fraud, dishonesty or other acts of material misconduct in the course of your duties; (iii) your abuse of narcotics or alcohol that has or may reasonably harm the Company; (iv) any violation by you of the Company’s written policies; (v) your failure to perform or uphold your duties and/or you fail to comply with reasonable directives of the Parent’s Board of Directors, as applicable; or (vi) any breach by you of any provision of Section 6, or any material breach by you of this Agreement or any other contract you are a party to with the Company.

(b) “Disability” shall mean a physical or mental impairment which renders you unable to perform the essential functions of your employment with the Company, even with reasonable accommodation that does not impose an undue hardship on the Company, for more than 180 days in any 12-month period, unless a longer period is required by federal or state law, in which case that longer period would apply.

(c) “ Separation from Service ” occurs when you die, retire, or otherwise have a termination of employment with the Company that constitutes a “separation from service” within the meaning of Treasury Regulation Section 1.409A-1(h)(1), without regard to the optional alternative definitions available thereunder.

(d) “ Good Reason ” shall mean the following events without your express written consent: (i) the assignment to you by the Board of any duties or responsibilities which are materially inconsistent with your position as President and Chief Executive Officer or a material reduction in duties and responsibilities exercised by you, or a loss of the title of President and/or Chief Executive Officer, except in connection with the termination of employment for Cause or Disability or death, or (ii) any material breach by the Company of any provision of this Agreement which is not cured to your reasonable satisfaction within thirty (30) days after written notice has been provided to the Company.

4. **Limitation on Benefits**. Notwithstanding anything contained in this Agreement to the contrary, to the extent that any payment, benefit or distribution of any type to you or for your benefit by the Company or any of its affiliates, whether paid or payable, provided or to be provided, or distributed or distributable pursuant to the terms of this Agreement or otherwise (collectively, the “ Total Payments ”) would be subject to the excise tax imposed under Section 4999 of the Internal Revenue Code of 1986, as amended (the “ Code ”), then the Total Payments shall be reduced (but not below zero) so that the maximum amount of the Total Payments (after reduction) shall be one dollar (\$1.00) less than the amount which would cause the Total Payments to be subject to the excise tax imposed by Section 4999 of the Code. Unless you shall have given prior written notice to the Company to effectuate a reduction in the Total Payments if such a reduction is required, any such notice consistent with the requirements of Section 409A of the Code to avoid the imputation of any tax, penalty or interest thereunder, the Company shall reduce or eliminate the Total Payments by first reducing or eliminating any cash severance benefits (with the payments to be made furthest in the future being reduced first), then by reducing or eliminating any accelerated vesting of stock options or similar awards, then by reducing or eliminating any accelerated vesting of restricted stock or similar awards, then by reducing or eliminating any other remaining Total Payments. The preceding provisions of this Section 4 shall take precedence over the provisions of any other plan, arrangement or agreement governing your rights and entitlements to any benefits or compensation.

5. **Section 409A**. It is intended that any amounts payable under this Agreement and the Company’s and your exercise of authority or discretion hereunder shall comply with and avoid the imputation of any tax, penalty or interest under Section 409A of the Code. This Agreement shall be construed and interpreted consistent with that intent. If you are a “specified employee” within the meaning of Treasury Regulation Section 1.409A-1(i) as of the date of your Separation from Service and you are entitled to the Severance Benefit, you shall not be entitled to any payment or benefit pursuant to Section 2(b) until the earlier of (i) the date which is six (6) months after your Separation from Service for any reason other than your death, or (ii) the date of your death. The provisions of the preceding sentence shall only apply if, and to the extent, required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the Code. Any amounts otherwise payable to you upon or in the six (6) month period following your Separation from Service that are not so paid by reason of such 6-month delay provision shall be paid (without interest) as soon as practicable (and in all events within thirty (30) days) after the date that is six (6) months after your Separation from Service (or, if earlier, as soon as practicable, and in all events within thirty (30) days, after the date of your death).

## 6. Protective Covenants

### (a) Confidential Information

(i) You shall not disclose or use at any time, either during the Period of Employment or thereafter, any Trade Secrets and Confidential Information (as defined below) of which you become aware, whether or not such information is developed by you, except to the extent that such disclosure or use is directly related to and required by your performance in good faith of duties for the Company. You will take all appropriate steps to safeguard Trade Secrets and Confidential Information in your possession and to protect it against disclosure, misuse, espionage, loss and theft. You shall deliver to the Company at the termination of your employment, or at any time the Company may request, all memoranda, notes, plans, records, reports, computer tapes and software and other documents and data (and copies thereof) relating to the Trade Secrets and Confidential Information or the Work Product (as hereinafter defined) of the business of the Company or any of its affiliates which you may then possess or have under your control. Notwithstanding the foregoing, you may truthfully respond to a lawful and valid subpoena or other legal process, but shall give the Company the earliest possible notice thereof.

(ii) For purposes of this Agreement, “Trade Secrets and Confidential Information” means information that is not generally known to the public and that is used, developed or obtained by the Company in connection with its business, including, but not limited to, information, observations and data obtained by you while employed by the Company or any predecessors thereof concerning (i) the business or affairs of the Company (or such predecessors), (ii) products or services, (iii) fees, costs and pricing structures, (iv) designs, (v) analyses, (vi) drawings, photographs and reports, (vii) computer software, including operating systems, applications and program listings, (viii) flow charts, manuals and documentation, (ix) data bases, (x) accounting and business methods, (xi) inventions, devices, new developments, methods and processes, whether patentable or unpatentable and whether or not reduced to practice, (xii) customers and clients and customer or client lists, (xiii) other copyrightable works, (xiv) all production methods, processes, technology and trade secrets, and (xv) all similar and related information in whatever form. Trade Secrets and Confidential Information will not include any information that has been published (other than a disclosure by you in breach of this Agreement) in a form generally available to the public prior to the date you propose to disclose or use such information. Trade Secrets and Confidential Information will not be deemed to have been published merely because individual portions of the information have been separately published, but only if all material features comprising such information have been published in combination.

(iii) For purposes of this Agreement, “Work Product” means all inventions, innovations, improvements, technical information, systems, software developments, methods, designs, analyses, drawings, reports, service marks, trademarks, trade names, logos and all similar or related information (whether patentable or unpatentable, copyrightable, registerable as a trademark, reduced to writing, or otherwise) which relates to the Company’s or any of its affiliates’ actual or anticipated business, research and development or existing or future products or services and which are conceived, developed or made by you (whether or not during usual business hours, whether or not by the use of the facilities of the Company or any of its affiliates, and whether or not alone or in conjunction with any other person) while employed by the Company (including those conceived, developed or made prior to the Effective Date) together with all patent applications, letters patent, trademark, trade name and service mark applications or registrations, copyrights and reissues thereof that may be granted for or upon any of the foregoing. All Work Product that you may have discovered, invented or originated during your employment by the Company or any of its affiliates prior to the date hereof, that you may discover, invent or originate during your employment or at any time following the termination of your employment with the Company, shall be the exclusive property of the Company and its affiliates, as applicable, and you hereby assign all of your right, title and interest in and to such Work Product to the Company or its applicable affiliate, including all intellectual property rights therein. You shall promptly disclose all Work Product to the Company, shall execute at the request of the Company any assignments or other documents the Company may deem necessary to protect or perfect its (or any of its affiliates’, as applicable) rights therein, and shall assist the Company, at the Company’s expense, in obtaining, defending and enforcing the Company’s (or any of its affiliates’, as applicable) rights therein. You hereby appoint the Company as your attorney-in-fact to execute on your behalf any assignments or other documents deemed necessary by the Company to protect or perfect the Company, the Company’s (and any of its affiliates’, as applicable) rights to any Work Product.

(b) Restriction on Competition. During your employment with the Company and twelve (12) months following the termination of your employment with the Company (regardless of the reason for such termination and regardless of whether or not you are entitled to the Severance Benefit) (the “Restricted Period”), you shall not directly or indirectly, individually or on behalf of any other person or entity, manage, participate in, work for, consult with, render services for, or take an interest in (as an owner, stockholder, partner or lender) any Competitor. For purposes of this Agreement, “Competitor” means a Person anywhere in North America (the “Restricted Area”) that at any time during the period of time during which you are employed by the Company, or any time during the Restricted Period engages in the business of operating retail stores and/or websites for the sale of women’s apparel, jewelry, accessories, gifts, greeting cards, picture frames and related items or any other business that the Company is engaged in, or reasonably anticipates becoming engaged in. As used herein, the term ‘retail stores’ shall not include: (i) stores that are operated in thirty-thousand or greater square feet; (ii) department stores such as Macy’s, Dillard’s, JCPenney, Nordstrom, Target, Walmart etc., and ; (iii) the following named stores; Burlington Coat Factory, Marshall’s, Dollar General, Family Dollar, DSW, FootLocker, and Dick’s Sporting Goods. The parties hereto agree that the Company intends to engage in business throughout the Restricted Area, even if it does not currently do so, and therefore its scope is reasonable. Nothing herein shall prohibit you from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as you have no active participation in the business of such corporation. The term “Person” as used in this Agreement shall be construed broadly and shall include, without limitation, an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

(c) Non-Solicitation of Employees and Consultants. During your employment with the Company and during the Restricted Period, you will not, and should be enjoined (if necessary) from being able to directly or indirectly through any other Person: (i) induce or attempt to induce any employee or independent contractor of the Company or any affiliate of the Company to leave the employ or service, as applicable, of the Company or such affiliate, or in any way interfere with the relationship between the Company or any such affiliate, on the one hand, and any employee or independent contractor thereof, on the other hand, or (ii) hire any person who was an employee of the Company or any affiliate of the Company until twelve (12) months after such individual's employment relationship with the Company or such affiliate has been terminated.

(d) Non-Solicitation of Customers; Non-Disparagement. During your employment with the Company and during the Restricted Period, you will not, and should be enjoined (if necessary) from being able to directly or indirectly through any other Person: (i) influence or attempt to influence customers, vendors, suppliers, licensors, lessors, joint venturers, associates, consultants, agents, or partners of the Company or any affiliate of the Company to divert their business away from the Company or such affiliate; and (ii) interfere with, disrupt or attempt to disrupt the business relationships, contractual or otherwise, between the Company or any affiliate of the Company, on the one hand, and any of its or their customers, suppliers, vendors, lessors, licensors, joint venturers, associates, officers, employees, consultants, managers, partners, members or investors, on the other hand.

You agree that you will not disparage, ridicule or criticize the Company or its affiliates and its and their present and former employees, directors and officers, or make any remarks or statements that could reasonably be construed as disparaging, ridiculing or criticizing any of them; provided, however, the foregoing shall not prohibit you from giving truthful testimony in any legal proceeding pending before any agency or court of the United States or state government or in any arbitration proceeding relating to this Agreement.

(e) Understanding of Covenants. You acknowledge and agree that the Company would not have entered into this Agreement, providing for severance protections to you on the terms and conditions set forth herein, but for your agreements herein. You agree that the foregoing covenants set forth in this Section 6 (the "Restrictive Covenants") are reasonable, including in temporal and geographical scope, and in all other respects, and necessary to protect the Company's and its affiliates' Trade Secrets and Confidential Information, good will, stable workforce, and customer relations. The parties hereto intend that Restrictive Covenants shall be deemed to be a series of separate covenants, one for each county or province of each and every state or jurisdiction within the Restricted Area and one for each month of the Restricted Period. You understand that the Restrictive Covenants may limit your ability to earn a livelihood in a business similar to the business of the Company and any of its affiliates, but you nevertheless believe that you have received and will receive sufficient consideration and other benefits as an employee of the Company and as otherwise provided hereunder or as described in the recitals hereto to clearly justify such restrictions which, in any event (given your education, skills and ability), you do not believe would prevent you from otherwise earning a living. You agree that the Restrictive Covenants do not confer a benefit upon the Company disproportionate to your detriment.

(f) **Enforcement.** You agree that a breach by you of any of the covenants in this Section 6 would cause immediate and irreparable harm to the Company that would be difficult or impossible to measure, and that damages to the Company for any such injury would therefore be an inadequate remedy for any such breach. Therefore, you agree that in the event of any breach or threatened breach of any provision of this Section 6, the Company shall be entitled, in addition to and without limitation upon all other remedies the Company may have under this Agreement, at law or otherwise, to obtain specific performance, injunctive relief and/or other appropriate relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Section 6, or require you to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived from or received as a result of any transactions constituting a breach of this Section 6, if and when final judgment of a court of competent jurisdiction is so entered against you.

7. **Withholding Taxes.** Notwithstanding anything else herein to the contrary, the Company may withhold (or cause there to be withheld, as the case may be) from any amounts otherwise due or payable under or pursuant to this Agreement such federal, state and local income, employment, or other taxes as may be required to be withheld pursuant to any applicable law or regulation.

8. **Successors and Assigns.** This Agreement is personal to you and without the prior written consent of the Company shall not be assignable by you otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by your legal representatives. This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

9. **Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF TEXAS OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF TEXAS TO BE APPLIED.

10. **Severability.** If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable for any reason, such finding shall not affect, impair or invalidate the remainder of this Agreement. If any aspect of any restriction herein is too broad or restrictive to permit enforcement to its fullest extent, you and the Company agree that any court of competent jurisdiction shall modify such restriction to the minimum extent necessary to make it enforceable and then enforce the provision as modified.

11. **Entire Agreement, Amendment and Waiver.** This Agreement constitutes the entire agreement between you and the Company with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written communications respecting such subject matter. This Agreement shall not be modified, amended or in any way altered except by written instrument signed by you and by an officer of the Company duly authorized by Parent's Board of Directors to execute such instrument. A waiver by either party hereto of any rights or remedies hereunder on any occasion shall not be a bar to the exercise of the same right or remedy on any subsequent occasion or of any other right or remedy at any time.

12. **Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

13. **Remedies**. Each of the parties to this Agreement and any such person or entity granted rights hereunder whether or not such person or entity is a signatory hereto shall be entitled to enforce its rights under this Agreement specifically to recover damages and costs for any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that each party may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance, injunctive relief and/or other appropriate equitable relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Agreement. Each party shall be responsible for paying its own attorneys' fees, costs and other expenses pertaining to any such legal proceeding and enforcement regardless of whether an award or finding or any judgment or verdict thereon is entered against either party.

14. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument.

[Signature page follows]



**Exhibit A**

Performance Criteria	Weighting		Payout as % of Target Bonus Allocable to the Metric	\$ Target
Pre-Tax Earnings (Income from continuing operations before income taxes)	66.7%	Maximum	200%	\$43.5m
		Target	100%	\$34.7m
		Threshold	Up to 25%	\$30.4m
Comparable Store Sales (Relative to our performance group)	33.3%	Maximum	200%	TBD
		Target	100%	TBD
		Threshold	25%	TBD

Target Bonus for purposes of this Exhibit A: \$330,344 [(\$657,400 x .75) x .67].

Performance Group for purposes of this Exhibit shall be as follows:

Dillard's, Inc., Abercrombie & Fitch Co. Genesco Inc., J. C. Penney Company, Inc., American Eagle Outfitters, Inc. Guess?, Inc., Kohl's Corporation, Ann Inc., L Brands, Inc., Macy's, Inc., Ascena Retail Group, Inc., The Men's Wearhouse, Inc., Nordstrom, Inc., Chico's FAS, Inc., Ross Stores, Inc., Sears Holdings Corporation, DSW Inc., The TJX Companies, Inc., Foot Locker, Inc., Urban Outfitters, Inc., The Gap, Inc.

All of the above subject to confirmation per the final reported by Prior Employer.

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**francesca's® Announces Appointment of Steven P. Lawrence as President and Chief Executive Officer**

HOUSTON, September 20, 2016 (GLOBE NEWSWIRE) -- Francesca's Holdings Corporation (Nasdaq:FRAN) (the "Company") today announced the appointment of Steven P. Lawrence as President and Chief Executive Officer. Mr. Lawrence was also appointed to the Company's Board of Directors. He will assume his roles with the Company in October 2016. Upon Mr. Lawrence's official assumption of his duties, Richard Kunes, who has been serving as the Company's Interim Chairman of the Board, President and Chief Executive Officer since May 2016, will become the Company's Chairman of the Board.

Mr. Lawrence currently serves as the Chief Merchandising Officer for Stage Stores, Inc. Prior to joining Stage Stores in May 2012, Mr. Lawrence worked at J.C. Penney Company from September 2000 to March 2012.

"After a thorough selection process, francesca's is excited to announce Steve's appointment as our President and Chief Executive Officer", said Mr. Kunes. "Steve is a world-class retail executive and brings a wealth of knowledge gained over 26 years of retail experience. Not only is Steve a talented merchant, he is a strategic thinker and a thought leader who knows how to lead teams to successfully execute their strategic plans and to drive growth. We are confident Steve is the right person to capitalize on francesca's solid growth platform and continue to enhance francesca's position as a specialty retailer."

Mr. Lawrence said, "francesca's unique retailing strategy and deep customer loyalty makes it an outstanding brand with tremendous growth potential. I look forward to working with the strong leadership team and employees at francesca's to build upon the success and growth achieved so far. I am honored and humbled by the confidence placed in me by the Board to lead this amazing company."

Richard Emmett, Lead Director stated, "We were fortunate to have had Rick's leadership as Interim President and Chief Executive Officer. Rick's many years of retail experience both as an executive and a Board member proved invaluable as he led us through this CEO transition. On behalf of the Board and management, I would like to extend our gratitude to Rick for stepping in over the past five months. We look forward to continuing to work with Rick as our Chairman of the Board."

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## Forward-Looking Statements

Certain statements in this release are “forward-looking statements” made pursuant to the safe-harbor provisions of the Private Securities Litigation Reform Act of 1995, as amended. Such forward-looking statements reflect our current expectations or beliefs concerning future events and are subject to various risks and uncertainties that may cause actual results to differ materially from those that we expected. These risks and uncertainties include, but are not limited to, our ability to integrate a new President and Chief Executive Officer and our ability to successfully implement our strategic plan and support our continued growth. For additional information regarding these and other risks and uncertainties that could cause actual results to differ materially from those contained in our forward-looking statements, please refer to “Risk Factors” in our Annual Report on Form 10-K for the year ended January 30, 2016 filed with the Securities and Exchange Commission (“SEC”) on March 25, 2016 and our Quarterly Report on Form 10-Q for the quarter ended April 30, 2016 filed with the SEC on June 9, 2016, as well as any risk factors contained in subsequent quarterly and annual reports we file with the SEC. We undertake no obligation to publicly update or revise any forward-looking statement.

## About Francesca's Holdings Corporation

francesca's® is a growing specialty retailer which operates a nationwide-chain of boutiques providing customers a unique, fun and personalized shopping experience. The merchandise assortment is a diverse and balanced mix of apparel, jewelry, accessories and gifts. Today francesca's® operates 663 boutiques in 48 states and the District of Columbia and also serves its customers through [francescas.com](http://francescas.com). For additional information on francesca's®, please visit [www.francescas.com](http://www.francescas.com).

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